THE LAW TIMES,

AND

JOURNAL OF PROPERTY,

FROM

OCTOBER 1844, TO MARCH 1845.

VOLUME IV.

THE REPORTS IN THIS VOLUME ARE CONTRIBUTED BY THE FOLLOWING GENTLEMEN:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, Esq. of the Middle Temple, Special Pleader.

HOUSE OF LORDS by WILLIAM PATERSON, Esq. of Gray's Inn, Barrister-at-Law.

EQUITY COURTS.

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BANKRUPT AND INSOLVENT COURTS.

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NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by JOHN BRIDGE ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit by G. F. H. OLIPHANT, Esq. Barrister-at-Law.

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MIDLAND CIRCUIT by ADAM BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JOHN B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

The REGISTRATION COURTS, collected and edited by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister at-Law.

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THE REPORTS.

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PRIVY COUNCIL by WILLIAM PATERSON, Esq., of Gray's-inn, Barrister-at-Law.

HOUSE of LORDS by WILLIAM PATERSON, Esq., of Gray's-inn, Barrister-at-Law.

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The EXCHEQUER CHAMBER by J. A. FOOT, Esq., of the Middle Temple, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq., of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq., of the Middle Temple.

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N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

Equity Courts.

LORD CHANCELLOR'S COURT.

Wednesday, July 31.

Re HARLAND, a Lunatic.

Practice—Sale of gravel.

White supported a petition, praying the confirmation of the commissioner's report. The commissioner had reported that it would be beneficial to the lunatic's estate to sell a quantity of gravel which is found upon the property. There was a mortgage of 330*l*. on the estate, which it was proposed to pay off out of the money received for gravel. It had been valued at 60*l*. an acre, and would require an outlay of 300*l* which the tenant of the property was willing to make upon such terms. The money as received to be carried to a separate account, to be entitled the "gravel fund." Costs to be paid out of the general estate.

Ordered.

WINDSOR *v.* WINDSOR, *Re* WINDSOR, a Lunatic.

Practice—Lunatic tenant for life—Sale of estate—Title-deeds.

The estate had been sold under a decree in this cause, of which the lunatic was tenant for life. The deeds had been in the hands of trustees, who had deposited them in the Master's office.

James Parker supported a petition, praying that the deeds might be delivered out to the purchaser.

Ordered.

WILLIS *v.* OLIVER, *Ex parte* ANN TAYLOR.

Contempt in not producing deeds—Discharge of prisoner—Master's report

A defendant in custody for non-production of documents, which are not within his power, but in the hands of his mortgagee, cannot apply for his discharge under the 17th rule of 3 Wm. 4, c. 36, but must apply to the judge who made the order for production to rescind it.

Blunt, a counsel for the suitors' fund, moved to discharge the defendant, Ann Taylor, out of custody, upon the ground of irregularity; or in the alternative that she might be discharged and her costs paid out of the suitors' fund. She had been committed in 1839 for not depositing deeds in the Master's office according to an order made to that effect.

The suit had been instituted against the assignees of an insolvent debtor and a Mr. Mitchell; and Ann Taylor, as assignee from Mitchell of a leasehold estate of the insolvent's, was made a defendant at a later stage of the proceedings. The suit had been originally commenced by James Willis and John M'Lean, who were also assignees, as co-plaintiffs, but James Willis was dead at the time Ann Taylor was made a defendant. M'Lean had become an insolvent. Under these circumstances he contended that the suit had become abated, and consequently Ann Taylor's commitment was altogether irregular. The order by which she was required to deposit the papers in the Master's office was entitled in the suit of "Willis and another." The writ of execution is in a suit wherein James Willis and another are plaintiffs, and Oliver and others are defendants. The defendant was also in custody for another contempt, in nonpayment of costs to "James Willis and others."

Chandless, contrà.—The words "since dead" should have been added after the name of James Willis in the title to the cause, but the omission was unimportant. The bill was filed, in 1829, by the plaintiffs as assignees; one of them died in 1831; all his interest survived, and it is quite clear a surviving assignee may continue the suit. There is no abatement. (Lord Redesdale's Book on Pleading, pp. 58, 59, 4th ed.)

The LORD CHANCELLOR.—What do you say to the insolvency of the other plaintiff?

Chandless.—He is a mere trustee, and therefore his insolvency does not determine his interest in the subject-matter of the suit. As to costs, payment must be made to the solicitor.

The LORD CHANCELLOR.—Mr. Chandless is right. The defendant is in mercy. You must proceed on the other part of the motion.

Blunt.—She is unable to produce the deeds, which are in the hands of a mortgagee.

The LORD CHANCELLOR.—If she is in custody for not producing the deeds, and she is unable to do so, the Master, on visiting the prison, will advise her what to do.

Blunt.—The Master's report on her case states that the deeds are in the hands of her mortgagee, that she has nothing to subsist on but a charitable allowance of 6s. a week, and that hers is a proper case for the Act. She states that in 1835, being indebted to one Pearce, she deposited these deeds with him as a security for his debt.

The LORD CHANCELLOR.—She can get the deeds by paying off the mortgage debt, and must apply to the Vice-Chancellor to discharge the order. I cannot order the costs to be paid out of the suitors' fund. The 17th rule does not apply to such a case as this. The motion is wrong altogether. The plaintiff's costs must be costs in the cause.

WOODBURN *v.* FISHER.

Injunction—Contempt—Vacation judge—Practice.

Where an injunction has been granted by the vacation judge acting for another judge, applications to dissolve the injunction must, according to the 15th order of the 8th of May, 1837, be made to the Lord Chancellor, and not to the judge to whom the cause properly belongs.

In August, 1843 (the vacation), an injunction had been granted by the Vice-Chancellor of England, acting for Vice-Chancellor Knight Bruce, to restrain the defendant and his servants from carrying away stones, gravel, sand, and other substances, from the bank or mound in the plaintiff's bill mentioned. The plaintiff is the owner of a small property in the island of Walney, on the Lancashire coast; and the defendant is the occupier of another property lying to the north of the plaintiff's. There is a sea-bank of sand, stones, and gravel, on the west of the island, which protects it, and especially that part of it where the plaintiff's property is situate, from inundation by the sea during high tides. This bank extends along the whole of the western coast of the island, between high and low watermark, and the bill alleged, that thereby that part of the island called the Division of Biggar, including the plaintiff's property, has been, and still is, protected from being overflowed and damaged by the sea. In the affidavits filed on the part of the plaintiff, the sea-bank is described as "a natural bank or mound called the White Horse Scarr." The defendant had put in his answer at the beginning of the present year, and had since gone into evidence to shew that there are three scarrs or precipices in the division of Biggar, and that the scarr from which the defendant took stones is situated two miles to the north of the plaintiff's property, which is opposite the White Horse Scarr. The defendant had acquiesced in the injunction until last May, when he had again removed large quantities of stone, and thereby committed a breach of the injunction. For that breach he had been committed under an order made by Vice-Chancellor Knight Bruce. He had then moved to be discharged from custody, upon the ground that he had not committed any breach of the injunction, and that motion had been refused.

Cooper now moved that the injunction might be dissolved, and that the order of the Vice-Chancellor for the committal of the defendant for the breach of it in May last might be discharged.

Phillips objected, that this was an original and not an appeal motion. The defendant had moved before the Vice-Chancellor for his discharge, upon the allegation that he had never committed a breach of the injunction; but he had never applied to dissolve the injunction.

Cooper.—On appeal motions it is usual to add also an original motion, and to produce fresh affidavits. The defendant had a right to come here at once.

The LORD CHANCELLOR.—Under what circumstances was the injunction granted?

Phillips.—The Vice-Chancellor of England, as vacation judge, granted the injunction for Vice-Chancellor Knight Bruce.

The LORD CHANCELLOR.—This is an original motion, and must be heard by the Vice-Chancellor.

Cooper would proceed with the other part of the case, and contended, that by the terms of the injunction the defendant was only restrained from taking material from the White Horse Scarr. The defendant, by an affidavit filed the 29th of July, stated, that he had no intention to commit a breach of the injunction, which he apprehended to restrain only from taking stones at the White Horse Scarr. The plaintiff had affixed a notice-board to the White Horse Scarr only, and which was the only weak part of the island. That the parts of the sea-bank to the north of the White Horse Scarr, from whence the defendant had taken the stones, was bold and rocky, and that it was beneficial to carry away the stones, as the sea then formed a natural bank of gravel and sand.

The LORD CHANCELLOR.—That goes to the merits of the injunction.

Cooper.—Even if the injunction did extend to restrain the defendant from the acts he had lately done, the 17th rule of the 15th section of Sir Edward Sugden's Act (1 Wm. 1, c. 36), if the party in contempt had no other detainer against him which rendered it necessary for him to procure his discharge under the Insolvent Act, enabled the Court to discharge him, and make the costs costs in the cause. Besides, the application must necessarily be made here, for by the 15th order of May 1837, it is directed that, "in the interval between the close of the sittings after any Term and the commencement of the sittings of the next ensuing Term, applications for special orders may be made *to any judge of the court in the same way as if those orders had not been made*," and the order afterwards directs that "no order so made by one judge for another *will be reheard for the purpose of being discharged or varied* otherwise than by the Lord Chancellor." The application to dissolve the injunction must, therefore, of necessity be made to this Court.

The LORD CHANCELLOR.—This case ought to stand over. But what is to be done with the man?

Phillips.—The defendant's wife and servants are still hovering on the coast with a ship, and they intend to carry off more of the sea-bank. The plaintiff will produce affidavits within a week to meet the defendant's application.

Bankrupt and Insolvent Courts.

COURT OF BANKRUPTCY.

(Before Mr. Commissioner EVANS.)

Thursday, Sept. 26.

Re PORTINGTON.

Vesting order in Insolvent Court—Effect of remand when petition dismissed.

The insolvent in this case was a prisoner in the Queen's Bench prison, where he had been detained three years. A vesting order had been obtained by the creditors, but he had refused to file a schedule. He had appeared on his first examination, having in the meantime been discharged according to the Act.

Woodroffe, in opposition, stated this fact, adding that as the whole of the petitioner's property was in the hands of the provisional assignee of the Insolvent Court, the creditors could not benefit under the present schedule.

Mr. Commissioner EVANS said the insolvent had no *locus standi* in that (the Bankrupt) Court, and that if the facts had been previously known the discharge would not have been granted. He considered that a fraud had been practised on the Court, and dismissed the petition.

Woodroffe applied for an order to remand the insolvent to his former custody.

Mr. Commissioner Evans directed the order.

The insolvent observed the vesting order was at an end by the discharge, but the Court ruled the contrary.

Hughes suggested to the Court that, according to previous decisions,(*a*) the Court could not order a remand to former custody, as the petition was dismissed.

Mr. Commissioner Evans refused, however, to rescind his order in the present case, which was one of gross imposition on the Court.

Re Blond.

In this case the insolvent had also been discharged from custody, having petitioned the Insolvent Court. The commissioner dismissed the petition, and made an order to remand him to his former custody, when

Levy, in support, called the attention of the Court to the 6th and 24th clauses of 7 & 8 Vict. c. 96, as shewing that it was only when certain facts were found that the Court had the power to remand to former custody, and that when the petition was dismissed, then, the interim protection having ceased, the prisoner could only be taken again in execution.

Mr. Commissioner Evans.—I say that the man got his discharge by fraud, and that being so, I make an order, if the creditors like to take advantage of it.

THE LEGISLATOR.

Summary.

The quantity and importance of the Legislation of the last session compels us still to devote a large portion of our columns to its record: we hope to complete the publication of the remaining statutes of general interest before the business of the Term begins to occupy our columns. We have yet to present to our readers some Bills which were laid upon the table of the House of Commons for the purpose of being considered during the recess, but hitherto matters of more urgency have compelled their postponement. The earliest opportunity shall be taken for their appearance here.

NEW STATUTES.

Of the Session 8 Victoria.

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page 493.*)

Cap. XCI.

An Act to consolidate and amend the Laws relating to Turnpike Trusts in South Wales. (Aug. 9, 1844.)

Cap. XCII.

An Act to amend the Law respecting the Office of County Coroner. (Aug. 9, 1844.)

58 *Geo.* 3, *c.* 95, *repealed.*—Whereas the regulations for the elections of coroners for counties are insufficient: and whereas such elections are made with much inconvenience, and are attended with great and unnecessary expense: and whereas, for remedy of such grievances, it is expedient that an alteration should be made in the manner of making such elections: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That an Act passed in the fifty-eighth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate the Elections of Coroners for Counties," shall be repealed.

2. *Petition for division of counties.*—And be it enacted, That when and as often as it shall seem expedient to the justices of any county that such county should be divided into two or more districts for the purposes of this Act, or that any alteration should be made of any division theretofore made under this Act, it shall be lawful for the said justices, in general or quarter sessions assembled, to resolve that a petition shall be presented to her Majesty, praying that such division or alteration be made, and thereupon to adjourn the further consideration of such petition until notice thereof shall be given to the coroner or coroners of such county as hereinafter provided.

3. *Preparation of petition.*—And be it enacted, That the clerk of the peace shall give notice of any such resolution to any coroner for such county, and of the time when the petition will be taken by the said justices into consideration, and the justices shall confer with every such coroner, who shall attend the meeting of the justices for that purpose, touching such petition, having due regard to the size and nature of each proposed district, the number of the inhabitants, the nature of their employments, and such other circumstances as shall appear to the justices fit to be considered in carrying into execution the provisions of this Act; and such petition, with a description of the several proposed districts, and of the boundaries thereof, with the reasons upon which the petition is founded, shall be certified to her Majesty under the hands and seals of two or more of the justices present when such petition shall be agreed to, and the clerk of the peace for such county shall forthwith give or send a true copy of such petition, certified under his hand, to every coroner for such county.

4. *Division of the county into districts.*—And be it enacted, That it shall be lawful for her Majesty, if she shall think fit, with the advice of her privy council, after taking into consideration any such petition, and also any petition which may be presented to her by any coroner of the same county concerning such proposed division or alteration, or whenever it shall seem fit to her Majesty to direct the issue of a writ *de coronatore eligendo*, for the purpose of authorizing the election of an additional coroner above the number of those who have been theretofore customarily elected in such county, to order that such county shall be divided into such and so many districts, for the purposes of this Act, as to her Majesty, with the advice aforesaid, shall seem expedient, and to give a name to each of such districts, and to determine at what place within each district the court for the election of coroner for such district shall be holden as hereinafter provided, and every such order shall be published in the *London Gazette*.

5. *Districts to be assigned to coroners.*—And be it enacted, That the justices in general or quarter session assembled shall assign one of such districts to each of the persons holding the office of coroner in such county, and upon the death, resignation, or removal of any such person, each of his successors, and also every other person thereafter elected into the office of coroner in such county, shall be elected to and shall exercise the office of coroner, according to the provisions of this Act, and shall reside within the district in and for which he shall be so elected, or in some place wholly or partly surrounded by such district, or not more than two miles beyond the outer boundary of such district.

6. *Provision for coroners already acting in districts.*—And be it enacted, That whenever it shall appear to her Majesty, with the advice aforesaid, and shall be set forth in the said order in council, that any such county has been customarily divided into districts for the purpose of holding inquests during the space of seven years before the passing of this Act, and it shall seem expedient to her Majesty, with the advice aforesaid, that the same division of the county be made under this Act, each of such districts shall be assigned to the coroner usually acting in and for the same district before the passing of this Act; but if it shall appear expedient to her Majesty, with the advice aforesaid, that a different division of such county be made, and any such coroner shall present a petition to her Majesty praying for compensation to him for the loss of his emoluments arising out of such change, it shall be lawful for her Majesty, with the advice aforesaid, to order the Lord High Treasurer or Commissioners of her Majesty's Treasury to assess the amount of compensation which it shall appear to him or them ought to be awarded to such coroner, and the amount of such compensation shall be paid by the treasurer of the county to such coroner, his executors or administrators, out of the county rate.

7. *List of places in each district to be made.*—And be it enacted, that such justices so assembled as aforesaid shall order a list to be prepared by the clerk of the peace for their respective counties of the several parishes, townships, or hundreds, as the case may be, in each and every of the several districts into which the respective counties shall be divided under the authority of this Act, specifying in such list the place within each district at which the court for the election of coroner is to be holden, and also the place or places at which the poll shall be taken, inserting the parishes, townships, and places for each of such polling-places, and shall cause such order to be enrolled among the records of the county.

8. *Detached parts to form parts of counties by which they are surrounded.*—And be it enacted, That all isolated or detached parts of counties shall be considered, for the purposes of this Act, as forming a part of that county, riding, or division respectively whereby such isolated or detached parts shall or may be wholly surrounded; but if any such isolated or detached part shall be surrounded by two or more counties, ridings, or divisions, then as forming part of that county, riding, or division with which such isolated or detached part shall have the longest common boundary.

9. *Election to be held in the district; who to elect.*—And be it enacted, That from and after the time when any county shall have been so as aforesaid divided, every election of a coroner for any such district shall be held at some place within the district in which he shall be elected to serve the office of coroner; and that every person to be so elected shall be chosen by a majority of such persons residing within such district as shall at the time of such election be duly qualified to vote at the elections of coroners for the said county.

10. *Sheriff to hold a special county court for election of coroner. If election not determined on the view, then to proceed to take a poll. Duration of poll.*—And be it enacted, That from and after the division of any counties as aforesaid into coroners' districts, upon every election to be made of any coroner or coroners for any county, the sheriff of the county where such election shall be made shall hold a court for the same election at some convenient place within the district for which the election of coroner shall take place, on some day to be by him appointed, which day shall not be less than seven days, nor more than fourteen days after the receipt of the writ *de coronatore eligendo*; and in case the said election be not then determined upon the view, with the consent of the electors there present, but that a poll shall be demanded for determination thereof, then the said sheriff, or in his absence his under-sheriff, shall adjourn the same court to eight of the clock in the forenoon of the next day but one, unless such next day but one shall be Saturday or Sunday, and then of the Monday following; and the said sheriff, or in his absence the under-sheriff, with such others as shall be deputed by him, shall then and there proceed to take the said poll in some public place or places by the same sheriff, or his under-sheriff, as aforesaid, in his absence, or others appointed for the taking thereof as aforesaid; and such polling shall continue for two days only, for eight hours in each day; and no poll shall be kept open later than four of the clock in the afternoon of either of the said days.

11. *Places for taking the poll at elections for coroners.*—And be enacted, that for more conveniently taking the poll at all elections of coroners under the authority of this Act, the poll for the election of the coroner in each district shall be taken at the place to be appointed for holding the court for such election, and at such other places within the same district as may for the time being be appointed by the quarter sessions.

12. *Sheriff may erect polling booths for taking the poll at. No voter to poll out of the district where his property lies. In case of a parish not included in any district.*—And be it enacted, That at every contested election of coroner for any district of the said county, the sheriff, under-sheriff, or sheriff's deputy shall, if required by or on the behalf of any candidate on the day fixed for the election, and, if not so required, may, if it shall appear to him expedient, cause a booth or booths to be erected for taking the poll at the court or principal place of election, and also at each of the polling places within the district hereinbefore directed to be used for the purposes of such election, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the several parishes, townships, and places for which such booth is respectively allotted; and no person shall be admitted to vote at any such election in respect of any property situate in any parish, township, or place, except at the booth so allotted for such parish, township, or place, and if no booth shall be allotted for the same, then at any of the booths for the same districts; and in case any parish, township, or place, or part of any parish, township, or place, shall happen not to be included in any of the districts, the votes in respect to property situate in any parish, township, or place, or any part of any parish, township, or place, so omitted, shall be taken at the court or principal place of election for such district of the said county.

13. *Poll clerks to be appointed and sworn. Inspector of poll clerk. Electors to be sworn. Oath.*—And for the more due and orderly proceeding in the said poll, be it enacted, That the said sheriff, or in his absence the under-sheriff, or such as he shall depute, shall appoint such number of clerks as to him shall seem meet and convenient for the taking thereof, which clerks shall take the said poll in the presence of the said sheriff or his under-sheriff, or such as he shall depute; and before they begin to take the said poll every clerk so appointed shall by the said sheriff or his under-sheriff, or such as he shall depute as aforesaid, be sworn truly and indifferently to take the same poll, and to set down the names of each elector, and the place of his residence, and for whom he shall poll, and to poll no elector who is not sworn, if required to be sworn by the candidates or either of them; and which oaths of the said clerks, the said sheriff or his under-sheriff, or such as he shall depute, shall have authority to administer; and the sheriff, or in his absence his under-sheriff, as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each candidate to be inspector of every clerk who shall be appointed for taking the poll; and every elector, before he is admitted to poll at the same election, shall, if required by or on behalf of any candidate, first take the oath hereinafter mentioned; which oath the said sheriff, by himself or his under-sheriff, or such sworn clerk by him appointed for taking the said poll as aforesaid, shall have authority to administer; (that is to say,)

"I swear [or, *being one of the people called Quakers, or entitled by law to make affirmation*, solemnly af-

(*a*) *Vide* L.T. Sept. 28, *re* Baker, *re* Waterfield, p. 488.

firm], that I am a freeholder of the county of and have a freehold estate, consisting of lying at within the said county; and that such freehold estate has not been granted to me fraudulently or colourably on purpose to qualify me to give my vote at this election; and that the place of my abode is at [*and, if it be a place consisting of more streets or places than one, specifying what street or place*]; that I am twenty-one years of age, as I believe; and that I have not been before polled at this election [*adding, except in cases of solemn affirmations*]

"So help me God."

14. *Punishment for perjury.*—And be it enacted, That every elector or other person who shall wilfully and falsely take the said oath or affirmation hereby appointed to be taken by the electors as aforesaid shall for every such offence incur the penalties by law inflicted on persons guilty of perjury; and every person who shall unlawfully and corruptly procure or suborn any freeholder or other person wilfully and falsely to take the said oath or affirmation in order to be polled, shall for every such offence incur such pains and penalties as are by law inflicted on persons guilty of subornation of perjury.

15. *Custody of poll books, and final declaration of the poll.*—And be it enacted, That the poll clerks shall, at the close of the poll, inclose and seal their several books, and shall publicly deliver them, so inclosed and sealed, to the sheriff, under-sheriff, or sheriff's deputy presiding at such poll, who shall give a receipt for the same; and every such deputy who shall have received any such poll books shall forthwith deliver or transmit the same, so inclosed and sealed, to the sheriff or his under-sheriff, who shall receive and keep all the poll books unopened until the reassembling of the court on the day next but one after the close of the poll, unless such next day but one shall be Sunday, and then on the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and shall make proclamation of the person chosen, not later than two of the clock in the afternoon of the said day.

16. *Expenses of sheriff, &c. to be paid by the candidates.*—And be it enacted, That all the reasonable costs, charges, and expenses which the said sheriff, or his under-sheriff or other deputy, shall expend or be liable to in and about the providing of poll books, booths, and clerks (such clerks to be paid not more than one guinea each for each day), for the purpose of taking the poll at any such election, shall be borne and paid by the several candidates at such election in equal proportions.

17. *Coroners may compel attendance of jurors and witnesses. Coroner to certify defaulters to the clerk of the peace; who shall enter them on the roll of fines. Proviso.*—And whereas great difficulty and delay are frequently occasioned by the nonattendance of jurors and witnesses summoned to attend the coroner on taking an inquest; be it therefore enacted, That if any person, having been duly summoned as a juror or witness to give evidence upon any coroner's inquest, as well of liberties and franchises contributing to the county rates, as of counties, cities, and boroughs, shall not, after being openly called three times, appear and serve as such juror, or appear and give evidence on such inquest, every such coroner shall be empowered to impose such fine upon every person so making default as he shall think fit, not exceeding forty shillings; and every such coroner shall make out and sign a certificate, containing the name and surname, the residence, and trade or calling of every such person so making default, together with the amount of the fine imposed, and the cause of such fine, and shall transmit such certificate to the clerk of the peace for the county, riding, division, or place in which such defaulter shall reside, on or before the first day of the quarter session of the peace then next ensuing, and shall cause a copy of such certificate to be served upon the person so fined, by leaving it at his residence twenty-four hours at the least before the first day of the said next quarter session of the peace; and every such clerk of the peace shall copy the fine or fines so certified on the roll on which all fines and forfeitures imposed at such quarter session of the peace shall be copied, and the same shall be estreated, levied, and applied in like manner, and subject to the like powers, provisions, and penalties in all respects, as if such fine or fines had been part of the fines imposed at such quarter session: Provided always, that nothing herein contained shall be construed to affect any power now by law vested in the coroner for compelling any person to appear and give evidence before him on any inquest or other proceeding, or for punishing any person for contempt of court in not so appearing and giving evidence, or otherwise.

18. *Coroner not to act professionally in prosecutions where he shall have sat as coroner in the same case.*—And be it enacted, That from and after the passing of this Act, in all cases in which any person shall be charged by any coroner's inquisition with the commission of any crime, and shall be subsequently put upon his trial, either on such inquisition, or in pursuance of any bill of indictment found for the same, the coroner before whom such inquisition shall have been found shall be wholly incompetent to act as an attorney in prosecution or defence of such person for such crime, either by himself or his partner (directly or indirectly); and that in all cases in which it shall appear to the judge before whom such person shall be tried that any coroner shall have so acted contrary to the provision and intention of this Act, such judge shall impose upon every coroner so offending such penalty, not exceeding fifty pounds, as the said judge shall in his discretion think fit.

19. *Coroner, although elected for a district, shall be considered as coroner for the whole county, except, &c.*—And be it enacted, That every coroner elected under the authority of this Act, although such coroner may be designated as the coroner for any particular district of a county, and may be elected by the electors of such district, and not by the freeholders of the county at large, shall for all purposes whatsoever, except as hereinafter mentioned, be considered as a coroner for the whole county, and shall have the same jurisdiction, rights, powers, and authorities throughout the said county as if he had been elected one of the coroners of the said county by the freeholders of the county at large.

20. *Present and future coroners (except during illness, &c. of coroner for another district, or in case of vacancy in the office), to hold inquests only within the district to which they shall have been assigned or elected.*—And be it enacted, That, except as aforesaid, every coroner for any county, or any district thereof, or his deputy, after he shall, in pursuance of the provisions of this Act, have been assigned to or elected by the electors of any particular district, shall, except during illness or incapacity or unavoidable absence as aforesaid of any coroner for any other district, or during a vacancy in the office of coroner for any other district, hold inquests only within the district to or for which he shall have been assigned or elected: provided always, that the coroner who shall, by himself or deputy hold any inquest in any other district, save that to which he shall have been assigned or elected as aforesaid, shall, in his inquisition to be returned on such inquest, certify the cause of his attendance and holding such inquest; which certificate shall be conclusive evidence of the illness or incapacity or unavoidable absence as aforesaid of the coroner in whose stead he shall so attend, or of there being a vacancy in the office of coroner for the district in which such inquest shall be holden.

21. *Coroners to be paid travelling expenses where inquisition shall not be taken.*—And whereas doubts have arisen as to the power of the justices to order the payment of allowances for travelling in any case where an inquisition has not been taken, although such coroner has been compelled to travel from his usual place of abode for the purpose of taking an inquisition; be it therefore enacted, That it shall and may be lawful for the justices of the peace in their general or quarter sessions assembled for the county, riding, division, or liberty where such inquisition would have been taken, or the major part of them, if they shall see fit, to order the payment of such allowances for travelling to any coroner who shall shew, to the satisfaction of the said justices, that he had been compelled, in the discharge of his office, to travel from his usual place of abode for the purpose of taking an inquisition, but which, in the exercise of his discretion, he deemed to be unnecessary, and declined to take.

22. *Coroners to be paid when they act for sheriffs.*—And whereas, in cases where the sheriff is a party, or otherwise disqualified to act, and in various other cases, writs and processes in civil actions and suits, and also extents and other process where the Queen is interested, are frequently directed to and executed by the coroner in the place and stead of the sheriff, but the coroner is not in any such case allowed any fee or reward for the execution of any such writs, process, or extents; be it therefore enacted, That in all cases where any writ, process, or extent whatsoever shall be directed to and executed by any coroner or coroners in the place or stead of any sheriff or sheriffs, such coroner or coroners shall have and receive such and the same poundage fees or other compensation or reward for executing the same as the sheriff or sheriffs, if he or they had executed the same, would have been entitled to receive for so doing, and shall also have such and the same right to retain, and all other remedies for the recovery of the same, as the sheriff or sheriffs would have had in whose place and stead such coroner or coroners shall have been substituted; and if the fees or compensation payable to the sheriffs shall at any time after the passing of this Act be increased by Act of Parliament or otherwise, that in every such case the coroner or coroners shall be entitled to such increased fees or compensation.

23. *Coroners for detached places to continue to hold inquests.* 6 & 7 *Vict. c.* 12.—And whereas by an Act passed in the sixth year of the reign of her Majesty Queen Victoria, intituled "An Act for the more convenient holding of Coroners' Inquests," it was enacted, that for the purpose of holding coroners' inquests every detached part of a county, riding, or division shall be deemed to be within that county, riding, or division by which it is wholly surrounded, or where it is partly surrounded by two or more counties, within that one with which it has the longest common boundary; and whereas as to some such detached parts of counties, ridings, or divisions there were at the time of the passing of the last-mentioned Act coroners appointed expressly for and having jurisdiction in such detached parts only, and doubts have arisen whether such last-mentioned coroners were superseded by such last-mentioned Act: be it therefore enacted, That as to every such detached part of any county for which at the time of the passing of the said last-mentioned Act there was a coroner appointed for and acting in such detached part, such last-mentioned coroner shall (if now living, and not having resigned, or been removed from his office otherwise than by the operation of the said Act) continue to hold and exercise his former office and jurisdiction within such detached part for so long a time and in such manner as such coroner would have held and exercised the said office and jurisdiction if the said last-mentioned Act had not passed.

24. *Expenses of inquests occasioned to any county with respect to any detached part of any other county.*—And be it enacted, That the treasurer of every county shall keep an account of all expenses occasioned to such county by any inquest in or with respect to any such detached part of any other county, and shall twice in every year send a copy of such account to the treasurer of the other county to which such detached part belongs; and the treasurer of such other county shall, out of the moneys in his hands as treasurer, pay the same to the order of the treasurer sending the account, with all reasonable charges of making and sending the account; and in case any difference shall arise concerning the said account, and such difference shall not be adjusted by agreement, it shall be lawful for either of the parties to apply to the justices of assize of the last preceding circuit or of the next succeeding circuit, or to one of such justices, who shall, by writing under their or his hands or hand, nominate a barrister-at-law, not having any interest in the question, to arbitrate between the parties; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties as shall appear to him necessary and shall by his award in writing, determine the matters in difference, and his award shall be final and conclusive between the parties; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom and out of what fund the same shall be paid.

25. *Coroners for particular places excepted out of this Act.*—And be it enacted, That no coroner of the Queen's household and the verge of the Queen's palaces, nor any coroner of the Admiralty, nor any coroner of the city of London and borough of Southwark, or of any franchises belonging to the said city, nor any coroner of any city, borough, town, liberty, or franchise which is not contributory to the county rates, or within which such rates have not been usually assessed, shall be entitled to any fee, recompense, or benefit given to or provided for coroners by this Act; but that it shall be lawful for all such coroners as are last-mentioned to have and receive all such fees, salaries, wages, and allowances as they were entitled to by law before the making of this Act, or as shall be given or allowed to them by the person or persons by whom they have been or shall be appointed.

26. *Provisions of Act as to expenses to extend to the Cinque Ports.*—And be it enacted, That the provisions of this Act touching the allowance for the travelling expenses of coroners shall be deemed and taken to extend to coroners appointed and acting for the jurisdiction of the Cinque Ports, any thing hereinbefore contained to the contrary notwithstanding.

27. *To what places this Act shall not extend.*—And be it enacted, That nothing in this Act contained touching the divisions of counties into districts, or the appointment or election of coroners, shall extend to the county of Chester, or any county palatine, city, borough, town, liberty, franchise, part, or place the appointment or election of coroner whereof takes place by law otherwise than under the writ *de coronatore eligendo*.

28. *Meaning of "county."*—And be it enacted, That in construing this Act the word "county" shall be taken to mean county, riding, or division of a county in and for which a separate coroner hath been customarily elected; and that in the counties of York and Lincoln all things hereinbefore directed to be done by and with respect to the justices in general or quarter sessions assembled, and by their clerk, shall be done by and with respect to the justices of the said counties of York and Lincoln in general gaol sessions assembled, and by their clerk.

29. *Not to affect the royal prerogative.*—Provided always, and be it declared and enacted, That nothing herein contained shall be construed to abridge or affect the royal prerogative, or the authority of the Lord Chancellor, for issuing a writ *de coronatore eligendo*, as fully as if this Act had not been passed.

30. *Act to extend only to England.*—And be it enacted, That this Act shall extend only to England.

31. *Act may be amended this session.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present session of Parliament.

CAP. XCIII.

An Act to enable Barristers appointed to arbitrate between Counties and Boroughs to submit a Special Case to the Superior Courts. (Aug. 9, 1844.)

We give this statute entire :—

5 & 6 Wm. 4, c. 76; 5 & 6 Vict. c. 98. *Arbitrating barrister, upon receiving a requisition in writing from treasurer of the county or visiting justices of the prison, &c. may state a special case, touching any matter referred to him, for the opinion of a superior court.*—Whereas by an Act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and by another Act passed in the sixth year of the reign of her Majesty, intituled "An Act to amend the Law concerning Prisons," provision was made for the appointment of barristers at law to arbitrate in cases of difference concerning certain accounts and the amounts of certain expenses therein mentioned: And whereas it is expedient that the treasurer of the county, the visiting justices of the prison, and the council of the borough, or any of them, affected by any award which may be made by any barrister under the authority of either of the said Acts, should be enabled to obtain in a summary way the opinion of one of the superior courts of common law at Westminster upon any point of law arising out of any of the matters referred to such barrister: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in any case in which a barrister at law shall have been or shall hereafter be named, as in the said recited Acts or either of them is mentioned, to arbitrate between the parties, such barrister at law, upon the requisition in writing of the treasurer of the county, or of the visiting justices of the prison, or of the town clerk of the borough, on behalf of the council of the borough who shall be interested in the decision of such barrister, shall be empowered, if he shall think fit, before making his award, to state one or more special case or cases touching any of the matters referred to such barrister at law for the opinion of such one of the superior courts of common law at Westminster as he shall direct, or to raise in any award to be at any time made by him any question or questions for the opinion of such court; and such court shall hear and determine the matter according to the practice of the court upon special cases, and make such order as to the costs, and by and to whom and in what manner the same shall be paid or borne, as to such court shall seem meet, and the decision of the court shall be binding on such barrister in making his award.

2. *In case barrister die before making his award another one to be chosen.*—And be it declared and enacted, That in case any barrister who shall have been or shall hereafter be named, in pursuance of the said recited Acts or either of them, or of this Act, shall die, or refuse to act, or be disabled from acting, either from ceasing to practice as a barrister or for any other reason, before making his award, the several parties in the said several Acts mentioned shall be authorized and required to name another barrister at law for all the purposes in the said several Acts mentioned, or any of them, in like manner as if no appointment had been made under the same; and the barrister so newly named shall have the same authority to decide the matters in difference as if no other appointment had been made, and in every such case in which, before the passing of this Act, a second barrister has been appointed to settle or determine any matters in difference, left unsettled or undetermined by the barrister first appointed for that purpose, the appointment of such second barrister shall be deemed good, and the barrister so secondly appointed shall be deemed to have and to have had from his appointment the same authority as if appointed under this Act.

CAP. XCIV.

An Act to explain and amend an Act for making better Provision for the Spiritual Care of populous Parishes. (August 9, 1844.)

We give this statute entire :—

1. 6 & 7 Vict. c. 37. *Crown may nominate ministers by warrant under sign manual.*—Whereas an Act was passed in the last session of Parliament, intituled "An Act to make better Provision for the Spiritual Care of populous Parishes;" and it is expedient to explain and amend certain of the provisions of the said Act; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That wherever any right of patronage of any district or new parish constituted under the authority of the said Act, and nomination of the minister or perpetual curate thereof, shall be assigned to or vested in or may be exercised by her Majesty, according to or under the provisions of the same Act, it shall be lawful for her Majesty to nominate to the bishop of the diocese a spiritual person to be licensed to such district or new parish as minister or perpetual curate thereof, as the case may be, by warrant under her royal sign manual; and such warrant shall be full and sufficient authority to such bishop to license such spiritual person accordingly.

2. *Bishop may license, as to any existing perpetual curacy.*—And be it declared and enacted, That wherever any right of patronage of any such district or new parish shall in like manner be assigned to or vested in or may be exercised by any bishop, it shall be lawful for such bishop to license a spiritual person to such district or new parish as minister or perpetual curate thereof, as the case may be, in the same manner, *mutatis mutandis*, as he may now by law license a spiritual person to any perpetual curacy.

3. *Warrant without fee—Fee for license.*—Provided always, and be it enacted, That no fee whatever shall be payable for or in respect of any such warrant as aforesaid; and that a fee of one pound, and no more, shall be receivable by the secretary of any bishop for and in respect of each and every license granted by such bishop of a spiritual person as minister or perpetual curate of any such district or new parish as aforesaid, or of any building licensed by such bishop within any such district for the performance of divine service, pursuant to the provisions of the said Act; and no further or larger fee or gratuity shall be receivable by any person whomsoever for or in respect of the making, issuing, or granting of any such license as aforesaid.

4. *How scheme to be served where incumbent or patron absent from England.*—And be it declared and enacted, That wherever any incumbent or patron to whom, according to the provisions of the said recited Act, it shall be necessary to transmit or deliver the draft of any scheme proposed to be laid before her Majesty in Council, shall be beyond the seas, it shall be and be deemed to be a sufficient compliance with such provisions to leave such draft, in the case of an incumbent, at the house of residence belonging to his benefice or church, or if there be no such house of residence then at his last usual place of abode in England, and in the case of a patron at his last usual place of abode in England: Provided always, that in any such case of an absent incumbent or patron such scheme shall not be laid before her Majesty in Council until after the expiration of two calendar months from the day on which the draft thereof shall have been so left, unless such incumbent and patron shall in the meantime consent to the same.

5. *How where incumbent incapacitated or benefice sequestered.*—And be it declared and enacted, That in the case of any such incumbent being an idiot or lunatic or of unsound mind, or of any benefice or church being under sequestration, or of the duties thereof being performed by a curate duly appointed in consequence of the suspension or the reputed incapacity of the incumbent thereof, it shall be and be deemed to be a sufficient compliance with the same provisions to deliver or transmit the draft of any such scheme to the committee of such idiot, lunatic, or person of unsound mind, or to the sequestrator, or to such curate of such benefice or church, as the case may be; and the consent of such committee, sequestrator, or curate shall be deemed to be the consent of the incumbent, within the meaning of the said Act.

6. *How where patrons numerous.*—And be it declared and enacted, That in any case in which the patronage of any church or chapel of any parish, chapelry, or district is or shall be vested in and exercised by the inhabitants generally of such parish, chapelry, or district, or by any body or class of persons exceeding five in number, it shall be and be deemed to be a sufficient compliance with the same provisions to deliver or transmit the draft of any such scheme to one of such patrons, and to the churchwardens or chapelwardens of any such church or chapel, as the case may be; and such churchwardens or chapelwardens, or one of them, shall thereupon cause notice of the contents of such draft to be given to such patrons, and shall ascertain their objections, if any, or their consent to such scheme, in such manner as the ecclesiastical commissioners for England shall direct, and such churchwardens or chapelwardens, or one of them, shall communicate the same to the said commissioners or to the bishop of the diocese; and the said commissioners shall not lay such scheme before her Majesty in Council untill after the expiration of two calendar months from the day on which such draft shall have been so delivered or transmitted, unless such consent shall in the meantime be given.

7. *Construction of certain terms in 6 & 7 Vict. c. 37.*—And be it declared and enacted, That in the construction of the said recited Act the words "Goods and Chattels" shall be construed to extend to and comprehend all personal estate and property whatsoever; and the word "Testament" shall be construed to extend to and comprehend any will or testamentary paper whatsoever, including under such definition the execution by any such will, testament, or testamentary paper of any appointment, in pursuance of any power, howsoever conferred or acquired.

8. *Original map or plan may be registered.*—And be it declared and enacted, That, notwithstanding any thing in the said recited Act contained, it shall be lawful to transmit the original map or plan annexed to any scheme laid before her Majesty in Council under the provisions of the said recited Act, to be registered in the registry of the diocese, instead of a copy thereof, as provided by the same Act.

9. *Bounds of districts may be varied within limited time.*—And be it declared and enacted, That it shall be lawful, by the authority in the said recited Act provided, at any time or times within twelve months after the date of the licence of the minister first licensed to any separate district constituted under the provisions of the same Act, to alter the bounds of such district, although any alteration be not required with a view to the constituting of another separate district: provided always, that the scheme for making any such alteration shall be subject to all the provisions in the same Act and in this Act contained relating to schemes for constituting separate districts thereunder; and that any portion of any such separate district which by any such alteration as aforesaid shall become detached or excluded therefrom shall to all intents and purposes again belong to and form part of the parish, chapelry, or district out of which such portion was taken, upon such separate district being originally constituted, or to and of any new district, as shall be determined by the like authority.

10. *Until minister licensed, cure of souls not affected.*—And be it declared and enacted, That in the case of any district constituted under the provisions of the said recited Act, nothing contained in the scheme or order for constituting the same shall in any manner whatever affect any parish, chapelry, or district, as to the pastoral superintence of the inhabitants thereof or otherwise, until a minister shall have been duly licensed to such newly constituted district.

11. *Form of grant or conveyance.*—And be it enacted, That any grant, conveyance, or assurance which shall be made to the said commissioners by deed, under the authority of the said recited Act, of any lands, tithes, tenements, or other hereditaments, may be made according to the form in the schedule hereunto annexed contained, or as near thereto as the circumstances of the case will admit; and every such conveyance and assurance shall be valid and effectual in the law to all intents and purposes.

12. *Act may be altered this session.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed during this present session of Parliament.

SCHEDULE.

I [*or* We, *or the corporate title, if a corporation*], under the authority of Acts passed in the sessions of Parliament held in the sixth and seventh and seventh and eighth years of the reign of her present Majesty, intituled respectively, "An Act to make better Provision for the Spiritual Care of populous parishes," and "An Act to explain and amend an Act to make better Provision for the Spiritual Care of populous Parishes," do by these presents freely and voluntarily, and without any valuable consideration, give, grant, convey, and assure to the Ecclesiastical Commissioners for England all [*describe the premises to be conveyed*], and all [my, *or* our, *or* the] right, title, and interest [of, *if a corporation*,] to and in the same and every part thereof, to hold to the said commissioners and their successors for the purpose of [*describe the particular purpose, being some purpose within the provisions of the said Acts, or say, generally*, for the purposes of the said Acts]. In witness whereof, &c.

CAP. XCV.

An Act to amend an Act of the fourth year of King George the Fourth, for the Preservation of the Salmon Fisheries in Scotland. (August 9, 1844.)

CAP. XCVI.

An Act to amend the Law of Insolvency, Bankruptcy, and Execution. August 9, 1844.

In consequence of the immediate interest of this statute it was necessary to print it out of its turn. It appeared at length at page 397 of the third volume, and thither the reader is referred.

CAP. XCVII.

An Act for the more effectual Application of Charitable Donations and Bequests in Ireland. (August 9, 1844.)

BREWERS, VICTUALLERS, AND BEERSHOP-KEEPERS.—It appears from a Parliamentary document, that on the 10th of October last there were 2,644 brewers in the United Kingdom, of which number 2,318 were in England, 188 in Scotland, and 138 in Ireland. There were at the same period 86,973 victuallers in the United Kingdom, of whom 57,698 resided in England, 15,449 in Scotland, and 13,826 in Ireland. In England there were 31,227 persons

licensed to sell beer to be drunk on the premises, and 4,252 persons licensed to sell beer not to be consumed on the premises; there were 27,609 victuallers who brewed their own beer, and nearly 14,000 beershop-keepers who also brewed their beer.

THE MAGISTRATE.

Summary.

We continue to receive opinions and suggestions upon the proposed changes in the Law of Settlement and the Bill for regulating the fees of Justices' Clerks. To all such communications we gladly give place, trusting that, as coming from practical and experienced men, they will receive due consideration from the framers and proposers of the measures in question. Again, we would ask our readers to give their special attention to the extremely sound and sensible comments upon Mr. Fitzroy Kelly's Criminal Appeal Bill, which appeared last week, and which was the production of a learned counsel of extensive experience in the practice of the criminal law. We are confident that many of the suggestions there contained have but to be submitted to Parliament to be adopted.

POOR LAW SETTLEMENT BILL.

(Conclusion.)

6. MAINTENANCE AND COSTS.

Section 26 replaces the present law as to the costs of the pauper's maintenance after notice of removal.

Numerous difficulties have arisen as to the recovery of costs in cases of abandoned orders of removal, and which the Court of Queen's Bench has frequently decided can only be recovered by appeal where the parties cannot agree upon the amount to be paid by the abandoning parish.(a) This is provided against by the 17th section, as far as abandoned orders are concerned, that section providing that—

"The overseers abandoning such warrant shall pay to the overseers of the parish to which the removal was thereby directed to be made, the costs incurred by such last-mentioned overseers by reason of such warrant, and of all subsequent proceedings thereon; and if such last-mentioned overseers apply to *the proper officer* of the court before whom any appeal against such warrant, if it had not been abandoned, might have been brought, and if they produce to him the notice of such abandonment, and if they satisfy him that such reasonable notice of taxation has been given to the overseers abandoning such warrant as in his judgment the distance between the parishes requires such officer shall tax such costs; and may thereupon charge and receive the usual costs of taxation; and shall indorse the sum allowed by him as costs, and the amount of the said costs of taxation, upon the notice of abandonment; and if such costs, being lawfully demanded, be not paid within ten days after taxation, the overseers entitled to the same may recover them as penalties and forfeitures."

This is as it should be: it will save a great deal of trouble, cost, and difficulty. A similar taxation and allowance of costs is provided by sections 24 and 25, where appeals are abandoned, as well as when heard and decided against the appellants. The following is also worthy of commendation:—

"If either of the parties have included in their respective statements any grounds of removal or of appeal which, in the opinion of the Court determining such appeal, are frivolous or vexatious, such Court may, at their discretion, direct such party to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, and shall certify the amount thereof."

It is also properly provided that where overseers give notice

"That they abandon such warrant, then such warrant, and all proceedings consequent thereon, shall not be given in evidence in case any warrant be afterwards obtained for the removal of any person shall become and be null and void to all intents and purposes, as if the same had not been made; and who may have been affected by such first-mentioned warrant."

7. MISCELLANEOUS PROVISIONS.

The Bill provides that boards of guardians shall have the power of obtaining warrants of removal and of executing them. (See section 34.)

Paid officers may be appointed to conduct removals.

By section 28, natives of Scotland, Ireland, and the islands of Man, Scilly, Jersey, and Guernsey, not settled in England, may be removed to the places of their birth; and guardians of unions in Ireland, and the heritors and kirk session or borough magistrates in Scotland, may appeal against such warrants. Removing parishes may abandon warrants on payment of all costs incurred, including those of sending the paupers back to such parishes.

We have now completed our sketch of the leading provisions of the Bill for altering the entire system of settlements. That there are great evils in the complexity and uncertainty of the existing law, we fully admit; that a large, simple, and well-considered system might be profitably substituted for it (were it practicable to carry out a centralized power without awakening just jealousies), we acknowledge. But this measure has all the audacity of innovation, with little of the benefit of amendment. Some advantages are introduced by the Bill, but these might have been equally secured without the bold and sweeping changes whereby existing practice and law must be wholly unhinged, if this measure passes.

One of the most sweeping of these changes is that which it is attempted to effect by the proviso in section 23:

"That on the trial of any such appeal *no warrant of removal shall be quashed or set aside*, either wholly or in part, on the ground that such *depositions do not furnish sufficient evidence to support*, or that any matter therein contained raises an objection to the warrant or the statement of the grounds of removal."

In cursorily noticing this clause last fortnight, we stated that this provision is utterly inconsistent with existing law, and in fact prevents all objection to warrants of removal because made on insufficient evidence. Section 12 alone provides that "a statement of the *grounds* upon which the warrant was made" shall be sent to the receiving parish; these may be drawn up without disclosing the evidence at all, as is required by section 79 of the present Act. The depositions alone shew what the evidence was: they are by section 18 of this bill to be sent to the clerk of the peace; and form the only record of the evidence on which the warrant was made; and then comes the above-cited proviso in section 23 of this Bill, declaring that no warrant shall be quashed upon the ground that such depositions do not furnish sufficient evidence to support the warrant! It must, therefore, follow, that removals may be made without any sufficient evidence. It will not matter how absurdly slight, how obviously illegal, be the evidence given to the justices; the warrant once given, the opposite party has no other resource than that of obtaining positive evidence to contradict the case thus vamped up against them, or to submit to the burden of the pauper with the best grace they can. The universal rule of all law and all justice has been from time immemorial that a charge shall be proved by those who make it, and that the accuser shall not throw the task of disproving it upon the accused, without first substantiating it himself. *Why is this rule to be set at defiance in favour of parishes who may choose to indulge in speculative removals at the expense of their neighbours?* Let the authors of this vicious Bill answer this to the satisfaction of the ratepayers of England, before they proceed in this rash change of an old and complicated branch of law, with which (be they who they may) they have evinced gross incompetency to grapple. If no objection is to be made to insufficient evidence of settlements, insufficient evidence suffices for removals; this in effect is no evidence at all; and paupers may, if this Bill passes, be removed on a mere statement of a case, which affords no sufficient information as to dates or places, whereby the appellants may prepare themselves with counter evidence to rebut it; and in many cases it may be impossible to do so. But we denounce this provision mainly on the general ground of the gross injustice of imposing a charge without first proving the ground for doing so. The legislature has no right to permit it: the same doctrine may just as well be extended to other branches of jurisprudence; from which interminable and obvious injustice would follow.(b) But most of all is this the case where persons like country justices, who are not conversant with the rules of evidence, are thus made final judges of what evidence is. There is no doubt that this proviso will save some hundreds of pounds in appeals to the Queen's Bench, but at an expense of *many thousands by unjust burdens.* Upon the whole, we incline to regard this cool setting aside of all the rules of evidence as one of the most startling features of this audacious measure, more especially so, since it is introduced in direct disregard—we had nearly written in insolent defiance—of the well-known and recent judgment of the Lord Chief Justice of the Court of Queen's Bench, couched in these memorable words:—"*We think we do a benefit to the public by declaring that, for the future, there must be no doubt that an order of removal is to be obtained* ON LEGAL EVIDENCE.(c) "*We* think," say the concoctors of this Bill, "that *we* do a benefit to the public by declaring, that however illegal and insufficient be the evidence on which removals are obtained, no sort of objection shall be made to it." We may safely leave the rate-payers to choose between the comparative wisdom of the two authorities'

No provision is attempted to be made to prevent parishes like Hales Owen, which have been split up into separate townships, from ridding themselves of all their preceding liabilities of settlement, simply because the overseers of each township are not the overseers of the whole parish as in its former integrity. This is among the gross abuses of the present law to which this amending Bill applies no amendment, though the abuse will be just as much felt under its provisions.

Although we must guard against committing ourselves to any matured or decisive opinion upon so difficult a subject; and although we feel the necessity of eschewing the shallow precipitancy which characterizes this Bill and its authors; we are at present, upon the whole, inclined to question whether any large change in the existing law of settlement would prove substantially beneficial to the country, which failed to provide some system which should dispense entirely with the removal of paupers. We are disposed to think it *possible* that means might be devised for relieving paupers wherever they became chargeable, without disturbing the proportion of parish charges; saving the entire cost of removal, and much of the trouble and expense of appeals. However this may be, we feel no hesitation in denouncing the folly of a measure which, without pretending to substitute any large and uniform principle for the bundle of rules and laws in usage, *and to which custom has given a facility of application*, proposes to erect a new fabric, every atom as complicated as its predecessor,

(a) Reg. v. Pontefract (2 Gale & Dav. 180); Reg. v. Tounstall and Stayley (2 Gale & Dav. 676), &c.

(b) A contemporary journal, which seldom dives into parochial law, has actually stumbled upon this as an amendment.

(c) Reg. v. Rishworth (1 Gale & Dav. 597; 11 Law J. M.C. 34).

which, so far from removing old abuses and evils, leaves some of the worst in existence, and superadds pernicious novelties, which have no recommendation either for simplicity, economy, or justice! Some amendments the Bill does certainly introduce, and to each of these we have endeavoured to do justice in the course of the series of articles which this brings for the present to a conclusion.

We earnestly recommend the measure to the sedulous, and mature consideration of the Profession; and especially of parochial authorities. The remarks we have made must be regarded more in the light of provocatives to further inquiry, than as clearing out the subject, or as having traced all the inconveniences and costly doubts and difficulties to which this measure will give rise. Let practical men apply themselves to this task. We have felt it a duty to say candidly and faithfully what our view is of this measure. We know not, and care not, who its authors are: that they are incompetent for the difficult and delicate task of remoulding the law of parochial settlements, we believe we have said and cited enough to demonstrate. We may add our belief that the measure does not emanate from the Poor Law Commissioners or their able secretary; though it may be a benefit to the country that they should turn to it their prompt consideration, for it will inevitably increase the difficulties of their office.

The spirit of meddling and officious legislation—the mania for altering and interfering with every relation of society and the laws which govern them, without any adequate benefit to compensate the evils of change, are becoming very great and serious grievances. Of such measures, reckless in destroying, without judgment in restoring, we have met with few stronger examples than "The Bill to amend and consolidate the Laws relating to Parochial Settlement and the Removal of the Poor."

THE LAWYER.

Summary.

We lay before the Profession a long, but deeply interesting narrative of the recent discreditable revelations at the Central Criminal Court and Middlesex Sessions, which have occasioned so much excitement and just indignation in legal circles, and been so severely handled by the daily press. It is, we believe, unnecessary to offer any apology for occupying so much of our space with the circumstances of this affair, comprising the reports, the correspondence, and the commentaries thereupon, for since the establishment of the Law Times there has been no occurrence of equal interest and importance to the Profession, whether we look to the discussions or to the measures that must grow out of it. That something must be done by the authorities seems to be generally admitted, but great differences prevail as to the precise remedies to be adopted. In the consideration of these, the Law Times will endeavour faithfully to discharge its duty and to maintain the lofty standard of Professional integrity and honour which it has ever sought to set before its members. In doing this it will seek as far as possible to avoid personalities; but where an offence is clearly proved, painful though the duty will be, it will not shrink from the task of placing the offender upon the pillory, though rather as an example than for the sake of punishment.

The Title-page and the very elaborate Indices which have been prepared for the volume just completed, will unavoidably occupy a portion of our space for this and the two following weeks, and compel the curtailment of much of our usual legal intelligence. So abundant have been the events of the present year that concern the Profession, that even the vacation has scarcely sufficed to enable our ample space to keep pace with them.

We understand that the Legal Protective Association is growing in numbers, and that it has received the approval of some of the most influential members of the Profession.

THE PROPERTY LAWYER.

(*Continued from page* 498.

Coleridge, J. considered the power to be well executed. After shewing that this conclusion was in accordance with common sense, statutory interpretation, judicial construction by our courts, and the reasonings of jurists on general principle, he proceeded to examine the decisions, which, he said, together with the 54 Geo. 3, c. 168, & 1 Vict. c. 26, s. 10, had undoubtedly raised a general impression in the profession that in order to exercise a power securely, the attestation clause should state in terms the performance of all solemnities prescribed with regard to the execution of the instrument.

"The cases of *Wright* v. *Wakeford*, however, and of *Doe* dem. *Mansfield* v. *Peach*, may be said to be the foundation of the whole. it will therefore be worth while to see exactly what they decided. In the former, the deed was required to be 'under hand and seal, attested by two or more credible witnesses.' The attestation indorsed on the deed was 'sealed and delivered by the within-named —— in the presence of —— ——— ———.' The majority of the Court certified "that the word 'sealed' did not necessarily imply that the party sealing had also signed in the presence of the witnesses, that signature was not comprehended in the words made use of in the attestation." *Doe* dem. *Mansfield* v. *Peach* (2 M. & Sel. 576) cannot be distinguished from the preceding; and Lord Ellenborough said: "If the question be, whether it follows as a legal consequence that an attestation of the sealing and delivery of a deed is an attestation of the signing, we are bound to answer that it does not." Place by the side of these propositions that for which the defendants in error now contend, and see whether this foundation is at all co extensive with the superstructure. A power requires that a deed in exercise of it shall be under hand and seal, attested by two witnesses; the witnesses in the attestation clause say that they saw it sealed and delivered; the Court concludes that these words do not import they saw it signed. Whether from that conclusion, which in itself was unobjectionable, they ought to have inferred a bad execution of the power, is not at this moment the question, but the conclusion itself was merely one of verbal construction The proposition now contended for as necessarily flowing from this—so necessarily that it binds us against our sense of propriety and justice—is this, that an attestation clause must *in terms* express every formality prescribed in the execution by the power. This last may be a conclusion to be worked out from the former; it may be said that attestation means attestation clause, and attestation of certain things means an attestation clause stating in terms expressly their performance: all this may be very reasonable inference, but it has not been inferred in those cases by the judges who decided them. It is not a necessary inference, nor can I find that in any one of the decisions cited in the various arguments of this case the Court has ever in terms drawn this inference. It cannot, I am sure, escape your lordships that the answer to your present question turns upon a consideration which does not appear to have been presented to the minds of those very learned judges. There must be an attestation of all the formalities required, this I can afford to grant: the performance of the formalities must appear from the attestation clause; I can afford to grant this also: if the clause in terms states the performance of one or more, and is silent as to others, the analogy of legal reasoning will infer the non-performance of these others in the presence of the witnesses; it is as much as if they had said, 'We can only say we saw the deed sealed and delivered; as to the signing we can say nothing—we did not see it done;' this, too, I can afford to concede. But, what is the meaning of a general attestation clause that condescends upon no particulars? Whether if by the last words of the instrument the party professes to perform all the particulars required for a due execution, the witness, by such general attestation, does or does not import an attesting of them all. These are questions wholly distinct from the former, and which the two cases above cited leave wholly undecided."

The learned judge then argued that the certificate of Lord Chief Justice Gibbs in *Moodie* v. *Reid* (7 Taunt. 361) was in reality in favour of the sufficiency of this execution. The will was to be "signed and published," it only stated "signed by me," &c. The attestation clause was "witness B. H., J. H." The power was certified to be not well executed. But Gibbs, C. J. said—"The witnesses have *clearly attested the signing*." But said Coleridge, J.—How was it an attestation to that and not to publication—

"Not by its expression of it in terms, but only because, being entirely general, it was to be referred to that act which was stated in the close of the will by the testatrix herself. If in that part of the will she had said, 'signed and published,' instead of 'signed' only, must not Lord Chief Justice Gibbs have held that the witnesses had attested both, and that the power was well executed? I see no escape from this conclusion; and that is this very case. It is clear, then, that he did not draw the inference from *Wright* v. *Wakeford* which is now pressed on us; and his high authority is in my favour. But, was he warranted in holding that opinion? A power requires certain things to be done and attested by witnesses; the donee in terms states that she has performed them; and, so far as they can be shewn on the face of the instrument, they appear to have been performed: immediately under is the word "witness," and the witnesses sign their names. It cannot be denied that they state themselves to be witnesses: but witnesses of what? Will you say of nothing? Is not that unreasonable, unauthorized? Is it not at least to construe an ambiguous act so as to invalidate an instrument, when legal principle enjoins you to construe it so as to make it valid? If you admit that they witness something, why one act more than another? why not all? I agree that powers are to be strictly performed; but the reasoning by which we are to determine the question of a disputed performance is to be the same in kind as that by which we determine any other disputed question of fact or construction in law. It will be said, that, where the instrument must be, and on the face of it professes to have been, executed with several specified formalities, and the attestation is general, it is left uncertain whether the witnesses attested all, and, if not all, which of those formalities, and therefore is defective. I think, if sifted a little, this argument will be found based on premises which have no place properly in the discussion. If you read what is called the testimonium clause with the attestation, there is no uncertainty: then, the conclusion is clear, that the latter imports a presence at and a witnessing of the whole. But it is said, you cannot do this, because witnesses commonly do not see or do not regard what is stated in the testimonium clause I deny that you can enter into that consideration. If you could, how far might it not go? Witnesses very commonly do not even read the attestation clause; are we to inquire in each particular case whether they have done so! In truth, determining this as a question of law, we are to consider, not what witnesses do, but what they ought to do: when the creator of a power requires that witnesses shall attest certain acts as a security for their performance, we must assume him to proceed on the footing that the witnesses will discharge their duty properly; otherwise the whole provision is futile. Then, what is the duty of a witness? Not to sign his name to he knows not what: he must be aware that he is called to see something done, and to affirm by his signature that he has seen it. Surely, then, he is to ascertain what it is that he is required to see and to affirm: if so, it seems to me a most reasonable presumption, that, where the attestation is general, and in terms excludes nothing, it makes no selection by inference, but affirmatively includes every thing stated in the testimonium clause; there is then no uncertainty. In *Stanhope* v. *Keir* (2 Sim. & Stu. 37), and *Buller* v. *Burt*, Sir John Leach appears to have entertained the same opinion."

Williams, J. gave his opinion in favour of the due execution of the power.

Gurney, J. considered that it would in any case be well to overrule *Wright* v. *Wakeford*, and quoted at length from Sir Edward Sugden's work on Powers, p. 317, *et seq.*

Patteson, J. gave his opinion as follows, that the power was not well executed:—

"My Lords, The power set forth in the special verdict referred to by your lordships in these cases, requires that any will by which it is to be exercised shall be 'signed, sealed, and published in the presence of and *attested* by three or more credible witnesses.' The first question which arises appears to me to be, what is the meaning of the word 'attested?' Now, the fair meaning of the previous words, 'in the presence of three or more credible witnesses,' must be, that three or more credible persons should see what is done, not merely that they should be present, without having their attention drawn to what is done; therefore, the word 'attested,' if it have any meaning at all, must import something more than merely being present and seeing what is done. Independent of authority, I should have thought that it meant this, and no more, namely, that the will must not only be signed, sealed, and published in the presence of witnesses, but that those witnesses must affix their names to it. I find, however, that a sense has been given to the word 'attest,' when found in a power, in a long series of decisions, from *Wright* v. *Wakeford* (4 Taunt. 213), downwards, by a great number of

eminent judges, according to all which, without exception, as I understand them, the word 'attest' means 'certify by their signature, and by written expressions, that the formalities required by the power have been complied with,' or to that effect. The authority of those decisions appears to me to be much too strong to be resisted; and I agree that it would be very dangerous, especially in matters regarding real property, to unsettle established rules, on which probably many titles may depend. Some of those decisions are undoubtedly in cases where the memorandum of attestation has stated some of the requisite formalities and omitted others; and those cases might have been decided on the ground that 'expressio unius est exclusio alterius;' but I do not find that such ground was taken in them; and in some other cases it could not have been taken, because the memorandum was general. I am obliged, therefore, to come to the conclusion, that, if the memorandum of attestation is in this case to be considered as consisting of the words 'Witness, Charles Ball, Elizabeth Ball, Ann Ball,' and no more, this will is not *attested* at all within the meaning of the power. The second question which arises is, whether any and what part of the body of the will itself is to be considered as forming part of the memorandum of attestation. I have great [illegible] that any part of the body of the will can be so considered. The language of the body of a will is that of the testator, and not of the witnesses, who need not, and in practice do not in general, see or *read* any part of the will, the language of a memorandum of attestation, on the other hand, is that of the witnesses; and I am at a loss to see how one can fairly be taken as incorporated with the other. In the case of *Moodie* v. *Reid* (7 Taunt. 355), the Court of Common Pleas seemed to consider that the concluding part of the will, or at all events the signature, might be taken as part of the memorandum of attestation (which was, as here, quite general, being only the word 'witness'); but they did not determine that point, for they held the will insufficient because the publication was not attested. So also in *Stanhope* v. *Kerr* (2 Sim. & Stu. 37), Sir John Leach, Master of the Rolls, said that he could not take the attestation, which was merely by the words 'in the presence of,' to extend [illegible] than the signing; but he held the will bad, and therefore did not determine the *present* point. Why it might extend to the signing, and not to the publication, the Master of the Rolls does not explain, nor did the Court of Common Pleas in the case of *Moodie* v. *Reid*, and I confess it appears to me that such a distinction is entirely without foundation, and was plainly unnecessary to the decision of either of the cases. So, again, the same learned judge, in *Butler* v. *Reed*, expressed himself still more strongly; but [illegible] he held the execution bad in that case also, the present point was not determined. I have not been able to find one case in which it has been held affirmatively that any part of the body of an instrument can be imported into the memorandum of attestation, so as to shew, and to make the witnesses certify in writing, what it is which they profess to attest. Neither do I find the contrary expressly decided anywhere; and I do not think that the cases of *Wright* v. *Wakeford* (4 Taunt. 213), *Doe dem. Mansfield* v. *Peach* (2 M. & Sel. [illegible]); *Wright* v. *Barlow* (3 M. & Sel. 512); *Brougham* v. *Sandys* (2 Simons, 95); *Allen* v. *Bradshawe* (Curteis, 110), and some similar cases, even impliedly decide the point; for, in those cases the maxim of *expressio unius est exclusio alterius* seems to me to apply, and to prevent the importing the words of the party executing the instrument into the memorandum of attestation, and adding them to the words of the witnesses there used. The recent cases of *Simon* v. *Simeon* (4 Simons, 555) and *Curtis* v. *Kenrick* (3 M. & W. 461), and similar cases, where equivalent words used in a memorandum of attestation have been held sufficient, do not appear to me to bear upon this question. In ancient times, no doubt, the clause of *his testibus* was part of the instrument, and the names of the witnesses were inscribed in it: and, when the names of the witnesses came to be put at the bottom of the instrument itself, they might, for many purposes, be considered still as part of the instrument. But, when a power requires that the instrument should be attested—assuming that the construction of that word which I have before stated is the right one—it appears to me, in the absence of any direct authority, that the instrument itself and the memorandum of attestation ought to be considered as quite distinct from each other, and as being the acts and the language of different parties; that the memorandum of attestation ought to be complete in itself; and that any omission or defect in it cannot be supplied or cured by reference to the instrument. For these reasons, I am of opinion that the power in this case was not duly and effectually executed by the will."

PARKE, B. concurred in this view, and referred to his former judgment (9 Ad. & El. 940) for the grounds of his opinion, admitting, however, that had the question been *res integra*, or a writ of error, in *Wright* v. *Wakeford*, he should have come to a different conclusion. He informed their lordships that Alderson, B. also adhered to his former opinion.

(To be continued.)

LEGAL INTELLIGENCE.

IRREGULAR PRACTICES.

Being loath to publish a serious accusation until an opportunity was given for accompanying it with explanation or defence, we have deemed it right to defer the narrative of the case which has so greatly interested the Profession, and even been made the subject of public discussion, until we could give with it the correspondence that has grown out of it. We now present a report of the entire proceedings, to the present moment, with the letters and some of the comments that have appeared in the daily papers.

First, take the report of the *fracas* at the Central Criminal Court from the *Morning Chronicle*:—

"In the course of the session just concluded, the attention of the commissioners of the court and the influential members of the Bar was again called to the [illegible] practices which [illegible] 'getting up' [illegible] defences and [illegible]. On several previous occasions the censure of the commissioners has fallen on parties pretending to be attorneys, who have obtained introduction either to prisoners or their friends, and taken money under pretence of feeing counsel and preparing briefs. Sometimes the parties who have so obtained the money have decamped, or at least kept out of the way until all fear of detection had ceased, and the unfortunate prisoners have remained [illegible] by counsel. At other times, the [illegible] obtained the aid of junior members of the Bar [illegible] them to set up defences—[illegible] which has called down [illegible] from the Bench, as the readers [illegible] have more than once observed.

"During the [illegible] and the [illegible] about to terminate [illegible] have been made by the sheriffs and under-sheriffs to put a stop to these practices, and prevent [illegible] persons from obtaining access to the gaol of Newgate, and consequently fewer instances than heretofore of plundering prisoners have occurred during the last ten months.

"In the case to which we are about to refer, an irregularity of another description was developed, regarding the reception of instructions by counsel for prosecutions without the intervention of attorneys [illegible].

"The case [illegible] and was tried in the evening [illegible].

"William Pond, an auctioneer [illegible] and two other young men, [illegible] indicted for stealing various articles of furniture [illegible] small value, from Mr. Stewart, an auctioneer, at [illegible], whose employment Pond had been for some time.

"The prisoners surrendered in court to take their trial.

"*Crouch* conducted the prosecution, and *Wilkins* the defence.

"The prosecutor having given his evidence in chief, was cross-examined by *Wilkins*, who asked him, among other questions, if he had employed an attorney? To which he replied, he had not. *Wilkins* inquired how it happened that he had a counsel employed, and how the counsel came to be instructed? The witness acknowledged that he had employed the counsel himself, and that he had himself instructed him.

The COMMON SERJEANT interposed, and asked how the prosecutor came to give instructions to counsel himself. It was so unusual a thing, so different from any thing to which he had been accustomed when at the Bar, that he should like to hear it explained.

"Mr. Stewart replied that, knowing Mr. Crouch personally, he had gone to him and told him he wished he would undertake the case.

"The COMMON SERJEANT. It is exceedingly unusual.

"*Crouch* denied that it was unusual in this court. He appealed to the gentlemen at the bar to bear him out in his assertion.

"*Ballantine*, as the senior counsel present begged to say that he never knew an instance of a brief being taken for a prosecution in such a manner.

"The COMMON SERJEANT never knew such a thing as instructions being given in such a manner to a gentleman at the bar.

"*Crouch* asserted that it occurred in this court every day.

"The COMMON SERJEANT.—What! Instructions given to counsel without an attorney being employed!

"*Crouch* was aware that it was a system which ought not to be encouraged; but in this instance, the prosecutor knowing him, applied to him to attend for him at the Wandsworth police court, which he could not do, and he, the prosecutor, then sent instructions to him.

"The COMMON SERJEANT observed that Mr. Crouch held a brief, apparently of considerable length, taken from the prosecutor's mouth.

"*Crouch* denied that it was so. He held only the statement which the prosecutor had sent to him.

"The COMMON SERJEANT never heard before of such a thing. In consultations held by counsel, even a witness was always excluded from the room.

"*Crouch* confessed that the course under consideration might be more honoured in the breach than the observance, but he could assure the learned Common Serjeant that it was common at that court.

"*Wilkins* denied it positively, and if such a thing occurred in his own circuit it might happen once through ignorance, but if it were repeated by any individual, no gentleman on the circuit would speak to him afterwards.

"The COMMON SERJEANT begged it to be distinctly and publicly understood that if the practice were repeated he would lay it before the judges.

"In the course of his address to the jury for the defence, *Wilkins* passed some very severe strictures upon the conduct of the prosecutor and his counsel, and expressed a hope, that for the honour of the Bar, such a course would not again be adopted.

"The prisoners were acquitted.

"Pond and one of the others were again indicted for stealing a mattress belonging to the same prosecutor.

"*Crouch* stated the case, which was similar in its circumstances to the other, except that the evidence was somewhat stronger against Pond. In the course of his opening *Crouch* complained of the violence and injustice of the attack made upon him, and in his own defence alleged that it was the practice of the learned judge (the Common Serjeant) to refuse the expenses of counsel for a prosecution, except to a favoured few of the counsel at that Bar.

"The COMMON SERJEANT instantly rose and stopped Mr Crouch. He hoped the learned counsel would consider what he was saying, for such an observation implied a charge of corruption on the part of the judge who should act so. He indignantly denied the truth of such an accusation.

"Alderman THOMAS WOOD, who sat with the Common Serjeant, declared he would represent this matter to the Commissioners of the Court and to the Bar. Much had been said of late about the improper conduct of the attorneys attending and practising there, but he (Alderman Wood) had always said that, if the counsel pursued the course which was consistent with the honour and dignity of the Bar, they would soon annihilate those irregularities. And he was fully convinced, by the scandalous conduct he had that day witnessed, that his observations were well founded. As for the charge made against his learned and excellent friend the Common Serjeant, he would not allow it stop there.

The COMMON SERJEANT wished it to be distinctly understood, that he had no 'favoured few.' He had only one object—to do strict justice. If any one shewed him a proper brief, with an attorney's name on the back, he allowed the expenses; but when he found cases taken up by counsel as a matter of speculation as to whether or not the fee would be paid for them, it was his bounden duty to set his face against such proceedings, and he always had done and would do so. The county could not and would not enter into such speculations. Those things did not perhaps occur before the judges, before whom a different class of cases came; but in the other (the new) court, in minor cases coming before him (the Common Serjeant), those tricks, if, indeed, they might not be called frauds, were practised. And persons, he was ashamed to say, wearing wigs and gowns, did enter into such speculations, which he was resolved to stop whenever he could. And, as he had been obliged to speak out, he would say, that of all the disgraceful cases he ever witnessed, that was the most disgraceful. Was it not proved that a member of the Bar of England had taken up the case without the intervention of any attorney, without any person but the prosecutor to instruct him, and that he absolutely made his brief in court himself from the report of the witness?

"*Crouch* was very sorry that he had called for those remarks. He hoped that his inexperience would be his excuse. He begged to apologise for what he had said, and assured the Court such a thing should not occur again so far as he was concerned.

"Alderman WOOD observed that they (the commissioners) had taken almost unlimited means to put an end to certain fraudulent practices with reference to persons taking instructions from prisoners in Newgate who were not authorized to so do. They had met with difficulties which the respectable members of the Bar, much to their credit be it said, had lent their aid to overcome; and it was to the integrity of the Bar they should look for aid to carry out those objects. There had been cases almost amounting to common swindling which he (Alderman Wood) had taken up; but, unfortunately, could not complete, or the parties would certainly have been indicted.

"*Ballantine* cordially approved of the exertions of

the Court of Aldermen, and begged, on the part of all around him, to thank them for the great care and attention they had given the matter, and for trying to make the court what it ought to be—the highest and purest in the kingdom.

"The case was then suffered to proceed.

"*Wilkins* again addressed the jury, and having observed that cheap articles were never of good quality, said that the rule extended even to law. If they wanted an example of cheap law, *ecce signum!*

"The jury returned a verdict of guilty against Pond, and acquitted the other prisoner.

"The COMMON SERJEANT sentenced Pond to three months' imprisonment.

"*Crouch* then said that as a matter of principle he felt bound to apply to the Court for the expenses of the prosecution. He should ask the Court to allow the barrister's fee.

The COMMON SERJEANT, as a matter of principle, would not grant it. He felt bound to refuse the expenses of counsel most distinctly. He would allow only the ordinary expenses of witnesses. And he should again observe, that so far from such practices as had that night been exposed being tolerated when he was at the bar, in cases of consultation not a word would be spoken whilst a witness remained in the room. The witness would be first ordered out, and then, and not till then, did the counsel hold their consultation.

"The subject was then allowed to drop."

Upon the publication of this report, and the appearance of some severe commentaries in the leading articles of the daily papers, Mr. CROUCH addressed the following letter to the *Times*:—

"SIR,—As the report in the *Times* of Monday last, headed 'Central Criminal Court,' may do me great injury, I hope you will have the kindness to insert the following explanation:—

"Mr. Wilkins assures me (and I candidly believe him) that when he made those strong observations against me (reported in your paper) he was not aware that it was ever allowed for the Bar attending the Central Criminal Court to act as counsel for the prosecution, unless an attorney was employed in the case, or that, had he been aware of the practice, of course he would not have made such observations.

"Yesterday the barristers formerly at the Bar of the Central Criminal Court met at the Middlesex Sessions, and it was stated by all the gentlemen present, 'That it had always been the practice of the Bar attending London Sessions to act as counsel either for the prosecution or prisoner, although no attorney was engaged in the case; and that Mr. Crouch, in doing so, had neither acted unusually nor unprofessionally.'

"You will see how important this is to me, confirming the statement I made in court at the trial, and I pray you will insert it.

"Yours, obediently,

"Temple, Sept. 23." "NEWTON CROUCH."

And the following to the *Morning Chronicle*:—

"CENTRAL CRIMINAL COURT.

"TO THE EDITOR OF THE MORNING CHRONICLE.

"SIR,—The great offence for which you have denounced me amounts to this: 'I have become the advocate of a prisoner who had not employed an attorney.' And when I had shewn you by my letter (that which I had asserted at the trial) that in doing so I had only acted in accordance with the usage of the London Sessions, you then mix me up with other persons and other matters (quite unconnected with my case), and heap dishonour and disgrace upon my character.

"I have, Sir, the consolation of knowing that I never in any way merited such severe censure, and I feel convinced that you yourself will yet do me justice, and confess you have blamed me undeservedly.

"You demand of me certain information; but I think your end will be better answered if I give a short account of the whole transaction, which I believe will embrace all your queries.

"The prosecutor, an old friend of mine, called upon me and said he wished me to be his counsel in a prosecution for robbery (at the same time handing me the depositions from the magistrates). I asked him who his attorney was (for attorneys are always the best clients); he said it was a simple case, and he did not intend to employ one. I then told him he must send me all the information he had to communicate, which he did a few days afterwards.

"I took no notes, took no examination (and I have a person who was present during the interview). The next time I saw prosecutor was on the first day of the sessions at the Central Criminal Court, and he then paid me the fee (two guineas) before the bill was even found, and four days before the trial took place.

"The prosecutor asked me if I would see the two policemen in the case. I told him no, the depositions were my best information. I never examined, I never even saw any of the witnesses until they came into the box to give their evidence.

"If at the trial I did not state all this, it was because I felt confused at being so suddenly attacked by Mr. Wilkins, by the learned judge, and Mr. Alderman Wood, and do not distinctly remember any thing I said, except that I declared it was usual in that court to act as I had done; and I still stand upon that most true declaration.

"And now to your further interrogatories.

"On Tuesday last I called the attention of the Bar (of which there were about twenty present at the sessions) to the report of the trial in the *Times* newspaper.

"Mr. Prendergast said he had read the report, and in his opinion no blame attached to Mr. Crouch; he (Mr. Crouch) had done no more in this case than he himself (Mr. Prendergast) had done in similar ones, and that he felt convinced every man at the sessions, who had been some time in practice, had occasionally done the same.

"Mr. Clarkson (who then entered the room) was of the same opinion, and instanced the cases of the dock companies (who prosecute without attorneys). Mr. Payne also confirmed the prevalence of the practice, and, I believe, every gentleman at the sessions, either at that time or during that day, expressed the same opinion as the leaders had done, and exonerated me from any blame.

"Mr. Wilkins 'regretted he had not before been aware of the practice of the London Sessions, and in the handsomest manner offered to bring the subject before the Court on the first day of the next sessions, and place Mr. Crouch rightly before the public.'

"And now, Sir, allow me to call your attention to the many cases where counsel act without the intervention of attorneys.

"Parish appeals, of which there are thousands every quarter sessions, are frequently got up by the overseers or clerk, and counsel (even the highest at the Bar) take briefs, hold consultations, and take instructions (no attorney employed).

"In the insolvent and bankruptcy courts, private persons employ counsel without attorneys.

"Public companies (dock companies, for instance) instruct counsel; no attorney engaged.

"Mint cases have (I believe) no attorney employed by the Crown to instruct counsel.

"Many other instances might be added to shew you the prevalence of the practice but at the same time I beg to say, 'It is a practice more honoured in the breach than in the observance.'

"You will oblige me by inserting this letter, and believe me to be, Sir, yours obediently,

"Temple, Sept. 28, 1844." "N. CROUCH."

The *Morning Chronicle*, citing the Report, thus commented upon the practices revealed in it:—

"Into the large and general question, namely, under what circumstances an advocate may dispense with the intermediate agency of the attorney between himself and the client we will not now enter. The subject is too wide and general, and a more fitting occasion may arise to discuss it. Every profession has, no doubt, the right to make rules to bind its own members; and each learned body has within itself the machinery to execute its own laws, by sending a refractory brother to Coventry; but these rules are arbitrary, and in England almost universally nugatory. So long as men of all classes and conditions, without reference to competence, character, fitness, or learning, are admitted, and admitted *without examination*, to the English Bar, so long must there be found such paltry sweepings of lawyers, such *ecumeurs de procès*, as are to be found not alone in the Old Bailey but in Westminster-hall itself. Institute a council of discipline, composed, as in France, of the most learned and liberal among the order, and there is no fear but such practices as those of Mr. Crouch would be justly and properly dealt with. We cannot, however, but think that the virtuous indignation of Mr. Wilkins has begun at the wrong end; nor are we quite sure that he is exactly the man who ought to have cast the first stone against an erring brother.

"The iniquities and malpractices of the Old Bailey and Central Criminal Court are not solely confined to such as Mr. Crouch; and if Mr. Wilkins would really grapple with the monster evil, let him strike at more desperate but more dexterous practitioners— not 'nobler quarry,' certainly, but men who, from their craft and cunning, as well as boldness and dexterity, are more mischievous to the suitor and less creditable to the Bar itself. A smooth, oily, jaunty jobber, who by an ostentatious yet empty benevolence, worms himself into the post of prosecuting counsel to parishes, vestries, and boards, is, to our minds, far more dangerous and disreputable than the practitioner whose offence, after all, is only the communication with an auctioneer instead of an attorney. Mr. Wilkins, however, well enough knows that there are attorneys who have especial affection for such a man. There is a *necessitudo sortis* between them.

"We perceive that Mr. Ballantine, a very young barrister, stepped forward to vindicate the honour of his cloth, and to aver that he never knew, in his experience, an instance of a brief being taken for a prosecution in such a manner as had been disclosed in the case of Crouch. We are of course bound to believe Mr. Ballantine; but his experience is extremely limited, and we had rather have the opinion of some of his seniors. There is not an abler or a more honourable gentleman in the profession than Mr. Adolphus; not a more straightforward, candid, manly man than Mr. Prendergast; not a more ingenious and well-read person than Mr. Churchill. These gentlemen are all by many years Mr. Ballantine's seniors. Will *they* come forward and say that they have never before heard of or seen such professional malpractices as have been first *denounced* though not first *discovered* in the present case? When they do, then we shall believe that the stories of jobbing, and monopoly, and exclusion, and the system of cadding by clerks, and hooking and plucking by low retainers in the precincts of the Old Bailey courts, are a mere 'coinage of the brain' of some briefless would-be brief-snatcher, less successful in action, though fully as guilty in intent as Crouch himself. 'As at present advised,' to use a favourite expression of the late Lord Eldon, we consider these practices by no means of uncommon occurrence, though we are willing to admit that they have been only recently publicly noticed and denounced. But is there a man in or out of the Profession who does not know that the Old Bailey was, to all intents and purposes, and is yet, to the generality of practitioners, as close a borough as were Gatton and Old Sarum to the parliamentary candidates before the passing of the Reform Bill? Is ther a man who does not know that business was and is jobbed there in the grossest and unfairest way, and that an embryo Erskine would be 'mute and inglorious' for evermore, if he had to begin at the Old Bailey without the proper freemasonry of the craft of the trade, for it would be a prostitution of the name to call it profession?

"Mr. Wilkins is, no doubt, an exception to the rule of exclusion; but Mr. Wilkins came to the Central Criminal Court with a reputation already made, and in a most opportune season, to fill up the void created by the promotion of Mr. Phillips. But he must not suppose, because he has himself succeeded, that a fair career is opened to every man of talent. No; if this able and dexterous advocate wishes to improve this great metropolitan jurisdiction, let him speak out against the practices of the leviathans, and let him direct his attention to the constitution of the Court itself. There is a taint in the very atmosphere of the Old Bailey; and to fire at such 'small deer' as Crouch (whose conduct is, however, disreputable and unprofessional in the highest degree), without hunting down the wolves and foxes of the Central Criminal jungle, is to waste good powder and shot. Mr. Wilkins may be assured that if he be really desirous to amend the practice and proceedings of the Court, the public voice and opinion will go along with him. But, again we say, he has begun at the wrong end."

While this instance of malpractice was in course of discussion, another, far worse in its character, occurred at the Middlesex Sessions. The most succinct account of it is given in a leading article in the *Morning Chronicle*, which we transcribe:—

"We now turn to the case at the Middlesex Sessions—*Reg.* v. *Thompson*, which was tried before Mr. Serjeant Adams and a full bench of magistrates:—

"This was (says the report) an indictment against the defendant by Mr. H. H. Pyke, Barrister-at-law, and others, charging him with having erected and carried on a nuisance at Kentish-town, by means of bleaching bristles for brushes, making varnish, boiling soap, and dyeing wood.

"*Pyke*, in the absence of *Horry*, himself conducted the case for the prosecution; and *Prendergast* and *Bodkin* appeared for the defendant.

"The case for the prosecution lasted until seven o'clock in the evening, the learned prosecutor himself occupying the Court a considerable time by the statement of the facts.

"In the course of the evidence for the prosecution it came out that the learned prosecutor had, although a member of the Bar, been acting in this matter in the character of an attorney. He had drawn the brief, and delivered it to and held consultations with another counsel, without the name of any attorney being at the bottom of the brief.

"The learned JUDGE, in very energetic language, condemned this conduct as extremely unprofessional and highly improper, and went on to say that if such a practice were to obtain amongst the members of the Bar, its character as a liberal and honourable profession could no longer be upheld.

"*Pyke*, in the course of his reply, in reference to what had fallen from the learned judge, asserted that every prosecutor had a right to conduct his own case.

"The JUDGE said that was perfectly true; but here was the prosecutor, a barrister, drawing and delivering the briefs to another counsel, without the name of an attorney being on them, and then at last appearing in that court as counsel in his own prosecution. The learned gentleman had brought these observations upon himself by his own conduct. The course of proceeding which he had adopted *was not only unprofessional, but most improper, and unless the learned gentleman could prove that he had not drawn the briefs, and had not delivered them to counsel, it would be difficult to excuse himself to the Court.*

"*Pyke* again contended that he was justified by the law of the land in doing what he had done.

"The JUDGE would tell the learned gentleman that he was not justified, neither was another barrister justified in taking a brief, without the name of an attorney being attached to it. There was a somewhat similar case at the Central Criminal Court a day or two since, but there the party giving the brief was not a professional man, still less was he a member of the Bar. He hoped never to see such another proceeding.

"The case having been brought to a conclusion,

"The JUDGE said he felt it necessary, in consequence of the course adopted by the learned gentleman in his reply, to offer a few remarks upon his conduct. He felt it to be his duty, and most reluctantly he performed it, to say that in his judgment that learned gentleman had not been justified in any one step which he had taken in this matter. He had conducted himself most unprofessionally, and in a way which he sincerely hoped he should never be a witness to again. He had placed himself in the position of *prosecutor, witness, attorney, and counsel, for he found that not only was his name at the back of the indictment, but that he had gone before the grand jury. But the learned gentleman had not simply done this; for he, a barrister—a member of that which was called a liberal and honourable profession—had published and stuck up in front of his own house a placard which was full of untruths.* He had then gone round to different persons, soliciting them to come forward to prosecute this defendant, and in a letter had offered his own professional services without fee. This *was a most improper proceeding*, and one which he could not allow, in justice to the Profession of which he had been for more than thirty years a member, to pass without public notice from the seat he had the honour of occupying. Counsel received, but did not seek briefs, and they were bound to receive any brief which might be brought to them with the fee, and were then called upon to do the best they could for their client. Here, however, in his own letters, the learned gentleman tendered his professional services and influence. That Mr. Horry had taken the brief without the name of an attorney being upon it he could not believe, and he hoped that to-morrow morning that learned gentleman would be able to deny the statement that he had done so. He had felt called upon to make these observations; and lest Mr. Pyke should feel aggrieved at them, and should think it necessasy to take any steps in consequence, he should, in order to be prepared with a *justification for these remarks, direct that all the gentleman's letters which had been read in evidence should be retained in the custody of the Court.*"

"In reading the report of the *Chronicle*, we began to think we might have been imposed on by one of those ingenious fictions which was recently practised on one of our contemporaries; but on referring to the *Times* we find the account is almost word for word the same. Is this, then, the condition to which the English Bar is reduced in the year of our Lord 1844? Are these the manner of men to whom we are to surrender the defence of our liberties, our lives, our property, and that which should be dearer to us than all, our reputations? Here is a man, by profession a barrister, commencing a case as prosecutor against a party who was his rival for the local situation of commissioner of paving and lighting, drawing the brief as attorney, holding consultations with another counsel without the name of any attorney being at the bottom of the brief, and when the solicitor on the other side declined to hold any communication except with another professional gentleman, he received an anonymous letter from Pyke, the prosecutor and barrister, attorney and attorney's clerk, intimating that Mr. Kirk, of Symond's-inn, was retained as solicitor for the prosecution. How, we ask, *can* such things be, and are they permitted by the proper authorities? If an attorney be guilty of any malversation or malpractice, appeal may be made to the Law Institution for inquiry, or to the Court of which he is an officer, to strike him off the roll. But is there to be no remedy in the case of a barrister? The cases of *disbarring* are certainly not numerous in the books, and the remedy has not been frequently resorted to; but if ever there were a case which called for the exercise of this extreme remedy, surely the circumstances of this case are so flagrant as to demand the instant interposition of the authorities. On looking to the Law List, we find this Pyke is a member of the *Honourable* Society of Gray's-inn. Surely if Gray's-inn wish to continue an *honourable* society, the benchers must take the earliest opportunity of disbarring such a person. We know not whether this be the Pyke who drew up a bill, or answer, in Chancery (for he practises in all the courts of equitable and legal, as well as of parliamentary and criminal, jurisdiction), of such a nature as to call down, very recently, the severe animadversions of the presiding judge; or the Pyke who raised the controversy with one Dickenson, an attorney; but be this as it may, enough is apparent on the proceeding now before us to put in motion the inn of court to which he belongs.

"While we are on this subject, we may in passing observe, that the facility with which some of the inns of court admit persons to the Bar of late years, without previous examination in law or learning, or inquiry into moral character, appears to us worthy of the grave censure of the judges. Where there is a University degree, and a well-established reputation, such examination may be unnecessary; but there are numberless cases in which such examination is not only necessary, but would be profitable both to the Profession and the public. We are aware that the practice has prevailed for some dozen years or more at the Inner Temple, and with some good effect; but we should look on the Institution of Councils of Discipline, as established in France, as a much more efficacious method of dealing with those bad subjects of the law whom Heinneccius calls *Vultures Togati*. These councils, formed out of the body of the Bar itself, by election, are charged with the functions of watching over the honour and conduct of members of the Profession. They have the power of admonishing, censuring, reprimanding, interdicting temporarily from practice, or altogether disbarring. But in the exercise of this latter right, the usages of the Profession allow an appeal, within a certain period, to the inculpated advocate.

"We confess that recent circumstances induce us to think that such a council might be profitably instituted in England. The Bar, however, is the custodier of its own honour, and it is for that body to say whether they will allow the *Vultures Togati*, the discreditable pettifoggers, to remain within their ranks. Mr. Serjeant Adams has, at all events, done his duty to the Profession and the public."

In further explanation of this discreditable affair, the following letter has been addressed to the *Morning Herald*:—

"TO THE EDITOR OF THE MORNING HERALD.

"THE QUEEN, ON THE PROSECUTION OF H. H. PYKE, ESQ. BARRISTER-AT-LAW, AGAINST WILLIAM THOMPSON.

"36, Bucklersbury, Mansion House,
"Sept. 27, 1844.

"SIR,—I observe a letter in your paper of this morning, addressed to you by Mr. Pyke, complaining of the observations made on his conduct by the chairman of the Middlesex Sessions.

"As the attorney conducting the defence of Mr. Thompson, allow me to say a very few words. At the commencement of the case I received letters and papers, although in the handwriting of Mr. Pyke, yet signed with the name of A. Verchild. Finding this person was not an attorney, but only a clerk in the office of Mr. Pyke, a law stationer in Chancery-lane, and a negotiator of law partnerships, and who is the father of Mr. Pyke, the barrister, I wrote and refused to communicate with him. I then received an anonymous letter in the handwriting of Mr. Pyke, referring me to Mr. Kirk, of Symond's-inn, as the attorney to be communicated with, and to that gentleman I wrote on the 5th September, inviting him to attend a chemical examination of Mr. Thompson's process of bleaching, accompanied by his counsel, clients, and chemists, but which offer was not accepted.

"To shew the spirit in which this prosecution was commenced and conducted, I think I need only refer to the fact of Mr. Horry having pressed for costs when the Court adjourned the case on the 10th inst. and also to the following letters, written by Mr. Pyke, and sent to a gentleman who produced them in court, under a *subpœna* from me, and which letters were read in open court to the jury, commented upon by the chairman in his observations to the jury, and were subsequently impounded, with other papers, by the learned chairman, in addition to those which Mr. Pyke left with the chairman, the brief which he used in court, and which we are to presume is the one given to Mr. Horry, and it will at once be seen whether it is in the handwriting of a law clerk or Mr. Pyke himself.

"I remain your obedient servant,
"FRAS. HOBLER.

"P.S. I omitted to say that the copies of *subpœnas* served on the witnesses for the prosecution, which I have been able to see, are filled up in Mr. Pyke's writing, but no attorney's name indorsed, as should be on such a document."

The *Morning Chronicle* has again thus admirably commented upon the recent exhibitions:—

"We are well pleased to learn that our remarks on the practices of the Bar at the Central Criminal Court and Middlesex Sessions have excited not only the observation and consideration of the proper authorities, but have likewise awakened the attention of the Profession at large. If this were the only result obtained, the reform to be hoped for might not be very immediate nor very sufficient; but fortunately public indignation is roused, and the judges and benchers will now see that the subject is one of grave import, and which will not brook delay. In free states the character of the Bar is public property. Our lives, our liberties, our reputations, our fortunes, are in the hands of that body, and it is important, not only to public liberty, but to the well-being and existence of every state, that the Bar should be composed not merely of learned lawyers and subtle pleaders, but of men of liberal minds, enlarged views, unblemished honour, and incorruptible integrity. It was because we wish to see the Profession so composed in England that we unhesitatingly, and at once, pronounced unqualified condemnation in the recent cases at the Central Criminal Court and at the Middlesex Sessions. We know nothing individually of either of the parties incriminated—either of Mr. Crouch or Mr. Pyke—and we wish to know nothing of them; but all we say is this, that if such practices as were made patent in these two particular instances, now being openly discovered, are not openly condemned and discredited by the authorities, there is an end to the independence, to the respectability, and to the high tone and honour of the Bar of England.

"We were well aware that the practices for which Mr. Crouch was brought under the notice of the Court, namely, taking a prosecuting brief without the intervention of an attorney, had long existed at the Old Bailey, unreproved and uncondemned, and all we desired was a public recognition of the fact that it had so continued publicly unreproved, though privately deprecated. Mr. Prendergast is too honest and straightforward a man to deny the existence of such a practice as we felt it our duty to condemn—a practice which prevailed, if we be rightly informed, before he entered the court as a practitioner. But does he applaud it? On the contrary, he and all other respectable barristers lament the existence of a deviation from the stricter and purer professional rule.

"It is not stated whether Mr. Curwood, who has been a member of the Bar for half a century, or Mr. Adolphus, who has been in the profession thirty-seven years, or Mr. Ryland, who has been a barrister for twenty-seven years, took part in the discussion at the Middlesex Sessions in Mr. Crouch's case; but if the fact be really so, these gentlemen, in admitting the existence of the practice, must have condemned it generally, without reference to any individual case. In the individual case of Mr. Crouch it has been directly brought under cognizance of the Court, and the Common-Serjeant could not do otherwise than denounce such a deviation from etiquette as grossly unprofessional. We should have felt great pity for Mr. Crouch if this had been his first offence; but we are informed that it was not, and that a meeting of the Old Bailey Bar had been heretofore held in reference to his professional conduct, at which a Mr. O'Brien officiated as secretary, and on which occasion he received a gentle hint that he had transgressed professional bounds. Mr. Crouch then pleaded ignorance, and was excused. If this fact, communicated to us by a gentleman of the Bar, be true, Mr. Crouch cannot a second time plead ignorance, or say that he was unwarned as to the gross irregularity of his conduct. Mr. Crouch would have us believe that parish appeals are managed without the intervention of an attorney. To this we give a decided denial. We believe in one or two of the metropolitan parishes the bad practice prevailed of allowing the vestry clerk occasionally, not an attorney, to act as such; but this is now prohibited, as Mr. Crouch ought to know, by Lord Langdale's Act, the 6 & 7 Vict. c. 73, sec. 2, which provides that no person shall act as an attorney or solicitor unless he be duly admitted and enrolled as such. After the passing of this Act, Mr. Corder, clerk to a metropolitan parish, handed a brief to Mr. Pashley, at the Middlesex Sessions, and an objection was, on that account, raised to Mr. Pashley being heard. Surely, as a practitioner at the bar, Mr. Crouch ought to know this, and more particularly ought he to know it as a practitioner at the Middlesex Sessions. It is said that dock companies prosecute without the aid of an attorney. Whatever be the case in the metropolis, we know this is not so in the provinces; and if the practice obtain in London, it is a gross irregularity, without the shadow of an excuse. The poverty of a prosecutor may be a reason for his not employing an attorney; but there can be no such excuse for dock companies. Mr. Crouch expressed his belief that the Mint have no attorney. Not only have they an attorney in London, but an agent in every town of England of any importance, and an inspector, Mr. Powell, well known to every counsel in England of any practice.

"But we have said enough of Mr. Crouch, whose case we now leave to the consideration of the authorities. There is, certainly, a considerable difference between the deviation of Crouch and the gross professional offence of Pyke, which cannot be lost sight of either by the benchers or the judges, whose bounden duty it is to consider both cases, with a view to a remedy early in the ensuing Term. For the last century, and until within the last fourteen or fifteen years, the Bar of England has certainly been a credit and an honour to the country; but of late the 'cankers of a calm world and a long peace' have infested this learned Profession with a class of men neither learned nor respectable, and who excercise their calling in a manner neither honourable to the body nor useful to the public at large.

"It has been too much the fashion to admit of late to the Bar, *and without examination*, persons whose previous pursuits one would have supposed had wholly disqualified them for the exercise of a learned Profession. Far, indeed, are we from countenancing the idea, that in this free country the

career of the Bar should not be open to all; but open when the candidate had proved his fitness to enter on it, by having had the benefit of a liberal education, joined to a proficiency in his particular art. If we go on admitting candidates indiscriminately, in the way in which they have been admitted for the last ten or twelve years, the respectable members of the Bar will be overborne by men who follow all the low practices of the Jeffreys and Pembertons, without disclosing any portion of their abilities. We shall have the dishonourable tricks of Francis North revived, who, even according to the account of his own near relative, resorted, when counsel, to the discreditable practice of opening his case with 'a long history of matters upon record, of bulls, monasteries, orders, greater or lesser houses, surrenders, patents, and a great deal more,' all which he knew to be perfectly false; and, when called upon to go into his evidence, gravely informed the Court 'that the attorney had forgotten to examine the copies with the originals at the Tower.'

"It may be by many thought that we have attached far too much importance to those flagrant breaches of etiquette occurring within the last week. We cannot be persuaded to think so. If these practices go unreproved, we shall fall on the 'evil days' of the Jeffreys and Pembertons; and what manner of men they were we learn from that most amusing book, 'The Life of Francis North, by his Brother Roger.' It is thus that the brother Roger describes Jefreys:—

"'His beginnings at the inns of court and practice were low. After he was called to the Bar he used to sit in coffee-houses, and order his man to come and tell him that company attended him at his chamber; at which he would huff, and say, '*Let them stay a little; I will come presently.*' This made a show of business, of which he had need enough, being married, and having several children. One of the aldermen of the City was of his name, which probably inclined him to steer his course that way, where, having got acquaintance with the City attorneys, and drinking desperately with them, he came into full business amongst them, and was chosen Recorder of the City.'

"The sketch of Lord Chief Justice Pemberton is, if possible, more graphic. Though we have now our Jeffreys and our Pembertons *in petto*, and on a small scale at the Old Bailey, fortunately public opinion has kept them in the back-ground, and retarded their advancement:—

"'This man's morals were very indifferent, for his beginnings were debauched, and his study and first practice in the gaol. For, having been one of the fiercest town rakes, and spent more than he had of his own, his case forced him upon that expedient for a lodging. And there he made so good use of his leisure, and busied himself with the cases of his fellow collegiates, whom he informed and advised so skilfully, that he was reputed the most notable fellow within those walls; and at length he came out a sharper at the law.'"

Rumoured Judicial Changes.—Dublin, Sept. 28.—The impression is very general here that several changes in the Irish law department will take place either before or shortly after the commencement of the ensuing Michaelmas term. According to the current report, which, although freely spoken of in well-informed quarters, cannot at this early period be received with absolute credence, Chief Justice Pennefather retires from the Queen's Bench, the declining state of his health entitling him to the receipt of the usual pension. Chief Justice Doherty, it is stated, is to be transferred from the Common Pleas to the Queen's Bench, the Right Hon. Judge Keatinge succeeding from the Prerogative Court to the Chiefship of the Common Pleas. Mr. Baron Lefroy, adds the same rumour, is to take the Prerogative Court, and is also to be elevated to the peerage of the United Kingdom. The seat thus vacated in the Court of Exchequer would be, of course, at the disposal of the Attorney-General, and, in the event of the right hon. gentleman's refusal, it would be tendered to Mr. Greene, the Solicitor-General. Other minor changes are also freely discussed, but, as they must be altogether contingent upon the foregoing arrangements being carried into effect, it would be useless to enumerate them while these remain matter of doubt.

Release of Sam Gray.—This celebrated individual was, on an application to the Queen's Bench Chamber this day, admitted to bail—the Crown offering no opposition—on finding bail, himself in 1,000l. and two sureties of 200l. each.

The obstructions hitherto in the way of Colonel Tynte's claim to the Wharton peerage are understood to be so far removed, that it is expected he will be called to the Upper House by the title of Baron Wharton in a few months.—*Cambrian.*

Courts of Frankpledge.—Yesterday the Right Hon. the Recorder, assisted by the High Bailiff of the borough of Southwark, held three several courts of Frankpledge, at the Town-hall, the Globe, York-street, and the Three Tuns, St. Margaret's-hill, for the Great Liberty, Guildable, and King's Manors. At each of the courts the vacancies in the leet juries were filled up from those who had served the inferior offices of constable and ale and flesh tasters, and the various presentments were made of tradesmen who had been fined by the juries for using deficient weights and measures. In the course of the proceedings, one of the ale-tasters of the Great Liberty informed the steward (the Recorder) that he had seized at some of the public-houses some measures which were deficient, considering that he was fully empowered to do so by the oath he had taken on entering office. The Recorder then received the explanations of the parties in whose houses the measures were found, informed them that no fines would be levied, and the different courts were adjourned.

A Case not in the Law Books.—In the course of a case on Monday, in the Bankruptcy Court, before Mr. Commissioner Evans, an application was made under the following circumstances:—It appeared that after the fiat, the bankrupt's wife brought an addition to the family, not inserted in the balance-sheet. The nurse now made her claim, and the assignees, as the credits were small, felt a difficulty as to whether they could legally pay the amount claimed in full, or whether the party must prove the debt; although her services were continued, she was not engaged by the assignees. (Laughter.) Mr. Commissioner Evans referred to the books and gravely said he did not find a case in point, but he thought she might be considered as a domestic servant, and entitled to be paid in full.—*Globe.*

The First Committal under the Convention between France and England.—Mansion House.—Jacques Besset, who traded under the firm of Pricener and Co. general merchants, of No. 73, Fenchurch-street, and against whom a warrant was obtained on the 13th ult. was brought up on Monday last, in the custody of Stephen Thornton, of the A division, charged under the law of France with fraudulent bankruptcy. The result of the proceedings was that the prisoner was committed, preparatory to his being sent to France.

The will of the late William Heathcote, esq. was proved in the Prerogative Court, Doctors' Commons, on the 12th ult. by John Gregson, esq. of Bedford-row, the sole surviving executor, and the personal estate is sworn to be under 200,000l.—*Britannia.*

The Great Will Case—Bellew v. Bellew.—The worshipful Chancellor Martin has given judgment in this case. He recapitulated all the circumstances, went into an elaborate exposition of the decision on the same point, and concluded by confirming the will, thus giving the property to Miss Caroline Bellew. He remarked upon the influence which had been exercised over the testatrix, but which had been exercised as much by the caveatrix, Miss Frances Pellew, who disputed the will, as by Miss Caroline; admitting, however, that the influence of the latter was that of affection and mutual attachment. The array of authorities which the worshipful Chancellor produced, appeared to leave not a shadow of ground for concluding that the decision would have been otherwise, the ruling principle of law being, as we gathered it from his elaborate judgment, that where there was any possibility that sanity existed at the time of making the will, no matter what influences were exercised, so long as the testator was a free agent, the will must be admitted. Touching the question of costs, the Chancellor said, that where the caveator failed in endeavouring to set aside a will, it was usual to condemn him in costs; but looking at the relationship of the parties, and the desirableness of improving the feeling which existed between them, he should give no costs; thus adjudging each party to bear her own costs.—Judgment for Miss Caroline Bellew.—*Western Times.*

Bankruptcy.—A return pursuant to 5 & 6 Wm. 4, c. 29, and 5 & 6 Vict. c. 122, and to an order of the Honourable the House of Commons, dated 9th May, 1844, lately printed, shews that in 1841 the amount of dividends transferred was 602,228l. 0s. 8d.; the amount paid out was 523,148l. 9s. 3d. In 1842, the amount transferred was 702,816l. 16s. 4d.; the amount paid out was 661,230l. 19s. 8d. In 1843 the amount transferred was 1,118,590l. 2s. 10d., the amount paid out was 1,067,976l. 3s. 5d. For the same years respectively the payments made by orders of the Court were 13,452l. 7s. 10d.; 5,012l. 11s. 6d.; 7,686l. 14s. 6d.; by the judges and Lord Chancellor, 7,060l. 3s. 4d.; 660l. 13s. 9d.; 655l. 10s. 2d.; and by the Commissioners, 360,314l. 6s. 10d.; 251,967l. 10s. 10d.; 418,571l. 19s. The net balances existing on the 1st January, 1844, were on the Bankruptcy Fund Account, 1,606,407l. 14s. 11d.; on the interest arising from Bankruptcy Fund Account, 31,398l. 7s. 8d., and 60,000l. invested in Consols; on the unclaimed Dividend Account, 7,387l. 9s. 4d., and 23,000l. invested in Consols; on the Secretary of Bankrupts' Account, 7,048l. 15s. 1d., and 15,000l. invested in Consols; and on the Secretary of Bankrupts' Compensation Account, 8,744l. 9s.

Misdemeanors (Queen's Bench).—It appears from a parliamentary paper (No. 408) that the power of appeal in cases of misdemeanors has, in the greater number of instances in which it has been exercised, been beneficial to the accused parties, so that we may infer a similar result from the establishment of other criminal cases. It is a return of the number and names of parties to all informations and indictments for misdemeanors preferred in the Court of Queen's Bench, or removed thither by *certiorari* or otherwise, and tried, since the 1st day of January, 1824, and of the verdicts and judgments thereon, and of all motions therein for a new trial, or that a verdict be entered therein for one or more defendant or defendants, or that judgment be arrested, and the substance of the rules pronounced upon such motions; and, when a new trial has been ordered, of the further proceedings thereon, so far as the same can be ascertained. In that period there were 27 rules obtained to arrest judgment, of which 23 were made absolute, 3 were discharged, and in one nothing further was done. There were 56 rules obtained for new trials, of which 15 were discharged; in 15 cases only were new trials had, which resulted in 12 acquittals and 3 convictions. The two judgment was given for debts on a special case, two remain to be decided, and the rest nothing further was done. In 13 cases, rules to enter verdicts for defendants were made absolute, and in 4 they were discharged, while 2 out of 4 rules to enter verdict for the prosecutor were made absolute, and two discharged. No account is kept at the Crown Office of motions for new trials which are refused; nor is there any account of trials had upon any indictment or information at Nisi Prius, unless in cases wherein the postea is returned to the Crown Office.

Hawkers' Licenses.—A return of the number of hawkers licensed in England, Scotland, and Ireland, in each of the years 1800, 1810, 1820, 1830, 1840, and 1843, has been prepared and printed on the motion of Mr. Joseph Hume, M.P. It hence appears that in England the amount of revenue derived from hawkers' licenses was, in 1800, 8,963l.; in 1810, 17,898l.; in 1820, 29,236l.; in 1830, 33,392l.; in 1840, 32,512l.; and in 1843, 27,100l. In the last-mentioned year (1843), 4,793 licenses were paid for at the rate of 4l.; 927 at the rate of 8l.; 40 at the rate of 12l.; and 2 at the rate of 16l. In Scotland, we find that in 1840 there were 705 licenses at the rate of 4l. and 58 at the rate of 8l.; the total amount which accrued to the revenue having been 3,284l. In 1843 there were 411 licenses at 4l. and 56 at 8l.; whilst the total amount accruing to the revenue was 2,092l. Previous to the year 1835 these licenses were not under the management of the Board of Stamps and Taxes, and consequently no returns can be obtained. From Ireland the information procured is still more scant. In 1800 the hawkers' licenses were under the management of the Excise Department, in 1810 under that of the Stamp-office, and in 1820 once more under the management of the Excise, but no records can be found. In 1830 the amount of revenue derived from this source was 853l. and in 1840 only 4l. 14s. 6d. No further particulars are given in the return.

CORRESPONDENCE.

ATTORNEYS' GOWNS—SHAM ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—By several letters in your columns from different parts of the country, I see there is a somewhat widely-spread inclination among our order (the Attorneys) to return to the ancient and respectable practice of wearing gowns, as is, it would appear, our professional right.

Mr. Shapland, of South Molton, has invited members of the Profession to join him in endeavouring to bring about the resumption of our legal costume. "Many recommend it," he says, "but write anonymously;" and he asks for the *names* of gentlemen willing to make a beginning. I beg to add mine, and shall be glad if an earnest movement in this direction can be originated.

For the following reasons:—

1st. It is a simple and efficient means of avoiding the inconvenience of obtaining admission into crowded courts of justice, at assizes, &c.

2ndly. When admitted to the body of the court, of obtaining access to counsel, and retaining possession of the seats appropriated to attorneys—a matter which every solicitor knows is now often an impossibility—the seats being usually crowded at the opening of the courts by the idle and curious, in consequence of which the attorney is often obliged to *fling* his brief to counsel, without an opportunity of making any of those suggestions, or answering any of those questions in the progress of the cause—civil or criminal—which his detailed knowledge of the case would render so useful and convenient to the advocate.

3rdly. It would draw a notable distinction between the regularly educated practitioner, when attending in the preliminary stages of an inquiry at petty sessions, the metropolitan police courts, &c. and the bullying sham attorneys, pretended clerks, &c. who infest

their purlieus, and who would not dare, it is presumed, to adopt the professional costume—not, at any rate, without making themselves liable to the penal clauses of 6 & 7 Vict. c. 73, as falsely pretending to be and practising as attorneys. Nor could the public be so easily deceived by "gaol-agents" or the malpractices complained of at the Central Criminal Court be so felicitously carried on, to the degradation of the Bar and the invasion of our privileges.

Lastly, it would give a professional character, and bring with it proper respect, by raising the respectability of our order in the eyes of the public. The barrister does not forsake his wig and gown, why should the attorney relinquish the outward and visible sign of his belonging to the same learned profession, though in a more humble character? I firmly believe that if we, the attorneys, have lost *caste*, it is in no inconsiderable degree to be attributed to our own neglect of this professional observance. I trust, Sir, that—should your views coincide with those above expressed—you will lend your assistance in bringing about a return to it.—I am, Sir, yours truly,

GEORGE JOHN DURRANT.

Chelmsford, Sept. 30, 1844.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I observe, with pleasure, a letter in your last number from Mr. Shapland, of South Molton, relative to the above subject, agreeing as I do, in the propriety of his remarks thereon; and I am glad to find such remarks meet with attention in your valuable paper, and that some members of the Profession, alive to its interests, have taken up the matter.

There is now in the course of erection at Colchester a town-hall, and several members of the Profession in this town have determined, upon their first professional engagement after the new courts are completed, to appear therein in an appropriate robe, and have already provided themselves with such symbol of their avocation from Messrs. Adams and Ede, of Chancery-lane.

I am amongst the number of those who, in common with Mr. Shapland, have experienced difficulty in obtaining an entrance into courts at an assize town, and have met with very improper conduct from the officials when seeking such admission; the whole of which, I believe, I should have been happily freed from, had my profession been made apparent by a robe—and I think that one great means of upholding the dignity of the honourable profession of the law is, by the members of that body, whilst engaged in public business, wearing an attorney's gown.

Your correspondent may be assured that the practice will be revived, and adhered to, by several members of the legal Profession in this town, as soon as the new courts of justice are opened for public business, which will probably be in two or three months.

I am, Sir, yours obediently,

F. G. ABELL.

P.S. Upon having mentioned our determination to several barristers, I am glad to say they perfectly coincide in the propriety of the course we mean to take.

Colchester, Oct. 2, 1844.

NEW SETTLEMENT BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Having read with much interest the articles in your late numbers on the projected "Poor-Law Settlement Bill," and concurring in many points in the view taken by their author, I wish to call your attention to the feeling which the prospect of such a sweeping measure is producing in our parochial districts. From an experience of very considerable extent, not less than a period of forty years, in the practical working both of the poor-laws in general, as well as of settlements, I am perfectly satisfied that so subversive a change in the present practice as this measure contemplates, is much more calculated to produce confusion, cost, and trouble, than promote any really beneficial or useful reform. It seems to me a measure admirably schemed to unhinge, without settling the operation of removals. And this is exactly the light in which all the plain practical farmers, who have the deepest interest as rate-payers in the matter, with whom I have discussed the subject, view its tendency. Complicated and diversified as the classes of settlement under the existing law may be, still the practice under its operation has, from length of time, and the habit and experience of local authorities and parish officers, become so familiarized to their apprehension, that they would have materially more difficulty and expense to encounter in working this new system, and its contradictory provisions, than in going on with the existing plan.

Of one novelty which this hopeful scheme of disjointing the present organism of our settlement law proposes, that of the five-year location (sec. 8), there seems to be a very strong and well-grounded dread. Of the evils to which its adoption would give birth, the concocters of the measure, in their zeal for *innovation*, rather than *amendment*, would seem to be utterly unaware. It would, by its immediate operation in many districts, rivet the burden of numerous families upon parishes that have been invaded by settlers of whom, by this provision, they would be rendered unable to disburden themselves. And I can vouch, by experience of the fact of parishes about me, as well as one in which I am resident, that this would be the effect. I here speak of the case of cottagers who have taken in parcels of common or waste lands, and having erected small dwellings, sell them to strangers who come into parishes where such severalties have been made, and, by continuous labour for five years, will have thus virtually secured a settlement.

I am, Sir, yours, &c.

A JUSTICE OF THE PEACE.

SELECTIONS FROM CORRESPONDENCE.

Another Attorney thus treats the subject of Professional Costume:—

I was glad to see the observations of Mr. Shapland in your paper of the 28th of September last, in reference to my former letter therein. In order to keep the subject from dying, and to assist, if possible, in the adoption of gowns by attorneys generally when professionally engaged at the courts, I am induced again to trespass on your valuable columns, feeling satisfied that wearing gowns will add to the dignity of the Profession, and remedy much of the inconvenience of which many of us complain. It is well known that in all courts places are set apart for the accommodation of counsel and attorneys, in the way to or in the occupation of which the former are but seldom much disturbed, as on their appearance in their professional costume the way is immediately cleared by the officials of the court, and a "writ of possession" executed against any one occupying counsel's places. But how fares the "humble attorney," who has no such mark of distinction? Why, he is obliged to elbow and push his way through the crowded court in the best manner he can; in addition to which, he is oftentimes obstructed, as Mr. Shapland and his friend were, by the officers of the court, owing to his being a stranger to them, and consequently not known to be an attorney. The places assigned to attorneys are also invariably filled up by others more lucky to get possession first, there being at present nothing to denote a professional man from any other. The above inconveniences are but a few of the many we are subjected to, the whole of which would, I think, be in a great measure lessened by our adopting some distinctive mark of our profession. I hope, therefore, something of this sort will form one of the subjects for the consideration of the "Legal Protective Association," as also that, at the forthcoming meeting of the deputations from the Provincial Law Societies, advertised in your valuable paper to take place at Manchester, the members thereof will one and all adopt and recommend the wearing of gowns.

I would myself most readily join Mr. Shapland in immediately wearing a gown, but should not like to appear singular, fearing the rest of my professional brethren here may not do the same.

An Articled Clerk in the city thus comments upon one of the suggestions put forth by the Law Protective Association:—

On perusal of your paper I was much struck by a paragraph stating that one of the objects of the Law Protective Association would be a reduction of the Certificate Duty, and an additional duty on admissions.

Being an Articled Clerk, I, as to the proposed increase of stamp duty, feel an interest in this question.

To shew that the Legislature has considered Articled Clerks to be already sufficiently taxed, I need only refer you to the reduced amount of Certificate duty payable for the first three years after admission, a reduction not made in any other case except that of an attorney. That the Certificate Duty is an impost requiring revision every member of the Profession admits; but I do think it is too bad for a society of attorneys to endeavour to relieve themselves of an unjust burden by throwing it on another class, less able to afford it. At all events, the fair plan will be to let those parties only have the benefit of the reduced Certificate Duty who pay the increased admission duty. I think a protective association is much wanted, but its exertions should be directed for the benefit of *future* as well as present members of the Profession.

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THE LAW TIMES.

SATURDAY, OCTOBER 5, 1844.

ADDRESS.

THE present number commences another,—the FOURTH,—volume of the LAW TIMES. It is customary on such an occasion to address a few words to friends both old and new, nor are we inclined to neglect so agreeable a duty.

As is the motto, so has been the march, of the LAW TIMES:—ONWARD!—The completed volume has exhibited continued progress in prosperity. Subscribers have steadily increased with every passing week; it has become more and more the organ of the Profession, of whose members it has been made the medium for intercommunication; and its columns of advertisements shew that its utility for the circulation of their sales and other professional announcements has been generally recognized.

Another feature which has distinguished it, since the volume commenced, is the resolution of the magistracy of many counties and of the town councils of divers cities and boroughs to advertise in its columns the notices of their sessions; a resolution which, it is to be hoped, will ere long be followed by the rest.

This great and growing favour has, we trust, been met with corresponding efforts on the part of the LAW TIMES to deserve it. Many improvements have been made during the progress of the completed volume, some taught by experience, others suggested by friends.

The Reports have been greatly extended in design and improved in execution. The system, so entirely novel, and therefore full of difficulties at first, has been brought by degrees into a much more perfect shape than was deemed to be possible until we proved its practicability. And more improvements are contemplated.

The last volume contains many papers on Practical Law which have proved extremely useful to the Profession.

Many contributors of great ability have been added to our corps; among them we may specially boast the Paris Avocat, whose articles have excited so general an interest both within and without the Profession.

In the course of that volume the abuses and malpractices existing in the Profession have been fearlessly exposed, and the way has been opened for a reform which cannot be long delayed, now that the necessity for it has become apparent.

A new feature introduced into the last volume has been the devotion of a portion of its columns weekly to the widely interesting subject of Property Law. The articles that have appeared in this department are of permanent value, and will often be resorted to by the practitioner.

So much for the past.

For the future, we can say only that we shall proceed as we have begun, adopting every practicable improvement, as zealously guarding the interests of the Profession, as fearlessly exposing abuses, as sternly rebuking wrong-doers, as industriously gathering whatever can instruct and assist the British lawyer.

And if the LAW TIMES pursue the same path, we trust it may look for the continued support of its large circle of old friends, and that they will exert themselves to introduce it to many new ones.

NOTICE.

The title-page and portion of the Index contained in the present number compel the postponement of many articles that are in type.

To those who prefer to avail themselves of the advantages of *pre-payment* we beg to state that the subscription for the new volume is now due.

New subscribers are informed that Vols. I. II. and III. may still be had to complete sets.

THE RECENT REVELATIONS.

Out of evil comes good. The startling revelations made in the strange affair at the Middlesex Sessions and the Central Criminal Court, however painful at the moment, are rather to be rejoiced at than otherwise, because they will compel the adoption of some decisive measures for the extirpation of a mischief which has been long secretly sapping the prosperity of the Legal Profession.

We are desirous of dealing with the great question which events have forced upon our consideration with as little reference as possible to individuals; we prefer to treat it in the abstract, assuming the existence of the evil as proved, and to direct attention to the more important inquiry—what is the remedy? It matters little to the Profession at large who may be guilty of the practices we condemn; it is enough that those practices be prevalent. Mr. Crouch may have erred; but if he have erred in common with other men, he may fairly plead their example and the custom of the court in his own extenuation. But this plea, sufficient to palliate his offence, makes it still more incumbent upon the Profession—we mean, the whole Profession in all its branches—to adopt stringent measures to extirpate a mischief which has been suffered to grow until it has become of daily occurrence. And such an effort for such an object, we believe, will not be declined by those who must feel that the character of their profession, and their own indirectly, is staked upon the issue.

What is the fact proclaimed at the Central Criminal Court? That counsel there are accustomed to accept briefs from persons who are not attorneys, contrary to the established and, let us add, most commendable etiquette of the Bar. This by-law of the Profession, which, being based upon the soundest reasons, ought to be most sedulously observed, the violation of which is generally understood to subject the violator to that most fearful of chastisements — to be shunned by his learned brethren — is, it would appear, systematically set at naught by many, though not by all, of the counsel practising at the Central Criminal Court and the Middlesex Sessions. When one is detected in this malpractice he pleads the custom of the court, and avers that the same has been, and is still, done by greater men than he. The assertion is denied by two of the magnates of the court, but others hold their peace, and do not, probably because they cannot, venture upon a contradiction. Nor, as we are informed, is the malpractice confined to the court in which the discovery was made. We are assured by friends and correspondents, on whose veracity we can rely, that it is not uncommon at the county sessions and assizes. Names and places have been detailed to us, which, however, we decline to publish, because our purpose is rather to attack the practice than the practitioner. Of the existence of the evil there cannot be a doubt. Briefs *are* accepted by some counsel from others than attorneys, without the indorsement of an attorney's name to verify them.

This is a great mischief, for it is a direct violation of the rules of practice. But there is another mischief, not so palpable, but much more dangerous, to which we hope attention will now be directed, and a remedy applied. It is well known that everywhere in assize and sessions towns there are persons who in truth play the parts of attorneys, and deliver briefs in the name and under the indorsement of an attorney generally resident at a distance, who is not unfrequently paid for this loan of his patronymic, he being in fact entirely unconnected with the business; the fellow to whom he has sold himself alone conducting the affair, and pocketing the profits. The extent to which this nefarious system is carried would be incredible to those who had not witnessed it, and the results are most pernicious both to the attorneys and their clients, the former being deprived of their fair profits, and the latter being pillaged by the knaves who prey upon both.

This evil is more difficult of cure than the other, because it is not so easily detected. In the former case, counsel cannot fail to know that the brief is one which he ought not to accept, for it wants the authenticity of an attorney's name. In the latter case, however strong may be his suspicions, he cannot with safety act upon them. If the indorsement be sanctioned by the attorney, counsel may not question the *bona fides* of its appearance: he cannot sit in judgment upon the actual relationship between the *soi-disant* clerk and the pretended master. Whatever his suspicions, nay, if they verge upon certainty, he may not on that account reject the brief; it bears upon itself the stamp of authenticity, and, if there be forgery, that is a question between the forger and the person whose name is forged.

Here are two mischiefs urgently demanding remedies; mischiefs of long standing, and wide extent, and daily growing. It is equally the interest as the duty of all branches of the Profession to do what they can to suppress them. To the character of the Bar they are infinitely damaging; to the attorneys they are injurious alike in practice and in person. They encourage, nay, they are the principal support of the hosts of sham lawyers who swarm everywhere, and of whose doings so voluminous a record has been preserved in the pages of the Law Times. An investigation into the extent of the evil, honestly and earnestly undertaken by the Law Societies, would, we believe, exhibit an amount of injury inflicted upon the Profession far exceeding aught that is imagined by any person. Nor are the remedies difficult to find, or to be applied. They need only honest co-operation and a little stern resolution on the part of practitioners, and the disease will die away. What are those remedies is a question upon which we have not left ourselves space to enter now. In another article they shall receive the consideration due to their importance.

VERULAM SOCIETY.

In consequence of the approach of the quarter sessions, it has been arranged that the *fourth* Part of Bittleston and Symons's *Magistrates' Cases* shall appear forthwith. This will complete the business of the last Term, and the four numbers will be sewn into a part, similar to the regular Reports, which will be supplied to members of the society at 4*s*. and sold to other persons at 6*s*., and which will contain for that price about threefold the quantity of matter contained in any other of the Reports at the same cost.

The *fourth* Part of *the Real Property and Conveyancing Cases* is in the press, and when completed, it will, with its predecessors, form a part, sewn and supplied at the same moderate prices as above stated of the *Magistrates' Cases*.

A second number of Cox's *Criminal Law Cases* is nearly ready.

In answer to repeated applications as to the *Practice Cases*, we have to state that the reporters have all been recruiting themselves from their fatigues, nor till their return after the vacation can we procure their notes. But then there shall be no further delay in the publication of the first part.

The Prospectus of the Text-Book on the Practice of the Law, announced some weeks ago, and the design of which appears to have received the general approval of the members of the Verulam Society, is in course of preparation; but it is a work demanding much deliberation; moreover, the Society is not yet strong enough to venture upon the cost of such a publication. As we have already stated, a less number than 750 would scarcely justify the outlay, and as yet the members enrolled amount only to 610. Accessions to the list come in almost daily, and a circular has just been transmitted to all the country solicitors, calling their attention to the Society, its nature and objects; but much more would be effected by the personal exertions of the present members. If each one would make it his business to see the attorneys in his neighbourhood, and prevail upon them to join the Society, a few weeks, nay, a few days, would behold it strong enough to undertake, not only the important practical work projected, but a large series of useful text-books, which only wait the means to be begun.

May we request those of the members who have not yet paid their entrance fee and subscription to transmit them with their half-yearly payment for the Law Times, now due, as the demands upon the funds are necessarily very heavy?

The following new members have been enrolled during the last week:—

Jones, R. Parry, Whitchurch, Salop.
Gunning and Francis, Messrs. Cambridge.
Taylor, Thos. Fred. Wigan.
Hilton, Caleb, Wigan.
Godwin, Benj. C. Winchester.

ALTERATIONS IN THE LAW
By 7 & 8 Vict. Cap. 96.
No. II.

(*Continued from page* 496.)

Assignees.—Before proceeding to notice the difficult question respecting the liability of the insolvent's future estate, we must observe that the assignees are now declared "to be officers of the Court, and liable to the control thereof" (sec. 4), and that although, by sec. 35, provision is made for the remuneration of the official assignee, there is none made for the remuneration of the creditor's assignee, as in 1 & 2 Viet. c. 110, s. 45. This is an important omission, since, in *Appleby* v. *Duke* (13 L. J. 10 C. C.), Lord Lyndhurst held that the provisional assignee of an insolvent debtor who had been made a party in a foreclosure suit was not entitled to costs, although he stated in his answer that he had no interest and no assets. The property is in all cases to be received by the official assignee (sec. 4).

Liability of future estate.—It is not a little singular that one of the principal questions which must arise in every case of insolvency, should have been left in doubt by this Act. Knowing that the general object of the Act was to assimilate the proceedings in insolvency and bankruptcy, and to give the like privileges to the honest non-trader as the trader has long possessed, we felt, at the first perusal of the Act, little doubt that the future property of the insolvent was freed from liability in respect of debts included in the petition and schedule. We find, however, that both Mr. Homes and Mr. Horry take a different view, and we certainly admit that the point is by no means clear.

The question stands thus: By the 5 & 6 Vict. c. 116, all property acquired by the insolvent after the final order became vested in the assignees, upon their filing a copy of their claim, and serving a notice thereof upon him, although possession could not be taken by them without an order from the commissioner or the Court of Review. By sec. 73 of the present Act, it is declared that the provisions of the two Acts are to be construed by analogy to the law of bankruptcy, except where otherwise expressed; and by sec. 74, that nothing shall be construed to repeal, affect, or in any manner alter the provisions of the former Act, except so far as is expressly provided, or except so far as the provisions of the said recited Act (5 & 6 Vict. c. 116) *may be inconsistent with or at variance with the provisions of this Act.*

We must look, therefore, to the words of the new Act. Now sec. 4 enacts that the "property of the petitioner shall, for the purposes of the said

recited Act and this Act, rest in the assignee for the time being;" but the word "property" is defined in sec. 73 as follows:—

"And be it enacted, That in construing this Act, the word property shall mean and include all the real and personal estate and effects of the petitioner within this realm and abroad (except the wearing apparel and such other articles of the value in that behalf aforesaid, as may by this Act be excepted from the operation of the said recited Act and this Act), and all the future estate, right, title, interest, and trust of such petitioner in or to any real or personal estate and effects within this realm or abroad, which such petitioner may purchase, or which may revert, descend, be devised, or bequeathed, or come to him *before he shall have obtained the final order*, and all debts due or to be due to such petitioner *before he shall have obtained such final order.*"

The effect of this interpretation clause, therefore, is that only the property as therein described is by *this* Act vested in the assignee; and since no fresh enactment to this effect was necessary, as the 5 & 6 Vict. c. 116 would by itself have given still larger powers, it may well be argued that this clause "is inconsistent with and at variance with" the former Act. It clearly is so as to the *time* of the vesting of the property, for now every assignee takes immediately upon his appointment (sec. 4), while before, the title of the creditor's assignee was dependent upon the final order. Mr. Horry feels this difficulty, but gets over it by a curious suggestion, which seems to admit that the argument against his view cannot be answered as the Act stands. He says (p. 66, n.)—"*Quære*, ought not the words 'before he shall have obtained his final order, and all debts,' &c. to be inserted after the word 'abroad,' and the word 'after' to be substituted for 'before,' in the subsequent sentence?" Such a transposition would, as it seems to us, be an unheard of tampering with the words of a statute, which the courts now more than ever endeavour to interpret according to its plain grammatical meaning. But, moreover, sec. 73 says that the two Acts are to "be construed by analogy to the law of bankruptcy, except where otherwise therein respectively expressed, and in the most beneficial manner for promoting the ends intended by the said recited Act and by this Act." We are aware that it may be still said that this throws no light upon the question, because the whole turns upon what is "otherwise." But we think it may be referred to, as shewing that the ends were to put the non-trader on a footing with the trader. It is not a little remarkable that sec. 15, which enables the creditors to obtain possession of any stocks, &c. to which the petitioner is beneficially entitled, is expressly limited to stocks, &c. to which he may be entitled "*before*" the final order; and there are no means pointed out by which stocks, &c. belonging to the insolvent after the final order could be touched. Under 1 & 2 Vict. c. 110, s. 14, the judgment upon the warrant of attorney would have been effectual for this purpose. Does not sec. 15 shew, therefore, that the future property is *not* to be liable? We would further observe that by the Debtors and Creditors Act (7 & 8 Vict. cap. 70) the future property is protected. (Sec. 13.) We are very desirous to see the decision of the commissioners upon this subject; for at present we cannot feel satisfied with the views expressed by Mr. Horry and Mr. Homes.

Evidence.—We class sec. 37 among the alterations, not because we really think that the construction which *may* be put upon it was either intended or will be adopted, but merely to point out that there is a verbal alteration which requires consideration. It is as follows.

"37. *Proceedings, or a copy thereof, duly signed, receivable in evidence.*—And be it enacted, That any petition for protection from process, and any proceeding in the matter of such petition purporting to be signed by a commissioner of the Court of Bankruptcy, or a copy of such petition or other proceeding purporting to be so signed, shall in all cases be receivable in evidence of such proceedings having respectively taken place."

Now this does not, we think, shew with sufficient clearness whether the copy is to purport to be signed or not, although we can hardly believe that a mere copy made by any one would be receivable in evidence under this section. It would have been easy to have observed the wording of 2 & 3 Wm. 4, c. 114, which requires a copy "purporting to be sealed" with the seal of the court. We shall in a future number point out the alterations in the law of bankruptcy and execution by this important but hastily drawn statute.

(*To be continued.*)

LECTURES ON MEDICAL JURISPRUDENCE.

By Alfred S. Taylor.

Delivered at Guy's Hospital, 1844.

Lecture III.

We have now to consider the diseases the symptoms of which resemble those of poisoning. These are principally *cholera*, *gastritis*, *enteritis*, *peritonitis*, *hæmatemesis*, *colic*. And, first, with respect to *cholera*: it is necessary to distinguish the common English from the Asiatic variety. In what is termed Asiatic cholera there is always sudden and extreme prostration of strength; the surface of the body is very cold, and sometimes has a dark livid or leaden hue, especially observed in the extremities of the hands and feet: the breath is also cold as it issues from the mouth; the matters discharged from the bowels are very copious, and resemble rice-water, with flakes of coagulated mucus floating in them. Besides this, there is the most intense thirst, and the patients will drink large quantities of cold water. This symptom—*intense thirst*—exists in poisoning by arsenic, but the symptoms of poisoning by arsenic, with this exception, are wholly different from those of cholera. In the common form, cholera, as it occurs in the summer and autumn, closely resembles arsenical poisoning in its symptoms. Thus, an attack often occurs soon after a meal, and is accompanied by vomiting, purging, and by violent pain in the abdomen, continuing till death where the case terminates fatally. Many acquittals on criminal trials have taken place in consequence of the great difficulty of distinguishing cholera from arsenical poisoning; and this is perhaps the most successful objection which can be taken to the medical evidence; and if the medical evidence rested on the symptoms alone, it would be almost impossible to draw such a diagnosis as the law would deem satisfactory for a conviction on a charge of poisoning.

The rules for forming a diagnosis as they are laid down by toxicological writers are by no means satisfactory. In irritant poisoning the evacuations are often tinged with blood, which is especially the case where arsenic is the poison. In cholera they rarely contain blood, but they are tinged with bile. In irritant poisoning these evacuated liquids will sooner or later yield traces of poison when analyzed, but this is not so in cholera. We shall see in the lectures on arsenic that there is a most ready mode of discovering the poison in a few minutes, in a very small quantity of animal matter. Persons do not often die of an attack of English cholera, and when the disease proves fatal, it is commonly after three or four days from its commencement. In arsenical poisoning death is the common result within twenty-four hours, when the symptoms produced are such as to have resembled cholera. We may remark that with regard to cholera it is often intimately connected with the drinking of acid or cold liquids, or the eating of acid fruits. In arsenical poisoning the symptoms come on in about half an hour after the meal at which poison has been taken; and although cholera may commence its attack about the same time, all persons who have partaken of the same food will suffer more or less, if it be really a case of poisoning, but not if it be a case of cholera. An analysis of the food, if it be supposed that that has caused the symptoms, will serve to determine whether they are owing to the disease or to poison. As arsenic affects the mucous membrane, so arsenical poisoning is often indicated by special symptoms. Thus in persons who have taken arsenic, and who have survived the first effects of the poison, the conjunctivæ of the eyes become inflamed, and the eyelids become swollen; there is also great cutaneous irritation, followed by a peculiar kind of herpetic eruption of the skin, which some persons have called "*eczema arsenicale*." We find also occasionally other symptoms, such as paralysis and coma. An analysis of the contents of the stomach or of the soft organs, when a person dies, will remove any doubts that may have previously existed on the real nature of the case.

There are three other diseases which have been thrown out as objections to medical evidence in cases of arsenical poisoning: they are, *gastritis*, *enteritis*, and *peritonitis*. These diseases do not commonly occur without some very obvious cause; indeed, the two first, gastritis and enteritis, are the direct results of the action of irritant poison.

Thus arsenic produces these two diseases, gastritis and enteritis. The diagnosis will rest, firstly, upon the time of the occurrence of the symptoms after a meal; secondly, the order in which they occur; thirdly, the obstinate constipation of the bowels which is observed in gastritis and enteritis, while diarrhœa is met with in arsenical poisoning; fourthly, the presence of fever in these diseases, and though this sometimes exists in arsenical poisoning, it is only in the protracted cases; fifthly, the history of the case so clearly explains its nature that we never hear of these diseases being mistaken for arsenical poisoning. The same observation applies to peritonitis, in which disease there is also constipation and but little vomiting. Perforation of the stomach and intestines may resemble irritant poisoning, but in these cases there is always an opportunity of making a *post mortem* examination; hence no difficulty exists in determining the real nature of the case; the real difficulty is in those cases where we cannot examine the interior of the body. *Colic* can only be confounded with one variety of irritant poisoning, namely, that induced by the salts of lead. But it is to be observed that the poisonous salts of lead are very rarely used criminally, and when they are taken in sufficiently large doses to kill with rapidity, the symptoms resembling colic are mixed up with those of irritant poisoning, so as to render it impossible for a skilful practitioner to refer them to that disease alone. With regard to *hæmatemesis*, this affection so little resembles a case of arsenical poisoning that it cannot easily be mistaken. In hæmatemesis there is neither pain nor diarrhœa, and there is a copious discharge of blood by vomiting. *Strangulated hernia* is said to have been mistaken for a case of irritant poisoning; but this is hardly possible, because an examination of the person will immediately remove any doubt. Such, then, are the diseases that resemble irritant poisoning.

With regard to narcotic poison, you will be asked the question—what diseases resemble the effects of narcotic poisons? They are *apoplexy*, *epilepsy*, diseases of the *brain*, of the heart, and, indeed, all diseases that destroy life suddenly, whatever their seat or whatever their nature. These causes of sudden death are in general organic diseases of the heart, and the large vessels about the heart; also rupture of the stomach, and others of a like nature. With regard to *apoplexy*, narcotic poisons, of which we may take opium as the type, actually seem to produce this diseased condition of the brain. The diagnosis between apoplexy from disease and from poisoning is extremely difficult, unless we obtain a full history of the case. The following circumstances require notice in the diagnosis: first, apoplexy, as a disease, is sometimes preceded by warning symptoms before a fatal attack comes on; secondly, it very rarely occurs in persons under the age of thirty; but there are exceptions to this; thirdly, the relation between the time of the attack and the time at which the food or medicine is last taken. Thus, if the comatose symptoms do not come on till five or six hours after abstinence from food, then it is very likely to be apoplexy from disease, and not from poison; fourthly, in apoplexy from disease, coma is at once induced; but in all those cases that result from the effects of narcotic poisons, we find coma comes on as a secondary symptom to stupor and vertigo. Besides this, the discovery of poison in the food or contents of the stomach will assist in establishing the fact of poisoning.

With regard to epilepsy, this resembles poisoning by one substance only, namely, hydrocyanic acid. If the symptoms really depend on poisoning, it is certain that some liquid or substance must have been taken *immediately* before their occurrence; and then by an inquiry it is easy to settle the question of poisoning; because if they come on after four, or five, or six hours' abstinence, it is quite impossible that they could depend on the results of poisoning. With regard to strychnia, the symptoms produced by this poison may be confounded with tetanus; but, fortunately, it is very little known, and is not made use of for criminal purposes. There has been one such case, where it is alleged that a young lady was poisoned by strychnia, in order that the party guilty of her murder might obtain the payment of a policy of insurance on her life. The individual lost the action which he brought to recover the money, and he fled the country, and has not been heard of since. It is not likely that we shall often meet with a case of this sort; but we must remember that the disease *tetanus* closely resembles the symptoms of poisoning by strychnia. There is, however, this distinction, that the symptoms of strychnia must come on almost *immediately* after the poison has been taken;

whereas if they supervene after two or three hours' abstinence, we must refer them to disease.

There are many diseases of the heart and stomach that resemble the effects of narcotic poisoning, and destroy life; but there is, or ought to be, always an opportunity for a *post mortem* examination *in every case of sudden death*, and we should never pronounce an opinion at an inquest without insisting upon an examination of the interior of the body. Rupture of the stomach sometimes happens from over-distension of the organ by food; an accident which occasionally occurs; but the fatal symptoms always appear very suddenly, and the individual speedily dies. A case of this description often comes before coroners as matter of inquiry as to the cause of the sudden death of the individual, which turns out to be merely distension of the stomach, without rupture: this is of itself quite sufficient to cause sudden death. The distension may take place from a very full meal, inducing apoplexy. Many of these cases have occurred where persons apparently in health have been found dead, who have gone to bed after eating a hearty supper. There has been found, on examination of the body in these cases, no organic lesion in any part, and nothing to account for death, but an extreme distension of the stomach, and, in some cases, congestion of the brain.

Now, the best means of determining the cause of death, whether it has been from poison or otherwise, is an examination of the dead body. It was formerly supposed, and it is now even a matter of belief among many persons, that the bodies of persons when poisoned become speedily livid and swollen, and then go rapidly into a state of putrefaction. This is a very erroneous opinion, for the bodies of persons who have died from poisoning undergo no change beyond what would result from any other cause of death. In a trial that took place thirty years ago, the absence of putrefaction in the body was said to furnish negative evidence that poison had not been administered. In the present day, no well-informed practitioner would found an opinion upon such a loose assumption as this. Some poisons which were formerly supposed to possess this property have been proved recently to have exactly the reverse effect. In the case of Mrs. Smith, who was poisoned by arsenic in Bristol, in 1835, after the lapse of fourteen months, that part of the alimentary canal where the poison was most abundantly found was extremely well preserved. In some experiments with arsenic on the bodies of animals which had been buried for two or three years underground, I found that the stomach and the duodenum were entirely preserved, while all the rest of the body was in a state of decomposition. The more distant parts, only, of the body were decomposed. This antiseptic effect of arsenic is chiefly to be seen in those structures with which the poison is in immediate contact; although there is no doubt that arsenic is absorbed and penetrates even to the fingers and toes of the person who has taken it; yet where the person dies in a few hours, the quantity that is absorbed is not sufficient to exert this antiseptic power. This is important in a medico-legal point of view. Arsenic may be thus detected in the bodies of individuals who have been buried five, six, or seven years. It may be observed, that all other poisons do not possess similar antiseptic properties, though they do not accelerate the process of putrefaction; hydrocyanic acid, for instance. In some instances putrefaction has appeared to be accelerated, and there have been other cases where it has been retarded. If a medical jurist were to be asked the question, Could poisons in general have any influence on the progress of putrefaction? the answer would be that, as far as experience enables us to judge, it seems, with the exception of arsenic, to be very doubtful.

In relation to the internal appearances, it may be proper to state, that the effects of poisons on the living body are not such as, when taken by themselves, will yield satisfactory evidence of their having been exhibited. In the opinion of Dr. Christison and some other medical jurists, there is an exception to this rule when strong sulphuric acid or nitric acid has been taken, in which case the dark carbonized or intense yellow appearance of the stomach is considered to be quite characteristic; that is to say, if we had a body brought before us, and opened it, without hearing any thing of the particulars, we might be able to pronounce from the appearances that the individual had been poisoned by a mineral acid. Dr. Christison restricts his view on this point to the action of sulphuric and nitric acids. Now, certainly, a dark, carbonized appearance of the mucous membrane, like that caused by sulphuric acid, and an orange-yellow colour, like that in poisoning by nitric acid, are conditions that do not arise under any circumstances from disease; that is to say, no disease will produce these effects within ten or twelve hours; but unless the body present some other substantial proofs of poisoning, a medical jurist will be scarcely justified in ascribing this appearance entirely to poison. It is true that in poisoning by sulphuric acid, we are more entitled to speak from appearances than in many other cases. Sometimes, it should be observed, the stomach will present a dark appearance when no poison has been taken. As in the case of melanosis, we may have a patch of black extravasated matter over the mucous membrane, though not attended by any inflammation; but when it does arise from poison, we commonly find the marks of inflammation besides. A case which created some embarrassment was that of a female in a noble family, who died somewhat suddenly under suspicious circumstances, two or three years ago. She had been unwell for about three weeks, and was subject to occasional vomiting and disturbances of the stomach. Still her illness was so slight, that it did not in the least interfere with the performance of her usual duties. One afternoon about four o'clock, and about three hours after her last meal, she was suddenly seized with the most excruciating pain in the abdomen, and violent vomiting. Her skin was cold and clammy, and the abdomen tender and painful. It was suspected that she had taken poison, and magnesia and sulphate of magnesia were given to her. No poison was found in the room, and she strongly denied the imputation. The symptoms became worse, the vomiting more violent, and she died the following morning, about fifteen hours after her first seizure. On inspection, all the organs were found healthy, except those of the abdomen. There were here strong marks of peritoneal inflammation: the intestines were loosely adherent to each other, and a quantity of lymph was effused around them. The cavity contained about a pint of liquid, which had escaped from an aperture in the stomach. This liquid was reserved for analysis. The stomach was laid open by making an incision along its great curvature. It was empty. At the upper and posterior part, near the pyloric end of the smaller curvature, was an opening of an oval shape, about half an inch in its longest diameter. The edges were firm, hard, and smooth, presenting not the least appearance of laceration or ulceration. They were bevelled off from within outwards, being thinned towards the peritoneal coat, the aperture in which was much smaller than that in the mucous membrane. There was no sign of inflammation in the membranes around; but the peritoneum, about the edge of the aperture, had a black appearance, and the coats of the stomach were thickened. At the lower part, near the larger curvature, there were thick, irregular, black striæ, the mucous membrane being raised and blackened, but not softened. These striæ appeared like those produced by sulphuric acid; but there was no corrosion, and on applying test-paper there was no acid reaction. The black matter was interspersed with a yellowish-coloured substance. This turned out, on investigation, to be a case of death from perforation of the stomach, owing to disease, and not from poison.

The two great classes of poisons that are most liable to be mistaken for disease, in their effects on the living body, are the narcotics and the narcotic irritants. The action of irritant poisons is chiefly confined to the alimentary canal and the intestines, which they corrode and inflame. Other organs of the body often participate in this mischief. The corrosive irritants are not absorbed, and they only act on the structure with which they come in contact. The *post mortem* appearances left by narcotic poisons are generally extremely slight, and are chiefly fulness of the cerebral vessels. Now, an important question sometimes put to a medical jurist, is this: Can a person die of arsenic, and no striking change be found in the stomach? The answer must be in the affirmative. Then it will be inquired, What are the morbid appearances that result from irritant poisons? They are *redness, ulceration, softening*, and *perforation*. The most important effect produced by irritant poisons is an inflammatory redness, which is either confined to the part immediately affected by the poison, or it may be extended over the whole surface of the membrane. In the case of arsenical poisoning, it is often confined to the rugæ of the stomach; in other instances the whole of the mucous membrane participates in the inflammation. The colour may vary from crimson to a blood-red. In poisoning by arsenic, when the body is first opened, the colour is rather of a crimson tint; it is something like red currant juice spread over the mucous membrane. Sometimes, in irritant poisoning, blood is extravasated, giving to the membrane a dark colour. This has been mistaken for gangrene, but Sir B. Brodie first pointed out the error. The effect of irritant poisons is to turn the blood a dark brown colour. Now where is the redness most commonly found in arsenical or irritant poisoning? In general at the great extremity of the stomach; but it may be met with all over. Within what time after poison has been taken is the earliest period at which the redness may appear? This is a question which may be properly put to a medical witness where an individual has died of arsenic, and the stomach is found inflamed, and where the doubt may be whether the inflammation be due to natural causes or to poison. We are here fortunately in a position to give a decisive answer. Arsenic has been known to produce strong inflammatory redness of the whole mucous membrane of the stomach *within two hours* after it has been taken. That is the earliest time known, but we are not justified in saying that it might not occur within one hour.

Now there is a very important class of cases that ought to be pointed out as rendering great caution necessary in forming a judgment upon the state of the stomach; they are cases where the redness of the mucous membrane of the stomach, as it is found after death, depends on causes but little understood. Several of these cases have occurred in the hospital, and records of four of them have been kept in which the mucous membrane was extensively reddened; but in none of them were there any symptoms of disease during life. It is very difficult to account for such cases, and when, as in the instances just mentioned, they occur without presenting any symptoms of disorder of the stomach, they claim the most serious attention. With regard to the redness produced by cadaverous infiltration, I do not think that that requires any particular observation, for it is not likely to be mistaken by a practitioner for arsenical poisoning. With regard to gastritis and enteritis, they present appearances in the abdominal viscera that cannot be always distinguished from irritant poisoning. The morbid changes produced by poisoning can seldom be confounded with putrefaction, and with respect to the period of time upon which we can rely upon these changes as evidence of poisoning, it is impossible to give a definite answer to such a question. It must depend upon the exposure of the body, the degree to which putrefaction has advanced, and many other circumstances that will suggest themselves upon an examination. With regard to arsenic, Dr. Christison gives an instance in which he was fully able to rely on the *post mortem* appearances as proof of poisoning three weeks after the death of the individual, and there is no doubt evidence may be obtained at a still longer period than this. In the case of Captain Donellan, who poisoned his brother-in-law, Sir T. Boughton (Warwick Ass. 1782), it was stated in evidence that the stomach and viscera of the deceased were red, and presented the appearance of inflammation. In answer to a question put to him on the subject, the Crown witness, Dr. Grattray, said, that the *post mortem* appearances confirmed his opinion of poisoning by laurel-water, so far as he might be allowed *to form a judgment upon appearances so long after death*. This very ambiguous answer led to the following cross-examination by the counsel for the prisoner. "Q. By your putting your answer in that way, do you or do you not mean to say that all judgment in such a case is unfounded? A. I cannot say that; because, from the analogy between the appearances in that body and those distinguishable in animals killed by the poison I have just mentioned, I think them so much alike, that I am rather confirmed in my opinion with respect to the operation of the draught. Q. Those bodies were instantaneously opened? A. Yes; so much so, that there was the peristaltic motion of the bowels upon their being pricked. Q. This examination was made upon the eleventh day after Sir Theodosius's death?" There the witness was obliged to admit this, and the counsel properly objected to the evidence, because the witness compared the appearances found in the bodies of animals immediately after they had been killed by poison, with those met with in the

stomach of a person who had died eleven days before, when it was obvious that they must have depended on very different causes. It was clear that no professional person ought to have made such a comparison. The evidence, therefore, went for nothing.

With regard to *ulceration*, this condition of the mucous membrane is of rare occurrence; and though it is sometimes the effect of poisoning, it is much more commonly the result of disease. In ulceration produced by poisoning, the membrane, besides being reddened, is raised up in small circular patches like fungoid excrescences. Sometimes the portion raised up is well defined; it is of a darker colour than the surrounding surface, and on it we find the poison. This is very important to notice, because it is on this we found the diagnosis. If we are asked to say whether there is any thing peculiarly different in the ulceration from disease and that from poisoning, we are obliged to confess that there is not; the appearance is the same in the two cases, though in the case of ulceration from poisoning such changes are accompanied by other symptoms which tend to fix the diagnosis. The history of the case, however, is the only certain criterion upon which to found a medical opinion. Care must be taken to distinguish ulceration from corrosion. Ulceration is a vital process, the substance of a part is removed by the absorbents as a simple result of inflammation. Corrosion, on the other hand, is a chemical action; the parts are destroyed by the immediate contact of the corrosive substance: they are decomposed, and deprived of their vitality. Ulceration requires time for its establishment, while corrosion is generally an instantaneous effect. Ulceration, as the result of disease, is confined to small circular patches, situated about the lesser curvature, gradually destroying the coats of the stomach. A man in Guy's Hospital died many years ago, and there was no reason to suspect that there was any disease of the stomach existing at the time of his death; there was nothing at all to indicate that he was labouring under disease of this description, and he died in the hospital from some disease of the kidney. On examining the body, attention was directed to the stomach, and it was found that the whole of the mucous membrane was in a state of inflammation, and that one portion of it was removed by ulceration, resembling very closely the effects produced by irritant poison. This case shews that the mere condition of the stomach is not sufficient to justify us in pronouncing an opinion, unless we know something of the history of the individual's complaint. How should we distinguish such a case? The symptoms during life may be very trivial, or there may be none at all to direct our attention to the stomach. Supposing such effects depend on irritant poison, it is utterly impossible that the individual during life should have gone on without exhibiting some symptoms of the effects. Ulceration of the stomach from disease is a very slow and insidious process, without any well-marked symptoms, and unless perforation ensues, we may probably know nothing of its existence. Ulceration does not take place from arsenical poisoning until some previous symptoms have occurred. In a case of arsenical poisoning the question is sometimes asked, What period is required for ulceration to take place as an effect of this poison? Now you will observe, ulceration is by no means a common, and never an immediate, effect of arsenical poisoning. We very seldom meet with cases where ulceration exists until twenty-four or thirty-six hours from the time that the poison was taken; but in a case of murder by arsenic, which occurred a few years ago, the ulceration had taken place within ten hours, the earliest period yet recorded.

Another condition of the stomach is *softening*. The parietes of the stomach are sometimes found so soft as easily to yield and break down under pressure, and this may be the result either of poisoning, or of some spontaneous morbid change in its structure. As this change in the stomach, when caused by poison, is commonly produced by those substances only which possess corrosive properties, it follows that, in such cases, traces of their action will be found in the mouth, fauces, and œsophagus. In softening from disease, the change will be confined to the stomach alone. When softening takes place from irritant poison, it is generally attended by other striking and unambiguous marks of its operation. Softening is not to be regarded as a character of poisoning; it is only an occasional appearance, and as a general rule, we ought to say, that softening is no evidence of poison, unless we have at the same time poison in the softened part of the organ. Where softening is produced by poison, it is by chemical action. Sometimes the stomach becomes preternaturally hardened and thickened. This result happened in a case of poisoning by sulphuric acid that occurred in the hospital some years ago. We do not, however, always find that: instead of the stomach being softened, and easily broken down under pressure, we find it extremely tough, and the whole of the mucous membrane exceedingly corrugated. In either case we generally find traces of the poison in the part affected, if this appearance of the stomach has really been produced by poison.

Now the last condition of the stomach which we have to notice is *perforation*. Perforation by poison is comparatively rare, and it may occur in two ways,—by corrosion, or by ulceration. Perforation by corrosion is the most common variety of perforation by poisoning. Some time since a brewer's clerk took some oil of vitriol, the stomach was entirely destroyed, and there was extensive perforation manifest on examining the body. In cases of perforation by corrosion, death very speedily takes place. The best means of detecting it is by an examination of the mouth, fauces, and œsophagus. Nitric acid is said to have produced perforation in one instance; but it is very rarely taken as a poison. There is only one single case on record of oxalic acid having produced perforation, and only one in which corrosive sublimate has been attended with the same result. The caustic alkalies have produced it in animals, but there is not one instance of their having produced perforation by corrosion in the human subject. Dr. Christison met with only one case of perforation as a result of the action of arsenic, and two others are recorded, one of which occurred in America, and the other in France. Cases of this kind produce no ambiguity, because the symptoms of poisoning will always be present before perforation takes place.

JOURNAL OF PROPERTY.

The following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.

For every succeeding 30 words . 1s.

THE MONEY MARKET.

Friday.—The Funds are still high, and some good purchases have been made in New Three-and-a-Quarter per Cents. for the opening, so that the market value of that security is about 102⅞ to 103⅛. The Commissioners have given 100¾ for their parcel of Consols, and for time the rates have advanced to 100⅝ ¾. Exchequer Bills are steady, at 74s. to 76s. premium. Nothing has been done in Bank or India Stocks, and the market looks very quiet.

The Foreign Investments are also very inactive. Dutch Bonds have been very firm; the Two-and-a-Half per Cents. at 62½ to 62⅝, and the Five per Cents. at 98⅞ to 98. The conversion plans seem to be favourably construed. Spanish Active Bonds are 24½, and the Three per Cents. 35½ to ⅝. Portuguese Converted obtain 49. Mexican are 35⅛, and Colombian 14⅞. Brazil Stock is 87½.

For Railway Shares, there is a fair market generally; and where holders yield a little, sales are not difficult to effect. The French lines are looking up. Joint-stock Banks and Mines continue dull.

The Chipchase estate, which was offered for sale by Messrs. Small and Brough, one day last week, was put up at 30,000*l.* exclusive of the wood, and, after the biddings had gone to 35,000*l.* it was bought in at the reserved sum of 55,000*l.* The last offer was made by John Hodgson Hinde, esq. M.P. for this town.—*Newcastle Journal.*

Profits of Timber on Estates.—The late Mr. Fleming, of Hampshire.—This gentleman was one of the largest landed proprietors in the county, owning at his death 15,000 acres, and so richly wooded has it always been that he is supposed to have cut no less than 300,000*l.* of timber, from first to last, and yet left the whole as full as the land will bear. Mr. Fleming's expenditure in the town and neighbourhood of Southampton averaged 18,000*l.* a year, and immediately after his departure for the Mediterranean the loss of such a large expenditure was most sensibly felt.—*Hants Advertiser.*

Public Sales.

By Messrs. FAREBROTHER, CLARKE, and LYE, at Garraway's.

A freehold estate called "Dargate," in Kent, consisting of a superior residence, spacious yards, with farming buildings of every description; oast-house, cottages for labourers, and sundry enclosures of pasture and arable lands, hop-gardens, and fruit plantations, lying compact, and containing 193a. 1r. 32p. situate in the parish of Herne-hill, about three miles from Faversham, from whence produce is shipped for the London markets; eight to Canterbury, and ten to Sittingbourne, in one of the richest farming, grazing, and hop districts of the county of Kent. The estimated value of the entire property, including the residence, is 500 guineas. The above property was sold under a fiat in bankruptcy. The annual land-tax amounts to only a few shillings—sold for 13,000*l.*

The beautiful freehold estate of Gattonside, situate about a mile from, and in the parish of Melrose, Roxburghshire, on the north bank of the River Tweed, in the most admired part of the south of Scotland, consisting of a capital stone-built mansion of handsome elevation, with every description of domestic offices, coach-house, and stabling, capital walled garden of about two acres, and lawns sloping to the River Tweed, with extensive and highly ornamental plantations, also suitable farming buildings and upwards of 300 acres of productive land. The estate commands views of the richest scenery, including the valley and river, with the ornamental suspension-bridge, the celebrated Abbey of Melrose, and the far-famed Eildon hills. The estimated value is 425*l.* per annum—10,400*l.*

The absolute reversion on the death of a widow lady, aged 70 years in October next, to the principal sum of 1,000*l.* charged upon freehold estates in Somerset, containing about 640 acres—700*l.*

A copyhold residence, newly built in the most substantial manner and stuccoed, situate at Epsom, Surrey, let for seven years from Christmas 1842, at 70*l.* per annum; there are a range of detached offices, a two-stall stable and loose-box, two coach-houses, harness-room, &c.; the ground, which is about two acres, is tastefully laid out in lawn and flower garden, also pleasure and kitchen gardens—910*l.*

A villa residence, No. 27, in Addison-road North, Notting-hill, of the annual value of 50 guineas per annum; held for 99 years, from December 1841, at a ground-rent of 10*l.* per annum each house—115*l.*

A ditto, No. 28, ditto—110*l.*

A villa residence, No. 17, Hamilton-terrace, St. John's-wood, with garden, conservatory, and at the side of the residence is a coach-house and stable, room and loft over, let at 140*l.* a year; held for 91¼ years from June 1840, at a ground-rent of 15*l.* per annum—1,580*l.*

A ditto, No. 18, ditto—1,850*l.*

A residence, No. 19, Hamilton-terrace, with large garden in the rear, let at 120*l.* per annum; held for 91¼ years from June, 1840, at 15*l.* per annum—1,420*l.*

A cottage residence, No. 5, Melina-place, Grove End-road, St. John's-wood, with large garden, chaise-house, and two-stall stable; held for a term of 85 years from Michaelmas, 1831, at a ground-rent of 30*l.* per annum—570*l.*

The adjoining residence, No. 6, Melina-place, Grove End-road, let at 81*l.*; held for 85 years from Sept 1831, at a ground-rent of 15*l.* per annum—595*l.*

An improved rent of 60*l.* per annum, for eight years, arising from the coach manufactory and premises, No. 53, George street, Portman-square—340*l.*

A house and shop, No. 33, New Church-street, Marylebone, let at 45*l.*; held for 99¾ years, from March, 1830, at a ground-rent of 10*l.* per annum—365*l.*

A ditto, No. 34, let at 53*l.* held for the same term—700*l.*

An improved rent of 30*l.* per annum, secured upon a residence, No. 31, Upper George-street, Portman-square; held for 21 years, from Christmas, 1837—220*l.*

A residence, No. 35, New Church-street; held for 90¾ years, from Lady-day, 1830, at 10*l.* per annum—670*l.*

A ditto, No. 36, ditto—680*l.*

A leasehold estate, consisting of extensive premises, No. 35, Little Church-street; held for 93¾ years, from March, 1830, at a ground-rent of 16*l.* per annum, let at 75*l.* per annum—810*l.*

A leasehold estate, comprising the whole of the newly-erected stabling and premises in John's-yard, Lisson-grove North, producing a gross rental of 225*l.* per annum; held for 97 years, from Christmas, 1833, at a ground-rent of 75*l.* per annum. The vendors pay the rates, taxes, and insurance—1,370*l.*

The extensive premises known as the Factory, being No. 30, Lisson-grove North, let at 130*l.* per annum, held for 61¼ years from Christmas, 1830, at a peppercorn-rent—1,500*l.*

By Messrs. HOGGART and NORTON, at the Mart.

A freehold estate, situate in the parishes of Whittington Stanely and township of Bremington, Derbyshire, comprising Whittington Hall, a newly erected mansion, built of stone, with attached and detached offices, standing in the midst of park-like grounds; three farms adjoining, with farm-houses and farm buildings, &c., accommodation, meadow and pasture land; the whole property containing together about 524 acres—25,800*l.*

A freehold net rental of 158*l.* 6s. 8d. per annum, being an undivided third part of an extensive property, known as Lavender Dock, situate in Rotherhithe-street, and abutting upon Horseferry-stairs—3,680*l.*

A freehold rental of 16*l.* 13s. 4d. per annum, being a third part of a wharf and premises situate in Rotherhithe-street—380*l.*

By Mr. DODD.

The absolute reversion to one-fourth share of the sum of 1,940*l.* Three per Cents. Reduced Bank Annuities, receivable on the death of a gentleman now in his 55th year—180*l.*

By Messrs. BULLOCK, at the Mart.

A residence, No. 3, Brook Green-terrace, Hammersmith, also a plot of ground in the rear, extending 70 feet by a breadth of 16 feet 6 inches; held by lease from the lord of the manor of Fulham for 99 years from 1799, at 7*l.* 7s. per annum, to be renewed every 21 years until the term is completed—200*l.*

A house, No. 6, Brook Green-terrace; held for 95 years from Christmas, 1802, at 5*l.* 10s. per annum, the lease to be renewed every 21 years—225*l.*

A plot of ground in the rear of Nos. 2 and 3, measuring 23 feet by 30 feet in depth, and another piece of ground at the rear of Nos. 5 and 6, Brook Green-terrace; held for 92 years from December, 1805, at a ground-rent of 2*l.* 2s. per annum—*50l.*

By Mr. W. W. SIMPSON, at the Mart.

Important freehold property in Essex, about two miles from Sudbury, called the Auberies, with its modern spacious and perfectly appointed mansion, seated in a princely timbered and richly ornamented park of 150 acres; also the Armoury farm, together with cottage property and a tithe rent-charge of 48*l.* per annum. The property in this lot contains 636a. 2r. 12p. The valuable fixtures are to be included in the purchase—30,900*l.*

The second lot of this valuable property comprises Brookhall farm, Carbonell's farm, Bosley Green farm, malthouse, and cottage property, and Purkiss's farm, containing 768a. 0r. 12p.; rental 1,318*l.* 13s.—32,900*l.*

By Mr. GARDINER.

The lease of the Red Lion public-house and wine-vaults, No. 33, in Liverpool-street, Bishopsgate-street; held for 20 years, at 100*l.* per annum—*970l.*

By Messrs. D. S. BAKER and SON, at the Mart.

A villa residence, with coach-house and stable, No. 1, Highbury Villas; held for 60 years, from March 1842, at a ground-rent of 10*l.* per annum—*720l.*

A ditto, No. 8, held for the same term, at 8*l* per annum—*430l.*

A ditto, No. 9, ditto—*445l.*

A family residence, No. 10. Highbury Villas, held for 60 years at 8*l.* per annum—*500l.*

A cottage residence, No. 8, Clarence-terrace, Lower-road, Islington; held for 99 years from June 1841, at a ground-rent of 5*l.* per annum—*300l.*

A family residence, No. 33, Canonbury-square, Islington; held for 91 years from June 1841, at a ground-rent of 7*l.* per annum—*520l.*

A house, No. 5, King-street, Goswell-street, Clerkenwell, let at 31*l.*; held for 60¼ years from June 1805, at a ground-rent of 5*l.* per annum—*130l.*

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Arnold and *Co.* cheesefactors, 1st joint, 3s. 9d.; sep. H. A. 2s. 8d. sep. J. Arnold, 2s. 1d. Valpy, Birmingham.—*Billington*, S. woollen draper, 1st, 6½d. Morgan, Liverpool.—*Carr* and *Co.* merchants, 3rd and final sep. J. C. C. 1s. 7¾d. Baker, Newcastle.—*Jones*, E. grocer, 4th, 3s. 11d. Morgan, Liverpool.—*Jones*, J. grocer, 1st, 3s. 6d. to new proofs. Valpy, Birmingham.—*Taylor*, J. coal fitter, 5th and final 5d. and 3-5ths of a penny. Baker, Newcastle.—*Webb*, W. ironmonger, 2nd, 4½d, Morgan, Liverpool.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Sept. 27.

Royston, J. C. gent. Codnor-park, Derbyshire, gent. Sept. 5. Trusts. J. Cutts, gent. Chesterfield, and T. Lee, grocer, Crich. Sols. Lucas and Cutts, Chesterfield.

Gazette, Oct. 1.

Buston, J. slopseller, Maidstone, Sept. 24. Trust. J. Lowe, wholesale clothier, 4, Minories. Sol. Llewellin, Noble-st. Cheapside.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Sept. 27.

ELDRIDGE, THOMAS, coach builder, Upper North-pl. Gray's-inn-rd. Oct. 11, at half-past twelve, Nov. 8, at half-past eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Chamberlayne and Meaden, Great James-st. sols Date of fiat, Sept. 24. J. Bishop, wheelwright, Gilbert-st. Bloomsbury, pet. cr.

LAMBERT, JOHN, grocer and flour dealer, New Elvet, Durham, Oct. 10, at half-past two, Nov. 18, at two, Newcastle, Com. Ellison; Baker, off. ass.; Crosby and Compton, Church-st. Thompson, Durham, and Hoyle, Newcastle, sols. Date of fiat, Sept. 19. C. Wm. Lowes, tobacconist, Durham, pet. cr.

LEYBOURN, JAMES, provision shop keeper and cabinet maker, Oct. 9 and 28, at eleven, Leeds, Com. West.; Freeman, off. ass.; Foster, Bradford, and Nethersole, Essex-st. sols. Date of fiat, Se . 19. On bankrupt's own petition.

M'LAUGHLIN, EDWARD, hair and glue merchant, Long-lane, Bermondsey, Surrey, Oct. 16, at half-past eleven, Nov. 8, at half-past two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Keddell and Baker, Lime-st. sols. Date of fiat, Sept. 26. W. Tanner and J. Ward, leather factors, Leadenhall-pl. Lime-st. pet. crs.

STACY, FREDERICK BOTH, and WILLIAM, warehousemen, Lawrence-lane, Cheapside, City, Oct. 5, at half-past twelve, Nov. 8, at two, Basinghall-st.; Com. Holrord; Edwards, off. ass.; Crowder and Maynard, Coleman-st. sols. Date of fiat, Sept. 19. H. Burlatt, Stevens's hotel, Bond-st. pet. cr.

WEBB, JOHN GREGORY, mineral water manufacturer, Rosamond-buildings, Islington, Oct. 11, at one, Nov. 8, at half-past one, Basinghall-st. Com. Holroyd; Groom, off. ass.; James, Basinghall-st. sol. Date of fiat, Sept. 19. W. Haigh, cork manufacturer, Church-lane, Whitechapel, pet. cr.

WILLIAMS, WILLIAM, and SAWTELL, JOSEPH, corn and provision merchants, N wport, Monmouthshire, Oct. 14 and Nov. 8, at eleven, Bristol, Com. Stephen; Kynaston, off. ass.; Prothero, Newport, sol. Date of fiat, July 17. W. North, miller, Cannington, Somersetshire, pet. cr.

Gazette, Oct. 1.

ASHWELL, EDWARD, butcher, Yeldon, Bedfordshire, Oct. 15, at eleven, Nov. 12, at two, Basinghall-st. Com. Holroyd: Edwards, off. ass.; Clarke and Co. Lincoln's-inn-fields, and Beckwith and Co. Norwich, sols. Date of fiat, Sept. 23. J. Mace, farmer, Norwich, pet. cr.

DEFLINNE, FRANCIS, check and gingham manufacturer. Manchester, Oct. 14, and Nov. 11, at eleven, Manchester; Fraser, off. ass.; Milne and Co. Temple, and Crossley and Sudlow, Manchester, sols. Date of fiat, Sept 26. Bankrupt's own petition.

HAYNES, HENRY, innkeeper, wine and spirit merchant, and coach proprietor, Scole, Norfolk, Oct. 9, at one, Nov. 12, at half-past one, Basinghall st. Com. Holroyd; Edwards, off. ass.; White and Co. Lincoln's-inn-fields, and Muskett, Diss, sols. Date of fiat, Sept. 16. R. Fincham, H. J. Oakes, R. Beavan, and G. Moor, Diss, Norfolk, pet. crs.

MASLIN, MARTIN, coal and lime merchant, Croydon, Surrey, Oct. 19, at eleven, Nov. 12, at half-past twelve, Basinghall-st. Com. Holroyd; Edwards. off. ass.; Ashhurst, Cheapside, sol. Date of fiat, Sept. 26. Bankrupt's own petition.

MAUND, JONATHAN THOMAS, laceman, hosier, and bazaar keeper, Birmingham, Oct. 15, at twelve, Nov. 12, at half-past two, Basinghall-st. Com. Holroyd; Edward's off. ass.; Reed and Shaw, Friday-st. sols. Date of fiat, Sept. 27. R. Groucock, G. Moor, and S. Copestake, Bow Church-yard, warehousemen, pet. crs.

NICHOLLS, CHARLES KERRY, banker and scrivener, 8, Bridge-road, Battersea, Oct. 10 and Nov. 12, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Townshend, Howland-st. Fitzroy-square, sol. Date of fiat, Sept. 2. On his own petition.

ROBINSON, RICHARD, coal merchant, 457, Strand, Oct. 16 and Nov. 12, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Yonge and Hancock, Tokenhouse-yard, sols. Date of fiat, Sept. 26. R. Robinson, coal merchant, 457, Strand, pet. cr.

WATSON, ROSS, and MORRIS, ROBERT, brokers, Liverpool, Oct. 15, at twelve, Nov. 12, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Vincent and Co. Inner Temple, and Minshull, Liverpool, sols. Date of fiat, Sept. 25. J. G. Morris, A. Hurtz, T. and J. A. Case, tar distillers, Liverpool, pet. cr.

WEBB, RICHARD JOHN, wine and spirit merchant, 36, Milsom-st. Bath, Oct. 14, at twelve, Nov. 12, at eleven, Bristol, Com. Stevenson; Miller, off. ass.; Dimmock and Co. Size-lane, and Hassell, Bristol, sols. Date of fiat, Sept. 24. H. Reay and J. Reay, jun. wine merchants, 61, Mark-lane, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Sept. 24.

Bunn, W. and P J. 16, Saint Alban's-place, Maida-hill, Sept. 1st.—*Brown*, J. and *Harrison*, J. coopers, Newcastle-upon-Tyne, June 22.—*Cheshire*, T. and *June*, J C. W. merchants, Liverpool, Sept. 23. Debts paid by Cheshire.—*Cossins*, J. and H. D. millers, Ilminster, Sept. 20. Debts paid by H. D. Cossins.—*Definne*, F. and *Holt*, G. check and gingham manufacturers, Manchester and Flixton, Sept. 21. Debts paid by G. Holt.—*Geere*, C. and D. D. farmers, South Heighton, Sept. 21.—*Nicholson*, B. and J W. manufacturing chemists, Leeds, Sept. 21. Debts paid by B. Nicholson —*Newham*, S. and *Berrey*, G. jun. wine merchants, Nottingham, July 1. Debts paid by Newham.—*Oliphant*, C. *Thomson*, E. and M. A. schoolmistresses, Croydon, Sept. 7.—*Polhill*, R. C. and *Coleman*, H S. wine merchants, Crown-court, Old Broad-st. Sept. 20.—*Powell*, V. J. and *Kirtland*, J. tobacco manufacturers, King's-place, Commercial-road East, Sept 24.—*Quarton*, J. and *Dresser*, T. grocers and drapers, Stamford bridge, Sept. 21.—*Rattle*, J. and *Brine*, T. booksellers, Bath, Sept. 20. Debts paid by Rattle.—*Rodgers*, J. and *Christie*, J. masons, Notting-hill, Sept 20.—*Rutley*, R. and *Taylor*, G. carvers and gilders, Swan-yard, St. Martin's-lane, Sept. 21.—*Walker*, R. *Rowell*, T. *Lisle*, W. and *Peacock*, G. Hartlepool, Aug. 29.—*Wright*, J. E. *Parker*, W. *Barrowforth*, J. and *Wilson*, E. seed crushers, Iver, Bucks, so far as regards Wright, Sept. 20. Debts paid by the remaining partners.

Gazette, Sept. 27.

Abrahams, E. and *Watkin*, J. engravers to calico printers, Manchester, Sept. 16. Debts paid by Simpson, Manchester.—*Addison*, R. B. and *Greenwood*, J. engineers, Sumner-st. and the Grove, Southwark, Sept. 20. Debts paid by Greenwood.—*Atkinson*, E. and E. milliners, Liverpool, June 8. Debts paid by Eliz. Atkinson.—*Barton*, T. and H. P. and *Ormerod*, J. calico printers, Manchester, Sept. 25.—*Bate*, J. A. and *Faulkner*, J. A. factors, Birmingham, Sept. 23. Debts paid by Faulkner.—*Blackmore*, M. and A. milliners, Davies-st. Berkeley-sq. Sept. 26.—*Cornforth*, W. B. and *Gaskell*, S. L. pawnbrokers, Congleton, Sept. 20.—*Cox*, E. and J. wheelwrights, Upper East Smithfield, Sept. 21.—*Gregory*, E. and *Davenport*, E. milliners, Church-st. Spitalfields, Sept. 1.—*Holland*, T. and T. jun. cattle dealers, Preston and Cirencester, Sept. 25.—*Holland*, H. and *Sadler*, W. architects, Duke-st. Adelphi, Sept. 29.—*Jackson*, W., S. S., and E. tobacco manufacturers, Leeds, so far as regards E. Jackson, Dec. 30.—*Lovegrove*, J. and *Young*, J. barge-builders, Rotherhithe-st. Aug. 27. Debts paid by Lovegrove.—*Orford*, T. *Ramsden*, R. G. and *Holland*, H. merchants, Liverpool and New Orleans, Sept. 16.—*Penny*, R., *Penny*, G., and *Randolph*, E. attorneys, Exeter, Sept. 21.—*Rigmaiden*, E. and *Ellerton*, J. ale merchants, Liverpool, Aug. 5.—*Southan*, H. sen and jun. carriers, Worcester and Gloucester, Sept. 25.—*Walsh*, J. and *Padgett*, W. scribbling millers, Guisely, Sept. 1. Debts paid by Padgett.—*Yates*, J. and *Slater*, R. cotton manufacturers, Preston, Sept. 11. Debts paid by Yates.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, Sept. 24.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Akerman, J. T. victualler, out of business, Oxford, Oct. 14 at two.—*Bayley*, F. W. N. author, Nelson-square, Oct. 16, at one.—*Buck*, W. cabinet maker, Bury Saint Edmunds, Oct. 14, at half-past twelve.—*Carter*, W. jeweller, Spencer-st. Clerkenwell, Oct. 17, at twelve.—*Caton*, H. out of business, Boreham, near Chelmsford, Oct. 12, at twelve.—*Coleby*, G. tobacconist, Stangate-st. Lambeth, Oct. 14, at half-past one.—*Coleman*, J. F. accountant, Coleman-st. Oct. 17, at one.—*Cooke*, J. M. attorney, Upper Seymour-st. Portman-square, Oct. 5, at two.—*Cross*, R. Briar-villa, Starch-green, Hammersmith, Oct. 14, at half-past one.—*Davies*, T. weaver, John-st. Southwark, Oct. 12, at half-past eleven.—*Danks*, A. Collier's-rents, White-st. Southwark, Oct. 17, at one.—*Feakes*, R. Smith's-place, High-st. Wapping, Oct. 16, at one.—*Flower*, J. out of business, Bath-st. Cambridge-road, Mile-end, formerly of Charles-st. Stepney, cheesemonger, Oct. 14, at one.—*Gadsden*, R. out of business, Wyndham-st. Marylebone, Oct. 12, at eleven.—*Green*, H. omnibus driver, Park-st. Camden-town, Oct. 12, at twelve.—*Hopwood*, W. hatter, Broadwall-gardens, Lambeth, October 3, at three.—*Lazard*, B. embroiderer, Queen-st. Golden-square, Oct. 17, at twelve.—*Mills*, J. land surveyor, Spencer-st. Northampton-square, Oct. 14, at twelve.—*Nisbett*, J. M. clerk, Augmering, Sussex, Oct. 12, at one.—*Parkinson*, C. teacher of music, Gloster-place, Portman-sq. Oct. 17, at half-past one.—*Parsons*, W. out of business, 358, Strand, Oct. 17, at half-past twelve.—*Perfett*, M. A. widow, German-pl. Brighton, Oct. 14, at one.—*Provo*, L. Y. Surrey-grove, Kent-road, Oct. 12, at half-past twelve.—*Quadri*, G. jeweller, St. John's-lane, Clerkenwell, Oct. 14, at half-past one.—*Runting*, J. sack manufacturer, Ipswich, Oct. 12, at half-past twelve.—*Sawyer*, C. upholsterer, Oct. 14, at half-past twelve.—*Scott*, P. T. lighterman, Windsor-pl. Southwark-bridge-road, Oct. 14, at twelve.—*Slater*, J. W. bricklayer, Gee's-court, Oxford-st. Oct. 17, at twelve.—*Venzano*, N. commission agent, Austin-friars, Oct. 16, at one.—*Wells*, J. carpenter, White Horse-alley, Cow-cross, Oct. 17, at half-past twelve.—*Wright*, J. upholsterer, Southwold, Oct. 14, at half-past twelve.

MEETINGS IN THE COUNTRY.

Gazette, Sept. 27.

Ackerly, D. agent, Liverpool, Oct. 15, at one, Liverpool.—*Bentley*, R. collector, Everton, Oct. 22, at twelve, Liverpool.—*Chesworth*, J. Stoke upon-Trent, Oct. 10, at twelve, Birmingham.—*Chugg*, G. agricultural labourer, West Down, Oct. 17, at eleven, Exeter.—*Daniel*, T. traveller, Burslem, Oct. 14, at eleven, Birmingham.—*Every*, R. farmer, Callington, Oct. 17, at eleven, Exeter.—*Gardner*, R. labourer, Halton, Oct. 14, at one, Manchester —*Goodson*, J. beer shop-keeper, Nottingham, Oct. 12, at eleven, Birmingham.—*Gummer*, J. farmer, Flax Bourton, Oct. 24, at eleven, Exeter.—*Livingston*, N. manufacturing chemist, Wigan, Oct. 14, at twelve, Manchester.—*North*, W. B. butcher, Wolverhampton, Oct. 3, at one, Birmingham.—*Owen*, C. sheriff's officer, Chester, Oct. 14, at eleven, Liverpool.—*Owen*, E. P. gentleman, Liverpool, Oct. 12, at eleven, Liverpool.—*Page*, J. R. F. butcher, Walton-upon-Trent, Oct. 14, at twelve, Birmingham.—*Rawlins*, C. H. druggist, Liverpool, Oct. 12, at eleven, Liverpool.—*Redmayne*, M. butcher, Hulme, Oct. 9, at twelve, Manchester.—*Vaughan*, S. blacksmith, Oldbury, Oct. 14, at half-past ten, Birmingham.—*Wallis*, W. inspector of weights, Wington, Oct. 17, at twelve, Exeter.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Sept. 27.

Butler, W. out of business, Great Suffolk-street, Oct. 12, at two.—*Curtis*, T. out of business, Lisson-grove, Oct. 12, at half past two.—*Deadman*, J. A. hawker, Deptford, Oct. 8, at half-past one.—*Lasslett*, W. carpenter, Swalecliffe, Oct. 12, at two.—*Lovell*, E. hurdle maker, Ellisfield, Oct. 11, at eleven.—*Roast*, S baker, out of business, Little Laver, Oct. 12, at half past one.—*Sacheverell*, E. T. brush maker, New Windsor, Oct. 12, at one.

Country.

Ballard, J. shoe maker, Chilvers Coton, Oct. 22, at eleven, Birmingham.—*Cardwell*, T. out of business, Thornhill, Oct. 18, at eleven, Leeds.—*Cohen*, B. hawker, Bishop Wearmouth, Oct. 10, at half-past two, Newcastle.—*Harris*, S. carpenter, Stalbridge, Oct. 17, at twelve, Exeter.—*Hebblethwaite*, J. butcher, Halifax, Oct. 11, at eleven, Leeds.—*Kennedy*, G. draper and grocer, Aspatria, Oct. 3, at half-past eleven, Newcastle.—*Kitson*, G. beer retailer, Leeds, Oct. 11, at eleven, Leeds.—*Minster*, T. boarding house-keeper, Liverpool, Oct. 7, at eleven, Liverpool.—*Mountford*, J. auctioneer, Middlesbrough, Oct. 11, at eleven, Leeds.—*Newtown*, T. jun out of business, Wisbeach, Oct. 18, at twelve, Birmingham.—*Ritcher*, F. teacher of languages, York, Oct. 18, at eleven, Leeds.—*Tayler*, S. baker, Cheltenham, Oct. 29, at eleven, Bristol.—*Thomas*, J innkeeper, Falmouth, Oct. 17, at eleven, Exeter.—*Woodhouse*, E. horse breaker, Kirton in Lindsey, Oct. 11, at eleven, Leeds.—*Woodman*, J. Stonegate, York, Oct. 11, at eleven, Leeds.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

WARE.—On the 25th ult. at Upper Thurlow-place, Hackney-road, the lady of Thomas Ware, esq. solicitor, of a daughter.

MARRIAGES.

MOUAT, Mr. A. wine-merchant, Creed-lane, Ludgate-hill, to Caroline, daughter of the late Henry Kincaid, solicitor, of Cranbrook, Kent, on the 30th ult. at St. Michael's, Cornhill.

DEATHS.

BRODIE, Bathia, wife of John Clerk Brodie, esq. Writer to the Signet, Edinburgh, on the 25th ult. at Lethen-house, Nairnshire.

HART, Rebecca, third daughter of Mr. Hart, solicitor, of Reigate, on the 30th ult. at Reigate, aged 21.

HOLT, Francis Ludlow, esq. Q.C. and Vice-Chancellor of the Duchy of Lancaster, on the 29th ult. at his residence, Earl's-terrace, Kensington.

MANBY, Fanny Mary, the eldest daughter of William Manby, esq. solicitor, on the 27th ult. in her 6th year.

ADVERTISEMENTS.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports :—

PRIVY COUNCIL by WILLIAM PATERSON, Esq., of Gray's-inn, Barrister-at-Law.

HOUSE of LORDS by WILLIAM PATERSON, Esq., of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq., of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq., of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq., of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq., of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by JAMES A. FOOT, Esq., of the Middle Temple, Barrister-at Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq., of the Middle Temple, Barrister-at-Law

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq., of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq., of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by J. A. FOOT, Esq., of the Middle Temple, Barrister-at Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq., of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq., of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq., of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq., Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by R. C. ROBINSON, Esq., of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq., of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq., of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq., of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq., D.C.L., of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by HENRY MILLS, Esq., of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq., D.C.L., of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq., of the Middle Temple, Barrister-at-Law, and HENRY TINDAL ATKINSON, Esq., of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq., of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq., of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

IRISH REPORTS by WM. ST. LEGER BABINGTON, LL.D., Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

Common Law Courts.

ADMIRALTY COURT.

THE EMMA.

The rule of the High Court of Admiralty is, that both in cases of salvage and collision protest should always be produced. No distinction is drawn between salvage to the ship and salvage to the cargo. The practice of the Court, is to take the whole value of both ship and cargo, and assess proportionably on the two.

Where the cargo consists of different commodities, no distinction is drawn between one sort and another, except in the case of bullion, for the salvage of which, being an article easily preserved, a lower remuneration is granted than for more bulky merchandise.

On the merits of the present case the tender is held insufficient.

This was a suit by twenty-two boatmen belonging to the port of Margate against the owners of the cargo and freight of the barque *Emma* for salvage remuneration.

The barque, on the 18th of October, having met with rough weather, lost two anchors and cables, and was drifting on the Nayland Rock. The boatmen had put out their lugger for the purpose of rendering assistance to vessels in distress, a stiff gale blowing from the N.W. They almost immediately met with the barque, and attempted to board her, but she kept drifting on, and, it seems, was only prevented from destroying the lugger by striking on the rock. There she remained in great danger of being beaten to pieces. The services of the salvors were then offered and accepted, and they were continued from the 18th to the 20th. The master and crew abandoned the barque, and got into the lugger. On the morning of the 20th, the agent of the owners and underwriters went down and made an arrangement with the salvors, and they continued their services for several days. An agreement was subsequently concluded between the owners of the ship and the salvors as to the amount of remuneration due for the services rendered to the ship, and the Court was not now called upon to allot salvage for the ship, but merely for the freight and cargo, the value of which was 3,000*l.* The tender of 250*l.* as salvage on that sum was made and refused.

Sir *J. Dodson*, Q.A. and *Haggard*, for the salvors.

Addams and *Bayford*, for the owners.

Dr. LUSHINGTON.—I will avail myself of this opportunity for expressing my opinion with regard to the production of protests. This certainly is a case in which, according to all ordinary practices and experience, a protest would have been made, and would have been produced; and perhaps the non-production of such protest becomes rather more extraordinary, when I compare the affidavit of the master and the affidavit of the mate—the affidavit of the latter being infinitely more full than that of the former. But with regard to the production of protests generally, I have always understood the rule and principle of this Court to be—and I am now applying it to cases of salvage—that they ought to be produced, and for the following reasons:—In the first place, because every protest ought to be made *recenti facto*, and ought to contain an account of the transaction when the facts are fresh in the memories of the witnesses, whereas the discussion as to the nature and extent of the salvage services, and the evidence taken on it, cannot be produced till a late period, when even those inclined to speak with the most perfect accuracy may find that memory fails them with respect to certain important points. Now that is one reason why a protest is required; but there is another, which has been adverted to by Dr. Addams, putting his argument in a different point of view, which always strikes me as one of the most important reasons, not for keeping it back, but for its production—viz. the protest is made *alio intuitu*. The first and primary object of the protest is ordinarily to found a claim against the underwriters for damage done, and generally the object of the parties is to state all the facts, and every thing which has happened to the ship, so as to lay the foundation of the most extensive claim, whereas when they come before a court, such as the present court is, for the purpose of adjusting the amount of reward, then the state of things is reversed, the state of danger is diminished, the extent of damage depreciated, and the degree of danger decried. It is, therefore, exceedingly desirable, much more in cases of salvage than in cases of collision, though it is also desirable there, that the protest should always be produced. Now, before I address myself to the particular circumstances of this individual case, I cannot but notice an argument which has been strongly and ably pressed upon the Court with regard to the differences which may subsist between the salvage to be assessed upon the ship and that upon the cargo. It has arisen from the following circumstances, which occur in this case, viz.—that the owners of the ship have made an arrangement with the salvors, and have given to them the sum of 60*l.* upon a value of 500*l.*, being 12 per cent. upon the value; and in order to induce me not to adopt the reasoning on behalf of the salvors, that that was a fair proportion on the value, it has been contended that there may be a distinction between the services rendered to the ship, and to the cargo—that the services rendered to the latter may be of a weaker kind, and that a less rate of salvage may be due on account of the cargo than on account of the ship. In the first place, I must observe that my judgment is not, and cannot be, in the slightest degree ruled or governed by any thing that has been done out of court, between the salvors and the owners of the ship. I shall look at this case just exactly the same as if no agreement had taken place between the owners of the ship and the salvors, because there are so many reasons in a case of this description why, though the act is done by the common consent of the parties, it may not form a fair estimate of the real value of the services, so that I never can think of adopting that as a rule for my guidance. In the first place, the small value of the ship, the desire of saving expenses of litigation, the desire to get the matter settled with due expedition, without waiting the result of a judgment from this Court—all these are motives and reasons to disturb a fair adjustment and balance. Though I may look at it as an ingredient in the case, undoubtedly it can never govern my judgment. But an agreement has been addressed to the Court, which if it were founded in truth, and in the ancient law and practice of this Court, would lead to very important results. It was urged in the end of the speech of the learned counsel who addressed the Court last, that, independently of the general liability of the cargo, the Court might look to the services rendered to the ship, and those rendered to the cargo, separate and apart. Much stress was laid on the nature and description of the cargo, and its present liability to damage from being wetted in the water. Now the ordinary habit and practice of the Court, which is well known to every person that has practised in it, is, to take the whole value of the ship and cargo, and assess upon the whole, each paying in proportion. I am not aware, except in the instance to which I am about to advert, that any distinction has ever been taken so as to say that the services were of greater importance to the ship than they were to the cargo, and therefore the ship should bear the larger burden, or *vice versâ*. The distinction would lead in many cases to intricate litigation, and to nice distinctions, which it would be exceedingly difficult to adjust. *A fortiori*, I never knew this—that distinctions had been made as to the kind of cargo, because what would be the result of making such a distinction? The cargo might have consisted partly of wood, which is not liable easily to be injured by the access of water; and it might have consisted partly of cotton, flour, or sugar, which might have been destroyed. It would lead then into nice examinations of the quality of the cargo, and how far the one sort suffered a greater risk of being damaged than the other. In fact, it would be an endless consideration. There is only one case in which the Court ever, in my recollection, has taken the distinction—wisely and properly taken it—and that is in the case of silver or bullion—that being an article easily preserved. In these cases, the Court has allotted a less proportion than in cases of bulky merchandise. The way in which I must consider the present case is this to add the 500*l.* the value of ship, to the 3,000*l.* the value of the cargo and freight, and say what ought to be the reward paid to these salvors out of the whole 3,500*l.*, each part, of course, bearing its proportion. With regard to the service itself, I think it has most properly not been denied that in the first instance it was of a very meritorious character, because this vessel went out for the purpose of rendering assistance to ships in distress, on the 18th of October, when the wind was blowing a strong gale from the N.W. and when there was reason to apprehend that the assistance which a lugger of this description could render might be required; and that instantly the lugger was manned, I think, with thirteen persons. Shortly after she quitted Margate she fell in with this vessel, which had suffered in consequence of the gale the loss of two anchors and cables, and was, at that time, drifting directly upon the rocks. It appears that just before the vessel was approaching the rock, respecting which there has been so much discussion—the Nayland Rock—an attempt was made to board her, but at that time the vessel which they went to succour was only prevented from destroying the lugger in consequence of her striking on the rock. This constitutes an important ingredient in this case, viz. that the salvors did at the risk of their lives attempt to render assistance to the vessel. Now, what was the danger to the vessel and cargo at that moment? Why, there has been a debate as to what Nayland Rock is made of. According to the best evidence, that of the harbour-master, and a gentleman who has been some years on the coast, and is in the Preventive Service, it is made of hard chalk. I apprehend there is little difference between its being made of that or other material. This case proves that there is no difference, for there the vessel remained in imminent danger of being beaten to pieces. Now, as to the cargo, it is almost superfluous, after the observations I have already made, to consider whether it would have floated on shore. It is a mere contingency; it might have happened or not. It is one of the circumstances that none can calculate, and it is impossible that I can alter the rate of salvage on that account. Now, these services are tendered and accepted, and it is not denied that, such as they were, they were continued from the 18th to the 20th. There is one part of this case which has not been investigated quite enough for my satisfaction in the various affidavits, and that is, whether or not the boats on board the vessel would have been sufficient in case of need to have carried the master, and mate, and crew to shore. On the one hand it is asserted; on the other, it is as confidently denied—and it is difficult for the Court to ascertain the truth; but this is clear, that the master, mate, and crew did abandon the vessel, and did go in one of the luggers belonging to these parties. Now, I cannot suppose that they would have so quitted the vessel unless the danger was imminent: and, if there was an equal facility in going in their own boat, I hardly know why they should have resorted to the other. Up to this period it is not necessary to occupy more time in stating with specification the nature of the service. It is set forth in the papers in the case, and is admitted by counsel, to have been a salvage service. On the morning of the 20th Mr. Gillmore comes down. He is the agent of the owners and the underwriters, and he very properly takes the vessel into his own charge, and under his own directions, and he endeavours, for the benefit of those whom he represents, and with whom he is concerned, to make some sort of arrangement with the salvors. With regard to this arrangement, I think that counsel have acted with great discretion in stating that they do not consider that there was an express engagement made for the mere service

of labour, and labour only, because it is quite evident to my mind that, if Mr. Gillmore had determined to make a precise agreement with them, and if any service to be performed was to be that of simple labour, unattended with any risk and without any unusual hardship, he would have fixed the rate at which the men should be paid; because if the nature of the service could have been ascertained—though the duration was uncertain—what could have been more easy than to determine the rate? But the degree of service was unknown; there was the possibility of there being risk of a different kind, and it was therefore impossible to make a precise agreement. That seems to be the nature of the case. Mr. Gillmore is anxious to make an arrangement; he is unable, and the salvors say we will be paid according to the nature of the service and its duration, and that must depend on other circumstances, which it was impossible to foresee; therefore I am of opinion that, in assessing the rate of compensation to be paid from the 20th of October down to the time the service ceased, the Court must not be governed by the previous arrangement, but must look at the nature of the service. I think it was not strictly to be called labour—I think it was not strictly to be called salvage—it partook in some degree of both. There was a certain degree of skill, a certain degree of hardship, and a great deal of hard work to be performed. With regard to the end of this service I must confess that I think, from the balance of evidence, that very little, if any thing of importance, was done subsequently to the 6th of November. Some little matters might have been done at one time by some of the salvors, and at others by others of them. But there was no great degree of labour—nothing of the continued service of these twenty-two salvors and their two luggers. Looking at the whole of this case, and being of opinion that the original services commenced in most meritorious exertions, in which the lives of the persons performing it at that time—though not after—were undoubtedly to some extent put in peril; and conceiving from the nature of the locality, and the state of the weather, and the disabled condition of this vessel with regard to anchors and cables, that not only the property was in danger, but the lives of the parties on board might have been perilled, I think I must consider these circumstances as giving the salvors a claim to a higher rate of salvage, and I shall upon the whole overrule the tender, and instead of 250*l.* I shall give the sum of 320*l.*

The Hercules.

Salvage—Tender insufficient.

This vessel, on a voyage from Youghal, Ireland, to the port of London, laden with a cargo of oats and butter, met with bad weather and lost an anchor and cable. She got on the Nore Sand on the 8th of January, and remained there for about an hour. She, however, managed to get herself off, and was lying with her only remaining anchor and cable in the neighbourhood of that sand. The wind was blowing strong from the E.N.E. and the crew of a smack, who were the salvors now claiming remuneration, came up and offered their services. The captain at first declined, but afterwards accepted them. The vessel was at that time pitching and rolling very heavily—the palls of the windlass were capsized, and other damage done. The salvors assisted in slipping the anchor and cable; and for the small service they rendered six guineas were offered. A charge of misconduct against them was made by the owners, but it was as stoutly denied by themselves.

Harding, for the salvors.

Haggard, for the owners.

Dr. Lushington.—In point of value this is a question of very little importance. Still, as relates to the means of the parties, it is of consequence to them, and it is the duty of the Court not to dispose of it without sufficient consideration. That consideration has been bestowed. (The Court having stated the above facts.) The master employed the salvors after the alleged misconduct had been committed, and they appear to have parted on good terms. The service is of a very trifling nature, but I am of opinion that the tender of six guineas is not sufficient, and I shall decree the sum of 12*l.*

Bankrupt and Insolvent Courts.

COURT OF BANKRUPTCY.

Tuesday, Oct. 1.

Ex parte Nerinkz.

Petition dismissed—imprisonment after.

The insolvent had petitioned the Court under 5 & 6 Vict. c. 116, when his petition was dismissed. He was then taken in execution and had now been in prison upwards of twelve months.

Sturgeon applied to the Court to order his discharge under the 28th sec. of 7 & 8 Vict. c. 96, which provides that no debtor shall be imprisoned more than twelve months, in case the final order be refused, or the protecting order be not renewed.

Mr. Commissioner Evans said that he had no authority to order the discharge, and the Act did not point out any mode of obtaining it. The best course would be to go before a judge of the superior courts, who would discharge the prisoner if improperly detained in custody.

Wednesday, Oct. 2.

Re Spillon.

5 & 6 *Vict. c.* 116, *final order under, notwithstanding* 7 & 8 *Vict. c.* 96.

The petition in this case had been presented under the former Act, and the insolvent, after several adjournments, now appeared for his final order.

The Registrar (Mr. Curzon) suggested that a difficulty stood in the way of granting the final order, inasmuch as no notice had been given under the last Act which now regulated the proceedings, and thus the order might prove invalid.

Sir C. Williams was of opinion, that he might grant the final order under the 5 & 6 Vict. c. 116.

Horry referred the Court to the 2nd sec. of the 7 & 8 Vict. c. 96, which mentioned only petitions presented *after* the passing of that Act, and to sections 22, 26, as shewing that the final orders mentioned in them were connected only with such petitions, and not to petitions under 5 & 6 Vict. c. 116, which would be governed by the latter Act.

Sir C. Williams observed it would be much safer to grant the final order under 5 & 6 Vict. c. 116, and made it accordingly.

Re Wood.

Refusal to dismiss petition on insolvent's application.

This insolvent, who had been a prisoner, applied to dismiss his petition, having settled with his detaining creditor.

Sir C. Williams refused to dismiss the petition as desired. When the petition was filed, all the property of the petitioner became vested in the official assignee, who would make it available for the creditors at large. If he dismissed the petition now, he might cause a renewal of the trouble those creditors had already undergone who did not happen to be settled with. Why should they be subjected to further trouble, when the funds designed for them were in court? He did not consider that he had power to dismiss the petition according to the Act, except under conditions which had not yet appeared. If all the creditors were present to assent to the application, he might then presume that it was for their benefit, and be induced to grant it.

Re Hedgcock.

Vexatious defence—what.

The insolvent had accepted a bill under an agreement that the parties accommodated should deposit with him paintings and engravings of adequate value, which, however, he never received. He was sued by an indorsee, and pleaded non-acceptance. The cause went to trial, and a verdict was returned against him. He was now opposed on the ground of a vexatious defence.

The insolvent stated the above agreement, and that he was defrauded in the transaction. He had then consulted his attorney, who advised him that he could defend the action, and conducted the defence accordingly.

The attorney admitted this fact, and said that he believed that the non-deposit of the pictures would be a defence. He also drew the plea himself, in the expectation of giving that defence under it, which he only found at the last moment he could not do.

The counsel for the opposing creditor said, however much this might have availed as between the parties, it was a vexatious defence as between the acceptor and indorsee.

Sir C. Williams said that he could not view the defence in this case as a vexatious one. When a man clearly had no reason to oppose the demand of his creditor, and then subjected him to costs in addition to the loss of his debt, such conduct was vexatious; but here the insolvent had himself been defrauded, and laboured under an idea that the injury sustained by him was an answer to the action, a notion that was strengthened by his legal adviser, who mistook his situation. The insolvent thought he was resisting an unjust claim. He would name a day for the final order. The learned commissioner added that considerable difference had existed among the commissioners as to dismissing a petition where a vexatious defence appeared, and that the main consideration that determined them to view it as an offence was the scope that would have been afforded to dishonesty by means of that court had they determined otherwise.

THE LEGISLATOR.

Summary.

No subject of the slightest interest in relation to law-making claims attention this week.

Bills in Progress.

Mines Registration.—A Bill introduced by Mr. Hodgson Hinde and Mr. Ord has recently been printed for consideration during the recess, entitled "A Bill for establishing District Registers of all Mines and Mining Operations in England and Wales." There are ninety-two sections in the measure, with a schedule of the places to which its operations are to be applied. It is not proposed that it should take effect until January next after the passing of the Act. By the preamble it is stated to be expedient to establish a systematic registration of all mining operations carried on throughout England and Wales and in the Isle of Man, for better preventing the loss of Life, the occurrence of many grievous and unexpected injuries to mining proprietors, and the large and fruitless expenditure of capital and labour. It is proposed to establish offices and appoint officers for the purpose of registration, and that the expenses of the Act should be paid out of the Consolidated Fund. The Board of Trade is to have the general management of the proposed measure.

NEW STATUTES.

Of the Session 8 *Victoria.*

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page* 4.)

Cap. XCVIII.

An Act to enable the Commissioners of Public Works in Ireland to accept a certain Sum of Money in satisfaction of their Mortgage on the Branch Canals communicating with the Grand Canal in Ireland. (August 9, 1844.)

Cap. XCIX.

An Act to extend the Time limited by an Act passed in the Fourth and Fifth Years of her present Majesty, empowering the Commissioners for the Issue of Exchequer Bills for Public Works to complete the Works for improving the Navigation and Harbour of Tralee, in the County of Kerry. (August 9, 1844.)

Cap. C.

An Act to supply an omission in an Act of the Sixth and Seventh Years of her present Majesty, for amending and continuing the Laws in Ireland relative to the registering of Arms, and the Importation, Manufacture, and Sale of Arms, Gunpowder, and Ammunition. (August 9, 1844.)

Cap. CI.

An Act for the further Amendment of the Law relating to the Poor in England. (August 9, 1844.)

We give this important statute entire:—

1. 4 & 5 Wm. 4, c. 76. *Powers of making order on putative father to cease.*—Sect. 1 enacts, That from and after the passing of this Act all powers for obtaining or making an order upon any putative father for the maintenance of a bastard child shall cease and determine, except as herein-after provided.

2. *The putative father to be summoned to petty sessions, on application of mother of bastard.*—And be it enacted, That any single woman who may be with child, or who may be delivered of a bastard child, after the passing of this Act, or who has been delivered of a bastard child within the period of six calendar months before the passing of this Act, may either before the birth, or at any time within twelve months from the birth of such child, or at any time thereafter, upon proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child paid money for its maintenance, make application to any one justice of the peace acting for the petty sessional division of the county, or for the city, borough, or place in which she may reside, for a summons to be served on the man alleged by her to be the father of such child; and if such application be made before the birth of the child the woman shall make a deposition upon oath stating who is the father of such child, and such justice of the peace shall thereupon issue his summons to the person alleged to be father of such child to appear at a petty session to be holden after the expiration of six days at least for the petty sessional division, city, borough, or other place in which such justice usually acts.

3. *Justices in petty session may make an order on the putative father for maintenance and costs, and enforce the same by distress and sale. Proviso.*—And be it enacted, That after the birth of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty session, the justices in such

petty session shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child under the provisions of this Act, of a sum of money weekly, and of such costs as may have been incurred in the obtaining of such order, including, if they think proper, ten shillings for the midwife, and ten shillings towards the funeral expenses of the child, provided it have died before the making of such order; and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child, at a rate not exceeding five shillings per week for the first six weeks after the birth of such child; and in other cases such sum shall not exceed two shillings and sixpence per week from the time of the making of the application; and if at any time after the expiration of one calendar month from the making of such order as aforesaid it be made to appear to any one justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by warrant under his hand and seal, cause such putative father to be brought before any two justices; and in case such putative father neglect or refuse to make payment of the sums due from him under such order, or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, apprehension, and bringing up of such putative father, such two justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices, for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, or if by the admission of such putative father, it appear that no sufficient distress can be had, then any such two justices may, if they see fit, by warrant under their hands and seals cause such putative father to be committed to the common gaol or house of correction of the county, city, borough, or place where they have jurisdiction, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such sum and costs, and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied: Provided always, that if the woman have allowed the weekly payment to be in arrear for more than thirteen successive weeks, without application to a justice, the man shall not be called upon to pay more than the amount due for thirteen weeks in discharge of the whole debt, and no warrant of distress shall be issued for more than the amount of arrears for thirteen weeks payment in discharge of the whole arrears or debt.

4. *Applications to be made within forty days. Appeal to quarter sessions for the putative father.*—And be it enacted, That the justices in petty session as aforesaid may adjourn the hearing of the case as often as to them may seem fit; but no such order shall be made unless applied for at such petty sessions within the space of forty days from the service of the summons after the birth of the bastard child on the person alleged to be the father of such bastard child; and if within twenty-four hours after the adjudication and making of any order on the putative father as aforesaid such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace, it shall be lawful for such putative father to appeal to the general quarter sessions of the peace to be holden after the period of fourteen days next after the making of the said order for the county, city, borough, or place for which such petty session may have been held; and the justices in such quarter sessions assembled, or the recorder, as the case may be, shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them or him may seem fit.

5. *Money under the order to be paid to the mother or to a person appointed by the justices. Time of cessation of order.*—And be it enacted, That all money payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison, or under sentence of transportation; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may, if they see fit, by order under their hands and seals from time to time appoint some person who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead. And every person so appointed to have the custody of a bastard child, shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovering of all payments becoming due under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done; and the clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child, as hereinbefore provided, shall as soon as may be send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the mother of such bastard child resided at the time of making such order or appointment; provided always, that no order for the maintenance or support of any such bastard child made in pursuance of this Act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child.

6. *Mother punishable for neglect or desertion of her bastard child.* 5 G. 4, c. 83.—And be it declared and enacted, That every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person, under the provisions of an Act made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of the United Kingdom called England;" and every woman so neglecting to maintain her bastard child, after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last-recited Act.

7. *Officers of parishes or unions not to receive money under the order, or to interfere in any respect. Proceedings against putative father in case of death or incapacity of mother.*—And be it enacted, That it shall not be lawful for any justice of the peace to appoint any officer of any parish or union, to have the custody of any bastard child as hereinbefore provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any bastard child under an order of petty session as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices as penalties and forfeitures under the said first-recited Act: provided always, that after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made, becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of an union or parish, or if there be no such board of guardians for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as hereinbefore provided, and on condition that such bastard child shall cease to be chargeable to such parish or union.

8. *Penalties for promoting marriage of a mother of a bastard improperly, misapplying monies, or maltreating a bastard child.*—And be it enacted, That if any officer of a union, parish, or place endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanor; and every peron having the custody of any bastard child under any order of justices, as hereinbefore provided, who may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall, on conviction before any two justices forfeit and pay a sum not exceeding ten pounds.

9. *Existing orders, &c. not to be affected. Orders made before 14th August, 1834, to cease on 1st January, 1849.*—And be it enacted, That nothing in this Act contained shall affect the validity of any orders for the maintenance of a bastard child made by justices in quarter or petty sessions before the passing of this Act; but no such order made before the fourteenth day of August one thousand eight hundred and thirty-four shall be in force after the first day of January, one thousand eight hundred and forty-nine, and that all proceedings actually pending before justices in quarter sessions or petty sessions at the time of the passing of this Act may be continued, and orders made therein in the same manner as if this Act had not been passed.

10. *Orders made by justices acting in two adjoining counties to be valid, although not made in the county in which the parish is situate.*—And whereas various unions established under the authority of the said recited Act are situate partly in one county, riding, or division, and partly in an adjoining county, riding, or division: and whereas doubts have been entertained whether any justice of the peace acting under under two commissions for different counties, ridings, or divisions can legally make orders in bastardy when acting in petty sessions within the limits of one of such commissions, for such parts of such unions as as are situate within the limits of the other of such commissions: and whereas it is expedient to remove all such doubts with regard to orders which have before the passing of this Act been made under such circumstances; be it therefore enacted, That all orders in bastardy which have been made by any justices of the peace acting as such under two commissions for any two adjoining counties, ridings, or divisions, shall, although not made within the county, riding, or division in which the parish interested in the order or any part thereof is situate, be as valid, good, and effectual in the law, to all intents and purposes, as if they had been made within such county, riding, or division.

11. *Clerks to justices annually to make a return of summonses, orders, &c. to the clerks of the peace; who shall transmit copies thereof to the Secretary of State, with lists of appeals.*—And be it enacted, That every clerk to the justices shall once in each year, (that is to say,) as soon as may be after the first day of January, make up, in the form in the Schedule (A.) annexed to this Act, and forward to the clerk of the peace, a complete list of summonses issued, applications heard, and orders made as aforesaid since the first day of January of the year preceding, by the justices to whom he acts as clerk; and every clerk of the peace shall receive such lists, and shall, on demand of the clerk to the justices, acknowledge under his hand the receipt of any such list, and shall preserve the said lists, and shall, as soon as may be after the receipt of such lists, transmit copies thereof, duly certified to her majesty's Principal Secretary of State for the home department, and shall also transmit a list of all the cases in which appeals have been made to the Court of Quarter Sessions during the same period, with the result of every such appeal; and it shall be lawful for the justices of the peace, at their respective general quarter sessions of the peace, to make and settle a fee or fees to be paid to every such clerk to the justices for every such list; and on production by any such clerk to the justices of the acknowledgment by the clerk of the peace of the receipt of such list the treasurer of the county shall pay the fee so made and settled, and due in respect of any such list, out of the county stock in the hands of such treasurer.

12. *Poor law commissioners to prescribe the duties of poor apprentices, and masters neglecting to fulfil them liable to penalty. Guardians to bind poor children apprentices instead of overseers.*—And be it enacted, That the poor law commissioners, may, by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as apprentices; and every master of such apprentice who wilfully refuses or neglects to perform any of such terms or conditions so inserted in any such indenture shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding twenty pounds; and that after the first day of October next no poor child shall be bound apprentice by the overseers of any parish included in any such union or subject to a board of guardians under the provisions of the first-recited Act, but it shall be lawful for the guardians of such union or parish respectively to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the said guardians, and shall not need to be allowed, assented to, or executed by any justice or justices of the peace, and the guardians shall have all the powers for binding or assigning any such apprentice which are now possessed by overseers, and shall cause all apprentices so bound or assigned by them to be registered by their clerk according to the form prescribed by the statute of the forty-second year of the reign of King George the Third relating to the

registration of parish apprentices, so far as the same may be applicable to such binding or assignment: Provided always, that nothing herein contained shall directly or indirectly interfere with the provisions of any Act of Parliament relating to apprentices to be bound to the sea service.

13. *Compulsory apprenticeship abolished. Repeal of* 43 *Eliz. c.* 2, 8 *&* 9 *Wm.* 3, *c.* 3.—And be it enacted, That after the passing of this Act so much of an Act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An Act for the Relief of the Poor," and so much of an Act passed in the session held in the eighth and ninth years of the reign of King William the Third, intituled "An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom," or of any other Act of Parliament, whether general or local, as compels any person to receive any poor child as an apprentice, shall be and is hereby repealed.

14. *Repeal of so much of* 4 *&* 5 *Wm.* 4, *c.* 76, *as relates to number of votes of owners and rate-payers.* 58 Geo. 3, c. 69. *Owners of property and rate-payers to vote according to the scale herein set forth.*—And whereas by the said first-recited Act it is provided, that in every case of an election of guardians under the said Act, or whenever the consent of owners of property or rate-payers in any parish or union may be required for any of the purposes of the said Act, the owner, as well as the rate-payer, in respect of any property in such parish or union, shall be entitled to vote, and the owner shall have the same number and proportion of votes respectively as is provided for inhabitants and other persons in and by an Act made and passed in the fifty-eighth year of the reign of his late Majesty King George the Third, entitled "An Act for the Regulation of Parish Vestries," and in and by an Act to amend the same, made and passed in the fifty-ninth year of his said late Majesty; and the rate-payers under two hundred pounds shall each have a single vote; and the rate-payers rated at two hundred pounds or more, but under four hundred pounds, shall each have two votes; and the rate-payers rated at four hundred pounds or more shall each have three votes: And whereas it is expedient that the number and proportion of votes of owners of property and of rate-payers respectively should be assimilated; be it enacted, That so much of the said Act as is above recited relating to the number and proportion of votes of owners of property and of rate-payers respectively shall be and the same is hereby repealed; and that in all cases in which by the said Act, or by any Act amending or extending the same, owners of property and rate-payers are entitled to vote, every owner of property and rate-payer shall have respectively the same number and proportion of votes, according to the scale following; (that is to say), if the property in respect of which he is entitled to vote be rated upon a rateable value of less than fifty pounds, he shall have one vote; if such rateable value amount to fifty pounds and be less than one hundred pounds, he shall have two votes; if it amount to one hundred pounds and be less than one hundred and fifty pounds, he shall have three votes; if it amount to one hundred and fifty pounds and be less than two hundred pounds, he shall have four votes; if it amount to two hundred pounds, and be less than two hundred and fifty pounds, he shall have five votes; and if it amount to or exceed two hundred and fifty pounds, he shall have six vote

15. *Regulations as to votes of owners and of proxies.*—And be it enacted, That no owner of property shall be entitled to vote as such, under the provisions of the said recited Act, either in person or proxy, during the year following the twenty-fifth day of March in any year, unless before the first day of February next preceding such twenty-fifth day of March he had given to the overseers the statement required by the said Act, signed by him, nor unless such statement contain a description of the nature of the interest or estate he may have in such property, and a statement of the amount of all rent-service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay such rent-service; and no person shall be entitled to vote as proxy until fourteen days after he have made his claim so to vote in the manner required by the said Act; and no person shall be entitled to vote as proxy for more than four owners of property in any one parish (except he be a steward, bailiff, or land-agent, or collector of rents for the owners of property for whom he may be appointed to vote); and no appointment of proxy shall remain in force for a longer period than two years from the making thereof, excepting only in the case in which an owner appoints his tenant, bailiff, steward, land-agent, or collector of rents to be his proxy, in which case such appointment shall remain in force so long as the proxy may continue to be such tenant, bailiff, steward, land-agent, or collector, and while such appointment remains unrevoked; and the overseers of every parish containing a population exceeding two thousand persons, according to the last enumeration of the population published by the authority of Parliament, shall, on or before the fifth day of the month of February in every year, enter in the book to be from time to time provided for the purpose the names and addresses of all persons who before the first day of the said month of February have given such statement or made such claims as owners or proxies as aforesaid; and such overseers shall allow any person to peruse such book, without payment of any fee, at all reasonable hours between the said fifth day and the tenth day of February; and any person who has given such statement or made such claim, or any rate-payer of such parish, may, on or before the fifteenth day of the said month of February, object to any other person as not being entitled to vote as such owner, by delivering to the clerk of the board of guardians of the said parish, or of the union in which it may be comprised, and at the address of the person objected to, notice in writing of the grounds of such objection; and on or before the twentieth day of such month of February such clerk shall send to the overseers of such parish notice of some day, between the twenty-fourth of the said month and the first of March then next, on which he or some person duly appointed for the purpose will hear evidence in relation to such objections, and of the place within the parish or union at which he or such other person will attend to hear such evidence; and such overseers shall forthwith cause a copy of such notice to be fixed on or near the doors of all churches or chapels within such parish, and at all the usual places of affixing notices of parochial business; and such clerk shall attend on the day and at the place so appointed, and shall, in the presence of all persons who may think fit to be present, hear any matter adduced in support of such grounds of objection, or in opposition thereto, but none other; and the overseers of the said parish shall then and there attend, and produce to such clerk the rate-books of the parish for the whole year preceding, and shall answer all such questions as such clerk may put to them or any of them touching the matter of any such objection; and such clerk shall retain in the said book the name of all persons to whom no objection has been duly made, and of all persons objected to, unless the party objecting have appeared in support of his objection, and established such objection, and when the name of any person has been duly objected to, such clerk shall require proof of the right of such person to vote as owner; and in case any matter be adduced in support of the objection, and the right of the person objected to be not proved to the satisfaction of such clerk, he shall expunge the name of such person from such book; and such clerk shall have power to adjourn from time to time, and administer an oath to the overseers of any parish, and to all persons attending before him claiming a right to vote as owners or objecting to such right, and to all witnesses who may be tendered or examined on either side; and such clerk shall write his initials against every name struck out, and sign his name to every page of the said book; and the persons whose names as owners are retained by such clerk in such book shall be the only persons entitled to vote in such parish as owners of property for the year following the twenty fifth of March next ensuing: provided always, that the said commissioners may, if they see fit, by order under their hands and seal, direct the guardians of such parish or union to appoint some person, other than the clerk to such guardians, as a paid officer, to hear and decide the matter of such objections as aforesaid, who shall have all such powers as are hereinbefore given to the clerk, and perform all such duties as are hereinbefore imposed on the clerk in that behalf: provided also, that nothing herein contained shall affect any election in which proceedings have been commenced before the passing of this Act.

16. *So much of* 4 *&* 5 *Wm.* 4 *as relates to not voting only to extend to poor's rates.*—And whereas by the said first-recited Act it is provided that no person shall be deemed a rate-payer, or be entitled to vote, or do any other Act, matter, or thing as such, under the provisions of that Act, unless he shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such rate-payer, and shall have paid the parochial rates and assessments made and assessed upon him for the period of one whole year, as well as those due from him at the time of so voting or acting, except such as shall have been made or become due within six months immediately preceding such voting or acting; be it enacted, That such parochial rates and assessments shall be deemed to extend only to rates made for the relief of the poor.

17. *Annual election of guardians to take place within forty days after the* 25*th of March*.—And whereas in the said first-recited Act it is provided, that guardians of the poor elected under the provisions of that Act shall go out of office, and guardians for the ensuing year shall be chosen within fourteen days next after the twenty-fifth day of March in every year: and whereas such period hath been found to be too short, and it is expedient to extend the same; be it therefore enacted, That the period within which the annual election of guardians shall take place shall be extended to the period of forty days next after the said twenty-fifth day of March, and that the guardians of the preceding year shall continue in office for the said period of forty days, or until the election of guardians for the succeeding year have taken place.

18. *Number of guardians may be altered with reference to population, &c.*—And be it enacted, That it shall be lawful for the said commissioners, having due regard to the relative population or circumstances of any parish included in a union, to alter the number of guardians to be elected for such parish, without such consent as is required by the said first-recited Act.

19. *Parishes may be divided into wards.*—And be it enacted, That in every case in which a parish in which guardians are to be elected under the provisions of the said first-recited Act contains more than twenty thousand persons, according to the enumeration of the population then last published by authority of Parliament, it shall be lawful for the said commissioners, by order under their hands and seal, for the purpose of conducting the election of guardians, to divide such parish into such and so many wards as they may deem expedient, so that no such ward shall contain a number of rated houses less than four hundred, and to determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall, for the purpose of every election of guardians, so far as the said commissioners may direct, be considered as a separate parish.

20. *Qualifications of guardians in wards.*—And be it enacted, That in every case in which a parish is divided into wards for the purpose of electing guardians every person qualified to be elected as a guardian in the parish shall be qualified to be elected in any ward within the same parish; but no person shall at any election of guardians be elected for more than one ward within the same parish; and if at any such election a person be nominated in two or more wards, the returning officer at such election shall, if such person reside within the parish, give such person notice thereof in writing, to be left at his place of residence on the day following the last day fixed for the nomination of candidates, and such person, whether he reside in the parish or not, may at any time, until two days preceding the issuing of the voting papers, elect by notice in writing delivered to the returning officer any one ward for which he will stand an election; and if he do not so elect some one ward, the returning officer shall place his name on the list of candidates for that ward only for which he was first duly nominated.

21. *Voting in wards.*—And be it enacted, That no person entitled to vote shall give in the whole of the wards into which a parish may be divided a greater number of votes than he would be entitled to have given if the parish had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward; but, subject to the foregoing limitations, any rate-payer, owner of property, or proxy entitled to vote may, by notice in writing delivered to the overseers of the parish before the day appointed for the annual nomination of candidates, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards; and if he do not give such notice he shall not be entitled to vote for any ward in which he does not reside.

22. *Restriction as to separate overseers for townships.*—And be it enacted, That after the passing of this Act it shall not be lawful to appoint separate overseers for any township or village or other place for which, before the passing of this Act, separate overseers had not been lawfully appointed.

23. *Orders of Poor Law Commissioners valid, notwithstanding separate appointment of overseers.*—And it is hereby declared and enacted, That in all cases in which overseers have, for the first time, been separately appointed for any township or village since the fourteenth day of August, in the year of our Lord one thousand eight hundred and thirty-four, all orders of the Poor Law Commissioners, determining the number of guardians, or ascertaining the averages of any such township or village, or of any portion of the parish from which such township or village had been separated, shall be and be deemed to be good and valid in law, notwithstanding such separate appointment of overseers.

24. *Justices who reside in extra-parochial places or parishes within unions to be ex-officio guardians.*—And be it enacted, That when any union has been formed under the provisions of the said first-recited Act, or where the said commissioners have, under the provisions of the said Act, directed that the laws for the relief of the poor of any single parish shall be administered by a board of guardians, every justice of the peace acting for the county, riding, or division in which such union or parish, or any part thereof, is situated, and residing in any extra-parochial place, the boundary line of which, or the greater part of the boundary line of which, is included within or coincident with the boundary line of such union or parish, shall be *ex officio* a guardian of such union or parish; and every justice of the peace residing in any parish within such a union, and acting for any county, riding, or division in which any part of such union is situated, shall be *ex officio* a guardian of such union.

25. *Relief of married women in certain cases to be subject to the same conditions as if they were widows.*—And be it enacted, That so long as it may appear that the husband of any woman is beyond the seas, or

in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman, or to her child or children, shall, notwithstanding her coverture, be given to such woman in the same manner and subject to the same conditions as if she was a widow; but nothing herein contained shall diminish or affect the obligations or liabilities of such husband in respect of such relief.

26. *Relief to widows in certain cases. Proviso.*—And be it enacted, That in the case of any person being a widow having a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than the parish of her legal settlement, and not situated in any union in which such parish is comprised, it shall be lawful for the guardians of such parish or union, if they see fit, to grant relief to such widow, although not residing in such parish or union: provided always, that, notwithstanding any thing herein contained, the guardians of any union or parish, and the overseers of any parish, in which such widow may be resident or may require relief, shall be and remain liable to relieve such widow in the same manner as any other person requiring relief in such union or parish.

27. *Expenses incurred for insane persons may be levied off their estates.*—And be it enacted, That if it be made to appear to any two justices that any insane person, lunatic, or idiot chargeable to any parish hath an estate more than sufficient to maintain his family, they shall by order under their hands and seals direct the overseers of the parish to which such person is chargeable to seize so much of any money, to seize and sell so much of any goods and chattels, or to receive so much of the rent of the lands or tenements of such person who is proved to such justices, to be necessary to pay any charges incurred in providing for the removal, maintenance, clothing, medicine, and care of such person; and if any trustee or other person having the possession, custody, or charge of any property of an insane person, lunatic, or idiot, or if the Governor and Company of the Bank of England, or any other person or persons, having in his or their hands any stock, interest, dividend, or annuity due to any such insane person, lunatic, or idiot, pay any money to any overseer or to any guardians of the poor to defray the charges incurred by any parish in the removal, maintenance, clothing, medicine, or care of such insane person, lunatic, or idiot, the receipt of such overseer or of the clerk of such guardians shall be a good discharge to such trustee or other person aforesaid.

28. *Guardians under local acts to have powers with respect to insane poor.*—And be it enacted, That the guardians of every parish or union appointed under any local Act, and their officers appointed to act in the relief of the poor, and their clerks, shall, from and after the passing of this Act, have the like powers, and shall be liable to perform the same duties with respect to insane persons as are provided in the case of guardians appointed under the provisions of the said first-recited Act, their relieving officers and their clerks respectively.

29. *Guardians to apply money raised for emigration.*—And be it enacted, That the guardians of any parish or union constituted by the said commissioners shall apply all money raised or borrowed for the purpose of defraying the expenses of emigration in such parish or in any parish within such union, subject to the conditions and restrictions imposed by the said first-recited Act.

30. *Cost of obtaining site of workhouses in the metropolitan police district, &c.*—And be it enacted, That in addition to the principal sum or sums of money which guardians are empowered by the said first-recited Act to raise or borrow for the purpose of purchasing, hiring, building, enlarging, or altering workhouses, or buildings to be converted into workhouses, the guardians of any parish or union any part of which is situated within the metropolitan police district, or the city of London, or the select vestry of the parish of Liverpool, may, with the consent of the Poor Law Commissioners, also raise or borrow and charge the future poor-rates of such parish or union with such further or other sum or sums of money as may be or may have been necessary for the purchase of any land, or interest in land, required as the site of such workhouse, or of any additions to any such workhouse.

31. *Burials of paupers.*—And be it declared and enacted, That it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorized to do), every dead body which the guardians or any of their officers duly authorized shall direct to be buried at the expense of the poor rates shall (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise desired) be buried in the churchyard or other consecrated burial-ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial under the direction of the guardians or overseers as aforesaid the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of Parliament, shall be paid out of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such Act may be entitled to receive any fee: provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding Five pounds.

32. *Commissioners may combine parishes and unions into districts for audit of accounts. Election of District auditors. Their powers and duties.*—And be it enacted, That it shall be lawful for the said commissioners from time to time, by order under their hands and seal, to combine the parishes and unions in England and Wales into districts for the audit of accounts, and from time to time to add any parish or union to any such district, or separate any parish or union therefrom; and the chairman and vice chairman of each board of Guardians constituted under the said first-recited Act or any other Act, or if there be no chairman or vice chairman of any guardians constituted under any other Act, then some two of their number to be selected by such last-mentioned guardians, or if there be no such body then some two of the overseers to be selected by the overseers respectively acting within the district, shall elect, at the time and in the manner to be prescribed by the said commissioners, a person to be the auditor of the district; but in any case in which there are two vice chairmen appointed in any board of guardians such board of guardians shall select one of the vice chairmen, who shall vote in the election of such auditor; and the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged on the poor rates, and to all other matters relating to auditors for such districts, as they have under the said first-recited Act with regard to paid officers; and every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to monies assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him, any money, books, deeds, papers, goods or chattels, found by him to be due from any person, and when any such auditor has so certified any money, books, deeds, papers, goods or chattels, to be due from any person, he shall forthwith report the same to the said commissioners; and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods and chattels, and in the case where there is no treasurer as aforesaid all monies so certified to be due, shall be delivered over or paid, within seven days of the same being certified, to the person or persons authorized to receive the same; and if any such money, books, deeds, papers, goods or chattels, be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all monies so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such monies, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first-recited Act; and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct; and if any person from whom any such books, deeds, papers, goods or chattels, may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things, in their hands; and any churchwarden, surveyor of the highways, overseer or other officer of a parish or union, who shall wilfully authorize or make an illegal or fraudulent payment from the church-rate, highway-rate, or other public fund of a parish or union, or shall unlawfully make any entry in his accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the poor-rate, or disallowed or surcharged in the accounts of any parish or union by such auditor, shall, upon conviction thereof before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount of such payment or of the sum so entered in his account.

33. *Rate books, &c. to be made up seven days before the audit day. Notice of time and place of audit. Inspection of books.*—And be it enacted, That seven clear days at least before the day fixed for the audit of accounts the overseers or other officers employed in any parish in carrying the laws for the relief of the poor into execution, and every collector or assistant-overseer acting for such parish, shall cause their rate books and other accounts to be made up and balanced; and the books so made up shall forthwith be deposited at the house within the parish of some one of such overseers or other officers, or of such collector or assistant-overseer, or at some other house within the parish; and notice shall forthwith be affixed at the usual place or places of giving parish notices, stating the time and place of audit, as notified by the auditor, and the place where the books are deposited; and such books shall on each of such days be open between the hours of eleven and three, for the inspection of every person liable to be rated to the relief of the poor; and such auditor shall give or send by post or otherwise to the said overseers or other officers fourteen days' notice of the said audit; but it shall not be necessary for the auditor to give or send separate notices to each of such overseers or other officers, and it shall be sufficient if it be proved that any one of them had notice; and if any such overseer or other officer, collector, or assistant overseer neglect to make up such account, or alter such account, or allow it to be altered when so made up, or refuse to allow such inspection thereof, he shall be liable, on conviction thereof, to forfeit forty shillings; and if any such overseer or other officer, collector, or assistant overseer, refuse or wilfully neglect to affix such notice of audit, and of the time and place for the inspection of such accounts, as above provided, he shall be liable, on conviction thereof, to forfeit forty shillings; and it shall be lawful for every rate-payer in any parish or union to be present at the audit of the accounts relating to such parish or union, and to make any objection to any such accounts before such auditor; and it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's-rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first-recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury.

34. *Balances found before the passing of this Act may be discharged.*—And be it enacted, That in every case in which before the passing of this Act any balance has been struck by any auditor in the account of any officer of any parish or union, and such balance has not been paid nor any proceedings commenced before the passing of this Act for the recovery thereof, it shall be lawful, on the application of the officers of any parish or of any board of guardians of any union, and in all other cases of disputed accounts relating to the expenditure and management of the fund for the relief of the poor previous to the passing of this Act upon the application of the board of guardians to the said commissioners, and with the consent of the said

commissioners, for the auditor to discharge the officers for the time being from the payment of such balance; and all balances struck against any person, and not so discharged, shall be recoverable, after the passing of this Act, as if the same had been struck and the amount thereof certified by an auditor appointed in pursuance of the provisions of this Act.

35. *Certiorari for auditor's allowances or disallowances.*—And be it enacted, That if any person aggrieved by any allowance, disallowance, or surcharge by any such auditor require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench for a writ of *certiorari* to remove into the said Court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition of such recognizance shall be, to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of accounts to which such notice shall refer, and shall appear before the said Court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor-rates of the union or parish respectively interested in the decision of the question, unless the said Court make any order to the contrary; and that on the removal of such allowance, disallowance, or surcharge the said Court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such Court that the decision of the said auditor was erroneous, they shall, by rule of the Court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such Court may seem fit; which rules of Court respectively shall be enforced in like manner as other rules of the said Court are enforceable.

36. *Persons aggrieved may apply to commissioners, who may issue orders thereupon.*—Provided always, and be it enacted, That it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the Court of Queen's Bench for a writ of *certiorari*, to apply to the said commissioners to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question.

37. *Cessation of powers of justices to audit. Existing district au··ors may be retained. Proviso.*—And be it enacted, That in every district for which an auditor may be appointed under the provisions of this Act the powers of justices of the peace and of all other persons to examine, audit, allow, or disallow accounts shall, so far as relates to any accounts which such auditor is authorized to examine and audit, cease, and the same are hereby repealed: Provided always, that where any union or unions and parishes have been already combined by the said commissioners under the provisions of the said first-recited Act for the appointment of an auditor, and such an auditor has been appointed, or where any person has been appointed auditor for more than one union, it shall be lawful for the said commissioners to continue such auditor in office, and such district shall be deemed to have been formed, and such unions to have been formed into a district, and such auditor to have been appointed respectively under this Act: Provided also, that if the said commissioners subsequently add any parish or union to any district now formed or to be formed after the passing of this Act, or which is to be deemed to be formed under this Act, or separate any parish or union therefrom, such addition or separation shall not vacate the appointment of any auditor appointed previously to such addition or separation, but it shall be lawful for the commissioners to continue such auditor in office for such increased or diminished district without any re-election of such auditor.

38. *Accounts may be rendered half-yearly.*—And be it enacted, That so much of the said first-recited Act as provides that accounts shall be made and rendered not less frequently than once in every quarter shall be and is hereby repealed; and such accounts shall be made and rendered at such times and as often as the said commissioners may direct, but not less often than once in every half year.

39. *Taxation and allowance of law bills.*—And be it enacted, That on application of any overseer, or of any board of guardians, or of any attorney at law, it shall be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and the allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge; and the clerk of the peace shall be allowed for such taxation after the rate to be fixed from time to time by the Master of the Crown Office, and declared by an order of the said commissioners; and if any such bill be not taxed before it is presented to the auditor, the auditor's decision on the reasonableness as well as the legality of the charges shall be final.

40. *Parishes and unions may, within certain limits, be combined into school districts.*—And be it enacted, That it shall be lawful for the said commissioners, as and when they may see fit, by order under their hands and seal, to combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district; but the said commissioners shall not include in any such district any parish any part of which would be more than fifteen miles from any other part of such district: Provided always, that when the relief of the poor has been hitherto administered in any parish or united parishes by guardians appointed under a local act, and not by overseers of the poor, if such parish or united parishes, according to the last enumeration of the population published by authority of Parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, without the consent in writing of the majority of such guardians, to include such parish or united parishes in a school district.

(*To be continued.*)

RAILWAY DEPARTMENT.

Minute of the Lords of the Committee of Privy Council for Trade, relative to the Constitution and Mode of Proceedings of the Railway Department.

At the Council Chamber, Whitehall, the 6th August, 1844—By the Right Hon. the Lords of the Committee of Council, appointed for the consideration of all matters relating to trade and foreign plantations.

My lords read and considered the following paragraphs and resolutions, taken from the third section of the Fifth Report of the Select Committee of the House of Commons on Railways (1844):—

"In recommending, therefore, that Railway Bills be submitted to the Board of Trade previously to their coming under the notice of Parliament, the committee conceives that that board (or such other public department as may be intrusted with the care of railway matters) might advantageously examine these Bills, and also the schemes themselves before they had assumed the form of Bills, with regard mainly to the following subjects:—

"1. All questions of public safety.

"2. All departures from the ordinary usage of railway legislation, on points where such usage has been sufficiently established.

"3. All provisions of magnitude which may be novel in their principle, or may involve extended considerations of public policy. For example, amalgamations and agreements between separate companies; extension of capital; powers enabling railway companies to pursue purposes different in kind from those for which they were incorporated; modifications of the general law.

"4. Branch and extension lines, in cases where, upon the first aspect of the plan, a presumption is raised that the object of the scheme is to throw difficulties in the way of new, and probably legitimate enterprises.

"5. New schemes, where the line taken presents a strong appearance of being such as to raise the presumption that it does not afford the best mode of communication between the termini, and of accommodating the local traffic.

"6. Cases where a Bill of inferior merits may be brought before Parliament, and where a preferable scheme is in *bonâ fide* contemplation, although not sufficiently forward to come simultaneously under the judgment of Parliament, according to its standing orders.

"7. Any proposed arrangements with subsisting companies which may appear as objectors to new lines.

"The adequate and satisfactory discharge of their duties would entail upon the Board of Trade a great additional amount of labour and responsibility; and it is the opinion of the committee that if the recommendations of this and of its other reports should be adopted, it would be necessary to enlarge the Railway Department of that board, and to improve its organization. Upon these grounds, and with these intentions, the committee have come to the following

"Resolution.—That it is expedient that all Railway Bills should henceforward be submitted to the Board of Trade previously to their introduction into Parliament; and that the various documents and other requisite information connected with each project, and, if necessary, copies of the plans and sections of the line, shall be lodged at the office of the Board of Trade, at such periods as may afford sufficient opportunity for their examination."

My lords read and considered the heads of several clauses of the Railways Bill (now awaiting the Royal assent) which relate to the functions of thi department.

My lords read the letter of Mr. Lefevre to Sir George Clerk, dated the 2nd instant, in which it is proposed that provision should be made for the appointment of two secretaries to the Railway Department of this board, and of an assistant-inspector, and the reply of the 5th instant, in which is stated the approval of these arrangements by the Lords of the Treasury.

My lords are of opinion that they are not competent, without the aid of time and experience, to lay down definite and sufficient rules for the future practice of the Railway Department of this board; but they have decided upon the following general instructions (subject, of course, to reconsideration hereafter, if in any particulars they should be found inapplicable or inconvenient) with respect to:—

1. The constitution of a board for the purpose of transacting railway business.
2. The preparation of minutes and reports.
3. The provisions to be made for obtaining adequate and early information.

1. My lords are of opinion that for the adequate and satisfactory discharge of the duties which, as is now proposed, will devolve upon this committee, it is desirable that a distinct board should be constituted in the department for the despatch of railway business, and that such business shall be settled by written minutes, in the same manner as the ordinary business of this committee.

The president or the vice-president of the committee will act as the head of this board, and the remaining members of it will act as his advisers in all its transactions, and subject to his controlling authority.

The ordinary members of the board will be, besides the inspector-general, and, in his absence, the assistant-inspector, the superintendent and the joint secretaries.

2. Every minute of the board upon a railway scheme, and every report upon a Railway Bill, to have the signatures of,

Firstly, the president or vice-president of this committee; and,

Secondly, three members of the board, one of whom at least to be an engineering officer of the department.

As respects minutes upon railway schemes, to be made before the Bills for giving effect to them are framed, my lords direct that whenever the department has formed an intention to prepare such a minute, whether upon the application of parties or otherwise, notice shall be given of that intention in the *Gazette*, for the information of those whom it may concern.

My lords direct that in such notice shall be stated, as nearly as may be, the points into which inquiry is to be made in connection with the proposed line of railway. No such minute, unless of a preliminary or provisional nature, shall be signed until six weeks after such notice. Every such minute shall be published forthwith in the *Gazette*; and every such minute shall be laid on the table of both Houses of Parliament fourteen days after the opening of the session.

Reports to Parliament on Railway Bills shall be made within fourteen days, if there shall have been previous report on the schemes embodied in them respectively; and at all events within six weeks at the furthest from the receipt of any such Bill.

3. As regards the measures to be taken for obtaining early and regular information respecting Railway Bills and railway projects before they have assumed the form of Bills.

Adverting to the resolutions already adopted by the House of Commons on the 19th of July, and to those which it is the intention of the vice-president to propose for adoption in the House of Lords, and also to the provisions contained in the Joint Stock Companies' Registration and Regulation Bill, which, if that Bill shall become law, will insure the deposit in a

public office, under the superintendence of this department, of all documents made public by the promoters of any such joint-stock undertaking as may be formed subsequently to the passing of the Act—my lords are of opinion that there will be adequate security for their being duly apprised, from time to time, of the origin and progress of future railway projects up to the periods of the presentation of the Bills.

To make similar provisions for their subsequent stages, before the passing of the Acts of incorporation, my lords will cause to be addressed to all the parliamentary agents the circular hereto annexed (A).

As regards railway projects already announced to the public during the present year, and now in existence, but not having assumed the form of law, my lords direct a list to be prepared of these, and the circular letter (B) hereto annexed to be addressed to the solicitors or other leading promoters of them.

(A.)

CIRCULAR LETTER TO PARLIAMENTARY AGENTS.

Railway Department, Board of Trade,
Whitehall, August 1844.

Sir,—Referring to the recommendation of the Select Committee on Railways, that "Railway Bills be submitted to the Board of Trade previously to their coming under the notice of Parliament," with a view to the examination of these Bills by the Board, and to the resolution adopted by the House, "That in the case of Railway Bills, a copy of every Bill annexed to a petition be deposited in the office of the Board of Trade on or before the day of presentation of the petition to the House," I am directed by the Lords of the Committee of Privy Council for Trade to call your attention to the course of proceedings with regard to Railway Bills intrusted to your charge, which will become necessary in order to give effect to the proposed supervision of the Board of Trade over such Bills during their progress through Parliament.

My lords will be desirous of exercising this supervision with the least possible interference with the ordinary progress of Parliamentary business; and with this view they conceive that the most convenient course will be to require that the information necessary to enable them to form a judgment on the Bill at its different stages should be furnished to them by the agents at the same times as such information is required to be lodged at the Private Bill Office by the standing orders of the House.

Accordingly my lords think fit to propose, in regard to Railway Bills,

1. That a copy of such filled-up Bill as proposed to be submitted to the committee, as is deposited in compliance with the 136th standing order in the Private Bill Office at or before the time of giving notice of the committee, be at the same time deposited in the office of the Railway Department of the Board of Trade.

2. That a printed copy of every Bill as amended in committee, except in cases wherein the committee shall report the amendments to be merely verbal or literal, be deposited by the agent for the Bill at the office of the Railway Department of the Board of Trade, three clear days at least before the consideration of the report.

3. That in the case of Railway Bills, where it is intended to bring up any clause, or to propose any amendment in the report, or the consideration of the report, or on the third reading of any Bill, notice shall be given thereof, and a copy of such clause or amendment deposited in the office of the Railway Department of the Board of Trade on the day previous to such report, or consideration of the report, or third reading.

4. That in the case of Railway Bills, where amendments made by the House of Lords to any Bill sent up to them are to be taken into consideration, a copy of the same be deposited by the agent for the Bill in the office of the Railway Department of the Board of Trade, on the day previous to the same being proposed to be taken into consideration.

In fixing the same periods for the deposit of information regarding Railway Bills in the Railway Department of the Board of Trade, as is required by the standing orders of the House in regard to the deposit of similar information in the Private Bill office, my lords wish, however, to call your attention to the desirableness of furnishing, in all cases of Railway Bills, any information respecting them, at the earliest periods when it may be found practicable.

I am, &c.
(Signed) S. Laing.

(B.)

CIRCULAR LETTER TO THE PROMOTERS OF RAILWAY SCHEMES.

Railway Department, Board of Trade,
Whitehall, August, 1844.

Sir,—Referring to the recommendation of the Select Committee on Railways, that a supervision should be exercised by a department of the Government over future railway schemes in their earlier stages, and to the resolutions founded on that recommendation which have been adopted by the House of Commons—I am directed by the Lords of the Committee of Privy Council for Trade to call your attention to the functions which this department is about to undertake with reference to the railway schemes in which you are understood to be interested, or in which you may hereafter become interested [as solicitor, agent, chairman of company, or otherwise, as the case may be].

It will be their lordships' wish to discharge these functions so as to incur the smallest possible risk of obstructing the progress of Railway Bills and undertakings by the delay necessary for adequate examination; and with this view it is obviously desirable that they should be placed by the promoters of such schemes in possession of the necessary information at the earliest possible period. Accordingly, my lords request that you will use due diligence in communicating with them from time to time without delay, as occasion may arise, respecting railway schemes in contemplation, in which you may be interested as a promoter or otherwise; and in due course respecting the detailed nature of such schemes, and the specific legal provisions which it is intended to seek from Parliament. I am, &c.
(Signed) S. Laing.

PARLIAMENTARY RETURNS.

Spirits (Ireland).—Accounts of Excise duties on spirits in Ireland, and prosecutions for offences against the distillery laws, &c. have just been embodied in a Parliamentary return, on the motion of Sir R. Ferguson, M.P. It was ordered to be printed on the 21st ult. We find from this return that the total quantity of spirits in Ireland brought to charge for home consumption amounted, in the year 1843, to 5,917,077 gallons, upon which the sum of 841,282*l*. duty was received; and in the year 1842, to 4,813,045 gallons upon which the sum of 882,391*l*. was received in the shape of duty. Thus, whilst the consumption of spirits in Ireland sustained an increase in the year 1843 of 1,104,032 gallons, the duty fell off by the sum of 41,109*l*.—a fact which may, in some degree, be attributed to the repeal, in August last, of the additional duty of 1s. a gallon granted by Parliament on the 11th of March, 1842, and which proved a complete failure. The quantity of spirits bought to charge for home consumption amounted, in the first quarter of 1843, to 1,207,810 gallons, paying 221,431*l*. duty; and in the first quarter of the present year (ended on Good Friday), to 1,581,571 gallons, paying 210,876*l*. duty, thus exhibiting an increase in the consumption of 373,764 gallons, and a decrease in the duty of 10,555*l*. Of the total quantity of proof spirits on which duty was paid for home consumption in the year ending the 5th of April, 1844 (5,917,077 gallons), it appears that 5,510,840 gallons were produced from a mixture of malt and unmalted grain, and 406,237 gallons from malt only. Of the 4,813,045 gallons consumed in 1842, 4,456,786 gallons were produced from a mixture of malt and unmalted grain, and 356,259 gallons from malt only. The total number of detections of offences against the laws for the suppression of illicit distillation, in Ireland, during the year ending the 5th of April, 1844, amounted to 3,190; the number of persons prosecuted, to 1,165; and the number convicted of the offences laid to their charge, 799. In 1842, 2,805 offences were detected; 1,239 persons prosecuted, and 803 convicted. The total number of persons confined in the various gaols of Ireland, for offences committed against the distillation laws, amounted, on the 5th of January, 1844, to 206; on the 5th of March, 1844, to the same number (206); and on the 5th of April (Good Friday), 1844, to 146 only.

Naval Force, Army Force, and Ordnance Department (Ireland).—An account shewing the amount of money issued for the payment of the naval force employed in Ireland, also similar accounts for the army and ordnance departments, was ordered some time ago by the House of Commons on the motion of Colonel Rawdon, M.P. for Armagh. The account shews that no money whatever was issued for the payment of any naval force employed in Ireland during the years 1838, 1839, 1840, 1841, and 1842, but that in 1843 the sum of 5,425*l*. was appropriated for that purpose. The Cyclops is the only vessel, it appears, which has been specially commissioned for service in Ireland, all other ships having been detached to that kingdom on their way to other stations. The naval force employed on the coast and in the rivers of Ireland, from 1834 to 1843, was as follows, viz. in 1834, six ships with a total complement of 1,131 officers and seaman, in 1835, four ships, with a total complement of 315 officers and seaman; in 1836, eight ships, with a complement of 2,022; in 1837, eight ships, with a complement of 1,457; in 1838, ten ships, with a complement of 2,197; in 1839, eleven ships, with a complement of 1,807; in 1840, fifteen ships, with a complement of 3,100; in 1841, ten ships, with a complement of 953; in 1842, eleven ships, with a complement of 527; and in 1843, forty ships (of which about sixteen are still serving), with a complement of 8,215 officers and men altogether. The gross total amount of money issued for the payment of the effective army force in Ireland was, in 1838-39, 689,787*l*.; in 1839-40, 616,014*l*.; in 1840-41, 621,497*l*.; in 1841-42, 603,868*l*.; in 1842-43, 575,424*l*.; and from April to December, 1843, 513,772*l*.; making a grand total for the above six years of 3,620,365*l*. of which 40,877*l*. was defrayed by the East India Company, and 3,579,487*l*. by votes of the House of Commons. The amount of money issued for the payment of the Ordnance department in Ireland was, in 1838, 257,119*l*.; in 1839, 256,718*l*.; in 1840, 259,288*l*.; in 1841, 233,890*l*.; in 1842, 212,670*l*.; and in 1843, 200,616*l*. Thus it appears that, whilst a trifling expense has been occasioned by the maintenance of a large naval force on the coast of Ireland, a considerable decrease has occurred in the amounts appropriated to the payment of the army and ordnance departments, within the last two years.

Arms (Ireland).—A return of the number of yeomanry arms registered in each county in Ireland, and also an account of the number of persons in each county in Ireland who have registered more than twenty stand of arms, has just been printed and published on the motion of two of the Irish "Liberal" members, Viscount Clements and Mr. Bellew. This return may, perhaps, serve to convey some idea of the operation of the Irish "Arms" Act, passed last session by the Government now holding office. It appears that the number of yeomanry arms registered in the various counties of Ireland is as follows, viz.:—in Antrim, 444 stand of arms; in Armagh, 62; in Carlow, 229; in Cavan, 1,256 guns; in Clare (none registered); in Cork, 63 muskets; in Donegal, 445 arms; in Down, 1,248; in Dublin county, one gun; in Fermanagh, 835; in Galway (no specific return); in Kerry (none registered); in Kildare, 69 arms; in Kilkenny, 22; in King's County, 95; in Leitrim, 401; in Limerick, 82; in Londonderry (no specific return); in Longford, 88; in Louth, 69; in Mayo (no return); in Meath, 107; in Monaghan, 268; in Queen's County (*nil*); in Roscommon (*nil*: there being no yeomanry at all in that county); in Sligo, 263; in Tipperary, 50; in Tyrone, 688; in Waterford (*nil*); in Westmeath, 196; in Wexford, 329; and in Wicklow, 542. The number of persons in the various counties above-mentioned who have registered more than 20 stand of arms is as follows, viz.:—In Antrim, 2; in Armagh, 2; in Carlow, 3; in Cavan, 3; in Clare, 2; in Cork, 5; in Donegal, 2; in Down, 5; in Dublin, 1 (Mr. G. A. Hamilton, M.P. of Hampton-hall, Balbriggan); in Fermanagh, 4; in Galway, 1; in Kerry, none; in Kildare, 5; in Kilkenny, 1; in King's County, 1 (the Earl of Rosse); in Leitrim, 1; in Limerick, 3; in Londonderry, 1; in Longford, 1; in Louth, 3; in Mayo, none; in Meath, 2; in Monaghan, none; in Queen's County, 5; in Roscommon, 2; in Sligo, 7; in Tipperary, 3; in Tyrone, 2; in Waterford, 1; in Westmeath, 4; in Wexford, 2; and in Wicklow, 4.

The Land-Tax.—A paper containing an account of the land-tax, redeemed and unredeemed, in England and Wales, has been printed by order of Parliament, on the motion of the member for Bolton. We hence find that the gross total amount of the land-tax in all the counties of England and Wales (both redeemed and unredeemed) is 1,858,924*l*. 6s. 1d. The total amount of the land-tax redeemed is 724,463*l*. and that of the land-tax unredeemed 1,134,460*l*. The land-tax is distributed as follows (both redeemed and unredeemed), viz.:—in Bedford, 28,433*l*.; in Berks, 40,197*l*.; in Bucks, 46,818*l*.; in Cambridge, 32,462*l*.; in Chester, 27,476*l*.; in Cornwall, 30,477*l*.; in Cumberland, 3,727*l*.; in Derby, 23,403*l*.; in Devon, 77,772*l*.; in Dorset, 32,026*l*.; in Durham, 10,444*l*.; in Essex, 88,647*l*.; in Glocester, 46,657*l*.; in Hereford, 20,106*l*.; in Herts, 41,783*l*.; in Huntingdon, 15,278*l*.; in Kent, 80,495*l*.; in Lancaster, 19,406*l*.; in Leicester, 34,238*l*.; in Lincoln, 70,548*l*.; in Monmouth, 9,612*l*.; in Norfolk, 81,819*l*.; in Northampton, 47,159*l*.; in Northumberland, 13,460*l*.; in Nottingham, 26,733*l*.; in Oxford, 38,127*l*.; in Rutland, 5,743*l*.; in Salop, 28,864*l*.; in Somerset, 69,902*l*.; in Southampton, 52,596*l*.; in Stafford, 26,140*l*.; in Suffolk, 72,499*l*.; in Surrey, 65,110*l*.; in Sussex, 58,399*l*.; in Warwick, 39,106*l*.; in Westmoreland, 3,030*l*.; in Wiltshire, 50,987*l*.; in Worcester, 32,411*l*.; and in Yorkshire, 88,405*l*. In the county of Middlesex, including both the cities of London and Westminster, the total amount of land-tax is 236,249*l*. viz. 87,794*l*. redeemed, and 148,455*l*. unredeemed. This return is made up from the accounts for the year ending the 25th of March, 1843, the accounts for the year ending the 25th of March, 1844, not being yet completed.

Railways and Canals.—In the appendix to a statement issued on behalf of the Grand Canal Company of Ireland, in the matter of the proposed railway to Cashel, there are given some curious details as to the effect of railways on canal property. Thus, the Grand Junction Canal, which forms the first 90 miles of water communication between London and Birmingham, had, in the three years immediately preceding the opening of the railway, an annual revenue from tolls, ranging from 174,722*l*. to 198,000*l*. regularly increasing. Since the railway was fully in ope-

ration, this revenue has varied from 121,139*l.* to 113,012*l.* The Rochdale Canal is 33 miles long, and throughout the entire distance the Manchester and Leeds Railway runs parallel to it. In the three years previous to the opening of the railway, the tolls ranged from 62,059*l.* to 59,258*l.*; in the last three years they have varied from 31,533*l.* to 27,165*l.* The Kennet and Avon Canal, and the Wilts and Berks Canal, are both affected by the Great Western Railway, and the tolls of the former have fallen since the railway was opened, from 46,703*l.* to 32,045*l.* and of the latter, from 19,328*l.* to 8,477*l.* The Forth and Clyde Navigation has gone down from 62,516*l.* to 42,218*l.* and the Union Canal, which connects Edinburgh with the Forth and Clyde Canal, has had its net profits reduced by railways from 12,000*l.* to 4,281*l.* The market price of canal stock has, of course, suffered in proportion. Thus, shares in the Grand Junction Canal have fallen from 330*l.* to 148*l.* per share; Warwick and Birmingham, from 330*l.* to 180*l.*; Worcester and Birmingham, from 84*l.* to 55*l.*; Kennet and Avon, from 25*l.* to 9*l.*; and Rochdale, from 150*l.* to 61½*l.*; while Coventry Canal shares, which at one time were as high as 1,200*l.* per share, have fallen as low as 315*l.*

THE MAGISTRATE.

Summary.

INQUIRIES are beginning to be made if there is to be another Winter Circuit. From the silence of the authorities we augur that the scheme is abandoned, at least for the present. It was found to be fraught with inconveniences to all parties. Not that we approve the long confinement of prisoners previous to trial, but that we think another and better remedy might be found in the reconstruction and improvement of the Courts of Quarter Sessions, so often urged in the LAW TIMES. Whatever the decision of the Home Office, it ought to be made known to the Profession at once.

An extraordinary letter has appeared in the *Times*, the facts of which, if true, demand investigation. We extract it:—

JUSTICE TO IRELAND.

TO THE EDITOR OF THE TIMES.

"Sir—The late decisions of the House of Lords, reversing judgments in Irish criminal cases, where parties have been enabled by their friends to sustain appeals, induced me to apply to the Governor of Carrick-on-Shannon gaol for particulars, referred to in his letter dated the 20th of September, 1844, respecting Bryan Sweeny, who was unlawfully tried and sentenced to transportation for ten years by Baron Lefroy.

"The following is the case of this helpless poor man who, without the remotest possibility of procuring means requisite to sustain an appeal to the House of Lords, is suffering under his illegal sentence of transportation.

"Having been instructed by Mr. Welsh, the respectable solicitor of the county of Leitrim, to defend Sweeney, as his counsel on a trial for horse-stealing, I felt it my duty to rest the defence on facts which could not possibly be controverted, and must, according to law, have secured the complete acquittal of my client, namely, 'that the indictment charged him with stealing a "horse;" that the prosecutor admitted the animal to be a "gelding;" and that the law made an express distinction between a "horse" and a "gelding."' Sweeny accordingly was acquitted of the offence imputed to him by the verdict of the jury, to whom he was given in charge, and who were duly sworn to try him.

"Baron Lefroy, however, contrary to the strongest remonstrance by me, directed, for the same offence, a second indictment to be preferred against him, and the same animal to be stated therein as a 'gelding,' instead of a horse. Sweeny, consequently, was a second time put on trial, and thus a verdict obtained against him for identically the same offence by Baron Lefroy, for which he was acquitted, with the privity of the Baron himself, in the previous part of the same day.

"I exerted all in my power to vindicate and uphold the law for poor Sweeny, who was tied 'as it were to a stake,' and forced, contrary to law, to be tried and convicted. I pleaded *autrefois acquit*, and using the strongest language my position would permit, stated to the Court that I knew no master but the law, and insisted on the prisoner's right to its protection, and to the benefit of his plea, but all to no effect.

"I only obtained from Baron Lefroy (thus cognizant of the identity of the prisoner, of the offence charged, and of the animal) his promise that after returning to Dublin, Sweeny should get the benefit of his plea of *autrefois acquit*, should he be deemed, on consideration, to be entitled to it. I beg to refer to the records of the county of Leitrim Crown Court, to the officers of that court, to the county books, and to Baron Lefroy's notes of Bryan Sweeny's trial, in support of the facts stated. The poor man's friends, I believe, were with difficulty able to procure even fees and the necessary expenses for one trial. An idea of their being enabled to sustain any additional expenses whatever for other law proceedings or appeal is not to be entertained.

"I have prepared several memorials to the Irish Government on the subject of this letter, for the members of Sweeny's family, which have not been attended with effect. Whether they have been referred to Baron Lefroy by the Irish government or not I am unable to state. But, however earnest the desire of government may be 'to administer the existing laws with scrupulous impartiality' in Ireland, absurdity itself could not expect redress by reference to Baron Lefroy for a decision against himself. I trust, therefore, your kindness will excuse my pressing Bryan Sweeny's case on the attention of your powerful and influential journal, for the purpose of relieving her Majesty's poor helpless Irish subject from a lengthened period of severe suffering under the cruel outrage committed on him by forms of law, but in violation of every principle of our constitution and of justice.

"The fate of Bryan Sweeny may, at no distant period, be the fate of other innocent people; and certainly no poor helpless subject of her Majesty in Ireland, who is without means of appealing to the House of Lords in England, can feel safe under such a system of perverting criminal justice.

I am, Sir, your obedient servant,

"AN IRISH BARRISTER."

POOR LAW CIRCULAR.

POWERS OF AUDITORS APPOINTED UNDER THE ORDERS OF THE POOR LAW COMMISSIONERS.

The following circulars have been issued by the Poor Law Commissioners on this subject:—

11th July, 1844.

Sir,—I am directed by the Poor Law Commissioners to transmit for the information of the guardians, a copy of a circular letter which the commissioners have caused to be sent to all auditors appointed under their orders.

The guardians will probably deem it expedient to communicate to the several parish officers within their union the general purport of that letter.

I am, Sir, your obedient servant,

W. G. LUMLEY, Assistant Secretary.

To the Clerk to the Guardians of the ——— Union.

8th July, 1844.

Sir,—I am directed by the Poor Law Commissioners to transmit to you for your guidance, a copy of a judgment pronounced during the last term by the Court of Queen's Bench, in a case of *The Queen on the prosecution of the Poor Law Commissioners* v. *The Governors and Directors of the Poor of St. Andrew, Holborn above Bars, and St. George the Martyr.*

You will observe from this decision that it is your duty to inquire into the expenditure by the overseers, or other parochial officers, within your district, of the whole of the moneys raised by them under the name of the poor-rate, whether the expenditure by them be strictly confined to the relief of the poor or relate to any other object, and that if the accounts of such expenditure have not hitherto been laid before you, you must henceforth require them to be produced.

It is right, at the same time, to notice that these officers are not responsible for the expenditure by other parties of such sums as they are called upon by law to pay out of the poor-rates to such parties for specific application; thus, the overseers are not answerable for the expenditure by the guardians of the contributions which they have called for, or by the justices, of the sums paid to the county-rate, or for the application of the sums paid to the police commissioners, or to the treasurer of the borough, where police or borough-rates are made.

In these cases you will only require the production of the proper orders upon the overseers, or other vouchers, by which the amounts paid by them are legally demanded.

I am, Sir, your obedient servant,

W. G. LUMLEY, Assistant Secretary.

To the Auditor of the ——— Union.

IN THE QUEEN'S BENCH.

Westminster Hall, 8th June, 1844.

THE QUEEN *v.* THE GOVERNORS AND DIRECTORS OF ST. ANDREW, HOLBORN ABOVE BARS, AND ST. GEORGE THE MARTYR.(*a*)

JUDGMENT.

Lord DENMAN.—In the case of The Queen against the Governors and Directors of St. Andrew, Holborn above Bars, and St. George the Martyr, and their collector, there were two questions proposed for our consideration: first, whether the defendants, having accounted to the auditor under the local Act of the 6th of George the Fourth, were also bound to account to the auditor appointed under the order of the Poor Law Commissioners; secondly, whether, if they were bound to account to the auditor, the account rendered by them as stated in the case is sufficient. With respect to the first question, the powers of the auditors under the local Act are so inadequate to the performance of the duties required of the auditor appointed under the order of the Poor Law Commissioners, having no power to disallow any of the items in the account, that we are clearly of opinion that the defendants were bound to account to the latter auditor, although they had already accounted to the auditor under the local Act. This part of the case was indeed scarcely contested on the part of the defendants, and was in effect settled by the decision of this Court in the case of the Alstonfield Union, in the 11th Adolphus & Ellis, p. 558. With respect to the second question, it was contended, on the part of the defendants, that they were not bound to render an account to the auditors appointed under the order of the Poor Law Commissioners of *all the money* collected by them under the rate denominated *the poor-rate*, which is partly applicable to other purposes than the relief of the poor, but only so much of the produce of the rate as was raised for and applied to the purposes of the relief of the poor. The defendants' made a rate of one shilling and twopence in the pound for the relief, maintenance, lodging, and employment of the poor, which by estimation would produce a sum of upwards of 6,000*l.*; but of this not much more than half was applied or intended to be applied to the relief of the poor, the residue was applied, and intended to be applied, to the police-rate and county-rate, and in payment of principal and interest due in respect of debts contracted under the authority of the local Act, and salaries and expenses attending the carrying of the local Act into effect. The defendants did account for so much of the money raised under the rate as had been applied and was intended to be applied to the relief and maintenance of the poor, but objected to account for the residue, which was raised for and applied to other purposes, and whether they are bound to do so is, in fact, the question. It is not necessary to refer to the local Act, as the question turns entirely on the Poor Law Amendment Act, and applies undoubtedly to every parish in England, where the poor-rate is in part applicable to the payment of the county-rates, police-rate, or *any other expenses* than the relief and maintenance of the poor. By the 46th section of the Poor Law Amendment Act, the commissioners may direct the guardians of any parish or union to appoint an officer for the examining, auditing, and allowing or disallowing of accounts of such parish or union, or united parishes; and may define, and specify, and direct the execution of the duties of such officers, and the places or limits within which the same shall be performed. In pursuance of this power, the commissioners did direct the guardians of the Holborn Union, of which the district in question forms a part, to appoint an auditor, whose duties were specified to be, among others, to audit the accounts of the said union, and of the several parishes comprised therein, at proper times, and to examine whether the expenditure in all cases was such as might lawfully be made, and to strike out such payments and charges as were not authorized by some provision of law or the order of the commissioners. By the 47th section of the Poor Law Amendment Act, every person having the collection, receipt, or distribution of the moneys raised for the relief of the poor in any parish or union, or holding or accountable for any balance relating to the relief of the poor, or the collection or distribution of the poor-rate of any parish or union, shall, where the orders of the commissioners shall have come in force, as often as the said orders shall direct, make and render to the guardians, auditor, or such other persons as by virtue of any statute or custom, or of the said orders, may be appointed to examine, audit, allow, or disallow such accounts, a full and distinct account in writing of all moneys, matters, and things committed to their charge; or received, held, or expended by them on behalf of any such parish or union; and all balances due from any person having the control and distribution of the poor-rate, or accountable for such balances, may be recovered in the same manner as any penalties are recoverable under the Act. Two things may be observed in this section—first, the accounts are to be rendered to a person appointed either by statute, custom, or order of the Poor Law Commissioners, to examine, audit, allow, or disallow such accounts; and secondly, that the account is to be made of *all moneys*, matters, and things committed to their charge, or received, held, or expended by them on behalf of the parish or union, and the balance may be recovered under the Act. The auditors under the local Act do not, as already observed, possess the power required for an auditor under this section: they have no power to disallow accounts, but the auditor appointed under the order of the commissioners does possess the power, and is therefore the person to whom the accounts should be rendered under the terms of the 47th section. With respect to the accounts themselves, the terms of the 46th and 47th sections of the Act include *all moneys* held by the parties accounting on behalf of the parish or union, and would therefore apply to all money

(*a*) See this case, *supra*.

raised by the poor rate. And it is also to be observed, that in the description of the persons who are to account given in the beginning of the early part of the 47th section, persons holding or accountable for any money or balance relating to the relief of the poor, or the collection or distribution of the poor rate are mentioned. It appears to us, therefore, that by the terms of the 46th and 47th sections of the Poor Law Amendment Act, as applied to this case, the defendants were bound to account to the auditor appointed under the order of the Poor Law Commissioners *not only for so much of the money raised by the poor rate as was raised for and applied to the relief and maintenance of the poor, but for the whole amount of the money raised by the poor rate*, and that the auditor may insist on ascertaining the amount of balance of the whole rate in the hands of the accountant. There is but one rate levied, and that professedly for the relief, maintenance, lodging, and employment of the poor, and even, although the inquiry into the mode of disposing of the proceeds of the rate may introduce matters foreign to the direct and avowed object of the rate, this is but a necessary incident in the inquiry, and seems to have been contemplated by the Legislature when a remedy is provided for the recovery of the balance in the hands of the accountant, obviously meaning the balance of the whole rate levied for the relief, maintenance, lodging, and employment of the poor. We are therefore of opinion that the verdict which has been entered for the prosecutors should stand.

Office of the Poor Law Commission,
Somerset House, Oct. 7.

This is to give notice that the Poor Law Commissioners did, on the 24th day of September last, appoint Samuel Hitch, esq., a Doctor in Medicine, to be an Assistant Commissioner, for the period of twenty days from the 11th of October, 1844, for the purpose of inquiring specially into the condition and treatment of the lunatic inmates of the workhouses at Birmingham and Leicester.

THE POOR LAW COMMISSIONERS AND THEIR OFFICERS.—Amongst the letters and other communications read at the board of guardians of the parish of St. Luke, Chelsea, at their usual weekly meeting on Wednesday last, was the following, received from the Bradfield Union, on the subject of the oppressive interference of the Poor Law Commissioners in refusing to sanction the appointment of Mr. Brangwin, late one of the guardians of that union, and recently twice unanimously elected by the board of guardians as a fit and proper person to fill the office of Master of the Bradfield Union Workhouse, and threatening proceedings against the board of guardians if they do not remove Mr. Brangwin and proceed to the election of another officer, which the board of guardians appear to see no grounds for doing:—

"THE BRADFIELD UNION AND THE POOR LAW COMMISSIONERS.—The committee of rate payers and guardians of the poor of the above union present their compliments, and have forwarded by post a copy of the *Berkshire Chronicle*, containing a report of the public meeting, and they earnestly request that it may be considered by the Chelsea Board of Guardians as a matter deeply affecting their privileges. The committee will be happy to receive any communication with a view to co-operation of other boards in the redress of such manifest injustice.

"Letters may be addressed to Mr. F. Penman, Chairman of the Committee, care of the Editor of the *Berkshire Chronicle*, Reading.

"To the Chairman of the Chelsea
Board of Guardians, London."

Mr. Hill (one of the Chelsea guardians), who had previously heard of the rupture between the Poor Law Commissioners and the Bradfield Board of Guardians, said he considered the conduct of the Poor Law Commissioners so glaring, that he thought they (the Chelsea Board) ought to take the subject into their serious consideration. Several other guardians having spoken and it appearing that a general feeling prevailed that it was the duty of one board of guardians to protect another board against such tyrannous conduct on the part of the Poor Law Commissioners, the chairman (Mr. Ryder) then gave notice of the following motion for Wednesday next, viz.: "To consider the communication received from the board of guardians of the Bradfield Union in reference to a controversy now existing between that board and the Poor Law Commissioners respecting the retention in the guardians' service of Mr. Brangwin as master of the Bradfield Union workhouse, and to come to such resolutions on that subject as the circumstances of the case may call for."

THE LAWYER.

Summary.

THE recent exhibitions at the Bar continue to engross attention in professional circles, and from time to time to occupy the columns of the newspapers. An excellent letter, which we extract, has appeared in the *Morning Chronicle*:—

"PRACTICES AT THE BAR.

"TO THE EDITOR OF THE MORNING CHRONICLE.

"SIR,—The remarks which you have recently made on the conduct of some of our Profession are indeed very severe, and it is greatly to be lamented that such remarks should be merited, which, if report speak truly, I fear they are.

"I quite concur with you when you contend for the necessity of some kind of 'examination,' whereby to test the fitness of persons who present themselves for admission to our order. It certainly is a strange fact that while there is no other calling in life requiring at once so great a variety of acquirements, and so high a reputation for integrity, the calling of our [illegible] one in every respect the most easy to [illegible]; for it really is a fact in the present day, though it was not so formerly, that a barrister is obliged to know nothing whatever before his 'call,' while the expense to that end is perhaps less than will be [illegible] for a baker's or butcher's apprentice before he can open shop on his own account. According to old style all barristers not wearing full [illegible] were but 'apprentices in the law,' the disuse of which name is but consistent with conscience, seeing how nominally it would apply to many of those youths who are sent forth into the world of law from the universities called inns of court.

"It was said to have been proposed not long since that the benchers should admit none to be members but men of independent fortunes, the absurdity of which idea was equal to its injustice. In one of the inns there has of late been established an examination in Latin and Greek. But the reason, after all, assigned for the non requiring of law in the legal apprentice has been this, that if he venture to the Bar unfurnished with due learning he can expect no clients; that there is an attorney between the client and him; that the attorney (who now, by the bye, has to undergo a somewhat rigid examination before he is admitted), must himself be a tolerably good critic in the merits of counsel, and must have found out that heads were made before wigs, and that the lawyer's gown is not invariably the costume of a conjuror.

"Doubtless this train of reasoning is, in a great measure, sound enough, and the ordinary result may have been, that merit has been discovered by such medium of perception, and that the most meritorious have had the most to do.

"But this leads us to the assertions which, since the printing of your own remarks, have been publicly made by Mr. Crouch, Mr. Pyke, and Mr. Horry, assertions which have caused in me, and, I am sure, must have caused in the vast majority of our Profession, no less astonishment than displeasure. According to what these gentlemen have said, and the former relies on the authority of a number of the London Session Bar, the presumed sufficient reason (viz. the intervention of an attorney) is at an end. We may, it seems, be deprived of even that reason, for it may be now said, twisting an old legal maxim to the purpose, *cessante lege cessat et ipsa ratio*. But I shall not allow that the intervention of an attorney is to be dispensed with, nor that the rule having ceased, this imperfect reason, whatever its value, is gone. I beg to contradict the assertions of the gentleman above mentioned, and to assure you that the 'notoriousness' which is affirmed by Mr. Horry, is of something with which 'the Bar,' in its collective capacity, will have nothing to do, and which, as I confidently predict, they will repudiate in every manner that becomes them. [illegible] it be just for the press to call some of our members to account as you have done, I think the same sense of what is right must make you desire that the general body should be viewed in a true light, and not have attributed to it that against which, for the sake both of itself and the public, it has ever had, and still maintains an inflexible rule.

"It is a rule with us (and till now I always supposed it to be of universal observance) that a barrister must not take briefs for prosecutions but from attorneys. There surely is no one of us who does not know this, and there is no such one who does not also know that local practices, inconsistent with a rule of this kind, are unprofessional.

"If there be a difference in practice with regard to the defence of a prisoner, the attorneys throughout England must have observed that the Bar study to have their intervention also in such cases, and there are many reasons why we ought to do so. It is best for the public, best for the accused, and (above all, I may perhaps say) best for our own prospects and professional character, that instructions for a defendant in criminal cases should, if possible, come to us from the hands of attorneys alone. Necessity knows no law; and if a prisoner come to be tried, without the means of employing an attorney, no man at the Bar would object to conduct his case, if requested to do so. But the truth is, that this necessity is but occasional; and with those who are alive to what is becoming in this particular, there rarely arises any desperate need of acting without an attorney's assistance.

"I am, Sir, your most obedient servant,
"A BARRISTER.

"London, Sept. 2[illegible], 1844."

The remarks in this letter were thus noticed by Mr. HORRY, whose meaning was certainly misunderstood, for he has shewn himself among the most strenuous to condemn and suppress the practice.

"PRACTICES AT THE BAR.

"TO THE EDITOR OF THE MORNING CHRONICLE.

"SIR,—As the terms in which I am alluded to in the letter of 'A Barrister,' in this day's *Chronicle*, may [illegible] of my professional habits and opinions, I am sure you will allow me to explain how and why I used the term 'notorious,' in allusion to the practice of barristers to be retained without the intervention of attorneys, and, at the same time, to [illegible] that I [illegible] and entirely concur in the opinions expressed by him.

"On reading the report that a junior counsel, Mr. C[illegible] (with whom I have no private acquaintance), had been rebuked from the bench for a breach of professional [illegible] which had been tolerated at the London and Middlesex Sessions for a number of years, and that common practisers at those sessions, Mr. Ballantine in particular, had gravely assured the Court that no such custom existed, I thought it right, [illegible] the word 'notorious' in connexion with the above mentioned sessions only, without intending to imply, as your correspondent seems to suppose, that the practice was known to, or sanctioned by, the Bar or the Profession generally.

"I remain, Sir, yours very obediently,
"S. C. HORRY.

"Temple Chambers, Chancery Lane,
"October 1, 1844."

It will be seen, by the correspondence in our columns, that a very general desire has been excited among the attorneys for the resumption of their professional costume, as the best security against the multitudes of sham lawyers by whom the courts are infested. We are requested to suggest that a convenient season for taking the question into consideration will be afforded by the meeting of the Union of Law Societies advertised in another column.

THE PROPERTY LAWYER.

EXECUTION OF POWER.

BURDETT *v.* DOE *dem* SPILSBURY.*

(*Continued from page 7.*)

TINDAL, C. J. stated his opinion that the power had been duly executed. He considered this case to be distinguishable from *Wright* v. *Wakeford*, and having briefly commented upon that and the other cases, his lordship proceeded thus:—

"The rule, therefore, deducible from those cases is that, wherever it does not appear by the attestation itself, either by express enumeration and specification or by necessary intendment, that every solemnity prescribed by the instrument creating the power has been complied with, the execution of the power is bad, and that the four cases above referred to have also established affirmatively that a memorandum of attestation mentioning the observance of some or one only of several solemnities required, and omitting the mention of one or more, is not an attestation within the meaning of the instrument creating the power. But the present attestation does not, as it appears to me, fall within the latter predicament; and it is upon this precise ground that my opinion is rested, viz. that the attestation of the will of Mrs. Skynner does not express some only of the solemnities directed to be observed and omit the rest, but by necessary intendment shews that all have been observed. It might, indeed, be argued that it mentions *none* expressly and is therefore bad upon that ground; but it cannot be held bad on the ground upon which *Wright* v. *Wakeford* was determined. I do conceive, however, that the signature of the names of the witnesses immediately underneath the general word 'witness' at the foot of the will constitutes a good attestation, the same being free from the objection raised by those cases and being supported by the authority of others, to which I shall afterwards refer, for, if that word is taken abstractedly by itself as constituting the whole of the attestation, I can see no objection to holding that the three persons whose names are

subjoined to it must be taken to be witnesses to all that was actually done at the time, which is found by the special verdict to be all that was required to be done; or, if the word 'witness' is to be construed with reference to the statement immediately preceding it at the end of the will (and one or other must be the sense to be put on the word 'witness'), then the word 'witness' necessarily implies that the testatrix did in their presence declare the instrument to be her will, and that she did in their presence put her hand and seal thereto, that is, in the language of the settlement, that she 'signed, sealed, and published it,' in the presence of those three witnesses; for, I think it cannot be contended successfully, that, if a testatrix *declares* an instrument which she executed to be her will, any other publication beyond such declaration can possibly be required. To this construction an objection was taken by the counsel at your lordship's bar, which has also been relied upon by some of the learned judges who have delivered their opinions before me, viz. that it proceeds upon the supposition that the whole of the instrument may legally be read together to explain the meaning of the word 'witness,' and that it supposes the witnesses are conusant of the contents of the instrument, neither of which circumstances can be supposed. But I cannot feel the force of this objection. There has been from the earliest time at which deeds were known a marked and acknowledged distinction between the operative part of the deed itself and the testimonium clause (as it is called) at the end of the deed. The essential part of the deed is properly that part, and that only, which contains the grant; the clause at the end is introduced, not as constituting any part of the deed, but merely to preserve the evidence of the due execution of it. Admitting, therefore, the deed itself is matter which may be properly held to be confined to the knowledge of the parties, namely, the grantor and the grantee, the testimonium clause is expressly introduced into it for the use of the public and the witnesses to the deed. It is well known that a similar clause was constantly inserted in old deeds and charters at the close thereof, beginning with the words 'his testibus,' and thence generally called the his testibus clause, in which the names of the persons present who heard the deed read by the clerk were written, not by themselves, but by the clerk who prepared the deed. Spelman, in his 'Glossary,' p. 228, traces out the variations in the form of the clause at different periods of our history; and Madox, in the dissertation prefixed to his 'Formulare Anglicanum,' goes more fully into the matter, and in the work itself gives numerous instances, which it is impossible to read without being satisfied that the sense requires that the witnesses whose names are inserted in the his testibus clause must of necessity have known the words preceding it, or in fact they would have witnessed nothing at all. Take, for example, among many, that numbered 312: 'And, that this my gift, grant, and confirmation may remain firm for ever, I have confirmed this present charter with the impression of my seal. His testibus,' &c.: or again, No. 631, 'And for the greater security of my obligation, I have made oath, and put my seal to this present writing. His testibus,' &c. Who can doubt for a moment that these witnesses either actually read, or heard read over to them, the words of the deed immediately preceding their names, and that the introduction of that preceding clause had no other object or purpose? And this practice continued down to the reign of Henry the Eighth, as appears on the authority of Lord Coke (2 Inst. 78), who states the practice then began of separating the attestation from the deed itself, and for the witnesses to subscribe their own names to it, either at the bottom or indorsed on the deed. But that the clause 'in cujus rei testimonium,' so long as it was found at the close of the deed, never formed part of the deed itself, is evident from 'Sheppard's Touchstone,' p. 55, where he says, "a deed is good albeit these words in the close thereof 'in cujus rei testimonium sigillum meum apposui' be omitted,"—citing the authorities which shew it is no more in fact than what it imports to be—the very attestation of the deed which has preceded it. There is, therefore, no reason why the word 'witness,' written immediately after this testimonium clause, in the case now under consideration, should not be considered as incorporated with it, and as calling the attention of the witnesses to all that had preceded in the testimonium clause. On the contrary, there is every reason why it should have that effect; the bare inspection of the fac-simile set out in the appendix to the case of the defendant in error shewing as much, and the sense and context also proving that it must have been written for that very purpose, and no other; and this appears to me to be the answer to the argument on the ground of the danger which is apprehended if the witnesses must necessarily be supposed to be conusant of the contents of the deed; for the witnesses are not supposed to be conusant of the contents of the deed, but of the testimonium clause only, which is introduced for their express use, and for that express object and purpose. If all the particulars of the solemnities required by the instrument creating the power were formally enumerated in this will just before the testimonium clause, and therein stated to have been performed, and if the three witnesses had signed their names beneath the word 'witness' immediately subjoined to that clause, it could not, I think, be denied that such attestation would be sufficient, whilst it is admitted, that, if the very same particulars were repeated in a separate attestation at a small distance below the will, and such attestation is signed by the very same witnesses, the latter attestation would be complete. This would be rather struggling for a formal than a substantial distinction, and would be in direct opposition to the acknowledged maxim in the construction of all instruments, namely, '*ut res magis valeat quam pereat*.' And, further, so far is it from being a rule of law that you may not, in the attestation to a deed, look back to that which is found at the close of the deed itself, that, on the contrary, in most of the cases which have been relied on by the defendant in error express reference has been made to the close of the deed itself. Thus, in *Moodie* v. *Reid* (7 Taunt. 355), the power is directed to be executed 'by will signed and published in the presence of and attested by two or more credible witnesses,' and there are found at the end of the will these words, namely, 'These my last bequeathes signed by me,' and immediately beneath the word 'witness' follow the names of the two witnesses. Now, upon this state of facts, Chief Justice Gibbs says: 'Here the witnesses have clearly attested the signing; the question is whether they have attested the other formality of publication.' But how does it appear they have attested the signing, except by looking back to that which is inserted in the close of the will itself, and importing it into the attestation. Again, in the case of *Stanhope* v. *Keir* (2 Sim. & Stu. 37), a direct reference is made to the words which are inserted in the will. The will concludes, 'This is my last will and testament, made and signed' &c.; the words at the bottom of the will are, 'in the presence of;' and Sir John Leach, Vice-Chancellor, said he could not assume more from the attestation than that the witnesses saw Mrs. Keir sign the instrument, and held the execution bad where the power was directed 'to be signed and published' in the presence of and attested by three witnesses. But, in that case, as in the former, the Court look back to the statement of the testatrix contained in the will itself, in order to see what it is that the witnesses attest. And lastly, the authority of Sir John Leach, Master of the Rolls, in the case of *Buller* v. *Burt*, is express to the very point, that, where the word 'witnesses,' without more, is used in the attestation, it affirms that all has been done in the presence of the witnesses which has been stated in the body of the deed. It appears, therefore, upon the authority of these cases, that the Court do look back beyond the general word of attestation, whether it be 'witness' or 'in the presence of,' to the concluding clause of the will itself, to discover what it is that the witnesses do attest; and, in the present case, if such reference is made, I think it appears upon the face of the will that the witnesses do attest the signature, sealing, and publication of the will, which are all the solemnities prescribed by the settlement for the execution of the power. For these reasons, the opinion which I offer humbly to your lordships, is, that, under the particular circumstances of this case, the power is well executed."

Lord Lyndhurst, C. was of opinion that the power had been properly executed. There would have been little or no doubt about it, but for previous decisions. Having reviewed each of the cases, his lordship concluded by moving that the judgment of the Queen's Bench be affirmed.

Lord Brougham took the same view of the question:—

"It is perfectly true, as was stated by my noble and learned friend, that, in this as in all other cases where a decision has been held to make the law, where it has been acted upon, as this has been in other cases—two of which particularly have been mentioned by my noble and learned friend—when it has been acted upon by professional men, has been assumed to be the law by professional men, and has obtained the faith of parties, and has regulated the transactions of men upon most material points affecting their most important interests: it is of the highest possible importance, and even of the most absolute necessity, that the courts should not, without a very strong reason indeed to induce them so to do, depart from that rule—it being of very much more importance, in nine cases out of ten, that the law which is to regulate the conduct of professional men and to govern the transactions of their clients should be known and fixed, than that perhaps the best possible rule of law should in each case be adopted."

"Lord Campbell.—My Lords, It gives me great satisfaction in this case to agree in opinion with the majority of the learned judges. When your lordships consult the Queen's judges, I do not at all consider that you are bound by the opinion of the majority, or even by their unanimous opinion, unless you are perfectly satisfied with the reasons which they assign for the opinion they give. But it is always a very painful thing to differ from those venerable magistrates, who are always to be looked to with so much reverence and respect. My Lords, In this case the only question is, whether the will was attested by three credible witnesses. It is not at all disputed—indeed, that is found by the special verdict—that it was signed, sealed, and published in the presence of the witnesses. The question is, whether it has been attested by them. The witnesses saw all these solemnities performed, and they signed their names to the will as attesting witnesses. The question is—is not that will attested by them? My Lords, Independently of authority I cannot doubt that for a moment. The only objection that can be made is this, that the will upon the face of it does not contain any *procès verbale* or history of the transaction. Well, but the power imposes no such condition: it does not say, a will signed, sealed, and published in the presence of three witnesses and attested by them, and a will containing a history of the solemnity; there are no such words in the power; and I know not how such a condition is to be added to the power which the donor has given. Then, my Lords, I am very glad to think that there is no authority in this case to prevent us from giving the natural construction which such a power ought to receive—a construction in analogy to the statute of frauds respecting the execution of wills. My Lords, the statute of frauds, respecting the execution of wills, enables the donor to give the power: the testator is the donee of the power; and, unless the donee complies with the solemnities required by the donor, the power is not well executed. Now, the statute of frauds, as your lordships are aware, upon this subject is almost *ipsissimis verbis* the same with the power, the construction of which we are now considering: and it has been determined over and over again, that, if a will is properly executed in the presence of witnesses, and they simply sign the will, that is a due execution of the power, and the will is good under the Statute of Frauds. With regard to powers contained in private deeds, we have *Wright* v. *Wakeford* (4 Taunt. 213, 17 Vesey, 264), and the class of cases which have succeeded that case. Now, fortunately, it is not necessary for this house to overturn those cases to-day; although had they been brought by appeal before this house in proper time, I apprehend that the probability is, that your lordships would not have approved of them. But in those cases there is not a mere simple attestation by witnesses, that is, the subscription of their names, but there is an imperfect history of the transaction. There is a declaration by them that they saw certain solemnities performed which are required by the power, without having seen all; and that maxim of law has, I think, been misapplied, that the expression of one is the exclusion of the other, and therefore this has been supposed sufficient to negative the performance of any solemnity which is not mentioned in the history of the transaction of the will. But, my Lords, there is no case, I am happy to think, in which there has been a simple signature by witnesses, the witnesses having seen all the solemnities duly performed, which has been held not to be a due execution of a power. If it were necessary, my Lords, I think that the testimonium clause here might be resorted to, both upon principle and upon authority. I beg leave humbly to express my opinion, that without the testimonium clause, there would have been a good execution of the power; because here the will was signed, sealed, and published in the presence of three credible witnesses, who signed that will as the attesting witnesses. I say that that was the attestation, and that this is a good execution of the power, without reference to the testimonium clause. My Lords, the very common expression we have of 'attesting witnesses to a deed' explains this. What is the meaning of an attesting witness to a deed? Why, it is a witness who has seen the deed executed, and who signs it as a witness. He is a good attesting witness, although there should not be upon the deed itself a memorandum saying that it is 'signed, sealed, and delivered' in his presence. My Lords, these are good attesting witnesses; and I apprehend that, upon principle, and not contrary to authority, this will was attested in the presence of three credible witnesses; and that therefore it is a good execution of the power. The consequence is, that the judgment of the Court of Exchequer Chamber will be reversed, and that of the Court of Queen's Bench will be affirmed.

Lord Brougham.—There is no authority for saying that a general attestation is insufficient.

Lord Lyndhurst, C.—The party who sees the will executed is a witness. If he subscribes as a witness, he is then an attesting witness.

Judgment reversed."

LEGAL INTELLIGENCE.

A LAW COURT IN JERSEY.

"A libel case, *Le Sueur* v. *Wilson and Le Gros*, which has lately engaged the attention of the Royal Court of Jersey, deserves notice as exemplifying some of the most prominent absurdities of Jersey justice. The defendant, Charles Carus Wilson, of whom one of the judges took judicial cognisance as 'a very tall

man,' and who, as an English attorney and solicitor, is legally a 'gentleman,' was the principal defendant. Le Gros was proceeded against as the printer of the *Jersey Gazette*, in which the alleged libel had been published. Le Sueur, the plaintiff, is a Jersey advocate, and the libel of which he complained was an accusation against him of his having wilfully betrayed the cause of a Mrs. Stratton before the petty jury of St. Clement's. Le Sueur, disregarding a certain old saw which warns litigants against being counsel for themselves, undertook the conduct of his own cause, and soon found that he had 'caught a Tartar' in the shape of the 'very tall' defendant. The Jersey Solicitor-General, who appeared for Le Gros, and Mr. Hammond, the advocate for Wilson, also found themselves involved to a greater extent than they had promised in the litigation. Wilson having avowed himself the author of the alleged libel, the Solicitor-General 'was surprised that the name of his client was still remaining in the action. Had he not hoped that it would be withdrawn, he must confess he would not have undertaken this case; but, having promised to plead for Mr. Le Gros, under the erroneous impression that he would be set aside at the first hearing, he was necessarily compelled to carry out the task he had undertaken, and fulfil his mission.' The awkwardness of his not being able to shirk his task was increased by his being hampered with the proceedings which Wilson took. It does not appear whether it depended on the particular form of action, the course originally taken for the defence, or the universal rule of the court; but in every plea put in by Wilson, however crotchetty, Le Gros, it seems, was obliged to join, for the sake of not being prejudiced. Mr. Hammond, too, had accepted his retainer under the mistaken belief that Wilson, as 'a man of law,' would have conducted his own case, and that he should have merely had to watch it, and explain to his client the mode of proceeding; but suddenly found himself, 'instead of being a passive agent, compelled to come forward as his counsel.'

"The scene opened by a claim on the part of Wilson that, as he did not understand French, the Court would allow the case to be conducted in English, or would appoint a sworn interpreter. This claim was supported by the advocates of the defendants, and opposed by the plaintiff. The Court came to a decision of most amusing absurdity; for, after a grave consultation, they split the difference between the parties, *allowing Wilson to plead his own cause in English, but refusing to have the rest of the proceedings conducted in that language*.

"After this decision had been communicated to the defendant, he rose and observed, that it was the greatest possible absurdity to allow him to answer arguments advanced in an unknown language (which he termed *gibberish*). They might just as well have refused him the right of reply altogether.

"The President said, that this was the decision of the Court, *and must be maintained*. He also requested Mr. Wilson to be more guarded and respectful towards the Court.

"From this piebald decision Wilson appealed to the full Court, and the appeal was granted *en fin de cause*.

"Mr. Hammond having thus been compelled to take an active part in the proceedings, the main fight began by Wilson's challenging the President, on the ground of personal enmity. It is impossible in an abridgment to give our readers any sufficient notion of the mess into which the Court was thrown by this proceeding, and by others of a similar character, which, in accordance with the practice of the Court, Wilson adopted. So far as we can make out from the report, it seems that a Jersey defendant has about as extensive a right of challenge for the purpose of setting aside the jurats by an allegation of their bearing enmity against him, as the most desperate litigant could desire; and possibly this may be a very necessary safeguard against injustice in the island. Wilson's challenge of the President apparently operated as a *primâ facie* disqualification of him, for the Court did nothing more till, a third jurat having been sent for, there were two unchallenged on the bench: but no sooner had he made his appearance, than up started Wilson with a challenge against him also, and put the Court again in 'a pretty particular considerable fix.' After a lengthened discussion, in which the plaintiff made a tolerably free use of the 'gibberish,' the new comer settled the dispute by withdrawing from the court, and his exit put a stop to the second scene and first act of the farce. The curtain having drawn up after a few days' interval, it appeared that Wilson had not wasted his leisure. He began by handing in a protest against the validity of the former proceedings, on the ground of the record not having been duly signed and attested by the magistrates. Before this was decided on, the question of making up the court was entertained; and a disengaged judge having been secured, the original president gave up his post. The discussion on the protest then coming on, was proceeding with Jersey decorum, the plaintiff (as we infer, though the report is in English) making liberal use of his mother tongue, when the never-tiring Wilson handed in a protest against the two original judges whom he had not previously challenged; and it was about as neat a specimen of a legal document as perhaps was ever framed. That a Court should seriously take it into their consideration, —and the Royal Court of Jersey appears to have had no option in the matter—is enough of itself, we should think, to amount to a self-condemnation.

"To get out of their hobble the judges proposed to name as *juge commis* their new colleague; but the wide-awake defendant 'had brought with him a number of blank pleas, which he was filling up with the names of those jurats who made their appearance;' and as soon as ever the *juge commis* was suggested, Wilson let fly another challenge and winged him. This course frightened the plaintiff himself, and he protested against the appointment of a *juge commis* on the ground that 'it would be an acknowledgment of the validity of the plea, *and would give Mr. Hammond's client ample opportunity to screen himself from justice*.' After another long argument, abounding with strong personality, and tending still further to lower the dignity (?) of the Court, the last challenge was refused, and the judges retired for a half-hour's consultation. The mode by which they got out of their difficulties was on a par with the rest of the proceedings. Two of the challenged judges satisfied the others, 'having solemnly on their honour said that they entertained no enmity against the defendant Wilson. Each of them, in short, pleaded not guilty,' and so purged themselves of their incompetency sufficiently to enable the case to be proceeded with to the next stage, which was an appeal (granted *en fin de cause*) to the full court!

"The judges being at last enabled to attend to the merits of the case, and the plaintiff having requested the Solicitor-General 'to emit a plea,' which he declined to do, Mr. Hammond 'emitted' one which threw the Court into fresh confusion, 'stating that Mr. Wilson was not properly denominated in the action, inasmuch as he had a right to the title of gentleman, by virtue of two appointments (*which he produced*), the one to the office of attorney in the Court of King's Bench, the other to that of a solicitor in her Majesty's Court of Chancery;' and the Solicitor-General followed it up by another, complaining that his client, Le Gros, had been called '*Mr.* J. Le Gros,' instead of blunt 'J. Le Gros,' in some of the proceedings; and that the other defendant (docked of his postfix of 'gentleman' in the judgment of the Court) had been summoned with the same prefix of '*Mr.*' instead of by his plain unvarnished name 'C. C. Wilson.' Great importance was evidently attached by all parties to these weighty objections. The Solicitor-General declared that if the Court refused Wilson's claim 'on the plea that he was not born in the island,' —for there seemed no doubt that if a Jersey 'gentleman' had been so shorn of his honours the cause must have stopped, 'then *he might well say there was no justice for Englishmen in that court*.'

"Want of space precludes our making any observation on this curious exhibition of insular pettifogging, except that we could scarcely have wished for a better proof of the necessity of extending to the Channel Islands some such ameliorations of the practice of the law as those which of late years have been adopted in England.—*Times*.

A subsequent article in the *Times* continues the history of this very curious case:—

"The Royal Court of Jersey have shifted their scenes, and the libel case *Le Sueur* v. *Wilson and Le Gros*, instead of continuing to be enacted as a broad farce, has become somewhat tragic. The defendant Wilson has been lodged in a *felon's* cell for having protested against the gross injustice with which the Court treated him. His manner, which the insolent attacks made on him by the plaintiff, Le Sueur, with the tacit approval of the Court, had rendered somewhat more energetic than suited the bailli and jurats, appears to have been the real, though it was not the legal, excuse for inflicting on him the vengeance of his judges. The adjourned hearing of the case commenced with an objection on the part of the defendants, that owing to their not having been legally summoned, and the cause not having been legally placed '*à table*,' it could not then be regularly called on. That the objection was perfectly well founded was shewn by the Solicitor-General, to whom the plaintiff replied, that deviations from the strict letter of the law had frequently been acquiesced in, and that the objection came too late.

"The rejoinder, that loose practice could not repeal the law (barely ten years old), and that an objection taken at the earliest possible opportunity could not without manifest absurdity be rejected as "*à tard*," may appear to have been sufficient; but how the Court, though they came to a decision on the point, had made up their minds, is left to conjecture. The Court was composed of the Bailli Sir J. De Veulle, and Jurats D'Avranche and Bisson, who had all been 'recused' (challenged on the ground of personal animosity) by the defendant Wilson, and who, according to another jurat, Picot, ought not, after having been recused, to have assisted in the hearing of the cause. As soon as they returned from their consultation on the plea, with their decision reduced into writing, Wilson said, 'Mr. Bailiff, *I enter my solemn protest against that Act being read, because it emanates from an incompetent court, composed of a bailiff who has been recused, and two lieutenant bailiffs who have been recused, from which recusations they have not yet purged themselves, neither have they the power to purge themselves*.' These words—probably as respectful to the Court as any plea to its competency which could have been framed, and merely stating plain indisputable facts, and an opinion on a point of law, which, whether correct or not, any suitor under similar circumstances must have a right to hold and express—were uttered with great vehemence. The report of the case, with which we have been furnished, states, that 'Mr. Wilson is a man of a warm and animated manner, and under the pressure of Mr. Le Sueur's *insolent attacks* (unchecked by the Court) he occasionally rose to *a trifle more* than the energetic;' and that 'it is difficult to decide whether or not Mr. Wilson's *manner* was justifiable.' We will give the Court the benefit of the doubt, and grant, for the sake of argument, that his *manner* was even as intemperate as Le Sueur's; still in the *words* he employed there is nothing even approaching intemperance; but for those *words*, and for those words *only*, so far as can be learned from the record, was he punished for contempt of Court! As soon as Wilson had concluded his protest, the Bailli ordered him to sit down, and asked the Attorney-General his opinion on the language made use of by the defendant.

"The Attorney-General rose to address the Court, but was interrupted by Mr. Wilson, who requested that he would speak in English.

"The Attorney-General (in English).—*I might do so by courtesy, but* NOT BEING BOUND, I CERTAINLY WILL NOT UNDER THESE CIRCUMSTANCES.' Under these circumstances, forsooth! Being on the point of moving the Court that the defendant should be criminally punished, he would not be guilty of the *courtesy* of making use of words which the defendant could understand. Pretty well for an Attorney-General! We recommend him to read the old State trials, where he will find that even when it was the fashion for Attorney-Generals to bully prisoners, they did so in their own mother tongue, and whence he may possibly get some hints for improving the severity of the Royal Court. After this scandalous avowal, the 'Commis au Greffe,' profiting by the example, took down at first only a part of the protest, *leaving out the concluding words*, but was soon compelled by Wilson to make a note of the whole. Wilson's protest having been recorded, the Attorney-General, after having observed, in Jersey-French, on 'the *indulgence* of the Court in allowing a man to plead his own cause,' and alluding to the defendant's 'greatest ingratitude,' moved that he 'be condemned TO PAY A FINE OF TEN POUNDS TO HER MAJESTY, AND TO DEMAND PARDON OF THE COURT.'

"Mr. Wilson rose and said—Mr. Bailiff and Gentlemen—Every person even in Jersey has, I should presume, a right to defend himself when a sentence is about to be passed upon him. Tread upon a worm and it will turn. I understand the Attorney-General demands that I pay 10*l*. fine to her Majesty, and ask pardon of this Jersey Court. I will neither do one nor the other—never, even if I should in consequence perish on a scaffold instead of by the rascalities of a Jersey gaol. The words I uttered were words that I had a right to utter. They are the truth. The bailiff is recused—is not that a truth? D'Avranche—no, Mr. Judge Avranche, is recused—is that true? Mr. Judge Bisson is recused also—and is not that a truth? And, gentlemen, they *cannot* purge themselves of that recusation. Is it because I am an Englishman, and they Jersey jurats, that I am to be trampled upon? Having said this, I leave the Court to pronounce its sentence.'

"After having made a firm and respectful protest against the competency of the Court to pass sentence on him, he was condemned to pay the fine and ask pardon. He refused to obey, and was removed to the gaol, under the escort of the Deputy-Viscount and a rabble, yelling out their joy at the fancied victory over an Englishman, and encouraged by the Court's having permitted those who were present when the sentence was passed to express their delight, without the slightest rebuke from the Bench, by loud clapping of hands and stamping of feet. Wilson is about fifty years of age, and afflicted with gout and asthma.

"The criminal cell to which he was removed contains an open privy and has an open window. His daily allowance of food is scarcely better than that of paupers under the new Poor Law—two pints of gruel, half a brown loaf, a pint of soup, and a pound and a half of potatoes. His drink, cold water only. He is denied the use of both books and writing materials. All letters to him must be first read by the gaoler. No one can see him without a pass from his persecutors, nor 'unless there be nothing to render the interview *inexpedient*,' and then all conversation must be carried on in the immediate presence and hearing of the turnkey. He is not allowed even to speak to the debtors who walk in front of his cell. An application from him to be attended by his own medical attendant, an Englishman, was refused, and a Jer-

seaman was sent to him, by whom he was grossly insulted at his first visit. Mrs. Wilson sent him a basket of food. This was first searched, and then refused admittance.

"The absurdities and injustice of Jersey laws and practice, and the gross partiality of their judges, find a suitable climax in this *peine forte et dure*, which they dare to inflict on an English suitor, because, accustomed to English courts, English judges, and an English Bar, and smarting under the persecution inflicted on him by petty tyrants revelling in the license of their trumpery jurisdiction, he is carried away by the warmth of his feelings, and takes the liberty of being as intemperate as he sees Le Sueur, the advocate and plaintiff, is permitted to be: but is it to be endured that such flagrant iniquity shall be continued to be practised with impunity? The Jersey jurats have reckoned without their host; and they will find that the notoriety which they have now given to the absolute necessity of a radical change in the administration of justice in the Channel Islands will end far otherwise than they could have imagined. We do not defend Wilson's intemperance; but we must say that he has plenty of matter to plead by way of extenuation of his offence; and that if a man can rely under any circumstances on the certainty of general sympathy when he is punished for open contempt of Court, it must be in such a case as this, when it would be sheer hypocrisy for any third person to regard that Court with respect. For public interests it is not to be regretted that Wilson has dared even to beard the Royal Court. Many important liberties of Englishmen in England are greatly owing to the boldness with which the Bench has been confronted by the Bar or by suitors; and the term by which Wilson's manner will eventually be characterized may depend on the result of his resistance to oppression. If Erskine had succumbed to Mr. Justice Buller in the Dean of St. Asaph's case, his conduct would have been regarded as gratuitous impertinence; but the success with which he maintained the right of trial by jury on that celebrated occasion won him the reputation of a legal hero. But, however much it might be for the advantage of Englishmen in general that Wilson should undergo the extreme of the torture which his irascible judges can inflict on him, he must not be suffered to rot in gaol for the benefit of others; and if he is not immediately treated with as much leniency as Jerseymen under somewhat similar circumstances have been, the Home Secretary must interfere with the strong arm of authority. According to the *Jersey Gazette*, Messrs. Nicolle and Ste. Croix, two of the jurats, committed for *real* contempt in refusing to obey orders made by the Royal Court in its judicial capacity, were merely lodged in the governor's house, 'and were never really imprisoned at all.' The difference between those lodgings and the felon's gaol in which Wilson is incarcerated may serve to shew the difference in the estimation of that Court of Jerseymen and Englishmen, and how far he was justified in challenging his judges on the ground of personal hostility to himself. If they had been anxious to prove the validity of his recusations, they could not have taken a more effectual course than they have done; if they had desired to destroy their own jurisdiction, they could not have laid a better foundation than they have for the eventual introduction into the Channel Islands of TRIAL BY JURY."

At the Court at Windsor, the 7th day of October, 1844, present, the Queen's most excellent Majesty in Council: It is this day ordered by her Majesty in Council, that the Parliament which stands prorogued to Thursday the 10th day of October instant, be further prorogued to Thursday, the 12th day of December next.—From the *London Gazette* of Tuesday, Oct. 8.

WHITEHALL, Oct. 7. The Queen has been pleased to order a writ to be passed under the great seal of the United Kingdom of Great Britain and Ireland, for summoning the Right Hon. Edward Geoffrey Smith Stanley (commonly called Lord Stanley) to the House of Peers, by the style and title of Baron Stanley, of Bickerstaffe, in the county palatine of Lancaster.

IMPORTANT DECISION. — Considerable excitement was occasioned at Greenwich on Wednesday, by the announcement that the long-pending law suits between Sir R. Dobson and Mr. Sutton on the one side, and the watermen of Greenwich on the other, had been finally decided by Sir J. Bailey, to whom they were referred at Maidstone Assizes in March last, in favour of the watermen. The decision of the case of *Reg.* v. *Sir R. Dobson and Others* is not only of importance to the prosecutors, but also to the owners of all waterside property. The facts appear to be shortly these:—The watermen, by means of barges, placed a floating-pier at Garden-stairs, for landing and embarking passengers from steam-boats. This greatly interfered with the profits of the defendants as principal shareholders in the Greenwich Pier Company, and after in vain, for the space of two years, trying to remove the floating-pier, they hit upon the expedient of purchasing from the commissioners of Greenwich Hospital the Salutation Tavern, and other houses adjoining the stairs. Having completed the purchase, they then applied to the corporation of the city of London for a license to embank the River Thames in front of their newly-acquired property, to the extent of about sixty feet into the bed of the river, and thus entirely preclude the landing of passengers excepting from small boats at the stairs. The City granted the license, and the defendants commenced the embankment, when the watermen were advised that, the City not having the power to grant such license, the embankment was unlawful. An indictment was then preferred, and the result is, that in accordance with the decision of Lord Chief Justice Abbot in a similar case, the arbitrator has decided that no such power is possessed by the City authorities. Thus it will appear that the vast revenue derived by the City for driving piles, embanking the river, &c. is illegally taken from the different parties possessing river frontage.

ARTICLED CLERKS.—By an Act passed on the 9th of August last, a remedy was provided for articled clerks in cases where the attorneys had not taken out their annual certificates, or had not registered the same under a recent Act for consolidating the laws of the Profession. A very material question arose, whether a clerk articled for a certain number of years, and whose principal had not taken out his certificate, could be admitted as a person who had served a clerkship in the manner prescribed by the statute. It is now declared by the 4th section of the 7th & 8th Vict. c. 86, that whereas many attorneys, solicitors, notaries public, and others, may have omitted, or may hereafter omit, to take out annual certificates, or to enter and register the same in the proper office, and persons who may have served as clerks to such attorneys, solicitors, or notaries public, may, by reason of such omission, have incurred, or may hereafter incur, certain disabilities, for preventing whereof "be it enacted, that no person who now has, or hereafter shall have regularly served any attorney or attorneys, or notary public, for the term of years required by law, shall be prevented or disqualified from being admitted an attorney, solicitor, or notary public, by reason of any omission of the person or persons whom he served for the same term, or any part thereof, having neglected or omitted to take out his annual certificate, or to enter or register the same, provided such person so having served is otherwise entitled to be so admitted, as aforesaid, by the laws for the time being in force relating thereto."

MATRIMONIAL SUITS.—It appears that the number of matrimonial suits instituted in the metropolitan diocesan courts from 1810 to 1813, was, in England 160, in Wales 2, and in Ireland 16. In Scotland, during the same period, the number of cases brought before the Court of Session, which alone has jurisdiction in marital matters, was 169. This proportion is remarkable, and may arise from the facilities which the public in Scotland have for obtaining divorces. Lord Eldon is reported to have said, "he had been a long time trying to discover what would not constitute a marriage in Scotland." The Scotch law is analogous to the Roman in this respect, a promise of marriage, if followed by connection between the parties, constituting a marriage which may be judicially declared to exist by a decree in an action of declarator. The number of Divorce Acts passed in the same four years was twenty-seven, and the average amount of the fees of the House of Lords on each Act was 87*l*. 16s. 0d. In the Court of Session, the only court in Scotland having jurisdiction in marital matters, the average expenses, when the proof is simple and clear, is about 30*l*. and in other cases upwards of 500*l*.

SINGULAR DISCOVERY OF THE INEFFICIENCY OF THE NEW INSOLVENT LAW.—In a case that came before Mr. Commissioner Evans, on Friday, at the Court of Bankruptcy, in which it appeared that the insolvent had assigned considerable property to his uncle under very suspicious circumstances, Mr. Wilkins, the barrister, said that he had been retained to oppose the insolvent, but he was bound to draw the attention of the Court to the 4th clause of the 5th and 6th Vict. c. 116, which prevented him offering any opposition to the insolvent obtaining his interim order. The clause in question provided that the Court had authority to withhold its protection and punish an insolvent when he unfairly disposed of property *after* filing his petition; but the statute gave the commissioner no power to act in case of the insolvent making off and squandering away his property, provided he did either *before* he filed his petition. Mr. Commissioner Evans concurred in the view of the law taken by Mr. Wilkins, and added, that it was another instance of the Act enabling fraudulent debtors to rob their creditors. The insolvent obtained his interim order, and walked off with his protection.

PERISHED WINE.—Before the passing of the Act 7 & 8 Vict. c. 25, repealing the excise duty on British vinegar, which has recently come into operation, it was the practice to allow perished or sour wine, which, from the length of time it had remained in the vaults at the docks, or other causes, had become unfit for consumption, and not worth the duty to which, as wine, it was liable, to be delivered on payment of the duty as British vinegar, on certain conditions—viz. that a specified quantity of vinegar be put into each cask containing the perished wine, on the open quay, in the presence and under the superintendence of the revenue officers, so as completely to spoil it and render it unfit for use as wine; which being done it was removed to the premises of the party, and placed in charge of the excise, being mixed with stock, and chargeable with the excise duty on British vinegar. But since the Act named came into operation, it has become a question, it having repealed the duty altogether on British vinegar, to what rate of duty sour or perished wine, so delivered, should be liable; and applications have been made to the Lords of the Treasury, requesting that under such circumstances it might, after the usual process of spoiling had taken place, be delivered, duty free. It has, however, been decided that being foreign wine, and strictly liable to that duty, it cannot be delivered as British vinegar, without payment of any duty, but shall, after the regulations with respect to spoiling, &c. have been complied with, be delivered on payment of the duty of 4d. per gallon as foreign vinegar.

WILL OF THE LATE MR. BECKFORD.—The will of this celebrated man (whose singular history is well known) has been proved at Doctors'-commons. At ten years of age he succeeded to the enormous income of 100,000*l*. a year. He expended 273,000*l*. upon Fonthill, which he made a place of unparalleled magnificence. In December, 1822, the great tower fell, destroying a considerable part of the mansion, which was rebuilt at immense expense. In consequence of excessive expenditure and other circumstances, he sold this property, which was purchased by Mr. Farquhar for 330,000*l*.; and Mr. Beckford, with his diminished fortune, retired to Bath. His property has been sworn to as under 80,000*l*. The will has been proved by the Duchess of Hamilton and Brandon (wife of the Duke of Hamilton) and R. S. White, Esq., solicitor to deceased. He gives to his daughter, the Duchess of Hamilton, the bulk of his property, and leaves his executor, Mr. White, 500*l*. He also gives annuities to servants and other persons, and desires to be buried near Lansdowne Tower. The will is very short.

SHIPPING AND TONNAGE (AMERICA).—A return of the number and tonnage of all vessels entering and departing from the ports within the limits of all the Consular stations in the United States of America, for the years ending the 31st day of December, 1839, 1840, 1841, 1842 and 1843, was moved for some time back by Sir Howard Douglas, the hon. member for Liverpool. The House of Commons ordered it to be printed on the 1st of August instant. Taking the year 1843 by itself, we find that the following information is afforded by the return before us. The number of vessels which arrived at New York was—British, 276, and foreign, 201. The number which departed stood thus—British, 258; foreign, 177. The gross total invoice value of their inward cargoes was 4,951,041 dollars, and the gross total invoice value of their outward cargoes, 4,787,249 dollars. Into the port of Philadelphia, 59 vessels entered (British and foreign), whose cargoes were valued at 39,185*l*. while 59 vessels cleared outwards, whose cargoes were valued at 52,320*l*. Into Charleston, 92 British vessels entered, with cargoes valued at 31,223*l*. and 96 cleared outwards, with cargoes valued at 447,850*l*. Into New Orleans, 268 vessels entered inwards (British and foreign), with cargoes valued at 1,002,008 dollars, whilst 249 cleared outwards (British and foreign), with cargoes valued at 5,234,486 dollars. Into the ports of Massachusetts (Boston, &c.), 901 vessels (all British), entered inwards, with cargoes valued at 514,099*l*. and 900 (all British) cleared outwards, with cargoes valued at 87,427*l*. From various other ports of the Union, accounts have not yet been received, whilst in some cases the figures are not sufficiently significant to warrant us in occupying our space with a lengthened detail. The ports in question include those of Maryland, Alabama, and Floridas, Virginia, Georgia, Maine, New Hants, &c.

A Return, pursuant to Act 5 & 6 Wm. 4, c. 29, and 5 & 6 Vict. c. 122, and to an Order of the Honourable the House of Commons, dated May 9, 1844, shews that: In 1841, the amount of dividends transferred, was 602,228*l*. 0s. 8d.; in 1842, 702,816*l*. 16s. 4d.; in 1843, 1,118,599*l*. 2s. 10d. The amount paid out was, in 1841, 523,148*l*. 9s. 3d.; in 1842, 661,230*l*. 19s. 8d.; in 1843, 1,067,976*l*. 3s. 5d. In the same years respectively, payments made by orders of the Court were, 13,452*l*. 7s. 10d., 5,012*l*. 11s. 6d., 7,686*l*. 14s. 6d; by the Judges: Lord Chancellor, 7,060*l*. 3s. 4d., 660*l*. 13s. 9d., 655*l*. 10s. 2d.; by the Commissioners, 360,314*l*. 6s. 10d., 251,967*l*. 10s. 10d., 413,571*l*. 19s. The amount exhibited in the payments made by order of Commissioners, arises in consequence of an order of the Lords Commissioners of the Great Seal, dated 31st October, 1835, whereby the signature of the judge, for payments out, was dispensed with, and the signature of a commissioner, testified by a deputy registrar, was substituted. The net balances existing on

the 1st January, 1844, were: On the Bankruptcy Fund account, 1,506,407*l.* 14*s.* 7*d.*; on the interest arising from Bankruptcy Fund Account, 31,398*l.* 7*s.* 8*d.*, and 60,000*l.* invested in Consols; on the Unclaimed Dividend Account, 7,387*l.* 9*s.* 4*d.*, and 23,000*l.* invested in Consols; on the Secretary of Bankrupts' Account, 7,048*l.* 15*s.* 1*d.*, and 15,000*l.* invested in Consols; and on the Secretary of Bankrupt's Compensation Account, 8,774*l.* 9*s.*

CORRESPONDENCE.

LETTER BEFORE ACTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will you allow me, as one of your subscribers, to inquire of experienced practitioners whether an attorney can legally charge the party to whom he writes, demanding debt, for the letter, if the debt is tendered, either to him or the plaintiff, before a writ issues? There is an opinion entertained by some members of the Profession that he cannot do so, and that if a debtor tenders the debt under such circumstances either to the plaintiff or his attorney, they are bound to receive it; and if they do not, and commence an action, the debtor may plead a tender, which will be an answer to the action, as the action would only be brought to recover the debt, and not the costs.

Mr. Dax, in his work on Costs, p. 141, says: "In the case of a letter requiring payment of a debt, before the commencement of an action, a fee of 3*s.* 6*d.* is allowed, and may be claimed by the attorney, even in the event of the debt being paid before a writ issued."

It appears highly reasonable that an attorney should be able to make the debtor pay for the letter; under such circumstances he could not refuse to pay for a writ, if it were issued in the first instance, and I think it very advisable that one uniform practice should exist throughout the Profession with regard to this subject. I shall, therefore, feel glad if some one of your experienced correspondents would favour the Profession with his views on the subject, and point out, through your valuable journal, the proper course for an attorney to adopt to recover his charge for the letter under such circumstances.

I am, Sir, yours, &c.

Congleton, Oct. 5, 1844. THOS. COOPER.

REGISTRATION APPEALS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Many members of the Profession would with myself feel greatly obliged to any of your readers who were engaged in the registration appeals of last year, if they would inform us, through your columns, what was the cost of the appeal, either in the total, or (which would be more useful) the items of those costs. I am, Sir, yours, &c.

Liverpool, Oct. 7, 1844. AN ATTORNEY.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

Portsea, Oct. 8, 1844.

SIR,—On this subject I would make a few remarks. Mr. Durrant has given several reasons for adopting either this practice or some other, which would have the effect of procuring for attorneys that attention in courts of justice, and that facility for performing the duties which devolve upon them there, which it is manifestly unjust not to afford them. Ready access ought at all times to be afforded to attorneys in the courts, in order that, whenever they may choose to do so, they may put themselves in the way of acquiring a practical knowledge of duties which the very next day may find them called on to discharge, and may also have the advantage of hearing the speeches of counsel, and remarks of the judges, in the cases which come before them for adjudication. But how much more ought they to be able easily to gain admission into courts when they actually are engaged in the conduct of a cause; indeed, what a crying injury is it that they should experience the slightest difficulty in so doing. But how do we find it in practice? First, the attorney has to fight his way up to the door of the court; having happily accomplished this, the next difficulty is to prevail with the gentleman who keeps it to let him in; this person, on the attorney's exhibiting his brief, and saying "he is an attorney," will probably open the door; first, however, it may be politely making the remark (which I once heard made to a gentleman), "why you are all attorneys." Having advanced thus far, he has to make his way through the crowd to his counsel; this he will find to be no easy matter, if, indeed, he should be able to do it at all, and not be compelled to throw his brief at the counsel's head. The crowd being penetrated, he will find, perhaps, that he has, goose like, to hide his head under his wing, lest, in passing the gentleman who is addressing the judge or jury, any part of the oration should be lost by the interposition of so solid an obstacle. At last, he is near his counsel; if he is a reasonable man, he will not expect to obtain a seat at all, much less a comfortable one, but will content himself with communicating with the advocate by making a desk of the crown of his hat, and forwarding notes through the medium of the tipstaff, who will possibly condescend to fix the aforesaid notes on the point of his long stick, and "poke" them over to the learned gentleman addressed, who, in due time, will procure the tipstaff to match, with *his* long stick, to "poke" back answers.

Now, I do say, that for attorneys, who are really the officers of the court, and rank next to barristers in point of importance, to have all this inconvenience superadded to the anxiety they must naturally feel properly to discharge their duties, is a crying injustice; every proper accommodation ought to be rendered to them, in order to the due performance of their obligations, the same as is rightly rendered to barristers. So keenly do I believe this rude treatment, to which attorneys attending courts are subject to be felt, that I strongly suspect it sometimes causes an unwillingness on the part of old practitioners to take a cause into court. And no wonder. Here are persons educated as gentlemen, living as gentlemen, and accustomed to be addressed and treated as gentlemen, who are no sooner called upon on the part of their clients to attend the courts, than they find themselves reduced to the necessity of almost seeking as a favour that which is their right.

These observations apply to the first and second reasons Mr. Durrant has given for wearing gowns, and I think these are the most important. The others, and especially the being distinguished from the contemptible and disreputable fry of "sham lawyers" of various species, are, however, very cogent ones. But I would suggest that, whatever is done, should be done, not merely by voluntary arrangement, but by the order or recommendation of the judges, who, I presume, on proper application, would readily sanction the wearing of gowns, or adopting any other custom, to attain the proposed ends, especially now the "sham lawyer" question is exciting so much public attention; this would insure the general observance of the regulation decided upon, and unanimity on the subject would be very desirable.

I remain obediently yours,

A. CHAMBERLAIN.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR, I am glad to find the subject of attorneys' gowns has excited the attention of the Profession. The frauds and malpractices committed by sham attorneys and others at the Central Criminal Court and within the purlieus of the metropolitan police courts, so ably and properly exposed and reprobated in your columns, alone shew the necessity of attorneys wearing their proper costume, for no step seems better calculated to eradicate the evil complained of than the universal adoption of that practice. Independently, however, of this consideration, I have long been of opinion that the members of the honourable Profession of the Law ought to take every available method of increasing its dignity and importance, and to which end the practice of wearing gowns may doubtless be resorted to with the greatest propriety. Mr. Abell states, in your last number, that some of the professional men here intend, on the opening of our new Town Hall (which will shortly take place) to adopt the practice: I beg to say I am one of the attorneys alluded to, and that I have provided myself with a gown accordingly.

The clergy, whilst discharging their public duties, wear a respectable and fitting costume; barristers, whether exercising the more grave and sober duties of judge, or appearing as advocate, give due weight and importance to their station by wearing the gown and wig; and proctors, who stand in the same relative position in the Admiralty and Ecclesiastical Courts as Attorneys in the courts at Westminster, *are not allowed to attend in court without their gowns.* Why, then, should not attorneys be at once known and distinguished by their costume? I should think all legal functionaries, from the judges downwards, would hail with satisfaction the improved and orderly appearance the courts of law would present, were the practice of wearing the respectable and uniform garb of the Profession generally adopted.

Mr. Durrant, of Chelmsford, alludes to the difficulties sometimes experienced by attorneys in obtaining admission to courts of justice at assizes and sessions; this a crying evil! and even if a professional man succeeds in gaining an entrance, he finds, to his mortification, the attorneys' seats occupied by prosecutors, witnesses, or idle lookers-on, who evince no disposition to vacate their places, because the attorneys cannot be distinguished from any other person; but once adopt the professional costume, and way will be made, as well by the bailiffs as the occupants, for those who are entitled to the seats.

I would, in conclusion, remark, that when attorneys are admitted and sworn they are invested with the gown, the distinguishing garb and characteristic of their profession.

Trusting that the practice will be adopted by the Profession universally, and hereby enrolling myself amongst the number of those who are willing to join Mr. Shapland, Mr. Abell, Mr. Durrant, and others, "in order to put the wearing of the gown in practice!"

I beg to subscribe myself faithfully yours,

JOHN H. CHURCH.

Colchester, Oct 9, 1844.

PROFESSIONAL MALPRACTICES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg to suggest a very simple plan of teaching the black sheep of the Bar good manners; which is for the solicitors to come to a resolution never to give a brief to any such people. They are most of them known, and those that are not so already cannot go on long without discovery.

One-third of the business transacted in court by barristers could be performed just as well by any solicitor of ordinary ability; but if a solicitor attempts to address a Court, if it be only to ask leave to put a paper into the hands of the clerk of assize or clerk of the peace, up jump half-a-dozen gentlemen of the Bar to protest against the invasion of their professional rights. Not, by the way, that I blame them at all for so doing; no respectable solicitor wishes to deprive counsel of their rights, and no respectable barrister will act as attorney and counsel.

I am, Sir, your obedient servant,

Hadleigh, Oct. 10, 1844. ISAAC LAST.

SELECTIONS FROM CORRESPONDENCE.

"A COUNTRY PROCTOR" thus replies to a practical query in a previous number on the relationship of Attorney and Proctor:—

In reply to the query of your correspondent "Curator" (LAW TIMES, Sept. 28) relative to the legality or illegality of an attorney's participating in the profits of the proctor whom he employs, I would beg to refer him to 53 Geo. 3, c. 127, ss. 8 & 9. By sec. 8 any proctor, whether of the Arches Court of Canterbury, or any other ecclesiastical court, is liable to be struck off the rolls who shall permit his name to be used in any business appertaining to the office of proctor, "to or for or on account of, or for the profit or benefit of, any person or persons not entitled to act as a proctor, *or shall permit or suffer any such person or persons to demand or participate in any such profit and benefit*," and by sec. 9 a penalty of 50*l.* is imposed (for every offence) upon any person, who in his own name, or in the name of any other person, shall "make, do, act, exercise, or perform any act, matter, or thing whatsoever in any way appertaining or belonging to the office, function, or practice of a proctor, for or in consideration of any gain, fee, or reward, *or with a view to participate in the benefit to be derived from the office, function, or practice of a proctor*, without being admitted and enrolled."

The language of the 8th section I think too unequivocal to be mistaken; and indeed it has been construed by some proctors at Doctors' Commons into a prohibition against their permitting, not only attorneys, *but proctors of diocesan courts*, to share in the emoluments of any ecclesiastical business with which they may intrust them, on the ground, I conclude, that a proctor of a diocesan court is "*not entitled to act as a proctor*" in the Arches Court. The 9th section it seems to me would only apply to persons not being proctors, who, in their own names, or in the names of others, *actually perform* the duties of a proctor for gain, &c.; thus an attorney may quietly participate in the profits of his proctor with impunity, so long as he does not himself perform any proctorial act, but the proctor permitting such participation is unquestionably liable to be struck off the rolls of his court; and this appears to have been the view taken by the framers of the Ecclesiastical Courts Bill, brought in by Dr. Nicholl, Sir James Graham, and the present Chief Baron of the Exchequer, in February, 1843; for, by the 28th section of that Bill, it was intended to enact that 53 Geo. 3, c. 127 should be applicable to "*proctors and branch-proctors of her Majesty's Court of Arches*," and goes on further to impose a penalty of 50*l.* on any attorney, solicitor, surrogate, or other person who should "*receive from any such proctor or branch-proctor any gain, fee, or reward in respect of the doing, exercising, or performing of any act, matter, or thing whatsoever, in any way appertaining or belonging to the office, function, or practice of a proctor*;" thus inflicting a punishment on both offending parties, the attorney client as well as the proctor. It is, doubtless, an impropriety for an attorney to share any of the emoluments arising from business not within his own peculiar province, though he may have introduced it to the professional man to whom the performance of such business properly belonged; but I must confess myself at a loss to see any greater impropriety or injustice in a proctor of the Arches Court of Canterbury permitting his country client, the diocesan proctor, to share in the profits of business furnished by such country proctor, than in the recognized practice between the London agent and country attorney. I will not, however, trouble

you with any discussion upon that point. What I have stated will, I think, satisfy your correspondent that the practice alluded to by him is illegal. I know not whether the practice of an attorney dividing with his broker the commissions on sale and purchase of stock be legal or not, but the great impropriety of such a practice cannot, I am satisfied, be for one moment questioned by any honourable professional man.

Our Correspondent "Pous" has obliged us with the following useful hint as to the Duties of Constables under the recent statute.

Permit me to direct your attention to the 7 & 8 Vict. c. 33, entitled "An Act for facilitating the Collection of County Rates, and for relieving High Constables from attendance at Quarter Sessions in certain cases, and from certain other duties." Sec. 8, after reciting that it is expedient to relieve high constables, in certain cases, "from the duty of attending at the Court of Quarter Sessions," enacts, That where high constables have heretofore been usually appointed at courts of quarter sessions, the high constables of such places shall hereafter be appointed by such justices as may be present at the special session of their division, held for the purpose of hearing appeals against the rate.

As high constables have an idea that their attendance will not, under the Act, be required at the quarter sessions, perhaps it will be as well to destroy that pleasant hope, to prevent their getting into a scrape, by informing them, that although the Act recites that it is expedient to relieve them in *certain cases* from the duty of attending, yet the slight mistake (not by any means unusual) has been made of omitting any mention of what those certain cases are. The whole section is a confused jumble, both as regards the sense and structure of the sentence—"But if the hundred or other *like* division." What is a *like* division? A new legal phrase has been used in one place, where justices may determine the DIVISION of *the special sessions*. The whole section well deserves your attention, and your able commentary to arrive at the true meaning, which at present can only be guessed at.

The subject of "PROFESSIONAL COSTUME" continues to excite a great deal of interest. We select from the correspondence on the subject some of the best of the arguments *pro* and *con*. J. B. W. thus writes:—

The resumption of an appropriate professional costume is of more importance than many are inclined to suppose. Mr. Durrant's letter places the matter in a proper light. If wearing gowns do no more for us than relieve us from the crush, obstruction, and general inconvenience of a crowded court, that is sufficient to overthrow the only "argument" I ever heard against it. But as it will also manifestly mark the attorney, it will also mark the fraudulent pretender. *We* shall be more observant of the person who, without a frock, is yet doing in court that which denotes an attorney. Counsel will and *must* be less blind to the real character of him who hands over a brief.

The only counter observation is that the appearance of a gentleman is more appropriate than the close resemblance to an usher. But I presume the gown to be used will sufficiently mark a distinction. If the matter were put to the vote, a vast majority would be found in favour of the proposal. Still it is manifest the silent majority quail to the fear of being ridiculed by some of their dissenting brethren. Permit me to suggest a simple mode of turning the laugh upon the other side. Let those in favour of the revival request the leaders on their circuit upon the opening of the commission, to announce to the judge their intention and solicit his lordship's direction to the officers of the Court that they take cognizance of the attorney's gown and see the wearer has his rightful facility of entrance and his proper seat in court. If, as I assume, the right to wear a gown is clear, his lordship would doubtless comply, and methinks the ambition, the misplaced ambition, of being in a court of justice "a gentleman" instead of "a lawyer," will gradually subside before the prospect of comfort attached to the wearer of the gown; and who can doubt that the provoking smile of ridicule which curled the lip outside the court will sink into sobered gravity at the usher's sceptical remark, "You are not an attorney, sir"? It is true he might beckon to a costumed brother to testify that he is an attorney, but as the gown would supersede the unpleasant necessity of the reference to one upon whom he had inflicted the sneer, depend upon it gowns would prosper while sneers died away.

The same plan is applicable to all courts, even to petty sessions; and since nobody can be more interested in the aspect and order of his court than its president, it is difficult to imagine any judge, commissioner, or magistrate who would not feel that in compliance he studied his own official dignity while he granted ease and comfort to the practitioners before him.

On the same subject of "Attorneys' Gowns," X. Y. who dates from South Ham, Devon, differs from the majority of our correspondents, and thus urges the argument. He subjoins some just remarks upon SHAM ATTORNEYS.

"It appears to me that *gowns* would prove very inconvenient to be worn by attorneys in crowded courts such as the assizes; their case differs widely from that of counsel, for the former are necessarily more locomotive, and it often happens that they are obliged to pass in and out and to and fro through densely-crowded avenues, and to go about the assize town "in all weathers." I submit that gowns would therefore prove a sad incumbrance. Counsel, too, have, I believe, generally the privileged accommodation of a robing-room, where they divest themselves at pleasure of their gowns and wigs, but which cannot be expected to be provided for attorneys. Nevertheless I am an advocate for a distinctive badge; what it should be I am not prepared to suggest, unless it were something like the costume which I remember seeing worn in a French court at Paris. I cannot well describe it, except by terming it a sort of scarf attached to the back, of very chaste appearance, and free from the least approach to an incumbrance; indeed, I should say it was invented to avoid that objection; some of your correspondents can no doubt describe it better, and add their opinion as to its eligibility for our purpose.

SHAM ATTORNEYS.

I have reason to suspect that the names of attorneys are often indorsed on briefs without their knowledge, and even with *fictitious* names *purporting* to be those of attorneys; and how is this to be detected, seeing that no address or description is required?

Suppose a brief handed to counsel with the name of "Smith," or even "*John* Smith," indorsed; this is *primâ facie* the name of an attorney, and it cannot be expected that counsel should go into a *cross-examination* to ascertain whether it be a real Simon Pure who hands or *sends* him the brief; the name may not be even a forgery, but that of the *pseudo* practitioner himself, and so the matter passes: no impropriety seems to be surmised as possible, so as a *name* be indorsed. The only feasible mode I can suggest of obviating this palpable mischief is, that all cases and matters coming before courts of justice, or for the present argument I may confine myself to the quarter sessions, should be *entered* with the clerk of the peace after the manner of entering causes at Nisi Prius, or appeals at sessions, in a book for this express purpose, in a tabular form, with columns for the names of the attorneys concerned on each side (and, query, counsel also), or, if none be employed by a party, then the words "in person" to be inserted. It might not be practicable to insist on this being done *previously* to the sessions, or within a limited period before the coming on of the business; but, so far as convenience would admit, this *should be* required; and, in all cases not previously entered, the object might be attained by the officer of the court demanding the names at the time of calling on the business, and immediately inserting them in the appropriate columns; but both the Christian and surname should be given, and the place of residence, or there would be no effectual security, especially in populous towns or districts. Let this "Book of Entry" be accessible to attorneys without fee, and the malpractice complained of would be cut up by the root. This hint may doubtless be improved on. Something *must* be done to quash the grievance, and I can think of nothing better than that every person presenting himself as an *officer of the court* should produce his testimonial, or, which would have same result, comply with a regulation perfectly facile, by which his qualification may be *tested*.

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THE LAW TIMES.

SATURDAY, OCTOBER 12, 1844.

A SUGGESTION.

SOME correspondents have reminded us of a suggestion we threw out some months since for the formation of an Insurance and Reversionary Interest Society among the Profession.

We can assure our friends, that although other subjects have for a time engrossed our attention, this one has not been forgotten. The many communications which the publication of the plan called forth have been duly weighed, objections have been considered, and improvements adopted, and again we propose to direct to it in a more matured shape the attention of the readers of the LAW TIMES.

The proposition is founded upon the following considerations. Societies for the purchase of Reversionary Interests and Insurance Offices everywhere flourish. By whom are they mainly supported? By the Solicitors. What advantage do they reap in return? A paltry five per cent. upon their payments. The profits pass into the pockets of capitalists, for whose lion's shares the attorney is the provider.

The plan we are about to submit to the serious consideration of the Profession will have for its object the securing to those who bring the business all the benefits of it. As thus.

We propose to form a Solicitors' Reversionary Interest and Insurance Society, for the purpose of Life Assurance in all the forms required in practice, and the purchase of Reversionary Interests.

The Society to be in the nature, partly of a Mutual, and partly of a Proprietary office; for inasmuch as a capital will be necessary at first, this can only be supplied by shares, which we propose shall bear a fixed interest, and to be paid off as soon as the funds will permit.

The profits of the Society we propose to apply thus—and herein lies the novelty, and to the Profession the vast advantages of the scheme—One half to be divided among the insurers. The other half to form a permanent fund to be applied as follows:

Pensions to the widows of members of the Profession transacting their business with the Society.

Pensions to unmarried daughters, and children under age.

Pensions to members of the Profession in old age.

Occasional relief to distressed members.

The amount of pensions to be regulated, first, according to the amount of profits, of course; and secondly, according to the amount of business brought into the office by each member.

Estimating the vast amount of insurances which the Solicitors yearly effect, and which it will be in their power to bring to their own Society, there is little doubt that in a very few years the profits would be sufficient to provide liberally for the old age or orphan families of all its members.

We do not propose that this Society should attempt to obtain business by any of the usual arts. Every security for the interest of the insurers should be taken that ingenuity can suggest. A competent and responsible Directory should be formed, the sanction of an Act of Parliament given to it, and the fund that is to meet the calls held sacred and apart. Our design is only that the legitimate profits which the Solicitors now carry to other offices and stranger proprietaries, shall be secured for their own benefit.

It may be said that already we have the Law, the Legal, and other professional Insurance Offices; but these, though in name associated with the Profession, are not so in reality. Who reaps any advantage from them save the proprietary, who are not of us? The plan we have suggested differs from all existing ones in this,

that it will *bonâ fide* secure to the Profession the entire profits of their own business.

This is but a rude outline of a scheme, the details of which would occupy two or three pages. We throw it out for discussion, and shall be glad to hear opinions upon it and suggestions of improvement. We conscientiously believe it to be one of a series of measures to be accomplished by a cordial union of the Profession, which will go far to make it what it ought to be and will be, if the work be begun in right earnest, the most influential, because the most respectable and intelligent, body of gentlemen in the empire.

IRREGULAR PRACTICES.

Assuming as undeniable the fact, that in the Central Criminal Court and the Middlesex Sessions frequently, and at the assizes and county sessions sometimes, briefs *are* accepted by *some* counsel from persons who are not attorneys, and therefore not authorized to give them, we proceed now to the consideration of the remedies for the mischief.

The *Morning Chronicle*, which has handled the subject with great spirit and ability, is of opinion that, in a more strict examination and in a closer scrutiny into character, before admission to the Bar, is to be found the cure. This might do something: it might check, but it would not eradicate, the evil. Unscrupulous persons would still find their way to the counsel table, for few fall until they are tempted, and temptation seldom besets a man until he is thrown upon the world. An unexceptionable youth might yet result in a very disreputable manhood.

While, therefore, we would not oppose the subjection of an aspirant to the duties of an Advocate to any fair trial of his fitness, when on his way to the post which his ill-conduct disgraces as much as his worthy maintenance of its high standard of honour exalts, we would strenuously urge the superior advantages of a stricter watch over him when he has arrived there. The checks now nominally imposed must be really brought into play. The Bar must set itself up as the jealous guardian of its own honour. The Benchers must perform the duty devolving on them. The Judges must lend their aid; and, last, but not least—for they may accomplish more than Bar, Benchers, and Judges together—the Attorneys must take up the question, and not only wield the rod they hold in their hands *in terrorem*, but *use it!*

What should the Bar do? Adopt some formal resolutions to the effect that the practices recently revealed are unprofessional, and that it is contrary to etiquette to accept briefs from any but an attorney or his known clerk acting *bonâ fide* for and under the immediate sanction of his master. This, though the acknowledged rule, is evaded under various pretences. A formal reissuing of it will leave no excuse for its violation hereafter.

And at the courts which have witnessed the worst instances of its breach, there should be a special interference for the suppression of the mischief. Let the Bars of the Central Criminal Court and the Middlesex Sessions form a mess, as do the Bars on the Circuits, dining together once a year. If any offend against the rules, let them be expelled. If any refuse to join, or be expelled, let the Attorneys do their duty towards those who act honourably, and one and all refuse to give briefs to one who will not make, or will not keep, a rule framed as much for the benefit of the Attorneys as for that of the Bar—or more.

The Benchers should second the effort at purification by disbarring for very gross breaches of professional decorum.

And the Judges might exercise their authority, and virtually suspend, by refusing to hear, a counsel who has forfeited his character.

But the Attorneys, as we have said, may do more than all; indeed, they have the remedy in their own hands, if they will but use it fearlessly. Let them unanimously resolve, and let the resolution be known, that their briefs will not be given to any counsel who offends against the rule that a brief shall come only through an attorney.

And that the sham lawyers may be extinguished, we would earnestly recommend the establishment of a roll of practitioners at the Central Criminal Court, to which any attorney shall be admissible, but over which the Judges shall have so much control as to enable them to erase from it the name of any person guilty of improper conduct. There could then be no excuse for counsel accepting a brief from any person who is not on that roll; and were he to do so, his punishment would be signal, and his employer would be subject to the penalties of the Solicitors Act.

We throw out these suggestions with deference, and if there be objections, we shall be glad to hear them. It is agreed on all hands that something must be done; and that being admitted, the wisest course is to set ourselves seriously to the consideration of what that something shall be. The time for talking is past; the time for action is come; but it will be as well to deliberate before we act.

THE HEIR-AT-LAW SOCIETY.

We are about to lay before our readers the *arcana* of a speculation calling itself *The Heir-at-Law Society*. Ere we do so, we desire to be armed with as many documents as possible which may throw light upon its dark doings. We shall feel obliged for any authentic information which may have reached any member of the Profession in the course of his practice. If expressly desired, communications on the subject will be held in strict confidence.

ADVERTISING ATTORNEYS.

From two or three quarters has our attention been directed to a highly reprehensible advertisement in the *Birmingham Gazette* of Oct. 7th. If any of our readers could help us to trace the offender, we will place him in the pillory. Here it is:—

"TO SOLICITORS.

"A Professional Gentleman in London being desirous to extend his Practice, will undertake the Agency of any respectable Country Solicitor, at a stated annual remuneration, to be regulated according to the nature of the practice.—Letters addressed to A. Z. at Mr. Gregory's, Law Stationer, No. 7, Cook's-court, Lincoln's-inn, London.—References as to respectability will be given and required."

We should like much to see the "references as to respectability." The same advertisement has appeared also in the *Liverpool Mail*.

SHAM LAWYERS.

Another of these suspicious personages has made his public appearance. This is a copy of a card which has been circulated in the neighbourhood of Slough. Let the Law Societies look out:—

"J. HARMAN,

"County Court Bailiff, for Bucks, Berks, and Surrey, and Collector of Debts and Rents, Slough, Bucks.

"Attends at No. 14, Church-street, Windsor; the George Inn, Colnbrook; Swan Inn, Maidenhead; and Barleymow, London-street, Reading; once a fortnight: the George Inn, Iver; George Inn, Chalfont, St. Peter's; One Tun, Sunning-hill; Red Lion, Great Marlow; Bull Inn, Wooburn Green; and King's Arms, Egham; once a month: where all orders in J. Harman's department will be duly attended to, and all money paid over as soon as received.

"Commission, two shillings in the pound, on the amount collected, and one shilling for a letter, if nothing got."

VERULAM SOCIETY.

The fourth number of Bittleston and Symons's *Magistrates' Cases* was published yesterday, and the first part, containing all the cases of the last two Terms, is now ready. Price to members, 4s.; to the public, 6s.

The third and fourth numbers of the *Real Property and Conveyancing Cases* are in the press.

We are pleased to be enabled to announce a considerable accession of members. The following gentlemen have joined the Society since our last publication:—

Gregson, Edw. R. Walton, Norfolk.
Edge, Mathias, Ormskirk.
Tucker, Robert, Ashburton.
Waldron, James, Wiveliscombe.
Scholey, John, Wakefield.
Wartnaby, George, Lutterworth.
Mounsey, G. G. Carlisle.
Gaches, Wm. Daniel, Peterborough.
Palin, Richard, Shrewsbury.
Knowles, Isaac, Wellington, Salop.
Collis, Wm. Blow, Stourbridge.
Preston, Chas. Abbot, Debenham.
Sperling, J. M. Walton-on-the-Naze.
Cowdery, Chas. Newport, Isle of Wight.
Handy, John T. Malmesbury.
Badger, Thomas, Attorney and Coroner, Rotherham.
Dewes, William, Ashby-de-la-Zouch.
Sykes, Edward, Wakefield.
Kenyon, George, Thorne.

THE CRITIC.

New Books.

Best on Presumptions of Law and Fact.

(*Continued from page 504, Vol. III.*)

Mr. Best then proceeds to consider the presumptions that arise in international and maritime law. He remarks:—

"With respect to international law, its very existence as a science rests on one important presumption. 'In the silence of any positive rule,' says Dr. Story, 'affirming or denying, or restraining the operation of foreign laws, courts of justice *presume* the tacit adoption of them by their own government, unless they are repugnant to its policy, or prejudicial to its interests.' (Story, Conflict of Laws, chap. 2, art. 38.) 'So,' says Professor Greenleaf, 'a spirit of amity, and a disposition to friendly intercourse, are presumed to exist among nations as well as among individuals.' (Greenl. L. Ev. art. 43, p. 48.)"

The various presumptions as to domicile, &c. are then examined *seriatim*. So in maritime law the presumptions of seaworthiness, of loss of the ship from absence, and so forth, are set out in order.

The next chapter is devoted to miscellaneous presumptions, such as the ownership of the soil of rivers, highways, wastes, ways, and in cases of contracts.

"In the case of contracts between individuals, many presumptions of law are to be found, based on general policy and convenience. Thus, it is conclusive presumption of law, that an instrument under seal has been given for consideration; which presumption can only be removed by impeaching the document for fraud. (3 Stark. Ev. 931, 3rd ed.; *Lowe* v. *Peers*, 4 Burr. 2229.) There is a remarkable exception to this rule, where the consideration of an instrument under seal is a restraint of trade, in which case a consideration must appear on the face of the instrument. (See *Mitchell* v. *Reynolds*, 1 P. W. 181, and the judgment of Parke, B. in *Mallan* v. *May*, 11 M. & W. 65, where most of the cases are referred to.) So, although in the case of contracts not under seal a consideration is not in general presumed (*Rann* v. *Hughes*, 7 T. R. 350, n. *a*), we have seen that the rule is reversed in bills of exchange, promissory notes, and some other mercantile documents. (Chitty and Hulme on Bills of Exchange, 68, 69; Byles on Bills, 2, 88, 4th ed.)"

We come now to

Part III.

ON PRESUMPTIVE PROOF IN CRIMINAL CASES.

All judicial evidence is divided into *direct* or *circumstantial*.

"When the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness and veracity of which there seems no reason to question, the evidence of that fact is said to be *direct*, or positive. By *circumstantial* evidence, on the contrary, is meant, that the existence of the principal fact is only inferred from one or more circumstances which have been established directly. And when the existence of the principal fact does not follow from the evidentiary facts as a necessary consequence of the laws of nature, but is deduced from them by a process of probable reasoning, the evidence and proof are said to be *presumptive*. (3 Benth. Jud. Ev. 2.)

The value of *presumptive* evidence is thus accurately set forth:—

"The elements, or links, which compose a chain of presumptive proof in criminal cases, are certain moral and physical coincidences, which individually indicate delinquency in the accused; and the probative force of the whole depends on the *number*, *independence*, *weight*, *and consistency* of those elementary circumstances. A *number* of circumstances, each individually very slight, may so tally and confirm each other, as to leave no room for doubt of the fact they tend to establish; but if they are not *independent* of each other, and all arise from one source, an increase in the number of the circumstances does not increase the probability of the hypothesis. (Beccaria, s. 7; Theory of Presumptive Proof, 57; 1 Stark. Ev. 567, 3rd ed.) But it is also of the utmost importance to bear in mind, that, where a number of *independent* circumstances all point to the same conclusion, the probability of the justness of that conclusion is not merely the *sum* of the simple probabilities of the circumstances composing the chain, but is the multiplied, or compound ratio of them.(*a*) 'Not to speak,' says Mr. Bentham, 'of greater numbers, even *two* articles of circumstantial evidence, though each taken by itself weigh but as a feather—join them together, you will find them pressing on the delinquent with the weight of a millstone.' (3 Benth. Jud. Ev. 242.) Thus, on an indictment for uttering a bank-note, knowing it to be counterfeit, proof that the accused uttered a counterfeit note amounts to nothing, or next to nothing—any person might have a counterfeit note in his possession: but suppose further proof adduced, that, shortly before the transaction, he had, in another place, and to another person, offered another counterfeit note, the presumption of guilty knowledge becomes very strong. Lastly, the circumstances composing the chain must all be *consistent* with each other,—a principle sufficiently obvious in itself, and which will be further illustrated presently."

Mr. Best properly condemns the absurd arguments frequently urged against presumptive evidence in general. But, on the other hand, he is equally energetic in denouncing an opposite error, still more dangerous.

"Juries have been told from the bench, even in capital cases, that 'where a violent presumption *necessarily* arises from circumstances, they are more convincing and satisfactory than any other kind of evidence, because facts cannot lie' (*b*). Numerous remarks might be made on this strange proposition; the first of which that presents itself is, that the moment we talk of any thing following as a *necessary* consequence from others, all idea of *presumptive* reasoning is at an end. (2 Ev. Poth. 329.) Secondly, even assuming the truth of the assertion, that facts or circumstances cannot lie, still, so long as witnesses and documents, by which the existence of those facts is to be established (Domat, liv. 3, tit. 6; Theory of Presumptive Proof, p. 28), can, so long will it be impossible to arrive at infallible conclusions. But, without dwelling on these considerations, look at the broad proposition—facts cannot lie. Can they not, indeed? When, in order to effect the ruin of a poor servant, his box is opened with a false key, and a quantity of goods stolen from his master deposited in it: or, where a man is found dead, with a bloody weapon lying beside him, which is proved to belong to a person with whom he had a quarrel a short time before, and footmarks of that person are traced near the corpse; but the murder has been in reality committed by a third person, who, owing a spite to both, put on the shoes and borrowed the weapon of one to kill the other,—do not the circumstances lie—wickedly, cruelly lie? (*c*) There is reason to fear, that a blind reliance on the dictum, that 'circumstances cannot lie,' has occasionally exercised a mischievous effect in the administration of justice." (*d*)

Having compared these two classes of evidence, and clearly pointed out their relative advantages and disadvantages, he thus draws his conclusion:—

"The true principle of criminal jurisprudence is, that, whatever the nature of the evidence against an accused party, his guilt must be essentially connected with the facts proved, so as to flow from them by a species of *moral necessity*. In other words, conviction must not be grounded on suspicion, or even on a preponderance of probability on the side of delinquency in the accused, but must be based on such a *moral certainty* of his guilt, as, if not sufficient to destroy all contrary hypotheses, shall at least reduce them within the limits of physical possibility.(*e*) The nature of this moral certainty is, however, more easily conceived than defined,(*f*) and, as applied to presumptive proof, will be best understood by attentive consideration of instances where the ends of justice have been successfully attained by well-conducted reasoning on evidence exclusively of that nature."

Some remarkable instances of presumptive evidence in criminal cases are related, and then Mr. Best proceeds to define the rules that should govern circumstantial proof. But to these we must revert in another notice.

(*a*) 1 Stark. Ev. 568, 3rd ed.; 2 Evans's Poth. 342. This proposition is mathematically, as well as morally, true.

(*b*) Per Legge, B. in the case of Mary Blandy, 18 Ho. St. Tr. 1187; per Buller, J. in Donellan's case, printed report, London, 1781. See also, per Mounteney, B. in Annesley *v.* Earl of Anglesea, 17 Ho. St. Tr. 1430, Gilb. L. E. 157; Paley's Moral and Political Philosophy, book 6, chap. 9; and the works of Chancellor D'Aguesseau, vol. 12, p. 647, Paris, 1789.

(*c*) A bad case of this nature is given in the Theory of Presumptive Proof, Append. case 10, p. 102. See also the case of Adrien Doué, 5 Causes Célèbres, 445; and that of the Milan Jews, id. 440.

(*d*) Theory of Presumptive Proof, p. 49.

(*e*) "You must have such moral certainty of the prisoner's guilt, as convinces your minds, as reasonable men, beyond all reasonable doubt," per Parke, B. to the jury, in R. *v.* Sterne, Surrey Sum. Assizes, 1843, MS. See also 1 Stark. Ev. 559, 560, 575, 3rd ed.; Wills on Circumstantial Evidence 26; Theory of Presumptive Proof, 63, 64; Sir S. Romilly on the Criminal Law, n. (D), p. 74; per Alderson, B. in R. *v.* Hodge, 2 Lew. C. C. 228; per Bushe, C. J. in R. *v.* Forbes and Others, printed report, Dublin 1823, p. 350; per Lord Gillies in R. *v.* M'Kilney, 33 Ho. St. Tr. 506; Burnett's Criminal Law of Scotland, 522; Greenleaf's Law of Evidence, art. 1. And, however great the aberrations in *practice* on the continent of Europe, we find the same *principle* recognized by all the eminent foreign jurists. Huberus, Prael. J. C. lib. 22, tit. 3, n. 4 and 16; Matthaeus de Probationibus, c. 2, p. 89; J. Voet. ad Pand. lib. 22, tit. 3, n. 18; Domat, liv. 3, tit. 6; Works of Chancellor D'Aguesseau, vol. 12, p. 647, where the general principles of presumptive proof are beautifully summed up; Beccaria, s. 7. By the text of the Roman law, prosecutors were to be required to prove their charges, either "idoneis testibus, apertissimis documentis, vel *indiciis luce clarioribus*." Cod. lib. 4, tit. 19, l. 25. See also the rescript of the Emperor Trajan, Dig. lib. 48, tit. 19, l. 5; and, for the canon law, see Sanchez de Matrimonio, lib. 10; Disput. 12, No. 40 and 41.

(*f*) Beccaria dei Delitti e delle Pene, Vienna, 1798, s. 7. "For which reason," continues the author, "I deem that the best judicial system which associates with the principal judge assessors, not selected, but chosen by lot; for in such matters the conclusion of an untechnical mind, judging by common sense, is safer than that of a learned one, judging by opinion. Where the law is clear and precise, the duty of the tribunal is limited to ascertaining the existence of facts; and although, in seeking the proofs of crime, ability and dexterity are required; although, in summing up the result of those proofs, clearness and precision are indispensable; still, in order to draw a conclusion from them, nothing more is required than plain ordinary good sense—less fallacious than the science of a judge accustomed to seek the proofs of guilt, and who reduces every thing to an artificial system formed by study." What a tribute to our common-law mode of trial by judge *and* jury, which, independent of its value on constitutional grounds, affords justice a double chance, by uniting the wisdom of a *fixed*, with the integrity of a *casual* tribunal, while it avoids in a great measure the inconveniences of both! See also the observations of Lord Tenterden, in R. *v.* Burdett, 4 B. & A. 162; Paley's Moral Philosophy, b. 6, c. 8; and 1 Stark. Ev. 539, 3rd ed.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

FRIDAY.—The Stock Market is more buoyant to-day, business having been resumed in many of the "shut Stocks," which are now marked ex. dividend. Consols are 100⅝ ¾ again for Money, and for Account we should call them 100¾ to ⅞. Bank Stock is marked 205½ to 206½, without the interest, and India Stock is 288 to 289. The New Three-and-a-Quarter per Cents. 102¾ to 103. Exchequer Bills are 75s. to 77s. prem.

The Foreign Securities have been at about previous rates. In Spanish there is not much doing. They are 23⅜ ½ for the Five per Cents. and 34⅜ ½ for the Three per Cents. Portuguese Converted Bonds have been 50½ to 51. Mexican Stock is quiet at 34½, and Colombian at 14½. Brazilian Stock is worth 85½ to 86¼, and Peruvian, 26. Belgian Bonds are 1 4¼. Dutch Two-and-a-Half per Cents. 62½ ¾.

The Railway Shares have been quiet again. The new opposition line to Portsmouth affects South-Western. The French lines are very brisk, especially the Orleans, Tours, and Bordeaux of Mackenzie, which has obtained the grant from the French government, though, we apprehend, upon terms which are too favourable to the State, and only likely to make it more exacting.

PROPERTY IN SHARES.—On Friday, at the Auction-mart, Mr. Shuttleworth put up for sale by auction 100 shares in the Thames Tunnel, upon which 50*l.* each had been paid, amounting to 5,000*l.* The attendance of capitalists was rather numerous, in consequence of the same auctioneer having several other lots of valuable property to dispose of: but they appeared to "resolve unanimously" that this was a bad lot, and after a very sluggish and slight competition, they were knocked down to an extensive shareholder in the undertaking at the exceedingly low price of 6s. per 50*l.* share, realizing only 30*l.*, and 4,970*l.* less than had been paid for them. The sale was a *bonâ fide* one, the shares having been put up by the executors of a deceased gentleman.—*Sun.*

RAILWAY RETURNS.—The following are the receipts of railways for the past week—that is to say, up to the date to which the respective returns are made, together with the receipts for the same week of the previous year:—

	Last Week.			Corresponding Week, 1843.		
	£	s.	d.	£	s.	d.
Birm. and Gloucester, Sept. 27..	3,020	19	3	2,205	4	3
Bristol and Gloucester, Sept. 28	1,309	9	11			
Eastern Counties, and Northern and Eastern, Sept. 29 ..	4,429	17	0			
Edinburgh and Glasgow, Sept. 28	2,585	7	5	2,587	19	3
Great Western, Sept. 29........	17,890	0	8	14,054	6	8
Grand Junction, Sept. 28	8,496	0	8	8,285	3	4
Glasg. Paisley, and Ayr, Sept. 28	1,656	15	6	1,957	9	8
Great North of England, Sept. 28	2,169	11	4	1,544	9	4
London and Birm. Sept. 28....	19,756	4	5	17,705	17	7
London and Blackwall, Sept. 29	1,035	18	9	960	6	2
London and Brighton, Sept. 28	5,933	14	10	5,155	8	7
London and Croydon, Oct. 1 ..	531	10	10	909	17	8½
London and Greenwich, Sept. 29	805	14	1	777	3	11
London and South-West. Oct. 1	7,015	6	4	6,897	8	7
Liverpool and Manchest. Sept. 27	5,100	6	2	4,503	14	1
Manchester, Leeds, and Hull Associated Com. Sept. 28 ..	8,259	2	6	6,781	17	5
Manchester and Birm. Sept. 28	3,903	4	2	3,532	4	10
Midland, Sept. 28	11,978	7	0	9,718	6	5
Newcastle and Carlisle, Sept. 28	1,747	4	1	1,601	8	4
Newcastle and Darlington, Sept. 28	1,214	9	7			
Paris and Rouen, Sept. 30......	6,841	0	0	138,828f. 3c.		
Paris and Orleans, Sept. 30 ...	5,974	0	0	5,761	0	0
South-Eastern and Dover, Oct. 5	7,136	10	2	4,829	14	1
Sheffield & Manchester, Sept. 28	792	15	5	558	18	10
York and North Midland, with Leeds and Selby, Sept. 28..	3,604	1	0	1,998	16	7
Yarmouth and Norwich, Sept. 29	380	4	11			

Public Sales.

By Messrs. SHUTTLEWORTH and SONS, at the Mart.

A policy for 999*l.* 19s. with a bonus amounting to 32*l.* 9s. 11d effected in the Hope on the 24th of August, 1825, on the life of a gentleman now in the 68th year of his age, annual premium 43*l.* 18s. 4d.—115*l.*

Two shares of 100*l.* each, paid in full, in the British Plat Glass Company—36*2l.* per share.

Two similar shares—37*2l.* per share.

Two ditto—30*8l.* per share.

A policy for 300*l.* with the accumulations thereon, amounting to 89*l.* effected with the same society the 11th of January, 1825, on the life of a gentleman now in the 45th year of his age, annual premium 7*l.* 4s.—40*l.*

Five bonds for 225*l.* sterling each, effected by the Executive Department of the state of Illinois, United States of America, bearing interest at six per cent.—215*l.* per bond.

Five similar bonds—200*l.* per bond.

Five ditto—200*l.* per bond.

A policy for 800*l.* effected with the Economic the 14th June, 1837, on the life of a gentleman now in the 53rd year of his age, annual premium from 1842 to 1846, 15*l.* 1s. 8d.; from 1847 to 1851, 18*l.* 15s., from 1852 to 1856, 22*l.* 16s. 3d.; and every subsequent year, 26*l.* 11s. 2d.—40*l.*

A policy for 1,000*l.* effected with the Standard of England the 20th January, 1839, on the life of a gentleman now in his 60th year; annual premium, 210*l.* 15s.—910*l.*

A ditto for 1,000*l.* with the accumulations, amounting to 1,105*l.* effected with the Alliance the 29th March, 1833, on the life of a gentleman now in the 44th year of his age; annual premium, 26*l.* 13s. 4d.—105*l.*

A ditto for 1,000*l.* effected with the Pelican the 2nd December, 1834, on the life of a gentleman now in the 56th year of his age; annual premium, 39*l.* 6s. 8d.—135*l.*

A ditto for 500*l.* with a bonus thereon of 20*l.* effected with the Economic the 16th August, 1833, on the life of a gentleman now in the 51st year of his age, annual premium, 14*l.* 18s. 9d.—105*l.*

Twenty-five shares, of 80*l.* each, in the Thames Tunnel, paid in full—7*l.* 10s. per share.

Twenty-five similar shares—7*l.* 10s. per share.

Twenty-five ditto—7*l.* 10s. per share.

Twenty-five ditto—7*l.* 10s. per share.

A policy for 1,200*l.* effected with the Pelican, Feb. 2, 1813, on the lives of a gentleman (since deceased), and his wife, now in the 54th year of her age—390*l.*

A policy for 500*l.*, with a bonus of 176*l.*, effected with the Loan Society the 8th December, 1826, on the life of a gentleman who will complete his 65th year in May next, annual premium 20*l.* 12s. 11d.—270*l.*

By Messrs. FULLER and MARSH.

A policy, or one-and-a-half share for 300*l.* effected with the Amicable Society on the 17th November, 1836, on the life of a gentleman in the 51st year of his age; annual premium 10*l.* 17s. 6d.—29*l.*

Five shares of 5*l.* each, called and paid in the Eagle Company, which pay a dividend of five per cent. per annum—5*l.* 8s. 8d. per share.

Five ditto—5*l.* 8s. per share.

A reversion to one-fifth part of the following funds and properties—namely, the several sums of 500*l.* 400*l.* 301*l.* 17s. 600*l.* and 313*l.* 6s. 3d. Three per Cent. Bank Annuities; the sum of 1,559*l.* 4s. 5d. like Bank Annuities; also a sum of 200*l.* and a share in the Albion; and also in the following freehold and copyhold property:—Nos. 17, 18, and 19, Southampton-street, Camberwell; No. 1, South-street, Camberwell; and a house in Heathen-street, Kingston; and also of five acres of freehold and copyhold land, known as Bramble-common, near Hoddesdon, Herts; which properties will become divisible on the death of a lady in the 63rd year of her age; the supposed amount of the vendor's share is 734*l.* 15s. 11d.—300*l.*

A contingent reversionary interest in one-seventh part of 5,214*l.* 13s. 2d. Three-and-a-Half per Cent. Reduced, on the death of a gentleman in the 78th year of his age, provided the vendor, aged 35, shall be then living—440*l.*

A ditto in one-seventh part of 717*l.* 11s. 4d. Three per Cent. Reduced Bank Annuities; also in one-seventh part of 8,053*l.* 13s. 8d. Three per Cent. Consols—260*l.*

THE REPORTS.

The following are the names of gentlemen who favour the Law Times with the Reports:—

PRIVY COUNCIL by William Paterson, Esq., of Gray's-inn, Barrister-at-Law.

HOUSE of LORDS by William Paterson, Esq., of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by Richard Griffiths Welford, Esq., of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by George Goldsmith, Esq., of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by Geo. S. Allnutt, Esq., of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by Henry Baker, Esq., of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by James A Foot, Esq., of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by Henry Tindal Atkinson, Esq., of the Middle Temple, Barrister-at-Law.

The COURT of EXCHEQUER by John Bridge Aspinall, Esq., of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. Saunders, Esq., of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by J. A. Foot, Esq., of the Middle Temple, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by John W. Bittleston, Esq., of the Middle Temple.

ADMIRALTY COURT by John W. Bittleston, Esq., of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by Geo. S. Allnutt, Esq., of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. Angus Homes, Esq., Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. Robinson, Esq., of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. Tindal Atkinson, Esq., of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by James A. Foot, Esq., of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by Edward W. Cox, Esq., of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by John Lane, Esq., D.C.L., of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by Henry Mills, Esq., of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by John Lane, Esq., D.C.L., of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by Edward W. Cox, Esq., of the Middle Temple, Barrister-at-Law; and Henry Tindal Atkinson, Esq., of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by Edward W. Cox, Esq., of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by Edw. W. Cox, Esq., of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

IRISH REPORTS by Wm. St. Leger Babington, LL.D., Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

Equity Courts.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Thursday, July 11.

COOKE v. TURNER.

Practice—Insufficiency of answer—Will—Clause of forfeiture.

Sir G. O. P. T. by his will gave an annuity of 2,000l. a year to his only child and heiress-at-law: the will contained a proviso that if at any time she should dispute his will or his ANIMUS TESTANDI, *or refuse to confirm the same so far as she could, or if any proceedings should at any time be taken by any person or persons whomsoever, by any possible result of which any estate or interest could by any way be attained by his said daughter of larger extent than was intended by the will, and such proceedings should not be formally disavowed by her to the full extent of her ability, then in lieu of the said annuity of 2,000l. per annum the testator gave her an annuity of 300l. a year only. A bill was filed by the trustees of the will against the heiress-at-law, and other parties interested in the testator's estate to have the will established, and the trusts thereof carried into execution. The bill, among other things, alleged that the testator had been a lunatic, but that he had recovered his senses before the execution of his will. H. E. F., his heiress-at-law, under the fear of incurring the forfeiture, would not, in her answer, set up the testator's insanity, and, therefore, did not answer any of the interrogatories relating to that point. To this part of the answer the plaintiffs excepted:—Held, that the defendant was not bound to answer any part of these interrogatories wherein the forfeiture clause was involved, as the defendant might thereby be placed in a worse position.*

The testator, Sir Gregory O. P. Turner, by his last will and testament, dated June, 1841, devised all his real estates to the plaintiff, Rev. T. L. Cooke and the Rev. L. G. G. Dryden, in fee simple during the life of his wife Dame Helen Eliza Page Turner, and his daughter Helen Elizabeth, the wife of C. G. Fryer, and the survivor of them upon trust, among other payments therein mentioned to pay his said daughter an annuity of 2,000l., and the residue of his income, after payment of his debts, funeral, and testamentary expenses, to his said wife for her life; and after the decease of either his said wife or daughter, to pay the whole of the income to the survivor, with remainder over as therein mentioned. And the testator afterwards declared, "that if his said daughter or her husband, or any person or persons in her, his, their, or any or either of their names, or upon her, his, their, or any or either of their behalf should dispute his said will, or his the said testator's competency to make the same, or if his said daughter and her said husband, or either of them, should refuse to confirm his said will, so far as he or she lawfully could when required by the said testator's executors, or either of them, so to do; or if they, or either of them, should lodge any *caveat* against proving the same, and if his said daughter and her said husband, or either of them, should refuse or neglect to withdraw, or cause to be withdrawn, such *caveat* for ten days after request made by his executors, or either of them, to that effect; or if any proceedings should at any time be had or taken by any person or persons whomsoever by any possible result of which any estate or interest could be in any way attainable by his said daughter or her husband, or any person or persons in her right of larger extent or value than was intended for her by his said will, and such proceedings should not be formally disavowed, stayed, or resisted by his said daughter and her husband to the full extent of their, her, or his ability so to do, then he revoked the trust, direction, and disposition thereinbefore contained for payment to his said daughter, or her appointees, in manner thereinbefore contained of the aforesaid yearly sum of 2,000l. and also the trust, direction and disposition thereinbefore contained for payment to her, or her appointees, in the event thereinbefore mentioned of the net rents, issues, and profits of his real estates thereinbefore devised, and also the liberty of residing in his said mansion-house, and all other benefits thereby given for his said daughter, or derivable by her under his said will: and in lieu thereof the said testator directed his said trustees by and out of the net rents, issues and profits of his said real estate to pay to his said daughter thenceforth the yearly sum of 300l. only during her natural life by equal half-yearly payments, to the intent that the same might be held and enjoyed by his said daughter for her own sole and separate use and enjoyment, independent of her then present, or any future husband, and that the same, or any part thereof, might not be subject to his debts, control, or engagements." The testator then directed that in case his said daughter should dispute his said will, or his competency to make the same, &c. the said trustees should, from and after the decease of his said wife, receive the rents, issues, and profits of the said real estates, and invest the same or the net surplus thereof after payment thereout of the said yearly sum of 300l. in their or his names or name, and stand possessed of the said stocks and funds, and all accumulations thereof, upon trust for, and for the only proper use and benefit of the person or persons who should first become entitled to an estate of inheritance of and in his real estates thereinbefore devised. The testator died without revoking the trusts of his wife in favour of his said daughter, Helen E. Fryer, in the month of March 1843, leaving her his only child and heiress at law surviving him. Shortly after proving the will of the testator, the plaintiffs filed the present bill, for the purpose of having the trusts thereof carried into execution. The testator's daughter, the said H. E. Fryer, who never had any issue, and her husband, Charles G. Fryer, were made defendants in the suit. Sir E. G. J. P. Turner and his son, who were also defendants, were entitled to the estates expectant upon the death of Helen Elizabeth Fryer without issue male. The bill alleged that the defendants, C. G. Fryer and Helen Elizabeth his wife, had refused to execute a deed to confirm the will of the testator, and charging that they refused to do so upon the ground that the testator was not capable of making a will. Several of the interrogatories were framed for the purpose of eliciting the fact of the testator's sanity at the time when he executed his will. The defendants, C. G. Fryer and Helen Elizabeth his wife, although they did not by their answer admit the testator's will; yet they admitted that the writing set forth and described in the bill to be the last will and testament of Sir G. O. P. Turner contained the clause of forfeiture and the other beforementioned clauses. They moreover admitted that they did not execute a deed which had been sent to them by the plaintiffs for execution; but they refrained from answering any of the interrogatories that had been put to them for the sake of proving the soundness of the testator's mind, or which might seem to have respect to that question. Out of sixteen exceptions which the plaintiff took for insufficiency to the defendant's answer, the Master allowed three only. The plaintiff took exceptions to the Master's report, and upon these exceptions the case was brought before the Court; but the exceptions upon which the plaintiff mainly relied and insisted were, the sixth, seventh, and twelfth. Exception the sixth was—that the defendants had not answered whether the testator did not make occasional or some excursions or excursion into the country, and whether or not to the sea-side, and whether or not without any keeper, and whether or not without any attendants other than his own domestic servants. The seventh exception related to the intimacy which the defendants had with the testator in the latter part of his life; his capability of forming a correct and rational judgment of all such affairs as came under his notice, and of understanding and transacting matters of business; and whether they the said defendants, or any of the testator's other relations and friends, ever, during the last three or four years of his life, expressed or intimated a doubt of the testator's capacity to understand or take part in the usual transactions of life, or to form a rational judgment of the state of his affairs. The twelfth exception was, that the defendants had not answered the interrogatory relating to divers conversations and communications which the defendants had during the testator's lifetime, and since his decease, with each other and various other persons, respecting the mental capacity and the habits of the testator, and whether they had not thereby admitted and stated, and heard it stated by persons competent to form an opinion, that the said testator was before, and at, and after the date and execution of his said will, competent to make and execute a will, and to understand the purport or effect thereof, and generally to understand and transact business.

Stuart and *Freeling*, in support of the exceptions, contended that for a testator to insert a clause of forfeiture to prevent his will being disputed, was contrary to the policy of law, and that in the present instance, the clause in the testator's will having such for its object, was therefore invalid, it being a different case from that wherein the heir-at-law is put to his election. But, even upon the supposition that the forfeiture clause was valid, when some actual proceedings had been instituted by the defendants for disputing the will and the sanity of the testator, could it be said that the mere involuntary act of theirs in answering the interrogatories introduced into a will, for the purpose of eliciting an answer touching those facts, be looked upon as constituting a forfeiture? Lastly, supposing such an answer did amount to a forfeiture, have not the defendants already incurred that forfeiture by their answer, wherein they admit that they have not executed the deed confirming the will? If so, is not their refusal to answer the bill under the pretence of their liability to forfeiture utterly groundless? as was decided in the late case of *Yewing* v. *Osbaldiston*, where a defendant, having answered one portion of the bill, which brought him under the penalty of a certain Act of Parliament, he could not, upon the ground of liability to the statutory penalty, refuse to answer the other portion of the bill.

Cases cited: *Lloyd* v. *Spillet* (3 P. W. 344); *Powell* v. *Morgan* (2 Vern. 91); *Morris* v. *Burroughs* (1 Atk. 399).

Bethel and *Willcock*, who appeared for the defendants, were not heard.

The Vice Chancellor.—It appears to my mind that these defendants ought not to be compelled to put in any further answer, for a most serious question stands in the background, viz. whether a forfeiture may not be incurred by answering, and that certainly is not a point which can be determined upon the question whether the answer shall proceed any further. The parties have already answered to a certain extent, and in a manner which they conceived prevented their incurring the risk of forfeiting the benefit they derived under the will. They, however, are now called upon to put in a further answer. Take, for instance, the third exception; one of the interrogatories is, whether the wife of the testator had not separated herself from the said Sir Gregory Osborne Page Turner in consequence of his unsoundness of mind, and whether she did not [illegible] return to and [illegible] with him as his wife until his decease. Now it would be no benefit to [illegible] if the defendants answered this part of the interrogatory whilst they left the [illegible] not answered. The same reasoning is applicable to the other exceptions. No advantage could be [illegible] by answering them only partially. The only point to be decided seems to be this, whether, when such a question of forfeiture is raised upon [illegible] of the bill as this, can the Court, in justice, compel the defendants to answer further, placing them perhaps, by so doing, as regards the question of forfeiture, in a more unfavourable position? Suppose the defend-

ants even answered fully, and at the hearing the plaintiffs' counsel stated there was an objection to the will and that they wanted an issue to try its validity, it would be a matter of course for the Court to direct one. On the whole, it appears to me that these defendants ought not to be compelled to answer any further. *Exceptions overruled.*

HARDY *v.* HULL.

Practice—Service under the 23rd Order of August 1841.

Where a defendant, under the above order, was served with a copy of the bill, but was not required to appear or answer, died before appearance, it is necessary to bring his representative before the Court by a supplemental bill, and not by bill of revivor.

A defendant in this suit had been served with a copy of the bill under the 23rd order of August 1841, but was not required to appear to or answer the bill. The defendant died without having put in his appearance, or desired to be served with a notice of the proceedings therein under the 27th order. A question, therefore, arose in a former stage of the proceedings(a) whether, by virtue of the 25th order, the plaintiff could proceed in the suit without reviving it against the representatives of the deceased party, when the Court ordered the suit to be revived, and put in the same plight as it stood at the death of the defendant; it therefore stood over as an abated cause, with liberty to amend. A bill of revivor was afterwards filed to bring the personal representative of the deceased defendant before the Court.

The cause now came on to be heard.

Bethel appeared for some of the defendants, and objected that a bill of revivor was not the proper one to bring the representative of the late defendant before the Court, and cited *Crowfoot* v. *Mander* (9 Sim. 396).

K. S. Parker and *Stinton*, for the plaintiffs, contended that a simple bill of revivor was the only proper method of bringing such representative before the Court, for that, under the 23rd order, they were entitled to proceed in the suit exactly in the same manner as if the defendant had put in his appearance.

His HONOUR the VICE-CHANCELLOR thought that the proper means of bring the representative of the deceased defendant before the Court was by a supplemental bill.

Bankrupt and Insolvent Courts.

COURT OF BANKRUPTCY.

Tuesday, Oct. 2.

Re CARROL.

Re ———

Examination when insolvent not present—Order of remand.

The insolvents had been discharged from custody, and now did not appear, nor any one on their behalf.

Sir C. WILLIAMS.—If an insolvent prisoner gets his discharge for the mere purpose of going away, I shall treat him as guilty of fraud, and regard his discharge as void; but as his schedule is in court, I shall proceed with the examination of it as if he was present. If no one appear to account for an insolvent's absence, I shall certainly make an order of remand, that the Court may commit him again to custody, as this contempt of Court, for such it is, cannot be allowed.

Thursday, Oct. 17.

(Before Sir CHARLES WILLIAMS.)

Attorneys—and Attorneys' Clerks.

Re ANN DANKS.

Mr. *W. H. Norton*, of New-street, Bishopsgate-street, appeared in opposition and was examining the insolvent, when an individual present made a suggestion to her.

Mr. *Norton* inquired what the party was; was he a solicitor?

The reply was in the affirmative, when

Mr. *Norton* rejoined, "Do you mean to say you are a solicitor?"

The answer to this question was, "Not exactly a solicitor, but the clerk to one."

Sir C. WILLIAMS.—Who is the solicitor, then? why don't he attend? he ought to be here. To whom do you say you are clerk?

The individual replied, "To Mr. Roberts, of Church-street, Trinity-square."

Sir C. WILLIAMS.—Then Mr. Roberts ought to be here. If persons pay for legal advice and assistance, they ought to have it, and not be cheated by the attendance of clerks. What control have I over clerks? none. But I have over solicitors of the Court, and if any thing goes wrong in the case, I know what to do with them.

Mr. *Norton* inquired the gentleman's name, when he said "Jones."

Mr. *Norton.*—But your Christian name?

Jones.—Jacob.

Mr. *Norton.* Then you say your name is Jacob Jones, and you are clerk to Mr. Roberts?

Jones having assented, Mr. Norton directed his clerk to make a memorandum of the name.

Sir C. WILLIAMS.—And now, pray, why is not Mr. Roberts here?

Jones.—I prepared the schedule, and, being acquainted with the proceedings, I attended here for him.

Sir C. WILLIAMS.—I will not tolerate this conduct. I can perfectly understand the meaning of it. Persons would find it by far the cheapest plan to employ respectable people at once, and there are plenty of respectable solicitors in London willing to do business on fair and reasonable terms. Pray, madam, how came he to be employed by you?

The *Insolvent.*—He came to me in prison where I was confined. [She then added, with a strong emphasis], If I had known he was not a solicitor he never should have been employed by me.

Sir C. WILLIAMS.—And have you ever seen Mr. Roberts?

Jones.—Why, Sir Charles, Mr. Roberts himself witnessed her signature.

Insolvent.—And very much astonished I was to see him; and I have never seen him before or since.

Sir C. WILLIAMS.—A very strong inference arises out of that fact, certainly.

Mr. *Norton.*—Then you only knew this gentleman as your attorney?

Insolvent.—That was all.

Mr. *Norton.*—Did he ever represent himself to you as an attorney?

Insolvent.—Not exactly; but I always thought he was a man of law, or something of the sort.

Sir C. WILLIAMS.—I am very glad that this incident has come out. Poor people really ought and shall be protected in this court. It is monstrous that a poor creature is perhaps scraping and rending every thing he has in the world to raise a guinea or two to procure qualified legal assistance, and is then imposed on by a person who can't appear on his behalf. Why should an attorney send his clerk here to conduct his case? By the same rule the clerk might send his clerk, and a counsel his clerk, and then where would the Court be? I shall keep a careful look-out on certain parties; there are too many such practices going on.

The learned Commissioner subsequently added, that as he had been the means of depriving her, to a certain extent, of the assistance she had anticipated, he would take care she should not suffer by the misconduct of another. The examination then proceeded.

REGISTRATION COURTS.

CITY OF LONDON.

Thursday, Oct. 10.

(Before Mr. ARNOLD.)

Re JOHN AUGUSTUS LOCK.

Occupation by lodgers.

Occupiers of rooms in a house not occupied by the landlord are entitled to vote.

The REVISING BARRISTER gave judgment in this case. John Augustus Lock was duly objected to. His name was in the list in respect of the occupation of "two rooms, 26, Botolph-lane." It was proved that he occupied, for the purposes of dwelling, two rooms on the first floor of a house, 26, Botolph lane, which communicated with each other. The house consisted of four stories. The ground-floor was occupied as a warehouse, to which there was a separate entrance from the street. The second and third floors were occupied each by another party. The access to the first and other floors was by the common street-door of the house, a key of which was in the possession of each of the tenants of these three floors; and each tenant had the key and exclusive right of access to the apartments in his own occupation. The landlord did not reside in, or occupy any part of, the house. No question arose as to residence, value, or rating, as upon the latter point it appeared that the party had claimed to be rated upon the only rate made in this parish in the course of the year; and that at the time of such claim the rates for the house had been paid. In support of the objection it was urged, not only that the qualification as proved was not sufficient, but that the qualification as stated in the list was insufficient in law, and that therefore the name ought to be expunged under the 40th section of the 6th Vict. c. 18. With regard to the latter point, I am of opinion that the objection cannot prevail. Assuming that the two rooms in question constitute such a "building" as would under the 27th sect. of the Reform Act, confer the franchise on the occupier thereof, although it may be that designation is not the most accurate or proper that might have been adopted, I cannot say it is such a statement of the qualification as to render it "insufficient in law." Suppose an entire building consisted of two rooms only, or that two rooms, forming what in common parlance might be considered as a portion of a building, were quite detached and separated from all other portions of the building, and had a distinct entrance; in either case there can be little doubt that the occupation of these two rooms would be sufficient. If they were occupied for the purposes of dwelling, they might properly be designated as a "house;" if used as a "warehouse," "counting-house," or "shop," they might be so described; if used professionally, there probably would be no objection to their being called "chambers" or "offices;" or they might possibly be occupied in some manner which would render it difficult to give them any particular designation. In that case it might be said that the generic term "building" might be adopted; but that would appear to be open to more objection on the score of vagueness than the description now in question; and in the former class of cases, where a more particular description might be given, the only objection would be, that such description had not been adopted. That would, however, I think, be rather a case where the revising barrister might, if he thought it necessary, change the description of the qualification, "for the purpose of more clearly and accurately defining the same," under the same section of the Act first referred to. Whether that power should be exercised in this case it would be premature just now to consider. The other point is the more important and difficult one, and it resolves itself into the general question of the right of a lodger to vote where the landlord does not reside upon the premises, or occupy any part thereof. This question was under my consideration in 1811, when I revised the lists for the city of Westminster; and after a review of all the authorities on the subject, I was very much disposed to come to the conclusion that a person situated like the party in the present case was entitled to vote. As, however, the barristers who had preceded me had uniformly decided the other way, and at that time no direct appeal existed to a superior tribunal, I thought it the more prudent, as well as the more becoming, course to give up my own opinion, and not to introduce uncertainty into the franchise of that city. But as the Registration Act now enables parties to obtain a binding and satisfactory decision upon any point of law connected with the revision of the list of voters, I feel myself released from the difficulties I experienced on the former occasion. I have, therefore, again reviewed all the authorities which I formerly examined, and on further consideration I do not feel disposed to abandon my former opinion. It will not be necessary to recapitulate all those authorities, as they will be found to be cited or referred to by Mr. Elliott, in his work on registration, pp. 147 to 160, 2nd edition. The only two cases I would particularly mention are *Rex* v. *Trapsham* (2 Leach, 478), and *Fenn* v. *Grafton* (2 New Cases, 617). In the former of these cases, upon the question as to what was the dwelling-house of a party in which a robbery might be committed, Justice Gould, delivering the opinion of all the judges, used this language:—"The owner of the house is, if I may so express myself, the lord of it; but having relinquished every part of it to the habitation of others, it cannot with any propriety be considered his mansion or dwelling-house. The entirety which resides with him is split into several possessions, and every separate apartment, being in distinct and separate occupation, is the distinct mansion-house of its respective possessor." In *Fenn* v. *Grafton*, the Court of Common Pleas held, after consideration, that a plaintiff, who had only the separate use and occupation of the first floor and some other parts of the house, the defendants being in the occupation of the remainder, was in possession of a messuage, which term was also held to be synonymous with a dwelling-house. It does not distinctly appear from the report in Bingham that the defendants were not the landlords; but in the report of the same case in 2 Hodges, 58, it appears that both the plaintiff and the defendants held under the same landlord; and this fact, as the plaintiff and the defendants were in the occupation of the whole house between them, excludes the possibility of any part having been in the occupation of the landlord. And this case was fully recognized in *Monks* v. *Dykes* (4 M. & W. 567). And I find that my opinion upon this subject is confirmed by that of Mr. Elliott (pp. 156 and 157), and by a recent decision of my learned colleague Mr. Moylan, in the borough of Marylebone. I come, therefore, to the conclusion that the party whose case is now under consideration is entitled to be registered as for the occupation of "a dwelling-house." And I also think that this is a case in which I may change the description of the qualification from "two rooms" to "dwelling-house," so as more clearly and accurately to define the same. I shall therefore make that alteration, and the name of the party will be retained.

Re CHARLES ROBINSON.

Notice of claim—Insufficient description.

The occupier of rooms is not properly described as claiming for "part of a house." He should claim for "rooms."

The REVISING BARRISTER said—When the case was before me I did not advert to the description of the premises of the claimant, and received evidence upon the case generally, when it certainly appeared that the claimant was in occupation of the considerable portion of a house; that he resided there; that another party occupied a much smaller portion; and that the landlord did not reside upon, or occupy any

(a) *Vide* 2 Law T. 455.

part of, the premises; and upon this state of the facts, in conformity with the decision I have just given in Lock's case, I should have thought that the party was entitled to be registered as the occupier of a dwelling-house, or generally of a house. But upon consideration, I am of opinion, as I thought in a case on Saturday last, that the description of the qualification given in the claim is insufficient; that, in the language of the 38th section of the Registration Act, the party was not entitled to have his name inserted in the list of voters in respect of the qualification described in his notice of claim. "Part of a house" is clearly an insufficient qualification; and this is not like Lock's case, where the party was on the list in respect of the occupation of "two rooms." If this party had claimed in respect of the occupation of two rooms, the case would, I think, have been the same, because I there considered that "two rooms" might constitute a whole house, or a whole warehouse, &c.; and, in fact, I decided in that case that the two rooms in question did in law constitute an entire dwelling-house. But the case would have been different if the party had been on the list or had claimed as the occupier of "part of two rooms;" one room may constitute sufficient qualification, "part of a room" I think clearly would not. I think, therefore, I ought not to have received any evidence as to the nature of the premises occupied by the claimant, and that I must deal with the claim alone, which, for the reasons above given, I consider insufficient. I was reminded that in a case last year I came to a different decision. I have carefully reconsidered that case, and have come to the conclusion that I was wrong on that occasion; the present claim, therefore, will be disallowed.

CENTRAL CRIMINAL COURT.

AUGUST SESSION.

Wednesday, August 21.

REG. v. VALLER, EURICO, and HARRISON.

Forgery under 1 Wm. 4, c. 66, s. 19—Engraving a plate for a portion of a note, within the Act—A party employed to engrave a plate for the purpose of forgery on a foreign Government, communicated with the consul of that Government, and under his direction procured other persons to make the plate. Held, that those who actually engraved it were to be assumed, in the absence of evidence to the contrary, to be innocent agents, and that the parties who had originally given the order were correctly indicted as principals in the forgery.

The prisoners were indicted under the 1 Wm. 4, c. 66, s. 19, for having engraved a plate for the purpose of forging certain orders for the payment of money, purporting to be the orders of the Administrator of Funds in the kingdom of Holland. There were other counts, charging them with knowingly having such forged plate in their possession. It appeared in evidence that the prisoners had applied to an artist named Rosenthal to engrave a copy of the coupons of the Netherlands Bank. Rosenthal, suspecting that there was an intention to defraud, communicated with the police, and also with the Dutch consul, on the subject, and, under the direction of the latter, he employed persons to engrave the plate in accordance with the order given him.

Clarkson, for the prisoner Eurico.—Rosenthal, without the privity of the other parties charged, employs others, and there is no evidence to shew that those who really made the plate were not guilty. If so, the indictment is incorrectly framed, since, if they were principals, the prisoners could only be accessories before the fact. Here all the counts charge a making, and not a causing to be made.

Charnock, for the prisoner Valler.—The parties engraving the plate, although taken to be innocent of any fraud, had no competent authority to engrave it. In legal contemplation, therefore, they are not innocent agents, so as to render the parties here indicted principals. The case of *R.* v. *Bannen* (2 Moody's Cr. Ca. 309) was somewhat similar to this, but there the Mint gave the authority to the agent to make the die, and was legally empowered to do so. Moreover, the coupon engraved is an imperfect instrument. It wants both number and signature; without these it is valueless.

GURNEY, B.—The instrument is laid in the indictment as part of an undertaking, and the Act of Parliament expressly mentions a perfect or imperfect instrument. As to the other objection, my brother Wightman and myself think it is answered by the facts of the case. The agents appear to have acted *bonâ fide*. If the prisoners rely on their being guilty, and therefore principals in the felony, it is for them to prove it. As to authority, this is a better authority than the one which was held sufficient in *Reg.* v. *Bannen*. There the solicitor to the Mint was the authorizing party; here it is the Consul of the Netherlands. A legal authority to coin or forge is impossible, but a sufficient authority has been given here.

THE LEGISLATOR.

Summary.

THE various measures propounded by the Government at the close of the session, for the purpose of discussion during the recess, have certainly effected their object. They are eagerly debated everywhere. The balance of opinion appears to incline against the New Settlement Bill and the Medical Reform Bill. We regret that we have as yet been unable to find room for at least an abstract of the two admirable Consolidation Bills; but the statutes of the session are so many, so long, and so important, that they claim an unusual number of our columns.

NEW STATUTES.

Of the Session 8 Victoria.

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest, and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

CAP. CI.

(*Continued from page 22.*)

41. *Districts for providing asylums for houseless poor may be formed in the town specified in schedule (B.)*—And whereas it is expedient that more effectual means should be provided for the temporary relief of poor persons found destitute and without lodging within the district of the metropolitan police, or the city of London, and the city, towns, and boroughs named in the schedule annexed to this Act, and for avoiding the introduction of infectious disease, by the reception of such poor persons into the workhouses established for the ordinary relief of the poor within such districts and places; be it enacted, That it shall be lawful for the said commissioners, as and when they may see fit, by order under their hands and seal, to declare so many parishes or unions, or parishes and unions, any part of which may be within the district of the metropolitan police, or the city of London, or within the limits respectively of the city, towns, or boroughs named in the schedule marked (B.) annexed to this Act, as such limits are described in an Act passed in the third year of the reign of King William the Fourth, "to settle and describe the division of counties, and the limits of cities and boroughs, in England and Wales, so far as respects the election of members to serve in Parliament," to be combined into districts for the purpose of providing and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence, and who may apply for relief, or become chargeable to the poor's rates within any such parish or union.

42. *Constitution of the district boards for schools and asylums.*—And be it enacted, That a board shall be constituted for every district formed under this Act for the maintenance of a school or of an asylum; and every district board so constituted shall respectively consist of members to be elected from amongst the persons rated within the district to the relief of the poor; and the said commissioners shall fix the qualification of such members, such qualification to consist in being rated within the district to the relief of the poor, but not so as to require a qualification exceeding the net annual value of forty pounds; and such members shall be elected at such periods, not exceeding three years, and in such proportions and in such manner, as the said commissioners may from time to time direct, by the guardians of every parish or union governed by a board of guardians under the provisions of the said first-recited Act or of any Local Act, and if there be no such guardians then by the overseers of a parish not governed by such guardians; and the chairman of every board of guardians constituted under the provisions of the said first-recited Act shall, if he consent thereto, be *ex officio* a member of any district board constituted under the provisions of this Act.

43. *Powers and duties of district boards.*—And be it enacted, That every such district board shall have such of the powers of guardians for the relief and management of the poor within any school or asylum, and for the appointment, payment, and control of paid officers, as the said commissioners may direct; and the legal and reasonable orders of such district board shall be obeyed and obedience thereto enforced in the same manner, and by the same remedies and penalties as the legal and reasonable orders of guardians; and it shall be lawful for the said commissioners, with the consent in writing of a majority of any district board, to direct such district board to purchase or hire or build, and to fit up and furnish, a building or buildings, of such size and description, and according to such plan, and in such manner as the said commissioners may deem most proper, for the purpose of being used or rendered suitable for the relief and management of the poor to be received into such school or asylum; and the said commissioners may, with the like consent, alter the district for which such district board was originally constituted, by adding thereto or taking therefrom any parish or parishes, union or unions, as aforesaid; and the said commissioners shall have the same powers for regulating the proceedings of any district board or of any committee thereof, and for directing and regulating the appointment, duties, remuneration, and removal of paid officers to be appointed by any district board, as they have with respect to the proceedings of boards of guardians, or with respect to paid officers to be appointed by any board of guardians; and every such board for a school district shall appoint, with the consent of the bishop of the diocese, at least one chaplain of the established church as one of the paid officers aforesaid, who shall be empowered to superintend the religious instruction of all the infant poor being under the control of such district board; and it shall be lawful for the said commissioners to issue rules and regulations for the government of any such school or asylum, and the inmates thereof, as if such school or asylum were a workhouse; and any orders or regulations of the said commissioners made in pursuance of this Act shall be enforced in the same manner and by the same penalties as if the same were an order or regulation made in pursuance of the said first-recited Act: Provided always, that no rules, orders, or regulations of the said commissioners, nor any regulations made by such district board, shall oblige any inmate of any such school or asylum to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorize the education of any child in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or surviving parent may object, or, in the case of an orphan or deserted child, to which his next of kin may object: provided also, that it shall be lawful at all reasonable times of the day, according to rules and regulations to be made for this purpose by the said board, for any minister of the religious persuasion professed by an adult inmate, or of the religious persuasion in which any child has been brought up, or in which the parents, or surviving parent, or next of kin, as the case may be, may desire such child to be instructed, to visit the school or asylum at the request of such adult inmate, for the purpose of affording to him religious assistance, or to visit such child for the purpose of instructing such child in the principles of his religion: Provided also, that it shall be lawful at all times for any inspector of schools appointed by her Majesty in Council to visit such schools, and to examine into the proficiency of the scholars therein.

44.—*Powers of district board for purchasing and hire of land, &c. Sums to be raised for providing schools or asylums not to exceed one fifth part of the average annual rates.*—And be it enacted, That for the purpose of providing a building for such school or asylum it shall be lawful for such district board, subject to the order of the said commissioners, to exercise the powers given to boards of guardians by the said first-recited Act or any other Act or Acts for the purchase and hire of lands and buildings, and to borrow, in like manner as is provided in the said first-recited Act or in any other Act or Acts, such sum or sums of money as may be necessary for the purpose of purchasing any site, or purchasing, hiring, or building, and of fitting up and furnishing such building or buildings as aforesaid, and to charge the future poor rates of the parishes or unions, or parishes and unions, so combined as aforesaid, with the payment of such sum or sums of money, and interest thereon: Provided always, that the consent of any rate-payers or owners of property of any parish shall not be necessary to any sale, exchange, lease, or other disposal by guardians or overseers to or with any such district board of any workhouse, tenement, building, or land: provided also, that the principal sum or sums to be raised for the purpose of providing any such building or buildings as aforesaid, and charged on any union, or on any parish not included in an union, shall in no case exceed one-fifth of the average annual amount of the aggregate expenditure relating to the relief of the poor within any such union, or of the like expenditure within any such parish, for three years ending the twenty-fifth day of March next preceding the raising of such money; provided also, that the principal sum or sums required for the purpose of providing any such building or buildings shall, if the same be borrowed, be repaid, with all interest thereon, within a period not exceeding twenty years.

45. *District board to hold property of the district as a corporation.*—And be it enacted, That every such district board shall be enabled to accept, take, and hold, on behalf of the district for which they act, any lands, buildings, goods, effects, or other property, as a corporation, and in all cases to sue and be sued as a corporation, by the name of the board of management of the   district school or asylum, as the case may be.

46. *Payment of contributions to district boards.*—And be it enacted, That every district board for the

management of any school or asylum shall from time to time call on the parishes and unions included in such district for such contributions as they may deem requisite for the purposes of this Act; and notice in writing of the amount of such contributions, purporting to be signed by the clerk or other officer of such district board, in any form prescribed by the said commissioners, shall, fourteen days at least before such contribution becomes due, be forwarded, by post or otherwise, to the clerk to the board of guardians of any union, and to two at least of the overseers or other officers authorized to make and levy rates for the relief of the poor in every parish from whom such contributions or any part thereof will become due; and if such contributions are not duly paid to the treasurer of such district board, such district board shall, in addition to any other remedy which now is or hereafter may be given to any persons against any board of guardians, have the like remedy for recovery of the same from the overseers or other officers authorized to make and levy the rates for relief of the poor of the several parishes, whether comprised in an union or otherwise, and which may form part of the district for which such district board may act, as are given to guardians for the recovery from overseers of the contributions of parishes; and in case of any addition or separation of obligations of parishes or unions, the said commissioners shall ascertain the proportionate value of property and amount of every parish or union affected by the change, and shall fix the amount to be received or paid, or secured to be paid, by every such parish or union.

47. *Distribution of charges for schools.*—And be it enacted, That the expenses incurred by any district board in the purchase or hire of any building or buildings to be used as a school, or in erecting, repairing, adding to, or fitting up any building, and in the purchase of utensils and materials for the employment of the inmates of such school, or of books and other objects and things necessary for the instruction of such inmates, and the salaries of the officers and servants of the establishment, and all other expenses incurred on the common account of the parishes or unions, or parishes and unions, so united for the management of any class of infant poor, or incidental to the discharge of the duties of such district board, shall be paid by such unions in the proportion of the averages last declared for every such union, and by such parishes in the proportion of the average expenditure of every such parish for the like period and purposes as those to which the declared averages of such unions shall relate; and the said commissioners shall from time, by order under their hands and seal, ascertain and declare the proportion and rates of contribution in the above respects of every such parish and union; and that all other expenses incurred in the relief of the children under the management of such district board shall be separately charged by such district board to the parish or union from which each such child may be sent.

48. *Distribution of charges for asylums.*—And be it enacted, That the expenses incurred by every such district board in the purchase or hire of any building or buildings, or in erecting, repairing, adding to, or fitting up any building as an asylum, and in the purchase of utensils and materials for the employment of the inmates of such asylum, and other objects and things necessary for the relief of such inmates, and the salaries of the officers and servants of the establishment, and all other expenses incurred by such district board in the relief of the poor, or in the management of such asylum, or incidental to the discharge of the duties of such district board, shall be charged by such district board upon the parishes or unions, or parishes and unions, comprised in such district, in proportion to the annual value of messuages, lands, tenements, and hereditaments upon which such parishes and the parishes combined in such unions are respectively assessed to the county or borough rate, or oth rate in the nature of a county or borough rate; and where any parish or place comprised in such district does not contribute in respect of the whole thereof to any county or borough rate, the said expenses shall be paid by such parish or place in proportion to the net annual value of all the property therein assessed to the rates for the relief of the poor; and any information necessary for the distribution of such charge shall be furnished, on demand of such district board or of the said commissioners, by every parish officer, and by every clerk of the peace, town clerk, or other li e officer of any county, city, town, or borough, or other place raising rates in the nature of county or borough rates.

49. *Appointment of auditors for district boards.*—And be it enacted, That the Poor-law Commissioners shall appoint some person, being at the time the auditor of some parish or union situated within the district for which any district board for any school or asylum may be appointed, who shall be the auditor of such district, and shall be empowered and required to audit the accounts of each district board, and of the officers of such district board; and the salary of every such auditor of a district shall be paid by the district board thereof; and the said commissioners shall have the same powers for regulating the duties and remuneration of such auditors as they have with respect to paid officers appointed by any board of guardians; and it shall be lawful for the said commissioners, as they may see fit, to remove any auditor of such district, and in case of vacancy to appoint another person as aforesaid to the office; and every district board constituted under this Act, and every officer of such district board, shall, twice in the year at least, at such time and in such manner and form as may be prescribed by the Poor Law Commissioners, account to the auditor appointed as aforesaid; and such auditor shall have all the powers of allowing and disallowing any charges in such accounts as are or may hereafter be given to auditors under the provisions of the said first-recited Act or any other Act for the audit of accounts relating to rates for the relief of the poor; and all sums disallowed or reduced, or charged as balances against any person by such auditor, shall be recovered, on the application of such auditor (which application he is hereby empowered to make), in the same way as penalties and forfeitures under the said first-recited Act, from the person making or authorizing such illegal payment; and within thirty days of such audit each district board shall cause to be printed, and shall forward by post or otherwise to each board of guardians, and to the officers of every parish within their district, an abstract of the accounts of their district, so audited, in such form as the Poor Law Commissioners may direct.

50. *Guardians may visit and inspect asylums.*—And be it enacted, That every guardian of every union or parish included in any such district formed for the maintenance of an asylum shall at all reasonable times be entitled to enter the asylum of such district, and inspect any part thereof, and enter his remarks thereon in a book to be kept for that purpose.

51. *Children may be sent to district schools from parishes and unions not combined, but not distant more than twenty miles.*—And be it enacted, That in any case where a parish or union is not combined in a school district, and where any part of such parish or union is not more than twenty miles from a district school, the board of guardians of such parish or union may, with the consent of the board of such district, send to such district school any infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting thereto; and the costs of the maintenance, employment, and instruction of such infant poor in such district schools shall be paid by such board of guardians to such district board, according to such rates and at such times and in such manner as may be agreed upon by the said boards, with the approbation of the said commissioners; and such infant poor while at such district school shall be subject to the control and management of such district board and their officers, in like manner as if the said parish or union were combined in such school district by virtue of this Act.

52. *Repeal of the Acts 7 Geo. 3, c. 39, and 2 Geo. 3, c. 22.*—And be it enacted, That the provisions of the Act passed in the seventh year of the reign of his late Majesty King George the Third, intituled "An Act for the better Regulation of the Parish poor Children of the several parishes therein mentioned within the Bills of Mortality," and of an Act passed in the second year of the reign of his said late Majesty, intituled "An Act for the keeping regular, uniform, and annual Registers of all Parish poor infants under a certain Age within the Bills of Mortality," shall be and are hereby repealed.

53. *Class of destitute poor to be relieved in such asylum.. 5 Geo. 4, c. 83. Mode of admission into asylum. Regulations with respect to poor persons admitted into such asylums. 5 Geo. 4, c. 83.*—And be it enacted, That every district board for the management of any asylum under this Act shall make provision for the temporary relief and setting to work therein of any poor person found destitute within any such district, not professing to be settled in any parish included therein, and not known to have any place of abode there, and not being charged with any offence under the provisions of an Act passed in the fifth year of his late Majesty King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England," or of any other Act; and, subject to any regulations of the said commissioners, every such district board or any committee thereof may direct the mode of admission of such poor persons to the asylum of such district; and it shall be lawful for any constable of the metropolitan police, or of the police of the city of London, or any constable of the police acting under the chief constable of any county, district, or division, or any constable of the city, towns, or boroughs respectively named in the schedule marked (B) annexed to this Act, personally to conduct any such poor person found wandering abroad within any district to any asylum established in such district in pursuance of this Act, and such poor person shall, if there be room in such asylum, be temporarily relieved therein; and the serjeant of police or constable conducting such poor person shall sign his name in a column, headed to the following effect, in a book to be kept, in such form and manner as the said commissioners may from time to time direct, by some officer of every such asylum, in which shall be entered the alleged names of all poor persons admitted:

> "We, the undersigned constables of the metropolitan police [*or* of the police of the city of London, *or* constable, &c. as the case may be], do severally declare, so far as each of us is concerned therein, that we have conducted the poor persons (whose alleged names are set opposite our respective signatures) to the asylum of district, the said poor persons having been by us found wandering abroad, and apparently destitute, and not having committed or being charged with any offence punishable by law, within our knowledge."

And every such book, purporting to be signed and to be certified at the foot of the page by the officer keeping the same, shall be received in all courts of justice as sufficient evidence of the fact that the poor persons described therein were chargeable to the said district at the time of their admission, and, if not contradicted by other evidence, of such other particulars as are therein duly recorded; and all poor persons admitted into any such asylum shall, if they desire it, be relieved with food and lodging for the night succeeding such admission; but no such poor person shall be detained against his will for any longer space of time than until the ordinary hour of breakfast of the day next succeeding his admission, and four hours afterwards, unless such poor person, since his admission, have become lawfully punishable for misbehaviour within such asylum, in which case it shall be lawful to detain such poor person for a space of time sufficient for such punishment; but no poor person shall be punished for any offence or misbehaviour in any asylum by confinement for any longer space of time than twenty-four hours, and such longer space of time as may be necessary in order to have such person before a justice of the peace; and if any poor person so admitted as aforesaid shall be disabled by sickness, or shall be unwilling to depart from such asylum, he may receive relief therein, if he consent to remain, and conform to the rules of the house, until the next meeting of the district board or of s ne committee (which such district board, subject to the rules of the said commissioners, is hereby authorized to appoint), who shall give such directions respecting such poor person as they may deem right, by discharging him from such asylum, with a direction to apply for relief in the district where he has dwelt, or otherwise as to them may seem fit: provided always, that, except under a medical certificate of sickness, it shall not be lawful for the officers of any such asylum to relieve any poor person for a longer period continuously in such asylum than is sufficient to enable his case to be decided by the district board or committee as aforesaid; provided also, that if any person received into such asylum shall wilfully give a false name, or make a false statement, or shall be proved to have given two or more different names on two or more different occasions, when so received into any such asylum, such person not having lawfully changed her name in consequence of marriage, such person shall be deemed a rogue and vagabond within the meaning of the said Act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of the United Kingdom called England."

54. *Liabilities of persons relieved in such asylums. 55 Geo. 3, c. 137.*—And be it enacted, That every poor person relieved in any asylum under the management of any district board shall be liable to the same obligations in respect of the relief afforded to him as if the same were afforded in any workhouse, and shall be subject to the same punishment and penalties as are provided by an Act passed in the fifty-fifth year of the reign of King George the Third, intituled "An Act to prevent poor persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the Thirty-sixth Year of His present Majesty as restrain Justices of the Peace from ordering relief to poor Persons, in certain Cases, for a longer Period than One Month at a Time; and for other Purposes therein mentioned relating to the Poor," or under any other Act or Acts, for refusal or neglect to work, in pursuance of any regulations or directions prescribing a task of work, or for wilfully destroying or injuring his own clothes or any property, or for absconding with any clothes or other articles provided by such district board, or for damaging any of the property of such district board, or for any misbehaviour in such asylum, by disobedience of the rules and regulations in force therein, or otherwise, as if he were relieved or set to work in any workhouse under the control of a board of guardians acting under the orders and regulations of the said commissioners in pursuance of the said first-recited Act: provided always, that nothing in this Act contained shall relieve any guardian, overseer, relieving officer, or master of a workhouse from any obligation now imposed upon him by law with regard to the relief of cases of sudden and urgent necessity, or shall prevent the recep-

tion into a workhouse of any person labouring under dangerous illness, or shall authorise the transfer to an asylum of any person received into such workhouse in a case of dangerous illness, unless with the certificate in writing of a medical man duly licensed to practise, to the effect that such person is then in a fit state to be removed, and stating the manner in which such person, in the opinion of such medical man, may be safely removed.

55. *Penalty for returning after removal.* 5 G. 4, c. 83.—And be it enacted, That if any poor person return and become chargeable in the asylum of any district after removal from any parish in such district, he shall be deemed to have returned and become chargeable, without any certificate, to the parish whence he has been legally removed by order of two justices of the peace, within the meaning of the said Act made and passed in the fifth year of King George the Fourth, intituled "An Act for the Punishment of idle and disorderly persons, and Rogues and Vagabonds, in that part of Great Britain called England."

56. *Workhouse to be deemed to be situate in every parish of an union, &c.*—And be it enacted, That for the purposes of relief, settlement, and removal of poor persons, and the burial of the poor, the workhouse of any union or parish, and every such district school, shall be considered as situated in the parish to which each poor person respectively to be relieved, removed, or buried, or otherwise concerned in any such purpose, is or has been chargeable: provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such work house or building shall be charged by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable.

57. *Committal of offenders in workhouses to the gaol of the place to which the offenders belong.* 27 Geo. 2, c. 3.—And be it enacted, That if any person be convicted before any justice or justices of any offence committed in any workhouse, while maintained therein, or of absconding from any workhouse, and carrying away clothes or other property therefrom, and be liable to be committed for such offence to any gaol or house of correction, it shall be lawful for the justice or justices before whom such person is convicted to commit such person to the common gaol or house of correction of the county or place in which the parish is situated to which such person at the time of the commission of the offence was chargeable, notwithstanding that such workhouse may not be situated in such county or place, and notwithstanding that such justices may not be justices of such county or place; and if such person have not goods or money within such county or place sufficient to bear the charges of himself and those who convey him, then such charges shall be defrayed at the expense of the county, place, or parish, according to the provisions of an Act passed in the twenty-seventh year of the reign of King George the Second, intituled "An Act for the better securing to Constables and others the expenses of conveying Offenders to Gaol; and for allowing the charges of poor Persons bound to give Evidence against Felons;" provided that in cases of such conviction and committal as aforesaid all further proceedings in respect thereof may be taken; and the costs and charges of such proceedings, and for the maintenance of such offender in such gaol or house of correction, shall be payable in like manner and under the like authority as such proceedings would have been taken, or as such costs and charges would have been payable, in case the offence had been committed within the parish or place to which such offender was chargeable at the time when he committed such offence.

58. *Punishment of persons in workhouses for misconduct.*—And whereas by the said Act passed in the fifty-fifth year of the reign of King George the Third, it is enacted, that if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them any clothes, linen, or other goods as aforesaid, such person or persons, being thereof lawfully convicted, either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain without bail or mainprize for the space of three calendar months; and it is further enacted, that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons, being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain without bail or mainprize for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour: and whereas it is desirable that justices of the peace should have a power to commit such persons as are first mentioned for a period less than three months, and such persons as are last mentioned for a period greater than twenty-one days, in cases of repeated offences; be it therefore enacted, that it shall be lawful for any justice or justices to commit any such person as is first mentioned to the common gaol or house of correction, to be kept there in the manner provided by the said recited Act for any period not less than seven days nor greater than three months, and to commit any such persons as are last mentioned, in case such persons have been before convicted of a like offence, to the common gaol or house of correction, in manner provided by the said Act, for any period not exceeding forty-two days.

59. *Costs of certain civil and criminal proceedings to be paid out of poor rates.*—And be it enacted, That it shall be lawful for any board of guardians or district board to pay out of the funds in their hands the reasonable costs of the apprehension and of the prosecution of any person who, according to the laws in force at the time being, is charged with refusing or neglecting to maintain himself or his family, or with running away and leaving his family chargeable, or whereby such family has become chargeable, or with wilfully neglecting or disobeying the rules, orders, and regulations of the Poor Law Commissioners, or with any offence or misbehaviour in any workhouse, or with deserting or running away from any workhouse, and carrying away clothes, linen, or other goods or things belonging to any workhouse, or given or procured or provided as or for relief, or with neglect or disobedience of the reasonable and lawful orders of justices or guardians, or of any district board, in the administration of the laws relating to the relief of the poor, or with obstructing or assaulting any officer engaged in the administration of the laws for relief of the poor, or with fraudulently obtaining, stealing, purloining, embezzling, wasting, or injuring, or wilfully misapplying, any property applicable to or connected with the relief of the poor, or with any offence directly affecting the administration of the laws for the relief of the poor, and the reasonable costs of apprehending and prosecuting any officer who may have been employed in the administration of the laws for the relief of the poor, for any neglect or breach of any duty of his office, or for any maltreatment or abuse of any poor person; and, subject to the approval of the said Commissioners, every board of guardians or district board shall pay the costs of all legal proceedings taken by any auditor, or under his direction, for the protection of the poor rates or property of any parish, union, or district, or taken by any other person whom the board of guardians or district board have authorized or directed to institute such prosecution or legal proceedings; and to the extent to which any such costs may not be repaid by the offending or other party, or from the county, liberty, or borough rates, the guardians of any union then may, in any of the cases aforesaid, having due regard to the circumstances of the case, and subject to the approval of the Poor Law Commissioners, charge such expenses, either to the common funds of the union, or to any parish or parishes comprised therein; and the district board of any district may, having like regard to the circumstances of the case, and subject to the like approval of the Poor Law Commissioners, charge such expenses, either to the funds of the whole of such district, or on any one or more of the unions and parishes comprised therein.

60. *Expenses of jury lists and boundaries of parishes may be paid out of poor rates.* 6 Geo. 4, c. 50.—And be it enacted, That the costs, charges, and expenses properly incurred by the officers of the parish in making out, preparing, printing, and collecting the lists of persons qualified to serve on juries, according to the provisions of the Act in the sixth year of the reign of his Majesty King George the Fourth, intituled "An Act for consolidating and amending the Laws relative to Jurors and Juries," and relating thereto, shall be paid and allowed to them out of the poor rates of the parish, together also with all expenses properly incurred by the same officers on the perambulation of the parish, and in setting up and keeping in proper repair the boundary stones of the parish, provided that such perambulations do not arise more than once in every three years.

61. *Collectors appointed by guardians may be appointed to perform the duties of assistant overseers.* 2 & 3 *Vict. c.* 84; 4 & 5 *Wm.* 4, *c.* 76; 59 *Geo.* 3, *c.* 21.—And whereas by an Act passed in the third year of the reign of her Majesty Queen Victoria, intituled "An Act to amend the Laws relating to the Assessment and Collection of Rates for the Relief of the Poor," it was amongst other things enacted, "that all orders heretofore made and issued under the hands and seals of the Poor Law Commissioners, and not rescinded by them or quashed before the sixth day of May in the present year, by which the said commissioners may have directed the overseers or guardians of any parish or union to appoint any person to collect the rates for the relief of the poor in any parish or parishes, or shall have defined or specified or directed the execution of the duties of such person, or the places or limits within which the same shall be performed, or shall have directed the mode of appointment, or determined the continuance in office or dismissal of any such person from his office, or the amount or nature of the security to be given by any such person, or shall have regulated the amount of salary payable to any such person, or the time or mode or the proportions of payment thereof, shall be deemed and the same are hereby declared to have the same force and validity as if the same had been warranted by an Act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws for the Relief of the Poor;" and the commissioners shall have the same powers and authorities with respect to all such orders, and to the persons appointed in pursuance thereof, as they have with respect to orders made and issued, and the paid officers appointed, under the provisions of the said Act; and that every person appointed by guardians of the poor under any such order of the said commissioners shall have the like powers, authorities, privileges, immunities, protections, and remedies, in and for the performance of his duty under such order, as are by law given to overseers of the poor in the performance of the like duty;" and it is expedient that such collectors should in certain cases be invested with other of the duties of overseers of the poor; be it enacted, That the inhabitants in vestry assembled of any parish situated within the district for which any collector or assistant overseer appointed under any order of the said commissioners now acts may appoint such collector or assistant overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of poor rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer under the provisions of an Act passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor;" and wherever any such collector or assistant overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons, other than the board of guardians of such parish or union (if a board of guardians have been constituted,) to appoint any collector or assistant overseer, and (if so directed by the said commissioners) every appointment under such powers shall cease: Provided always, that where the appointment of such assistant overseer shall have been made under the powers of any local Act of Parliament of a parish containing more than twenty thousand persons such appointment shall continue, and the powers of such local Act, as to any future appointment of an assistant overseer, shall be exercised, but subject always to the powers of the Poor Law Commissioners, notwithstanding the provisions of this Act; provided always, that no overseer shall be discharged by the appointment of any such collector or assistant overseer from his responsibility for the provision and supply of monies necessary for the relief of the poor, or for any of the purposes to which the rates made for the relief of the poor may be by law applicable; and every collector appointed or to be hereafter appointed as aforesaid, and every assistant overseer appointed or hereafter to be appointed, in pursuance of the said Act of the fifty-ninth year of the reign of King George the Third, or of the orders of the said commissioners, shall, subject to the rules of the Poor Law Commissioners, obey, in all matters relating to the duties of overseer, all directions of the majority of the overseers of the parish for which he acts; and the said commissioners shall have the same powers with respect to all collectors or assistant overseers as are given to them by the said first-recited Act with respect to paid officers; and every collector or assistant overseer appointed as aforesaid shall be bound to give to the board of guardians of the parish or union, or if there be no such board of guardians then to the overseers of the parish for which such collector or assistant overseer may act, sufficient security for the due performance of his duties; and no bond or any other security entered into in pursuance of this Act, or of the said Act of the fifty-ninth year of the reign of King George the Third, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to, any stamp duty whatsoever; and wherever any parish for which such collector or assistant overseer may be appointed is situated in an union, or is governed by a board of guardians, every bond or security given by any officer, in pursuance of this Act, or of the said Act of the fifty-ninth year of the reign of King George the Third, or of the said first recited Act, and not contrary to the rules of the said commissioners, shall, if the guardians shall see fit, be put in suit by the board of guardians of the union in which the parish or district for which the officer acts or has acted may be situated, notwithstanding that such bond or security may have been originally given to the overseers of a parish, or to any other persons; and every bond or security given by or on account of any officer appointed by any board of guardians, for the due performance of the office to which he is so appointed, shall remain in full force and effect, notwithstanding

any change in district for which such officer may have been appointed or required to act at the time when such bond or security was given, or the addition of any parish to or the separation of any parish from such union since the giving of such security.

62. *Poor Law Commissioners, on application of board of guardians, may direct appointment of paid collector of poor rates.*—And be it enacted, That if the board of guardians of any parish or union make application to the said commissioners to direct the appointment of a paid collector of the poor rates in such parish or union, or in any parish or parishes of such union, it shall be lawful for the said commissioners, by order under their hands and seal, to direct the said board of guardians to appoint such a collector; and the said commissioners shall have the same powers with respect to such collectors as are given to them by the said first recited Act with respect to paid officers; and all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any persons, other than the board of guardians of such parish or union, to appoint any collector for any such parish as aforesaid, and (except when otherwise directed by the said commissioners) all appointments under such powers, shall cease.

63. *Penalty on overseers neglecting to obtain a supply of funds for the relief of the poor.*—And be it enacted, That if the overseers of any parish wilfully neglect to make or collect sufficient rates for the relief of the poor, or to pay such moneys to the guardians of any parish or union as such guardians may require, and if by reason of such neglect any relief directed by the board of guardians to be given to any poor person be delayed or withheld during a period of seven days, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding twenty pounds.

64. *In what manner guardians under local Acts shall conduct their proceedings. Parishes under local Acts, with a population exceeding 20,000, not to be united without consent of guardians. Exception as to vagrant and audit districts.*—And be it enacted, That the guardians of every parish or union acting under any local Act for the relief of the poor shall hold their meetings once in every fortnight, or oftner, and in all matters concerning the relief of the poor shall act as a board at a meeting, and not individually; and whenever under any such local Act there is no person particularly designated or authorized to act as chairman, such guardians shall elect and appoint annually, and from time to time as vacancies may occur, a chairman and vice-chairman of such board, and shall at any meeting at which no chairman or vice-chairman is present elect a temporary chairman to preside at that meeting: Provided always, that when the relief of the poor has been hitherto administered in any parish by guardians appointed under a local Act, and not by overseers of the poor, if such parish, according to the last enumeration of the population published by authority of Parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, after the passing of this Act, without the consent in writing of two-thirds at least of such guardians, to declare such parish to be united with any other parish for the administration of the laws for the relief of the poor, any thing in the said first-recited Act to the contrary notwithstanding; provided, however, that nothing herein contained shall prevent the said commissioners from including any such last-mentioned parish in a district for providing and managing an asylum for the temporary relief of and setting to work of destitute houseless poor, or from including such parish in a district for the audit of accounts, under the provisions of this Act, except as herein-after enacted.

65. *Parishes with a population exceeding 20,000, under local Acts, having adopted the provisions of 1 & 2 Wm. 4, c. 60, and parishes in the metropolitan district having auditors, not to be included in any district for audit of accounts. Proviso.*—Provided always, and be it enacted, That where any parish which is not governed by a board of guardians constituted under the said first-recited Act, or comprised in any union, but is governed by guardians or directors under a local Act, and contains a population exceeding twenty thousand persons, according to the last enumeration of the population published by the authority of Parliament, have before the first day of January in the present year adopted and acted upon the provisions of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales," and that where any two or more parishes situated within the district of the metropolitan police, containing together a population exceeding twenty thousand, according to the last enumeration of the population published by the authority of Parliament, have been united for the purposes of rating or settlement under the provisions of any Local Act, and are governed by guardians or directors under such Local Act, and have not been comprised in any union formed under the provisions of the said first-recited Act, and have an auditor or auditors appointed and acting under any provisions of such Local Act relating to the audit of accounts in such parishes, it shall not be lawful to include such parish or such two or more parishes respectively in any such district for the audit of accounts: provided always, that it shall be lawful for any Assistant Poor Law Commissioner to be present at any audit as if the same were a meeting of a board of guardians or vestry, and to inspect, examine, and take copies or extracts from any books, accounts, or vouchers produced at such audit.

66. *Commissioners may separate parishes from unions, or add parishes to unions, without the consent of the guardians of the union.*—And whereas it is provided by the said first-recited Act that the said commissioners may, from time to time as they may see fit, by order under their hands and seal, declare any union not united for the purposes of settlement or rating to be dissolved, or any parish or parishes to be separated from or added to any such union, and that such union shall thereupon be dissolved, or such parish or parishes shall thereupon be separated from or added to such union accordingly; and it is thereby further provided that no such dissolution, alteration, or addition shall take place or be made unless a majority of not less than two-thirds of the guardians of such union concur therein; and it is expedient to enable the said commissioners to separate any parish or parishes from any union, or to add any parish or parishes to any union, without the concurrence of the guardians of such union respectively; be it enacted, That it shall be lawful for the said commissioners to exercise the powers given to them by the said Act for the separating of any parish or parishes from any union formed under the provisions of the said Act, or for the addition of any parish or parishes to any such union, without the concurrence of the guardians of such union respectively in such separation or addition; and the said commissioners may, if they see fit, cause a board of guardians to be elected under the provisions of the said Act for any single parish separated from any union in pursuance hereof, notwithstanding the provisions of any Local Act in force in such parish.

67. *Repeal of 55 Geo. 3, c. 137, s. 7 as to notices of contracts for supplying workhouses.*—And be it enacted, That so much of an Act passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled "An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the Thirty-sixth Year of His present Majesty as restrains Justices of the Peace from ordering relief to poor persons in certain cases for a longer period than one month at a time; and for other purposes therein mentioned relating to the poor, as relates to the giving of notice of the intention to enter into contracts relating to the relief of the poor, shall be and the same is hereby repealed.

68. *Clerks and officers may conduct proceedings before justices at petty sessions on behalf of boards of guardians, although not certified attornies.*—And be it enacted, That notwithstanding any thing contained in an Act passed in the seventh year of the reign of her Majesty, intituled "An Act for consolidating and amending several of the Laws relating to Attornies and solicitors practising in England and Wales, it shall be lawful for any clerk or other officer to any board of guardians constituted under the said first-recited Act or under any local Act, or to any district board, if duly empowered by such board, to make or resist any application, claim, or complaint, or to take and conduct any proceedings on behalf of such board before any justice or justices of the peace at petty or special sessions or out of sessions, although such clerk or officer be not an attorney or solicitor, or have not obtained a stamped certificate in pursuance of the provisions of the said Act.

69. *Guardians, &c., may make a certain certificate, which may be received in evidence, &c.*—And be it enacted, That it shall be lawful for any board of guardians or district board, at any meeting thereof, to make a certificate in the form or to the effect contained in the schedule of this Act marked (C.), and that every such certificate, and every copy of a minute of any order, complaint, claim, application, or authority of any such board of guardians or district board, purporting respectively to be signed by the presiding chairman of such guardians or district board, and to be sealed with their seal, and to be countersigned by their clerk, shall, unless the contrary be shewn, be taken to be sufficient proof of the truth of all the statements contained in such certificate, and of the directions respecting such order, complaint, claim, or application having been given as alleged in the copy of such minute, and shall be received in evidence accordingly by and before all courts of justice and all justices, without any proof of the signatures or of the official characters of the persons signing the same, or of such seal, or of such meeting; and that for the purpose of making any order of removal or other order, no further or other evidence of chargeability than such certificate shall be required, provided that every such order bear date within twenty-one days next after the day of the date of such certificate.

70. *Justices at petty sessions or out of sessions, may summon witnesses, and compel them to attend and give evidence.*—And be it enacted, That in any proceedings to be had before justices in petty or special sessions, or out of sessions, under the provisions of this Act or of any of the Acts required to be construed as one Act herewith, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings; and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and that the reasonable expenses of attendance were paid or tendered to such person, it shall be lawful for such justice by warrant under his hand and seal, to require such person to be brought before him, or any justices before whom such proceedings are to be had; and if any person coming or brought before any such justices in any such proceedings refuse to give evidence thereon, it shall be lawful for such justices to commit such person to any house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be a sufficient warrant for the discharge of such person.

71. *Rules, &c. printed by the printer authorized by her Majesty to be received in evidence.*—And whereas it is provided by the said first-recited Act that all rules, orders, and regulations made by the said commissioners under the authority of the said Act shall be as valid and binding, and shall be obeyed and observed, as if the same were specifically made by and embodied in the said Act; but no sufficient provision is made for bringing such orders to the knowledge of courts of justice; be it therefore enacted, That any copy of any such rule, order, or regulation, printed by the printer duly authorized by her Majesty or any of her royal predecessors or successor, shall, after the lapse of fourteen days from the date thereof, be received in evidence, and judicially taken notice of, and shall, until the contrary be shewn, be deemed sufficient proof that such order was duly made, and is in force.

72. *Evidence in legal proceedings of the transmission of the commissioners' rules, &c.*—And whereas it is provided by the said first recited Act that a written or printed copy of every rule, order, or regulation of the said commissioners shall, before the same shall come into operation in any parish or union, be sent by the said commissioners by the post, or in such manner as the commissioners shall think fit, sealed or stamped with their seal, addressed to the overseers of such parish, the guardians of such union, or their clerk, and to the clerk to the justices of the petty sessions held for the division in which such parish or union shall be situate: and whereas the proof of such sending is often attended with great expense and difficulty; be it enacted, That it shall not in any civil or criminal proceeding be necessary to prove such sending, except to the clerk to the guardians of the union or of the parish, or, where there shall be no guardians, to the overseers of the parish within which such rule, order, or regulation is intended to have effect; and that it shall in no case be necessary to prove such sending, unless reasonable notice in writing be given, by the party requiring such proof, to the party upon whom such proof would lie, that such proof will be required; and whenever it is proved to the satisfaction of the court that the said rule, order, or regulation was sent, and that the party was cognizant thereof, such court shall order the reasonable expenses of the witness or witnesses proving the same to be paid by the party who has given such notice, and such expenses shall be recoverable as penalties and forfeitures under the first-recited Act.

73. *Conveyances, &c. for workhouses to be good, although not enrolled.* 9 Geo. 2, c. 36.—And be it enacted, That in all cases where any messuages, lands, or hereditaments, or any estates or interest therein, have or hath been conveyed or assured, or purported to be conveyed or assured, either gratuitously or for valuable consideration, to or in trust for the churchwardens and overseers of the poor, or the overseers only, or the guardians of any parish or parishes respectively, or otherwise for the benefit of any parish or parishes respectively, or to or in trust for the guardians of any union, for the purpose of providing a workhouse or asylum, or workhouses or asylums, for the accommodation of the poor of such parish or parishes or union respectively, every such conveyance or assurance shall be deemed good and valid for all purposes whatsoever, notwithstanding that such conveyance or conveyances have not been enrolled pursuant to the statute passed in the ninth year of the reign of his late Majesty King George the Second, intituled "An Act to restrain the Disposition of Lands whereby the same became inalienable."

74. *Construction of Act 5 & 6 Vict. c. 57.*—And be it enacted, That this Act shall be construed in the same manner as the Act passed in the sixth year of the reign of her present Majesty, intituled "An Act to continue until the Thirty-first Day of July, One

thousand eight hundred and forty-seven, and to the end of the then next Session of Parliament, the Poor Law Commission; and for the further Amendment of the Laws relating to the Poor in England," and as one Act with the same, and with the acts and provisions thereby required to be construed as one Act; and the word "month" shall be taken to mean calendar month; and the words "clerk of the peace" shall be taken to mean the clerk of the peace or other officer discharging any of the duties of clerk of the peace for any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, city, county of a town, town, cinque port, or town corporate; and the words "licensed minister" in the said first-recited Act, and "minister" in this Act, shall be construed to mean and include every person in holy orders, and also every person teaching or preaching in any congregation for religious worship whose place of meeting is certified and recorded according to law; and, except where it is otherwise expressly provided, all provisions in any Act now passed or hereafter to be passed, relating to the officers of boards of guardians constituted under the provisions of the said first-recited Act, or to the workhouses under the management of such guardians, shall apply to all officers appointed by any district board, and to all workhouses under the management of any district board.

75. *Act limited to England and Wales.*—And be it enacted, That this Act shall extend only to England and Wales.

76. *When Act to operate.*—And be it enacted, That this Act shall come into operation on the day next after that on which her Majesty gives her assent thereto.

77 *Act may be amended this session.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

PARLIAMENTARY PAPERS.

Statistics of Lunacy, &c.—We have extracted the following statistical particulars relative to insanity in this kingdom from the interesting report of the Metropolitan Commissioners in Lunacy to the Lord High Chancellor of England, which was not long since presented to both Houses of Parliament by command of her Majesty the Queen. It appears that every care has been bestowed by the learned commissioners in collecting and arranging materials wherefrom to furnish some definite as well as accurate statistical information on so important a subject, considering that in all probability the attention of the Legislature will be called to these matters at no very distant period. We find, on studying the tabular statements presented in the report now on our desk, that the gross total number of insane persons, of all classes, in England and Wales alone, amounted in the month of January last, to 20,893, of whom 9,862 were men, and 11,031 women; being a proportion to the amount of population (which is estimated by the census for England and Wales at 16,480,082 souls), of about ·125 per cent., or 1 in 800, as nearly as possible. Of the above 20,893 lunatics, 4,072 (of whom 2,161 are men, and 1,911 women) are private patients, and 16,821 (of whom 7,701 are men, and 9,120 women) pauper patients. The proportion of the pauper lunatics to the population in January last was in England ·100 per cent. or 1 in 1,000; whilst in Wales the proportion was ·129 per cent. or 1 in 775, a difference of between 1-34th or 1-35th per cent., shewing that the proportion of pauper lunatics and idiots to the population is greater in Wales than in England; and in both countries it will be found that the number of insane pauper females is greater than that of the insane pauper males; the reverse being the case as regards the "private patients," as we have already shewn. Of the 4,072 private patients, there were 245 confined in county asylums, 168 in military and naval hospitals, 442 in Bethlehem and St. Luke's hospitals, 536 in other public asylums, 973 in metropolitan licensed houses, and 1,426 in provincial licensed houses; whilst there were 282 single patients "under commission." Of the 16,821 paupers, 4,155 are immured in county asylums, 89 in county asylums under local Acts, 121 in Bethlehem and St. Luke's, 343 in other public asylums, 854 and 1,920 in metropolitan and provincial licensed houses, and no less than 9,339 (or more than one-half) in workhouses, &c. The private patients are maintained, either wholly or partially, at their own cost, but the pauper lunatics are, of course, supported at the expense of the public. Independently, however, of these, there is a large number of persons, it appears, who are shut up as single patients, of whom no account is rendered in any public documents. Another table printed in the report shews that the cures, during the last five years, have, in four county asylums, been 30; in four others 40, in four others 50, and in three 60 per cent. At St. Luke's the permanent cures, during the year 1842, are stated to have been 70, and in 1843, 65 per cent.; and it would appear from long experience, that this distressing disorder is curable, in a large proportion of cases, during the first year of the attack; whereas recoveries after that period are comparatively very rare. It may be interesting to those of our readers who are wont to peruse the reports of commissioners *de lunatico inquirendo* which appear in our columns from time to time, to know that there are (or were a few months since) 535 (wealthy) lunatics under the especial care of the Lord Chancellor; that the value of their property was upwards of 1,000,000*l.*; that the annual income has been reported to Parliament to be 356,711*l.* 17s. 11d.; and the annual sum allowed for their support and maintenance to be 161,151*l.* 12s. There are, however, upwards of 4,000 lunatics confined in England as private patients, who are not under the care of the Court of Chancery, and whose estates and properties are, consequently, left more or less to the control of their relatives.

PARLIAMENTARY RETURNS.

RETURNS RELATINC TO STAMP DUTIES ON LEGACIES, &c.

A Return shewing the Amount of Capital on which the several Rates of Legacy Duty have been paid in Great Britain in the year 1843.—(In continuation of Parliamentary Paper, No. 111, of Session 1843.)

Year 1843.				An Abstract of the Total Amount under each Rate, since 1797.			
Rate	£	s.	d.	Rate	£	s.	d.
1 0 per cent.	23,137,110	16	8	1 0 per cent.	611,569,668	4	0
2 10 ,,	119,962	0	0	2 0 ,,	20,716,610	1	8
3 0 ,,	13,480,882	18	4	2 10 ,,	70,423,374	11	4
4 0 ,,	93,400	2	1	3 0 ,,	320,056,923	17	2
5 0 ,,	1,595,855	5	0	4 0 ,,	12,645,386	17	3
6 0 ,,	210,552	0	3	5 0 ,,	47,506,077	17	4
8 0 ,,	13,546	4	2	6 0 ,,	17,117,005	2	9
10 0 ,,	4,732,832	14	2	8 0 ,,	11,779,921	18	7
				10 0 ,,	134,610,912	17	4
Total	43,393,142	0	8	Total	1,219,425,910	7	5

Legacy Duty Department, Feb. 16, 1844. — Ch. Trevor, Comptroller of Legacy Duties.

STAMPS (IRELAND).

Return for the Year ended 5th January, 1844, shewing the Amount of Capital on which the several Rates of Legacy Duty have been paid in Ireland, distinguishing the Amount of each Rate.—(In continuation of the Return furnished last year.)

Rate of Duty.		Amount of Capital paid on, at each rate.	Amount of Legacy Duty at each Rate.		
	£ s.	£	£	s.	d.
Rates under 56 Geo. 3, c. 56	0 10 per cent.	38,695	225	5	4
	1 5 ,,	9,292	123	17	6
	2 0 ,,	602	15	0	0
	2 10 ,,	955	26	17	[illegible]
	5 0 ,,	12,279	650	7	10
Rates under 5 & 6 Vict. c. 82	1 0 ,,	785,928	7,859	5	8
	3 0 ,,	423,900	12,717	0	5
	5 0 ,,	59 250	2,962	10	3
	6 0 ,,	23,875	1,432	9	10
	10 0 ,,	130,221	13,022	2	11½
	Total	1,481,997	39,034	17	3½

Account shewing the Total Amount of Duties on Legacies, Probates, and Administrations, received in Ireland, in the year ended 5th January, 1844.

Amount of Duty on Legacies £39,034 17 3½
Amount of Duty on Probates and Administrations.... 66,184 10 1

Stamp Office, Dublin, Feb. 22, 1844. — J. S. Cooper, Comptroller and Accountant-General.

UNITED KINGDOM.

A Return of the Total Amount of Revenue received in the United Kingdom, in the year ended 5th Jan. 1844, for Stamp Duty on Legacies (distinguishing those on Direct and on Reversionary Bequests, if possible), on Probates, Administrations, and Testamentary Inventories; distinguishing the Amount for England and Wales, Scotland, and Ireland, with an Abstract of the whole Amount of Duty received since 1797.—(In continuation of a Return prepared in 1843.)

Year ended 5th January, 1844.	England and Wales.			Scotland.			Great Britain.			Ireland.		
	£	s.	d.	£	s.	d.	£	s.	d	£	s.	d.
Legacies	1,114,871	6	6	86,897	18	6	1,201,769	5	0	39,034	17	3¼
Probates, Administrations, and Testamentary Inventories	879,367	5	0	53,413	0	0	932,780	5	0	66,184	10	1

Note.—The Office Accounts do not admit of any distinction of the Duties received on Direct or Reversionary Bequests.

TOTAL DUTY RECEIVED SINCE 1797.

	Legacies.			Probates, Administrations, and Testamentary Inventories.		
	£	s.	d.	£	s.	d.
England	34,392,977	1	3	27,244,687	17	2
Scotland	2,037,524	19	0	1,390,696	10	2
Ireland	714,250	18	1	1,055,821	18	0¾
Total	37,144,752	18	4	29,691,206	5	4¾

Note.—The Duties on Probates in England, and on Testamentary Inventories in Scotland, were not distinguished in the Accounts of the Office prior to the year ended 5th January, 1806; the amount, therefore, of these Duties can only be given from that period.

The Duties on Legacies and Probates were not distinguished in the Accounts for Ireland prior to the year ended 5th January, 1818; the amount, therefore, can only be given from the last-mentioned period.

Accountant and Comptroller-General's Office, Stamps and Taxes, Feb. 21, 1844. — Thomas Lightfoot, A. & C. G.

STAMPS (IRELAND).

An Account shewing the total Amount of Duty on Legacies, Probates, and Administrations, received since the year 1797 to 5th January, 1844.

Years ended 5th Jan.	Legacies.	Probates and Administrations.	Years ended 5th Jan.	Legacies.	Probates and Administrations.
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
1797	In those years no distinct account		1831	24,628 15 3	37,125 15 3
to	was kept of the produce of those		1832	19,353 3 3	41,728 10 0
1817	duties.		1833	25,974 2 0	39,508 10 0
1818	14,256 16 9½	39,518 8 8½	1834	25,463 10 2½	38,543 13 10
1819	20,369 7 3½	36,935 14 7	1835	29,273 3 10½	44,824 10 0
1820	23,344 2 3	32,686 18 10½	1836	27,284 7 10	40,996 0 0
1821	16,393 17 2¾	25,744 9 0½	1837	26,048 19 5	40,541 10 0
1822	18,803 16 5	27,189 19 0	1838	29,008 18 4	44,254 0 0
1823	15,877 15 8½	27,775 19 6	1839	26,105 14 0	48,127 0 0
1824	16,296 14 5½	29,411 10 10	1840	27,443 8 1	42,237 10 0
1825	23,552 16 1	31,112 16 7½	1841	26,394 9 4	40,581 0 0
1826	30,258 13 2¼	34,552 0 0	1842	30,020 14 7	38,564 4 0
1827	21,053 12 4	38,102 9 11	1843	65,375 15 6¼	49,548 0 0
1828	35,750 0 9	32,166 10 0	1844	39,034 17 3½	66,184 10 1
1829	27,557 11 5½	41,659 10 0			
1830	29,825 10 1	46,400 17 10	Total..	714,250 18 1	1,055,821 18 1

Stamp-Office, Dublin, Feb. 22, 1844.

J. S. Cooper,
Comptroller and Accountant-General.

THE MAGISTRATE.

Summary.

It is not yet decided whether there will be a Winter Assize; but the best opinion is, that the plan is to be pursued wherever there is a sufficient number of prisoners to justify the expense and inconvenience. This will, we trust, awaken both the Magistracy and the Profession to a sense of the necessity for measures that shall convert the courts of quarter sessions into efficient local courts.

POOR' LAW CIRCULAR.

(*Continued from page 25.*)

BASTARDY.

PROSPECTIVE PAYMENT BY PUTATIVE FATHER.

January 29, 1844.

Churchwarden, Luxborough, Williton Union—Stated, that the parish of Luxborough had just received 50*l.* from the putative father of a bastard child, to defray the cost of its maintenance, and inquired whether the money could be applied to the use of the parish in lieu of collecting a poor-rate for the current quarter.

Ans.—The taking of a sum of money in gross, as a discharge of the future liability of the putative father of a bastard child, has been decided to be altogether an illegal transaction; and the balance of any sum so paid, remaining unexpended in the relief of the child, may at any time be recovered back by the putative father in an action at law. (*Cole* v. *Gower*, 6 East, 110; *Clarke* v. *Johnson*, 11 Moore, 319.)

CLERK.

PROFESSIONAL REMUNERATION TO CLERKS.

April 16, 1844.

Clerk of Winslow Union—Stated, that he had sent in a bill to one of the parishes in the Winslow Union, for professional services in a case of removal, as attorney to the parish, and for fees as magistrates' clerk; but an objection had been raised to the bill, on the ground that the charges ought to be considered as satisfied by his salary as clerk to the union. Requested the commissi ers' opinion as to whether the charges were such as ought fairly to be placed to the account of the parish.

Ans.—Although the clerk of a union who is a solicitor is bound by the Commissioners' General Order of 21st April, 1842, Art. 17, No. 7, to conduct the legal business of the union, he is under no such obligation to act professionally for the several parishes in the union. The removal of paupers is a matter within the province of the overseers, and not of the guardians, and the commissioners accordingly consider, that if the overseers emplo in such a matter the union clerk, he is entitled to be paid in the same way as any other solicitor would be. In like manner, the commissioners think that the offices of clerk to the guardians and of clerk to the justices being essentially distinct, the accident of their being held at any time by the same person would not affect his right to the distinct emoluments of each, or render the salary attached to the one a remuneration for the duties connected with the other.

GUARDIAN.

COMPATIBILITY OF OFFICES OF EX-OFFICIO GUARDIAN AND CHURCHWARDEN.

May 16, 1844.

Clerk of Leamington Union—Stated, that one of the *ex-officio* guardians had lately been appointed churchwarden of a parish within the division for which he acted as magistrate. Inquired, whether the office of churchwarden and that of a justice of the peace are compatible; and also, whether he could not act as an *ex-officio* guardian whilst holding the office of churchwarden.

Ans.—Looking to the fact, that a churchwarden is, by virtue of his office, an overseer of the poor, the commissioners are disposed to think that the offices of justices of the peace and churchwardens are probably incompatible, on the view expressed by Lord Kenyon in *Rex* v. *Pateman* (2 T. R. 779), as to the effect of *Rex* v. *Gower* (1 Burr. 245, 1 Bott. 14). The commissioners are not aware of any thing to prevent the gentleman, to whom the clerk refers from acting as an *ex-officio* guardian during his year of office as churchwarden, if he is capable of taking the latter office at all.

LUNATIC.

MAINTENANCE OF A CRIMINAL LUNATIC.

May 20, 1844.

Clerk of Kettering Union—Stated, that the guardians had been informed that the care and expenses incident to the confinement of criminal lunatics usually devolve upon the Government; and inquired what course the guardians should pursue in order to get Thos. Briggs, a criminal lunatic, who had been confined for several years in the asylum near Nottingham, at a considerable expense to the parish of Kettering, placed under the Government charge.

Ans.—The Commissioners are not aware of any general liability attaching to the Government to provide for the maintenance of criminal lunatics. The statutes on the subject (within whose provisions the case mentioned in the clerk's letter appears to fall) cast the burden of the maintenance on the parish of the lunatic's settlement, or, in lack of a settlement, on the county. (Sec 9 Geo. 4, c. 40; 1 Vict. c. 14; 3 & 4 Vict. c. 54.)

(*To be continued.*)

The Queen has been pleased to appoint William Henry Draper, esq. to be her Majesty's Attorney-General for that part of the province of Canada formerly called Upper Canada.

Her Majesty has also been pleased to appoint William Morris, esq. to be Receiver-General for Canada.

Her Majesty has also been pleased to appoint Denis B. Papineau, esq. to be Commissioner of Crown Lands for Canada.

Her Majesty has also been pleased to appoint James Smith, esq. to be her Majesty's Attorney-General for that part of the province of Canada formerly called Lower Canada.

Her Majesty has also been pleased to appoint Dominick Daly, esq. to be Secretary for Canada.

Her Majesty has also been pleased to appoint John Downie, esq. to be First Puisne Judge for the Colony of British Guiana.

Her Majesty has further been pleased to appoint Francesco Dalmas, esq. to be Cashier to the Government of Malta.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignities of Viscount and Earl of the United Kingdom of Great Britain and Ireland unto the Right Hon. Edward, Lord Ellenborough, and the heirs male of his body lawfully begotten, by the names, styles, and titles of Viscount Southam, of Southam, in the county of Gloucester, and Earl of Ellenborough, in the county of Cumberland.

New County Magistrates. — The following gentlemen have been appointed magistrates for the county of Middlesex:—William Hurst Ashpitel, John Fisk Pownall, jun. Josh. Arden, Colonel Charles Wood, James Mazer, Hon. Charles Lamb Butler, Henry Penton, John Wheelton, C. H. Cotterell, J. A. Moore, Sir Moses Montefiore, J. H. Longdon, W. P. Crawford, and C. Graham.

Magisterial Jurisdiction.—At the Uxbridge petty sessions, Mr. Gardiner, solicitor, gave notice on behalf of a Mr. Tollett, who, for having used some expressions towards another person while giving evidence, had been convicted in the pena..y of 40s. by the magistrates, that the conviction would be appealed against, there having been no information laid, or summons issued, as a foundation for it. He contended that the room in which the magistrates were sitting was not a public place. The words of the Act of Parliament were, "That every person shall be liable to a penalty of not more than 40s., who, within the limits of the metropolitan police district, shall in any thoroughfare, or public place, use any threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned." He would also contend, that neither the Police Act nor Police Courts Act gave the magistrates power to convict on sight, the justices having power to punish for contempt of Court. Mr. Woodbridge (clerk to the bench) said he doubted if the Police Act gave Mr. Tollett any power to appeal, the penalty not amounting to 3*l.* as required by the Act. Mr. Gardiner would in that case have the conviction removed by writ of *certiorari* into the Court of Queen's Bench; he had only out of courtesy to the bench informed them of his intentions.

The following buildings are certified as places duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—Bethesda Chapel, Blackpool, Lancashire. Robert Thompson, superintendent registrar. — St. Francis Xavier's Chapel, Yorkshire. Richard Baillie, superintendent registrar.—Islington-green Chapel, Islington.—Wesleyan Chapel, Liverpool.

THE LAWYER.

Summary.

Every day yields gratifying evidence that the Profession is at length fairly awakened to a sense of the necessity for prompt measures to protect and purify itself. It is seeking its own emancipation regardless of cliques and local interests. The union of the Provincial Law Societies and the establishment of the Legal Association are movements whose importance it is impossible to exaggerate, and if they be followed up in the right spirit, great effects must follow. We shall, of course, do all that in us lies to advance the objects proposed by these societies, and to report their proceedings to the Profession.

The recent affair at the Bar continues to attract attention. Besides the letter which appears in the leading article upon the subject, the following has been published in the *Times*. On the principle of hearing both sides, we insert it, but entirely dissenting from its arguments :—

THE ETIQUETTE OF THE BAR.

TO THE EDITOR OF THE TIMES.

Sir,—May I claim the indulgence of a small space in your publication on behalf of a class of unfortunates who, in a recent controversy at the Central Criminal Court and Middlesex Sessions, seem to have been forgotten? The learned judge at the Old Bailey exhibited considerable warmth, and expressed his opinion with great emphasis, when he was apprized that counsel acted for parties without having received their retainers through the medium of an attorney. Now, Sir, it was my misfortune to be acquainted with a person who had to take his trial for a trifling crime at the Old Bailey, but such was his poverty and those of his friends, that it was with the utmost difficulty that a small sum could be raised to employ counsel. But it is said that it is derogatory to the gentlemen of the Bar to receive instructions otherwise than from an attorney. Is there any occasion for one in the defence of a prisoner in many cases? There are no indictments to frame, nor nicety of pleadings to be attended to. In most instances all that is necessary would be to watch the proceedings, and cross-examine the witnesses, and call evidence as to character. Instructions to this effect might be conveyed to a barrister by a prisoner's friend, through the medium of a letter left at his chambers, accompanied by a fee. If it is the intention of the Bar to act upon the suggestion of the learned judges of the two courts, the Prisoners' Counsel Act will become a dead letter, except in the case of those rogues whom a successful career

has made rich enough to fee both attorney and counsel. AUDI ALTERAM PARTEM.

Temple, Sept. 28.

From the same journal we take another letter, which displays in a striking form the influence and importance of the Legal Profession, teaching us what we might do if we would, but put forth our strength, and act cordially together for the common good. It runs thus:

LAW, LAW, LAW.

TO THE EDITOR OF THE TIMES.

SIR,—There are no less than 2,776 solicitors, attorneys, and proctors actually practising in this great metropolis, or within the district of the old twopenny post. There are also 6,560 attorneys practising in the different towns of England and Wales. The former are subject annually (supposing them to have been in practice three years, which most have) to a certificate duty of 12*l.* and the latter (upon the same supposition) to an annual duty of 8*l.* per annum, thus yielding, in the shape of revenue annually, the large sum of 85,792*l.* Supposing these persons to have been articled and admitted since 1815 (the time of the passing of the present Stamp Act), they must have paid a stamp duty on their articles of 120*l.* each, and a further stamp on their admissions of 25*l.* thus making the enormous sum of 1,353,720*l.* which at 3 per cent. would yield an income of 40,521*l.* The lowest branch of the profession may, therefore, be looked upon as taxed to the extent of 126,313*l.* annually, besides the sinking of the sum paid on their articles and admissions.

There are about 130 special pleaders and conveyancers, who take out annual certificates of 12*l.* each, and the number of counsel called to the various inns of Court, now living, is 2,215. Each of these have paid an admission fee of 50*l.* or 110,750*l.* which, at three per cent. is 3,322*l.* So that the present lawyers of England are taxed to the extent of at least 131,195*l.* annually. All these persons may be considered as being replaced every 30 years, so that the revenue may be said to receive in addition the sum of 1,500,000*l.* during these 30 years in the shape of renewed stamps on the articles and admission of fresh blood.

So that the law forms no less a prominent feature in the revenue, than it does in the control it exercises over the wealth and property of this vast empire, or in the influence it has over society by the combined talent and learning of its members. J. W. M.

We have been requested, as a matter of justice, having taken from the daily papers all the rest of the story, to give a place to Mr. PYKE's letter in self-defence. We do so, although its needless length almost forbids it, because we are anxious that the rule of *audi alteram partem* should on all occasions be cheerfully and liberally observed by the LAW TIMES:—

TO THE EDITOR OF THE ERA.

SIR,—It is now a well-received axiom, that a barrister of the present day must have a nerve of iron; and although I do not possess more than a common share, yet I feel it will take a great deal to force me to submit to the dictation of any power who may think it the best policy to strike without a reason: in fact, first to knock down a public man, load him with sudden and black accusation, drawn from sources the most tainted, and then coolly to ask him for an answer! (a process I have most certainly undergone). Quietly have I permitted the most unbounded and miserable absurdities to be stated; falsehoods, evidently the result of malice, to be made, to ascertain, if possible, from what quarter they proceed, with their extent and amount of venom, before I, with due humility, put in my plea of "Not Guilty," at the bar of public opinion, to the absurd charge made against me of *copying my own brief, and conducting my own case without an attorney!* My answer is, I emphatically deny copying my own brief, used by me on the trial, or acting without an attorney. With regard to conducting my own case, I admit I did so, and contend that I have a right to do so upon every principle of English law; but, in the present instance, the *right* was declined until driven into it by the sudden and unavoidable absence of Mr. Horry, long since satisfactorily explained by him. Now, what are the short facts of my case and conduct throughout? Let the public calmly judge.

Five years since, from ill health, I purchased a cottage and garden at Kentish Town; upwards of twelve months since myself and neighbours are suddenly attacked with severe illness, evidently the result of a poisoned atmosphere. Several deaths occur, the parties complaining to me and stating the cause prior to their death, and one of them my deceased tenant. He is succeeded by another tenant, who is compelled to quit from the same cause, with two servants; and whilst sleeping there I also become seriously ill. We trace the cause to a manufactory for bleaching bristles for brushes; it is then found that arsenic, chlorine gas, and sulphur are the ingredients in the process. The opinions of Dr. Christison, on poisons, Dr. Roots, Dr. Steighill, Dr. Watson, Dr. Sandys, and Professor Brande, are taken, when we find that death and rapid disease are the result, if the poisonous fumes enter our houses. Dreadfully alarmed, we unceasingly for months apply to the Paving and Cleansing Board of the Hamlet of Kentish Town, *of which the defendant is a member!* In strong terms we complain of the iniquity in carrying on so poisonous a nuisance in the place, *and that too by a member of their own Board*, and submit we were entitled to protection, from the heavy rates we paid, and call upon the defendant's co-commissioners to appoint an attorney to put it down. The Board meet, and by a majority of twelve to two agree to, and do enter a report upon their minutes, or books, that the defendant is carrying on the bleaching of bristles by sulphur, and also the before-mentioned medical and chemical operations. The defendant is requested to remove it, all to no purpose; it is increased. The medical men advise the neighbours to quit, they cannot safely remain within reach of it, the danger is immediate, the delay is ruin to health. The neighbours try to abate it by a public printed warning of its frightful nature, supported by medical and chemical authority. All is of no service. They indict, and under the direction of the learned Chairman of the Middlesex Sessions, the jury are directed it is a private and not a public nuisance. The result is, a verdict of not guilty is returned, and all this contrary to a similar result on the Welsh circuit the assizes before last, when a Westminster Hall judge gave such a direction to the jury that a verdict of guilty was delivered; and the defendant on that indictment suffered six months' imprisonment for bleaching bristles similar to the present defendant.

The prosecutors in this case appoint their solicitor. The chemical and abstruse parts of the case, with the symptoms caused in and felt by myself, servants, tenant, and neighbours, with the chemical authorities and analysis referred to by me, and my thorough knowledge of my own case, are drawn up by me; these facts are submitted to our solicitor, then handed over to Mr. Horry to master that part of the case. Weeks before the indictment came on for trial a fair copy of the pleadings and brief are made, and I emphatically assert not by me; this copy brief I used in court, and upon such copy brief I made notes whilst conducting the case, the original draft minutes remaining in Mr. Horry's hands, who, I believe, still holds them. This is the head and front of my offence.

Now, let the public in its wisdom judge both myself and co-prosecutors. We shall submit with deference, conscious as we are every act of ours, when properly investigated, will entitle us to sympathy rather than abuse, so liberally bestowed on our stepping forth to put down what we feel and know to be a dreadful public nuisance.

Very faithfully yours,
H. H. PYKE.

87, Chancery-lane, 5th Oct. 1844.

LEGAL INTELLIGENCE.

COMMON LAW SITTINGS.

QUEEN'S BENCH,

Before Lord DENMAN, C. J.

IN TERM.—MIDDLESEX.

1st Sitting, Monday, Nov. 4.
Also on the 5th and 6th.
2nd Sitting, Thursday, Nov. 7.
And until all the Causes appointed are tried.
3rd Sitting, undefended, Friday, Nov. 22.
Sit at half-past nine.

LONDON.

Sitting for undefended and short defended causes, which will be tried forthwith, unless there be a satisfactory affidavit of merits.

Saturday, November 23.

AFTER TERM.—MIDDLESEX.

Tuesday, Nov. 26, and following days.

LONDON.

Wednesday, Nov. 27, to adjourn only.

The First and Second Sittings will commence at eleven o'clock, when the undefended causes (beginning with the remanets and the new undefended causes in their order, and including those taken out of their turn, by notice to the defendant and the marshal) will be taken first; next will follow short defended causes; and afterwards, such cases of tort, replevin, and feigned issues, as shall have been specially appointed in court, on application to the judge to have them added to the list, to be taken first on convenient days.

EXCHEQUER OF PLEAS,

Before Sir FREDERICK POLLOCK, C. B.

IN TERM.—MIDDLESEX.

1st sitting, Monday, Nov. 4.
2nd sitting, Monday, Nov. 11.
3rd sitting, Wednesday, Nov. 20.

LONDON.

1st sitting, Friday, Nov. 8.
2nd Sitting, Monday, Nov. 18.
And by adjournment, to Tuesday, Nov. 19.

AFTER TERM.—MIDDLESEX.

Tuesday, Nov. 26.

LONDON.

Wednesday, Nov. 27, to adjourn only.

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during Term, at Ten o'clock.

THE CORPORATION OF LONDON AND THE WHOLESALE DEALERS.

A good deal of excitement has been occasioned by the order just issued to the City Solicitor relative to the wholesale dealers in the city. The committee appointed by the Common Council on the eve of St. Thomas's day, in the last year, have at length produced their report, which has been confirmed by the Court. It is very voluminous, and contains many curious extracts from the city records, from the Saxon era to the present time. Annexed to the report there are certain conclusions drawn from the previous extracts, and certain suggestions for proceeding, which, it is understood, are from the pen of the learned Serjeant Merewether, the town-clerk. It is recommended in these suggestions, that the corporation shall immediately commence proceedings to compel all wholesale dealers to take up their freedom, and, for the purpose of more effectually accomplishing this object, that the ancient practices and proceedings of the wardmotes should be revived, and their due observance should by degrees be more rigidly enforced. Upon these suggestions the committee have reported as follows:

"The subject-matter is not only of the greatest importance to this city, but also involves weighty considerations, having on the one side deep-rooted prejudices, long practice, and continued neglect to overcome; and on the other, the necessity of extensive and effective correction of existing evils, and the securing the restoration of the ancient, just, and reasonable rights of the city.

"We have weighed and considered the conclusions which are printed, and the proceedings which are suggested, and though we are not at present prepared to give our final report on all the matters referred to us, or to recommend at once all the proceedings which may hereafter be requisite, yet there are some points upon which we are prepared to report our recommendations to this Court, and to press their immediate adoption, as required by the existing evils, and the necessity of a speedy correction.

"The pressure on the retail dealers and the immunity of others who dwell within this city, and partake of all its advantages, have weighed much with your committee, and we have unanimously resolved that the acts of Common Council enforcing penalties on persons residing in the city, and not enrolled, using arts, trades, occupations, and mysteries, within this city, should be recommended for immediate enforcement.

"We have been the more inclined to recommend to this Court the adoption of proceedings for the penalties under the acts of Common Council, as we have the satisfaction of knowing that the Court of Aldermen had likewise had laid before them by the Remembrancer extracts and documents relative to the wholesale dealers, copies of which have been communicated to us by the Court of Aldermen, and from which we find that the same view we have taken of the liability of the wholesale dealers, who are not freemen, to proceedings for penalties, under the laws and customs of this corporation, is adopted by the Remembrancer."

It is stated in the corporation circles that there are some thousands of opulent merchants and wholesale dealers carrying on business in the city without being free. The publicity which the report has received has caused a very extraordinary sensation amongst this class of persons; but it is understood not to be the intention of the corporation to commence an indiscriminate crusade against the whole body, but to select from each ward one or more offenders, with whom the question will be tried. It is stated that all the great wholesale dealers are determined to resist what they consider to be an usurped power, and next term is spoken of as likely to hear the decision.

BANKRUPTCY COURT, OCT. 12.

Re JAMES SAWYER.

ALLEGED FRAUDULENT CONDUCT OF AN ATTORNEY.—This insolvent, who had been an attorney in Bow-lane, Cheapside, was opposed by Mr. Cooke on the part of a widow named Rokes, and supported by Mr. M. Chambers.

The case was before the Court on a former day, when evidence was given on the part of the opposition, and the insolvent on the present occasion was examined to some hours' duration. The complaint was that he had defrauded Mrs. Rokes of nearly 2,000*l.* the loss of which had reduced her to distress, and had obliged her to sell some furniture to bring her case before the Court. The evidence proved that the husband and son of Mrs. Rokes had been undertakers in Union-street, Borough. They were in partnership, and both had died. The son had saved 2,000*l.* in a box, which he gave her shortly before his death, for her own benefit, and when her husband afterwards

died she took out letters of administration, omitting all mention of the money given her by her son. In February 1842, her son-in-law, North, was heard in the Insolvent Debtors' Court, on which occasion she was subpœnaed as a witness. She consulted the insolvent, and mentioned the circumstance about the 2,000*l*. He told her she had committed an offence for which she could be transported, as the money should have been returned when she took out letters of administration. The poor woman was alarmed, and it was arranged that she should sell it out, and place it in his hands until after the hearing of the case. They went together to the Bank and she sold out the money, and outside the Bank deposited in his hands 2,400*l*. North was finally heard in April 1842, and, until after that period, no application was made for the return of the money. The insolvent told her that North's creditors were entitled to a portion of the money, and he advised her to sell it out, He had made her advances to about 400*l*. and that was the whole she had obtained of the 2,400*l*.

The insolvent stated that he was to allow Mrs. Rokes interest for the money. He had advanced her 500*l*. He had a bill of law costs (which had not been delivered) to 50*l*., and he admitted he owed her a balance of about 1,400*l*. He had used the money in his business. He kept at the time nine clerks and his carriage, and had a good practice. He, however, only made small deposits at the time with his bankers. He had taken an opinion of counsel and was advised that the money should have been returned when letters of administration were taken out. He had not advised her to amend the return made to the Stamp-office, neither had he advised her to place a portion of it in court for North's creditors. She suggested that the money should be placed in his hands, and he "acceded" to that suggestion. His insolvency arose from the failure of a Mr. Hannan, who owed him 2,000*l*. and he had other debts owing to him.

On the conclusion of the evidence, Sir C. F. Williams ordered an account of the disposition of the money obtained from Mrs. Rokes to be furnished to him before he gave his decision.

Mr. Cooke pressed for an early day, remarking that the insolvent had been long enough out of prison, and the interest of justice required a speedy decision.

Mr. M. Chambers prayed the Court to grant some days' delay.

Sir C. F. Williams adjourned the case to Monday week, ordering the account mentioned to be furnished to him some days before the next occasion.

Notice.—The Master of the Rolls has appointed Saturday, the 2nd of November, at half after three in the afternoon, at the Rolls Court, Chancery-lane, for swearing in solicitors pursuant to the statute 6 & 7 Vict. c. 73, s. 45. Every person desirous of being sworn on the above day must leave his common law admission at the secretary's office, Rolls-yard, Chancery-lane, on or before the 1st November, at three o'clock.

Secretary's Office, Rolls, Oct. 7, 1844.

The Palace Court.—It is said that, owing to the increased business of the superior courts of Westminster, it is in contemplation to throw open the practice of the Palace Court, which is at present confined to four counsel, and about eight attorneys, with three presiding judges. The jurisdiction of the Palace Court extends twelve miles around Whitehall, as the crow flies, and it is competent to try causes to any amount; but in all causes above the amount of 20*l*. the defendant may, on giving security, remove the action to the Court of Queen's Bench. The throwing open of the Court will be a great boon to suitors, as its jurisdiction will be extended, in which case causes which have frequently to be made remanets of in the superior courts of Westminster in sittings after term, may then be set down for hearing and disposed of before the judges of the Palace Court, so that both time and expense will be saved.

The Attorney-General.—We are happy to state that accounts have been received mentioning a most favourable and gradual improvement in the health of the highly esteemed representative of Exeter. On the 30th of September, Sir William Follett was at Baveno, on the Lago Maggiore, whence he intended to proceed to Milan. The learned gentleman will remain in Italy for some months.—*Sunday paper*.

Commitment of Insolvents.—Under the New Insolvent and Bankruptcy Act of Lord Brougham, a sort of indiscriminate discharge of debtors whose debts have not amounted to 20*l*., it appears, has taken place; and the consequence has been that several re-commitments to prison by the Bankruptcy Commissioners have been made. Two instances of this kind have occurred in our District Court of Bankruptcy during the week. A man named Simpson, who had thus been discharged, came before the commissioners for a final order, and relief from his debts, when he was opposed by an attorney for a person named John Jones, a coal dealer, in Vauxhall-road, Liverpool, and the grounds of the opposition were, that the petitioner was also in gaol at the suit of Jones, for an assault, the damages and costs amounting to the sum of 38*l*.—the damages, however, being less than 20*l*. It appears by the fourth section of 5 and 6 Vict. it is enacted, "that if any insolvent has been convicted of any offence, or had contracted debts by reason of any judgment in any proceeding for breach of promise of marriage, revenue laws, or in any action for seduction, criminal conversation, libel, assault, battery, malicious arrest, malicious suing out a fiat in bankruptcy, or malicious trespass, he would be deemed ineligible to take the benefit of the Act." On the above section the commissioner held, that Simpson (who had been released from Lancaster Castle) should be sent back to his old quarters, when a warrant was made out and placed in the hands of Mr. Ayres (Mr. Gaskell the messenger's clerk), who subsequently relodged him with Captain Hansbrow in Lancaster Castle. A very awkward circumstance connected with these commitments is, that there is no fund, nor is there any thing in the Act to provide for the expense of conveying insolvents to gaol when there is no estate. The messenger, it is said, is bound to execute the warrant of the commissioner; and although the cost to him is 3*l*. for conveying a prisoner to Lancaster, it is held that he has no one to look to for redress. This is punishing the innocent for the guilty in earnest. An insolvent named Boyle was also recommitted this week and conveyed to prison by the messenger under similar circumstances, and on the opposition of the same Mr. Jones.—*Liverpool Mercury*.

Circulation of Country Notes.—To-day, the 10th instant, the portion of the Bank Charter Act which relates to the circulation of bank-notes by country bankers in England and Wales comes into operation. There are several provisions in the statute having reference to the subject. By the 13th section it is provided that every banker claiming to issue bank-notes in England and Wales should, within one month after the passing of the Act, on the 19th of July last, give notice to the Commissioners of Stamps and Taxes of his claim, and thereupon the commissioners should ascertain if he was lawfully carrying on business on the 19th of May last, and then the commissioners should ascertain the average amount of bank-notes which were in circulation for a period of twelve weeks preceding the 27th of April last, which amount is to be certified to the banker; "and it shall be lawful for every such banker to continue to issue his own notes after the passing of this Act, provided nevertheless that such banker shall not at any time after the 10th of October, 1844, have in circulation upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than the amount so certified." It is by other sections enacted that the amount so certified to be issued shall be published in the *London Gazette*, and that in case the amount in circulation shall exceed the certified sum, such banker shall forfeit a sum equal to the amount circulated. After the 19th of October every banker on one day in every week, to be fixed upon by the commissioners, shall render accounts of the amount of bank-notes in circulation on every day in the week, with the average for four weeks, and with the amount authorized, such account to be published in the *London Gazette*; and, if neglect be made, or a false account rendered, such banker to forfeit 100*l*. for every such offence. In order to ascertain the monthly average amount, the daily circulation for four weeks after the 10th of October is to be taken, such period ending on a Saturday, and such amount is not to exceed the sum certified. The commissioners have power to inspect the books of bankers, &c., to ascertain the circulation of their notes, and a penalty of 100*l*. is provided for disobedience on the part of the bankers.

The New Metropolitan Building Act.—The Commissioners of her Majesty's Woods and Forests have just issued a notice that they have appointed Sir Robert Smirke, James Pennethorne, esq. and Thomas Cubitt, esq. to constitute, with the official referees, a board for the examination of persons who may present themselves for the purpose of obtaining certificates of qualification for the office of district surveyor within the limits of the New Metropolitan Building Act. All communications for the said examiners are to be addressed to the registrar of metropolitan buildings, at his office, No. 3, Trafalgar-square.—*The Builder*.

Durham Scholarship.—Ralph Lindsay, esq. solicitor, of London, and a native of Durham, is about to found a scholarship in the university of the latter city, of the annual value of 40*l*. It will be tenable for three years by boys who must have been two years at Durham.

Finsbury Registration.—The revision of voters for the borough of Finsbury commenced on Wednesday, before Mr. Moylan, at the Vice-Chancellor's Court, Lincoln's-inn. On the parish of St. Mary, Islington, being called, Mr. Oldershaw, the vestry clerk, said there were no claims, but there were twenty-eight objections, some of which were of a peculiar character. Richard Thane, one of the persons objected to, said that his rates had not been paid in consequence of a highly objectionable form of receipt which was attempted to be palmed off upon the inhabitants of Islington, and which he believed was done entirely with a view of depriving the parishioners of the rights conferred upon them by the Legislature. On the 8th of July he tendered payment to the overseers, and a proper receipt was refused him. The Revising Barrister thought that, under the circumstances, the tender of the money ought to be considered a *bonâ fide* payment, as far as registration purposes were concerned. Mr. Thane stated that the collector would not insert his name in the receipt, but insisted on substituting that of his landlord. The Revising Barrister, after hearing a lengthened discussion, said he thought it was a matter of angry feeling, and trusted such a difficulty would not occur again. The name was ordered to be inserted in the registry. Several cases of a like nature occurred, and were similarly disposed of.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—My attention has been drawn to an exhibition you have endeavoured to make of me in the Law Times of last week, under the title of "Sham Lawyers," and stating that "another of those suspicious personages has made his public appearance;" and then follows a circular of mine, set out in due form, and any one would infer, from your style, that I had just commenced my business. I beg leave to tell you that I am no "sham lawyer," nor any lawyer at all, nor ever pretended or assumed to be one; and, therefore, your assignation of such a term as applied to me is most improper and unjust. I have been a debt collector for the last eight years, and I can refer to hundreds of respectable persons in the counties of Berks, Bucks, and Surrey, amongst whom I can count some of the most *respectable of the Profession*, and whose testimonial to that effect I have by me, recommending me to the sheriff as officer, &c.

I have collected some thousands of pounds in my time, and punctually *paid over the debts as I received them*, and which would be worthy of imitation by some of your *real lawyers*. I can also prove I am more a *friend* to the lawyers than otherwise, many of whom have had business through me. If a person to whom I apply will not pay, then a retainer is sent by the tradesman to whom the debt is due to an attorney to commence legal proceedings—the writ is sent through an attorney to serve in the usual way, which brings something into his pocket—then the defendant perhaps employs another attorney to defend, which puts more costs into his pocket; and all I get is my bare two shillings in the pound when the debt is paid. I would ask you, when a party will not pay, who is a tradesman to go to but an attorney? and if he don't go to one he must go to another, and business not being now with attorneys *as it used to be*, if one won't attend to it there are plenty that will; the only difficulty is to get hold of an *honest* one. I fear, in your zeal to signalize yourself in the eyes of your patrons, that you forget the proper distinction between debt collectors who do their business fairly and respectably, and those who usurp the duties of the Profession and act as attorneys under the shelter of being a clerk, &c.; but I must beg you to understand this is not my case, nor will the term "sham lawyer" apply to me. I am a county court bailiff and debt collector, and I have given a heavy bond for the performance of my duties. I certainly shall ask a *real lawyer* how far you are justified in thus injuring and branding at your pleasure any one you may, without proper inquiry, choose to hold up to public execration.

I shall expect you to insert this letter in your next.

I am, Sir, yours very obediently,

Jeremiah Harman.

Slough, October 15, 1844.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In the case of *Re Foster*, in which I was engaged for the petitioner, and which was heard before Mr. Fonblanque on Saturday last, the solicitor for the opposing creditor attempted to shew some connection between me and a Mr. Hardy, who had put in a plea for Foster in person. I beg to state that Mr. Hardy, *of Little East-street, Lewes, Sussex*, is not my clerk, and that I have no connection with him, either directly or indirectly.

I am, Sir, yours, &c.

Brighton, Oct. 14, 1844. G. R. Goodman.

ATTORNEYS' GOWNS AND SHAM ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The several able letters on the subject of "Attorneys' Gowns" which have appeared in your columns are, in my opinion, amply sufficient to justify the resumption of our legitimate costume. What objections are there to it? None, that I am aware of, but the *cost* and *carriage*; and would not these be *more* than *outweighed* by the advantage and comfort to ourselves and clients? As a professional body, we should not be alone or singular; instance the Church, the Bar,

the Proctor. Would it not add to the gravity of the Profession, and tend to increase its respectability? What, I repeat, are the objections? Let those who are *really* unfriendly to the adoption (if any such there be) come forward, *not anonymously*, and urge their objections, and let the arguments on both sides be put in the balance—I would say submitted to the judgment of the congregated Law Societies—and if their *verdict* be in favour of the "Gown," let the members of the Profession overcome their *modesty*, and appear on proper occasions as it is fit they should. I trust, with one of your correspondents, that the Legal Protective Association (upon which we are about to place some of our hopes) will use its influence not only in this particular, but in one also of equal, if not greater, importance I mean Sham Attorneys, for whose detection and punishment it is high time a remedy were applied. Now, I think the above association, coupled with the assistance of the Bar, will be able, to a very great extent, if not wholly, to eradicate the evil, provided the courts will not do it. Let it be ascertained, in every instance, whenever practicable, at the assizes or sessions, that the attorney's name and residence is indorsed on each brief, and if there be any suspicion that all is not right, let the attorney be immediately written to; if he confess the cheat, then let means be adopted to punish the wrong-doer. If the ostensible attorney do not second the exertions of the society, then, Sir, it will be your duty to "shew him up" to his professional [brethren]; and though the duty may not be a *pleasant* one, you have given proof that you do not, on *fit occasions*, shrink from it; and if such a man had taken to a gown, I wish you could be authorized to disrobe him. I respectfully submit, then, that these desirable objects are not difficult of attainment; only let us have the hearty co-operation of our different societies, and the *honourable* portion of both branches of the Profession, sanctioned by judicial authority, which would be cheerfully given to every right movement, and then, and not till then, will the profession of the law be placed in that position in public esteem which it ought to occupy. Gladly embracing this opportunity of thanking you for the valuable services you have rendered the body since the publication of the first number of the LAW TIMES,

I remain yours, &c.

WILL. MELLAND.

Chesterfield, Oct. 15, 1844.

P.S.—I recollect, some time ago, it was the custom of one of our county papers to add the names of the attorneys on both sides in their report of assize and sessions business. If this practice were generally adopted, Sham Attorneys would be at a discount.

PROFESSIONAL COSTUME.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am glad that the observations which I thought fit to address to you on the subject of obstructions to the admission of Solicitors into Courts of Justice has elicited several very able letters from your correspondents.

I quite agree with them that the gown of the Attorney should be worn as the distinctive badge of our grade of the Profession, were it only to sever us from accountants, agents, and others of that fry, whom Lord Brougham, in his progress of crushing the Profession by infinitismal doses, is seeking to bring into notice.

As the introduction of the gown should be simultaneous, I would suggest that each member of the Profession in the various towns should sign a consent to adopt the gown, and forward it to your journal, or to the Law Institution, by which means the measure would, in all likelihood, speedily become generally adopted.

I am, Sir, your most obedient servant,

THOMAS LOTT.

43, Bow-lane, Oct. 11, 1844.

LETTER BEFORE ACTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reply to Mr. Cooper's letter, I beg to refer him to the case of *Kirton* v. *Braithwaite* (5 Law J. N.S. Ex. Pleas, p. 165), which decides that an attorney cannot legally charge for a letter written before action brought, and that a tender made of a debt without the charge for the letter is a good tender. I recently tried a case before the under-sheriff of Oxford, in which the very point was involved. There was a demand in that case for the payment of two letters in addition to the debt. The defendant pleaded a tender of the debt. The under-sheriff ruled that the tender was good, upon which the plaintiff moved for a new trial, on the ground of a misdirection; but a rule was refused, and the plaintiff paid the defendant's costs.

An attorney's letter is, of course, always allowed in costs (if written). So far Mr. Dax is right: but he is quite wrong if he means that the attorney is entitled, as matter of legal right, to demand 3s. 6d. for the letter; and if not paid and tender pleaded, the non-payment of the letter will be an answer to the defendant's plea of tender of the debt. Mr. Dax's expression is, as quoted, a fee of 3s. 6d. "*may be claimed by the attorney*," which is not very strong. There has been a misapprehension on the point, and which, I think, has arisen from the case cited by Mr. Tidd, in his New Prac. p. 19. He says, "Formerly no charge was allowed for such a letter on taxing costs to the attorney for the plaintiff against the defendant; but the propriety of encouraging this preliminary step has of late induced a contrary practice; and in a recent case (*Morrison* v. *Summers*, 1 Bar. & Ad. 559; 1 Dowl. Rep. 325), it was determined that an attorney is entitled to costs for writing a letter demanding a debt from a defendant, and that he may proceed in the action, unless the same be paid, even after payment of the debt before a writ was issued."

I am, Sir, your obedient servant,

H. STILES.

Cheltenham, Oct. 14, 1844.

LETTER BEFORE ACTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg to refer Mr. Cooper to the case of *Morrison* v. *Summers* (1 Barn. & Adolph. 559), and to 3 Chitty's Gen. Prac. 3rd edit. p. 105, where he will find that an attorney can legally demand 3s. 6d. for his letter if the debt be paid before a writ is issued, if the same exceed 20*l.*, and 2s. if the debt be 20*l.* or under, and that a tender of the debt without the costs of the letter would not be a sufficient tender.

Yours truly,

J. T. SHAPLAND.

South Molton, Oct. 14, 1844.

LETTER BEFORE ACTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—For the information of your correspondent in last week's number, in reference to this subject, I would refer to a case where it has been decided that a charge for writing a letter *cannot* be sustained where the amount of the debt is legally tendered before process has been actually issued.

The case referred to is *Chillicumbe and Another* v. *Edgill*. I have not met with the case in the regular reports, but obtained my information from the *Legal Guide* (vol. 6), and I believe the report in that work may be relied upon. The facts were these:—An action was brought upon a bill of exchange, but, in fact, to try the right of the plaintiffs' attorneys to charge 6s. 8d. for writing a letter to the defendant demanding payment before action brought. In April 1840, a bill for 20*l.* accepted by the defendant, became due in the hands of the plaintiffs. The plaintiffs' attorneys wrote to the defendant demanding payment, with 6s. 8d. costs. Upon the receipt of the letter, 2s., with the amount of the bill, was tendered to the attorneys, which covered noting and interest, but was refused until the 6s. 8d. costs was paid. The party tendering left the money, and went away. Subsequently an application was made by the defendant for the bill, which was refused until the 6s. 8d. was paid for the letter, which request not being complied with, the action was brought.

It was argued for the plaintiffs that the plaintiffs' attorneys only did that which respectable professional gentlemen ought to do; which was, first to write a civil letter of demand before they commenced an action.

Bosanquet, J. left it to the jury to say whether the charge for the letter, when the demand was paid immediately after its receipt, was a fair one or not, and the jury found for the *defendant*.

In Easter Term, 1841, the plaintiffs obtained a rule *nisi*, calling upon the defendant to shew cause why the verdict should not be set aside and a new trial granted, on the ground that the decision was against evidence, and against the opinion of the judge who tried the cause. The Court, after taking time to consider, *discharged the rule*, the judgment delivered by Tindal, C.J. being, that the Court was of opinion the verdict ought not to be disturbed.

I may mention, that it is the general opinion among Town practitioners that the charge for a letter, before action brought, cannot be enforced if the debt be properly tendered before a writ has been issued. It would be otherwise if a writ had been *issued*, although not actually *served*.

Your obedient servant,

Gray's-inn. J. C. WHITEFIELD.

SELECTIONS FROM CORRESPONDENCE.

"A. B." thus writes on the subject of Attorneys' Gowns:—

There can be no doubt, for the reasons contained in the able letter of Mr. Durrant, in your paper of the 5th instant, that the resumption by attorneys of their proper legal costume would not only add to the dignity and respectability of the Profession, but also to convenience in practice in the Courts. This last, however, is the main argument in favour of such resumption; for there are not a few who would say, that the dignity of the Profession should be kept up by other means than that of wearing a gown, though why this should be a reason for not wearing our proper professional costume, one may well be at a loss to conceive—pity it is that the dignity of the Profession, to whose care men trust their dearest interests, should ever have been diminished—however, there is a better day coming, thanks to your valuable Journal and to the feelings existing amongst the younger members of the Profession. After all, when we can point to Roscoe as having been a member of our order, and to not a few of our most eminent judges, there is yet hope.

An attorney-at-law has as full and undeniable a right to wear a gown when in attendance at Court as a barrister-at-law has. This is proved by his being obliged to wear one on his being admitted an attorney of the Court of Common Pleas, at Westminster, on which occasion he pays a fee for the temporary use of a gown, to an official, who attends there in the same way as a similar person is present when degrees are being conferred at Oxford and Cambridge with a supply of the proper academical costume for the use of the embryo B.A.'s and M.A.'s. It would be well, however, for the matter to be taken up by the Incorporated Law Society, or the Legal Protective Association, and it would be highly proper, and indeed necessary, to bring the subject in an official way before the Judges of Common Law and Equity, with the view of having their countenance and approbation, inasmuch as the attorneys and solicitors, being officers of the respective Courts in which they may have been admitted, are under the control of the judges of those Courts with respect to their official dress as well as their other professional privileges. I throw out this suggestion with the hope of its being acted upon by the Law Societies I have named. There cannot be a dissenting voice as to the propriety of attorneys wearing their ancient and proper legal costume when professionally attending the Courts.

A subscriber, under the signature of "ONE, &c." thus treats of the same subject:—

I cannot refrain expressing the gratification I have felt on perusing the admirable correspondence contained in the last and previous numbers of your valuable journal of the Profession, on the subject of attorneys resuming their official costume, being fully persuaded that it will increase the respect due to our body as members of an honourable calling, and do much towards exterminating many of the evils which exist, more especially those flagrant breaches of professional etiquette which have been so ably attacked and successfully defeated by your just and severe criticism. There is no one, I imagine, who can venture to deny the usefulness of a professional habit, in the face of the clear and ample arguments of Mr. Durrant and others. Why attorneys and solicitors should be deprived of their ancient and proper dignity there are no grounds to shew; but before I adopt the wearing of a gown, as it appears many of my professional brethren have signified boldly their intention of doing, I would rather it came from the mouths of the judges to sanction the practice, and I sincerely hope the ensuing Term will not pass away without their lordships' attention having been drawn to the subject in a manner that may induce them to give their opinion upon it.

A correspondent, signing himself "ARGUS," who of course furnishes us with his real name, sends the following particulars of the interference and detection of one of that numerous fry we have had of late so frequently to castigate. It will be seen by this, and another case given in the present number, with what vigilance the Bankruptcy Courts (which have been most infested by these creatures) are now watched:—

In the Court of Bankruptcy, on Tuesday last, in the case of *Colchy*, Stowell, the common informer, actually appeared to conduct the proceedings on behalf of the insolvent; but a member of the Legal Protective Association being out he "look-out," Sir C. F. Williams soon gave Stowell an intimation to desist. It was then urged, he was acting as *clerk* to some attorney at Lambeth: but it was "no go;" Sir Charles was inexorable, and the agent was sent to the "right about."

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To Readers and Correspondents.

Owing to the large amount of correspondence which the question as to the adoption of professional costume by attorneys, the late disclosures at Middlesex Sessions, and the disputed point as to "letter before action," have brought in, we have been compelled to hold over several interesting communications till our next.

The unique specimen of a threatening notice from Buttle in our next.

We cannot insert anonymous replies to the queries of correspondents on matters of practice.

MODUS, *on Attorneys' Gowns, though with much truth in his epistle, is too flippant in tone.*

TO SUBSCRIBERS.

The Subscriptions of those who prefer prepayment being due for the current half-year, the PUBLISHER *will be obliged by their transmission in the course of the ensuing week.*

THE LAW TIMES.

SATURDAY, OCTOBER 19, 1844.

LAW TIMES EDITION OF IMPORTANT STATUTES.

MR. PATERSON'S edition of the very important Acts of the last session relating to Joint-Stock Companies, with elaborate notes and a copious index, will be published in the course of next week, forming the Third of the Law Times Editions of Important Statutes.

THE MOVEMENT.

WHAT share the LAW TIMES has had in stimulating the resolute efforts now being made by the Profession to protect and purify itself, it is not for us to determine. Enough that the work is done; let the credit of having kindled the flame be awarded where it may, the consciousness that the movement we have so long and strenuously urged is now being made will be to us of itself a sufficient reward.

But the value of this movement will mainly depend upon the discretion with which it is directed. Difficulties and dangers beset the path, which it will demand great courage and prudence to avoid or conquer. From time to time we propose to give warning of rocks a-head, and occasionally to proffer recommendations, whose value it will be for others to weigh. At all events it will the honest counsel of a friend who has been tried and proved.

Two organizations are now in progress, the one, the elder of the twain, aiming at a union of the provincial Law Societies; the other, yet in its infancy, proposing to link together the entire body of attorneys, metropolitan and provincial, for the common purposes of self-protection and the purification and exaltation (if the term may be so applied) of the Profession. We trust that these associations will work steadily together, nor jostle each other by the way. There must be between them no rivalries, no jealousies, no looking to mere local interests. Once they should turn their strength the one against the other, their worth will have passed away, and they will be hindrances instead of helps to the Profession. It will be very difficult to guard against collision of opinion, and harder still to avoid charges of self-seeking. It would be well if they could contrive from the first to keep up a close communion, so as always to direct their forces to the same spot at the same moment.

Perhaps it may not be amiss to recal to the memories of our readers a suggestion we threw out some months since for the complete organization of the Profession, and still we believe it to be not only a desirable object, but a practical one.

Our scheme was this. That all the provinces should be organized into Law Associations, each large town and county having its own; that the metropolis should form a similar society; that once in every year in the month of May the chairman and secretary of each of the societies should meet in London to deliberate upon the affairs of the Profession, to receive the proceedings of the local societies, to determine on matters of moment to their constituents, and so forth.

We proposed that there should be a central office in London, with a paid secretary, always in attendance, who should communicate to all the societies whatever it might be necessary that they should know, and that some half-dozen members resident in London should be appointed to meet and advise the secretary on any emergency, when time would not permit the summoning of the entire committee from the country.

We further proposed that one of the duties of the central committee at its annual meeting should be to determine what books should be published by the VERULAM SOCIETY for the year ensuing.

We still think that this plan, or something very like it, would be the most successful and satisfactory in its working, because it would really embrace the whole Profession, and in it all interests would be fairly represented. Such a union, moreover, would necessarily carry a vast influence with the Government and the public. Why should not the Provincial Union be deemed the first step towards this end? Why should not the Legal Association be the Metropolitan Society required by the scheme? We are confident that the more it is reflected upon the more apparent will be the advantages of this one complete organization we have rudely sketched over the partial ones in progress.

PROFESSIONAL MALPRACTICES.

MR. CROUCH, who has been the unfortunate cause of the fortunate detection of the unprofessional doings at the Central Criminal Court, has addressed the following letter to the *Legal Observer*. As we have given currency to the accusation, justice demands that we should as widely circulate the defence:—

SIR,—I am happy to observe, by your last number, that you intend to notice the report of the late trial in the Central Criminal Court, *Reg.* v. *Pond*, because I feel convinced that you will do that justice to the subject (which the *Morning Chronicle* has entirely forgotten), and, without mixing *other persons* or *other matters*, altogether unconnected with the case, you will fairly judge it by its own circumstances, and will

Nothing extenuate, nor set down aught in malice.

As my name has been much used in this affair, permit me "*se defendendo*," to give you some information which I think will enable you to investigate the subject with more accuracy. The question is, "How far a barrister, practising at the London Sessions, was justified in acting as counsel for a prosecutor in person?"

But before I enter into that question, allow me to say, that I at once concede that in all *cases whatever*, either *criminal* or *civil*, the *agency* of an *attorney* is most advantageous to the client, and ought never, if possible, to be dispensed with by counsel.

In order to look at the case fairly, it is necessary to examine the practice of the London Sessions in general; and, secondly, how far my conduct in this particular case was consistent with that practice.

I have been about two years in practice, and during that time I have attended the London Sessions; and being always most anxious to conform to the etiquette of the bar, my greatest difficulty has been to find out by what rules I ought to be guided. I therefore thought the safest plan was, to follow the example of those "who were older in practice, and abler than myself to make conditions." I found that the business of the Central Criminal Court was divided into three branches: the first and best of which was conducted by a few respectable attorneys, who employed the leading counsel, and from whom there was but little chance of juniors getting a brief; the second class of business was given to counsel by attorneys and agents who usually *importuned* clients in order to obtain it, and was not thought respectable; and the third sort of business was intrusted to counsel by prosecutor and prisoner *in person*. This latter business I found was received by gentlemen of the bar without any *disguise*, without any attempt at *concealment*, and without censure; and although it is only the second time that I have held a brief for a prosecutor (in person in this court), I should at no time have refused to do so. And the *Chronicle* itself allows it was the *practice*, even before Mr. Prendergast *went to the bar;* and I could, if necessary, give you the names of many cases where the leaders of the session have held similar briefs, were it not rendered unnecessary by the frank admission of the gentlemen themselves, who exonerate me from any blame, as I merely followed the practice of my sessions.

I hope, Sir, I have shewn you that in this matter blame has been unfairly attached to me by the daily press, and I look for mere justice at your hands.

It having been conceded to me by the gentlemen of the bar, that I was justified by their practice in acting as counsel in the case in question, it is now for me to shew how I conducted the case itself.

The prosecutor (whom I had known for many years) called upon me and said he wished me to be his counsel in a prosecution for robbery. I asked him who his attorney was (for counsel can never prefer private clients); he said it was a simple case, and he did not intend to employ one. He then handed me the depositions. I told him to send me any further information he had in writing, which he did in a few days. I took *no notes*, I took *no examination*.

The next time I saw him was at *the Central Criminal Court*, the *first day* of the sessions; he then *paid me* the fee (two guineas) before the bill was even found, and four days before the trial. I never examined the witnesses; I never even saw one of them until they got into the box to give their evidence.

I hope, Sir, on an impartial view of the subject, you will be of opinion that in undertaking the case in question I have neither acted unusually nor unprofessionally, and that, however the practice of taking briefs from clients in person may be condemned, yet that severe blame ought not to attach to one who had merely followed the long-established usage of the court he practised in.

I am, Sir, yours obediently,

N. CROUCH.

Temple, October 3rd.

We entirely acquit Mr. CROUCH of any peculiar wrong-doing in this matter. Undoubtedly, deny it who may, the practice of taking briefs from other than attorneys has prevailed both at the Central Criminal Court and at the Middlesex Sessions. Mr. CROUCH but followed in the footsteps of *greater* men, and it is very hard upon him that he should be visited with the blame that attaches to the practice, but which it is not fair to saddle upon one who has only pursued a well-trodden path.

His letter, however, if he be accurately informed, throws a new light upon the side scenes of the Central Criminal Court, and opens to us new mischiefs.

At the bar of this court, he tells us, there are no rules of etiquette, at least in two years he has been unable to find them out. This confirms the necessity we asserted last week of some rules being framed by those who practise there; such an excuse must no longer prevail, or no respectable man will take his wig into the court.

Then he tells us that the business is of three kinds: old and respectable practitioners take one slice, which they give to the leading counsel; a second is grasped "by attorneys and *agents*, who usually *importune* clients in order to obtain it, and was not thought respectable;" the *third* is business "intrusted to counsel by prosecutor and prisoner in *person*," and *this*, Mr. CROUCH adds, "was received by the Bar without any *disguise*, without any attempt at concealment, and without censure!"

Now, we must protest against the conclusions which Mr. CROUCH would deduce from the fact that the first class of respectable business, conducted by respectable men, is given by them only to the leading counsel. That such is the fact we do not doubt; but does it follow that the juniors are thereby justified in procuring briefs by unprofessional practices? Why should not the juniors at the Central Criminal Court and at the Middlesex

Sessions be content to bide their time equally with the juniors on the Circuits and at the other County Sessions? If they exclaim, "We must live," we should be inclined to reply, as did Dr. Johnson to a poor maker of bad verses, "I cannot see the necessity." They might have known that business at the Bar comes slowly; and they should not have gone thither wanting the means to enable them to wait the inevitable period of probation. Because a Counsel does not obtain briefs from a respectable attorney, he is not, therefore, justified in taking them from an agent.

As for class the third, the business brought by the parties in person, it may be as Mr. CROUCH asserts of the courts in question, that it is accepted by all without censure. But we can affirm that such is not the practice in any other court; the only case in which it is permitted to counsel to take a brief from the party being when it is handed to him *over the bar* by a prisoner for his *defence*. In prosecutions it is never allowed, and the reasons both for the rule and for the exception are too obvious to need being set forth.

Mr. CROUCH has in his second division mingled two distinct classes of business; viz. that importuned for by attorneys and by agents. These stand in a very different position as respects the conduct of counsel, for if the brief be brought by an attorney, counsel is bound to take it, however great the importunity by which it was procured; whereas, if presented by an agent, he is bound to refuse it, however readily obtained. A counsel cannot try degrees of respectability. He has one simple duty to perform,—to see that his brief is properly authenticated by the indorsement of an attorney. Having this, he can inquire no further, the question of the right to use that name is between the attorney who owns it, the party who uses it, and the Profession at large, whose duty it is to see that it is not used improperly.

With these comments on Mr. CROUCH'S letter, we quit the subject for the present. But we shall return to it again and again until something be *done* to prevent a recurrence of the practices that will assuredly revive when attention is diverted and the *talk* about them over.

SHAM LAWYERS.

THE following is a rich specimen of its kind. It is, as we are informed, the copy of a bill delivered by Mr. ROBERT SEVILLE, by trade a *tailor*, in Yorkshire, to one Mr. CHAS. SCAULAN, who had employed him professionally, in his second calling of *quasi*-lawyer. We hope Mr. CHAS. SCAULAN is satisfied with HIS *lawyer's* bill. May all employers of such men be so served:—

Mr. Charles Scaulan,
To Robert Seville, Dr.

1843.			£	s.	d.
June	13.	At your request writing a letter to Mr. Worsley, Penistone, to ascertain if he would sell his estate in Saddleworth, and if so, on what terms	0	1	0
,,	,,	Posting letter and postage (two miles)	0	1	7
,,	24.	Paid messenger delivering letter in answer, and waiting on you with same	0	1	0
,,	27.	At your request writing again	0	1	0
,,	,,	Posting letter and postage (two miles)	0	1	7
July	7.	Paid messenger delivering letter in answer and waiting on you with same	0	1	0
,,	10.	Writing again on the subject	0	1	0
,,	,,	Posting and postage (two miles)	0	1	7
,,	17.	Paid for letter and waiting on you with same	0	1	0
,,	18.	Writing in answer	0	1	0
,,	,,	Posting and postage	0	1	7
,,	24.	Paid for letter and waiting on you with same	0	1	0
,,	27.	At your request, journey to Penistone to see Mr. Worsley and conclude the purchase (two days)	0	15	0
,,	,,	Coach fare to Huddersfield	0	3	6
1843.			£	s.	d.
July	27.	Paid for saddle-horse to Penistone	0	7	0
,,	,,	Travelling expenses for self and horse (all night)	0	9	0
,,	,,	Paid Mr. Dransfield, attorney, Penistone, your share of the expense for preparing the agreement for the purchase	0	7	6
,,	,,	Coach fare from Huddersfield returning	0	3	0
,,	28.	At your request writing letter to Mr. Worsley, requesting him to give the tenant in possession notice to quit	0	1	0
,,	,,	Posting letter and postage (two miles)	0	1	7
Aug.	1.	Paid for letter in answer, and waiting on you with same	0	1	0
,,	9.	Writing again on the subject	0	1	0
,,	,,	Posting and postage	0	1	7
,,	20.	Paid for letter and waiting on you with same	0	1	0
,,	,,	The abstract not being furnished in pursuance of the agreement, at your request writing letter to Mr. Worsley on the subject	0	1	0
,,	,,	Posting and postage	0	1	7
Sept.	[illegible].	Paid for letter in answer, and waiting on Mrs. Scaulan with same	0	1	0
,,	,,	Paid carriage of abstract of title	0	1	6
,,	,,	At your request attending with Mrs. Scaulan upon your attorney with the abstract	0	2	6
,,	,,	Writing three letters: one to Mr. Carson, the mortgagee's attorney, Mr. John Worsley, and Mr. Thomas Worsley	0	3	0
,,	,,	Posting and postage	0	1	9
Nov.	2.	Writing two letters: one to Mr. Reddish, attorney for Mr. Thomas Worsley, and Mr. Carson, Liverpool, attorney for the mortgagee	0	2	0
,,	4.	Journey to Liverpool at your request to see Mr. Carson, the attorney for the mortgagee	0	10	0
,,	,,	Paid railway fares for going and returning	0	13	6
,,	,,	Paid omnibus fare in Manchester and Liverpool	0	2	0
,,	,,	Travelling expenses	0	7	6
,,	17.	The mortgagee refusing to allow you 50*l*., paid Mr. Thomas Worsley at your request, writing Mr. Worsley on the subject, also Mr. Reddish	0	2	0
,,	,,	Posting and postage	0	1	8
,,	20.	Paid for letter, and waiting on you with same	0	1	0
,,	28.	Paid, ditto, ditto	0	1	0
1844.					
Jan.	16.	Writing in answer	0	1	0
,,	,,	Posting and postage	0	1	7
,,	25.	Paid for letter, and waiting on you with same	0	1	0
March	12.	Writing letter to Mr. Worsley, with two post-office orders	0	1	0
,,	,,	Journey to Oldham to obtain same, and posting and postage	0	1	7
,,	,,	At your request accompanying Mrs. Scaulan to purchase stamps for the deeds	0	2	6
,,	,,	Attending at your request at Scout Head to execute the deed	0	2	0
,,	,,	Per-centage agreed upon on the amount of purchase-money 510*l*.	13	0	0
			£19	10	2

SHAM LAWYERS.

OUR correspondence last week contained a suggestion for the suppression of these nuisances which appears to us so thoroughly effective for its object, that again we bring it thus prominently under the notice of the Profession.

The plan proposed by our correspondent is very simple. It is, that in all the courts, both superior and inferior, the attorney shall enter his case, whatever it be, with the officer of the Court, as he now does his causes; at quarter sessions with the clerk of the peace; at the assizes with the clerk of the arraigns; and that no attorney shall be permitted to prosecute or defend without such previous entry.

This appears to us to be a certain cure for the mischief that has so long tainted our courts and inflicted such great injury upon the Profession. It would be attended with no inconvenience of any kind, and it would sweep away at once the entire brood of vermin by whom the courts are now infested.

Nor are we without hope that it would do something towards the removal of another evil of almost equal magnitude, and which has hitherto eluded every scheme devised for its destruction; we allude to the malpractice, but too prevalent, of an attorney lending his name to some fellow who pretends to be his clerk, although in truth there is no relationship between them of master and servant, nor is the attorney whose name is used in any manner cognizant of the doings of the fellow who borrows it. An entry of the attorney's name in each case will compel either his own appearance or that of a clerk expressly and directly empowered to appear for him by an authority which should be filed by the officer of the Court. Thus would a ready means be afforded for the discovery of such infamous associations where they exist, for it might easily be ascertained whether the producer of the authority was a *bonâ fide* clerk or a sham lawyer, and on proof of the latter the Law Societies might bring the party who had lent his name before the judges and procure his expulsion from the Profession he has disgraced.

Earnestly do we commend the suggestion of our correspondent to the serious and immediate consideration of the Profession. Let the Legal Association take it up, for upon them must now devolve those duties which others have neglected; and let it be a subject for consideration at the great coming meeting of the Union of the Provincial Law Societies, from whose co-operation so many advantages may be anticipated.

A NEW TRAP.

THE following advertisement has appeared in a Greenwich newspaper:

16, GREENWICH ROAD,
GREENWICH,
(Opposite the Tabernacle.)

From the difficulty experienced by Tradesmen in general in getting in their outstanding Debts, and the fear of enforcing the same, on account of the late alteration of the law of Imprisonment for Debt under 20*l*. and the dread of incurring heavy law expenses, G. N. WILLCOCK undertakes to *collect* the same, and *indemnify the party employing him from all law costs and charges whatever*, on being allowed a fourth part of the debt recovered.

N. B. Weekly and Quarterly Rents collected at 5 per cent. including serving Notices to Quit, Execution of Warrants, Estimates of Dilapidations, and Ejectments, under the new Act, and all legal proceedings attached to the agency.

Valuations for the Probate Duty, &c.

We direct special attention to it, not so much because it is the production of one of the countless brood of SHAM LAWYERS, but because we have no doubt that there is a *real* lawyer in the back-ground in connection with the advertiser, and who sets this trap to catch clients under cover of the convenient Mr. G. N. WILLCOCK.

Observe the terms of the announcement. Mr. WILLCOCK, himself no lawyer, undertakes to collect debts, and indemnify his employer *against all law costs and charges whatever*, on being allowed a *fourth* part of the debts recovered. (A moderate demand truly!) Now it is evident that some lawyer must be employed by Mr. WILLCOCK to do this; upon what terms is known only to themselves; but this much is certain, that there is a lawyer acting so unprofessionally as to deal with Mr. WILLCOCK instead of the real plaintiffs in the legal proceedings required for the recovery of those debts, and therefore giving his sanction to, nay, becoming in fact a participator in, the above advertisement. Let him endeavour to disguise it as he may, the truth is, that he is seeking business through the medium of the nominal advertiser.

Let us plainly tell this attorney that he is known to us; many eyes are upon him; we wait only for documental proof to publish him to the Profession, and consign him to the

Legal Association. The moment he is caught making applications or suing for Mr. Willcock, we shall be obliged by the proofs being forwarded to us, and without hesitation we will add him to the disreputable band which have been already put upon record in the pages of the Law Times.

Let him beware in time, and at once withdraw from the connection.

VERULAM SOCIETY.

The recent large accessions of members have brought almost within reach of calculation the period when the publication of practical Text-Books may be commenced with safety. The intermediate time may be profitably occupied in making preparation, and especially in deliberating and deciding what shall be done when the Society is in a position to act.

It seems to be generally agreed that the first Text-Book shall be a work, the want of which is daily felt by every member of the Profession, and the design of which was submitted to the members some weeks ago. It was that of a complete book of practice, to contain all the information upon PRACTICE which an attorney requires in the daily duties of his office,—for his LAW he can always find in his library if he wants it in a hurry; or he can procure it from counsel if time permits.

This Book of Practice we proposed to arrange under distinct branches, and to add to each the ordinary forms which the attorney is required to draw, and for which he cannot resort to advice.

The plan was universally approved, but when we came to arrange the details a doubt suggested itself as to the best shape for such a work. At first we proposed to divide it under the half-dozen principal branches of Practice; such as Common Law, Equity, Conveyancing, Magistrates, Bankruptcy and Insolvency, Elections, Local Courts, and Miscellaneous Business; but we found these so often running one into another, that frequently the quality that gives the greatest value to a Law-Book—readiness for reference—was lost in the bulk. The further we advanced in mapping out the scheme, the more apparent were the difficulties, and the more forcibly did we feel the advantages of adopting a different form for a work so multitudinous in its subjects.

The alphabetical arrangement is that which we think will be found the most convenient for the purposes of ready reference. On this point we have inquired of the experience of some legal practitioners in Belgium, where many of the most useful practical law-books are in that form, and they agreed in giving the preference for a book so miscellaneous as a book of practice to the cyclopædic or dictionary method.

Before final decision, we are desirous of taking the opinion of the Profession upon the question which of the two suggested shapes their Book of Practice shall assume. We are decidedly in favour of the alphabetical arrangement; and the manner in which we should propose to carry it out would be this:—

To procure the advantages of division of labour, both in perfectness and speed, each subject should be committed to some legal writer whose studies and practice have peculiarly fitted him for the task, so that a great number of pens may be employed at once.

That no subject might be omitted, we would away, ther propose to publish in the Law Times, helps t work proceeds, a list of the subjects in cult to gu in their alphabetical order, that they harder still ll scrutinized by the Profession, and It would be d heading supplied, or any useless the first to ged. By such means a work may always to c be produced, which will as nearly at the same the ideal of a useful Law-Book as Perhaps labour can accomplish.

memories of advantage of such a form is this, out some mc appear in parts as fast as each por- shed, without waiting for the completion of the entire work before publication, and each part will be in itself perfect and useful so far as it goes.

We shall be obliged by opinions as to the most desirable of these suggested forms of publication.

The First Part of *Bittleston and Symons's Magistrates' Cases* is now ready. Members will be pleased to learn that the Reports of the Society have been extensively used during the Quarter Sessions now in progress, and everywhere cited and accepted as authorities, and that in various quarters warm expressions of approval have been bestowed upon them.

The 3rd and 4th numbers and first part of the *Real Property and Conveyancing Cases* will be ready early next week, and will be followed by the second and third numbers of the *Criminal Law Cases.*

The following members have joined the Society during the last week:—

Mason, Henry Barber B. Wercham, near Stokesferry.
Richardson, Joshua Thos. Rochdale.
Ashton, J. Y. Liverpool.
Webster, Jno. 33, Norfolk-st. Sheffield.
Exeter Law Library, Exeter.
Spencer, William, Birmingham.
French, Robert, Little Hampton, Sussex.
Webb, Jas. Michael, Holt, Norfolk.

LECTURES ON MEDICAL JURISPRUDENCE.

By Alfred S. Taylor.

Delivered at Guy's Hospital, 1844.

Lecture IV.

Perforation from disease may occur in two ways: firstly, by ulceration; and, secondly, by solution of the parietes, which is supposed to occur after death. Perforation from cancer or malignant ulcer is a condition to which I shall not here call your attention, because the very diseased state of the stomach will at once announce the real nature of the case. The stomach appears to be one scirrhous mass, and this is not a case to lead to any medical ambiguity; because the individual suffers long, and bears the marks of organic disease. In some cases of perforation as the result of disease, the parietes of the stomach may be eaten away, and the aperture very small indeed. On examining these cases, we find the mucous membrane is the most extensively removed; the muscular coat next, and the peritoneal coat the least ulcerated. The aperture communicating with the abdomen is very small indeed, and not much bigger than a large pin's head. We find patches of redness scattered about the stomach. In scirrhous perforation the stomach is considerably thickened around the aperture, which is commonly of an oval form, about half an inch in diameter, situated in or near the lesser curvature of the stomach.

We have now to speak of *perforations of the stomach by poisoning*, which may be classed as follows:—

1. By corrosion (mineral acid).
2. By ulceration (irritants).

And those resulting from disease:—

1. By ulceration.
2. Spontaneous.

Another kind of perforation produced by poisoning, and the result of ulceration, takes place from the action of arsenic; but there are only three instances on record of the stomach having been perforated by arsenic as the result of ulceration. The reason of this is, that persons die from arsenic long before the ulcerated process goes on to the extent of producing perforation.

Now how do we distinguish cases of perforation from simple ulceration from cases of poisoning? It is to be remarked that perforation from disease resembles poisoning in its symptoms. The patient is suddenly seized while in a state of apparent health, soon after a meal, with a violent pain in the stomach, and dies in five or six hours. In many of these cases there is a strong resemblance to the action of arsenic, and the diagnosis is founded principally on the following facts: The symptoms of perforation from disease occur very suddenly, and in the most excruciating form, but in arsenical poisoning they come on gradually, and go on increasing in intensity. Then there is very slight vomiting in a case of perforation as the result of disease; there is no diarrhœa, and the patient dies with all the characteristics of peritonitis. It is owing to peritonitis, indeed, that life is destroyed, and in this form of disease it is not likely that a well-informed practitioner would ever make a mistake. An inspection of the body must remove all doubt, if accompanied by a chemical analysis. Now the second form, as the result of morbid causes, is known as spontaneous perforation. It is generally seen at the large end of the stomach. The aperture is large, and the edges are ragged and softened, and present an appearance exactly as if they had been scraped. Whenever we see this spontaneous perforation, we see these appearances. Although the contents of the stomach are effused, there is no sign of peritonitis, a circumstance that leads to the supposition that it is a *post mortem* change, otherwise we are unable to explain it. It has been supposed to depend on a chemical solution of the stomach by the gastric juice at or about the time of death. It is said to have been observed in certain cases where persons have died from accident or disease; but during the last twenty-three years we have only the report of one instance of this kind occurring in Guy's Hospital, and that was a case where the individual was labouring under disease. He died apparently from other causes, and there was a state of general disease of the system found after death. In persons who have died of apoplexy soon after a meal, nothing of the kind has been met with, and yet these are cases in which we should expect to find it, according to the theory I have noticed. In one instance it was seen where the person died from long-continued disease. The presence of food in the stomach does not appear to be necessary to it; the individual may be labouring under a lingering disease, and hence health and activity are not necessary to its production. We are unable to say what is the direct cause of this condition. It would appear to take place after death; but it is quite possible that it may take place an hour or two before death, and yet no marks of peritonitis be found. Those who take up the chemical views of the present day have contended, that muriatic acid combined with the gastric juice, will act with a solvent power on the mucous membranes; but it must be recollected, that this solution has no power on any substance possessing life, and therefore, this theory presents the almost inadmissible doctrine that the gastric juice preserves to itself a power of acting on the stomach, and retains a vitality longer than the stomach itself, unless we can imagine that the parietes of the stomach and the gastric juice retain their vital properties—the one as long as the other. On this theory it is assumed, that there is a kind of power preserved in the gastric juice which the stomach loses long before. Without going into that subject, we may say that the quantity of muriatic acid naturally present is quite inadequate to the explanation of any thing of that kind. By a most careful analysis, Dr. Prout found that the quantity of muriatic acid in the gastric juice was not more than five grains in sixteen ounces, hardly more than one thousandth part of the solution. I mention these facts to shew that we have yet to find out the cause of spontaneous perforation of the stomach. Perforation from corrosion is known from that produced by other causes by the presence of acute symptoms during life; by the vascularity, or cauterization of the mucous membrane, and the traces of corrosive poisoning in the substance of the stomach or abdomen generally; so that though here there is some difficulty in explaining how spontaneous perforation of the stomach occurs, yet medico-legally speaking, it is distinguished very easily from those cases which it most resembles.

We now proceed to the evidence derivable from a chemical analysis of the poison, or the contents of the viscera, and this is directed, first, to the nature of the poison; and, secondly, to the proportion or quantity that may exist. Both the nature of the poison and the probable quantity administered are required to be stated in the indictment on a criminal charge of poisoning; but it is not absolutely necessary for conviction that the substance thus stated should be proved to have been that actually administered, because the purposes of the law are considered to be fulfilled if the kind of death is substantially proved. A man may be indicted for administering corrosive sublimate; but it may be proved that the poison was in reality arsenic; still it has been held that the prisoner may be convicted of poisoning, because the kind of

death is, in substance, considered to be the same, and the means resorted to are perfectly immaterial. All the medical witness has to prove is that the person was poisoned. This is in many respects fortunate, because convictions may take place in spite of the defects in the original analysis. The quantity of poison present is generally stated conjecturally, but the witness may assist the law by giving a determinate idea of the quantity taken. Any organic substance given for analysis should, if liquid, be measured; or, if solid, be weighed, in order that you may at any future time determine the quantity. The contents of the stomach should be examined to know how much poison was present at the time of death. A question commonly put is—what quantity of poison is sufficient to destroy life or to produce any serious effects in the person to whom the poison is administered? This requires closer attention when it is considered that the malicious intent of a prisoner is very often inferred from the quantity of poison given. At the Kingston assizes a case occurred, about ten years since, in which a man was capitally indicted for administering oxalic acid with intent to murder. The poison was introduced in a cup of coffee, served for the prosecutor's breakfast. There could be no doubt of its presence, but an estimation of the quantity led Mr. Barry to discover that oxalic acid existed in the proportion of ten grains to one pint, a quantity which he considered quite insufficient to produce any deleterious effects. The man was acquitted, but it is probable that had a larger portion been found, he would have been convicted. That made all the difference as to the malice of the prisoner. This case shews that a medical witness, while he must not be content with determining the presence of the poison, must also, if he wish to render the law merciful, determine the quantity. The law presumes upon innocence rather than guilt, when the weight of the evidence does not strongly shew the maliciousness of the prisoner's act. If a man administered to another a few drops of oil of vitriol in a large quantity of water, we should not infer that his intention was to commit murder; but if he administered a large quantity of th acid in the undiluted state, the malice of such an act would be at once apparent. Presumptions of this kind must of course be affected as well by the nature of the poison as by the moral circumstances brought forward in the evidence. The quantity of the poison present, therefore, is important to be noticed. It is from the result of experiments upon the poisoned articles of food that the malice of the prisoner's conduct may be inferred. The quantity of poison that may exist in the deceased's stomach at the time of death cannot determine the quantity actually administered, in consequence of the loss by vomiting and purging, and by absorption from the length of time the deceased survived after taking it. If the deceased died from poison, it is clear that the quantity administered must have been sufficient to kill, whatever may be the quantity found in the stomach after death. This may or may not be more than sufficient to destroy life. But, notwithstanding this very general rule, lawyers very often put a question as to how much was found in the stomach, and whether that was sufficient to destroy life? Whether any was found, or whether there was sufficient left in the organ to kill, it is not very material to prove, if other facts shew that the person died from the effects of poisoning. There have been cases frequently in the hospitals of persons who have died from the effects of arsenic in twenty-four hours, and yet no trace of the poison has been discovered in the stomach, in consequence of the excessive vomiting and purging that have taken place. It is the custom of prisoners charged with administering poison to allege, with regard to some bodies, that they did not know them to be poisonous, and that they did not administer them with intent to kill; but the law infers that corrosive sublimate, or arsenic, or oxalic acid, must have been given with intent to kill, and it lies with the prisoner to prove the contrary.

I will just here call your attention to a few remarks on the identity of the articles that may be given for the purposes of analysis in a case of suspected poisoning. It is necessary that the vessels used should be perfectly clean, and that all the apparatus used in testing should be clean. This is very important to be attended to—in fact, it is incumbent on the medical practitioner to observe this caution, and unless he does so, in a doubtful case the prisoner will certainly be acquitted. In one instance the evidence from a good chemical analysis was rejected, because the contents of the stomach had been placed in a vessel borrowed from a neighbouring grocer's shop, and it was proved that the grocer dealt in poisons. The law assumed, for the sake of humanity, that there might have been something left in the vessel, the witness not having satisfied himself that it was perfectly clean. Then the suspected substance, when once placed in your hands, should be preserved in your custody, and should never be let out of your sight or keeping. It is not necessary always to carry it about you, but you should lock it up away from any person who might meddle with it. Suppose you leave it about in a room to which many other persons have access, your evidence respecting it will be set aside, because it would be necessary to bring forward every person who might have gone into the room, or any person who might have handled the substance, in order to know what became of it while it was in their possession. This, therefore, very much complicates the case. A case was tried on the Midland Circuit a few years ago, when it was proved that the liquid given to the medical practitioner for analysis went through the hands of five persons before it came to the medical witness. This case turned entirely upon the chemical analysis. The gentleman who examined the substance gave his evidence otherwise very satisfactorily, but when he came to the question as to the identity of the substance, he failed: and though the man was found guilty, it was not in consequence of the medical evidence. Another case was tried at Norwich, a few years ago, which ought to furnish a little caution to us. The contents of the stomach were left in a room where two nurses were, and to which many other persons had access. The medical practitioner left the vessel to be forwarded to him, and it was found that it contained arsenic; but, from the circumstance of it being left in the care of these two women, who had allowed the vessel containing the suspected liquid to be exposed in the room to which other persons were admitted, the medical evidence was not received. Now it is sometimes difficult to know what to do exactly when you are at a long distance from town in the country, and some corroboration of your opinion is required. If you receive any suspected liquid from the country for analysis, and observe that the substance is sealed up and forwarded by any mode of conveyance, in such a case, the seal being unbroken, there will be no objection to the evidence. But this cannot be said of any article sent in a vessel open or loosely tied, by a carrier, or in any other way. A case was tried at the Old Bailey, in 1835, in which a gentleman in the country had sent up a poisonous liquid to London by a carrier, not sealed, but open; this being proved, the evidence was rejected. In analyzing the substance supposed to have been taken, the smallest possible quantity of the substance, liquid or solid, should be used, as some should be reserved for corroborative experiments which may be required by others. Very often when an individual feels himself called upon to examine for the first time a suspected liquid, he employs an unnecessarily large quantity: but the tests are in general more conclusive when employed upon small quantities. In testing arsenic or corrosive sublimate, if you use a large quantity, you obtain none of the metal, as the sublimate is very often obscured. It is not merely a matter of policy, for the corroboration of evidence, but for security in the result, that you should operate upon the smallest quantities of the poison. With regard t the tests that should be used, the following is a list of those most proper to be employed:—

Acids.	Alkalies.	Salts.
Sulphuric	Potash	Nitrate of barytes
Nitric	Soda	Chloride of barium
Muriatic	Ammonia (and their carbonates	Chloride of lime
Oxalic	Calcined carbonate of soda	Nitrate of silver
Tartaric	Lime	Sulphate of iron
Acetic		Ferrocyanate of Potash
		Phosphate of soda
		Sulphate of copper
		Iodide of potassium
		Acetate of lead
		Bichloride of mercury
		Iodide of manganese
		Carbonate of barytes

Oxalate of ammonia; hydrosulphuret of ammonia; sulphuretted hydrogen; sulphuret of iron; sulphate of strontia; protochloride of tin; chloride of gold; bichloride of platina: iodic acid; permuriate (sesquichloride) of iron; black flux, and soda flux.

Then, again, in analyzing a suspected substance you may find yourself pressed to answer the question, What is the nature of the poison on which you are operating? There is a rule which, in such cases, should be closely followed; that is, to make no communication whatever as to the nature of the poison until you have completed your analysis. The reason for this precaution is, that the first steps of an analysis often lead to an inference not confirmed by the subsequent steps. The truth is, it is not by one character, but by many, that the nature of the poison is determined, and therefore you should never give an answer till the whole of the analysis is complete. Suppose you do not attend to this rule, and a person should be brought forward to say that the witness told him at such and such a time the matter contained arsenic, when, in point of fact, it was corrosive sublimate, or some other irritant. You would put it into the power of the prisoner's counsel to say that the witness was incompetent, for he thought at one time it was one poison, and at another time another. This kind of mistake not only throws doubt upon the case, but it seriously affects the reputation of the witness. It is advisable to take notes or make memoranda of the results of your observations, not only in the application of the chemical tests, but the symptoms and *post mortem* appearances. With regard to notes, you will find them most useful in many cases on which you may be called to give evidence. Many trials do not take place for five or seven months after the death of the party supposed to be killed, and very few memories can extend over the length of time that is often insisted on in the evidence. At coroners' inquests notes are used; a man may read his notes there, and no particular inquiry is made. In courts of law and criminal courts there is a difference with regard to notes; a medical witness is not allowed to use them except under particular circumstances; first of all they must be original; he is not allowed to refer to notes that have been made by another; they should be made by the witness himself, though that is not absolutely necessary if they are made under his superintendence; he may dictate them to another, or make them himself. Even a copy of your own notes is not allowed to be received in a court of law, unless that copy be made immediately, or as soon as possible after the occurrence. Suppose you delay a week or a month, because you know the trial will not come on for five or six months; at the end of this time a copy of your notes will not be received. Then, in what way will you be permitted to use your notes? If a witness is asked a question, and he refers to his notes, the prisoner's counsel will put this question—For what purpose are you looking at them? is it to refresh your memory, or to recal your mind entirely to the subject written on that paper? Many medical witnesses are unaware of the object of a question of this kind; and if a witness happened to say that he had forgotten the subject, and was referring to his notes in order to recal to his mind the subject, he would not be allowed to make use of his notes. If his answer be, that he has a general recollection of the main points, and only wants to refresh his memory, then the Court will allow him to refer to them. Notes are only allowed to be used in evidence to assist recollection, not to convey information. If the witness find any thing in his notes, which is lost to his memory until he sees it there, it is not receivable in evidence; he is not allowed to refer to it. Such is the law, and so must it be observed. It is easy for a man, before going up as a witness, to read over his notes; so that it must be pure carelessness where notes are used to correct a culpable forgetfulness. There was a case tried at Norwich some years ago, in which the gentleman who had analyzed the substance suspected detected arsenic. He was not used to analysis, and he made very copious notes, and on the trial he referred to his notes; when the counsel asked him whether he used the notes to refresh his memory, or whether he had forgotten the subject, and was about to speak only from what was written on the paper? He was not aware of the effect of the answer he was about to give, and he said that his memory was bad, that some time had elapsed, and he had entirely forgotten the subject. The judge ruled that the evidence of this witness could not be received, so far as it depended on the notes. This, then, is a point well worthy of your attention.

In the next lecture I shall pass on to the consideration of the poisons individually, first taking the class of irritants.

THE CRITIC.

New Books.

Insolvency Practice under the Act 5 & 6 Vict. c. 116, and the amended Act 7 & 8 Vict. c. 96, for the Relief of Insolvent Debtors, &c. By W. H. Sadgrove, Solicitor. London, 1844. Hodson.

This is another of the many editions of the new statute. It contains, first, the statute of 5 & 6 Vict. c. 16; then the statute of the last session. This is followed by some very sensible and practical remarks upon its provisions, with directions for proceedings under it. An appendix gives a list of the officers, &c. of the Bankruptcy Courts; the orders and tables of fees, and the Debtors and Creditors Act. An index completes the work, which appears to have been got up with considerable care, and with evident knowledge of the subject.

The Safety of Railway Travelling.—At a recent inquest, Mr. Wakley took occasion to observe, that he had held the office of coroner for five years and a half, and had the two great termini, and upwards of thirty miles of the most extensive railways in the kingdom in his district, and yet, notwithstanding the millions of persons that must have travelled up and down those lines during the period he had mentioned, he had never held a single inquest on a railway passenger.

JOURNAL OF PROPERTY.

The following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.
For every succeeding 30 words . 1s.

THE MONEY MARKET.

Friday.—This is the pay-day in the Consol market. The losses have been liquidated without any apparent difficulty. Consols for money have receded from 100⅜ to 100¼, and for the Account to 100⅜. We hear that capital is becoming more and more in request for mercantile purposes. It could not be better employed, as speculation in produce of all kinds is at present carried on to a very small amount. The great bulk of the public and private sales for some time past have been for *bonâ fide* consumption. The rate of interest has advanced a shade. The New Three-and-a-Quarter per Cents. have been firm at 102⅛. Exchequer Bills are quoted at 73 to 75 premium. Bank Stock at 206, and India Stock at 95 premium. The commissioners took 10,000*l*. Consols at 100⅜ to-day.

Spanish Bonds have been pretty steady to-day at 35¼ ⅜ for the Three per Cents. and 24⅛ ¼ for the Consols. The decree for funding the floating debt of Spain ought to have had a contrary effect, for most unquestionably the Spanish Minister of Finance, whoever he may be, will meet the demands of the home creditors ere the demands of foreigners will be thought of. Dutch Stock has advanced; Portuguese, Austrian, and Russian Bonds have been in request; Mexican Five per Cents. are at 34½; Brazilian Five per Cents. remain at 85½.

A slight improvement is noticed in some of the Railway Shares this morning. The Great Western Fifths have realized 14¼ to ½ prem.; the Manchester and Leeds, 81 to 83 prem.; the Manchester and Birmingham, 12 prem.; the Boulogne and Amiens, 3 prem.; and the Paris and Orleans, 20 prem. The Australasian Bank Shares are at 8 prem.

The *Journal des Debats* warns the public that the speculations entered into in consequence of the late adjudications of railroads are illegal, the companies not having the faculty to issue shares, or promises of shares, until the usual formalities of their contracts were concluded, which would require a delay of several weeks. Until then all negotiation is by law null.

Mr. H. G. Surtees has become the purchaser of the estates and manor of Dinsdale, with the Hotel and Spa, from the trustees of the Earl of Durham, for the sum of 40,000*l*. Mr. Surtees is a relative of the Earl of Eldon, and grandson of the late Mr. W. Surtees, receiver-general for this county. We find in Twiss's *Life of Lord Chancellor Eldon*, that it was from this estate on the banks of the Tees that this ancient family derived their name, *sur Tees*, in the time of the Norman conquest.—*Durham Advertiser.*

Railway Traffic.—The following are the receipts of railways for the past week—that is to say, up to the date to which the respective returns are made, together with the receipts for the same week of the previous year.—

	Last Week.			Corresponding Week, 1843.		
	£	s.	d.	£	s.	d.
Birm. and Gloucester, Oct. 4 ..	3,140	7	2	2,098	10	7
Bristol and Gloucester, Oct. 5 ..	1,227	2	0			
Eastern Counties, and Northern and Eastern, Oct. 6	4,029	9	2			
Edinburgh and Glasgow, Oct. 5	2,536	9	8	2,563	11	3
Great Western, Oct 6	17,477	3	6	14,888	19	3
Grand Junction, Oct. 5	8,834	19	1	9,006	12	9
Glasg. Paisley, and Ayr, Oct. 5	1,546	6	6	1,352	12	2
Great North of England, Oct. 5	2,272	15	7	1,749	10	7
London and Birm. Oct. 5	17,208	1	10	17,532	0	7
London and Blackwall, Oct. 6 ..	985	7	0	849	12	6
London and Brighton, Oct. 5 ..	6,203	0	5	5,046	17	9
London and Croydon, Oct. 8 ..	1,463	19	8	491	8	1
London and Greenwich, Oct. 6	825	15	10	675	7	7
London and South-West. Oct. 8	7,306	4	4	6,846	5	2¼
Liverpool and Manchest. Oct. 4	5,189	10	5	4,470	19	3
Manchester, Leeds, and Hull Associated Com. Oct. 5	8,015	5	4	6,421	18	1
Manchester and Birm. Oct. 5 ..	3,532	13	5	3,237	2	3
Midland, Oct. 5	11,988	2	3	9,971	9	10¼
Newcastle and Carlisle, Oct. 5..	1,960	9	10	1,565	7	0
Newcastle and Darlington, Oct. 5	1,113	7	0			
Paris and Rouen, Oct. 7	6,287	0	0	5,124	0	0
Paris and Orleans, Oct. 7	6,706	0	0	6,061	0	0
South-Eastern and Dover, Oct. 10	6,720	0	11	4,775	17	9
Sheffield & Manchester, Oct. 5 .	757	3	5	501	10	1
York and North midland, with Leeds and Selby, Oct. 5....	3,183	3	9	2,064	2	6
Yarmouth and Norwich, Oct. 6	329	15	11			

Public Sales.

By Messrs. DANIEL SMITH and SON, at the Mart.

Freehold ground-rents secured on business premises and houses, in the populous part of Chelsea, near the College, embracing a plot of ground, altogether about 565 feet in length, and about 80 feet in breadth, extending from the street known as Paradise-row, to the river, but divided into three parts; the lease of which has 93 years to run from Lady-day 1845, offered in three lots, as follows, viz.:—

A ground-rent of 50*l*. per annum, arising from a plot of ground, comprising about 60 feet frontage, in Paradise-row, on which are four dwellings and shops, and extending 160 feet in depth, forming a portion of the west side of Paradise-walk, on which have been erected several other houses, altogether of the value of about 300*l*. per annum—1,300*l*.

A ground-rent of 20*l*. per month, arising from a plot of ground in continuation of the last lot, measuring upwards of 280 feet in length and 12 feet in depth. There are five houses recently erected in part, the other portion is used as a timber-wharf—530*l*.

A ditto of 8*l*. per annum, arising from a wharf and dwelling near the above—270*l*.

By Mr. SELF.

One moiety or half-part of the sum of 5,600*l*. Three per Cent. Consols; part of a sum of 5,631*l*. 2s. Three per Cent. Consols, payable one year after the death of a lady, now in the 58th year of her age, and also the benefit of survivorship as to the other moiety—650*l*.

A ditto, ditto, and also the benefit of survivorship as to the first-mentioned moiety—650*l*.

By Messrs. HUMBER and SANDERS, at Garraway's.

A copyhold estate, comprising two houses, Nos. 11 and 12, Bricey's-buildings, Upper East Smithfield; let at 31*l*. per annum, subject to a fine certain of 10s. and a quit-rent of 4d. per annum—sold for 290*l*.

Two houses, Nos. 5 and 6, Chapel-place, Stratford-road, occupying a frontage next the road of 32 feet by a depth of 110 feet; held for 49¾ years, at a ground-rent of 8*l*. per annum—540*l*.

A family residence, with gardens, stabling, &c., situate on the high road to Ilford, being No. 25, Upton-place; held on lease from Christmas 1817, for the very long term of 980 years, subject to the trifling ground-rent of 5*l*. per annum—390*l*.

A ditto, No. 26, ditto—475*l*.

Five freehold houses, with fore court, and gardens in rear, situate on the south side of the high road, at Chadwell Heath, let at rents amounting to 52*l*. per annum, vendor pays taxes—605*l*.

By Mr. JOHN APPLETON.

The life-interest in one-eighth part of the rent arising from the freehold premises, No. 24, Cornhill, during the joint lives of Mr. George Field, in his 61st year, and of Mrs. Field, in her 59th year, amounting to 39*l*. 7s. 6d. per annum, which will be increased in one-fourth, viz. —78*l*. 15s. per annum, in the event of their jointly surviving a lady now in her 52nd year; the premises are let to Mr. White for 21 years, from Lady-day 1837, at the clear yearly rent of 315*l*.—250*l*.

By Mr. HENRY HAINES, at Garraway's.

The lease of the Triumph wine and spirit vaults, situate in Skinner-street, Somers'-town, held for 4½ years from Michaelmas-day last, at the rent of 60*l*. per annum—2,380*l*.

The lease of the Fountain tavern and wine vaults, Redcross-street, Cripplegate. A lease will be granted for thirty years from Christmas next, at 120*l*. per annum—350*l*.

By Mr. GEORGE ROBINS, at the Mart.

The advowson and next presentation to St Neot's, in Suffolk, situate in a very agreeable part of the county. The value is about 910*l*. a year, the real income derived from the commutation value of the glebe land and surplice fees amounts to 880*l*. 10s. per annum, independent of the value of the parsonage house, which is large and convenient, but very much out of repair, it is in consequence estimated at the low rent of 30*l*. per annum; the glebe extends to 13a. 2r. 30p. of excellent land, including a kitchen garden. The incumbent is 75 years of age—6,600gs.

The Cedryn slate quarry, of great extent, situate in Carnarvonshire, North Wales; the slate is of excellent quality, and can be had in abundance under a very thin cover; the work is already about 40 yards wide, and is capable of being extended to 160 yards in width, and at least half a mile in length, without any obstruction, and as deep as any parties may feel inclined to go—4,000gs.

By Mr. V. J. COLLIER.

A leasehold property, consisting of four houses, with shops, Nos. 33 to 36, White-street, Borough, let at rents amounting to 114*l*. per annum, and twelve smaller houses in the rear, forming the whole of St. George's-court, numbered 1 to 12, let at rents amounting in the whole to about 289*l*. per annum; held for twenty-one years from Michaelmas 1844, at ground-rents amounting to 79*l*. per annum; the vendor pays all rates and taxes on the twelve houses in the court, and also the assessed taxes on the houses in White-street, which amount on an average to 45*l*. per annum; the lessee covenants to insure in the sum of 2,400*l*.; such of the fixtures as belong to the vendor are included—1,400*l*.

By Messrs. CAFE, SON, and REID, at Garraway's.

A superior residence, situate and being No. 2, London-road, St. John's Wood, with large garden, tastefully laid out and planted with shrubs and fruit trees; the whole held for an unexpired term of 77 years from Michaelmas-day 1843, at a clear ground-rent of 40*l*. per annum—1,90*l*.

A house, situate in the rear of Francis-place, Westminster; held for 39¾ years from December 1827, at a ground-rent of 2*l*. 2s. per annum—85*l*.

The good-will of a laundry business, carried on in the above premises; also two carts, a horse, two mangles, coppers, butts, tubs, stores, &c.—110*l*.

By Messrs. SHUTTLEWORTH and SONS, at the Mart.

A freehold house, situate in Enfield Town, Middlesex; let at 28*l*. per annum—530*l*.

A similar house adjoining—520*l*.

A freehold messuage adjoining the preceding lots; let at 9*l*. per annum—120*l*.

A similar messuage; let at 7*l*. 16s. per annum—105*l*.

MARRIAGES AND DEATHS.

[The charge for the insertion of the above is 5s.]

MARRIAGES.

Crosse, Robert Jennings, esq. of Southmolton, Devon, late of the Inner Temple, London, to Lucy Hawell, daughter of John Gilbert Pearse, esq. of Southmolton, and of Broomhouse, in the same county, on the 15th inst.

Jacobs, William, esq. solicitor, of her Majesty's Stamps and Taxes, Somerset-house, to Mary, eldest daughter of the late John Heaton, esq. of Blackrod, Lancashire, surgeon, on the 16th inst. at the Collegiate Church of Manchester.

Sheffield, William, esq. solicitor, of Lincoln's-Inn-fields and Leadenhall-street, to Miss Eliza Marshall, of Kensington-square, on the 15th inst. at Kensington Church.

DEATHS.

Dobie, Miss, daughter of the late James Dobie, esq. solicitor, London, on the 11th inst. at Brighton.

Orford, Adam, the eldest son of Adam Bromilow, esq. barrister-at-law, on the 13th inst. in Wilton-place, aged 5 years and 9 months.

Roots, Sarah, relict of the late George Roots, esq. of the Chancery Bar, and Recorder of Kingston-upon-Thames, on the 13th inst. at Kingston-upon-Thames, aged 66.

Synge, Anna, wife of the Rev. Robert Synge, rector of Walwyn's Castle, Pembrokeshire, and sister of Sir W. Webb Follett, M.P. her Majesty's Attorney-General, on the 10th inst. at 11, Saville-row.

Tourle, Thomas, esq. late of Landport, near Lewes, on the 11th inst. at his residence, 86, Montpelier-road, Brighton, aged 74.

Twist, Elizabeth, wife of John Twist, esq. solicitor, on the 10th inst. at Coventry.

Williams, John Robert, esq. of Lambeth-hill, Doctors' Commons, on the 13th inst. at Whetstone, Middlesex, aged 48.

NECROLOGY.

DEATH OF THE VICE-CHANCELLOR OF LANCASTER.

On Sunday, the 29th ult. at his house, in Earl's-terrace, Kensington, Francis Ludlow Holt, esq. Q.C. and Vice-Chancellor of Lancashire. He was in every respect one of the most amiable men of his age. In private life he lived by one rule, that of the Christian gospel. He was warmly and sincerely pious, and most carefully obedient to the revealed laws of God, in the uniform and daily practice of exact truth, scrupulous justice, and abounding charity. In all the relations of domestic life his conduct was governed by the same unerring rule—an affectionate relative, a steady friend, and most liberal contributor to all who were in need, sickness, or any other adversity. In society he was eminently distinguished by his sound judgment, his finished taste, and his overflowing courtesy and good humour, abounding himself in the milk of human kindness, and diffusing his own benevolence and cheerfulness over all around him. He died in the calm serenity of a Christian.

The Marquis of Donegal died on Saturday, at Ormeau, in Ireland. George Augustus Chichester was born in August, 1769; and succeeded, in 1799, to the titles of Marquis of Donegal, Earl of Donegal and of Belfast, Viscount Chichester, Baron Belfast, in the peerage of Ireland, and Baron Fisherwick in the peerage of England. In 1795 he married Anna, daughter of Sir Edward May; by whom he had issue seven sons. The late marquis was a Conservative in politics, and was esteemed as a resident landlord and a kind-hearted man. The titles descend to his eldest son, George Hamilton Chichester, Earl of Belfast, a Whig, who married, in December, 1822, Lady Harriet Anne Butler, eldest daughter of the Earl of Glengall, by whom he has issue.

THE REPORTS.

The following are the names of gentlemen who favour the Law Times with the Reports:—

PRIVY COUNCIL by William Paterson, Esq., of Gray's-inn, Barrister-at-Law.
HOUSE of LORDS by William Paterson, Esq., of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by Richard Griffiths Welford, Esq., of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR of ENGLAND'S COURT, by George Goldsmith, Esq., of the Middle Temple, Barrister-at-Law.
ROLLS COURT, by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR KNIGHT BRUCE'S COURT by Geo. S. Allnutt, Esq., of the Middle Temple, Barrister-at-Law.
VICE-CHANCELLOR WIGRAM'S COURT by Henry Baker, Esq., of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. Symons, Esq., of the Middle Temple, Barrister-at-Law.
The COURT of COMMON PLEAS by Henry Tindal Atkinson, Esq., of the Middle Temple, Barrister-at-Law.
The COURT of EXCHEQUER by John Bridge Aspinall, Esq., of the Middle Temple, Barrister-at-Law.
The BAIL COURT by T. W. Saunders, Esq., of the Middle Temple, Barrister-at-Law.
The EXCHEQUER CHAMBER by J. A. Foot, Esq., of the Middle Temple, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by John W. Bittleston, Esq., of the Middle Temple.
ADMIRALTY COURT by John W. Bittleston, Esq., of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by Geo. S. Allnutt, Esq., of the Middle Temple, Barrister-at-Law.
BRISTOL DISTRICT COURT by J. Angus Homes, Esq., Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. Robinson, Esq., of the Middle Temple, Barrister-at-Law.
CROWN CASES (before all the Judges) by H. Tindal Atkinson, Esq., of the Middle Temple, Barrister-at-Law.
NORTHERN CIRCUIT, by James A. Foot, Esq., of the Middle Temple, Barrister-at-Law.
WESTERN CIRCUIT, by Edward W. Cox, Esq., of the Middle Temple, Barrister-at-Law.
OXFORD CIRCUIT, by John Lane, Esq., D.C.L., of the Inner Temple, Barrister-at-Law.
NORFOLK CIRCUIT by Henry Mills, Esq., of the Middle Temple, Barrister-at-Law.
SITTINGS AT NISI PRIUS AFTER TERM, by John Lane, Esq., D.C.L., of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by Edward W. Cox, Esq., of the Middle Temple, Barrister-at-Law; and Henry Tindal Atkinson, Esq., of the Middle Temple, Barrister-at-Law.
ELECTION COMMITTEES by Edward W. Cox, Esq., of the Middle Temple, Barrister-at-Law.
REGISTRATION COURTS, collected and edited by Edw. W. Cox, Esq., of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by William Duggan, Esq. Barrister-at-Law.
QUEEN'S BENCH and CRIMINAL COURTS by Wm. St. Leger Babington, LL.D., Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

Equity Courts.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Friday, July 26.

COCKRAN v. COCKRAN.

Will—Specific bequest.

A testator by his will gave all the property he then possessed in the public funds. Held, that this bequest was specific, and only included such property as the testator was possessed of at the date of his will.

The testator, W. Cockran, by his will bequeathed in behalf of his wife as follows: "The yearly interest of all the property that I now possess in the public funds for her use during her natural life." Upon these words a question arose whether they constituted a specific bequest so as to include such funds only as were standing in the testator's name, or belonged to him at the date of the will, or whether the bequest was general, and embraced all that he was possessed of at the time of his decease.

Stuart and *Hardy* appeared for the next of kin, and contended that the legacy was specific, including only the funds which belonged to the testator at the date of his will. (*Hayes* v. *Hayes*, 1 K. 97.)

Bethel and *Lonsdale*, on behalf of the widow, argued that the clause "all the property that I possess in the public funds" was intended to include all the property in the public funds that the testator might be possessed of at the time of his decease.

Cases cited: *Wilde* v. *Holtzmeyer* (5 Ves. 811); *Oakes* v. *Strachey* (7 Jur. 433).

Stuart, in reply.

His Honour the Vice-Chancellor thought that the words "all the property that I possess in the public funds" meant "all I *now* possess," and that therefore the widow was only entitled as tenant for life to all the property in the funds of which the testator was possessed or entitled to at the date of his will.

Saturday, July 27.

NORCOTT v. GORDON.

Customary heir—Dower—Devise—Election.

A testator bequeathed to his wife an annuity, which he directed should be accepted by her "in lieu and satisfaction of all dower and thirds, or other claims and demands which she could or might otherwise have or be entitled to, out of, upon, or against my estate." The testator at the time of executing his will and of his decease, was seized of certain freehold estates in fee and divers copyhold estates, held of the manor of Taunton Deane, and considerable personal property. According to the custom of this manor, a tenant's widow is his next heir. Held, that the widow was not bound to elect between her annuity and the copyhold estates, but that she took the latter as the customary heir of her husband.

The testator, H. Gordon, by his will, executed in 1829, amongst other bequests, gave and bequeathed to his wife the sum of 1,000*l.* sterling, to be paid to her within one month after his decease; and he further bequeathed to her during her natural life a clear annuity, or yearly sum, of 1,000*l.* to be paid quarterly, and made his personal estate liable to the payment of the said annuity. The testator then declared that the provision thereby made for his said wife was to be accepted by her "in lieu and satisfaction of all dower and thirds, or other claims and demands, which she could or might otherwise have, or be entitled to, out of, upon, or against his, the said testator's estate." And the testator directed that his said wife, when thereunto required by the acting executors of that his will, should, at the costs and charges of his estate, execute a good and sufficient release of such her rights, claims, and demands, or else the provisions thereby made for his said wife should be null and void. The testator appointed his wife, now Sarah Norcott, the plaintiff in this suit, and William Gordon and John Rich, two defendants hereto, and Charles Winter and Henry Winter, executrix and executors of his will. The testator died in the month of September 1839, without leaving any issue, but leaving the plaintiff, his widow, him surviving, and leaving also his brother, the defendant, W. Gordon, and the other defendants, the children of a brother deceased, his next of kin, him surviving. The testator was, at the time of his decease, seized in fee simple of several freehold estates not devised by his will, out of which, but for the provisions in his will, his widow, the plaintiff, would have been entitled to dower. The testator was also seized for an estate to him and his heirs, of and in several copyhold estates, parcel of the manor of Taunton Deane, in the county of Somerset. The testator died also intestate as to these estates. The question to be decided, therefore, was, whether his widow was bound to elect whether she would take these copyhold estates or the annuity given to her by the will, and so release her right to these copyhold premises. Upon the original hearing, it was, among other things, referred to the Master to inquire and state whether the testator died seized of any, and what, freehold, copyhold, or customary estates, out of which the plaintiff Sarah, then the wife of James Norcott, the widow of the testator, would be entitled to dower, freebench, or any, and what, beneficial interest, but for the provision made for her by the said testator's will, with liberty to state special circumstances. The Master, by his report, stated that he found the testator died seized of certain lands, tenements, and hereditaments, parcel of the manor of Taunton Deane, and he found amongst the customs of the said manor the following: "If any tenant die seized of any customary lands or tenements of inheritance within the said manor, and having a wife at the time of his death, then his wife ought, and hath used, time out of mind, to inherit the same lands, as *next heir unto her husband*, by the custom of the said manor, and be admitted tenant thereto, to hold the same to her and her heirs for ever, according to the custom of the said manor, and in as ample a manner as any other customary tenant there holds his lands, under the rents, fines, heriots, customs, duties, suits, and services, for the same due and accustomed." The cause was now set down upon further directions, and the principal question now was whether, such a custom having been found to exist, a case of election had been raised.

Bethel and *Bagshaw* appeared for the plaintiffs, and contended that the restrictive part of the will did not relate to the widow in her character of customary heir, but only as to heir claim of dower and thirds; and that, therefore, where she claims as heir, and not as widow, the words of the will had no relation thereto.

Stuart and *Montagu*, on the other side, urged the fallacy of calling the widow of the testator his heir-at-law; for whatever interest she was entitled to out of the copyhold estates, she took it as freebench. The testator's words are—"In lieu and satisfaction of all dower and thirds, or *other claims and demands*, which she could or might otherwise have or be entitled to, *out of, upon, or against my estate*." Let the Court compare this clause of the will with the claim the custom of the manor. Supposing, therefore, the claim which the plaintiff now makes be not regarded as dower or freebench, it must be considered as falling under the general expression, "*or all other claims and demands* which she could or might otherwise have or be entitled to out of my estate"—words of themselves sufficiently valid to exclude her fictitious claim as customary heir.

Bethel, in reply.—There can be no case of election here, as the testator has made no devise of his estate. There is but one heir, and the custom with sufficient clearness declares the wife of a deceased copyholder to be his next heir. If, therefore, the plaintiff, as widow of the testator, does not take, what other description of person can? The widow, in this case, stands precisely in the same position to her deceased husband as, in ordinary cases, the eldest son stands to his father, and the inheritance must go according to the custom. If I give my heir-at-law a sum of money in lieu of the inheritance, and make no devise of the inheritance, it descends, according to the rule of law, as appears in the case of *Pickering* v. *Lord Stamford* (3 Ves. 332 and 492).

The Vice-Chancellor.—I am of opinion that there is here no case raised for election; but that the widow takes the copyhold estates as the customary heir of her husband the testator. As to the annuity given by the will to the widow in lieu of dower and thirds, she is in that respect entitled to priority over the other pecuniary legacies.

REGISTRATION COURTS.

BOROUGH OF FINSBURY.*

(Before C. J. Moylan, Esq. R. B.)

The Overseers of St. Luke.

Under what circumstances overseers will be fined for improperly omitting the names of claimants from the list.

In this case the following judgment was delivered. It recites the facts:—In this case I am required to impose a fine upon the overseers for a wilful neglect of their duty. It appears that James Buckle has been for many years a resident in the parish, occupying a 10*l.* house; and that he has been, ever since the passing of the Reform Act, upon the register of voters for the borough of Finsbury; and that he has been duly assessed; that all his rates and taxes have been duly paid; but that notwithstanding this strict compliance with all the requirements of the Act of Parliament, his name was omitted from the list of voters published by them on or before the 1st day of August in this year, in accordance with the 13th section of the Registration Act. The course which Buckle himself should have pursued, when he perceived this omission, was to have given, before the 25th of August, a notice of claim to the overseers, according to the direction of the 15th section of the same Act. Having neglected to do this, I regret that it is not in my power to remedy the evil. If he had given such a claim, there is no doubt but that his name would now be inserted in the register, for it is admitted by the overseers that his qualification is, in every respect, perfect. I have asked the overseers for an explanation or excuse for their conduct, and I am told that as the collectors did not inform them that Mr. Buckle had paid all his rates and taxes, they presumed that they still remained unpaid, and therefore designedly omitted his name. Any person who could for one moment imagine that there was any reason in such an excuse, either must have never read the Act which defines his duties, or have grossly misunderstood the 12th section of the Act. That section directs the collectors to make out a list of defaulters, and deliver it before the 22nd of July in each year, to the overseers, and the overseers are, moreover, bound by the same clause to keep this list for public inspection during the 14 days after the publication of their list of voters. The overseers and collectors, therefore, seem to have neglected their duty in this particular. The 51st section of the Registration Act vests in the Court the power of imposing a fine on the overseers in any case in which they shall wilfully and without reasonable cause, omit the name of any person duly qualified to be inserted in the list. The overseers might, under this clause, be held liable to a fine of 5*l.* for every single offence, but not less than 20*s.* However, I feel myself at liberty to consider these several omissions (for Buckle's case is not a solitary one) as a general breach of duty by the overseers in the execution of this Act. The word wilful does not all imply any corrupt motive, or any thing like an intention to do an individual wrong. Igno-

rance, or indifference, or inattention may cause people as much trouble as if the design were malicious, and may as effectually deprive people, as unfortunately happens in this case, of their right to the franchise. I shall impose a fine of 60s. upon the overseers of the parish of St. Luke's.

CENTRAL CRIMINAL COURT.

OCTOBER SESSION.

Monday, Oct. 21.

REG. v. GEO. HENRY and GEO. WARD.

Indictment for obtaining money under false pretences, with counts for a conspiracy—Variance between the pretences as laid in the indictment and those proved—Sufficiency of the pretences.—In a count for a conspiracy, the overt act set out must be averred to be within the object of the conspiracy as stated in the indictment.

The prisoners were indicted for that they, on, &c. at, &c. unlawfully did falsely pretend to Will. Angerstein, that two horses and one mare, which they, the defendants, offered for sale to the said Will. Angerstein, had belonged to a family named Lloyd. That Mr. Lloyd was deceased, and that the said G. H. Ward had the said horses and mare intrusted to him to sell on commission. That the said family lived at Stratford-on Avon. That the name of the said G. Ward was Glass, and that he had been a servant in the said family; and that the said horses and mare were each of them sound, quiet to ride, and quiet in double or in single harness; and that if the said horses and mare were not approved of at the end of seven days from the said time, the money to be paid for them should be refunded. By means of which said false pretences they did obtain of and from the said W. Angerstein a certain valuable security, to wit, an order for the payment of 115*l.* 10s. and a piece of paper value one farthing, of the said W. Angerstein, with intent to cheat and defraud him of the same.

The second count was the same, except that the pretence as to the name of one of the prisoners being Glass, and that the horses, &c. were warranted quiet to ride, and quiet in double or in single harness, were omitted.

Thirdly. That defendants having in their custody and possession divers, to wit, two horses and one mare, did unlawfully and fraudulently conspire by divers false pretences and artful means and devices to obtain and acquire to themselves divers large sums of money from such person as might be desirous of purchasing the said last-mentioned horses and mare, and to cheat and defraud such persons of said sums of money. And that defendants, in pursuance of said conspiracy, did falsely pretend that the said last mentioned horses and mare had belonged, &c.—*laying the pretences as in the first count.* And that the defendants, in pursuance of the said conspiracy, did obtain of and from the said W. Angerstein a certain order for the payment of 115*l.* 10s.

There were two other counts charging a conspiracy generally to defraud.

The prosecutor, in consequence of an advertisement appearing in the public papers, had visited the stables where the horses were kept, and there saw the prisoners, who represented to him that they had been sent up from the country to be sold on commission; that they had belonged to a highly respectable family, residing *two miles from* Stratford-on-Avon, and that, in consequence of the death *of the elder member of the family*, they had given up keeping horses, and had ponies in their stead. The horses were warranted sound, quiet to ride or drive in single or double harness, and if not approved of within seven days, the money was to be returned. The prisoner represented his name to be Glass, but not before the price for the horses was paid.

Evidence was given negativing the truth of the various pretences, and that the horses were nearly valueless.

Bodkin and *Wilkins*, for the defence, contended that the evidence did not support the indictment. First, with regard to the counts for obtaining money under false pretences, of course no pretence was of any avail except it was made before the thing obtained was parted with, and although all those alleged need not be proved, still those relied on must have been such that the prosecutor parted with his money on their representation. Now, as to the pretence that Mr. Lloyd was deceased, it was not supported by proof that the elder member of the family was so. The utmost strictness is necessary in proving the statements alleged in the indictment to have been made; but here was a clear and palpable variance. The same remark would apply to the pretence that the family lived at Stratford on-Avon. The evidence was, that the prisoners had represented them to live two miles from that place. That the name of one of the prisoners was Glass, did not appear to have been stated until after the transaction was closed, and that allegation must, therefore, be dismissed. There was then the representation that the horses were sound, quiet, &c.; but it had been held, in numberless parallel cases, that an assertion of this kind, although known by the party making it to be false, did not render him amenable to the criminal law. He might be sued for a breach of warranty, it was admitted; but if a party were liable to be tried for declaring to a customer that goods were better than he in fact knew them to be, there were few tradesmen who might not be called upon to take their station in the dock. Lastly, there was the stipulation that if the horses were not approved, the money would be refunded on their being returned. This, however, was a pretence that something was to be done in future, and therefore clearly insufficient, even although the prisoners at the time had no intention of adhering to their contract.

Clarkson and *Ballantine*, for the prosecution, contended, that as to the first part of the argument, the variances were immaterial; that at all events the pretence of soundness was fully proved as laid, and there was no ground for saying that, if made with a full knowledge of its falsity, it was not sufficient to support the indictment. It was not a mere exaggeration, having some foundation in truth. It was a wilful statement of that which had no existence. It was like the case (*not reported*) where a chain was represented to be gold when the party knew it to be merely plated, and the charge of obtaining money under false pretences was supported. The case of *R.* v. *Pywell* (1 Star. 102) might be in favour of the prisoner, but it can no longer be considered law, since *R.* v. *Kenrick* (12 L. J. Rep. New Series, Mag. Cas. p. 135).

The RECORDER.—I am clearly of opinion that the alleged variance are material. The utmost precision is required in proving the pretences as laid; and I think, therefore, this objection must prevail. As to the pretence of soundness, I am by no means prepared to say, that if a person warrants a horse to have all the excellences that these were alleged to possess, and he knew at the time that it was as utterly worthless as these have turned out to be, that he would not be indictable; but I am not called upon to decide this question; since, if you relied on this representation, you were bound to shew that the prosecutor would have parted with his money on it alone: but no question of the kind has been put to him, and I must, therefore, take it that he was actuated by the pretences generally, and not by any individual portion of them. I think, therefore, that the first two counts must fail.

Bodkin.—Then, my, lord, I contend that the third count is also defective. It is alleged in the first part of the count that the prisoners conspired to defraud such persons as might be desirous of purchasing the horses, &c.; but when the overt act is set out, it is not alleged that the prosecutor was one of such persons. It is not, therefore, shewn that he was within the object for which the conspiracy was entered into. There is no connection shewn between the different portions of the count.

The RECORDER.—It states that the prisoners agreed together to angle for all whom they could catch.

Bodkin. Yes; but it does not go on to aver that the prosecutor was entitled to bite.

The RECORDER.—I see the force of your objection, and shall direct the jury to place the third count also out of their consideration, and merely consider the evidence with reference to the two last.

The case went to the jury on the 4th and 5th counts for conspiracy generally, and the prisoners were convicted.

Wednesday, Oct. 23.

REG. v. ROSS TUCHET.

To prove a plea of insanity, evidence that the grandfather of the person had been insane may be adduced, after it has been proved by medical testimony that such a disease is often hereditary in a family.

The prisoner was indicted for shooting, with intent to kill.

The defence relied on was the prisoner's insanity at the time he committed the act in question.

Charnock was for the prosecution.

Clarkson and *Bodkin*, for the defence.

A question was put on behalf of the prisoner to his brother, Lord Audley, as to whether their maternal grandfather, Sir Ross Donelly, had not been confined in a lunatic asylum.

Charnock objected to the question. It could have no relation to the issue which the jury had to try, whether, perhaps fifty years ago, another person had or had not been insane. If this were admitted, it would be impossible to say where the practice should stop. If the insanity of the grandfather can be shewn as evidence, that of a much more remote ancestor would be equally admissible.

Bodkin.—I have never known a case in which this objection has been raised. Such evidence was recived in Oxford's case, and in many others within my experience. We are not only prepared to shew the hereditary taint in the family, but that this is a mode in which it usually exhibits itself.

MAULE, J.—I know that these questions are generally admitted. It is a matter of fact, and not a matter of law, that insanity is often hereditary in a family; but I think you should prove that, in the first instance, by the testimony of medical men, and then your question will be legitimate.

THE LEGISLATOR.

Summary.

WE have nothing to report in the matter of Legislation, save a very general opinion that the Settlement Bill will not become law, at least without very material alterations.

NEW STATUTES.

Of the Session 8 Victoria.

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page 39.*)

CAP. CII.

An Act to repeal certain Penal Enactments made against her Majesty's Roman Catholic Subjects. (August 9, 1844.)

It is unnecessary to reprint it here, as all have been long obsolete.

CAP. CIII.

An Act to amend the Law for the Trial of controverted Elections of Members to serve in Parliament. (August 9, 1844.)

After reciting that it is expedient to amend the law for the trial of controverted elections of members to serve in Parliament, the first sections repeals 9 Geo. 4, c. 22, and part of 42 Geo. 3, c. 106, and 47 Geo. 3, c. 11. We give the remainder of the statute *verbatim*:—

2. *What shall be deemed election petitions.*—And be it enacted, That every petition which shall be presented to the House of Commons within such time as shall be from time to time limited by the House, complaining of an undue election or return of a member or members to serve in Parliament, or complaining that no return has been made to any writ issued or the election of any member or members to serve in Parliament on or before the day on which such writ is made returnable, or if such writ be issued during any session or prorogation of Parliament, that no return has been made to the same within fifty-two days after the day on which such writ bears date, or that any return is not according to the requisition of the writ, or complaining of the special matters contained in any such return, shall be deemed an election petition; but no election petition shall be received by the House unless at the time it is presented it shall be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned or elected thereat, or alleging himself to have been a candidate at the election.

3. *Recognizances to be entered into by petitioners.*—And be it enacted, That before any election petition shall be presented to the House the person or persons subscribing the same, or some one or more of them, shall personally enter into a recognizance to our sovereign lady the Queen, according to the form given in the schedule (A) to this Act annexed, for the sum of one thousand pounds, with one, two, three, or four sufficient sureties, either in the same recognizance or in separate recognizances, for the additional sum of one thousand pounds, in a sum or sums of not less than two hundred and fifty pounds each, for the payment of all costs and expenses which any committee of the House selected to try such petition in the manner hereinafter provided shall adjudge to be payable by the person or persons subscribing the said petition, and also for the payment of all costs and expenses which shall become due from the person or persons subscribing such petition to any witness summoned in his or their behalf, or to any party who shall appear in opposition to such petition, in case such petition shall be withdrawn, as hereinafter allowed.

4. *Sureties to make affidavits of sufficiency, and to be described.*—And be it enacted, That every person who shall enter into any such recognizance as surety for any other person shall testify upon oath in writing, to be sworn at the time of entering into the said recognizance, and before the same person by whom his recognizance shall be taken, that he is seised or possessed of real or personal estate (or both), above what will satisfy his debts, of the clear value of the sum for which he shall be bound by his said recognizance, and every such affidavit shall be annexed to the recognizance; and that in every such recognizance shall be mentioned the name and usual place of residence of the persons proposed to become sureties as aforesaid, with such other description of the proposed sureties as may be sufficient to identify them easily.

5. *Examiner of recognizances to be appointed.*—And be it enacted, That the Speaker of the House of Commons shall appoint a fit person to be examiner of recognizances; and every person so appointed shall hold his office during the pleasure of the Speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the Speaker.

6. *Provision for temporary disability of examiner.*—And be it enacted, That in case of the illness, temporary disability, or unavoidable absence of the examiner of recognizances, the Speaker may appoint a fit person to perform the duties of examiner of recognizances during such illness, disability, or absence; and throughout this Act the expression "Examiner of Recognizances" shall be deemed to include and apply to the person so appointed and for the time being performing such duties.

7. *How recognizances are to be entered into.*—And be it enacted, That every recognizance hereinbefore required shall be entered into, and every affidavit hereinbefore required shall be sworn, before the examiner of recognizances or one of her Majesty's justices of the peace; and the said examiner, and also every justice of the peace, is hereby empowered to take the same; and every such recognizance and affidavit which shall be taken before a justice, being duly certified under the hand of the justice before whom they shall have been taken, shall be delivered to the examiner of recognizances.

8. *Option of paying money into the bank instead of finding security. Declaration of trust.*—Provided always, and be it enacted, That it shall be lawful for any person by whom the said petition shall be signed, instead of entering into a recognizance for the full amount of the sums hereinbefore required, to pay into the Bank of England, on the account of the examiner of recognizances as trustee for the like purposes for which the recognizance is hereinbefore required, any amount of money which he shall think fit, in a sum or sums not less than two hundred and fifty pounds each; and in such case the person by whom the petition shall be signed shall still be required to enter into his personal recognizance for the sum of one thousand pounds, but shall be required to find a surety or sureties as aforesaid for so much only of the additional sum of one thousand pounds as the sum paid into the bank shall fall short of the sum of one thousand pounds; and no money shall be deemed for the purposes of this Act to be paid into the Bank of England until a bank receipt for the same shall be procured and delivered to the examiner of recognizances.

9. *Where money has been paid into the Bank, the examiner of recognizances to order payment of expenses and transfer the residue to the account of the party.*—And be it enacted, That in every case in which payment of any money as aforesaid shall have been made into the Bank of England the examiner of recognizances shall be bound, in the first place, and in such order of payment as he in his discretion shall think fit, to satisfy out of the said money all the costs and expenses for securing payment of which such investment was made, or so much thereof as can be thereby satisfied, and thereafter to transfer the residue (if any), wholly discharged of the said trust, to the account of the party by whom the same shall have been paid in.

10. *No petition to be received unless indorsed by the examiner of recognizances.*—And be it enacted, That no election petition shall be received unless, at the time it is presented to the House, it shall be indorsed by a certificate under the hand of the examiner of recognizances, that the recognizance hereinbefore required has been entered into and received by him, with the affidavits thereunto annexed; and, if the recognizance shall not have been taken for the whole amount, that the necessary amount of money has been paid into the Bank of England as hereinbefore required.

11. *Names of sureties to be kept in the office of the examiner of recognizances, and to be open to inspection.*—And be it enacted, That on or before the day when any such petition shall be presented to the House the names and usual places of residence of the sureties, when there are sureties, shall be entered in a book to be kept by the examiner of recognizances in his office; and the said book, and also the recognizance and affidavits and bank receipt for any money paid into the Bank of England, if any, shall be open to the inspection of all parties concerned.

12. *Sureties may be objected to.*—And be it enacted, That it shall be lawful for any sitting member petitioned against, or for any electors petitioning and admitted parties to defend the election or return, to object to the sureties, or any of them, who shall have entered into such recognizance, on the ground of insufficiency, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not acknowledged the same; provided that the ground of objection shall be stated in writing under the hand of the objecting party, or his or their agent, and shall be delivered to the examiner of recognizances within ten days, or not later than twelve of the clock at noon of the eleventh day, after the presentation of the petition, if the surety objected to reside in England, or within fourteen days, or not later than twelve of the clock at noon of the fifteenth day, after the presentation of the petition, if the surety objected to reside in Scotland or Ireland: provided also, that if either such eleventh or such fifteenth day shall happen to be a Sunday, Good Friday, or Christmas Day, it shall be sufficient if such notice of objection be delivered to the examiner of recognizances not later than twelve of the clock at noon of the following day.

13. *Notice of objections to be published in the office of the examiner, and copies may be taken.*—And be it enacted, That as soon as any such statement of objection shall be received by the examiner of recognizances he shall put up an acknowledgment thereof in some conspicuous part of his office, and shall appoint a day for hearing such objections not less than three and not more than five days from the day on which he shall have received such statement; and the petitioner or petitioners, and his or their agent, shall be allowed to examine and take copies of every such objection.

14. *Examiner of recognizances to decide on the objections.*—And be it enacted, That at the time appointed the examiner of recognizances shall inquire into the alleged insufficiency of the surety or sureties objected to on the grounds stated in the notice of objection, but not on any other ground; and for the purpose of such inquiry the examiner of recognizances is hereby authorized to examine upon oath any persons who may be tendered by either party for examination by him, and also to receive in evidence any affidavit relating to the matter in dispute before him, which shall be sworn before him, or before any Master of the High Court of Chancery, or justice of the peace, each of whom is hereby authorized to take and certify such affidavit; and the examiner of recognizances shall have power, if he shall think fit, to adjourn the said inquiry from time to time until he shall decide on the validity of such objection, and, if he shall think fit, to award costs to be paid by either party to the other, which costs shall be taxed and recovered as hereinafter provided for the costs and expenses of prosecuting or opposing election petitions; and the decision of the examiner of recognizances shall be final and conclusive against all parties.

15. *In case of death of a surety, the money may be paid into the bank.*—And be it enacted, That if any surety shall die, and his death shall be stated as a ground of objection before the end of the time allowed for objecting to the sureties, it shall be lawful for the petitioner to pay into the Bank of England, on the account of the examiner of recognizances, the sum for which the deceased surety was bound; and upon the delivery of a Bank receipt for such sum to the examiner of recognizances, within three days after the day on which the statement of such objection shall have been delivered to the examiner of recognizances, the sureties shall be deemed unobjectionable if no ground of objection shall be stated to any other of the sureties within the time before mentioned for stating objections to sureties.

16. *Examiner of recognizances to report whether or not sureties are objectionable.*—And be it enacted, That in case the examiner of recognizances shall have received any statement of objection to the sureties or any of them to any such election petition, and shall have decided that such sureties or any of them are objectionable, he shall forthwith report to the Speaker that such sureties are objectionable; but if he shall have decided that such sureties are unobjectionable, or in case he shall not have received any such statement of objection, then as soon as the time hereinbefore allowed for stating any such objection shall have elapsed after the presentation of the petition (or as soon thereafter as he shall have decided upon the statement of objection), the examiner of recognizances shall report to the Speaker that the sureties to such petition are unobjectionable; and he shall make out a list of all election petitions on which he shall have reported to the Speaker that the sureties are unobjectionable, in which list the petitions shall be arranged in the order in which they shall be so reported upon; and a copy of such list shall be kept in the office of the examiner of recognizances, and shall be open to the inspection of all parties concerned.

17. *How petitions may be withdrawn.*—And be it enacted, That it shall be competent to the petitioner or petitioners at any time after the presentation of the petition to withdraw the same, upon giving notice in writing under his hand or their hands, or under the hand of his or their agent, to the Speaker, and also to the sitting member or his agent, and also to any party who may have been admitted to oppose the prayer of such petition, that it is not intended to proceed with the petition; and in such case the petitioner or petitioners shall be liable to the payment of such costs and expenses as may have been incurred by the sitting member, and also by any party who may have been admitted to oppose the prayer of such petition, to be taxed as hereinafter provided.

18. *Proceedings when the seat becomes vacant, or the sitting member declines to defend his return.*—And be it enacted, That if at any time before the appointment of a select committee to try any such petition as hereinafter provided the Speaker of the House of Commons shall be informed, by a certificate in writing subscribed by two of the members of the said House, of the death of any sitting member whose election or return is complained of in such petition, or of the death of any member returned upon a double return, whose election or return is complained of in such petition, or that a writ of summons has been issued under the great seal of Great Britain to summon any such member to Parliament as a peer of Great Britain, or if the House of Commons shall have resolved that the seat of any such member is by law become vacant, or if the House of Commons shall be informed, by a declaration in writing subscribed by any such member, and delivered to the Speaker within fourteen days after the day on which any such petition shall have been presented, that it is not the intention of such member to defend his election or return, in every such case notice thereof shall immediately be sent by the Speaker to the General Committee of Elections, and to the members of the chairmen's panel hereinafter mentioned, and also to the sheriff or other returning officer for the county, city, borough, district, or burghs, port or place, to which such petition shall relate; and such sheriff or other returning officer shall cause a true copy of such notice to be affixed on or near the door of the county hall or town hall, or of the parish church nearest to the place where such election has usually been held; and such notice shall also be inserted, by order of the Speaker, in one of the next two London *Gazettes*, and shall be communicated by him to the House.

19. *Voters may become a party to oppose the petition.*—And be it enacted, That at any time within fourteen days after the day on which any election petition shall have been presented, or within twenty-one days after the day on which any notice shall have been inserted in the *Gazette*, to the effect that the seat is vacant, or that the member returned will not defend his election or return, or if either of the said periods shall expire during a prorogation of Parliament, or during an adjournment of the House of Commons for the Easter or Christmas holidays, then on or before the second day on which the House shall meet after such prorogation or adjournment it shall be lawful for any person or persons claiming to have had a right to vote at the election to which the petition shall relate to petition the House of Commons, praying to be admitted as a party or parties to defend such return, or to oppose the prayer of such election petition; and such person or persons shall thereupon be admitted as a party or parties, together with the sitting member, if he be then a party against such petition, or in the room of such member, if he be not then a party against the petition, and shall be considered as such to all intents and purposes whatever, and every such petition shall be referred by the House to the General Committee of Elections hereinafter mentioned.

20. *Members having given notice of their intention not to defend shall not be admitted as parties.*—And be it enacted, That whenever the member whose election or return is so complained of in such petition shall have given notice as aforesaid of his intention not to defend the same, he shall not be afterwards allowed to appear or act as a party against such petition in any proceedings thereupon, and he shall also be restrained from sitting in the House of Commons, or voting on any question until such petition shall have been decided upon.

21. *At the beginning of every session the Speaker to appoint a general committee.*—And be it enacted, That in the first session of every Parliament, on the day after the last day allowed by any order or resolution of the House of Commons then in force for questioning the returns of members to serve in Parliament, and in every subsequent session, as soon as conveniently may be after the commencement of the session, the Speaker of the House of Commons shall, by warrant under his hand, appoint six members of the House, who shall be willing to serve, and against whose return no petition shall be then depending, and none of whom shall be a petitioner complaining of any election or return, to be members of a committee, which shall be called "The General Committee of Elections;" and every such warrant shall be laid on the table of the House, and, if not disapproved by the House in the course of the three next days on which the House shall meet for the despatch of business, shall take effect as an appointment of such general committee.

22. *If the House disapprove the first appointment, a new appointment to be made.*—And be it enacted, That in case the House shall disapprove any such warrant the Speaker shall, on or before the third day on which the House shall meet after such disapproval, lay upon the table of the House a new warrant for the appointment of six members, qualified as aforesaid, and so from time to time until six members shall have been appointed by a warrant which shall not be disapproved by the House as aforesaid.

23. *Disapproval may be general or special.*—And be it enacted, That the disapproval of the warrant may be either general in respect of the constitution of the whole committee, or special in respect of any member or members named in the warrant.

24. *Members not disapproved by the House may be again named in the warrant.*—And be it enacted, That the Speaker may, if he shall think fit, but shall not be bound to name in the second or any subsequent warrant all or any of the members named in any former warrant, whose appointment shall not have been specially disapproved by the House as aforesaid.

25. *For what time the appointment shall be.*—And be it enacted, That after the appointment of the general committee every member appointed shall continue to be a member of the committee until the end of that session of Parliament, or until he shall cease to be a member of the House of Commons, or until he shall resign his appointment, or until the general committee shall report that he is disabled by continued illness from attending the committee, or until the committee shall be dissolved as hereinafter provided.

26. *Cases of vacancy to be made known to the House, and proceedings suspended.*—And be it enacted, That in every case of vacancy in the General Committee of Elections, the Speaker, on the first day on which the House shall meet after such vacancy shall be known by him, shall make known the vacancy to the House, and thereupon all proceedings of the general committee shall be suspended until the vacancy shall be supplied as hereinafter provided.

27. *Cases in which the general committee shall be dissolved.*—And be it enacted, That in case the General Committee of Elections shall at any time report to the House of Commons that, by reason of the continued absence of more than two of its members, or by reason of irreconcilable disagreement of opinion, the said committee is unable to proceed in the discharge of its duties, or in case the House of Commons shall resolve that the General Committee of Elections be dissolved, the general committee shall be thereby forthwith dissolved.

28. *How vacancies shall be supplied, and re-appointments made.*—And be it enacted, That every appointment to supply a vacancy in the general committee, and every re-appointment of the general committee after the dissolution thereof, shall be made by the Speaker, by warrant under his hand, and laid upon the table of the House, on or before the third day on which the House shall meet after the dissolution of the committee, or notification of the vacancy (as the case may be); and the warrant shall be subject to the disapproval of the House, in the like manner as is hereinbefore provided in the case of the first warrant for the appointment of the general committee, and upon any re-appointment of the general committee, the Speaker may re-appoint as many members of the former committee as he shall think fit, who shall then be willing and not disqualified to serve on it, but shall not be bound to re-appoint any of them.

29. *Speaker to fix the time and place of first meeting of committee. General committee to be sworn.*—And be it enacted, That the Speaker shall appoint the time and place of the first meeting of the General Committee of Elections, and the committee shall meet at the time and place so appointed; but no member appointed or re-appointed to serve on the General Committee of Elections shall act upon such committee until he shall have been sworn at the table of the House, by the clerk, truly and faithfully to perform the duties belonging to a member of the said committee, without fear or favour, to the best of his judgment and ability.

30. *Members necessary to enable the committee to act.*—And be it enacted, That no business shall be transacted by or before the General Committee of Elections unless at the least four members of the general committee shall be then present together, and no appointment of a select committee by the general committee, to be made as hereinafter provided, shall be of force unless at least four members then present of the said general committee shall agree in the appointment.

31. *Committee to regulate their own procedures.*—And be it enacted, That, subject to the provisions of this Act, the said committee shall make regulations for the order and manner of conducting business to be transacted by and before them.

32. *Clerk to keep minutes of proceedings to be laid before the House.*—And be it enacted, That the general committee shall be attended by one of the committee clerks of the House, who shall be selected by the clerk of the House of Commons for the time being, and shall make a minute of all the proceedings of the committee, in such form and manner as shall be from time to time directed by the committee; and a copy of the minutes so kept shall be laid from time to time before the House of Commons.

33. *During any suspension, the Speaker may adjourn any business before the general committee.*—And be it enacted, That if, at the time of the dissolution or suspension of all the proceedings of the General Committee of Elections, there shall be any business appointed to be transacted by or before such general committee on any certain day, it shall be lawful for the Speaker to adjourn the transaction of such business to such other day as to the Speaker shall seem convenient, and so as often as the case may happen.

34. *Members wholly excused from serving.*—And be it enacted, That every member who shall be more than sixty years old shall be wholly excused from serving on election committees; provided that on or before the reading over of the names of such excused members as hereinafter mentioned, or upon his afterwards becoming entitled to make such claim, he shall claim to be excused by declaring in his place, or in writing under his hand, to be delivered to the clerk at the table, that he is more than sixty years old; but no member shall be so excused who shall not claim to be excused before he shall be chosen to serve as hereinafter provided.

35. *Names of members claiming to be excused to be called over.*—And be it enacted, That in the first session of every Parliament, on the next meeting of the House after the last day allowed for questioning returns of members to serve in Parliament, and in every subsequent session on the next meeting of the House after the Speaker shall have laid on the table of the House his warrant for the appointment of the General Committee of Elections, the clerk of the House of Commons shall read over the names of all the members who shall so have claimed to be excused.

36. *Members temporarily excused from serving.*—And be it enacted, That every member who shall have leave of absence from the House shall be excused from serving on election committees during such leave; and if any member in his place shall offer any other excuse, either at the reading over the said names or at any other time, the substance of the allegations shall be taken down by the clerk, in order that the same may be afterwards entered on the journals, and the opinion of the House shall then be taken thereon; and if the House shall resolve that the said member ought to be excused, he shall be excused from serving on election committees for such time as to the House shall seem fit, but no member shall be so excused who shall not claim to be excused before he shall be chosen to serve as hereinafter provided; and every member who shall have served on one select committee for trying an election petition, and who, within seven days after such committee shall have made its final report to the House, shall notify to the clerk of the general committee his claim to be excused from so serving again, shall be excused during the remainder of the Session, unless the House shall at any time resolve, upon the report of the general committee, that the number of members who have not so served is insufficient; but no member shall be deemed to have served on an election committee who, on account of inability or accident, shall have been excused from attending the same throughout.

37. *Members temporarily disqualified from serving.*—And be it enacted, That every member whose return shall not have been brought in for a time exceeding that allowed for questioning the returns of members, or who shall be a petitioner complaining of an undue election or return, or against whose return a petition shall be then depending, shall be disqualified to serve on election committees during the continuance of such ground of disqualification; and every member of any select committee appointed to try an election petition shall be disqualified to serve again on an election committee during seven days after the final report of the committee on which he so served.

38. *A corrected list, distinguishing the excused or disqualified members, to be printed and distributed with the votes.*—And be it enacted, That the clerk of the House of Commons shall make out an alphabetical list of all the members, omitting the names of such members as shall have claimed to be wholly excused from serving on election committees as aforesaid; and the clerk shall also distinguish in such list the name of every member who shall be for a time excused or disqualified, and shall also note in the list every cause of such temporary excuse or disqualification, and the duration thereof; and such list shall be printed and distributed with the votes of the House, and the names of all the members so omitted shall be also printed and distributed with the votes.

39. *List may be further corrected during three days.*—And be it enacted, That during three days next after the day of the distribution of such corrected list further corrections may be made in such list by leave of the Speaker, if it shall appear that any name has been improperly left in or struck out of such list, or that there is any other error in such list.

40. *Selection of members to serve as chairmen of election committees.*—And be it enacted, That the list so finally corrected shall be referred to the General Committee of Elections, and the general committee shall thereupon select, in their discretion, six, eight, ten, or twelve members whom they shall think duly qualified, to serve as chairmen of election committees; and the members so selected shall be formed into a separate panel, to be called the Chairmen's Panel, which shall be reported to the House; and while the name of any member shall be upon the chairmen's panel he shall not be liable or qualified to serve on an election committee, otherwise than as chairman; and every member who shall have been placed on the chairmen's panel shall be bound to continue upon it until the end of the session, or until he shall sooner cease to be a member of the House, or until, by leave of the House, he shall be discharged from continuing upon the chairmen's panel; provided always, that every member of the chairmen's panel who shall have served on one or more election committees, and who shall notify to the clerk of the General Committee of Elections his claim to be discharged from continuing on the chairmen's panel, shall be so discharged accordingly; and every such member shall be excused from serving upon any election committee, either as chairman or otherwise, during the remainder of the session; but no member of the chairmen's panel shall be deemed to have served on an election committee who, on account of inability or accident, shall have been excused from attending the same throughout.

41. *List to be divided into five panels.*—And be it enacted, That after the chairmen's panel shall have been so as aforesaid selected, the general committee shall divide the members then remaining on such list into five panels, in such manner as to them shall seem most convenient, but so nevertheless that each panel may contain as nearly as may be the same number of members, and shall report to the House the division so made by them; and the clerk shall decide by lot at the table the order of the panels as settled by the general committee, and shall distinguish each of them by a number denoting the order in which they shall have been drawn; and the panels shall then be returned to the General Committee of Elections, and shall be the panels from which all members shall be chosen to serve on election committees.

42. *General committee to correct the panels from time to time.*—And be it enacted, That the general committee of elections shall correct the said panels from time to time by striking out of them the name of every member who shall cease to be a member of the House, or who from time to time shall become entitled and shall claim as aforesaid to be wholly excused from serving on election committees, and by inserting in one of the panels to be chosen by the general committee, at their discretion, the name of every new member of the House who shall not be entitled and claim as aforesaid to be wholly excused, and shall also from time to time distinguish, in the manner aforesaid, in the said panels, the names of those members who shall be for a time excused or disqualified for any of the reasons aforesaid; and the general committee shall, as often as they shall think fit, report to the House the panels as they shall then stand corrected; and as often as the General Committee of Elections shall report the said panels to the House they shall be printed and distributed with the votes of the House.

43. *Power to transfer to another panel the names of members obtaining leave of absence.*—And be it enacted, That when leave of absence for a limited time shall have been granted by the House to any member, it shall be lawful for the General Committee of Elections to transfer the name of such member from the panel in which it shall have been placed to some other panel subsequent in rotation, if they shall think fit so to do, having regard to the length of time for which such leave of absence shall have been granted, and to the number of select committees then about to be appointed.

44. *For supplying vacancies, and increasing the chairmen's panel.*—And be it enacted, That whenever any member of the chairmen's panel shall cease to be a member of the House, or shall be, by leave of the House, discharged from continuing upon the chairmen's panel, or shall be so discharged by reason of service, under the provisions hereinbefore contained, the general committee shall forthwith select another member to be placed upon the chairmen's panel in his room; and in case it shall at any time appear to the general committee that the chairmen's panel is too small, it shall be lawful for the general committee to select two, four, or six additional members to place upon it, so nevertheless, that the chairmen's panel shall not at any time consist of more than eighteen members, without the leave of the House first obtained.

45. *Members upon chairmen's panel to make regulations.*—And be it enacted, That it shall be lawful for the members who are upon the chairmen's panel from time to time to make such regulations as they may find convenient for securing the appointment or selection of chairmen of election committees, and for distributing the duties of chairman among all of them.

46. *Election petitions to be referred to the general committee. List of petitions to be made.*—And be it enacted, That all election petitions which shall be received by the House shall be referred by the House to the General Committee of Elections, for the purpose of choosing select committees, as hereinafter provided, to try such petitions; and the Speaker shall communicate to the House and the general committee every report by the examiner of recognizances to him concerning the sureties to any election petition; and in every case in which any election petition shall be withdrawn, or the examiner of recognizances shall have reported to the Speaker that the sureties are objectionable, the order for referring such petition to the General Committee of Elections shall be discharged, and no further proceeding shall be had upon such petition; and the general committee shall make out a list of all election petitions in which the examiner of recognizances shall have reported to the Speaker that the sureties are unobjectionable, and in which the proceedings are not suspended, in which list the petitions shall be arranged in the order in which they shall have been so reported upon; and in every case in which the proceedings in any petition inserted in such list shall be afterwards suspended, the petition shall be struck out of the list, and shall be again inserted at the bottom of the list at the end of such suspension of proceedings.

47. *Where notice of vacancy, or that the sitting member declines to defend, is received by the general committee, proceedings to be suspended.*—And be it enacted, That when notice of the death or vacancy of the seat of any member petitioned against, or that it is not the intention of such member to defend his election or return, shall be given to the General Committee of Elections by the Speaker as hereinbefore provided, the general committee shall suspend their proceedings in the matter of the petition referred to in such notice until twenty-one days after the day on which notice of such death or vacancy, or intention not to defend, shall have been inserted in the *Gazette* under the provisions hereinbefore contained, unless the petition of some person or persons claiming to be admitted as a party or parties in the room of such member shall be sooner referred to them.

48. *Provision for cases where more than one petition.*—And be it enacted, That when more than one election petition relating to the same election or return shall be referred to the General Committee of Elections they shall suspend their proceedings in the matter of all such petitions until the report of the examiner of recognizances upon each of such petitions, or such of them as shall not have been withdrawn, shall be received by them; and upon receipt of the last of such reports they shall place such petitions at the bottom of the then list of election petitions, bracketed together, and such petitions shall afterwards be dealt with as one petition.

49. *Committees to be chosen for petitions according to their order in the list.*—And be it enacted, That the General Committee of Elections shall choose the committees to try the election petitions standing in the said list of petitions in the order in which such petitions stand in the said list, and they shall from time to time determine how many committees shall be chosen in each week for trying such petitions, and the day or days on which they will meet for choosing such committees, having regard to the number of select committees which may then be sitting for the trial of election petitions, and to the whole number of such committees then to be appointed; and they shall report to the House from time to time the days appointed by them for choosing such committees.

50. *Notice to be given when any committee will be chosen. Notice of suspension to be given.*—And be it enacted, That notice of the time and place at which the committee will be chosen to try an election petition shall be published with the votes, not less than fourteen days before the day on which such committee shall be appointed to be chosen; and in case the conduct of the returning officer is complained of, such notice shall be sent to him through the post, not less than fourteen days before the day on which such committee shall be appointed to be chosen, and every such notice shall direct all parties interested to attend the General Committee of Elections, by themselves, their counsel or agents, at the time and place appointed for choosing the select committee; and if (after any such notice shall have been published with the votes, or sent to the returning officer as aforesaid) the proceedings in the matter of such petition shall become suspended, notice of such suspension shall be immediately published with the votes; and in case the conduct of the returning officer is complained of, such notice shall be sent to him through the post.

51. *Provision for cases where the sitting member does not defend, and no party has been admitted to defend, &c.*—Provided always, and be it enacted, That in case notice of the death or vacancy of the seat of any member petitioned against, or that it is not the intention of such member to defend his election or return, shall have been inserted in the *Gazette*, by order of the Speaker as hereinbefore provided, and no party shall have been admitted to defend such election or return, then, if the conduct of the returning officer is not complained of in such petition, it shall not be necessary to insert such petition at the bottom of the then list of petitions, but the General Committee of Elections shall meet for choosing the select committee to try such petition as soon as conveniently may be after the expiration of the time allowed for parties to come in to defend such election or return, as hereinbefore provided; and not less than one day's notice of the time and place appointed for choosing such committee shall be given in the votes.

52. *General committee empowered to change the day for choosing select committee.*—And be it enacted, That it shall be lawful for the General Committee of Elections to change the day and hour appointed by them for choosing a select committee to try any election petition, and to appoint some subsequent day and hour for the same, if it shall in their judgment be expedient so to do, giving notice in the votes of the day and hour so subsequently appointed; and in every case in which any such change shall be made by them they shall forthwith report the same to the House, with their reasons for making such change.

53. *Notice of petitions and panels.*—And be it enacted, That notice shall be published with the votes of the petitions appointed for each week, and of the panel from which committees will be chosen to try such petitions.

54. *Lists of voters intended to be objected to shall be delivered to the clerk of the general committee.*—And be it enacted, That in all cases of controverted elections or returns of members to serve in Parliament all the parties complaining of or defending such elections or returns shall, by themselves or their agents, deliver in to the clerk of the general committee lists of the voters intended to be objected to, giving in the said lists the several heads of objections, and distinguishing the same against the names of the voters excepted to, not later than six of the clock in the afternoon on the sixth day next before the day appointed for choosing the committee to try the petition complaining of such election or return; and the said clerk shall keep the lists so delivered to him in his office, open to the inspection of all parties concerned.

55. *Select committee to be chosen.*—And be it enacted, That the general committee shall meet at the time appointed for choosing the committee to try any election petition, and shall choose from the panel then standing next in order of service, exclusive of the chairmen's panel, four members, not being then excused or disqualified for any of the causes aforesaid, and who shall not be specially disqualified for being appointed on the committee to try such petition for any of the following causes; that is to say, by reason of having voted at the election, or by reason of being the party on whose behalf the seat is claimed, or related to the sitting member or party on whose behalf the seat is claimed by kindred or affinity in the first or second degree, according to the canon law; and each panel shall serve for a week, beginning with the panel first drawn and continuing by rotation in the order in which they were drawn, and not reckoning those weeks in which no select committee shall be appointed to be chosen.

56. *In case of disagreement, the general committee to adjourn.*—And be it enacted, That in case at the least four members then present of the general committee of elections shall not agree in choosing a committee to try any petition appointed for that day, the general committee shall adjourn the choosing of that committee and of the remaining committees appointed to be chosen on that day to the following day, and the parties shall be directed to attend on the following day, or if such following day shall happen during an adjournment of the House, then on the day to which the House shall stand adjourned, and so from day to day until all such committees shall be chosen, or until the general committee of elections shall be dissolved, as hereinbefore provided; and the general committee shall not in any case proceed to choose a committee to try an election petition until they shall have chosen a committee to try every other election petition standing higher in the list aforesaid, the order for referring which shall not be then discharged, except in the case where the day originally appointed for choosing a committee shall have been changed under the provision hereinbefore contained.

57. *Chairman to be chosen by the members on the chairmen's Panel, and his name communicated to the general committee.*—And be it enacted, That on the day appointed by the general committee to choose a committee to try an election petition the members who are upon the chairmen's panel shall select one of such members to act as the chairman of such election committee, and when they shall have been informed by the general committee that four members of such election committee shall have been chosen, they shall communicate the name of the member so selected by them to the general committee, but no member shall be so selected who would be disqualified from serving on such committee if not upon the chairmen's panel: provided always, that if, with reference to any petition for trying which they are about to appoint a chairman, the members of the chairmen's panel shall receive notice from the Speaker under the provision hereinbefore contained, of the death or vacancy of the seat of the sitting member petitioned against in such petition, or that it is not his intention to defend his seat, the members of the chairmen's panel shall suspend their proceedings with regard to the appointment of a chairman to try such petition until the day appointed by the general committee of elections for selecting a committee to try such petition.

58. *When committee chosen the parties to be called in.*—And be it enacted, That as soon as the general committee of elections shall have chosen four members of a committee to try any such petition, and shall have received from the members of the chairmen's panel the name of a chairman to serve on such committee, the parties in attendance shall be called in, and the names of the members so chosen and of the chairman shall be read over to them.

59. *General committee to proceed in order with all the petitions appointed for that day.*—And be it enacted, That after hearing the said names the parties present shall be directed to withdraw, and the general committee may proceed to choose another committee to try the next petition appointed for that day, and so on until all the committees appointed to be chosen on that day shall be chosen, or until the choosing of any committee shall be adjourned as aforesaid, and after any such adjournment the general committee shall not transact any more business on that day, except with regard to those petitions for trying which committees shall have been previously chosen.

60. *Parties may object to disqualified members.*—And be it enacted, That within one half hour at furthest from the time when the parties to any election petition shall have withdrawn, or if the parties to any other election petition shall then be before the general committee of elections, then after such other parties shall have withdrawn, the parties in attendance shall be again called before the general committee, in the same order in which they were directed to withdraw; and the petitioners and sitting member or members, or such party as may have been admitted as aforesaid to defend the return or right of election, their counsel or agents, beginning on the part of the petitioners, may object to all or any of the members chosen, or to such chairman, as being then disqualified or excused, for any of the reasons aforesaid, from serving on the committee for the trial of that election petition, but not for any other reason.

61. *If general committee allow the disqualification, a new committee to be chosen.*—And be it enacted, That if at the least four members then present of the general committee shall be satisfied that any member so objected to is then disqualified or excused for any of the reasons aforesaid, the parties present shall be again directed to withdraw, and the general committee shall proceed to choose another committee from the same panel to try that petition, or if the member to whom any such objection shall be substantiated be the chairman, they shall send back his name to the members on the chairmen's panel, and the members on the chairmen's panel shall proceed to choose another chairman to try that petition, and shall communicate his name to the general committee, and so as often as the case may happen.

62. *In the new committee members not before objected to may be included.*—And be it enacted, That in the second or any following committee the general committee may, if they shall think fit, include all or any of the members previously chosen by them to whom no objection shall have been substantiated; and no party shall be allowed to object to any member who may be included in the second or any following committee who was not objected to when included in the committee first chosen to try that petition.

63. *Notice to be sent to every member chosen.*—And be it enacted, That when four members and a chairman shall have been chosen, to none of whom any objection shall have been substantiated, the clerk of the general committee of elections shall give notice thereof in writing to each of the members so chosen by the general committee; and with every such notice shall be sent a notice of the general and special grounds of disqualification and excuse from serving which are hereinbefore mentioned, and of the time and place when and where the general committee will meet on the following day; and notice of the time and place of such meeting shall be published with the votes.

64. *If any member chosen proves a disqualification another committee to be chosen.*—And be it enacted, That the general committee shall meet on the following day at the time and place mentioned in such notice as last aforesaid; and if any such member shall then and there prove, to the satisfaction of at least four members then present of the general committee, that for any of the reasons aforesaid he is disqualified or excused from serving on the committee for which he shall have been so chosen, or if any such member shall prove, to the satisfaction of at least four members then present of the general committee, that there are any circumstances in his case which render him ineligible to serve on such select committee, such circumstances having regard not to his own convenience but solely to the impartial character of the tribunal, the general committee shall proceed to choose a new committee to try that petition, in like manner as if that member had been objected to by any party to the petition; and if within the space of one quarter of an hour after the time mentioned in the notice no member shall so appear, or if any member so appearing shall not prove his disqualification or excuse, to the satisfaction of at least four members then present of the general committee, the select committee shall be taken to be appointed.

65. *Select committee to be reported to the House.*—And be it enacted, That at the meeting of the House of Commons for the despatch of business next after any such select committee shall be appointed, the members chosen, including the chairman, shall attend in their places, and the general committee of elections shall report to the House the names of the select committee appointed, and shall annex to such report all petitions referred to them by the House which shall relate to the return or election of which such select committee is appointed to try the merits, and all lists of voters which shall have been delivered to them by either party; and the members chosen to be of the said select committee shall not depart the house till the time for the meeting of such select committee shall be fixed.

66. *Members of select committee to be sworn.*—And be it enacted, That the five members appointed as hereinbefore is mentioned shall, before departing the House, be sworn at the table, by the clerk, well and truly to try the matter of the petitions referred to

them, and a true judgment to give according to the evidence, and shall be taken to be a select committee legally appointed to try and determine the merits of the return or election so referred by the House to them; and the member so appointed from the chairmen's panel shall be the chairman of such committee.

67. *Members of said committee not present within one hour after the meeting of the House to be taken into custody by the Serjeant-at-Arms.*—And be it enacted, That if any member of the said select committee shall not attend in his place within one hour after the meeting of the House on the day appointed for swearing the said committee, or if after attending any member shall depart the House before the said committee shall be sworn, unless the committee shall be discharged, or the swearing of the said committee shall be adjourned as hereinafter provided, he shall be ordered to be taken into the custody of the serjeant-at-arms attending the House for such neglect his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it shall appear to the House by facts specially stated, and verified upon oath, that such member was by a sudden accident or by necessity prevented from attending the House.

68. *If any such member is not present within three hours after the meeting of the House the proceedings to be adjourned.*—And be it enacted, That if any such absent member shall not be brought into the House within three hours after the meeting of the House on the day first appointed for swearing the said committee, and if no sufficient cause shall be shewn to the House before its rising whereon the House shall dispense with the attendance of such absent member, the swearing of the committee shall be adjourned to the next meeting of the House; and all the members of the said committee shall be bound to attend in their places for the purpose of being sworn at the next meeting of the House, in like manner as on the day first appointed for that purpose.

69. *All the members not attending after adjournment, the committee to be discharged.*—And be it enacted, That if on the day to which the swearing of the said committee shall be so adjourned all the members of the committee shall not attend and be sworn, within one hour after the meeting of the House, or if on the day first appointed for swearing the said committee, sufficient cause shall be shewn to the House before its rising why the attendance of any member of the committee should be dispensed with, the said committee shall be taken to be discharged, and the general committee shall meet on the following day, or if such following day shall happen during an adjournment of the House, then on the day to which the House shall stand adjourned, and shall proceed to choose a new committee from the panel on service for the time being in the manner hereinbefore provided, and notice of such meeting shall be published with the votes.

70. *Petitions and lists to be referred to the committee, and time and place of meeting appointed by the House.*—And be it enacted, That the House shall refer the petitions and lists annexed to the report of the general committee of elections to the select committee so appointed and sworn, and shall order the said select committee to meet at a certain time, to be fixed by the House, which shall be within twenty-four hours of their being sworn at the table of the House, unless a Sunday, Christmas Day, or Good Friday shall intervene; and the place of their meeting shall be some convenient room or place adjacent to the House of Commons properly prepared for that purpose.

71. *Committees not to adjourn for more than twenty-four hours, without leave, &c.* And be it enacted, That every such select committee shall sit from day to day, Sunday, Christmas Day, and Good Friday only excepted, and shall . . er adjourn for a longer time than twenty-four hours, unless a Sunday, Christmas Day, or Good Friday intervene, and in such case not for more than twenty-four hours, exclusive of such Sunday, Christmas Day, or Good Friday, without leave first obtained from the House, upon motion, and special cause assigned for a longer adjournment; and in case the House shall be sitting at the time to which such select committee is adjourned, then the business of the House shall be stayed, and a motion shall be made for a further adjournment for any time to be fixed by the House: provided always, that if such select committee shall have occasion to apply or report to the House, and the House shall be then adjourned for more than twenty-four hours, such select committee may also adjourn to the day appointed for the meeting of the House.

72. *Committee-man not to absent himself. Committee not to sit until all be met; on failure of all meeting within one hour, to adjourn.*—And be it enacted, That no member appointed as aforesaid to be of any such select committee shall absent himself from the same without leave obtained from the House, or an excuse allowed by the House at the next sitting thereof, for the cause of sickness, verified upon the oath of his medical attendant, or for other special cause shewn, and verified upon oath; and in every such case the member to whom such leave shall be granted or excuse allowed shall be discharged from attending, and shall not be entitled to again to sit or vote on the said committee; and such select committee shall never sit until all the members to whom such leave has not been granted, nor excuse allowed, are met; and in case all such members shall not meet within one hour after the time appointed for the first meeting of such select committee, or within one hour after the time to which such select committee shall have been adjourned, a further adjournment shall be made, and reported by their chairman, with the cause thereof to the House.

73. *Absentees to be directed to attend the House.*—And be it enacted, That every member whose absence without leave or excuse shall be so reported shall be directed to attend the House at its next sitting, and shall then be ordered to be taken into the custody of the serjeant-at-arms attending the House for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it shall appear to the House, by facts specially stated, and verified upon oath, that such member was by a sudden accident or by necessity prevented from attending the said select committee.

74. *Committee not to be dissolved by the death or absence of not more than two members.*—And be it enacted, That the committee shall not be dissolved by reason of the death or necessary absence of one member or two members thereof only, but the remaining members shall thenceforward constitute the committee; and in case there shall ever be occasion for electing a new chairman on the death or necessary absence of the chairman first appointed, the remaining members of the committee shall elect one of them selves to be chairman, and if in that election there shall be an equal number of voices, the member whose name stands foremost in the list of the committee, as reported to the House, shall have a second or casting vote.

75. *If any committee is reduced to less than three by the non-attendance of its members, it shall be dissolved, unless by consent.*—And be it enacted, That in case the number of members able to attend any such select committee shall be, by death or otherwise, unavoidably reduced to less than three and shall so continue for the space of three sitting days, such select committee shall be dissolved (except in the case hereinafter provided), and another shall be appointed to try such petition in manner aforesaid; and the general committee and members of the chairmen's panel shall meet for that purpose as soon as conveniently may be after the occasion shall have arisen, at a day and hour to be appointed by the general committee, and notice of such meeting shall be published with the votes; and all the proceedings of such former committee shall be void and of no effect: provided always, that if all the parties before the committee shall consent thereto, the two remaining members of the committee, or the sole remaining member, if only one, shall continue to act, and shall thenceforward constitute the committee.

76. *Committees to be attended by a short-hand writer.*—And be it enacted, That every such committee shall be attended by a person skilled in the art of writing short-hand, who shall be specially appointed by the clerk of the House of Commons for the time being, and sworn by the chairman faithfully and truly to take down the evidence given before such committee, and from day to day, as occasion may require, to write or cause the same to be written in words at length for the use of the committee.

77. *Committee empowered to send for and examine persons, papers, and records. Witness's misbehaving may be reported to the House, and committed to the custody of the serjeant-at-arms.*—And be it enacted, That every such select committee shall have power to send for persons, papers, and records, and to examine any person who may have subscribed the petition which such select committee shall have been appointed to try, unless it shall otherwise appear to such committee that such person is an interested witness, and shall examine all the witnesses who come before them upon oath, which oath the clerk attending such select committee is hereby empowered to administer; and if any person summoned by such select committee, or by the warrant of the Speaker of the House of Commons (which warrants the Speaker is hereby authorized to issue from time to time as he shall think fit), shall disobey such summons, or if any witness before such select committee shall give false evidence, or prevaricate, or shall otherwise misbehave in giving or refusing to give evidence, the chairman of such select committee, by their direction, may at any time during the course of their proceedings report the same to the House for the interposition of the authority or censure of the House, as the case may require, and may by a warrant under his hand directed to the serjeant-at-arms attending the House of Commons, or to his deputy or deputies, commit such person (not being a peer of the realm or lord of Parliament) to the custody of the said serjeant, without bail or mainprize, for any time not exceeding twenty-four hours, if the House shall then be sitting, and if not, then for a time not exceeding twenty-four hours after the hour to which the House shall then be adjourned.

78. *How oaths to be administered.*—And be it enacted, That where in this Act any thing is required to be verified on oath to the House of Commons, it shall be lawful for the Clerk of the House of Commons to administer an oath for that purpose, or an affidavit for such person may lawfully be sworn before any justice of the peace or Master of the High Court of Chancery.

79. *Giving false evidence to be perjury.*—And be it enacted, That every person who shall wilfully give any false evidence before the House of Commons, or any committee or examiner of recognizances, under the provisions of this Act, or who shall wilfully swear falsely in any affidavit authorized by this Act to be taken, shall, on conviction thereof, be liable to the penalties of wilful and corrupt perjury.

80. *Evidence to be confined to objections specified in the lists.*—And be it enacted, That no evidence shall be given before the select committee, or before any commission issued by the said committee, against the validity of any one not included in one of the lists of voters delivered to the general committee as aforesaid, or upon any head of objection to any voter included in any such list other than one of the heads specified against him in such list.

81. *Committee to decide, and to report their decision to the House.*—And be it enacted, that every such select committee shall try the merits of the return or election, or both, and shall determine by a majority of voices, if for the time being consisting of more than one member, whether the petitioners or the sitting members, or either of them, be duly returned or elected, or whether the election be void, or whether a new writ ought to issue, which determination shall be final between the parties to all intents and purposes; and the House, on being informed thereof by the committee, shall order such report to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for ordering a return to be made, or for issuing a new writ for a new election, or for carrying the said determination into execution, as the case may require.

82. *Committees may report their determination on other matters to the House.*—And be it enacted, That if any such select committee shall come to any resolution other than the determination above mentioned, they shall, if they think proper, report the same to the House for their opinion at the same time that they shall inform the House of such determination, and the House may confirm or disagree with such resolution, and make such orders thereon as to them shall seem proper.

83. *When committee is deliberating, the room to be cleared, &c.*—And be it enacted, That whenever any such select committee shall think it necessary to deliberate among themselves upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition referred to them as aforesaid, as soon as they shall have heard the evidence and counsel on both sides relative thereto, the room or place in which they shall sit shall be cleared, if they shall think proper, whilst the members of the committee consider thereof.

84. *Questions to be decided by a majority.*—And be it enacted, That all questions before the committee, if for the time being consisting of more than one member, shall be decided by a majority of voices, and whenever the voices shall be equal the chairman shall have a second or casting voice.

85. *Names of members voting for or against any resolution to be reported to the House.*—And be it enacted, That whenever the select committee shall be divided upon any question the names of the members voting in the affirmative and in the negative shall be entered in the minutes of the said committee, and shall be reported to the House, with the questions on which such divisions arose, at the same time with the final report of the committee; and no member of the committee shall be allowed to refrain from voting on any question on which the committee shall be divided.

86. *Committees to be appointed for petitions standing over on a prorogation of Parliament.*—And be it enacted, That whenever it shall happen that Parliament shall be prorogued after any petition complaining of an undue election or return, or of the omission to return, shall have been presented, but before the appointment of a select committee to try such petition, the general committee of elections shall, within two days after their first meeting, in case the sureties shall have been then reported unobjectionable, appoint a day and hour for selecting a committee or committees to try the petition or petitions so standing over as aforesaid: provided always, that if the number of petitions so standing over as aforesaid shall be so great that the times for selecting committee of elections be conveniently appointed within two days after their first meeting, the said general committee shall, within two days after their first meeting, appoint the times for selecting committees to try such number of the said petitions as the said general committee shall deem convenient, and shall afterwards from time to time, as soon as conveniently may be, appoint the times for selecting the committees to try the remainder of such petitions.

87. *Committees not dissolved by the prorogation of Parliament.*—And be it enacted, That if the Parliament shall be prorogued after the appointment of any select committee for the trial of any such petition as aforesaid, and before they shall have reported to the House their determination thereon, such committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve of the clock on the day immediately following that on which Parliament shall meet again for the despatch of business (Sunday, Good Friday, and Christmas-day always excepted); and all proceedings of such committee, and of any commission to take evidence issued under the authority of such committee, shall remain and continue to be of the same force and effect as if Parliament had not been so prorogued; and such committee shall meet on the day and hour to which it shall be so adjourned, and shall thenceforward continue to sit from day to day in the manner herein-before provided, until they shall have reported to the House their determination on the merits of such petition.

88. *Costs when incurred by petitioners, &c.*—And be it enacted, That whenever any committee appointed to try an election petition shall report to the House with respect to any such petition that the same appeared to them frivolous or vexatious, the party or parties, if any, who shall have appeared before the committee in opposition to such petition shall be entitled to recover from the person or persons, or any of them, who shall have signed such petition, the full costs and expenses which such party or parties shall have incurred in opposing the same, such costs and expenses to be ascertained in the manner hereinafter directed.

89. *Costs when incurred by parties opposing petitions.*—And be it enacted, That whenever such committee shall report to the House, with respect to the opposition made to such petition by any party or parties who shall have appeared before them, that such opposition appeared to be frivolous or vexatious, the person or persons who shall have signed such petition shall be entitled to recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expenses which such petitioner or petitioners shall respectively have incurred in prosecuting their petition, such costs and expenses to be ascertained in the manner hereinafter directed.

90. *Costs when incurred where no party appears to oppose a petition.*—And be it enacted, That whenever no party shall have appeared before any such committee in opposition to such petition, and such committee shall report to the House, with respect to the election or return, or to the alleged omission of a return, or to the alleged insufficiency of a return, complained of in any such petition, that the same appeared to them to be vexatious or corrupt, the person or persons who shall have signed such petition shall be entitled to recover from the sitting member or sitting members (if any) whose election or return shall be complained of in such petition (such sitting member or sitting members not having given notice as aforesaid of his or their intention not to defend the same), or from any other person or persons whom the House shall have admitted or directed to be made a party or parties to oppose such petition, the full costs and expenses which such petitioner or petitioners shall have incurred in prosecuting their petition, such costs and expenses to be ascertained in the manner hereinafter directed.

91. *Costs upon frivolous objections.*—And be it enacted, That if any ground of objection shall be stated against any voter in any list of votes intended to be objected to as hereinbefore provided, and if such select committee shall be of opinion that such objection was frivolous or vexatious, the said committee shall report the same to the House of Commons, together with their opinion on the other matter relating to the said petition, and the opposite party shall in such case be entitled to recover, from the party or parties by whom or on whose behalf any such objections were made, the full costs and expenses incurred by reason of such frivolous or vexatious objections, which costs and expenses shall be ascertained and recovered in the same manner and form as is hereinafter provided for the recovery of costs and expenses in cases of frivolous or vexatious petitions.

92. *Costs upon unfounded objections.*—And be it enacted, That if either party shall make before the said select committee any specific allegation with regard to the conduct of the other party or his agents, and shall either bring no evidence in support thereof, or such evidence that the committee shall be of opinion that such allegation was made without any reasonable or probable ground, it shall be lawful for the committee to make such orders as to them shall seem fit for the payment, by the party making such unfounded allegation to the other party, of all costs and expenses which shall have been incurred by reason of such unfounded allegation, which costs and expenses shall be ascertained and recovered in the same manner and form as is hereinafter provided for the recovery of costs and expenses in cases of frivolous and vexatious petitions.

93. *Costs how to be ascertained.*—And be it enacted, That the costs and expenses of prosecuting or opposing or preparing to oppose any petition presented under the provisions of this Act, and the costs and expenses which shall be due and payable to any witness summoned to attend before the Examiner of Recognizances, or before any committee, under the provisions of this Act, shall be ascertained in manner following; (that is to say,) on application made to the Speaker of the House of Commons by any such petitioner, party, or witness, for ascertaining such costs and expenses, not later than three calendar months after the determination of the merits of such petition, or after any order of the House for discharging the order of reference of such petition to the General Committee of Elections, or after the withdrawal of any petition, as hereinbefore provided, the Speaker shall direct the same to be taxed by the examiner of recognizances; and the said examiner shall examine and tax such costs and expenses, and shall report the amount thereof, together with the name of the party or parties liable to pay the same, and the name or names of the party or parties entitled to receive the same, to the Speaker, who shall, upon application made to him, deliver to the party or parties a certificate, signed by himself, expressing the amount of the costs and expenses allowed in such report, with the name of the party liable to pay the same, and the name of the party entitled to receive the same; and such certificate so signed by the Speaker shall be conclusive evidence, as well of the amount of such demands as of the title of the several parties to recover the same, in all cases and for all purposes whatsoever; and the party claiming under the same shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

94. *Persons appointed to tax costs empowered to take affidavits.*—And be it enacted, That the examiner of recognizances is empowered to examine upon oath any party claiming any such costs or expenses, and any witnesses tendered to him for examination, and to receive affidavits sworn before him, or before any Master of the High Court of Chancery, or any of her Majesty's justices of the peace, who are severally empowered to take the same, relative to such costs or expenses, or the taxation or nonpayment thereof.

95. *Recovery of costs.*—And be it enacted, That it shall be lawful for the party or parties entitled to such taxed costs and expenses, or for his, her, or their executors or administrators, to demand the whole amount thereof, so certified as above, from any one or more of the persons herein made liable to the payment thereof in the several cases hereinbefore mentioned, and in case of nonpayment thereof to recover the same by action of debt in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, in which action it shall be sufficient for the plaintiff or plaintiffs to declare that the defendant or defendants is or are indebted to him or them in the sum mentioned in the said certificate; and the said plaintiff or plaintiffs shall, upon filing the said declaration, together with the said certificate and affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by *nil dicit*, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law: provided always, that the validity of such certificate (the handwriting of the Speaker thereunto being duly verified) shall not be called in question in any court upon the allegation of any matter or thing anterior to the date thereof.

96. *Persons paying costs may recover a proportion from other persons liable thereto.*—And be it enacted, That in every case it shall be lawful for any person or persons from whom the amount of such costs and expenses shall have been so recovered to recover in like manner from the other persons, or any of them (if such there shall be), who are liable to the payment of the same costs and expenses, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

97. *Recognizances, when to be estreated, &c.*—And be it enacted, That if any person or persons who shall have subscribed an election petition shall neglect or refuse, for the space of seven days after demand, to pay to any witness who shall have been summoned on his or their behalf before the examiner of recognizances, or any committee, under the provisions of this Act, the sums so certified as aforesaid by the speaker to be due to such witness, or if such petitioner or petitioners shall neglect or refuse, for the space of six months after demand, to pay to any party who shall appear in opposition to the said petition the sum so certified by the Speaker as aforesaid to be due to such party for their costs or expenses, and if such neglect or refusal shall, within one year after the granting of such certificate, be proved to the Speaker's satisfaction, by affidavit sworn before any master of the High Court of Chancery (and such master is hereby authorized to administer such oath, and is authorized and required to certify such affidavit under his hand), in every such case every person who shall have entered into a recognizance relating to such petition under the provisions hereinbefore contained shall be held to have made default in his said recognizance; and the Speaker of the House of Commons shall thereupon certify such recognizance into the Court of Exchequer, and shall also certify that such person or persons have made default therein, and such certificate shall be conclusive evidence of such default; and the recognizance, being so certified, shall be delivered by the clerk or one of the clerks assistant of the House of Commons into the hands of the Lord Chief Baron of the Court of Exchequer, or one of the Barons of the Exchequer, or of such officer as shall be appointed by the Court to receive the same, and shall have the same effect as if the same were estreated from a court of law; and the validity thereof (the handwriting of the Speaker to such certificate being duly verified) shall not be called in question upon the allegation of any matter anterior to the date of such certificate.

98. *Returning officer may be sued for neglecting to return any person duly elected.*—And be it enacted, That if any sheriff or other returning officer or officers shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned to serve in Parliament for any county, city, borough, district of burghs, port, or place within Great Britain or Ireland, such person may, in case it shall have been determined by a select committee appointed in the manner hereinbefore directed that such person was entitled to have been returned, sue the sheriff or other officer or officers having so wilfully delayed, neglected, or refused duly to make such return at his election, in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, and shall recover double the damages he shall sustain by reason thereof, together with full costs of suit, provided such action is commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of any proceedings in the House of Commons relating to such election.

99. *Commencement of the Act.*—And be it enacted, That this Act shall commence and take effect from the end of this present session of Parliament.

100. *Provision for election petitions remaining at the close of the present session.* 4 & 5 *Vict. c.* 58.—And be it enacted, That if at the close of the present session of Parliament there shall be any election petition or petitions before the House, the order for taking which into consideration shall not have been discharged, and for trying which no committee or committees shall have been appointed, such election petition or petitions shall, in case the sureties relating thereto shall have been reported unobjectionable, be tried by a committee or committees to be chosen under the provisions of this Act, and shall be referred to the General Committee of Elections before any petition presented in the next session, and the general committee shall, within two days after their first meeting, appoint a day and hour for selecting a committee to try every such petition; and the recognizances entered into in respect of such petitions shall be taken to remain in force for securing payment of all costs and expenses which the petitioners shall be liable to pay under the provisions of this Act: provided always, that if the Parliament shall be prorogued after the appointment of a select committee for the trial of any such petition as aforesaid, and before they shall have reported to the House their determination thereon, such committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve of the clock on the day immediately following that on which Parliament shall meet again for the despatch of business (Sunday, Good Friday, and Christmas Day always excepted); and all proceedings of such committee, and of any commission to take evidence issued under the authority of such committee, shall remain and continue to be of the same force and effect as if Parliament had not been so prorogued, and as if the Act passed in the fifth year of her Majesty, intituled "An Act to amend the Law for the Trial of controverted Elections," had continued in force; and such committee shall meet on the day and hour to which it shall be so adjourned, and shall thenceforward continue to sit from day to day in the manner provided in the last-mentioned Act, until they shall have reported to the House their determination on the merits of such petition; and all further proceedings shall be had, with reference to such petition, as if the said last-mentioned Act had continued in force.

101. *Act may be amended this session.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

SCHEDULE to which the foregoing Act refers.

SCHEDULE A.

Form of Recognizance.

Be it remembered, that on the day of in the year of our Lord before me A B (examiner of recognizances for the House of Commons) [*or* one of her Majesty's justices of the peace for the county of], came C D of &c. E F of &c. G H of &c. I K of &c. and L M of &c. and severally acknowledged themselves to owe to our Sovereign Lady the Queen the following sums; (that is to say), the said C D the sum of one thousand pounds, and the said E F the sum of pounds [the said G H the sum of pounds, the said I K the sum of

pounds, and the said L M the sum of pounds], to be levied on their respective goods and chattels, lands and tenements to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is, that if the said C D and X Y (the other petitioner, if any), or either of them, shall well and truly pay all costs and expenses which any committee of the House of Commons selected to try the matter of the petition signed by the said C D and X Y (complaining of an undue election or return for the [*here state the place*]), [*or* (complaining that no return has been made for the said within the time limited by Act of Parliament), *or* (complaining that the return made for the said is not a return of a member or members according to the requisition of the writ), *or* (complaining of the special matters contained in any such return)] shall adjudge to be payable by the said C D and X Y (*the other petitioner, if any*), or either of them, and shall also well and truly pay the costs and expenses due and payable by the said C D and X Y (*the other petitioner, if any*), and each of them, to any witness summoned in his or their behalf, or to the party who shall appear in opposition to the said petition, in case the said C D and X Y (*the other petitioner, if any*), shall be allowed to withdraw his or their said petition, then this recognizance to be void, otherwise to be of full force and effect.

PARLIAMENTARY RETURNS.

The Army.—A paper has just been delivered by the printers of the House of Commons, that contains an account of the finally audited receipts and expenditure for army and militia services, compared with the sums estimated for the year ending the 31st of March, 1843, &c. This account was laid on the table of the House by the newly-appointed Secretary-at-War, Sir T. F. Fremantle, bart. M.P. We find that the gross total expenditure for effective and non-effective services during the period in question amounted to 6,259,515*l.* whilst the grants made by Parliament, including appropriations actually received, appear to have amounted to 6,632,575*l.* Of the amount expended, the sum of 3,484,818*l.* was appropriated to the land forces, 170,875*l.* to staff officers, 87,502*l.* to public departments, 18,717*l.* to the Royal Military College, 101,704*l.* to the Volunteer Corps, 14,701*l.* to rewards for distinguished services, 465,402*l.* to half-pay and allowances, 46,677*l.* to foreign half-pay and pensions, 138,687*l.* to widows' pensions, 1,225,709*l.* to Chelsea Hospital, for in and out pensioners, and altogethe the sum of 150,986*l.* to the militia. Of the amount of 3,484,818*l.* expended on the land forces, the sum of 2,630,966*l.* was appropriated to "pay," 283,918*l.* to clothing, 113,525*l.* to provisions, 38,518*l.* to forage, 17,815*l.* to fuel and light, 12,883*l.* to lodging, 2,407*l.* to hospital expenses, medicines, and medical aid, 12,003*l.* to divine service, 61,242*l.* to the movement of troops, 6,668*l.* to the administration of martial law, 4,669*l.* to libraries and schools, 134,191*l.* to recruiting, and 20,645*l.* to miscellaneous expenses; besides a few other items not particularly worthy of notice. The expenditure of the land forces was less than the estimates by the sum of 331,271*l.*

The Constabulary Force.—Mr. Pakington, M.P. has put the public in possession of a printed abstract of returns shewing the number of the constabulary force in each county in England and Wales under the Act of the 2 & 3 Vict. c. 93, together with an account of the several items of expenditure, &c. for the year 1843. We find, from this return, that the total force in England and Wales, including both officers and men, amounts to 2,216 individuals; the cost of clothing and accoutrements, to 10,826*l.*; the expenses of horses, harness, forage, &c. to 6,011*l.*; and the payments to county treasurers, clerks of the peace, &c. to 20,698*l.*; that the gross total expenditure amounts to the sum of 158,767*l.* and the net expenditure to 145,803*l.* caused by the deduction of 12,964*l.* credits, &c. The gross total amount at which the counties included in the return are assessed is 18,668,526*l.*; the total population, 4,985,844; the average number of inhabitants (within the jurisdiction of the police) to each constable, 2,250; the total area of the said counties, 14,392,292 statute acres; the average number of acres to each constable, 6,494; the area of the said counties in square miles, 22,683; and the average number of square miles to each constable, 10¼. The counties included in this return are, Bedford (for which no statement is made), Cambridge, Cumberland, Durham, Essex, Gloucester, Hereford, Herts, Lancaster, Leicester, Norfolk, Northampton, Notts, Salop, Southampton, Stafford, Suffolk, Sussex, Warwick, Wilts, and Worcester, in England; and Cardigan, Carmarthen, Denbigh, Glamorgan, and Montgomery, in Wales; but in some cases only small portions of them are concerned.

Malt and Hops.—It appears that the total quantity of malt made in one year to the 10th of October last, in the United Kingdom, was 4,459,673 quarters, of which 3,566,298 quarters were used in that period. In England the quantity used was 3,336,140; in Scotland, 103,902; and in Ireland only 126,256 quarters in the year. In the same year there were nearly 43,157 acres of land under cultivation of hops in England and Wales, and the hop duty paid in the year amounted to 243,796*l.* 7s. 2d.

Legacy Duty.—The total legacy duty received since 1797 amounts to 37,144,752*l.* 18s. 4d. and on probates, administrations, and testamentary papers from the same period to 29,691,206*l.* 5s. 4¾d. making nearly sixty-seven millions of money as duty in 47 years. In the year ending the 5th of January last, the legacy duty in England and Wales was 1,114,871*l.* 6s. 6d.; in Scotland, 86,897*l.* 18s. 6d.; and in Ireland, 39,634*l.* 17s. 3½d. Other large sums were received as probate duty, &c.

French Statistics.—The *Reforme* states that during the last census taken by order of government, it has been ascertained that there exist throughout France 6,642,416 dwelling-houses, 82,575 mills, 4,412 furnaces and forges, and 38,030 manufactories. Total, 6,767,433 properties, belonging to 10,282,916 individuals. "There remain, consequently," observes the *Reforme*," "24,717,050 non-proprietors or passive citizens."

THE MAGISTRATE.

Summary.

It is said that a Winter Assize is positively resolved upon for those counties which have a sufficient number of prisoners for trial to justify the expenses. We presume that, as last year, the days and places will not be announced until the close of the ensuing Term.

The daily papers have been lately indulging in some very severe strictures on the magistrates in some of the midland counties for various proceedings taken by them under the Game Laws. But such attacks are extremely unjust. The magistrates do not make the law, they do but administer it; and when a charge is brought before them they are bound to pronounce the judgment which the law has awarded to the offence. If the law be bad it is a fair subject for censure, and it should be amended in the manner prescribed by our constitution; but to visit upon the administrators of the law the faults of the law is unjust and ungenerous.

As for the Game Laws, it seems to be admitted on all hands that they need alteration. Undoubtedly they are productive of discontent and crime, and none will, we believe, be more anxious to place them upon a more rational foundation than the landlords. The Earl of Euston speaks the growing opinion upon this topic in a remarkable publication, in which he forcibly points out the mischiefs resulting from the present law, and not a few of the landed proprietors in Sussex have announced their intention of abandoning their exclusive privileges, and giving the game to their tenants.

But we suspect that those who are loudest in their outcries against the Game Laws have no desire for a change that shall make game more strictly private property; they want only that it shall be made public property, and that they may take it wherever they can find it. Such, however, is not the change which reason recommends. It is simply to make game the property of the person on whose land it is found, just as his sheep or his fowls, and to punish the taking of his game from his land in the like manner as the taking of his poultry. If, then, the landlord would give the game to the farmer who feeds it, we believe it would be much better protected than now, because the farmer would sell it like any other produce; and as the landlord shoots and hunts for the sake of the sport, and not for the produce, he would always find the tenants willing enough to permit him to kill it *for them*; and he ought to ask no more of them; for it is hard that the farmer should feed for another to take, and it is not surprising that he should often prefer to save his crops, by walking over a nest, or tacitly encourage the poacher who rids him of a destructive foe. The alteration we suggest would, we think, effect the double object of taking away a fertile source of crime, and protecting the game without keepers; every farmer would then become a keeper of his own hares and partridges, as now he keeps his fowls and sheep.

THE RENTAL OF THE COUNTY OF MIDDLESEX.

The returns of the annual rental of the various parishes throughout the county of Middlesex have now been made, and present a larger amount than has hitherto been handed in. This result may fairly be said to have arisen from the course which the bench of magistrates felt it necessary some time since to adopt. The proceeding in question appears to have had its origin in the "returns of rental" which are made under the Property Tax Act. The vast difference between the two returns excited great surprise, and therefore, with a view of arriving at the cause of the discrepancy—for both documents are made up under the influence of an oath—the magistrates of Middlesex issued a paper, directing the attention of the several parochial officers to the immense difference in their respective amounts. Indeed, the variance in some cases was so immense as to demand that an explanation should be publicly made. As a proof of the fact, it is merely necessary to quote three or four cases, accompanied with this remark, that there were but few parishes whose returns without that explanation did not display a most unsatisfactory result in this respect.

In the return to the bench of magistrates of the rental of the parish of St. George, Hanover-square, for 1843, the amount was set forth at 600,796*l.*, whilst in the return under the Property Tax Act it was set out at 909,568*l.*, a difference of 308,772*l.* In the parish of St. Pancras the return to the bench was 566,320*l.*, and to the property tax 1,251,737*l.*, a difference of 685,417*l.* Then in the case of Marylebone, whilst to the bench the rental was returned at 816,572*l.*, that to the property tax commissioners was 1,132,324*l.* a difference of 315,752*l.* In Paddington, too, there was a variance of 392,955*l.*; in Clerkenwell, of 127,736*l.*; St. Mary, Islington, of 92,037*l.*; in St. Luke, of 61,983*l.*; in St. Leonard, Shoreditch, of 147,151*l.*; in St. Andrew, Holborn, of 81,007*l.*; in St. Giles and St. George's, Bloomsbury, of 69,496*l.*; in the Liberty of the Rolls, of 53,897*l.*; in St. John's, Hackney, of 32,907*l.*; in St. Margaret and St. John's, Westminster, of 108,550*l.*; in St. James's, of 177,783*l.*; and many others of smaller amounts.

Incorporation of Brighton.—On Monday, pursuant to a requisition to the High Constable of Brighton, a public meeting was held in the Town-hall in order to consider the propriety of petitioning the Queen in Council for a charter of incorporation for the borough. The High Constable having been called to the chair, Mr. Hallet, the landlord of the Bristol Hotel, moved that a committee of nine be appointed to take into consideration whether it will be beneficial for the inhabitants that the town should be incorporated, and also the propriety of presenting a petition to her Majesty under the provisions of the Municipal Amendment Act, and to report thereon to an adjourned meeting, to be held at the Town-hall in a month's time, which was carried unanimously, and a committee was accordingly appointed. These proceedings do not meet the unanimous approval of the town. The opinion as to the effects of a corporation are greatly divided. But the county is about to spend a large sum, at least it is in contemplation, to build or make additions to the Lewes gaol, at an enormous cost, and this has aroused the town of Brighton, and induced them to consider whether, as they contribute so much to the county rate, it will not be better for them to have a gaol of their own, and save the expense of transit. The requisition to the high-constable was signed by upwards of 400 inhabitants.

Escaped Convicts.—The metropolitan police have just received information from Hobart Town, New South Wales, of the escape of fourteen convicts, all of whom were sentenced to be transported for life, namely:—Walter Archbald, who was tried at Dublin in October 1816, he being then 25 years of age; William Hapsall, tried at Nottingham in March 1810 (conditionally emancipated in August 1828), again tried at Hobart Town in April 1830, a sawyer, a native of Yorkshire; James Nuth, tried at Somerset in March 1822, then 22 years of age, a sweep, and a native of Bath; John Spong, tried in Kent in August 1822, then 22 years of age, a carpenter, and native of Deptford; Freeman Aitken, and Ralph Tate tried at London in June 1824, then 19 years of age, cabinet-makers, and natives of the parish of St. Ann's; Cartney William Bligh, tried at Bristol in October 1823, a grocer, and a native of Barnstaple, being then thirty-eight years of age; Joseph Baker, tried at Warwick in July 1826, being then 25 years of age, a wood turner, and a native of Birmingham; William Crowhurst, tried at Kent in July 1823, being then 40 years of age, a farm-labourer, and a native of Hauling, near Chatham; Thomas Curply, tried at the Isle of

Man in April 1819, being then 45 years of age, a labourer, and native of the Isle of Man; William Danver, tried at the Isle of Man in 1821, then 36 years of age, a fisherman, and a native of the county of Wicklow; Richard Grater, tried at Bristol in July 1828, then 15 years of age, a mariner, and native of Plymouth; William Ironmonger, tried at Warwick in July 1823, a native of Staffordshire, carpenter; Joseph Reeves, tried at Berks in July 1826, carpenter, native of Berkshire; and Alexander Stirling, tried at Aberdeen in April 1828, then 25 years of age, a mariner, and a native of Deal. The information does not state how they effected their escape.

The High Sheriff and magistrates for the county of Hertford have conferred the appointment of governor to the gaol and House of Correction of that county on Mr. Samuel Hatchard, deputy governor of the Penitentiary, Millbank.

Costliness of Caermarthenshire Justice.—The punitive part of our administrative system of law here, it will be thought, is rather costly, when it is stated that the amount of property for the stealing of which the prisoners at the Caermarthenshire Quarter Sessions, held yesterday and to-day, is only about 40s. while the cost of prosecution falls but little short of 300*l*.—*Welshman.*

Last week, at Ormskirk, upwards of forty women appeared, at the same time and place, to have their children affiliated under the bastardy clause. The magistrates ordered the putative fathers to pay sums varying from 1s. 6d. to 3s. per week.

THE LAWYER.

Summary.

The business of the Term being about to commence, we have endeavoured to bring up all the arrears of material which had been accumulating during the *reporting* period of the legal year. Some very interesting points are to be decided during the ensuing Term. We learn that a great number of Registration Appeals are expected to come on for hearing, some of them involving important questions, affecting large classes of claimants, such as the lodger's case reported some two or three weeks since.

A letter in the *Times* has exhibited the ill effects of hasty legislation in the instance of the Insolvent Debtors Act. As it contains some useful hints we extract it. After some severe remarks on Lord Brougham's legislation, the writer says:—

It will be sufficient for my present purpose to confine my remarks to the recent Act passed for amending what is termed "the Insolvent Debtors' Protection Act." The original Act, it will be recollected, passed in 1842, and contained 15 sections. The amended Act contains 75 sections, and of these 15 relate exclusively to the amendments of the former Act; so that two years after the passing of the original measure it is found necessary to add 45 new sections for the purpose of carrying out the intentions of its promoters. That it is difficult by any legislative Act to provide for every contingency will readily be conceded; but that an Act of Parliament should be so loosely framed as to require another three times its length to amend and render it effectual, argues a want of skill, judgment, and forethought, that even the most unlearned must pronounce to be wholly incompatible with the ordinary qualifications of a legislator. Nor is the absence of proper care and reflection less apparent in the new than in the old measure, as will be seen from the few observations I am about to submit. The preamble of an Act of Parliament is usually so framed as to be explanatory of the whole scope of the Act, and so important is this deemed to the several enactments, that it is frequently referred to as the key for construing any clauses that may appear to be obscurely or ambiguously worded. Now, the preamble in Lord Brougham's amended Act simply recites, that it is expedient to amend an Act passed in the 6th year of the reign, &c.; and, reading this, it would be assumed that the enactments are altogether confined to the amendment of the former Act, whereas there is not only a most important section for enabling traders to obtain fiats in bankruptcy on their own petition, after filing a declaration of insolvency, besides several other sections relating to matters of bankruptcy, but the Act also contains several sections for preventing persons being charged or detained in execution for sums less than 20*l*. and for discharging those already in custody for debts not exceeding that amount. With reference also to these latter sections, it is difficult to understand why they should have been introduced at all into this amending Act, with which they have no sort of connection; and lookin[illegible] the class or persons for whose relief the 20*l*. clauses are intended, it seems most unfair and oppressive to compel them to wade through an Act of Parliament containing upwards of 70 sections, for the purpose of finding out some 10 or 12 sections relating exclusively to them. From the great pains taken by Lord Brougham to explain the effect of these enactments, it is perfectly unaccountable why he should have allowed them to be almost smothered in a mass of other matter, when he might have embodied the whole of them in a short independent Bill, and thus have rendered their effect clear and intelligible to the commonest understanding. Again, as to the amending sections, it will be found that many of them are mere repetitions of enactments contained in the old Bankrupt Act of 6th of Geo. 4, c. 16; and we are surely sufficiently advanced in the science of legislation to render unnecessary the repetition of a whole string of existing enactments, when a slight reference to them would answer the purpose.

Not the least important defect in the original measure was the singular omission of all power to divide amongst the creditors any funds that might be realized, so that before the amended Act was passed, the commissioners found themselves in the dilemma of having realized considerable assets belonging to persons who had petitioned, without the means of disposing of them. This defect has been cured by the 31st section of the amended Act, and will afford considerable relief; but, upon the whole, the Act is so loosely framed, and bears within and about it such evident marks of haste, that many who are not disposed to take the same favourable view of his lordship's exertions as myself may find ample grounds for attributing its sudden concoction to some other urgent call than that of pure patriotism.

For obvious reasons I do not think it prudent to send you my name, nor is it necessary, as the Acts speak for themselves, and there is nothing, therefore, in the above statement requiring authentication. Suffice it, then, to say that I am

October 15. A Barrister.

It must, however, be observed, that this Act is scarcely a fair specimen of legislation. It was framed under very peculiar circumstances. It was concocted by a committee of the Lords out of the bodies of three bills—a sort of Frankenstein of Parliament. It was impossible that, so framed, it could have unity of design or regularity of feature. It has perplexed its author as much as the judges and the lawyers.

We subjoin a letter which has been addressed to the Editor of the *Morning Herald*, on the subject of *Chancery Prisoners in County Gaols*:—

Sir,—As Michaelmas Term is approaching, which is the principal period for commitments to the Queen's Prison for contempt in not answering, I am sure you will readily give place to a few hints for the guidance of persons in the above situation, and of which experience shows they generally stand much in need.

In the first place, with regard to the period for commitments, this matter is provided for by Sir Edward Sugden's Act, the 1st Wm. 4, c. 36, s. 15, rule 5; the words of which are applicable to the above cases, and which, I think, are too plain to require explanation, but are, unfortunately, not sufficiently made known, are that, "the plaintiff shall bring the defendant by an *habeas corpus* to the bar of the court within thirty days from the time of his being actually in custody or detained (being already in custody) upon process of contempt, and if the last of such thirty days shall happen out of Term, then within the four first days of the ensuing Term." The rule then provides for the cases of persons in the custody of the serjeant-at-arms, or messenger, and therefore, not in gaol, and then proceeds, "and in case any such defendant shall not be brought to the bar of the court within the respective times aforesaid, the *sheriff, gaoler, or keeper, serjeant-at-arms, or messenger, in whose custody he shall be, shall thereupon discharge him out of custody without payment by him of the costs of contempt.*"

When the party is brought to the bar of the court, he is "turned over," or committed, to the Queen's Prison; but on the making of the order for the purpose he has, under the 6th rule of the same Act, an important right, of which few, if any, are ever aware, though it is the sole object of the foregoing rule—viz. *to make oath that he is unable through poverty to employ a solicitor to put in his answer*, upon the making of which oath it becomes the duty of the plaintiff to take the proper step for facilitating the putting in of the answer *in formâ pauperis*, according to the 6th and 7th rules. If the defendant does not allege poverty and take this oath, the time for putting in the answer is, under rules 2 and 13, never less than twenty-eight clear days from the commitment, and never less than two calendar months from the first lodgement or attachment in gaol; after which two periods (of two months and twenty-eight days, whether running together or successively) are complete, the plaintiff may bring the defendant to the bar of the court again, when the bill will be taken *pro confesso*, which, in ninety-nine cases out of one hundred, is all the plaintiff requires, and is in nature and effect precisely the same as signing judgment by default in an action at law; also, if the defendant, who has not been sworn in court, put his answer in, it may be taken off the file, unless the costs are paid; but if the defendant do take the oath, he must be brought to the bar of the court again, and be remanded before he can be brought up finally to take the bill *pro confesso* (see *Viscountess Barnewell v. Cook*, 7 Simons, 320), and even then the rules are not acted on imperatively against the prisoner, and when the answer is put in the costs are paid out of the suitors' fund. Therefore, poor persons, if they only attend to the precaution of alleging their poverty, are in a much better situation, or have a better chance of their right than persons who are not poor, and who run the very great danger of [illegible] made under the influence of sophistry and all kinds of deceit, for the employing of which there is a strong incentive when the object is to take the bill *pro confesso*, which is, of course, the only object when the bill is [illegible], which is generally is in cases of imprisonment.

In offering you these few hints, as to the points most material to poor persons, I [illegible] observe that there is no reason whatever for imprisonment, or the technicalities and expenses [illegible] it, and the risk of those robberies which are frequently suffered by judgment being [illegible], in proceedings which it is impossible should be [illegible] understood, although they are only for a purpose [illegible] equivalent to the mere signing judgment at law by default, which everybody understands, and in proof that such proceedings are not necessary, *they have been [illegible] in the Court of Chancery in Ireland, where the attorney could [illegible] a defendant, [illegible] be obtained by taking the bill pro confesso [illegible] done without any imprisonment.*

I am, Sir, your most obedient servant,

William Cobbett.

Queen's Prison, Oct. 22.

Memoranda for Lawyers.

Evidence in Pedigree.

The case of *Johnson v. Todd*, reported in 5 Beavan, 597, deserves notice for some useful comments on evidence on pedigree made by the Master of the Rolls. The judgment briefly recapitulates the facts, and then proceeds to a review of the character of the testimony given at the trial, which led to the remarks upon evidence of this class generally, which may be studied with advantage by the common lawyer equally as by the equity lawyer.

The testator (says the Master of the Rolls) was about eighty years of age when he died, in Jamaica, in the year 1820. His father, William Marshall, married Elizabeth Jeffrey, of Stitchell Mill, in 1734, and he was baptized in 1740, and went to Jamaica when a boy. So far the facts are not subject to controversy. The testator was the son of William Marshall, who married Elizabeth Jeffrey, of Stitchell Mill, and he went to Jamaica early in life. On the other hand, John Marshall, of Longformacus, died in November, 17[illegible], a very old man. He was married to Margaret Marshall, at Longformacus, in June, 1750, and by that marriage had two sons, Peter and Robert, and three daughters, Ann Giles and Jean and Margaret Marshall. The widow of John died in August, 1792. As to these facts there does not appear to be any reason to doubt. But the plaintiff in the issue alleges that John Marshall, of Longformacus, long prior to his marriage in 1750, had married another Margaret Marshall, by whom he had a son, William, who was the father of the testator. The plaintiff's allegation is, that William Marshall, the testator's father, was the son of John Marshall, of Longformacus, and the half-brother of the children of that John, who were the issue of the marriage which took place in 1750. Whether William Marshall was so connected with John and his family is the question to be determined. If he was, it is not disputed that Peter, the son of John, was next of kin of the testator at the time of his death. When, in cases of this kind, we speak of evidence and proof, we must be understood to mean such evidence and proof as the law allows, and as the nature of the case admits of. In cases where the whole evidence is traditionary, when it consists entirely of family reputation or of statements of declarations made by persons who died long ago, it must be taken with such allowances and also with such suspicions, as ought reasonably to be attached to it. When family reputation, or declarations of kindred made in a former age, are the subject of evidence, and the reputation is of long standing, or the declarations are of old date, the memory as to the source of the reputation, or as to the persons who made the declarations, can rarely be characterized by perfect accuracy. What is true may become blended

with, and scarcely distinguishable from, something that is erroneous; the detection of error in any part of the statement necessarily throws doubt upon the whole statement, and yet all that is material to the case may be perfectly true; and if the whole be rejected as false because error in some part is proved, the greatest injustice may be done. All testimony is subject to such errors, and testimony of this kind is more particularly so; and however difficult it may be to discover the truth, in cases where there can be no demonstration, and where every conclusion which may be drawn is subject to some doubt or uncertainty, or to some opposing probabilities, the Courts are bound to adopt the conclusion which appears to rest on the most solid foundation. On the late trial, the plaintiff examined five witnesses to prove the kindred. Four of them were children of Robert Marshall, the son of John. The fifth was William Jeffrey. They had all of them made affidavits in the Master's office, and all of them had been examined on the former trial, so that the defendants were fully prepared to cross-examine them, and to bring, with full effect, before the judge and the jury, any inconsistent statement in the evidence given by them on different occasions. It appears that in the evidence of the children of Robert Marshall there are very considerable discrepancies, discrepancies as to the members of the family from whom the information is alleged to have been received, discrepancies also as to some facts which are distinctly stated to be within the knowledge of the witnesses. I do not think that the veracity or even the accuracy of an ignorant and illiterate person is to be conclusively tested by comparing an affidavit, which he has made, with his testimony given upon an oral examination in open Court. We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the Court is not his: it is, and must be, the language of the person who prepares the affidavit; and it may be, and too often is, the expression of that person's erroneous inference as to the meaning of the language used by the witness himself; and however carefully the affidavit may be read over to the witness, he may not understand what is said in language so different from that which he is accustomed to use. Having expressed his meaning in his own language, and finding it translated by a person on whom he relies, into language not his own, and which he does not perfectly understand, he is too apt to acquiesce; and testimony not intended by him is brought before the Court as his. Again, evidence taken on affidavit, being taken *ex parte*, is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which, the witness may be unable to recal the connected collateral circumstances, necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject. For these and other reasons, I do not think that discrepancies between the affidavit and the oral testimony of a witness are conclusive against the testimony of the witness. It is further to be observed, that witnesses, and particularly ignorant and illiterate witnesses, must always be liable to give imperfect or erroneous evidence, even when orally examined in open Court. The novelty of the situation, the agitation and hurry which accompanies it, the cajolery or intimidation to which the witness may be subjected, the want of questions calculated to excite those recollections which might clear up every difficulty, and the confusion occasioned by cross-examination, as it is too often conducted, may give rise to important errors and omissions; and the truth is to be elicited not by giving equal weight to every word the witness may have uttered, but by considering all the words with reference to the particular occasion of saying them, and to the personal demeanour and deportment of the witness during the examination. All the discrepancies which occur, and all that the witness says in respect of them, are to be carefully attended to, and the result, according to the special circumstances of each case, may be, either that the testimony must be altogether rejected, on the ground that the witness has said that which is untrue, either wilfully or under self-delusion, so strong as to invalidate all that he has said, or else the result must be, that the testimony must, as to the main purpose, be admitted, notwithstanding discrepancies which may have arisen from innocent mistake, extending to collateral matters, but perhaps not affecting the main question in any important degree. One of the reasons which induced me to grant a new trial on the former occasion was, that the discrepancies between the affidavits and the oral testimony on the first trial might, if possible, be explained, or, at all events, that the discrepancies might be distinctly brought under the consideration of the judge and of the jury. This has now been done; the evidence given by affidavit, the evidence orally given on the first trial, and the evidence orally given on the last trial, have been compared and contrasted. Looking at the statement of what passed, as it appears on paper, I own that I find nothing which I consider to be satisfactory as an explanation of the differences; but having regard to the nature of the testimony, seeing that the demeanour of the witnesses during the examination and cross-examination to which they were subjected was under the observation of the jury and of the judge, and that the judge is satisfied with the verdict, I do not think that the discrepancies in the evidence of the Marshalls afford a sufficient reason for granting a new trial in this case.

THE PROPERTY LAWYER.

AN ACT TO SIMPLIFY THE TRANSFER OF PROPERTY (7 & 8 Vict. c. 26).

No. II.

Having some time since made a few hasty introductory observations on this statute, we now proceed to remark on its various clauses.

Passing over for the present the first clause in the Act, the "Interpretation Clause" as it is called, which we shall have occasion from time to time to advert to, we come to this clause:

That every person may convey by any deed, without livery of seizin or enrolment, or a prior lease, all such freehold land as he might, before the passing of this Act, have conveyed by lease and release, and every such conveyance shall take effect as if it had been made by lease and release.

This important clause creates a new method of conveying freehold estates; it does not supersede or render inoperative, or at all interfere with, the assurances now in use; it simply makes an addition to the number; and under its authority, a deed expressing in plain intelligible language the intention of the parties, without technical phrases or peculiarities, will, after the 31st December next, be sufficient to "convey freehold lands," and will be as effectual for that purpose as a feoffment with livery of seizin, a bargain and sale enrolled, a lease and release, a release referring to the statute dispensing with a lease for a year, or any other method of assurance; for the clause before us declares that such a deed shall have all the effect of a lease and release; and a subsequent clause (the seventh) deprives every other assurance of any greater effect.

Two main questions then arise; *who* can convey, and *what* can be conveyed by the deed thus introduced?

The words of the clause are, "*Every person*" may convey, &c. By the interpretation clause, the word "person" is made to include a corporation as well as an individual. Hitherto, from the incompetency of a corporation to be seised to an use, the common plan in conveying to a corporate body has been, instead of a lease for a year, to make a demise at common law. After the 31st of December, however, a corporation, whether sole or aggregate, may convey by a deed under this Act. From the generality of the language, "every person," it has been suggested that a married woman may convey her interest in freehold by a statutory deed, without acknowledgment, and that an infant may likewise pass his interest by a similar deed. This is obviously not the case, for (setting aside for the present the question whether the Act intended in any degree to do away with personal disqualifications, a question which we may have to consider hereafter) a party will be empowered to do by a deed under this clause *only* what he can now do by a lease and release. A lease and release, without acknowledgment, will not now pass a married woman's interest in freeholds; neither, therefore, will a deed under this clause without acknowledgment; but the converse is equally true. As a lease and release with acknowledgment will now pass her interest, so after the 31st of December will a deed with a similar acknowledgment, for the deed takes the place of the lease and release.

For the like reason an infant will be unable to convey by a deed under the clause, as before, for he cannot now make a valid conveyance by lease and release. In like manner a deed by a tenant in tail to bar or enlarge the entail must be enrolled pursuant to the provisions in the Fines and Recoveries Act, and when so enrolled will be effectual. A question, indeed, has arisen, whether a tenant in tail can resort to the Act before us for such a purpose, in consequence of the following words towards the end of the 5th section:—"No deed shall, by force of this Act, bar or enlarge any estate tail." These words, it has been considered, take the case of a tenant in tail out of the Act, and any assurance by him under its provisions, for the purpose of "barring or enlarging" his estate tail, will therefore be inoperative. We are disposed to think otherwise. The clause to which the words in question are appended enables "any person to convey by any deed" a variety of contingent and executory interests. It was probably feared that the language used would be extensive enough to include estates tail, and to guard against such a construction, and that only, the restrictive words in question were inserted. But waiving that, and attributing to the words their full literal import, our notion is simply this—we do not contend that a deed by a tenant in tail will, "by virtue of this Act," have a disentailing effect; but we say that such a deed will (as declared by the 2nd section) operate as a lease and release; and as a lease and release, when perfected according to the provisions of the Fines and Recoveries Act, will bar or enlarge an estate tail, a deed under this Act, perfected in like manner, will have the like effect.

In construing this clause, it must be borne in mind that the new form of conveyance is only a substitute for a lease and release—that whatever can be done by the latter assurance may, after the 31st December, be done by the former, but *nothing further*; and wherever an additional ceremony is requisite to complete a transfer by lease and release, that ceremony must equally attend any deed taking effect under the provisions of the Act before us. We press this consideration, because we conceive that, keeping it in view, the clause is freed from obscurity; and the points of difficulty which we have seen started have arisen from attributing some fancied peculiarity in the new conveyance. The only alteration in the common form of deeds necessary to bring them within the operation of this clause will be the omission of the awkward and absurd reference now required to the Act dispensing with a lease for a year.

We proceed to consider *what* may be conveyed by the new form of deed. The words of the clause are "All such freehold land as he might have conveyed by lease and release." Land, by the interpretation clause, extends to "manors, advowsons, messuages, lands, tithes, hereditaments, whether corporeal or incorporeal, to any undivided share thereof, and to any estate or interest therein, and to money subject to be invested in the purchase of land or any interest therein." Consequently, every kind of *freehold* hereditaments and every kind of *freehold* interest therein, or in any money which, according to the rules of equity, is to be considered as land, may be the subject of conveyance under this Act; but it must be *freehold*. Now, by the interpretation clause, that word is made to extend to "customary freehold, or such customary lands as will pass by deed or deed and surrender, and not by surrender only." There is considerable ambiguity in this definition. Lands of this nature are conveyed in different ways, according to the customs of different manors; in some by deed, sometimes with, sometimes without, admittance; in others, by surrender with admittance; in others, again, it is optional to use either a deed or a surrender with admittance; and we gather from the definition in question, that in others they pass by deed and surrender, of course with admittance, as the effect of a surrender is to vest the estate in the lord. In the definition in question nothing is said about admittance, and it will be a question, in consequence, what customary lands are included; and for that purpose it will probably be necessary to determine the meaning of the word "pass," whether it means a complete transfer, or such a conveyance only as takes the estate out of the prior owner, without reference to the party IN whom it vests it, whether the lord or the party intended to be benefited; because if it mean the former only, such lands only as may be transferred without admittance would be within the Act; the conseqence of which would be that by far the greater part of the customary lands in the country would be excluded. For the purpose, however, of the clause before us, the question is not material, for unless the method of conveying customary lands according to the custom of the manor of which they are held, be on lease and release (and we doubt whether in any manor this is the case), such lands are not within the purview of this clause, and cannot be conveyed by the deed which it authorizes. And if in any case the custom of the manor sanctions a conveyance by lease and release, the customary lands in that manor will be within the clause, and may be conveyed by deed accordingly.

Appended to the clause which we have been considering is the following proviso: "Provided always, that every such deed shall be chargeable with the same stamp duty as would have been chargeable if such conveyance had been made by lease and

release;" *i. e.* the same stamp duty must be paid as at present. An idea has got abroad that, under this proviso, the lease for a year stamp will be chargeable upon every conveyance of freeholds. Not so, however; if the conveyance be made under this Act, that stamp must be affixed, but in no other case. The language of the proviso is, "every SUCH deed," referring to the deed mentioned in the previous part of the clause. Consequently, a grant of a reversion, an appointment in exercise of a power, &c. may, after the 31st December, be as well made without a lease for a year stamp as it it can be so made now.

The 3rd section of the Act enacts, "that no partition, exchange, or assignment of any freehold or leasehold land shall be valid at law unless the same shall be made by deed."

This clause does not interfere with equity, which will, therefore, act upon agreements for partition, &c. as heretofore.

At common law, partition between joint tenants and tenants in common required a deed; not so in the case of coparceners, between whom a partition by parol was sufficient. (Co. Litt. 169 a.) At common law, also, an exchange by parol of corporeal hereditaments was good, but a deed was necessary to effect an exchange of incorporeal hereditaments. (Co. Litt. 50 a.) Assignments, too, at common law were partly by parol and partly by deed. The Statute of Frauds, however, required a writing in all the preceding cases of partition by parol, exchange by parol, and assignments by parol. After the 31st of December the above distinctions will no longer exist at law, and every partition, exchange, and assignment of freehold or leasehold land, to be valid at law, must be by deed. In practice, a deed has always been resorted to, so that the effect of the clause is to render imperative the course which has been ordinarily pursued.

(*To be continued.*)

CHARGE BY JUDGMENT.

The case of *Houlditch* v. *Collins* (5 Beav. 497) raised the curious point whether when a creditor had recovered a judgment in this country, and thereby obtained a charge on the debtor's lands, under the 13th sect. of 1 & 2 Vict. c. 110, and afterwards arrested the debtor in Jersey upon *mesne process* for the same debt, the charge upon the land was not forfeited under the 16th sect. of the same stat. which enacts:—

That if any judgment creditor, who, under the powers of this Act, shall have obtained any charge, or be entitled to the benefit of any security whatsoever, shall afterwards, and before the property so charged or secured shall have been converted into money or realized, and the produce thereof applied towards payment of the judgment debt, cause the person of the judgment debtor to be taken or charged in execution upon such judgment, then, and in such case, such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security, and shall forfeit the same accordingly.

It was argued by *Turner* and *Pigott*, for the debtor, that the object of the Act was, that the party should not be imprisoned for a debt while his creditor had a lien upon his property, which charge of itself prevented a sale for the purpose of realizing the money to pay the debt. The 16th sect. provides that if a creditor "*causes*" his debtor to be taken in execution, the charge on the estate shall be forfeited; and by a liberal construction of the clauses, the same consequences would be the result of any course of proceeding taken by the creditor on the judgment which might operate to imprison the debtor's person.

On the other side, it was argued by *Pemberton* and *Rolt*, that the section does not apply to an execution obtained on a judgment in a foreign court after judgment here. Besides, the debtor in this case has only been arrested on *mesne process*.

The Master of the Rolls, after reciting the facts and the clause in the statute, observed:—

The single question, therefore, in this case must be, whether the judgment creditors have caused the person of the judgment debtor to be taken and charged in execution upon the judgment; because if they had done so, then the charge is relinquished; if they have not done that, then the Act of Parliament does not apply. What has been done in this case is to adopt proceedings in the court at Jersey for the recovery of the same sum which was recovered by the judgment here. The documents, as they are set out in the plea, plainly, as it appears to me, indicate, not execution upon the judgment (which of course could not be had in a foreign court), but a proceeding to recover, by a new action, the amount of that which had been ascertained to be due by the judgment here. It is *mesne process*, and not a taking in execution upon the judgment; there is no taking upon the judgment. Now, without considering whether such a proceeding would have been allowed by the Legislature, if the point had been particularly considered, it is sufficient for me to say, that this does not appear to me to be a case comprised within the terms of the sixteenth clause. If the point had been the subject of consideration, there would seem to be great reason for hesitating in enacting a clause prohibiting such a proceeding. For here the defendant has withdrawn himself from this jurisdiction, and placed himself in another, where he may or may not have property, but which property, if he has it, can be followed by means of the authority of the court there. This act of the defendant may render it absolutely necessary for the plaintiffs, for the purpose of maintaining their rights, to adopt another proceeding in that court, and one of the first steps in that proceeding may be arrest in *mesne process*.

LEGAL INTELLIGENCE.

Court Papers.

CHANCERY SITTINGS.

MICHAELMAS TERM, 1844.

MASTER OF THE ROLLS.

AT WESTMINSTER.

Saturday .. Nov.	2	Motions
Monday	4	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	5	Petitions, the unopposed first
Wednesday	6	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday	7	Motions
Friday	8	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday	9	
Monday	11	
Tuesday	12	Petitions, the unopposed first
Wednesday	13	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday	14	Motions
Friday	15	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday	16	
Monday	18	
Tuesday	19	Petitions, the unopposed first
Wednesday	20	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday	21	Motions.
Friday	22	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday	23	
Monday	25	Motions.

Consent Causes, and Short Causes, every Tuesday at the sitting of the Court.

Notice.—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

Sir William Follett.—(From a Correspondent.)—We are gratified to be enabled, on the information of a gentleman who returned to this country from Naples on Saturday last, to announce the great benefit the Attorney-General has derived from his tour in Italy. Dr. Bright has been in company with the hon. and learned gentleman as his medical adviser, and so satisfactory is Sir William's health, that the professional duties of Dr. Bright are now dispensed with, and that gentleman is on his way to this country. It is deemed necessary for the entire restoration of Sir William's health that he should remain some months longer in the genial climate of the south.

Munificent Donation.—Mr. Serjeant Bompas, who died suddenly a short time since, left a widow and a large family in somewhat indifferent circumstances; but his professional brethren esteemed him so highly that a subscription was entered into for the benefit of his family, to which Sir Thomas Wilde contributed the princely sum of 1,000 guineas.—*Derby Reporter.*

Central Criminal Court.—The 132d session commenced on Monday, with a calendar of 182 cases; of which six are of murder, and ten of attempts to murder or maim.

Cheshire Winter Assizes.—It is confidently rumoured, in quarters likely to be in possession of authentic information on the subject, that there will be a winter assizes for this county, some time in the month of January, and that Baron Rolfe will, in all probability, be the judge.—*Stockport Advertiser.*

Mr. Brewster and Mr. Pigott are likely to succeed Messrs. Townsend and Goold as Masters in Chancery. It is said that Mr. Corballis succeeds Mr. Brewster as counsel at the Castle. The vacancy occasioned by the death of Mr. O'Hanlon, as counsel to the Irish office in London, is to be filled up. Mr. Batty, a member of the Irish bar, is to have the appointment. The learned gentleman was associated with the present Attorney-General in publishing law reports.—*Limerick Chronicle.*

The Movement in Retreat.—It will be seen by an advertisement in another column, that Mr. Wilson has been transferred to the debtors' side of the prison. The exertions of the independent press have thus been crowned with complete success. Sir James Graham peremptorily ordered him to be removed. Now, gentlemen of the Court—of the Prison Board; now grovelling parasites of that court and of that board, tell us, if you please, which was lawful—imprisonment in a felon's cell or in a debtor's ward, for contempt? The board is now shamefully violating the law, relaxing its wholesome rigour, or Mr. Wilson's previous punishment was grossly illegal. Upon which horn of the dilemma will you choose to be transfixed? There can be no mistake about the matter. Mr. Wilson was confined in a felon's cell; he is now in a debtor's room. To which of the two essentially distinct modes of treatment is he legally liable?—*Jersey Times.*

Revising Barristers.—The duties of the revising barristers for the revision of the lists of voters for the present year are drawing to a close. The first revision, in the year 1833, cost upwards of 30,000*l.* in payments to the barristers for their expenses; but under the Registration of Voters Act their charges were limited to 200 guineas each. It appears that the payment to the barristers, including their expenses, now amounts to the fixed yearly sum of 14,700*l.* More appeals are expected to the Court of Common Pleas in the present than occurred in the preceding revision. Only 13 appeals were made last year, of which ten were decided in favour of the respondents, and three for the appellants. The Court awarded no costs to either party, on the ground that the subject-matter of the appeals presented a fair and reasonable ground of doubt on the construction of the statute and the propriety of the determination of the revising barristers.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The last number of your valuable paper contains a letter signed "G. R. Goodman," of Brighton, in which he states that Mr. Hardy, of Little East-street, Lewes, *is not* his clerk, and that *he has* no connection with him, either directly or indirectly.

I know nothing of the affair which has given rise to this intimation, nor of the circumstances which may have produced a severance of the connection between Mr. Goodman and Mr. Hardy; but it so happens that, on more than one occasion, it has been my lot to meet the latter as the clerk and representative of Mr Goodman, at Lewes, and upon those occasions Mr. Goodman's name appeared upon the door-post of the house in which Mr. Hardy officiated as his clerk.

Mr. Goodman having, however, now publicly disavowed all connection with Mr. Hardy, perhaps he will be pleased to inform you whether Mr. Hardy is, or ever was, upon the roll of attorneys, and also whether that person has used his name, and acted as his clerk, without his authority or knowledge.

I am, Sir, your most obedient servant,

Wm. Crowe.

Uckfield, Oct. 23, 1844.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The attention of our order having, in the general movement of the Profession towards self-purification and advancement in public estimation, been drawn to this practice, and the resumption of it having, for the reasons succinctly stated in my letter of the 30th ult. been met on all sides with approbation, it now becomes necessary to inquire how this beneficial measure may be carried into operation.

It is universally admitted that a gown is an ancient right of attorneys and solicitors, as indefeasible as that of barristers or the bearers of academical degrees, as proved by investiture on admission, &c.

Its many advantages are also admitted, and abundant regret manifested at its falling into disuse.

In this position, many have expressed their readiness to put prejudice out of countenance, by at once adopting the gown as a *right*, and as a thing of *beneficial tendency*, and are still prepared—in the absence of a more general movement—to do so, relying on its reasonableness and convenience to insure, by degrees, it general resumption.

But the interest manifested from all parts of the country in the proposition proves in a very satisfactory manner the practicability of a simultaneous movement; and with this view we have the following hints thrown out:—

1st. Mr. Lott, of 43, Bow-lane, suggests "that each member of the Profession in the various towns should sign a consent to adopt the gown, and forward it to the Law Times or to the Law Institution."

2nd. Mr. Melland, of Chesterfield, thinks that the practice "should be submitted to the judgment and verdict of the congregated Law Societies."

3rd. J. B. W. (why write anonymously?) says, "Let those in favour of the revival request the lead-

ers on their circuits, upon the opening of the commission, to announce to the judge their intention, and solicit his lordship's direction to the officers of the court to take cognizance of the attorney's gown."

4th. "A. B." thinks that "the matter should be taken up by the Incorporated Law Society, or the Legal Protective Society, and that it would be necessary to bring the matter in an official way before the judges;" and in the same spirit "One, &c." "sincerely hopes the ensuing term will not pass away without their lordships' attention having been drawn to the subject in a manner that may induce them to give their opinion upon it."

Availing ourselves in due season of all these suggestions, permit me to say, that the practice having fallen into desuetude, I think with Mr. Lott that the PRELIMINARY STEP in this movement is to obtain among our professional brethren A GENERAL AND PUBLIC EXPRESSION OF OPINION. It is not enough to say the opinion exists, we must have A DEMONSTRATION of it.

And as this cannot be obtained in an irregular, desultory manner, permit me to suggest a practical plan of securing it.

There are now, I learn from the LAW TIMES of last week, 2,776 solicitors practising in London, and 6,560 in the different towns of England and Wales, making the aggregate number of the members of our branch of the Profession *nine thousand three hundred and thirty-six*.

My plan is, that a circular lithographic letter should be issued to every practising solicitor in England and Wales, inviting their attention to this movement, alleging the reasons for it—*mutatis mutandis*—contained in my letter of the 30th ult. and requesting them to signify their concurrence, by signing a short form to be appended on the fly-sheet, and re-addressed, in pursuance of a part of the plan I shall after mention, to the editor of the LAW TIMES.

If, as declared in a correspondent's letter in your number of the 10th inst. "there cannot be a dissenting voice" from the proposition, we should at once have acquired the complete power of carrying out the object simultaneously by a public declaration of the time from which the observance should commence.

But supposing that, from various causes,—apathy and the rest,—*only one half* of the Profession expressed *affirmatively* their concurrence, still we should have the names of *four thousand six hundred and sixty-eight* declared adherents, and then, indeed, with such a brief as this list—published in a supplemental sheet of the LAW TIMES—might the leaders on the circuits be requested to direct their lordships' attention to the fact of the Order of Solicitors having recognized the propriety of a return to their ancient professional costume; then might the Law Societies be asked to sanction by *their* approbation a practice coming to them recommended by the publicly expressed opinion of the Profession, and all petty local opposition be crushed by the weight of the demonstration. *But without this*, I think isolated attempts and proposals may prove inefficient, and possibly fail in result.

All this may be easily effected through the medium of our invaluable ally the LAW TIMES, and by the agency of the LAW TIMES office and its extensive machinery for printing and communication.

'n expense would be incurred—but what would it be among so many? The publisher would, no doubt, readily furnish an estimate, and I propose a subscription to defray it. I am informed that 70*l*. more or less, would cover the expense of postages, printing, paper, folding, &c.; and I have no doubt that a sufficient number of gentlemen will readily be found to put down their names for, say 1*l*. each, for the purpose: such subscribers to form an honorary committee, and the names o. six or eight of them to be appended to the circulars on behalf of themselves and the rest.

A solicitor, a member of one of the oldest firms in this town, has mentioned to me his willingness to become one of such committee, and hereby expressing mine, I beg to call on those gentlemen who have already declared their approval of the movement, and on others who feel interested in its progress, to join us in this simple and efficient plan for effecting our object, by forwarding their names to the LAW TIMES as subscribers to carry it out.

I am, Sir, yours truly,
GEORGE JOHN DURRANT.

Chelmsford, Oct. 21, 1844.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am much pleased to see that the suggestion of wearing gowns contained in my letter to you in the LAW TIMES of the 28th ult. has met with the approval of several of my brethren in the Profession, and I think that the reasons mentioned by Mr. Durrant, in his letter in the LAW TIMES of the 5th inst. are quite sufficient to convince us that the wearing gowns while attending court would be very desirable. I am very glad Mr. Abell, in his letter in the same number, has informed us that the gown can be procured of Messrs. Adams and Ede, Chancery-lane, it being very desirable that a strict uniformity in the make and material should be observed.

I beg to add (by way of making some sort of a beginning), that I should be glad to receive the *names* of those gentlemen who will adopt and recommend the practice, together with any suggestions that they may think proper to make, as to the best mode of carrying the same universally into execution. I shall then beg of you to allow me to publish the same in your paper, in order to shew the Profession at large that we are determined to wear "the gown, and nothing but the gown."

I shall take the liberty of heading the list with the names of

Durrant, G. J. Chelmsford,
Abell, F. G. Colchester,
Chamberlain, A. Portsea,
Church, J. H. Colchester,
Melland, W. Chesterfield,
Lott, T. 43, Bow-lane, London,
Shapland, J. T. South Molton,

the whole of us having signified our approval of wearing gowns in your valuable paper.

I am yours, &c.
J. T. SHAPLAND.

South Molton, Oct. 21, 1844.

SELECTIONS FROM CORRESPONDENCE.

An ATTORNEY at Cheltenham thus offers his opinion upon the subject of PROFESSIONAL COSTUME:—

I quite agree with those of your correspondents who advocate its adoption, but I fear it will never become universal, unless the judges make an order for it. If the matter is to be discretionary, some will adopt, whilst others will reject it, which would probably do more harm than good. Your numerous correspondents have presented two reasons to my mind unanswerable: first, the facilities the gown would give the wearer in his necessary access to courts of justice, and conference with coun el, and as forming a distinctive badge, which would outwardly mark the *real* from the *sham* attorney. If other grounds were wanting, surely these should be conclusive with the judges for promulgating an order that all attorneys and solicitors, in their attendance in the courts on their professional business, should wear their ancient costume. If it be the general opinion of the Profession that such an order should be made, and the practice thus become universal, would it not be advisable to communicate with the heads of the higher branches of the Profession, with a view to an application to the respective courts upon the subject? I cannot but think that after the disclosure of the disgraceful practices existing in and out of the Profession that have recently come to light, the judges would gladly avail themselves of the expressed desire of the attorneys and solicitors to encourage a distinctive garb, if by such means a stop could be put (in however slight a degree) to such practices.

I earnestly hope that the hint of your correspondent "A. Chamberlain," in the concluding p rt of his letter, will be adopted, and that an application will be made to the judges in the ensuing Term, by counsel practising in the respective courts of law and equity, that orders be made that no attorney or solicitor appear in court on and after a stated time without a gown, and that counsel shall not be permitted *in court* to receive briefs from any person or persons who shall not be invested with such gown or other distinctive garb. Such an order would produce universal acquiescence. It will be observed that such an order as this would prevent any brief being presented by a clerk. That might be a trifling inconvenience, but it would, I think, be more than counterbalanced by the great good that would arise to the Profession generally from the extermination of that nest of hornets, the "Sham Attorneys."

B.* writes thus on the subject that appears to excite so much interest in the Profession—ATTORNEYS' GOWNS:—

In many of the letters published in your valuable journal on this subject, I notice that constant reference is made to the difficulty experienced by the members of our Profession in obtaining admittance to and proper accommodation in the assize and sessions courts, as well as the inconvenience of being unable, even when there, to communicate properly with the barrister you employ. I would beg to add my testimony to these facts, and to say that to so great a height has this crying evil risen with us, that our Law Society thought it necessary, at a late meeting, to pass the following resolution:—

"That the secretary be requested to bring before the notice of the sheriff and his deputies at each assizes the necessity of retaining sufficient and proper accommodation in the courts for the Bar, the members of the Profession, and their clerks; and respectfully to request that all others, save witnesses, reporters, and other parties whose attendance is actually requisite, may be refused admission to the body of the court."

I would add, that in our assize courts a very large space is specially allotted to the public, while the space set apart as the body of the court wherein the Profession should have proper accommodation is proportionably small, although, if strictly reserved, it would be large enough; and I would fain hope that other societies will adopt resolutions in accordance with the above; when, I doubt not, the evil would be in a great measure remedied.

That the wearing of gowns, either upon the recommendation of the different law societies, or upon an order from the judges, would be attended with still more beneficial effects, I have not one moment's doubt; and whilst, being only a young practitioner, I should have some scruples, as an individual, in adopting any particular dress, I should, as a member of the general body, be much pleased to find it adopted.

An "ESSEX ATTORNEY" sends the following:

Will any of your readers inform me, through your journal, whether there is any law, and if so, where it is to be found, prohibiting persons, not regularly admitted attorneys, appearing in courts of justice in gowns? for it will be worse than useless for attorneys to adopt the gown should there be no law to that effect. I am induced to ask this question by reason of having it hinted to me by *an attorney's clerk* (not an articled clerk, but one who plys for criminal briefs at the Essex assizes and quarter sessions, professedly for his master, and in his name, but in reality for his own profit, his master never gracing the courts with his presence, or coming within eighteen miles of them), *that should gowns be worn by attorneys*, HE, *the clerk*, intends also to *appear at court in one!*

The manner in which the criminal practice, at the assizes and quarter sessions in Essex, is conducted, is infinitely more disgraceful than at the Central Criminal Court, for briefs are openly received in court by counsel from persons well known to them as not being attorneys, but who indorse an attorney's name on the briefs.

I have called the attention of counsel to it repeatedly, and the only answer I receive from them is, that they know the practice is bad, but what can *they* (the counsel) do in the matter? An attorney's name is always indorsed on the brief, and therefore they presume the briefs come from such attorneys, or at least that their names are indorsed with their consent; yet the same counsel admit they never saw these attorneys! One of these plyers is a cigar vendor, residing at Chelmsford (and well known by all the counsel attending the criminal courts there to be so), and he professes to be the clerk of an attorney (whose name he always indorses on the briefs he gets up) residing at least fourteen miles from thence, and who never shews himself either at assizes or sessions, and in fact his supposed clients never see or hear of him.

Another Correspondent suggests a new argument in favour of a Professional Costume.

The proposed resumption by attorneys of their proper professional costume seems to meet with almost universal countenance, and cannot fail speedily to be carried out. Among the many advantages the use of a befitting robe has suggested to my mind, is one not yet mentioned by any of your correspondents, viz. that as in each Profession, including the Bar, there are distinctive habits worn by its different members. pointing out the rank, standing, or attainments of the individual, so the same rule might be well applied to the attorney where he holds office under the Crown, &c. or has gained, under the present system of examination on admission, a high degree of merit. Thus, would I have the solicitors to the various Government offices, an attorney being a coroner, town clerk, or clerk to justices, &c. distinguished by some mark indicating his station or office. A badge upon the sleeve of the robe, embroidered in silk and metal thread, would well effect this, or there might be adopted a facing or hood of fur or coloured stuff. To instance, the badge the solicitor to the Admiralty would bear the Lords Commissioners' arms; an attorney, being a coroner, a crown, and so on. Such marks would speedily be known and recognized, and could not fail to be of use in and out of Court, and lead to a proper spirit of emulation.

A "SOLICITOR," writing from Liverpool, differs from the majority of correspondents on the subject of ATTORNEYS' GOWNS.

Although I admit that *some* badge of distinction is desirable, for the reasons stated by your correspondents, I think that much inconvenience would arise from its adoption to managing and articled clerks, when intrusted by their principals with the conduct of prosecutions, causes, &c. at an assize town or court. Adopt the system of badges, and how are they to gain admittance to the court? The Jacks in office will then be more unreasonable than now, and woe to that unfortunate unbadged who presents him

self for admission, even though armed with brief or blue-bag. These will fail to gain for him a passage, if the insignia of office, the "open sesame" badge be wanting.

To obviate this inconvenience it will be found necessary to give law clerks also some badge, as they are often obliged to thread their way in and out of court much more frequently than the attorney, who, once admitted and seated, has *comparatively* a snug berth of it.

Cannot some of your correspondents contrive for us some distinctive badge less cumbersome in a crowded court than a gown? In a squeeze they must greatly retard one's progress, and stand a fair chance of being docked of their dignified flow. Besides, without a robing-room, where are we to stow away, doff, and put on our gowns? I fear that as soon as the novelty is worn off, instead of congratulating ourselves on our *toga*, we shall find it a great incumbrance.

A "Country Solicitor," from Wilts, approves the suggestion as to Professional Costume.

Having on several occasions experienced the greatest possible inconvenience and obstruction in courts of assize and quarter sessions, I most cordially advocate the proposal that attorneys should wear a distinctive badge on the above occasions; and though I have never seen the scarf alluded to by your correspondent X Y, I have little doubt but that it would fully answer the purpose designed, not only as being less cumbersome, but also more *economical* than a gown; for which latter reason I am induced to trouble you with these few lines, hoping my professional brethren will generally adopt it.

A Barrister thus addresses us from "*the Temple*," on the subject of Attorneys' Gowns:—

It may be satisfactory to those attorneys who have, I think most judiciously, determined to adopt the professional costume, to know that the practice of wearing the gown is universal in the Irish courts of law.

"A Solicitor" thus notices the query which appeared a fortnight since on the subject of Letters before Action:—

I see in your last week's Journal, a question by Mr. Cooper, of Congleton, "Whether an attorney can legally charge the party to whom he writes, demanding debt, for the letter, if the debt is tendered before the writ issues?" This is an important question, and one which has engaged my attention, in common no doubt with that of other members of the Profession. I cannot pretend to answer it as an "experienced practitioner" myself, but I have asked the opinions of some of the most extensive common law practitioners in London and in the country, and I find they agree that the defendant cannot be compelled to pay for the letter, as no costs are recognized where an action has not been commenced, though the taxing officer allows the charge for the letter if the writ is actually issued. It certainly is a great injustice that every backward or dishonest debtor should be enabled to put his creditors to the expense of a letter, before he can be compelled to pay a lawful demand; but I believe the creditor has no remedy, as no respectable solicitor is willing to issue a writ till he has written a letter demanding payment. I have known a solicitor, however, do so under the following circumstances (and I think he was justified in pursuing the course he did). He had written demanding payment of an account long due; the defendant paid immediately on receipt of the letter, but refused to pay the costs of it; the solicitor, being of the opinion above stated, did not insist upon the costs, but warned the defendant that it was the last letter he would ever get for nothing. A very few days afterwards, another client employed the same solicitor to demand payment of a debt from the same defendant; the solicitor issued a writ immediately, *without letter*, and put the defendant of course to the expense of some two pounds, which I cannot help considering he was rightly served; and I should assuredly recommend all solicitors to adopt the same plan under similar circumstances.

If you think this letter of sufficient interest, you will oblige me by inserting it.

Another "Subscriber" at Cheltenham treats thus of the subject of Letter before Action:—

Your correspondent Mr. Cooper inquires in your last number whether an attorney can *compel* a debtor, to whom he has written for payment of debt, to pay for such letter, in case tender of the debt be made before action commenced.

This is a question which ought to be set at rest; for at present the prevailing opinion seems to be that he cannot.

There cannot, however, be a doubt but an attorney ought to be able to make a debtor pay for both letters and attendances before action, as they are *for* the debtor's advantage, and frequently save him a much heavier expense; but unless he *can* do so, it is not to be wondered at that attorneys are to be found who will never write such letters at all, but issue process at once, the costs of which they *can legally enforce*, and to ten times the amount.

If the law sanctions this, they are, perhaps, justifiable in following its dictation, which seems to be this, "If you write to the party first, and charge him 5s. or 6s. 8d. for so doing, he shall not be compelled to pay you any thing; but you shall trust to his honour. But if you put him to the expense of a writ, he shall pay for it." And I am sorry to say there are attorneys to be found who will not only advise a client to tender without paying for the letter, but will actually make such tender themselves, and charge the party perhaps twice as much for their attendance as the charge made for the letter.

Innumerable instances of this sort have occurred within my own knowledge, and by men who *rank* as respectable attorneys.

But let us see how the law stands. Mr. Chitty, in his General Practice, vol. 3, page 137, distinctly states, "that an attorney cannot be prejudiced by his courtesy in writing, and actually sending, a letter; and that the trouble of so doing *must, if he insist*, be paid by the opponent;" and "that he may proceed in the action, unless the same be paid for, even after payment of the debt, *before a writ issues*;" and quotes *Morrison* v. *Simmers*, reported in Bar. & Adolph. 559. But with the greatest respect for Mr. Chitty's opinion, I am tempted to doubt whether this dictum is *fully borne* out *by that case*, as there the writ issued *before the money was actually received* by the plaintiff in town.

Where, however, a demand of payment has previously been made by the plaintiff of the defendant, before the attorney's letter is written, I think there is little doubt but defendant can, in that case, be compelled to pay for the letter; for if a tender of the debt without the costs be made, and plaintiff's attorney refuses to accept it, and proceeds to issue a writ, defendant must plead his tender, averring "*tout temp prist*," and plaintiff might reply *a prior* demand. But where the attorney's letter is the first demand of payment, it seems to me questionable whether a tender might not be effectually pleaded.

I do not know that I am right; but, if not, I shall be very glad to see the opinion of some of your more learned correspondents on the subject; and perhaps it may lead some of our handy Law Reformers to introduce a clause in some of the very many Acts that are constantly passing for *improving* the law, to compel a debtor to pay all the expense which his creditor is forced to incur in order to compel payment of a just demand.

A Subscriber thus addresses the Law Times on the subject of the jurisdiction of County Courts:—

Considerable doubts exist in the Profession as to the jurisdiction of these courts. It frequently happens that towns lie on the borders of a county, and debts are contracted by persons living in the adjoining county, and questions arise as to whether they should be sued for debts under 40s. in the county court or the superior courts. Some contend that it is absolutely necessary that *plaintiff* and *defendant* should reside, and the cause of action arise, in the same county; others that it is merely necessary that the cause of action should arise and *defendant* reside in the same county. In support of the former view there is a case of *Thom* v. *Chinnock* (1 M. & G. 216; 9 Law J. Rep. N. S.) which appears to decide that *both* parties must reside and the *entire* cause of action arise in one county. In support of the latter view there are cases cited in Comyn's Digest (County Court, c. 8) to the effect that "an action cannot be brought in the county court unless the *defendant* reside and the cause of action arise within the county.

It is a matter of very considerable importance to persons living on the borders of counties as to what is the law of the matter, and many will feel obliged if you, or some of your correspondents, can state whether both plaintiff and defendant must reside in the county, or only the latter, to entitle *plaintiff* to sue in the county court.

A Correspondent, under the signature of "C." thus forcibly discusses the moot point, whether it be unprofessional to accept agency business on lower terms than those established by custom.

I have, from the commencement, seen with much pleasure, your unremitting and energetic endeavours to uphold the respectability of the Profession, to put down, by well-timed rebuke, all disreputable practices, and to expose to public infamy all dishonest practitioners. There is, however, one subject which has been brought under your notice, upon which you have severely animadverted; but although at first I fully concurred with you, yet subsequent reflection has induced me to entertain a doubt as to the justice of your strictures,—I refer to the practice of doing agency business for less than the usual and authorized scale of remuneration. And in the hope either to have my own scruples removed, or to relieve others from unmerited censure, I venture upon this method of calling your attention, and that of your numerous readers, to this important question.

An attorney, like every other man not blessed with an independence, has to gain his living by his profession, and it would be folly to suppose he could continue his business at a loss, or without expectation of profit. The attorneys who offer to work for lower pay are neither exempt from the necessity of gain, nor dead to the hope of reward; they therefore would not carry on an unprofitable business. What then is the inference? Why, that a lower scale will afford a fair and remunerative return to the attorney for his skill and labour. If this be the fact, why should the man who would be content with moderate gains be pointed at as an object of scorn and detestation? Why should not the same principle regulate an attorney in his dealings with his clients, as it is said, and justly said, should regulate the conduct of every other man? It is very true, that as attorneys must be employed to do certain work, they may combine for the purpose of keeping up their charges; but this would be to introduce all the mischief and to bring upon themselves all the odium of the most hateful monopoly. There are, doubtless, many wealthy, and therefore respectable firms, and individuals, who, charge what they may, will, from their very wealth and respectability, command almost any amount of business; but why should a poorer brother, who has not the advantage of a great name, nor wealth, nor any other element of respectability save skill, honesty, and industry, be debarred from earning in his vocation an humble and moderate living? When we consider that the practice in question is not only free from moral guilt, but that in fact it does precisely what we desire to have done in all other transactions, does it not appear that the hostility to the practice savours more of oppression towards poverty than of virtuous indignation against vice; that it springs rather from selfishness than love of purity? But, in addition to the charge of oppression and selfishness, I fear those who so loudly condemn this practice render themselves obnoxious to the charge of hypocrisy also, for wealth does covertly what it would crush poverty for doing openly. We hear of men purchasing a partnership and paying a large sum as a premium, and this arrangement is perfectly honourable. We also hear of men purchasing a partnership and paying as a premium, not a sum down, but a portion of their profits, they taking a smaller share than would otherwise fall to their lot; and this is a perfectly honourable arrangement, and these men, with the exception of their not being quite so wealthy, are considered quite as respectable as the former. Further, we sometimes hear of men purchasing for a sum of money the agency of a country attorney, and this is an honourable transaction. If, then, there be no dishonour in purchasing an agency business, why should there be any in the mode of payment? If a man can honourably purchase a partnership and pay for it by taking a smaller share of the profits, why should he not be allowed to purchase an agency and pay for it by taking a smaller share of the profits?

I will not take upon myself to decide upon the propriety or impropriety of this practice. It does, however, appear to me that in principle it is unobjectionable, although that principle, like every other, may be carried out by objectionable means. But conceding for a moment that the practice deserves all the reproach which is cast upon it, these observations may perhaps not be altogether useless, as they may induce some of your correspondents to shew the unworthy character of the practice, and remove the doubts of those who are wavering, or are in danger of being led away by the conduct and example of such as consider it no disgrace to be content with small profits.

"A Country Solicitor" repeats the complaint we have so often urged against the practice of judges conducting prosecutions. He says—

Notwithstanding the very excellent article in the eighteenth number of your valuable journal (and which was given greater publicity to by its insertion in several influential country papers at my request) upon the impropriety of "judges playing the part of prosecutors and performing the duties of counsel against the prisoner," I regret to observe that in Berkshire, as well as in most other counties, this highly objectionable practice still prevails, and is, I believe, chiefly to be attributed to the miserable economy of not allowing "briefs for the prosecution" except in what the magistrates please to call "special cases." I have now before me a report of the late Berkshire Quarter Sessions, and I find that out of *thirty* criminal prosecutions there heard, counsel on behalf of the Crown were employed in *thirteen* cases only. I would therefore most respectfully urge upon the serious consideration of the magistracy of England the emphatic remark of Mr. Justice Coleridge at

Exeter, "A judge ought never to be put to prosecute," and I would again express an earnest hope that "the whole system of county allowances on criminal prosecutions will be speedily and liberally amended."

"B. H" thus communicates to the Profession another practice of the SHAM LAWYERS, not so well known, because more easily transacted in secrecy —

The exposures which have from time to time appeared in your valuable columns have had a tendency materially to correct the abuses in the common law branch of the Profession, but I have never yet seen any notice taken of law stationers and others not properly qualified being in the habit of drawing and engrossing deeds A case of this description a short time ago came under my notice, I do not doubt that many of your readers will call to mind instances in which such practices have been followed to the detriment of the interests of the Profession, and it will be desirable if any of your correspondents will communicate through your columns any such practice as may come under their notice, this will materially assist in checking such malpractices.

"A F." addressing us from Bolton, asks of the experienced of our readers what is the rule of practice under the following circumstances —

Will some of your numerous correspondents inform me, through the medium of your Journal, what they believe to be the custom or etiquette of the Profession in the undermentioned case?

A mortgages to B In the usual course, A's solicitor furnishes an abstract, and B's solicitor prepares the mortgage, and submits the draft to the solicitor of A, WHO TAKES A COPY OF THE DRAFT A subsequently sells the property mortgaged, and his solicitor, having his own *draft abstract* and *the copy* taken by him of *the draft mortgage*, furnishes an abstract to the purchaser of the whole title Is not this, to say the least, an unusual course? ought he not to have applied to the mortgagee's solicitor to furnish the abstract? and if not of the complete title, at all events of the mortgage?

"AN OLD SUBSCRIBER" at Norwich submits the following query to the experience of our readers

I perceive there is an observation in Stone's Practice (p. 144), on the practice of the petty sessions which, if tenable, ought to be generally known The observation is as follows (in the words of Mr Stone) —

"The recent statute 1 & 2 Vict c 74, not only extends to the recovery of the possession of tenements not exceeding 20*l* a year rent, but also tenements *occupied without being liable to any rent*"

Perhaps some of your numerous subscribers would point out those portions of the statute which bear upon the latter point, namely, that it extends to the recovery of tenements occupied without being liable to any rent, as, from my recollection of the statute, it is not clear that it goes to effect this object, or at any rate, whether you take the same view

To Readers and Correspondents

AN ARTICLED CLERK —*We feel the full force of his objections but as the newsmen make their rounds on Saturday it would be ruin to depart from an old established custom We should like to do it but we fear it is impossible All things in London are so arranged as to make Saturday the only convenient day for publication*

A SUBSCRIBER —*We will endeavour to comply with his wishes*

F J.—*The query is one of* law *and not of professional practice, and, therefore within our rule that prohibits the* LAW TIMES *from being made the medium for procuring gratis opinions*

AN ENGLISH ATTORNEY'S *strictures on the Irish case are quite just, but too political in their tone for our columns*

We have received a great number of threatening letters and other documents proceeding from Sham Attorneys They shall appear as speedily as possible Meanwhile we thank our correspondents

A LOVER OF CONSISTENCY —*We have no right to refuse any advertisement not libellous or indecent The clerks would have enough to do if they were to sit in judgment upon every one brought to the office But we do not hesitate to blame the advertiser, who only is responsible We have never found fault with the Times for publishing the advertisements we have reproved*

T. L.—*Thanks for the information about the Heir-at-Law Society.*

F W. E.—*There is no better work for studying the* principles *of equity*

J B —*The Act has appeared, or will appear, in its proper place*

W D L —*We are unable to answer his queries, not being in the secrets of the publishers*

J E ELWORTHY —*The design is not abandoned but there are difficulties which, we fear, will prevent its satisfactory accomplishment till next year*

TO SUBSCRIBERS.

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at 5s 6d each, if forwarded to the Office.*

A PORTFOLIO, *on a novel and convenient plan, or preserving the current numbers of the* LAW TIMES *for ready reference, may be had at the Office, or by order of any Bookseller in the country, price 5s 6d*

An Alphabetical Index to the Cases in the current Volume of the LAW TIMES *always lies at the Office for the purpose of Reference*

TO SUBSCRIBERS

THE PUBLISHER of the LAW TIMES begs to inform the subscribers, that the subscription for the current half-year is now due, and that if they wish to secure the advantages of pre-payment, they should transmit the same, by post-office order, during the ensuing week It should, however, be understood that it is entirely optional with the subscriber whether he will take the benefit of pre-payment or not

Many subscribers who have sent their volumes to be bound having inclosed one of the former volumes as a pattern, the PUBLISHER begs to say that this is a needless trouble, as a standard copy is kept, by which all are precisely bound so as to observe the most perfect uniformity Therefore it will be only necessary to transmit the numbers comprising the volume (which may be done by post, provided they be tied in a parcel with the ends open) but each packet so transmitted should be marked so as to be identified, and a letter should advise what is the mark, and where the volume is to be sent when completed.

THE LAW TIMES.

SATURDAY, OCTOBER 26, 1844

TO READERS

EXTENSIVE arrangements are being made to carry out still more effectually the system of rapid reporting, and the plan of preserving some record of *every* case in the Common Law Courts, which the LAW TIMES has so successfully begun

For this purpose, and to secure regularity and greater care in the verifying of references to cases cited, &c it has been determined to place *two* reporters in the Queen's Bench and Exchequer, where there is the greatest press of business We hope thus that the reports will always be brought down to the Wednesday evening, or, at all events, to the Tuesday, preceding publication

We regret that the great length to which the statutes of the last session have extended should have prevented their completion before the crowding upon us of the business of Term. But it was impossible to print them more rapidly, with due regard to variety in our columns, and to the claims of other topics of more immediate interest.

We insert in another place the list of subscribers received since our last report. It will, we are sure, gratify our friends equally with ourselves. Such cordial support demands unwearied exertions on the part of the LAW TIMES to deserve the honour that has been conferred upon it in its adoption as their public organ by so numerous, influential, and intelligent a body as the lawyers of the United Kingdom.

LEGAL PROTECTIVE ASSOCIATION.

WE have received a draft of the rules to be submitted for adoption to the members of this Society at the meeting next week Of course we do not comment upon them in this their imperfect stage, but we may say of the propositions generally, that we highly approve them, and we trust that the meeting will exhibit that unanimity of feeling and resoluteness of purpose which are essential to success in the arduous task its promoters have undertaken. We shall of course report so much of the proceedings as it may be deemed desirable to publish

We are pleased to learn that every day brings numerous and influential accessions to the roll of members

THE JOINT STOCK COMPANIES ACTS.

THE LAW TIMES Edition of these important Statutes, at this time of speculation of such universal interest, is now ready It comprises three statutes, *viz* the *Joint Stock Companies Act*, the *Banking Companies Act*, and the *Railways Regulation Act*. It is edited by Mr PATERSON, who has introduced a great number of illustrative and explanatory notes, an Introduction, setting forth in order the forms to be observed in the formation of companies and the liabilities of shareholders, and added an Index so very copious, that there is not a topic, however minute, touched upon in the volume, which may not be found under three or four distinct headings We believe that thus it will become a very valuable accession to the office library

SHAM LAWYERS

We have published a great number of documents illustrative of the contrivances to which these vermin resort for the purpose of imposing themselves upon the ignorant as real lawyers, but the richest specimen of its class which has yet reached us is the following, which we copy *verbatim et literatim* —

SUSSEX

SPECIAL  ORDER.

Proceedings

Yourself and Smith } By virtue of Her Majesty's Original Writ of Justicies, or other Legal Process will be immediately commenced against you after this last application, whereby your Goods, Chattels and Cattle will be liable to be attached by Distringas, in case of Contempt for Non-Appearance, or by Process of Levari in case of

Final Judgment

Therefore an immediate COMPROMISE will be the only means of preventing such coercive proceedings, and you will attend at Hurst Green, or at St. Ann's Lewes, for that purpose.

Dated 10 Oct 1844

To Mr. Henry Crawford, Battle. } Debt & costs as before, Additional, 2s. 6d.

Hutchinson, Attorney in the Courts by Justicies.

*** The Copy of the Precipe herein, and the form of Justicies annexed, will give an opportunity of obtaining satisfactory Advice on the Legality of the Proceedings, and the Correctness of the Demand. And NOTICE of such Proceedings will be delivered to your Landlord, not only to prevent any improper protection of property, but also to avoid the plaintiff's liability, if possible, to the payment of one Year's Rent, or any part of such Rent, which might have been previously recovered pursuant to any Act of Parliament now in force.

The *indorsement* on this precious document is thus:—

Mr. Henry Crawford,

You may attend at the Dwelling of Janette Smith, in Battle, immediately to shew just Cause why you

do not pay the Debt within mentioned—otherwise further Proceedings to attachment agt. your Goods and Chattels.

Hutchinson, Atty.
10 Oct. 1844.

And annexed is the following notice, with a stamp in the margin to imitate a seal, having in its centre the words "Hutchins. Atty."

County of Sussex.

TAKE NOTICE

That if the Sum of £— 8 — which you owe to Mrs. Jannett Smith of Battle be not paid on the Day of the Delivery hereof or by such regular instalments as shall be proposed and agreed with the County Agent or Bearer hereof

LEGAL PROCESS

will be immediately commenced agt. you for the Recovery of the said Debt by Summons returnable at the next County Court or by Virtue of Her Majesty's

WRIT OF JUSTICIES.

Hutchinson, Atty. & Jus'. Agt.
Dated Lewes 10 Sept. 1844.

Costs 2s. 6d.

Signed
Janett Smith.

We have received some four or five more of like daring impostures, which shall duly appear, but the above is enough for the Law Societies to meditate upon for one week.

Still we strongly incline to the opinion, that if it could be clearly proved that, by menaces such as this notice contains, under the fraudulent pretence of legal compulsion, a man had paid the costs so demanded of him, Mr. Hutchinson could be successfully prosecuted. At all events, we would certainly recommend that it be tried: the very trial would operate to deter others, even though a conviction be not obtained.

THE LAW MAGAZINE.

Some time since it was announced by a contemporary, from whose columns we extracted the news, that the *Law Magazine*, after a flourishing existence of many years, had suddenly expired. We much regretted the loss of an old friend and favourite, and now we are rejoiced to find, from an announcement among our advertisements, that the report was exaggerated. The *Law Magazine* yet survives, and, we hope, to live for many years to come. The truth we understand to be, that there was a change of editorship only, and hence the rumour of dissolution. The new editor is, however, a man for whom we can vouch as in all respects qualified, not only to maintain but to raise the reputation of the periodical whose conduct he has undertaken. It would have given us sincere pleasure to have welcomed our respected quarterly contemporary under any circumstances; but knowing with what peculiar recommendations he appears again, with the vigour of youth infused into his veins, we congratulate him and the Profession on his revival, and cordially wish him health and long life, and may all the prosperity attend him which we are quite sure he will so well deserve.

PROFESSIONAL MALPRACTICES.

The revelations of the Central Criminal Court have excited very just and general indignation, not only within but without the Profession. Undoubtedly the character of the Bar has suffered from the misdeeds of some of its members. The Benchers have been called upon to interpose their extensive powers, and wipe out the blot upon the Profession, by disbarring those who have disgraced it.

But the malpractices that have been revealed are almost eclipsed by that which it is our painful duty now to lay before both branches of the Profession, directing to it the serious attention of the authorities.

The following *printed* advertisement has been placed in our hands. We copy it precisely as it appears.

TABLE FOR MAKING WILLS.

PERSONS.	For each "*distinct*" portion of "Personal Property" bequeathed (although to the same person).			For each "*distinct*" portion of "Real Property" devised (although to the same person).			OBSERVATIONS.
	£	s.	d.	£	s.	d.	
For each Person mentioned as a Legatee	0	5	0	1	1	0	Articles of Furniture, Jewellery, Implements, or Goods in the same house, and bequeathed to the same person, form but one "*portion*" in this table.
For each infant mentioned as a Legatee	0	10	6	2	2	0	
For many Persons or Infants, as joint tenants, or tenants in common (or as a class), or to a Public Body, or Charity, as Legatees, where no particular purposes of application have to be specified	3	3	0	6	6	0	
N.B. Where particular purposes have to be specified....	5	5	0	10	10	0	Avoiding the Statutes of Mortmain.
For each Person named as Executor (though also a Legatee), including specification of his duty	0	10	0				So that a person's *Will*, containing One Executor, and Two Legatees, would require no greater sum than 1*l.* to have it drawn.
For each person named as Trustee (though also a Legatee), including specification of his duty	1	1	0	2	2	0	

In cases of limited difficulty, where only a particular clause (or clauses) has to be drawn, to be inserted in a particular Will, the above table is also to be used; also in Codicil cases.

No fees required for consultations, or conferences at my chambers, or post-paid correspondence touching any Will or Codicil to be drawn.

No fees required for clerk.

N.B.—In cases of extreme expedition, the instructions and proper fees to be sent by carrier or coach (as a parcel) direct to my Chambers; and to secure its being known *as on business*, the address below to be adopted: the carriage is not to be paid, but included in the fee sent. For attending in person at the making of a Will, or at the execution of *any* Will, as a witness, an extra fee of half-a-guinea per mile.

Geo. Farren, Esq.
Chancery Barrister,
1, Symond's Inn, Chancery-lane.

Nothing so truly disreputable, so entirely unprofessional, so derogatory to the Bar, so daring in its defiance of all acknowledged rule, so unbecoming the gentleman, so disgraceful to the lawyer, has yet fallen under the notice of the Law Times. We have had occasion to expose many advertising attorneys, but only one advertising counsel; but the advertisements of the attorneys were modest, decorous, and creditable, compared with this advertisement of one who signs himself a barrister, and, *we suppose*, calls himself a gentleman. It is bad to advertise at all; it is worse to announce that "No fees are required for consultations!"—"No fees required for clerk!" but the depth of degradation is reached in the scale of fees, graduated according to the number of legatees!

Really, so indignant do we feel at the insult thus offered to our Profession, that we dare not trust ourselves to comment upon it just now. We would fain cherish the hope that it is a fraud; that some enemy hath done it to damage Mr. Farren and to throw discredit upon the society of which he is a member. We will wait for a week, that an opportunity may be given for contradiction or explanation. If it be not denied, there must be interposition somewhere, the Benchers must take it up, and the Solicitors to a man must resolve not in any manner to countenance a counsel who could thus disgrace and degrade that which ought to be the most cherished possession of every lawyer—his professional character.

VERULAM SOCIETY.

The first Part of the *Real Property and Conveyancing Cases* is now ready, and the second *number* of the Criminal Law Cases is in the press.

We regret much that we are as yet unable to publish the first number of the *Practice Cases*, although they appear to be greatly in request. The fact is, that the reporters of the two principal Courts during the last Term have been travelling, and are not yet returned, and they did not prepare their notes for the press previously to their departure, understanding that no publication was intended during the vacation.

It will be seen by an advertisement in another column that active measures are in progress for the publication of the first of the series of Text Books.

We give, as usual, the accession of members during the past week:—

Johnson, Jno. Ryde, Isle of Wight.
Wickham, Humphery, Strood, Kent.
Lakin, B. Whitchurch, Salop.
Bolton, Jno. Dudley.
Lane, Jno. Stratford-on-Avon.
Umbers, Thos. ditto.
Stringer, Jas. ditto.
Coates, Peter Eaton, Stanton Court, near Bristol.
Berry, J. Truro.

PRACTICE—PLEADING—EVIDENCE.

By Professor Carey.
Delivered at University College, London.
LECTURE XII.

There are two circumstances which occur in pleading, when one of the parties relies upon a deed. Where a party pleads a deed and claims or justifies under it, he used formerly, at the time of pleading, to produce the deed in court; he used to say, in effect, "I claim under a deed, and here is the deed under which I claim;" and then the other party was entitled to have it *read* in court, before he answered his adversary's pleading; there is the bringing the deed into court and the hearing it read—*profert* and *oyer*. Profert is now merely formal: the party merely makes a formal entry on the pleading; he does not in fact produce the deed, he merely states that he produces it. The meaning of the profert, and the necessity of it, depend on the theory of the deed's being actually produced. Profert is not required, unless the deed is in possession of the party pleading; for instance, if it is lost, instead of stating that he produces it in court, he states as matter of excuse, that the deed is lost, and that he, therefore, cannot produce it. One of the earliest cases of profert is *Read* v. *Brookman* (3 T. R. 151). Besides this, if the deed is one to the possession of which he is not entitled, then no excuse is necessary. Two cases (*Dangerfield* v. *Thomas*, 9 A. & E. 292, and *Bain* v. *Cooper*, 8 M. & W. 751) are upon this principle, that deeds operating under the Statute of Uses do not require to have profert made of them. In common conveyances, by lease and release, the lease, as it is called, operates under the Statute of Uses. It is a conveyance from A to B to the use of C; the possession is by the statute executor in C. C is, in fact, the purchaser, and he is the person who, being beneficially entitled, would have to make profert of the deed; B is a merely nominal party; but though only a nominal party, he is the person in law entitled to the possession of the deed; therefore, when C has to plead his title, it is not necessary to make profert of the lease. With respect to *release* it is otherwise; as that is a conveyance operating at common law, profert must be made of it. (*Jenkin* v. *Peace*, 6 M. & W. 722.)

At every stage of the pleadings the other party may demur. If the declaration in all the facts alleged shews no cause of action, there is no necessity for the defendant either to deny the facts or to avoid the effect of them. The effect of such a declaration, in point of law, is null; and therefore all the defendant has to do is to demur (from *demorari*). The demurrer *stops* the course of the pleadings, which otherwise would go on to an issue in fact, and submits the question to the judgment of the Court. Suppose the following case:—X Y delivers a horse to C D, to be redelivered at his request; X Y then requests C D to deliver the horse to A B; C D, though requested, does not deliver the horse, but retains it. An action on the case is brought by A B against C D; the declaration states the facts, and alleges the breach to be the non-delivery according to the request. This declaration is bad; because the wrong it discloses is a wrong done to X Y, not to A B, the plaintiff. I deliver to you a horse, to be redelivered to me or to my order; I authorize a third person to receive it, and order you to deliver it: you do not deliver it to my order; the injury that is done is an injury, not to the third person, but to me, and consequently I have a right of action; the third person has no such right. (*Tollit* v. *Sherstone*, 5 M. & W. 283.)

Demurrers are of two kinds, *general* and *special*. When the objection taken relates merely to some matter of form, it is required that the particular objection intended to be taken should be specially set down, "together with the demurrers as causes of the same." (27 Eliz. c. 5; 4 Anne, c. 16.) Before these statutes, all demurrers were general; but they have introduced special demurrers, by requiring causes to be assigned where the case is merely formal: they are confined to civil proceedings, and do not apply to criminal cases. Where the objection is mere matter of form, the grounds of it must (in civil cases) be specifically stated; and if such objection is not so taken, no advantage can be taken afterwards in any stage of the proceedings. By the modern rules, whether the demurrer be special or general, some matter of law must be stated in the margin of the demurrer book which is to be delivered to the judges. This is to give the judges notice of the points to be brought before them. It frequently happens that, on demurrer, if the ground of the demurrer is held good, the other party obtains leave to amend on payment of costs. Thus, if the declaration is bad in point of form, and the facts are such that, if correctly pleaded, the action may be maintained—if the facts are right and the pleading is wrong—the plaintiff may avail himself of the leave to amend; he sets his pleading right in point of form; if he does not, there is judgment against him. If he does—if he pleads so as to make his pleading correct in point of law—it is his business to make it so as to be supported by the facts. But if in his pleading he has stated the facts truly, and there is a fact omitted, the statement of which is necessary in order to make the pleading good in point of law, and the fact does not exist, the fault is not in the pleader, it is in the fact; and it is better to break down in a case by reason of not stating a fact, than by going to trial and not being able to prove it. Suppose you state but five facts, and there is a sixth fact which it is necessary to state in order to maintain the action;—you are permitted to amend on payment of costs, otherwise judgment is against you. If the sixth fact is an existing fact, you may plead it; your pleading is then right in form, and can be supported by the evidence; but if it is no fact at all, only a *desideratum* which you cannot supply, then if you introduce it, you merely incur the expense of subsequent failure. There is a case in which leave was given to amend (*Earl of Harrington* v. *Bishop of Lichfield*, 4 Bing. N. C. 77).

The demurrer admits the truth of the facts alleged, provided they are properly pleaded; it merely contends that they are "insufficient in law." Where the defendant thus insists that the facts contained in the declaration are "insufficient in law," if the Court decides in favour of the demurrer, that is, that the facts are insufficient, then there is judgment for the defendant. If the Court decides against the demurrer, that is, if it decides that the facts are "sufficient in law" to support the action; then, as the facts are admitted to be true by the demurrer, and no answer is given, there will be judgment for the plaintiff. The like effect is produced where the demurrer is taken to the plea, where, instead of replying, the plaintiff contends that the facts alleged are either in point of form or substance insufficient to support the defence. Suppose, for instance, that in an action on a bill of exchange against a person who has drawn a bill of exchange on his banker with a request to pay A B the plaintiff, the plea is that the defendant's banker paid the bill, that the bill was afterwards lost, and that it came into the plaintiff's hands without consideration; to that plea there is a demurrer. The plea is bad for *duplicity*, because it sets up two defences, perhaps neither of them properly pleaded. *Deacon* v. *Stodhart* (5 Bing. N. C. 594) is another case in which a demurrer occurs. In an action of debt the defendant pleaded a plea in the nature of "set-off;" the plaintiff replied *de injuriâ*, that "your non-payment was of your own wrong, and without the excuse you have alleged;" to this there is a demurrer, and judgment is given on it. The judgment of the Court below was that the replication *de injuriâ* was good. The case was carried into the Exchequer Chamber, and there the judgment was reversed, the Court holding that the replication *de injuriâ* was a bad one, and no answer to the plea of set-off.

I have hitherto supposed the simplest case of one single demand made by the plaintiff, and met by one single answer on the part of the part of the defendant. In point of fact, the pleadings very frequently have a more complicated appearance. The plaintiff was at all times at liberty to join several claims in one action; when this is done, he inserts in the declaration as many separate statements as there are causes of action; each of these statements is termed a count. Any number of counts may be joined in the same declaration. If you have one hundred and fifty bills of exchange upon which the same person is liable, you may bring an action with one hundred and fifty counts in it, a separate count on each bill of exchange. Counts in debt may be joined with counts in detinue, and counts in case with counts in trover; but counts cannot be joined in two forms of action wherein the nature of either the plea or judgment is different; as in trespass and case, assumpsit and trover, where, though the plea is the same, the judgment is different. To each demand of the plaintiff, the defendant, at common law, could set up only one defence. For instance, if a man were sued for goods sold and delivered, it might be true that the contract was obtained by fraud; it might be also true that the defendant had paid for the goods; either of these facts would be a good defence; but at common law, the defendant was obliged to select which he would rely upon, and, in the instance I have supposed, if he pleaded payment, and failed in proving it, or proved it only in part, the judgment would be given against him, though in fact the contract might have been altogether void in law by reason of the fraud, or *vice versâ*. In order to relieve the defendant from this disadvantage, it was provided by the statute of Anne, c. 4, s. 16, that it should be lawful for any defendant in an action in any court of record, to plead as many several matters thereto as he should think necessary for the defence. The power of pleading several pleas given by the statute, and the power existing at common law of inserting several counts in a declaration, were intended to apply to cases where a separate cause of action was stated in each count, and a separate ground of defence was raised in each plea. Gradually a perversion of this power grew into practice, in order to obviate the difficulties occasioned by a rule of law long adhered to. The rule I allude to was this; if the cause of action set out by the plaintiff in the declaration, or the ground of defence set up by the defendant in his plea, were not precisely supported at the trial, in either case the party failed: thus, if the plaintiff set out in the declaration a contract, and the contract proved by the witnesses turned out to be different from that set out in the declaration, the plaintiff failed in his action; he did not establish the contract on which his claim was founded. (*Churchill* v. *Wilkins*, 1 T. R. 447.) Here the contract declared on was, that the *defendant* was to deliver to the plaintiff all his tallow at four shillings per stone, and the contract proved was to deliver at four shillings per stone, or *so much more* as the plaintiff paid to any other person. It does not appear that the fact arose which made the alternative material. It does not appear that he had in fact paid any other person more than four shillings, and, if so, it was practically the same as if four shillings had been the price agreed upon. However, it was holden that the bargain proved was not the bargain declared upon. "This nonsuit is proper," says Ashurst, J.; "it was incumbent on the plaintiff to prove the case truly." There is another case (*Jones* v. *Cowley*, 4 B. & C. 445), which was upon the warranty of a horse. The declaration in *assumpsit* stated that the defendant warranted the horse to be sound; and it was proved that the defendant warranted the horse to be sound, except a kick on the leg. It was held that this was a qualified, and not a general warranty, and was a variance from the warranty stated in the declaration. There was here a misstatement of the fact, and the Court said "The question, therefore, is, whether, at the time of making the contract, it was agreed and understood between the parties that the horse was warranted sound generally, or with the exception of any unsoundness which might arise from the kick on the leg. It appeared in evidence that at the time of the sale, the animal had received a kick on the leg, which might or might not turn out to be an unsoundness, and that the defendant said to the plaintiff, 'I will warrant against any unsoundness, except an unsoundness which may result from a kick on the leg.' It appears to me that this was a qualified warranty. Suppose it had turned out that the horse had a permanent unsoundness arising from the kick on the leg, the defendant clearly would not have been liable on the warranty given by him. But if he had given a general warranty he would have been liable. The contracts are substantially different." The motion was for a nonsuit; the judge had directed the jury to find a verdict for the plaintiff, but reserved liberty to the defendant to move to enter a nonsuit. He did so; cause was shewn, and the rule was made absolute, that is, there was leave to enter a nonsuit, as if the nonsuit had taken place at the trial. The plaintiff, therefore, failed, because he misdescribed the contract entered into between him and the defendant.

In like manner it was, if, in an action of trespass, the defendant justified, under a particular custom, a right of way or the like, and there was a variance in the proof. If he justified under a right of way for all the year round, and it turned out to be only for six months in the year, if the custom or the right proved by the witnesses differed from the custom set out; the plaintiff would fail. In order to provide against these chances, the pleader who drew the declaration considered all the ways in which the contract might have been made, and the pleader on the part of the defence considered all the ways in which the right in question might rise, and each of these ways was set out in a separate count, or in a separate plea, as if it had been a separate cause of action or a separate ground of defence; so that whichever way the contract or the right was proved at the trial, there was a count on which the plaintiff could maintain his action, or a plea on which the defendant could support his defence. It was provided by the statute 3 & 4 Wm. 4, c. 42, that where any variance should appear in the matter alleged and the facts proved, the judge at the trial should have power to amend the record, so as to correspond with the proof, provided the variance were not material to the merits of the case, and should not prejudice the opposite party. (*Hemming* v. *Parry*, 6 C. & P. 580.) The circumstances here are the same as in *Jones* v. *Cowley*, and the judge (Alderson) held that the variance was within the statute, and was not material to the merits of the case. After this statute (3 & 4 W. 4) it was provided by the rules of court that several counts and several pleas should not be allowed unless a distinct subject-matter of complaint or a distinct ground of defence were to be established in respect of each. The only exception to this is that where the first count consists of many demands a count may be added, "on an account stated." Suppose an action is brought for goods sold and delivered—the claim consisting of one hundred and fifty items; the two parties meet, and the one says, "I owe you 50*l*. in respect of these goods." There is in effect only one claim, but there are in form two causes of action; there is one primary cause of action for the goods sold and delivered, and a secondary cause of action founded on the statement of the account, and both may be united in separate counts in the same declaration. The defendant is not allowed to plead the same defence in several ways, but he is at liberty to plead as many separate defences as the circumstances admit; but here the power ends. To each plea of the defendant, the plaintiff may plead a se-

parate replication; but he cannot plead more, except in as far as every pleading is in its nature divisible. *e. g.* An action is brought for goods sold and delivered, laying the debt at 50*l.*; the defendant may plead, except as to 20*l.* that he does not owe the money, and as to 20*l.* that he has paid it. Here the declaration is divided into two parts, and in the plea a separate answer is given to each part.

During the whole of the proceedings, from the time the defendant appears, it is required, at common law, that both parties should be present in person or by attorney, and an entry is made on the record that a day is given for their appearance *dies datus*. These entries of adjournment are called continuances; and on each of these occasions the court is said to be continued or adjourned. It sometimes happened that, after the defendant had pleaded, even after issue joined, nay, even after the jury was sworn, there might have arisen some new matter that it was proper for the defendant to plead in answer to the action. For instance, that the plaintiff, being a *femme sole*, had married. Suppose an action is brought against a woman, a *femme sole*, she pleads "not guilty," or "not indebted," as it may be; after that she marries; she may then plead her coverture in bar of the action, because the action ought to be commenced against the husband; in which case the plaintiff's right of proceeding would be stopped; or it might be that the plaintiff has given the defendant a release. Supposing the action to be commenced, and during the progress of the action the plaintiff releases the defendant from *all* actions, that is a defence to the action then in progress. But suppose the release does not take place until after the plea is pleaded, the defendant was at liberty at any time before the verdict was given to abandon the former defence and plead the release to be staid. The language of the law, *puis darreign continuance* (since the last continuance—since the last adjournment) a fact has occurred which did not exist before, by which the plaintiff is barred from recovering in this action, and then if the defendant pleaded the new matter as early as he could, he was permitted to do so. (*Baker* v. *Gough*, Cro. Jac. 82; *Todd* v. *Emley*, 9 M. & W. 606.) When an issue is joined, there is a question raised between the parties to be decided. In the 3rd vol. of Blackstone's Commentaries you have a list of the several modes of trial. Wager by battle and wager of law are now abolished, and now the only modes of trial are trial by record and by jury. Trial by record takes place where the existence of the record is attested by one and denied by the other party; and the only mode of asserting it is to produce it in court. Trial by jury is what we may consider the ordinary mode of trial. When the pleadings are drawn, a transcript is made by the plaintiff, called the *issue*, and delivered to the opposite party. The plaintiff must give due notice of trial; the jury process issues, and then the cause is ready for trial. It is a *venire facias* to the sheriff, ordering him to summon to Westminster twelve jurors of the county, stated in the margin of the declaration, and the cause is then ready for trial at the bar of the court. All trials were supposed formerly to take place at the bar of the court, but they now take place generally before the justices of assize; still they may, and sometimes do, take place at bar. (*King* v. *Price*, 5 B. & A. 447, and the recent case of *Reg.* v. *O'Connell and Others* in Ireland.) The plaintiff must give to the defendant due notice of trial, and must procure a record of the pleadings to be made out. The record is drawn out and delivered to the judge's marshal; it contains all the statements set out in the issue, without the addition of the *distringas*. It gives the judge a history of the proceedings, and of the question raised for trial.

There are certain rules laid down as to the persons who are to be taken as fit witnesses. All persons were considered competent witnesses who had the use of their reason, and whose religious belief did not destroy the obligation of the oath; who were not convicted of infamous crimes, or influenced by private interests. (7 T. R. 701.) Lunatics under the influence of their malady, or children who had not acquired the use of reason, were not competent. Quakers, Moravians, and Separatists, who objected to the oath, were not admissible till made so by Act of Parliament. (*Atcheson* v. *Everitt*, Cowper, 382; 7 Wm. 3, c. 34; 9 Geo. 4, c. 32; 3 & 4 Wm. 4, c. 49; 1 & 2 Vict. c. 87.) In Coke Lyt. 6 b, you find that infidels, that is, persons not professing Christianity, were incompetent witnesses; but upon the authority of *Homechund* v. *Baker* (Willis, 538), they are admissible, provided they believe in the existence of a God, the obligation of an oath, and a future state of rewards and punishments. By a statute of the last session, no person is excluded by reason of incapacity from crime; but the statute has not provided for the case of a man being outlawed; if he his outlawed for felony, it would appear that he is still an incompetent witness. A question may arise whether perjury, under the 5 Eliz. c. 9, would be within this Act, but I apprehend that it would. Every person interested in the event of a suit was, by the common law, excluded from giving evidence in favour of the party to whom his interest inclined, and the law looks upon a person as interested where he has some peculiar benefit depending upon the result of the suit. In a running down case, where the master has an action brought against him for the damage, the servant was an incompetent witness at common law, because, if damages were recovered against the master, he might bring an action against the servant for the damages he has been obliged to pay. This was obviated by the master giving the servant a release from all actions arising out of that particular action; and the evidence of the servant has also been made admissible by endorsing his name as a witness upon the record, in order that he might be evidence for the master. (*Yeomans* v. *Legh*, 2 M. & W. 419.) This is now of less importance, for by the 6 & 7 Vict. c. 85, no person offered as a witness is excluded by reason of interest—with some exceptions. The plaintiff or the defendant named on the record is not allowed to give evidence. Formerly no person interested was allowed to give evidence: no persons were more interested than the parties themselves, and therefore they were excluded. (*Bowerman* v. *Radmius*, 7 T. R. 662.) Where an action is brought by a trustee who has a legal interest in the property, against a third person, the trustee is for all purposes to be deemed as the plaintiff himself, and any admission made by himself would be evidence against him in any action that might be brought. In an action of ejectment, the virtual plaintiff, the landlord in whose right the ejectment was made, is not allowed to give evidence. No one is competent as a witness in whose immediate or individual behalf an action is brought or defended. It is very difficult to say what persons would be actually included within these words. Suppose an action is brought by a trading corporation — say a gas company — against an individual whom they supplied with gas, and who has not paid for it; a member of the corporation is put into the box, and he is a competent witness as a member of that corporation, though if he were a great capitalist, carrying on the like business in his own name, he would not, as the law stands, be able to give evidence. Again, an action is brought against a sheriff for misconduct of the officer; the sheriff has no interest in defending it, and he does not defend it; the officer is the defendant in point of fact; but though he is the person actually interested, it does not appear that he is the person in whose immediate behalf the action is defended; he is only touched mediately through the sheriff, and therefore he is a good witness. Take the case of an action of *quare impedit*, brought by a college; probably the senior fellow would be a good witness; the action is brought by the college, and he is only an individual.

THE CRITIC.

New Books.

The Judgment of Lord Denman in the case of O'Connell and Others against the Queen, as delivered in the House of Lords, September 4, 1844; with Notes, a Preface, and additional Observations. Edited by David Leahy, Esq. one of the Counsel in the Cause. London, 1844. Butterworth.

No lawyer will question the learned Editor's estimate of "the vast importance of the principles discussed" in the memorable judgment of the Lord Chief Justice of England, in the famous O'Connell case, nor can there be two opinions as to the propriety of its publication in the present accessible form, corrected and revised, as the report has been, by the eminent Judge by whom it was pronounced.

But an extraordinary value has been given to this edition of a valuable document, by the addition of some further explanations of his views, with which Lord Denman has supplied the Editor; for these alone it will be eagerly read on both sides of the channel.

It is the misfortune of such a topic as this, that people will *not* divest it of partisan feelings; nor will they allow to any other person the credit of being able to do so. If, for instance, we were to say that we either approved or disapproved the judgment of the Lord Chief Justice, we should forthwith be accused of making the Law Times political. And yet, in truth, with lawyers, law will almost always take precedence of politics; so much are we in the habit of looking at the case without reference to the parties, and so eager are we to ascertain the law, without the slightest regard for consequences, that we believe there are few lawyers, from the judge to the articled clerk, who would permit any party feelings to disturb, ever so slightly, his judgment upon a point of law. And least of all would Lord Denman be likely to be so swayed.

Indeed, it is impossible to read this judgment without feeling the profoundest respect for the lofty views of the judge; he has treated a great constitutional question in no narrow spirit, and however we may doubt the law he propounds, it is impossible to question his motives. He gives reasons, many and weighty, for his opinions; his arguments, startling at first, grow in power as we contemplate them, and few, we suspect, will rise from their perusal without at least feeling that his previous views have been shaken, if not overthrown.

The judgment of the Lord Chief Justice, as our readers will remember, was directed mainly to two points, in both of which he differed from the majority of the judges. These were, first, whether the true import of the expression "for his said offences," in the judgment of the Court below, be that the punishment was awarded in respect of all the facts indicted as offences, and, secondly, whether the incompleteness of the jury-list avoided the trial. We are not about to repeat any portion of this judgment, as it has been already submitted, in great part at least, to our readers; but we limit our extracts to the new matter supplied by Lord Denman to the Editor, and the history of which is thus stated in the Preface.

As Lord Denman observed, in the course of his judgment, that he had committed to writing some statements which he did not propose to address to the House, I took the liberty of requesting to be favoured with the inspection of the papers to which he alluded, with a view to their insertion in the present publication. His lordship was pleased in the most obliging manner to comply with this request, and to place the whole of the memoranda in question at my disposal, to be used according to my own discretion. As they were composed at various periods during the short interval between the close of the circuit and the day appointed for the re-assembling of the House, they necessarily included some actual repetitions as well as some brief expressions of opinions which are more fully developed in the judgment as delivered. But the unprecedented interest and admiration excited among all parties by the delivery of this noble address—in every respect so worthy of the transcendent importance of the subject—induce me to believe that the public will be happy to hear that I have exercised to the smallest possible extent the power of retrenchment with which I was invested in so confiding and condescending a manner, and that the papers in question, which are almost all printed at the end of the present publication, contain a full exposition of the whole of his lordship's opinions upon every part of the case.

From these additional observations we make a few extracts.

The question of the imperfection of the jury-lists, his lordship asserts to be "of the highest and most extensive consequence, as affecting jury trials, both in England and Ireland, the statutable enactments under which they take place in both parts of the United Kingdom being substantially the same."

It had been questioned whether a challenge of the array is still part of the law. It was clear that it had not been abolished by express enactment:—

Whether a privilege of such great value could be taken away by implication, might admit of grave deliberation. But the intention to repeal without substituting any similar security is hardly to be believed. Penalties are imposed on all the successive officers employed on this duty for the neglect of any portion of it, but there is no provision that the defective lists shall stand good notwithstanding. The great object of improving the mode of appointing juries was undoubtedly to purify the practice, and prevent all tampering, and suspicion of tampering, with the construction of those important bodies. But if the present doubt is well founded, the most impure proceeding might pass unquestioned; the most corrupt

packing of juries might prevail. For though in the present instance no suspicion is felt as to the motives, this argument goes the length of depriving the parties of all redress, however criminal the design may have been.

Then it was said that great inconvenience would arise from admitting a challenge for such a cause, as it would set aside the jury-book, and prevent the summoning of a good jury for that year. But

This doctrine seems open to many observations. 1. Whatever inconvenience the law produces must be borne by those whose duty it is to administer the law. The excessive inconvenience of one construction of an ambiguous Act may furnish a strong argument in favour of another construction equally consistent with its words: but it cannot introduce words which are not there, nor a construction of which no words which are there are susceptible. 2. Taking the supposed inconvenience at the highest, what are we to say of subjecting parties, through any misconduct, negligence, or default, in official persons, to a trial by a different jury from that which the law provides for them. But 3. The inconvenience imagined is a chimera, if the objection be of such a nature as to prove that the book called the jurors' book appears to have no title to be so styled. And this appears to me to be its true result; for if the sheriff has not received the book described and required by the Act, the Jury Acts of both countries have met this inconvenience by express enactment. "Provided," says the 11th section of the Act for England, and in the same form the 11th of the Act for Ireland,* "that if there shall be no jurors' book in existence for the current year, it shall be lawful to return jurors from the jurors' book for the year preceding." And if this construction of the proviso be considered doubtful, still, 4, it may be observed, that the supposition of the Court's setting aside *the book* generally, when they give effect to a challenge of the array in a particular case, by reason of the imperfection of such book, can hardly be maintained. Other parties may not challenge, notwithstanding the defect, and the book actually sent by the sheriff, if unchallenged, must stand good; or they might be unable to prove the facts, or might have waived the objection, or be estopped from insisting upon it.

Again—

Those who argue against the right of challenge to the array must be content to take up a position ever regarded by our courts with the utmost jealousy,—that here is a right which cannot be effectuated,—a wrong without redress. Remedy or redress there is none pretended, however defective the panel may be, or from whatever cause or motive the defect has arisen, unless it can be obtained through the old and well-known constitutional proceeding of challenge to the array. But an opinion has in some way grown up, that the array can be challenged for no cause but one,—partiality, or, as our books phrase it, unindifferency, in the sheriff. Now, though this was probably the most ordinary ground for such challenge, and though on conviction the sheriff would be punished by the Court, whose officer he was, it is obvious that the object of the party challenging must have been his own security, much more than the sheriff's punishment. His security is a lawful jury. Unindifferency in the sheriff might deprive him of it; but so might other faults. Unindifferency is plainly stated by Lord Coke as an example; he adds the more general word "default," and constantly repeats both in describing the effect of the challenge. If then the sheriff, or other officer (i. e. such other officer as may by law be clothed with his duty of returning juries), should transmit to the Court a panel from a list out of which it ought not to have bee[n t]aken; as if he should insert names of persons having no qualification within his bailiwick, here is a default, which would support the challenge. Is it not equally a default to make up the panel from a book which omits a whole class that ought to have been there? If the law enjoins him to make a general list, composed of lists A, B, and C, and then to select his panel from *that* general list, but he thinks proper to compose his general list from lists A and B only, is this no default? It may be venial,—it may involve less blame to him than to some of his subordinates, and the Court may properly refuse to exercise its power of punishing the officer; but surely the party, who has duly complained of the evil consequence to himself and his own security for a fair trial, cannot justly have that unlawful jury forced upon him.

After reviewing many of the arguments which had been raised on the part of the Crown, his lordship thus proceeds, and deals with it as a great question of constitutional law, as one nearly affecting the liberties of the subject and the right of trial by jury:—

For my part, I do not understand how the right to challenge the array can rest on any other principle than the right of her Majesty's subjects to have their interests decided by juries duly constituted according to law. That jury, which was returned from partiality, or imperfect through any default in the sheriff, was not so constituted. On that officer, and on the bailiffs of franchises who performed analogous functions, the whole duty was cast in ancient times. By the recent Act it is divided with other officers: but if the panel is rendered essentially imperfect by any one of these, when not exercising a judicial capacity, the subject loses the protection which the law would have afforded him, and the principle of challenge to the array applies. During the discussion, I heard a suggestion thrown out—from what quarter I do not now remember—to meet the argument arising from the absence of all other remedy. The party was said to be at liberty to apply by motion to the Court. I confess that I am at a loss to find it just or reasonable to strip a party of a well-known constitutional process, fully adequate to correct the wrong and prevent the mischief, and to refer him to the discretion of any Court, exercised on facts brought before it in the unsatisfactory form of written depositions, where the accused officer has the benefit of swearing last, when questions of fact would be withdrawn from the tribunal established for settling them, and the law would be laid down without appeal.

To another argument, that no injury was in fact done, and that after the omission there remained names enough to secure a fair jury-list, the Lord Chief Justice replies:—

It is said, that "no particular injury is stated" in the challenge. But none can be stated, nor, if stated, could be proved. There are no materials on which the judgment of the triors or of the Court could be exercised. The whole subject lies beyond the reach of human speculation. But as long as men differ in their opinions, understandings and feelings, and so long as these influence their decision on disputed points of morality, expediency and general policy, so long must it be at least uncertain whether the extrusion of a tolerably large proportion of persons from the body to which they belong may not materially affect the character of its general composition, and vary the chances of their arriving at such or such a conclusion. Here, if the true list had been entered in the sheriff's book, it might have happened that not one of the gentlemen who tried this case would have been suffered to enter the jury-box. The jury might have consisted altogether of individuals comprised in the omitted sixty, and might have brought to the inquiry such sentiments and habits of thinking as must have insured the acquittal of all the persons under accusation. To disclaim any thing like an opinion that this would have happened, or a suspicion of the fairness of those by whom the cause was tried, cannot be necessary. The want of all opportunity and power of arriving at any conclusion upon such a matter drives me to say that there is no alternative between a list duly formed according to the Act and one not so formed; no middle course between what is unlawful and what is right; no equivalent or substitute for that security for a fair trial which the law has carefully provided. The strictness, which would vitiate the whole for a single omission, was not formerly considered as a *reductio ad absurdum*, but was acted upon as a ruling principle. Nor will this jealousy appear excessive, if we weigh the opposite inconveniences. The question, rather tauntingly thrown out, "Will you set aside the whole panel because one name has been omitted?" is surely well enough rebutted by the other question, "Will you hold it good, though nine-tenths should be omitted?" There is no great inconvenience in exacting perfect fidelity and accuracy from ministerial officers who have to perform an easy duty of incalculable importance to the public. Glance at the inconvenience of dispensing with those qualities in their returns. At best, according to the learned judges, the Court must task itself with the inquiry, whether the number to which a panel may have been improperly reduced, was large enough to promise a fair trial, under all the varying circumstances of each particular case, without any means whatever of ascertaining the fact. But the negligence thus sanctioned and encouraged might be assumed as the cloak of fraud, and would infallibly incur the suspicion, and fill the minds of the people with all the distrust and discontent which, we can all remember, to have hung upon the special jury system but a few years back.

The concluding remarks of his lordship must not be omitted; and with these we close our notice of this pamphlet, which will recommend itself to the careful perusal of every lawyer:—

Thus have I set down what occurred to me from recollection and my notes of the argument in the House of Lords. I have since that time again read over the judgments on this point given at Dublin, and am much fortified in my own views by Mr. Justice Perrin's concurrence and reasoning, while I cannot feel that there is the least weight in the opposite argument of the majority of the judges. The only mode in which I think it possible to resist his conclusion is by finding some technical meaning for the word *array*—as that it imports nothing but the *sheriff's* act in selecting the names that make up the panel. Even this restricted sense would appear to me not to be inconsistent with the idea that an array taken from an illegal list cannot be legal. If I am asked how many omissions and interpolations will suffice to vitiate a return, I might perhaps decline the question as irrelevant, because the number actually omitted is at all events so considerable as to disturb the identity of the return. But I would decline to answer it for another reason,—the impossibility of tracing the operation of the faulty proceeding. The truth may be that the whole jury of twelve would have come out of the rejected sixty; or the truth may be, when one only is excluded, that that one entering the jury-box as one of the twelve to try the issues, would, by his influence with the other eleven, cause a different verdict. But such truth can never be established by evidence, nor can it be made the subject of any rational speculation. The law, regardless of the calculations which may be formed in various quarters upon these doubtful probabilities, affords a certain protection to all whose interests are to depend on the verdicts of juries, by cautiously providing the manner in which these are to be composed; and if this protection is not secured, the parties have none.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

Friday.—The only feature in the Stock Market this morning is that the Commissioners bought about the usual quantity of Consols at 99⅝. Money is in increased demand, and some transfers have been made at a fall of 92¾. For the Account par has been the only value given this morning. The premium on Exchequer Bills is firm at 71s. to 73s. Bank Stock has fallen to 202¼, a re-action of about 3 per cent. within a week. The fluctuation in the New Three-and-a-Quarter per Cents. is very trifling, scarcely exceeding ⅛ to ¼ per cent.

The value of Spanish Stock remains nominally the same as yesterday. Dutch Securities are a trifle lower, and Belgian Five per Cents. were firm in the morning at 10[illegible], but they have since receded to 103⅞. For Mexican and Portuguese Bonds the demand was limited to one or two bargains only.

The Birmingham and Gloucester Railway Shares have been flat to-day, at 1 to 2¾ premium. Edinburgh and Glasgow are lower, 10 premium being now the price. The Great Western Shares have been sold as low as 59 prem.; the London and Birmingham have been at 111½ to 113 prem.; Midlands at a fall to 3 prem.; York and North Midland are firm at 58 prem. and the Half Shares at 56 prem. The French lines are rather on the advance. General Steam Navigation Company's Shares are worth 13 prem.

Public Sales.

By Messrs. DAVIS and VIGERS.

A leasehold estate, comprising a house and shop, in Lambeth-place, Clapham-road, let at a ground-rent of 5*l.* per annum; also part of the Greyhound public house, let at a ground-rent of 3*l.* per annum; the Greyhound livery stables and residence for ostler, let at 24*l.*; a house adjoining, let at 17*l.*; and three messuages, coach-houses, &c. let at a ground-rent of 6*l.* 10s.; held for a term of 80 years, from March 1805, at a pepper-corn rent—450*l.*

A net improved ground-rent of 41*l.* arising from 12 cottage residences, South Island-place, Brixton; held for 65¼ years, from Dec. 1810—460*l.*

A ditto of 18*l.* 10s. arising from Nos. 2, 4, and 5, South Island-place; held for the same term—450*l.*

A residence, known as Ivy Cottage, Brixton, let at 45*l.* held for 79 years, from June 1810, at a rental of 15*l.* per annum—330*l.*

Ground-rents, amounting to 35*l.* 7s. arising from a chapel and eleven tenements in the Wandsworth-road; held for 79½ years, from Christmas 1810—450*l.*

By Mr. GARDINER, at Garraway's.

The lease of the Rose and Crown wine and spirit establishment, at the corner of Gilbert-st. Oxford-street; the public-house comprises a lofty pile of buildings, erected within a few years, without limit to expense; the elevation is lofty, and remarkably bold and prepossessing; it has two splendid fronts; adjoining is a house and shop, with warehouse at the back, situate No. 1, Gilbert-street; let by an under-lease to a potato merchant for 20 years from Christmas last, at 75*l.* per annum; the whole of the property is held by a sub-lease for a term whereof 20 years were unexpired at Christmas last, at the apportioned rent, for the public-house of 120*l.* per annum, and 60*l.* per annum for the premises No. 1, Gilbert-street—6,020*l.*

By Messrs. MUSGROVE and GADSDEN, at the Mart.

Building ground at Holloway, held for the residue of a term created in 1728, whereof 384 years are unexpired, free from any rent whatever, and land-tax redeemed, with front-

ages abutting on Park-road and Camden-road, leading to the Regent's-park, in four lots, as follows, viz.—

A plot of ground containing a frontage of 242 feet 8 inches, in the Camden-road, Holloway, by a depth of 209 feet and 235 at the rear—7,010*l.*

A ditto, with a frontage of 223 feet on the Park-road, by a depth of 209 feet and 235 feet—7,000*l.*

A plot of ground, with a south frontage of 200 feet on the Park-road—900*l.*

A parcel of meadow land, partly at the rear of the preceding lot, containing 8a. 3r. 10p.—2,020*l.*

Four freehold houses, being Nos. 1 to 4, John-street, Greenwich, let at 42*l.* per annum—395*l.*

A copyhold estate situate in Shernhall-street, Walthamstow, and consists of a cottage, kitchen garden, together with a meadow adjoining—380*l.*

By Mr. HENRY BROWN.

An absolute reversion to one twenty-fourth part of 10,666*l.* 13s. 4d. Three per Cent. Consols; also, to one-eighth share of another twenty-fourth part of the like annuities, on the decease of a married lady now in her 73rd year—400*l.*

A ditto, ditto, payable on the decease of the same lady in case she should die in the lifetime of a gentleman now in his 39th year; the above is derivable in right of a married lady in her 33rd year; also a policy for 500*l.* on the joint lives of the said lady and her husband, aged 39 years, and the right of the vendor to two annuities of 5*l.* each, payable to the lady aged 73 during her life—330*l.*

A policy for 500*l.* in the Argus, on a life aged 67; annual premium 31*l.* 19s. 2d.—45*l.*

A ditto, in the York and London Company on the same life—45*l.*

A policy, or three shares for 600*l.* in the Amicable, effected on the 7th of October, 1829, on the life of a gentleman now in his 65th year; annual premium 26*l.* 8s.—200*l.*

A cottage residence, No. 1, Harrington-road, North Brixton, let at 40*l.*; held for 80 years from Christmas, 1812, at 6*l.* per annum—300*l.*

A ditto, No. 2, ditto—360*l.*

Two cottage residences, Nos. 1 and 2, Clifton Cottages, let at 48*l.*; held for 70 years from Sept. 1812, at 7*l.* per annum—400*l.*

Two ditto, Nos. 3 and 4, ditto—400*l.*

Three freehold cottages, Nos. 1 to 3, Stockwell Cottages, Stockwell-green, Surrey—310*l.*

Three ditto—[illegible]*l.* Two ditto, Nos. 7 and 8—200*l.*

Two ditto, Nos. 9 and 10—210*l.*

Two ditto, Nos. 11 and 12—200*l.*

A freehold house, No. 1, Stockwell-green—210*l.*

A ditto, No. 2—260*l.* A ditto, No. 3—220*l.* A ditto, No. 4—210*l.*

By Messrs. CAFE, SON, and REID, at Garraway's.

The lease of a recently-built stabling and dwelling, situate in Grosvenor-mews, Lower Grosvenor-street, of the annual value of 212*l.* per annum; held of the Marquis of Westminster for a term of 37 years at a ground-rent of 68*l.* per annum—975*l.*

A residence, No. 6, William-street, Regent's Park; let at 42*l.* per annum; held for 98½ years from Lady-day, 1812, at a ground-rent of 6*l.* per annum—170*l.*

A residence No. 61, York-terrace, Regent's Park, of the presumed annual value of 80*l.* held for 96 years from June, 1825, at a rent of 51*l.* per annum—140*l.*

An improved rental of 50*l.* per annum, secured on the Sadlers' Arms public-house, No. 14, Swallow-street, Regent-street; the premises are held for a term of 98 years from July 5, 1821; let for the whole term at 100*l.* per annum and 3*l.* land tax—805*l.*

A house, No. 39, Great Pulteney-street, St. James's; let at 80*l.* per annum; held for 21 years from Christmas, 1830, at 65*l.* per annum—50*l.*

Three leasehold houses, being the Angel and Crown public-house, No. 11, Haddon-street; let for 16 years, from the 27th of October, 1842, at 60*l.* per annum; No. 12, let at 60*l.* per annum; and No. 11, Haddon-court, let at 40*l.* per annum; held for 21 years, from Christmas, 1837, at 125*l.* per annum—130*l.*

By Mr. V. J. COLLIER, at the Mart.

A freehold estate, called the Walnut Tree Farm, situate in the parish of Langleys, Kent; comprising a residence, five workmen's tenements, and 26a. 3r. 3p. of arable and meadow land, hop garden, and fruit ground; land tax, 2*l.* 6s.—2,940*l.*

A freehold residence, situate on the north side of Tollington Park, Hornsey-road, with coach-house, stable, and large garden—940*l.*

By Mr. BARNES.

A plot of freehold land situate on the east side of Stockwell-street, Old Kent-road, frontage 46 feet, depth 65 feet on the north side, 76 feet on the south side, and 74 feet wide on the east side—70*l.*

A ditto, on south-east side of Stockwell-street, 28 feet frontage, and depth of 63 feet—40*l.*

A ditto, forming the south-east corner—85*l.*

Twelve plots of freehold building land, with frontages to the Commercial-road, Bird-in-Bush-road, and Moor-terrace, in the Old Kent-road, sold as follows, viz.:—

A plot of ground, frontage 32 feet, depth, 100 feet—105*l.*

A ditto, ditto, depth 98 feet—90*l.*

A ditto, frontage 32 feet, depth 60 feet—60*l.*

A corner plot with two frontages of 60 feet and 27 feet—80*l.*

A ditto, with frontage to Moor-terrace of 32 feet, and a medium depth of 180 feet—90*l.*

A ditto, fronting Bird-in-Bush-road, 105 feet deep and 40 feet wide—155*l.*

A ditto, adjoining, frontage 40 feet, depth 107 feet—155*l.*

A ditto, frontage 44 feet, depth 109 feet—135*l.*

A ditto, frontage 53 feet, depth 140 feet—190*l.*

A ditto, frontage 40 feet, depth 140 feet—155*l.*

A ditto, ditto—165*l.*

A ditto, being plot nearest Kent-road, frontage 40 feet, depth 142 feet—180*l.*

By Mr. W. PHILLIPS, at Garraway's.

A freehold house and shop, No. 48, St. Martin's-lane, let at 100*l.* per annum—1,610*l.*

By Messrs. VENTOM and HUGHES, at the Mart.

A freehold house and shop, No. 12, Wittam-buildings, Old-street-road, let at 40*l.* per annum—215*l.*

A contingent reversionary interest in 1,000*l.* sterling, receivable on the demise of a lady aged 54, provided a gentleman aged 20 in March last should survive her.—265*l.*

RENTALS IN SUFFOLK.

A correspondent of the *Times* has published the following curious particulars relating to the rentals of estates in the division of Cosford, in the county of Suffolk. It will be useful to those engaged in the sale or purchase of land.

"I subjoin a table of the rent of the parishes in the Cosford division for 1692, 1815, and 1843. The rental of 1692 is assumed on the amount of land-tax assessed, which, having been made at 4s. in the pound on the then rental, is probably as near an approximation to the truth as the property-tax valuation of 1843.

COSFORD DIVISION, SUFFOLK.

Parish.	Quota of Land Tax, 1692.*			Rent in		
				1692.	1815.†	1843.
	£	s.	d.	£	£	£
Aldham	120	4	0	601	1953	2,232
Bildeston	165	16	6	829	1840	4,153
Brettenham	113	13	5	568	1666	2,559
Chilsworth......	94	4	0	471	1319	1,878
Elmset	160	12	0	803	2489	3,223
Hadleigh	473	5	6	2366	7605	12,911
Hadleigh Hamlet	41	0	0	205		702
Hitcham........	275	15	2	1378	4126	6,367
Kersey	129	12	2	648	2339	3,300
Kettlebaston....	89	16	0	449	1144	1,522
Layham........	238	12	0	1173	3722	5,046
Lindsey	108	16	0	544	1334	1,869
Naughton	52	4	0	261	854	1,067
Nedging	58	12	0	293	867	1,108
Semer	92	0	0	460	1718	2,420
Thorpe	195	16	0	979	2176	3,282
Wattisham	88	0	0	440	1381	1,978
Whatfield	104	8	0	522	1932	2,370

"The above illustrations of the progress of rent in the Cosford division of Suffolk will establish one of two facts—either that the agricultural improvement of the district has been very considerable since 1815, or that the condition of the farmers and labourers has very much deteriorated, since the rent has so greatly increased, whilst the average price of wheat has fallen from 101s. 7d. the quarter, as in the six years ending 1814, to 63s. 2d. the quarter on the average of the six years ending 1842."

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bennett, J. calico printer, third, 6⅞d. Stanway, Manchester.—*Bell*, R. P. fruiterer, third and final, 0¾d. Baker, Newcastle.—*Clark*, T. F. draper, first, 4s. 10¼d. Hobson, Manchester.—*Cleverly*, G. builder, second, 7s. 6d. Acraman, Bristol.—*Cooper*, J. wheelwright, first, 3s. 6d. Whitmore, London.—*Dean*, J. cotton spinner, second and final, 3s. 1d. Hobson, Manchester.—*Fletcher*, T. grocer, first, 3s 9d. Bittleston, Birmingham.—*Fletcher*, W. colourman, first, 4s. 6d. to new proofs. Christie, Birmingham.—*Glover*, E. jun ironmonger, 1s. to new proofs. Christie, Birmingham.—*Hayward*, E. innkeeper, first, 9d. Whitmore, London.—*Hebblewhite*, T. wine merchant, first, 9d. Cazenove, Liverpool.—*Higginson*, T. pawnbroker, first, 2s. 6d. Cazenove, Liverpool.—*Jefferson*, R. victualler, first and final, 1s. 2d. and 3-5ths of a penny. Baker, Newcastle.—*Lamb*, J. R. calico printer, first and final, 1s. 6¼d. Fraser, Manchester.—*Meredith*, S. linen draper, first, 3s. 2¼d. Pott, Manchester.—*Nash* and *Gardiner*, drapers joint, 7s. 4d.; sep. Nash, 1s. 8d. Whitmore, London.—*Parsonage*, I. paper hanger, first, 3s. 4d. Bittleston, Birmingham.—*Pott*, W. M. grocer, second and final, 3d. and 7-10ths of a penny. Baker, Newcastle.—*Southern*, J. grocer, first, 8s. 6d. Bittleston, Birmingham.—*Timmis*, W. draper, first, 1s. Bittleston, Birmingham.—*Thompson*, T. H. merchant, second, 2¼d. Cazenove, Liverpool.—*Wilkinson*, G. and J. curriers, first, 1s. 9d. to new proofs. Baker, Newcastle.—*Wood*, J. woollen manufacturer, first, 1s. 2¼. Hobson, Manchester.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Oct. 18.

Blackburn, T. grocer, Bentham, Yorkshire, Oct. 11. Trusts. J. Lambert, corn dealer, Bentham, and J. Healds, gent. Lancaster. Sol. Willan, Upper Bentham.—*Coleman*, S. L. draper, Edgeware, Sept. 10. Trusts. J. Bradbury, warehouseman, Aldermanbury, and W. Carter, warehouseman, Cheapside. Sols. Hardwick and Davidson, Weavers'-hall.—*Codner*, W. and *Codner*, W. S. linen drapers, Edgeware-road, Aug. 27. Trust. J. Bradbury, warehouseman, Aldermanbury. Sols. Hardwick and Davidson, Weavers'-hall.—*Ragsdale*, J. draper and hosier, High Holborn, Sept. 24. Trust. F. Nevill, hosier, Carey-lane. Sol. Ashurst, Cheapside.—*Stone*, E. grocer and tea dealer, Dockhead, Sept. 27. Trusts. E. Nash, wholesale grocer, King William-st. and F. Hicks, wholesale grocer, Mincing-lane. Sol. Sturmy, Wellington-st.

Gazette, Oct. 22.

Agate, R. plumber, Crouch-end, Hornsey, Sept. 19. Trusts. W. Robertson, glass and lead merchant, Old Swan-wharf, Upper Thames-st. and J. Tolhurst, baker, Lower Marsh, Lambeth. Sol. Burn, Great Carter-lane.—*Evans*, G. S. cheesemonger, Lambeth-walk, Oct. 17. Trusts. W. Surridge, wholesale cheesemonger, West Smithfield, and G. Webb, cheesemonger, Old Kent-road. Sol. Sturmy, Wellington-st.

* Property-tax return, 316, 1844.
† Parliamentary return, 348, 1831.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Oct. 18.

CHEQUER, WILLIAM, saddler and harness maker, 248, Blackfriars-road, Oct. 29, at half-past eleven, Nov. 30, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Nind, Clement's-lane, sol. Date of fiat, Oct. 17. W. G. Creason, saddler, Earl's-court, Leicester-square, pet. cr.

FOOTNER, ROBERT, cabinet maker and upholsterer, Lymington, Southampton, Oct. 30, at two, Dec. 4, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Pownall and Cross, Staples-inn, sols. Date of fiat, Oct. 16. J., T. and R. T. Newton, timber merchants, Paul-st. Finsbury, pet. crs.

HILL, WILLIAM, builder, Powis-st. Woolwich, Oct. 29, at half-past one, Dec. 4, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Hughes, Chapel-court, Bedford-row, sol. Date of fiat, Oct. 11. J. W. Newall, ironmonger, Woolwich, pet. cr.

PERKINS, BRISEIS, and WOOLLEY, SARAH, drapers and milliners, Stamford, Oct. 25, at one, Dec. 5, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Reed and Shaw, Friday-st. sols. Date of fiat, Oct. 9. J. P. Foster and R. Porter, warehousemen, Wood-st. pet. crs.

RICHARDSON, WILLIAM, glass manufacturer, painter, and glazier, Newcastle-upon-Tyne, Oct. 31, at two, Dec. 9, at one, Newcastle, Com. Ellison; Baker, off. ass.; Shaw and Newstead, Ely-place, and Walters, Newcastle, sols. Date of fiat, Oct. 7. R. Boyd, banker, Newcastle-upon-Tyne, pet. cr.

ROGERS, CHARLES, saddler and harness maker, 43, Bishopsgate-st. Within, Oct. 29, at two, Nov. 29, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Morris and Co. Moorgate-st. Chambers, sols. Date of fiat, Oct. 16. J. Boston, Bishopsgate-st. saddler, pet. cr.

SMITH, THOMAS the elder, wool and rugging manufacturer, Mint-st. Bermondsey. Oct. 25, at half-past twelve, Nov. 28, at eleven, Basinghall-st. Com. Williams; Graham, off. ass.; Burbidge, Hatton-garden, sol. Date of fiat, Oct. 15. J. Barwick, rag merchant, Denmark-st. St. George's-in-the-East, pet. cr.

Gazette, Oct. 22.

ASHMAN, JAMES, innkeeper, St. Michael's, Bath, Nov. 11, at twelve, Dec. 5, at eleven, Bristol, Com. Stephen; Kynaston, off. ass.; Shattock, Bristol, sol. Date of fiat, Oct. 10. Bankrupt's own petition.

BROOME, WILLIAM, and HARDY, WILLIAM, drapers and copartners, Oxford-st. Nov. 6, at half-past eleven, Dec. 3, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Reed and Shaw, Friday-st. sols. Date of fiat, Oct. 15. H. Hooton, C. White, J. Lupton, and E. Burdett, warehousemen, Bread-st. pet. crs.

BROOME, WILLIAM, linen draper, 158, Oxford-st. Nov. 6, at half-past eleven, Dec. 3, at eleven, Basinghall st. Com. Holroyd, Groom, off. ass. Messrs. Sole, Aldermanbury, sols. Date of fiat, Oct. 14. A. Luck, J. Bouche, and T. Coath, warehousemen, Bread-st. pet. crs.

COOLEY, MARY, tailor and draper, Spalding. Nov. 2 and 29, at one, Birmingham; Valpy, off. ass.; Maples, Spalding, and Simcox, Brothers, Birmingham, sols. Date of fiat, Oct. 11. D. Vivash, pawnbroker, Spalding, pet. cr.

FLAHERTY, THOMAS, tailor and draper, Bath, Nov. 4 and Dec. 3, at eleven, Bristol, Com. Stevenson; Miller, off. ass.; Whittington and Co. Bristol, sols. Date of fiat, Oct. 11. C. Wilkins, cloth manufacturer, Tiverton, pet. cr.

TILL, CHARLES, linen draper, Minster-street, Salisbury, and Andover, Oct. 30, at one, Dec. 5, at half-past twelve, Basinghall-st. Com. Williams; Turquand, off. ass.; Jones, Size-lane, sol. Date of fiat, Oct. 11. J. Clark, clothes and stay manufacturer, Noble-st. pet. cr.

WESTRUP, WALTER, and COOKSEDGE, THOMAS MARTIN, millers and ship biscuit bakers, New Crane, Shadwell, and Northfleet, Kent, Nov. 6, at two, Dec. 11, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Shearman and Slater, Great Tower-st. sols. Date of fiat, Oct. 21. A. Robinson, flour factor, Plaistow, pet. cr.

WILLET, JOSEPH, leather cutter and leather seller, Coggeshall, Essex, Oct. 30, at half-past eleven, Dec. 5, at twelve, Basinghall-st. Com. Williams; Turquand, off. ass.; Lott, Bow-lane, sol. Date of fiat, Oct. 15. J. and W. Hackblock, J. Clark, and J. Meek, tanners, Willow-walk, Bermondsey, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Oct. 15.

Allan, D. and *Griere*, J. lithographers, Nicholas-lane and Borough-rd. Sept. 28.—*Bailey*, H. *Waddington*, H. and *Bailey*, N. coal merchants, Biddulph, Staffordshire, Oct. 11. Debts paid by Waddington.—*Bird*, T. and *Bouk*, J. drapers, Commercial-rd. East, Oct. 11.—*Blomfield*, W. and *Snelling*, W. upholsterers, Brighton, Oct. 12.—Debts paid by Blomfield.—*Cann*, A. and *Sanders*, J. attorneys, Nottingham, Sept. 30.—*Chrystie*, W. (deceased), *Porteus*, J. and *Carson*, J. merchants, Kingston, Jamaica, so far as regards Chrystie, Dec. 30.—*Crowther*, S. R. and *Smith*, J. ironfounders, Newcastle-upon-Tyne, Oct. 9.—*Darton*, J. M. and *Clark*, S. publishers, Holborn-hill, Oct. 14.—*Dixon*, G. and *Wooler*, J. mercers, Stockton-on-Tees and elsewhere, Oct. 9. Debts paid by Dixon.—*Greenfield*, H. and *Buswell*, J. chair and cabinet makers, Broadwall, Blackfriars, Aug. 14, 1843.—*Key*, T. *Dell*, E. and *Hale*, W. patent metallic powder case manufacturers, Woolwich, Oct. 9.—*Leach*, M. *Lee*, G. and *Amphlett*, W. machine makers, Manchester, Oct. 11.—*Mazure*, L. J. and *Bertin*, F. gold cutters, Clerkenwell-close, Oct. 11. Debts by Mazure.—*Mellin*, H. F. and *Miller*, J. W. soda water manufacturers, Well-st. Upper East Smithfield, Oct. 7.—*Naylor*, A. *Day*, G. *Hurst*, M. *Milnes*, M. *Wharton*, J. *Newsome*, J. *Armitage*, B. *Crossland*, W. *Lister*, G. *Fox*, M. *Fozard*, T. *Wharton*, J. and C. and *Fozard*, J. scribbling and fulling millers, Batley Carr, so far as regards J. Fozard and Abraham Naylor, Oct. 7. Debts by the remaining partners.—*Sandle*, W. and J. P. farmers, North Ockendon and South Ockendon, Sept. 28.—*Scott*, S. and *Watts*, G. tailors, Grange-rd. Bermondsey, Oct. 12. Debts paid by Watts.—*Taylor*, W. and *Millichamp*, B. manufacturers of patent axle pullies, Birmingham, Oct. 7.—*Walker*, W. and *Whitehurst*, W. coach builders, Oxford-st. Sept. 28.—*Bower*, J. and B. Botolph-lane, Lower Thames-st. Sept. 1.—*Etheridge*, E. W. and J. D. wine merchants and maltsters, Stoke-ferry, Norfolk, Oct. 11.—*Evans*, I. and *Foden*, G. brewers, Chorlton-upon-Medlock, Oct. 15.—*Harvey*, G. L.

[illegible] Fennings-wharf, Too-[illegible] Oct. 15.—Kay, D. and Wilson, S. printers and [illegible]-plate workers, Hull, Oct. 15.—Knight, S. and Woodward, A. printers and cigar dealers, Birmingham, Oct. [illegible] Debts paid by Woodward.—*Moore*, W. T. and *Sawyer*, [illegible] butchers, John's-row, St. Luke's, Oct. 15.—*Morton*, J. and *Wood*, B. oil merchants, Manchester, Sept. 18. Debts paid by Wood.—*Phillips*, C. and W. and *Hayward*, J. St. J. brass founders, Bristol, so far as regards Hayward, Oct. 15. Debts paid by the remaining partners.—*Plant*, S. and R. A merchants and commission agents, Oct. 15. Debts paid by R. A. Plant.—*Robinson*, M. A. and *Arundell*, F. straw bonnet dealers, Bristol, Oct. 16.—*Shirley*, T. and C. farmers, Chart, Kent, Oct. 11. Debts paid by C. Shirley.—*Sykes*, A. and J. pawnbrokers, Manchester, Oct. 10, 1842.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Oct. 15.

Ashbey, F. miller, Knockholt, Nov. 11, at half-past one.—*Cole*, G. out of business, Hampton-court, Oct. 30, at eleven.—*Davey*, W. out of business, Maidsmorton, Oct. 30, at half-past eleven.—*Jones*, T. velvet maker, Peter-st Bethnal-green, Nov. 11, at one.—*Levy*, J. clothes salesman, Smithfield-bars, Nov. 11, at two.—*Smith*, J schoolmaster, Greenwich, Oct. 30, at eleven.—*Upton*, G. tailor, Godalming, Surrey, Oct. 30, at eleven.

Gazette, Oct. 18.

Alzard, G. C. gent. Debtors' prison, Nov. 11, at twelve —*Bailey*, J. accountant, Baldwin's-court, Cloak lane, Nov. 18, at half-past eleven.—*Ball*, W. tailor, Horsemonger-lane gaol, Nov. 11, at half-past eleven.—*Barnes*, E. baker and ginger beer manufacturer, Springfield, Nov. 18, at eleven.—*Blythe*, T. R. Chandos-st. Covent-garden.- Nov. 18, at half-past one.--*Chick*, S. oilman, Minories, Nov 11, at half-past twelve.—*Chifney*, W. sen. out of business, Newmarket, Nov 11, at eleven.—*Knight*, R. farmer, Byfleet, Nov. 18, at twelve.—*Moran*, W. beerhouse keeper, Wapping-wall, Nov 18, at half-past twelve.—*Phillips*, W. A. pewterer, Fann-st Goswell-st. Nov. 11, at half-past eleven.—*Schram*, E. C schoolmistress, Queen's-road, Bayswater, Nov. 11, at eleven.

Gazette, Oct. 15—*Country.*

Alman, L. musical instrument maker, Bristol, Nov. 8, at eleven, Bristol.—*Bottomley*, J. plasterer, Kirkburton, Nov. 1, at eleven, Leeds.—*Brand*, D. P. saddler, Walcot, Nov. 7, at twelve, Birmingham.—*Coleman*, J. jun. ribbon weaver Coventry, Nov. 7, at eleven, Birmingham.—*Foster*, J alias *Cook*, cloth finisher, Morley, Nov. 1, at eleven, Leeds -*Littlewood*, J. butcher, Sheffield, Nov. 1, at eleven, Leeds —*Monk*, J. farmer, Bisham, Oct. 25, at one, Liverpool -*Price*, S. grocer and flour dealer, Ruthin, Nov. 1, at one, Liverpool.—*Quinn*, J. sen. copper plate printer, Birmingham, at one, Oct 24, Birmingham —*Wylde*, J. J. milliner, High Harrowgate, and Bruton-st. Berkeley-square, Nov. 1, at eleven, Leeds.

Country.—Gazette, Oct. 18.

Brook, J. weaver, Kirkheaton, Nov. 8, at eleven, Leeds. -*Crowther*, J. cloth dresser, Huddersfield, Nov. 8, at eleven, Leeds.—*Field*, J. publican, Braithwell, Nov. 8, at eleven, Leeds.—*Glen*, R. confectioner, Althorpe, Nov. 8, at eleven, Leeds.—*Green*, E. beer retailer, Huddersfield, Nov. 8, at eleven, Leeds.—*Hall*, S. lace maker, New Senton, Nov. 13, at half-past ten, Birmingham. — *Horrobin*, W. provision dealer, Manchester, Nov. 4, at twelve, Manchester --*Linney*, J. S. cordwainer, Leeds, Nov. 8, at eleven, Leeds.—*Margetts*, B. baker, Birmingham, Nov. 4, at half-past ten, Birmingham.—*Mortimer*, J. cloth manufacturer, West Ardsley, Nov. 8, at eleven, Leeds.—*Richardson*, C. H. dyer, York, Nov. 8, at eleven, Leeds.—*Russell*, J. F schoolmaster, Bath, Nov. 7, at twelve, Bristol.—*Thomas*, W. bookkeeper, Birmingham, Oct. 24, at one, Birmingham.—*Vernon*, G. farmer, Newbold Verdon, Nov. 14, at one, Birmingham.—*Worsnop*, R. engineer, Halifax, Nov. 8, at eleven, Leeds.

LIST OF SUBSCRIBERS

To the Law Times, Received since the Publication of the Supplementary List on the 18th May last.

London

Ambrose, Thos. 89, Chancery-lane.
Atkinson, J. B. esq. barrister-at-law, 3, New-sq. Lincoln's-inn.
Bedford, H. 4, G[illegible]'s-inn-square.
Bennett, George, 3, Lower Ashby-street, Northampton-square.
Beresford, Wm. esq. barrister-at-law, 4, Brick-court, Temple.
Clarke, Edward, 5, Bedford-row, Holborn.
Dendy, Arthur H. 16, Montague-street, Russell-square.
Fowler, Edwd. 66, Hermitage-place, St. John's-wood.
Gell, F. T. Carlton Chambers, Regent-street.
Glyn, Clayton, esq. barrister-at-law, 5, Hare-court, Temple.
Hammond, Freelove, esq. barrister-at-law, 29, Norfolk-street.
Jewitt, J. W. 14, Southampton-street, Bloomsbury.
Jones, Messrs. 10, Brunswick-square.
Lyde, William, 32, Bucklersbury.
Oliver and Lindsell, 2, Raymond-buildings.
Pa[illegible]ster, F. E. 13, South-sq. Gray's-inn.
Pollard, Jno. D. 2, Bowling-green-lane, King-st. Borough.
Pullen, Jno. 21, Bedford-street, Covent-garden.
Sadgrove, Thos. 52, Mark-lane.
Spencer, H. 69, Westmorland-pl. City-road.
Taylor, J. M. 2, Clement's-lane.
[illegible]head, Jno. 17, Howland-street, Fitzroy-[illegible]re.
Wansey, George, 3, Lothbury.
Ward, Rd. Danvers, 77, Chancery-lane.
Whalley, Edwd. esq. barrister-at-law, 14, Gray's-inn-square.
Williams, Lewis W. 27, Bucklersbury.
Wills, Jno. (Proctor) 5, Great Carter-lane, Doctors' Commons.

Aberayron, Cardiganshire.
Parry, J.
Alnwick.
Foster, William.
Wilson, John.
Ashton-under-Lyne.
Higginbottom, Joseph.
Higginbottom and Brookes.
Banbury.
Moore, G.
Bath.
Harris, Edgar M.
Belvoir Castle, Belfast, Ireland.
Bateson, Samuel.
Birmingham.
Bray, Solomon.
Bishop Wearmouth.
Thompson, Thos.
Blackburn.
Bell, James.
Bolton.
Gaskell and Son.
Boston.
White and Calthrop.
Bradford, Yorkshire.
Barrett, Edw. A.
Braithwaite Bourness.
Gardner, G. H.
Brentford.
Clarke, George.
Bridgend, Glamorganshire.
Popkin, Thos.
Brighton.
Sharood, Chas.
Bury St. Edmunds.
Cambridge, J.
Carlisle.
Mounsey, G. G.
Charmouth.
Uthoff, Henry.
Chatham.
Stevens, M. S.
Chippenham.
Phillips, Jacob.
Chipping Sodbury.
Trenfield, John.
Clare.
Sams, W. H.
Darlastone, near Wednesbury.
Adams, John F.
Dartmouth.
Smith, John Brown.
Doncaster.
Collinson, John.
Glastonbury.
James, R.
Gloucester.
Cooke, Philip Boulter.
Hulls, John.
Halsted.
Hustler, Chas. Devereux.
Haslingden.
Woodcock, Thos.
Hastings.
Scriven and Young.
Haverhill.
Jackson, Henry Wyld.
Hereford.
Pritchard, Edward.
Holebrook House, near Wincanton.
Wyndham, J. Eveleigh, esq. J. P.
Honiton.
Flood, C. S.
Horsham.
Stedman, William.
Humshaugh, near Hexham.
Monck, Chas. Att.
Hythe.
Payn, A. F.
Ipswich.
Jackaman, S. B.
Kidderminster.
Brinton, William.
Kirkham.
Moore, Richard.
Kirton Lindsay.
Holgate, C. H.
Leeds.
Higham, John.
Leominster.
Lloyd, Edwin.
Lincoln.
Bromehead, E. A.
Litcham, near Swaffham.
King, Henry.
Little Hampton.
French, Robert.
Liverpool.
Wareing, William.
Llanelly.
Brown, Frederick J.
Loughborough.
Cradock and Woolley.
Maidenhead.
Smith, James.
Malton, Yorkshire.
Smithson and Jackson.
Manchester.
Atkins, J. B.
Sowler, Thos. (bookseller).
Vickers, J. B.
Wood, C. H.
Manningtree, Essex.
Ambrose, Jno. T.
Newcastle on-Tyne.
Davidson, Thos.
Newent.
Cannock, Jos.
Northallerton.
Shepherd, Samuel.
Walton, R. B.
Nottingham.
Cowley, G. M.
Oxford.
Cripps, Francis.
Davenport, J. M.
Penrith.
Maychell, William.
Plymouth.
Rooker, A.
Poole.
Dickinson, H. W.
Poulton-in-the-Fylde.
Liddell, A.
Preston.
Cartwright, S.
Reading.
Wedding and Slocombe.
Retford, East.
Beardsall, Thomas.
Brown, Edward Connell.
Rochdale.
Ashworth, George.
Dearden and Molesworth.
Henton, W.
Ross.
Jackson, Richard.
Rotherham.
Russell, Lancelot.
Rugeley.
Armishaw, Jno.
Smith, John.
Ryde, Isle of Wight.
Hearn, Jno. Henry.
Johnson, John.
St. Ives, Hunts.
Bury, John.
Selby.
Pearson, Matthew.
Settle.
Heath, Joseph.
Sheffield.
Smith and Wightman.
Wilson, James.
Southampton.
Butt, George.
Southwell, Notts.
Stenton, Henry Cawdron.
Staindrop, near Darlington.
Bourne, R. U.
Stourbridge.
Collis, Wm. Blow.
Swaffham.
Seppings and Jones.
Thetford.
Faux Gregory.
Thorne.
Kenyon, George.
Tonbridge Wells.
Palmer, Thos. Ellis.
Torrington, Great.
Doe, George, jun.
Price, W. E.
Truro, Cornwall.
Stokes, Henry Sewell.
Wakefield.
Whetham, Jno.
Wareham.
Filliter, C. and F.
Wereham, Stokeferry, Norfolk.
Mason, Henry, B. B.
Wigan.
Taylor, Thomas Frederick.
Wiveliscombe.
Waldron, J.
Woodbridge.
Crabbe, T.
Worcester.
Hyde and Tymbs.
Yarmouth, Great.
Reynolds and Palmer.
Yeovil.
Hancock, George.
Watts, H. M.

THE REPORTS.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Thursday, Oct. 31.
Ex parte NORTON, *re* WOOD.
Equitable invalidity of fiat.

A fiat annulled on the ground of equitable invalidity, it having been issued by the petitioning creditor in concert with one of the bankrupts, for purposes foreign to the proper purposes of a fiat.

The petition in this case was presented by William Norton, one of the bankrupts, for the purpose of annulling a fiat, issued on the 1st of July, 1844, against Jacob Wood and himself, who had carried on business in copartnership as fancy cloth manufacturers. The grounds upon which it was sought to set aside the fiat were, legal invalidity, on account of the absence of a good petitioning creditor's debt, and equitable invalidity, on account of the alleged fraudulent concert of the bankrupt Wood with the petitioning creditor, Jane Hampshire, in issuing the fiat, for the purpose of getting rid of a deed of arrangement between himself and partner, and compromise with the creditors of the firm, dated the 30th of January, 1844. The original petition in the case was heard during the vacation, but the question of the equitable invalidity not being properly raised upon it, the Chief Judge directed the case to stand over, with liberty for the petitioner to amend his petition, or present a supple-

mental petition. The petitioner accordingly filed a supplemental petition, which now came on to be heard with the original petition. The remainder of the case will sufficiently appear from the judgment.

Swanston and *Bennet*, for the petitioner, cited *Harding* v. *Glover* (18 Ves. 281); *Attwood* v. *Banks* (2 Bea. 192); *Smith* v. *Jeyes* (4 Bea. 503); and *Ex parte Browne, re Browne* (1 Rose, 151).

Kenyon Parker and *Bacon*, for the bankrupt Wood and the petitioning creditor.

Roupell, for the creditors' assignee.

The CHIEF JUDGE.—The first question in this case is, whether the fiat issued by Mrs. Hampshire is the fiat of Mr. Wood. I put it as the first question for convenience only. Now, the only allegation upon the first petition was, that the fiat was issued for the purpose of injuring the petitioner; and I thought, and still think, that the passage in the petition in which this allegation is contained might well have passed unnoticed. The defence of Mr. Wood and Mrs. Hampshire has been one: Mrs. Hampshire did not deny concert, but she denied collusion, or any intention of injuring the petitioner, and expressed her belief that the fiat was for the benefit of the creditors. I considered that the question, whether this fiat was in fact Mr. Wood's fiat, was not properly in issue; but I saw sufficient on the whole evidence to give the petitioner an opportunity to bring that forward. The present petition, which regularly raises the point, was presented in September last, and contains this allegation—"That the issuing of the fiat against the said Jacob Wood and your petitioner, as such co-partners, was fraudulently concerted by and between the said J. Wood and the petitioning creditor, the said Jane Hampshire, and that the same was issued at the instance of and by the procurement of the said J. Wood, for the purpose of defeating the said indenture of assignment, of the 30th day of January, 1844." Here, then, was an opportunity afforded of meeting and controverting this statement. Not one syllable in addition has been put forward by Mr. Wood or Mrs. Hampshire. Accordingly, by all the rules of evidence, it is my unavoidable duty to decide that the fiat was concerted for the purpose of defeating the indenture of assignment. Were I not to rely upon this, the allegations on one side and the absence of denial on the other, and to give the petitioner the benefit of that state of the record, I should, when I look at the general effect of the whole evidence together, be obliged to come to the same conclusion. I am of opinion then, on the whole evidence, that this fiat was not issued by Mrs. Hampshire with a view to the benefit of the creditors, or to obtain payment of her debt, but for the purposes of Wood, and that the object of Wood was the destruction of the indenture of assignment. The result is, that the fiat is that of Wood, and that Mrs. Hampshire was merely his instrument. Could Wood then be the author of such a fiat? Wood and Norton had been in partnership, and disputes had arisen between them, which rendered a continuance of the partnership impossible. This led to the deed of January, 1844, which was an act of bankruptcy, of which any creditor, not bound by participation, might avail himself. The trustees, however, correctly or otherwise, so conducted the affairs as to create dissatisfaction in the mind of Wood, and accordingly Wood wished that the affairs should be administered under a bankruptcy. It is clearly established that Wood made various endeavours for this purpose, and that they were successful with Mrs. Hampshire, and that he procured her to issue the fiat. In my opinion it has not been issued for the proper purposes of a fiat, and must therefore be annulled at the cost of Mr. Wood, whose fiat it is. It is said that Norton has so conducted himself as to give validity to the fiat. The matter being under the consideration of the commissioner, I cannot hold that the endeavour to procure an assignee favourable to the views of Norton implied an acquiescence in the fiat, or an intention of abandoning the petition. I annul this fiat solely on the ground of equitable invalidity, and that renders the question of the sufficiency of the petitioning creditor's debt immaterial.

Let the fiat be annulled at the cost of Wood in the usual way; but the costs of preparing, engrossing, presenting, and filing the first petition, and the costs of affidavits, so far as relates to the question whether Mrs. Hampshire was, at the time of issuing the fiat, a creditor of the two bankrupts, not to be allowed. Reserve the question whether Jane Hampshire shall be ordered to pay any costs. The petitioner to pay the assignees' costs, and have them over again against Wood, not exceeding 4l.

COURT OF BANKRUPTCY.

Friday, Oct. 25.
(Before Sir C. WILLIAMS.)
Re C. C. FOOTE, an Attorney.

The insolvent in this case applied for his final order.

Sturgeon, who opposed for the creditors, craved a further adjournment, on the ground that a person named Harvey had, in the insolvent's first account, been placed as a debtor to the estate in the sum of 1,800l., but was now, in his amended schedule, put down a creditor in 200l., making exactly 1,000l. of difference. That alone, he thought, justified the creditors in asking some further time to investigate the causes for such an extraordinary proceeding.

Sir C. WILLIAMS.—It was a very proper course on their part. The motives must be very dubious, indeed, which could induce a man to act as the insolvent had in this case. It was disgraceful, to say the least of it, that he should come to that court and affirm upon oath that the first account was a correct one, and yet in a short time after be as ready to make oath that the assets, as amended, were the real ones. What was the insolvent—an attorney's clerk?

Sturgeon.—Sometimes an attorney himself; then managing clerk, he believed, to this person, Harvey.

Sir C. WILLIAMS found his debts stated at 6,500l., and his assets at 1,250l, which would not, he supposed, fetch 1,250 shillings.

The solicitor to the creditors said that in the amended schedule, the insolvent's debts were above 13,000l.

Sir C. WILLIAMS.—It is most disgraceful, he repeated, that the insolvent should try to get off, in the first place by an artifice, and then make his schedule up to thousands instead of hundreds, as in the first instance. He would grant the creditors full time to make an ample investigation, and the more such a system was exposed the better.

The further hearing was then adjourned for a month.

Wednesday, October 30.
Re DOWNEY.
Petition for protection—Insolvent Court.

The insolvent had been discharged by the Insolvent Court about a year and a half since, on condition of assigning 30l. a year to the provisional assignee for the benefit of his creditors out of his salary as a clerk in Sewers' Office, and his assignment had been made a rule of court. He never, however, made any payment according to the rule, and a rule *nisi* was moved for an attachment for contempt of court, which was made absolute without any cause shewn. Before he could be taken, he petitioned the Court of Bankruptcy; the sum due to the provisional assignee being inserted in his schedule, he now appeared for the first examination.

Woodroffe, for the creditors, represented these circumstances to the Court.

Mr. Commissioner EVANS was decidedly of opinion that this was not a case contemplated by the Act. The Insolvent Court was in possession of the case, and it could not be expected that its jurisdiction was to be limited by this Court. Something was required to be done to prevent these continual trials by persons not entitled to it, to obtain the benefit of an Act intended only for the unfortunate.

[This case may be mentioned as an instance of the confused way in which business is managed in these Courts. *Woodroffe* having intimated, in the course of his remarks, that an officer was ready with a warrant to convey the insolvent to Newgate, the latter took advantage of a moment when the commissioner and counsel were interchanging observations, to draw back into the crowd surrounding him, and disappeared from the court.

A few weeks since, a prisoner, brought up in custody, withdrew in like manner, on being remanded, and a disturbance ensued in the court-yard, which it required the aid of the police to quell.

CENTRAL CRIMINAL COURT.

OCTOBER SESSIONS.
Tuesday, October 22.
REG. v. RILEY.
Larceny.

The prosecutor having been decoyed into a tavern by the prisoner, was induced to lend him money for the purpose of paying certain losses which he appeared to be incurring in a game at cards with one whom the jury found to be a confederate. The prisoner stated that he was about to receive other funds, and he would then repay the amount. The jury found that there was a design, ab initio, to defraud the prosecutor. Held, that the offence did not amount to larceny, and the conviction was quashed.

The prisoner was indicted for larceny, and the facts of the case, as they appeared in evidence, were these. The prosecutor having arrived from the country with a large sum of money in his possession, was decoyed into a public-house by the prisoner. A third person having joined them, cards were introduced, and the prisoner and the stranger commenced playing; the former was unsuccessful, and having lost all the money he appeared to be possessed of, he borrowed some from the prosecutor, stating that he was going to receive a large amount shortly, and he would then repay it. The two players, however, soon afterwards decamped, and the prosecutor found that he had been their dupe.

Wilkins, for the prisoner, submitted, that on this

state of facts, an indictment for larceny could not be sustained. To support such a charge, the property must have been obtained against the will, or contrary to the intent of the owner; and admitting the third party to have been a confederate, still the prosecutor parted with his money voluntarily. If the party were indited at all, it should be for a conspiracy.

The Common Serjeant.—Does not the question resolve into this? Was there any design on the part of the prisoner, *ab initio*, by fraud and deception, to obtain this man's money? The latter could not be said to part with it voluntarily, if he did so under an erroneous impression, which the deceitful acts of the prisoner had caused, and here there is evidence to go to the jury that the coins which the prisoner pretended to lose were mere counters.

Wilkins.—An indictment for larceny cannot be supported if the property as well as the possession of the thing alleged to be stolen was parted with by the owner. In that case a charge of obtaining money under false pretences might be sustained. Now here not only the possession, but the property in the coins lent, passed to the prisoner. The very purpose for which they were lent, and the stipulated mode of repayment, shew that the prosecutor never expected to have the identical pieces of money returned to him. The property in them was absolutely relinquished, with the understanding that others of a similar value would be repaid. Whatever, then, may have been the fraudulent intention of the prisoner at the moment of his first meeting with the prosecutor, a charge of larceny cannot be maintained.

The Common Serjeant referred to *Reg.* v. *Campbell* (1 Moo. C.C. 179).

Wilkins.—In that case the property was clearly not parted with. The owner swore that he never intended to give them up until the price was paid for them.

Simon, for the prosecution, contended that this case was similar to those of ring-dropping, which had been held to be larceny.

The Common Serjeant went into the Old Court for the purpose of consulting the Recorder, and on his return, he stated that that learned judge took the same view as he had originally taken, namely, that if this was an original and preconcerted fraud to cheat this man out of his money, there was a conspiracy between the prisoner and his confederates, and that, as no real play was intended on their part, the indictment might be sustained. He observed, however, that in case of a conviction he would take the opinion of the judges on the point before he passed sentence.

Wednesday, October 23.—The Common Serjeant stated that he had consulted Mr. Baron Rolfe on the subject, who was clearly of opinion that the conviction was bad, for that the offence did not amount to larceny. *The prisoner was accordingly discharged.*

Thursday, October 24.

Reg. v. Walker.

Where a party is indicted for obtaining money under false pretences, the false pretence being that he was a minor, a plea of infancy to an action brought against him is not receivable as evidence to shew either the fact of minority, or a guilty knowledge on his part. Query, whether to establish the fact of such minority, statements made by the prisoner that he was under age are admissible?

The prisoner was indicted for obtaining money under false pretences, and the instance laid was his having represented himself to be of age, when he well knew he was under age at the time.

To prove the fact of his having been then under twenty-one,

Ballantine, for the prosecution, offered in evidence a plea of infancy which the defendant had since that time put in to an action brought against him, and he contended that this was sufficient as an admission on the part of the defendant of his then age.

Wilkins, for the prisoner, objected to this evidence: parties were constantly in the habit of pleading matters of the most contradictory kind; it was a practice sanctioned by the law, and frequently necessary for the purposes of justice; but if the pleas were contradictory, they could not all be true; and it would be absurd, therefore, to assume that the person adopting such a course intended to pledge himself to the verity of each individual portion of the record. Again, a party to a suit intrusts his case to his legal adviser, and generally speaking knows but little of the nature of the proceedings in the cause. It would be a manifest injustice, therefore, to bind him down to the admission of facts merely on account of circumstances of which he has had no cognizance whatever. In this instance an attorney may have put in the plea without consulting the defendant, and is it just that in a criminal case the latter should be estopped from denying what in fact he has never affirmed.

The Common Serjeant consulted Mr. Baron Rolfe upon the point, and that learned judge decided that the evidence was not admissible, on the ground that the plea might have been put in without the knowledge of the defendant. The case was subsequently closed, no other evidence of the fact that the prisoner was a minor having been given, except that when applied to for the payment of a debt, and threatened with an action, he had told the applicant he might do as he pleased, that he, the defendant, was a minor, and that he should plead his infancy. The mother of the prisoner had given evidence before the magistrate, but although called on the part of the prosecution at the trial, she did not appear.

Wilkins submitted that there was no case for him to answer. The prosecution was bound to make out the falsity of the pretence as well as the guilty intention on the part of the prisoner. Here there was no evidence whatever of the former. The prisoner's admission is of no avail. It is not evidence, even of his belief, that he was a minor. It might have been used for the mere purpose of preventing a creditor from taking proceedings against him. Still less is such an admission evidence of the fact itself, since the prisoner could have had no knowledge of what his age really was. He would only be aware of it, if at all, from hearsay. The same rule would apply here as in cases of pauper examiners, where the statement of the pauper himself as to his age is not receivable for the purpose of establishing a settlement.

Ballantine contended that there was at least sufficient evidence for the jury. If it were necessary in all cases where the age of a party was to be proved, that some one should be called who was present at his birth, a failure of justice would constantly arise, since all such witnesses might be dead, or at least it might be impossible to produce them. Here the prosecution had done all it could do; it had subpœnaed the mother; she had not thought proper to attend, and he should submit, that under all the circumstances, the question was one for the jury.

The Common Serjeant.—I cannot see how the jury are to take this case into their consideration. It is necessary to shew that the prisoner was under age. The best evidence of the fact is that of a person who was present at the birth. Such a person is producible, but is not here. I cannot speculate as to motives, I only know that she is absent.

Ballantine then suggested that the mother's deposition should be read, and referred to *Reg.* v. *Oldroyd* (Russ. & Ryan, 88); but

The Common Serjeant thought, if admissible at all, it was now too late. He undertook, however, to consult Mr. Baron Rolfe as to whether the admission made by the prisoner was evidence of the fact of minority; and, on his return to the court, he stated that learned judge's opinion to be, that it was a question for the jury under the circumstances.

It was accordingly left to them, but they acquitted the prisoner.

[*Note.*—The decision in this case appears so opposed to principle that one is tempted to believe that in the midst of the performance of arduous duties in another court, the learned baron must have misapprehended the precise nature of the proposition submitted to him. That the evidence in question might properly be left to the jury is undoubted, because it would tend to establish one of the two necessary ingredients in the offence, namely, the guilty knowledge; but if a party is held incompetent to declare his own age, how can it be receivable to establish the other ingredient in the proof—that he was in fact of a particular age at the time he made the representation. If there is a tittle of evidence adduced, the jury are entitled to decide as to its sufficiency, but it is for the Court to declare whether or not there is any legal evidence for them to consider. Here it would seem there was none but what must have been founded on mere hearsay, and therefore not legally adducible; consequently, a material allegation in the indictment was utterly unproved. —Reporter.]

THE LEGISLATOR.

Summary.

No event of the week claims special notice in this division of the Law Times.

NEW STATUTES.

Of the Session 8 *Victoria.*

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page* 56.)

Cap. CIV.

An Act to supply a Sum out of the Consolidated Fund, and certain other Sums to the service of the Year One Thousand Eight Hundred and Forty-four, and to appropriate the Supplies granted in this Session of Parliament. (Aug. 9, 1844.)

Cap. CV.

An Act to confirm and enfranchise the Estates of the Conventionary Tenants of the ancient assessionable Manors of the Duchy of Cornwall, and to quiet Titles within the County of Cornwall as against the Duchy; and for other purposes. (August 9, 1844.)

Cap. CVI.

An Act to consolidate and amend the Laws for the Regulation of Grand Jury Presentments in the County of Dublin. (August 9, 1844.)

Cap. CVII.

An Act to regulate and reduce the Expenses of the Offices attached to the Superior Courts of Law in Ireland, payable out of the Consolidated Fund. (September 5, 1844.)

Cap. CVIII.

An Act to amend an Act of the Sixth Year of her present Majesty, intituled "An Act to regulate the Irish Fisheries, and to empower the Constabulary Force to enforce certain Provisions respecting the Irish Fisheries." (Sept. 5, 1844.)

Cap. CIX.

An Act to indemnify Persons connected with Art-Unions, and others, against certain Penalties. (Sept. 5, 1844.)

Cap. CX.

An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies. (Sept. 5, 1844.)

Long as is this statute, we deem it necessary, on account of its great importance, to reprint it entire, omitting only the voluminous schedules.

1. *General provisions. Operation of Act as to time.*—Whereas it is expedient to make provision for the due registration of joint stock companies during the formation and subsistence thereof; and also, after such complete registration as is hereinafter mentioned, to invest such companies with the qualities and incidents of corporations, with some modifications, and subject to certain conditions and regulations; and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of this Act: Now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall come into operation at the following times; that is to say, as to the officers to be appointed in pursuance hereof for the registration of companies, and the regulation of the office hereby provided for that purpose, immediately on the passing hereof; and as to all companies to which this Act is to apply, and all other the provisions hereinafter contained, except such as relate to such officers and office as aforesaid, on the first day of November, in the year one thousand eight hundred and forty-four.

2. *Operation of Act as to companies. Application of term "Joint Stock Company." Future companies. Companies for executing Parliamentary works. Incorporated companies.*—And be it enacted, That this Act shall apply to every joint stock company, as hereinafter defined, established in any part of the United Kingdom of Great Britain and Ireland, except Scotland, or established in Scotland, and having an office or place of business in any other part of the United Kingdom, for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except banking companies, schools, and scientific and literary institutions, and also friendly societies, loan societies, and benefit building societies, respectively duly certified and enrolled under the statutes in force respecting such societies, other than such friendly societies as grant assurances on lives to the extent hereinafter specified); and that the term "Joint Stock Company" shall comprehend—

Every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the copartners; and also,

Every assurance company or association for the purpose of assurance or insurance on lives, or against any contingency involving the duration of human life, or against the risk of loss or damage by fire, or by storm or other casualty, or against the risk of loss or damage to ships at sea or on voyage, or to their cargoes, or for granting or purchasing annuites on lives; and also every institution enrolled under any of the Acts of Parliament relating to friendly societies, which institutions shall make assurances on lives, or against any contingency involving the duration of human life to an extent upon one life or for any one person to an amount exceeding two hundred pounds, whether such companies, societies, or institutions shall be joint stock companies or mutual assurance societies, or both: and also,

Every partnership which, at its formation, or by subsequent admission (except any admission subsequent on devolution or other act in law), shall consist of more than twenty-five members:

And that, except where the provisions of this Act are expressly applied to partnerships existing before the said first day of November, it shall be held to apply only to partnerships, the formation of which shall be commenced after that date: provided nevertheless, that, except as hereinafter specially provided, this Act shall not extend to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament: provided also, that, except as hereinafter is specially provided, this Act shall not extend to any company incorporated, or which may be hereafter incorporated by statute or charter, nor to any company authorized, or which may be hereafter authorized, by statute or letters patent, to sue and be sued in the name of some officer or person.

3. *Construction of words.*—And be it declared, That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter: that is to say,

The word "company" to mean any joint stock company or other institution, as before defined:

The expression "assurance company" to mean any assurance company, association, or institution, as before defined:

The word "directors" to mean the persons having the direction, conduct, management, or superintendence of the affairs of a company:

The expression "promoter" or "promoter of a company," to apply to every person acting by whatever name in the forming and establishing of a company at any period prior to the company obtaining a certificate of complete registration as hereinafter mentioned:

The word "subscriber" to mean any person who shall have agreed in writing to take or have taken any shares in a proposed company or in a company formed, and who shall not have executed the deed of settlement, or a deed referring thereto:

The word "shareholder" to mean any person entitled to a share in a company, and who has executed the deed of settlement, or a deed referring to it, or, in the case of mutual assurance societies, any person who shall be an assured member thereof:

The word "person" to apply to bodies politic or corporate, whether sole or aggregate:

The expression "Commissioners of the Treasury" to apply to the Lord High Treasurer for the time being, or the Commissioners of her Majesty's Treasury for the time being, or any three or more of them:

The expression "Committee of Privy Council for Trade" to mean the Lords of the Committee of her Majesty's Privy Council for the consideration of all matters of trade and plantations:

The expression "secretary of the committee" to mean one of the joint assistant secretaries of the said Committee of Privy Council for trade:

The word "justice" to mean a justice of the peace for the county, city, borough, liberty, or place where the matter requiring the cognizance of any justice shall arise, and who shall not be interested in the matter:

The expression "special authority" to mean any deed of settlement, bye laws, letters patent, charter, or local and personal Act of Parliament, by which powers are conferred or regulations prescribed with reference to any individual company:

The word "prescribed" to mean provided for by special authority:

The word "month" to mean calendar month:

The expression "Superior Courts" to mean her Majesty's Superior Courts of Law or Equity in England or Ireland:

The word "occupation," when applied to any person, to mean his trade or following, and, if none, then his rank or usual title, as esquire, gentleman:

The expression "place of residence" to include the street, square, or place where the party shall reside, and the number (if any) or other designation of the house in which he shall so reside:

The word "oath" to include affirmation or other declaration lawfully substituted for an oath:

And generally whensoever, with regard to any matter, or to any function in respect thereof, the name of an officer (whether a public officer or an officer of a company) ordinarily having cognizance of such matter, or ordinarily exercising such function, is mentioned, such reference is to be understood to apply as well to any other person or officer who may have cognizance of such matter, or exercise such function in respect of such matter:

And, subject as aforesaid to the context and to the nature of the subject-matter, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender.

4. *Registration of companies. Provisional registration. Returns by promoters of companies. Certificate of provisional registration.*—And be it enacted, That before proceeding to make public, whether by way of prospectus, handbill, or advertisement, any intention or proposal to form any company for any purpose within the meaning of this Act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, it shall be the duty of the promoters of such company, and they or some of them are hereby required, to make to the office hereby provided for the registration of joint stock companies (and hereinafter called the registry office) returns of the following particulars according to the schedule (C) hereunto annexed; that is to say,

1. The proposed name of the intended company; and also,
2. The business or purpose of the company; and also,
3. The names of its promoters, together with their respective occupations, places of business (if any), and places of residence; and also the following particulars, either before or after such publication as aforesaid, when and as from time to time they shall be decided on, viz.
4. The name of the street, square, or other place in which the provisional place of business or place of meeting shall be situate, and the number (if any) or other designation of the house or office; and also,
5. The names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member or promoter whose agreement it purports to be (but such agreements need not be on a stamp); and also,
6. The names of the officers of the company and their respective occupations, places of business (if any), and places of residence; and also,
7. The names of the subscribers to the company, their respective occupations, places of business (if any), and places of residence; and also, before it shall be circulated or issued to the public,
8. A copy of every prospectus or circular, handbill or advertisement, or other such document at any time addressed to the public, or to the subscribers or others, relative to the formation or modification of such company:
9. And afterwards, from time to time, until the complete registration of such company, a return of a copy of every addition to or change made in any of the above particulars:

And that upon such registration of at the least the three particulars first before mentioned the promoters of such company shall be entitled to a certificate of provisional registration.

5. *Penalty as to delaying registration.*—And be it enacted, That if for a period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, the promoters of any company fail to register such particulars, then, on conviction thereof, any promoter as aforesaid shall be liable to forfeit for every such offence a sum not exceeding twenty pounds.

6. *Relief from penalties to promoters by the appointment of a solicitor to make returns. Return of appointment and acceptance. Penalty on solicitor failing to make returns.*—Provided always, and be it enacted, That if the promoters of a proposed company appoint a person, being an attorney or solicitor of one of her Majesty's superior courts of law or equity, to be solicitor for the promoters of such company, and return to the said registry office a duplicate of such appointment in writing, signed by some one or more of such promoters, together with a duplicate of the acceptance of such appointment, signed by the person so appointed, then, until a duplicate of the revocation or of the resignation of such appointment be returned in like manner, so signed as aforesaid, or until the decease of such solicitor, all returns by this Act required to be made by such promoters shall be made by such solicitor in their behalf, and the penalty hereinbefore imposed in respect of any failure to make such returns shall not be incurred by them; and that if within the period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, such solicitor fail to make such returns, then he shall be liable to forfeit for every such offence a sum not exceeding twenty pounds; and that if it be made to appear to the court to which he shall belong that he fraudulently omitted to make a return of any such particulars, then he shall be liable to be suspended from practice for any time to be appointed by the said court, or to be struck off the rolls of the said court.

7. *Complete registration. Constitution of companies. Provisions of deeds of settlements. Covenant to pay instalments on shares, &c. Provision in deed for purposes in Schedule A. Execution of deed of settlement. Authentication of deed. Registration of deed. Supplementary deed.*—And be it enacted, That it shall not be lawful for any joint stock company hereafter to be formed for any purpose within the meaning of this Act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, to act otherwise than provisionally in accordance with this Act until such company shall have obtained a certificate of complete registration as hereinafter provided; and no joint stock company shall be entitled to receive a certificate of complete registration unless it be formed by some deed or writing under the hands and seals of the shareholders therein; and in or by such deed there must be appointed not less than three directors, and also one or more auditors; and such deed must set forth in a schedule thereto, in a tabular manner, according to the order hereinafter mentioned, the following particulars; that is to say,

1. The name of the company; and also,
2. The business or purpose of the company; and also,
3. The principal or only place for carrying on such business, and every branch office (if any); and also,
4. The amount of the proposed capital, and of any proposed additional capital, and the means by which it is to be raised; and where the capital shall not be money, or shall not consist entirely of money, then the nature of such capital and the value thereof shall be stated: and also,
5. The amount of money (if any) to be raised or authorized to be raised by loan; and also,
6. The total amount of the capital subscribed or proposed to be subscribed at the date of such deed; and also,
7. The division of the capital (if any) into equal shares, and the total number of such shares, each of which is to be distinguished by a separate number in a regular series; and also,
8. The names and occupations and (except bodies politic) the places of residence of all the then subscribers, according to the information possessed by the officers of the company in respect of such names and occupations and places of residence; and also,
9. The number of the shares which each subscriber holds, and the distinctive numbers thereof, distinguishing the numbers of the shares on which the deposit has been paid from those on which it has not been paid; and also,
10. The names of the then directors of the company, and of the then trustees of the company (if any), and of the then auditors of the company, together with their respective places of business (if any), occupations, and places of residence; and also,
11. The duration of the company, and the mode or condition of its dissolution:

And that such deed must contain a covenant on the part of every shareholder, with a trustee on the part of the company, to pay up the amount of the instalments on the shares taken by such shareholder, and to perform the several engagements in the deed contained on the part of the shareholders; and that such deed must also make provision for such of the purposes set forth in Schedule A, to this Act annexed, as the nature and business of the company may require, and either with or without provision for such other purposes (not inconsistent with law) as the parties to such deed shall think proper; and that every such deed of settlement must be signed by at least one-fourth in number of the persons who at the date of the deed have become subscribers, and who shall hold at least one-fourth of the maximum number of shares in the capital of the company; and that every such deed must be certified by two directors of the company, by writing indorsed thereon in the form contained in the schedule (B) to this Act annexed; and that on the production of such deed, setting forth such matters and making such provisions as are hereby required to be provided for, and being so signed and certified, together with a complete abstract or index thereof, to be previously approved by the Registrar of Joint Stock Companies, and also a copy of such deed, for the purpose of registering the same, or as soon after such production as conveniently may be, the Registrar of Joint Stock Companies shall grant a certificate of complete registration, according to the provisions of this Act in that behalf; and unless such deed and other matters be so produced, and such conditions be so performed, it shall not be lawful for him to grant such certificate; and that after such certificate shall be granted, it shall be taken as evidence of the proper provisions being inserted in such deed, and of the performance of the conditions hereby required previously to the granting such certificate of complete registration; and that any defect or omission as regards the matters hereby required in any deed of settlement may from time to time be supplied by a supplementary deed or deeds; and that if any such supplementary deed be not inconsistent with or repugnant to this Act, or any Act respecting joint stock companies, and if it be duly registered, then it shall have the same effect as if there were only one

deed for the purposes of this Act; and that unless the same shall be registered it shall be of no force or effect.

8. *Notification of incompleteness of deeds of settlement.*—And be it enacted, That if any deed of settlement or supplementary deed of settlement, whether made before or after the granting of the certificate of complete registration, appear to such Registrar of Joint Stock Companies to be insufficient by reason of the omission or incompleteness of any of the provisions therein contained for the purposes set forth in the said schedule (A), or if the deed contained provisions which appear to such registrar to be inconsistent with or repugnant to this Act, or any Act for the time being in force respecting joint stock companies, then as soon thereafter as conveniently may be, such registrar shall notify the same in writing to the persons, or to the company by whom the deed shall have been presented for registration, specifying in such notification the particulars wherein such deed of settlement or supplementary deed of settlement is incomplete, or inconsistent with or repugnant to any such Act as aforesaid.

9. *Companies for executing parliamentary works to register copies of documents required to be deposited by the standing orders. Certificate of complete registration.*—Provided always, and be it enacted, That if any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without the authority of Parliament, deposit at the proper offices of the two Houses of Parliament, in compliance with the standing orders of such Houses respectively, and at or within the time required by such standing orders, such deeds of partnership or subscription contracts as shall be required to be deposited by such standing orders, and also return to the said registry office a copy of such deeds of partnership or subscription contracts, together with such certificate of the receipt of such plans, sections, and books of reference as shall be appointed by the said Committee of Privy Council for Trade, then it shall be lawful for the Registrar of Joint Stock Companies, and he is hereby required, to accept the same instead of the deed of settlement by this Act required to be returned for the purpose of obtaining a certificate of complete registration; and thereupon such company shall be entitled to a certificate of complete registration accordingly.

10. *Further registration: returns of further deeds and changes. Penalty.*—And be it enacted, That throughout the continuance of any joint stock company completely registered under this Act, except such companies as shall have been incorporated by Act of Parliament after complete registration, and within one month after the date of any new or supplementary deed of settlement, there shall be transmitted by the directors of every such company to the Registrar of Joint Stock Companies a copy of such new or supplementary deed of settlement, together with a complete abstract thereof, so approved of as aforesaid; and within six months after any change shall have taken place in any of the particulars hereinbefore required to be set forth in the schedule to the deed of settlement, except so far as respects the shareholders thereof and their respective shares, there shall be transmitted returns of such particulars, so far as the same shall have been changed; and if within such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds.

11. *Half-yearly returns of changes and additions of members. Penalty.*—And be it enacted, That in the months of January and July in every year the directors of every joint stock company completely registered under this Act, except companies which shall have been incorporated by Act of Parliament after complete registration, shall make or cause to be made the following returns to the Registrar of Joint Stock Companies, namely—

A return according to the schedule (E) hereunto annexed, and containing the particulars therein set forth, of every transfer of any share in such company which shall have been made since the preceding half-yearly return (or, in the case of the first of such returns made by such company since the complete registration thereof), and which shall have come to the knowledge of the directors.

And also a return according to the schedule (F) hereunto annexed, and containing the particulars therein set forth, of the names and places of abode of all persons who shall either have ceased to be shareholders of such company, or have become shareholders of such company otherwise than by a transfer as aforesaid, since the preceding half-yearly return, or since the complete registration of the company, as the case may require, and also of the changes in the names of all shareholders of such company, whose names shall have been changed, by marriage or otherwise, since the last preceding half-yearly return, or since the complete registration of the company, as the case may require:

And if within any such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds.

12. *Returns made by request.*—And be it enacted, That if at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith, on such request, the directors shall make the same accordingly; and that on proof of such transfer and such request to the satisfaction of the Registrar of Joint Stock Companies, it shall be lawful for any such party to make a return of such transfer, which shall be received, marked, and registered, and with the same effect, as hereby provided in the case of returns made by such companies.

13. *Restriction of rights of shareholders by non-registration of shares transferred. Continuance of liability of shareholders transferring.*—And be it enacted, That until the return of the transfer or other fact or event whereby a person becomes the holder of any shares, be made, pursuant to the provisions hereinbefore contained, it shall not be lawful for such company, its directors or officers, if such fact or event be known to them respectively, to pay to any such person any part of the profits of the concern, nor for any such person to sue for or recover any part of the profits arising in respect of such share, or in anywise to act as a shareholder; and that until the return of the transfer of any share shall have been made pursuant to the provisions hereinbefore contained, the person whose share shall have been thereby transferred shall, so far as respects his liability to the debts and engagements of the company, and also as respects the reimbursement of any loss, damages, costs, and charges he may incur thereby, be deemed to continue a shareholder of such company.

14. *Periodical registration of companies. Penalty.*—And be it enacted, That annually in the month of January in every year every company completely registered under this Act, except companies which shall have been incorporated by Act of Parliament after complete registration, shall make to the said registry office a return of the name and business of the company; and that on the receipt of such return the Registrar of Joint Stock Companies shall give a certificate thereof; and that if within the further period of one month such return be not made, then, on conviction thereof, such company shall be liable to pay a sum not exceeding twenty pounds: provided always, that it shall be lawful for the lords of the said committee, on the application of any company, to appoint any other period of the year for the making of such annual return as aforesaid.

15. *Returns generally; evidence of registration. Certificates of registration. Effect of certificate as evidence.*—And be it enacted, That when the particulars and documents severally by this Act required to be returned to the said registry office shall have been so returned, it shall be the duty of the said Registrar of Joint Stock Companies, and he is hereby required, to cause to be written on every such document and return of particulars brought to him for registration the day of the receipt thereof, and to cause to be marked on every such return or document, in writing or otherwise, a number denoting the order in which the same was received, and also, upon demand, to cause an acknowledgment of the receipt of such return or document to be given to the person by whom the same shall be so brought; and that if such returns or documents be conformable to the provisions of this Act, or of any regulations in that behalf, then it shall be the duty of the registrar, and he is hereby required, forthwith to register the same, and, on demand, to grant to such company a certificate of provisional or complete registration, as the case may require, signed by him, and sealed with the seal of his office; which certificate must set forth whether the company has been constituted provisionally or completely; and that, in the absence of evidence to the contrary, any such certificate, or a copy of any such return as aforesaid, shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

16. *Authentication of returns.*—And be it enacted, That until the company shall have obtained its certificate of complete registration, the promoters of the company, or their solicitor as aforesaid, shall make or cause to be made every return by this Act required to be made; and after such company shall have obtained a certificate of complete registration the directors of the company shall make or cause to be made every such return; and one or more of such promoters, or their solicitor, or such directors, as the case may be, shall sign such return; and every such return which shall be made after complete registration of the company, shall be sealed with the seal of the company.

17. *Regulations as to returns. Regulations to apply to all companies.*—And be it enacted, That if the Committee of Privy Council for Trade shall deem it expedient, then it shall be lawful for the said committee, and they are hereby authorised, from time to time to make regulations respecting the form of any such returns as are hereby directed to be made, and the manner and time of making them, and for those purposes to alter and vary the schedules annexed to this Act, and to dispense with any of the returns hereby made necessary, or any of the forms of returns prescribed by this Act; and that every such regulation shall be published in the *London Gazette*, and thereupon shall be of the like force as if the same were contained in this Act: provided always, that nothing herein contained shall be construed to permit the said committee to make any such regulations which shall not apply alike to all such companies as may be registered under the authority of this Act, so far as the same may be applicable to them.

18. *Inspection of returns at registry office. Certified copies or extracts. Legal effect thereof.*—And be it enacted, That every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said Registrar of Joint Stock Companies; and that there shall be paid for such inspection such fees as may be appointed by the commissioners of her Majesty's Treasury in that behalf, not exceeding one shilling for each such inspection; and that any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said registrar; and there shall be paid for such certified copy or extract such fee as the commissioners of her Majesty's Treasury may appoint in that behalf, not exceeding sixpence for each folio of such copy or extract; and that in all courts of law and equity and elsewhere, every such copy or extract so certified shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

19. *Office for registration. Appointment of registrar, &c. of joint stock companies. Assistant registrar. Leave of absence.*—And be it enacted, that it shall be lawful for the Committee of Privy Council for Trade, and they are hereby empowered, to appoint a person to be and to be called the Registrar of Joint Stock Companies, and, if the said committee see fit, an assistant registrar, clerks, and other necessary officers and servants; and that every such registrar and assistant registrar, clerks, and officers, shall be entitled to hold their offices during the pleasure only of the said committee; and that from time to time it shall be lawful for the commissioners of her Majesty's Treasury, and they are hereby authorized, to fix the salary or remuneration of such registrar, assistant registrar, clerks, officers, and servants; and that, subject to the provisions of this Act, it shall be lawful for the said Committee of Privy Council for Trade, and they are hereby authorized, to make rules for regulating the execution of the office of the said registrar; and that such registrar shall have a seal of office to be by him used in the authentication of all matters relating to his said office in respect of which such authentication is by this Act required; and that such assistant registrar shall, in the absence of the registrar, be competent to do all things which the registrar is authorized or empowered, directed, or required to do, as fully and effectually, to all intents and purposes, as the registrar himself may do; and all provisions in this Act relating to the signature and seal of office of the said registrar shall apply to the said assistant registrar: provided always that the registrar shall not be absent from the duties of his office, except on account of ill health or other urgent cause, without express leave in writing of the said Committee of Privy Council for Trade for that purpose previously obtained.

20. *Registrar's office attendance.*—And be it enacted, that from the hour of ten of the clock in the morning until five of the clock in the afternoon, and at such other times as the said Committee of Privy Council for Trade shall appoint, such registrar, or in the unavoidable, or, as aforesaid, permitted absence of the registrar, then such assistant registrar, shall give his attendance at the said office every day throughout the year, except Sundays, Good Friday, Christmas Day, and any other general holiday or fast day appointed by her Majesty in Council.

21. *Fees of registration. Commissioners of Treasury may fix other fees. Balance to go to Consolidated Fund. Regulation of fees. Return of three-fourths of the fee on capital to companies obtaining Acts of Parliament. Repayment by Treasury.*—And be it enacted, That every company shall pay the following fees; that is to say,

For a certificate of provisional registration, the sum of five pounds.

For a certificate of complete registration the sum of five pounds; and one shilling additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority.

For an annual certificate the sum of one pound:

And also such other fees as shall be appointed to be paid in respect of any other services to be performed by the said registrar; and that from time to time it shall be lawful for the Commissioners of her Majesty's Treasury, and they are hereby authorised, in addition to the fees hereinbefore required to be paid in respect of such certificates, to fix such other fees to be paid for the services to be performed by the Registrar of Joint Stock Companies as they shall deem requisite to defray both the expenses of the said office and the salaries or other remuneration of the said

registrar and of any other persons employed under him, with the sanction of the said Commissioners of her Majesty's Treasury, in the execution of this Act; and that the balance, if any, shall be carried to the consolidated fund of the United Kingdom of Great Britain and Ireland, and be paid accordingly into the receipt of her Majesty's Exchequer at Westminster; and that it shall be lawful for the said Commissioners of her Majesty's Treasury to regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for; provided always, that if within two years after a company shall have obtained a certificate of complete registration such company shall obtain an Act for the incorporation thereof, then three-fourths of the fee paid by or on behalf of such company on such complete registration in respect of the capital of the company shall be reimbursed and repaid to the said company, and that it shall be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorized and empowered, to repay the same accordingly.

22. *Extortion a misdemeanor.*—And be it enacted, That if either the said Registrar of Joint Stock Companies, or any person employed under him, either demand or receive any gratuity or reward in respect of any service performed by him, other than the fees aforesaid, then for every such offence every such registrar or person shall be guilty of a misdemeanor.

23. *Powers and privileges of companies. On provisional registration. Effect of provisional registration.*—And be it enacted, That on the provisional registration of any company being certified by the Registrar of Joint Stock Companies it shall be lawful for the promoters of any company so registered to act provisionally, but not for any longer period than twelve months from the date of the certificate, unless such certificate shall be renewed, which may be done on application for that purpose; and no such renewed certificate shall be in force for a longer period than twelve months from the date thereof, and it shall be lawful for the promoters of such company,—

- To assume the name of the intended company, but coupled with the words "registered provisionally;" and also,
- To open subscription lists; and also,
- To allot shares, and receive deposits by way of earnest thereon, at a rate not exceeding ten shillings for every one hundred pounds on the amount of every share in the capital of the intended company; and also, in the case of companies for executing any bridge, road, cut, canal, reservoir, aqueduct, water-work, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without the authority of Parliament, in addition to and exclusive of such sum of ten shillings per hundred pounds, such further sum per hundred pounds on the amount of every such share as may be required by the standing orders of either House of Parliament to be deposited before the obtaining of an Act of Parliament for enabling the company to execute such work; and also,
- To perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an Act of Parliament;

But not to make calls, nor to purchase, contract for, or hold lands, nor to enter into contracts for any services, or for the execution of any works, or for the supply of any stores, except such services and stores or other things as are necessarily required for the establishing of the company, and except any purchase or other contract to be made conditional on the completion of the company, and to take effect after the certificate of complete registration, Act of Parliament, or charter, or letters patent, shall have been obtained, and, except in the case of companies for executing such works as aforesaid, contracts for services, in making surveys and performing all other acts necessary for obtaining an Act of incorporation or other Act for enabling the company to execute such works.

24. *Proceedings of companies before registration, and while a company is not deemed to be provisionally registered. 25l. penalty against persons offending.*—And be it enacted, That if before a certificate of provisional registration shall be obtained the promoters or any of them, or any person employed by or under them, take any moneys in consideration of the allotment either of shares or of any interest in the concern, or by way of deposit for shares to be granted or allotted; or issue, in the name or on behalf of the company, any note or scrip, or letter of allotment, or other instrument or writing to denote a right or claim, or preference or promise, absolute or conditional, to any shares; or advertise the existence or proposed formation of the company; or make any contract whatsoever for or in the name or on behalf of such intended company; then every such person shall be liable to forfeit for every such offence a sum not exceeding twenty-five pounds; and that it shall be lawful for any person to sue for and recover the same by action of debt.

25. *On complete registration. Powers and privileges obtained thereby. Incorporation. Without restriction of liability. Company empowered to act. Restriction of powers of companies for executing Parliamentary works before obtaining an Act. Power to obtain Act of Parliament. Regulation of company under such Act.*—And be it enacted, That on the complete registration of any company being certified by the Registrar of Joint Stock Companies, such company and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, shall be and are hereby incorporated as from the date of such certificate by the name of the company as set forth in the deed of settlement, and for the purpose of carrying on the trade or business for which the company was formed, but only according to the provisions of this Act, and of such deed as aforesaid, and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the said company; and thereupon any covenants or engagements entered into by any of the shareholders or other persons with any trustee on the behalf of the company, at any time before the complete registration thereof, may be proceeded on by the said company and enforced in all respects as if they had been made or entered into with the said company after the incorporation thereof; and such company shall continue so incorporated until it shall be dissolved, and all its affairs wound up; but so as not in anywise to restrict the liability of any of the shareholders of the company, under any judgment, decree, or order for the payment of money which shall be obtained against such company, or any of the members thereof, in any action or suit prosecuted by or against such company in any court of law or equity; but every such shareholder shall, in respect of such moneys, subject as after mentioned, be and continue liable as he would have been if the said company had not been incorporated; and thereupon it shall be lawful for the said company, and they are hereby empowered, as follows; that is to say,

1. To use the registered name of the company, adding thereto "registered;" and also,
2. To have a common seal (with power to break, alter, and change the same from time to time), but on which must be inscribed the name of the company; and also,
3. To sue and be sued by their registered name in respect of any claim by or upon the company upon or by any person, whether a member of the company or not, so long as any such claim may remain unsatisfied; and also,
4. To enter into contracts for the execution of the works, and for the supply of the stores, or for any other necessary purpose of the company; and also,
5. To purchase and hold lands, tenements, and hereditaments in the name of the said company, or of the trustees or trustee thereof, for the purpose of occupying the same as a place or places of business of the said company, and also (but nevertheless with a license, general or special, for that purpose, to be granted by the Committee of Privy Council for Trade, first had and obtained), such other lands, tenements, and hereditaments as the nature of the business of the company may require; and also,
6. To issue certificates of shares, and also,
7. To receive instalments from subscribers in respect of the amount of any shares not paid up; and also,
8. To borrow or raise money within the limitations prescribed by any special authority; and also,
9. To declare dividends out of the profits of the concern; and also,
10. To hold general meetings periodically, and extraordinary meetings upon being duly summoned for that purpose; and also,
11. To make from time to time, at some general meeting of shareholders specially summoned for the purpose, bye laws for the regulation of the shareholders, members, directors, and officers of the company, such bye laws not being repugnant to or inconsistent with the provisions of this Act or of the deed of settlement of the company; and also,
12. To perform all other acts necessary for carrying into effect the purposes of such company, and in all respects as other partnerships are entitled to do:

And the said company are hereby empowered and required,—

13. To appoint from time to time, for the conduct and superintendence of the execution of the affairs of the company, a number of directors, not less than three, for a period not greater than five years, with or without eligibility to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye law; and also,
14. To appoint and remove one or more auditors, and such other officers as the deed of settlement under which the company shall be constituted may authorize:

Subject nevertheless, with respect to all such powers and privileges, to the provisions of this Act, and subject also to the provisions of the deed of settlement of the company or any other special authority: provided always, with regard to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament, that on the complete registration of any such company, and before such company shall have obtained its Act of incorporation or other Act whereby the authority of Parliament shall be granted for executing such work, it shall not be lawful for any such company or the directors or officers thereof to exercise the hereinbefore mentioned power to enter into contracts, otherwise than conditionally upon obtaining such Act, or to exercise the power to purchase and hold lands as aforesaid, or to exercise the power to receive instalments from shareholders beyond the sum or per-centage necessary to be deposited in compliance with the standing orders of either House of Parliament, or such other sum as may be requisite for obtaining the Act of incorporation or other Act for granting the authority of Parliament to execute such work, or to exercise the power to borrow money, as aforesaid, or to exercise the power to declare dividends, as aforesaid; and, subject to these last-mentioned exceptions, all the powers by this enactment hereinbefore given to any company completely registered, except the general power to perform all acts necessary for carrying on the business of the company, may be exercised as fully by any such company so completely registered as by any other company so completely registered: provided always, that it shall be lawful for any such company to perform all acts which may be necessary for obtaining an Act of incorporation or other Act for obtaining the authority of Parliament to execute its works as aforesaid, any thing herein contained to the contrary notwithstanding; and that upon obtaining such Act of incorporation or other such Act as aforesaid, or at the time of the coming into operation of such Act, as shall be thereby appointed, all the powers which any such company shall obtain by virtue of this Act, and all the provisions and regulations of this Act which shall apply to such company, shall cease and determine, except so far as shall be otherwise provided by such Act of incorporation or other such Act as aforesaid.

26. *Shareholders. Restriction of rights prior to execution of deed of settlement. Rights thereafter. Restriction on disposal of shares. 10l. penalty. Contracts of certificates of shares. Penalty as to false certificate.*—And be it enacted, That no shareholder of any joint stock company completely registered under this Act shall be entitled to receive any dividends or profits, or be entitled to the remedies or powers hereby given to shareholders, until he shall have executed the deed of settlement of the said company, or some deed referring thereto, and also have paid up all instalments or calls due from him, and shall have been registered in the registry office aforesaid; and further, that it shall be lawful for every shareholder who shall have signed such deed, and paid up such instalments or calls, and shall have been registered, and he is hereby entitled,—

- To be present at all general meetings of the company; and also,
- To take part in the discussions thereat; and also,
- To vote in the determination of any question thereat, and that either in person or by proxy, unless the deed of settlement shall preclude shareholders from voting by proxy; and also,
- To vote in the choice of directors, and of every auditor to be elected by the shareholders;

Subject nevertheless to the provisions of this Act, and of the deed of settlement of the company or other special authority, so far as such provisions shall either regulate or restrict the exercise of such powers, but not so as to deprive such shareholders thereof; and further, with regard to subscribers and every person entitled or claiming to be entitled to any share in any joint stock company the formation of which shall be commenced after the first day of November, one thousand eight hundred and forty-four, that until such joint stock company shall have obtained a certificate of complete registration, and until any such subscriber or person shall have been duly registered as a shareholder in the said registry office, it shall not be lawful for such person to dispose, by sale or mortgage, of such share, or of any interest therein, and that every contract for or sale or disposal of such share or interest shall be void, and that every person entering into such contract shall forfeit a sum not exceeding ten pounds; and that for better protecting purchasers it shall be the duty of the directors of the company by whom certificates of shares are issued to state on every such certificate the date of the first complete registration of the company, as before provided: and that if any such director or officer knowingly make a false statement in that respect, then he shall be liable to the pains and penalties of a misdemeanor.

27. *Regulation of companies. Directors. Powers of directors. Restriction as to lending money.*—And be it enacted, That with regard to the powers and duties of directors it shall be lawful for the directors of any joint stock company registered under this Act,—

1. To conduct and manage the affairs of the company according to the provisions and subject to the restrictions of this Act, and of the deed of

settlement, and of any bye law, and for that purpose to enter into all such contracts and do and execute all such acts and deeds as the circumstances may require, and also,

2. To appoint the secretary, if any; and also,
3. To appoint the clerks and servants, and also from time to time, as they see fit,
4. To remove such secretary, clerks, and servants, and to appoint others, as occasion shall require, and also,
5. To appoint other persons for special services as the concerns of the company may from time to time require; and also,
6. To hold meetings periodically and from time to time as the concerns of the company shall require, and also,
7. To appoint a chairman to preside at all such meetings, and in his absence to appoint a chairman at each such meeting,

Subject nevertheless to the provisions and restrictions of this Act, and to the provisions of the deed of settlement of the company or other special authority, but not so as to enable the shareholders to act in their own behalf in the ordinary management of the concerns of the company otherwise than by means of directors provided always, that it shall not be lawful for the directors to purchase any shares of the company, nor to sell any such shares except shares forfeited on the non-payment of calls or instalments, nor to lend to any one of their number, or to any officer of the company, any money belonging to the company without the authority and sanction of a general meeting of shareholders duly convened

28. *Pecuniary qualification of directors, patrons &c* —And be it enacted, That henceforth, notwithstanding any thing to the contrary in any deed of settlement or other instrument by which a joint stock company shall be constituted or regulated, it shall not be lawful to appoint any person to be or to act as a director, whether honorary or otherwise, or to hold the office of patron or president, or any other office of the like description, nor shall it be lawful for any person to act in any such capacity unless at the time of such his appointment or of such his acting he hold in his own right at least one share in the capital of such company, and that if, without having such share, any person be or become or act as a director, patron, or president of such company, or in any office of such or the like nature, then he shall forfeit for every such offence a sum not exceeding twenty pounds, and that if any person be announced or held out by or on behalf of the company as a director, patron, or president, or as holding any office of such or the like description, without having so consented or acted, then each director of such company knowingly concurring in such representation shall forfeit a sum not exceeding twenty pounds.

29. *Disqualification of directors As to contracts Approval of general meeting of shareholders As to shares, &c* —And be it enacted, That if any director of a joint stock company registered under this Act be either directly or indirectly concerned or interested in any contract proposed to be made by or on behalf of the company, whether for land, materials, work to be done, or for any purpose whatsoever, during the time he shall be a director, he shall, on the subject of any such contract in which he may be so concerned or interested, be precluded from voting or otherwise acting as a director, and that if any contract or dealing (except a policy of assurance, grant of annuity, or contract for the purchase of an article or of service, which is respectively the subject of the proper business of the company, such contract being made upon the same or the like terms as any like contract with other customers or purchasers) shall be entered into, in which any director shall be interested, then the terms of such contract or dealing shall be submitted to the next general or special meeting of the shareholders to be summoned for that purpose, and that no such contract shall have force until approved and confirmed by the majority of votes of the shareholders present at such meeting, and that if at any time any director cease to be a holder of the prescribed number of shares in the company, or shall become a bankrupt or insolvent, or shall have suspended payment, or compromised with his creditors, or be declared a lunatic, then it shall be unlawful for any such director to continue as a director, or to act as such, and the office of such director shall be and is hereby declared to be vacant

30. *Validity of acts of directors* —And be it enacted, That, notwithstanding it may afterwards be discovered that there was some defect or error in the appointment of any person acting, or who may have acted, as a director of a joint stock company registered under this Act, or that such person was disqualified, yet all acts done by him as such director before the discovery of such defect or error, either solely or with other directors, shall be as binding on him, and on the company, and the directors and officers thereof, as if such person had been duly appointed or qualified, and, if such acts were done *bonâ fide*, shall be as binding on all persons whomsoever as if such person had been duly appointed or qualified.

31. *Acts of fraud or wilful omission by directors or officers a misdemeanor.*—And be it enacted, That if any such director or other officer of any joint stock company registered under this Act wrongfully do or omit any act, with intent to defraud the company or any shareholder therein, or falsify or fraudulently mutilate or fraudulently make any erasure in the books of account or books of register, or any document belonging to the company, then such director or officer shall be deemed to be guilty of a misdemeanor

32 *Authentication and legal effect of books of record* —And be it enacted, That if the entry of the proceedings of any meeting of the shareholders or of the directors of any joint stock company registered under this Act purport to be signed by the chairman duly presiding at such meeting, and sealed with the seal of the company, then it shall be the duty of all courts of justice, justices, and others, and they are hereby required to receive the book in which such entry shall be made as *primâ facie* evidence, not only of the proceedings of the meeting of which entry shall be so made, but of such meetings having been duly convened, and of the persons making or entering such orders or proceedings being shareholders or directors, and of the signature of the chairman

33 *Inspection of books of registry* —And be it enacted, That the books of any such company wherein the proceedings of the company are recorded shall be kept at the principal or only place of business of the company, and at all reasonable times such books shall be open to the inspection of any shareholder of the company, subject nevertheless to the provisions of the deed of settlement or of any bye law

34 *Account books* —And be it enacted, That the directors shall cause the accounts of such company to be duly entered in books to be provided for the purpose

35 *Balancing of books Examination of balance sheet* —And be it enacted That fourteen days at the least before the period at which the accounts are required to be delivered to the auditors as hereinafter provided the directors of such company shall cause the books of the company to be balanced and a full and fair balance sheet to be made up and that previously to such balance-sheet being delivered to the auditors, as hereinafter provided, the directors, or any three of their number, shall examine such balance sheet, and sign it as so examined, and that when the balance sheet shall have been so examined the chairman of the directors shall sign such balance sheet and that thereupon the directors shall cause the same to be recorded in the books of the company

36 *Production of the balance sheet* —And be it enacted, That at each ordinary meeting of the shareholders the directors shall produce such balance sheet to the shareholders assembled thereat

37 *Inspection of accounts by shareholders Occasional inspection* —And be it enacted, That during the space of fourteen days previously to such ordinary meeting and also during one month thereafter, every shareholder of the company may, subject to the provisions of the deed of settlement, or of any bye law, inspect the books of account and the balance sheet of the company and take copies thereof and extracts therefrom, and that if at any other time three directors authorize in writing any shareholder to make such inspection then at such other time the shareholder so authorized may make such inspection

38 *Auditors appointment of auditors by company By Board of Trade Salary of such auditor* —And be it enacted, That every joint stock company completely registered under this Act shall annually, at a general meeting, appoint one or more auditors of the accounts of the company (one of whom at least shall be appointed by the shareholders present at the meeting in person or by proxy), and shall return the names of such auditors to the Registrar of Joint Stock Companies, and that if an auditor be not appointed on behalf of the shareholders, or if he shall die, or become incapable of acting or shall decline to act at the prescribed period, or if such return be not made, then on the application of any shareholder of the company, it shall be the duty of the Committee of Privy Council for Trade, and they are hereby authorized, to appoint an auditor on behalf of the shareholders, and that such auditor shall continue to act till the next general meeting, and the due appointment of such auditor shall be returned to the Registrar of Joint Stock Companies, and that thereupon it shall be his duty to register the same, and that it shall be lawful for the Commissioners of the Treasury, and they are hereby empowered, to appoint that the company shall pay to such auditor such salary or remuneration as to the said commissioners shall appear suitable, having regard to the duties of his office, and that thereupon such auditor shall be entitled to recover such salary from the company as and when it shall become due, according to the terms of the appointment thereof.

39 *Delivery of accounts to auditors. Auditors to receive and examine accounts.*—And be it enacted, That twenty-eight days at least before the ensuing ordinary meeting at which such balance-sheet is required to be produced to the shareholders, the directors shall deliver to the auditors the half-yearly or other periodical accounts and the balance-sheet required to be presented to the shareholders; and that the auditors shall receive from the directors such accounts and balance-sheet, and examine the same.

40. *Powers of auditors. Assistance to auditors.*—And be it enacted, That throughout the year, and at all reasonable times of the day, it shall be lawful for the auditors, and they are hereby authorized, to inspect the books of account and books of registry of such company; and that the auditors may demand and have the assistance of such officers and servants of the company and such documents as they shall require for the full performance of their duty in auditing the accounts.

41 *Report by auditors.*—And be it enacted, That within fourteen days after the receipt of such balance-sheet and accounts the auditors shall either confirm such accounts, and report generally thereon, or shall, if they do not see proper to confirm such accounts, report specially thereon, and deliver such accounts and balance-sheet to the directors of the company.

42 *Publication of reports* —And be it enacted, That ten days before the ordinary meeting of such company the directors shall, subject to the provisions of any deed of settlement or bye law in that behalf, send, or cause to be sent, a printed copy of the balance sheet and auditors' report to every shareholder, according to his registered address, and shall, at such meeting of the company, cause such report to be read, together with the report of the directors.

43 *Balance-sheet and auditors' report to be registered* —And be it enacted, That, within fourteen days after such meeting, it shall be the duty of such directors, and they are hereby required, to return to the said registry office a copy of the balance sheet, and of the report of the auditors thereon, and that thereupon it shall be the duty of the Registrar of Joint Stock Companies, and he is hereby required, to register or file the same with the other documents relating to such company

(*To be continued*)

THE MAGISTRATE.

Summary.

The Quarter Sessions of Somerset have been again the scene of a very extraordinary debate on the subject of the fees demanded from defendants in misdemeanors by the clerk of the peace

The history of this dispute may be briefly recapitulated

About three years since the *Somerset Gazette*, an influential local newspaper, in a short but earnest article, directed the attention of the magistracy to the fact, that a fee of three pounds and upwards was exacted from defendants in misdemeanors, even though *acquitted* of the offence with which they were charged.

So monstrous a violation of the plainest principles of justice was at first looked upon as a fiction of the editor's brain: the magistrates would pay no attention to the complaint, pronouncing it to be *impossible*. It is probable that the subject would have passed away, and the wrong continued to flourish, but that the article chanced to meet the eye of Mr. Bickham Escott, the member for Winchester, himself a lawyer, and who at once recognized the importance of the question. Inquiry satisfied him that the complaint was strictly true. At the next Sessions he laid the whole affair before the magistrates, with his usual ability, and succeeded in eliciting from them an almost universal condemnation of the practice, and a committee of inquiry

The committee reported that the fees in question were those allowed by the table duly prepared and sanctioned by the judges, in pursuance of the statute for regulating the fees of clerks of the peace, and that they could only be altered by the same authority, a revised table was presented, with the objectionable fees modified, but not quite expunged, and these were ordered to be, in due form of law, submitted to the judges of assize for their sanction.

But this was a slow process, and the wrong was a very urgent one. Mr. Escott was impressed with a strong belief that the fees were *illegal* in themselves, and that to take them was, in the legal sense of the term, extortion. In his place in Parliament he called the atten-

tion of the Home Secretary to the occurrence, but the members of the Government exhibited the same incredulity as the magistrates; they could not believe that so monstrous an injustice could be perpetrated. Returns were ordered on the motion of Mr. ESCOTT, and there the matter rested for awhile.

The notice thus attracted to the subject roused inquiry in almost all the counties. It was found that in some these fees were exacted, in others not so. But the magistrates everywhere interfered, and they were forthwith abolished in thirty-four counties.

In Somerset they continued to be demanded. Mr. ESCOTT was persevering in his endeavours to abolish them. At each session he renewed his motion and complaint; and he personally interfered to recommend many defendants *not* to pay.

It will be remembered that, in commenting upon this topic some time since, we expressed our opinion that Mr. COLES, the clerk of the peace for Somerset, had not been quite fairly treated in this matter. We stated the arguments and cases that led us to the conclusion that the fees in question, though grievously unjust and unconstitutional, were strictly legal; that they could only be abolished by the process prescribed by the Act of Parliament, and that being the remuneration of the officer for his labours, they could not be abolished without compensation, and that it was unfair to blame him for requiring the payment of fees to which he is legally entitled.

Such was the state of the case when Mr. ESCOTT again brought the subject under the notice of the magistrates of Somerset at the late Quarter Sessions: a scene of mutual recrimination and angry debate ensued, such as, for the dignity of the Bench, we trust will not be again exhibited. The whole report in the *Somerset Gazette* will be found deeply interesting, but we have not room for it here, and must refer our readers to that newspaper, copies of which can doubtless be procured. But the result was, that Mr. ESCOTT moved that the fees be abolished, and carried his motion by a small majority.

But though condemned by a vote of the magistrates, is the clerk of the peace bound to abandon his legal fees? Certainly not. Were they trifling in amount, he would, in deference to the desire so expressed, and their obvious impropriety, readily yield them. But their sum is considerable, as it would appear, averaging from three to four hundred pounds a year. It would, we think, be expecting too much of an industrious public officer to resign so large a portion of his income voluntarily, and without compensation. The clerk of the peace for Somerset has been subjected, as it seems to us, most unfairly, to much odium because he has not foregone a legal stipend of four hundred pounds a year. Would any of those who reproach him have done otherwise? It is certain that if he were to do so, he would never afterwards obtain the compensation to which he is equitably entitled. We cannot, therefore, blame Mr. COLES for persisting in demanding his fees until they are legally abolished.

But the exertions of Mr. ESCOTT do not the less deserve to be gratefully remembered, nor will the vote of the magistrates of Somerset be worthless. They have done this great good, that they have forced upon the notice of the Legislature and the public a question which might otherwise have slumbered for years, and compelled a speedy change of a very bad system—that of the payment of public officers by fees. Another session of Parliament cannot pass without some efficient measures being adopted to remove the monstrous stain upon the administration of justice denounced by Mr. ESCOTT, and that will involve a revision of the entire system of payment of officers in courts of justice. To none will such a change be more welcome than to those gentlemen, who would, we are sure, with gladness exchange an uncertain income and the obloquy produced by the source whence it comes, for a fixed salary with regular receipts, which have not upon them the taint of injustice and the curses of the wronged.

The following excellent article has appeared in *The Times* on the subject of Inequalities in Punishments, so often noticed in this Journal, but which has been so powerfully handled by our contemporary, that we cannot but direct to it the particular attention of our readers both among the Magistracy and in the Profession.

We feel compelled to recur to a subject that we have more than once touched on lately; and that is the great and growing inequalities of justice in our criminal courts, high and low. If any one wants to see his whole common-sense notion of justice violated in awarding punishments he must really enter one of our criminal courts—he must attend a police sitting or a quarter sessions. We do not mean to assert that justice is administered without reference to any principle whatever. There may be some recondite principle at the bottom; and the sage maxims of a new science of social order may probably pride themselves on their contrariety to superficial common sense and common feeling. All we say is, however, that there is this contrariety. Common sense is shocked, common feeling is wounded, by the disproportionate punishments that we repeatedly see. All our natural expectations are disappointed: the trial goes on, and the issue is just the opposite of what every ordinary notion of moral desert requires. A crime of the most brutal character is hardly tracked, and an obvious ruffian goes into society again, after a few weeks' imprisonment or a fine, to commit his assaults, to stab again, to get heated with liquor and commit murder ag in—the definition of manslaughter now-a-days. An unfortunate half-famished stealer of a penny loaf, a pound of bacon, or a shoulder of mutton is transported.

We have two or three cases in our eye, which have occurred lately. At the Berkshire Quarter Sessions a man of the name of Jackson, under the stimulus of grievous actual distress, joined in stealing a sheep. It was evidently not an ordinary case of sheepstealing. The man was not one of a gang: he had not made any trade of his crime. He joined in that particular instance in stealing a sheep, but he was obviously not what we mean by a "sheepstealer." He actually wanted food for his family: he stole the sheep, not to make money of it, but for the sake of the *real* meat upon its back: he took his share of the mutton home to his starving family, and they ate it. We do not mean to say that any extremity of destitution justifies theft, but we do say that it ought to be taken in palliation of it. In the present case, for stealing so much mutton to furnish a meal or two for a miserable family, the miserable man, who bore in his pale emaciated form the evidence of the motive on which he had acted, was sentenced to ten years' transportation.

Where is it that we read, "Men do not despise a thief, if he steal to satisfy his soul when he is hungry?" The act of theft, inexcusable as it is, is recipient of different motives, and is a totally different crime, according to the motion which impelled it. Scripture language makes this distinction. There is a crime of theft which arises from mere cupidity, and the wish to enrich yourself at the expense of your neighbour's purse; and there is a crime of theft, which has no greediness of gain whatever in it, but simply shews a man impatient of famine, and eager and unscrupulous in satisfying a natural appetite. The latter is most wrong, most pitiable; but it is not despicable. It does not create any of those feelings of indignation which the former shape of the crime does. Pickpocketing is one thing, impatient hunger is another. A man who steals food, *as* food, and for the sake of the actual support to life which it gives, and which he wants, stands upon a totally different ground, as a criminal, from one whose object is ill-gotten lucre.

Without meaning to throw particular blame upon the Berkshire magistrates—whose respected chairman evinced a strong disposition to leniency—we must, nevertheless, say, that we wish both they and the other magistracies throughout the country would attend a little more to the plain moral distinctions which often lie underneath the different crimes which come before them. We do not blame them as individuals, but we blame their system of justice. There is a theory of civil justice which simply regards, in the case of crime, the injury of the act *itself* to society, and intentionally omits all consideration of the motive as foreign to its purpose—as belonging to the department of moral, and not of civil, justice. Without entering philosophically into this theory, it is quite clear to us, that a justice which shocks common feeling and common sense is neither good moral, nor good civil justice either. It can never do for civil and moral justice to shew this palpable, staring gap between them.

The other case we refer to, and which we extracted a few days since from a provincial police report in a Portsmouth paper, unveils a more ludicrous department of the evil we are pointing out. Prepare for the pomp of justice. Four little boys are seen to go down a lane, are watched under a walnut-tree, are seen to clamber up, and then to clamber down again. They are pursued by the vigilant officer of the district, and three walnuts are found in their pockets. A prosecution is immediately instituted according to law. Two of the urchins took to their heels, and got off: so of the other two, one is put to the bar, and the other turns Queen's evidence against him. The culprit is sentenced to fourteen days' hard labour.

An extremer form of paltry drivelling nonsense, in the shape of a judicial trial, is hardly conceivable. It is too despicable to laugh at. An apprehension—a trial—a 14 days' imprisonment of a little boy, because he got some walnuts off a tree in a lane! And the other little boy made to turn Queen's evidence against him! O founders of the English constitution, sages of the Witenagemote, institutors of the Magna Charta; O shades of King Alfred, Judge Littleton, and Sir Edward Coke, did you mean to bequeath us such a despicable justice as this? The infliction of the overwhelming pomp of a criminal court upon a little boy for stealing three walnuts off a tree on the road, and making his little companion turn Queen's evidence against him—there is a concentration of anility, humbug, sickness, and nausea in the proceeding which is almost unique in our experience. A boy who takes what he ought not should be chastised certainly, and if the policeman who caught this urchin had given him some sharp cuts with his stick, it would have been about the proper punishment. But who would have thought of a *gaol* for such an offence? What but a degraded and sickening theory of justice could ever condemn a poor little boy, for a mere boyish crime, a joke, a piece of fun, to the gloom, the corrupting influence, the perpetual bad name, and the conscious disgrace and ignominy of a malefactor's imprisonment? According to this rule, half the schools in the country would have to draft off an annual proportion of their *alumni* for a temporary residence in a county gaol. School-boys are and have been proverbial robbers of orchards and perpetrators of mischief on farm-yards. Lord Eldon, if we are to believe Mr. Horace Twiss, would, according to this rule, have had to commence his experience at the bar in this culprit attitude. But it seems the rich are to have the benefit of a common-sense justice, and the poor are not. The rich man's son is flogged by the schoolmaster, the poor man's is sent to gaol.

WHITEHALL, OCT. 28.—The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Baronet of the United Kingdom of Great Britain and Ireland unto the Right Hon. William Magnay, of Postford-house, in the county of Surrey, Lord Mayor of the city of London, and the heirs male of his body lawfully begotten.

FOREIGN OFFICE, OCT. 29.—The Queen has been graciously pleased to appoint George William Featherstonhaugh, esq. to be her Majesty's Consul at Havre-de-Grace.

The following buildings have been duly registered for the solemnization of marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—Lady Huntingdon's chapel, situated in Peck-lane, Dudley-street, in the parish of Birmingham, in the county of Warwick. The Baptist chapel, situated at the Back-hills, in the parish of St. Nicholas, in the borough of Warwick, in the district of the Warwick union. The Wesleyan Methodist chapel, situated at Congleton, in the parish of Astbury, in the county of Chester, in the district of Congleton. Norwood Independent chapel, Norwood.—William Thomas Logan, superintendent registrar. St. Mary's Wesleyan Chapel, Truro, Cornwall.—R. M. Hodge, superintendent registrar. Wesley chapel, Atherstone, Warwickshire.—S. S. Baxter, superintendent registrar.

THE CONVICTS BARBER AND FLETCHER.—Accounts have recently arrived in London, stating that in the vessel which took out these will-forgers, a fever had broken out, to which it was said Barber had become a victim. It was added that he had left behind him some important memoirs connected with the extraordinary will-forgeries.

FRAUDULENT PRACTICES.—A circular has been issued by the Commissioners of the Dublin Metropolitan Police, stating that they have received from various parts of the United Kingdom counterfeited certificates, purporting to be from magistrates, with fictitious subscription lists appended, and sometimes municipal seals (found to be impressions from casts of corporation livery buttons), in which papers, women represented to be widows of sergeants or other non-commissioned officers of her Majesty's forces, are recommended for alms, usually under pretence of destitution from shipwreck; and various fabricators of such papers, apprehended by the police, having escaped punishment for want of legal proof of the actual receipt of money by means of the false pretences

used (the only offence cognizable in the present state of the law), it was considered advisable thus to give this public notice of the frauds so practised, with a view to prevent further imposition, and induce the transmission of charitable donations through responsible persons, when given in compliance with the written solicitations of unknown applicants.

THE LAWYER.

Summary.

TERM begins to-day, and with it the manifold cares and duties of the legal year. We have heard that business is unusually slack at least, such is the complaint in the agency offices. It will be seen that we have made extensive preparations for giving to our readers a still more perfect record of the proceedings of the courts, two reporters being now placed in each of the Common Law Courts. It was rumoured some days since that Mr. Justice ERSKINE had retired from the Bench, but as yet we have received no confirmation of the rumour.

ALTERATIONS IN THE LAW

BY 7 & 8 VICT. CAP. 96.

No. III.

(*Concluded from p. 13.*)

Bankruptcy.—The principal alteration in the law of bankruptcy worthy of notice is contained in the 41st section. This enables any trader who has committed an act of bankruptcy, by filing a declaration of his insolvency in the office of the Secretary of Bankrupts, to petition the Lord Chancellor for a fiat against himself, and so obtain the distribution of his property under the bankrupt laws without any thing being done by his creditors; but the bankrupt must prove all the matters requisite to support a fiat, and the proceedings under such fiat will thenceforth be prosecuted and carried on in like manner as if such fiat had been issued and adjudicated upon on the petition of a creditor of the bankrupt.

IMPRISONMENT AND EXECUTION.

The 57th and 58th sections of this Act destroy the power of imprisonment upon any judgment obtained "in any action for the recovery of any *debt* wherein the sum recovered shall not exceed the sum of twenty pounds, exclusive of the costs recovered by such judgment."

The first question that arises upon these sections is a consequence of what seems almost to be the studied carelessness of the whole Act. Why is there a difference between this and the Small Debtors Act, 48 Geo. 3, c. 123? That Act had the words "debt or damages," and the omission of the latter part in the present statute leaves it uncertain whether actions of special assumpsit are within this enactment or not.

In *Fogarty* v. *Smith* (4 D. P. C. 597), where the question was the prisoner's right to discharge, having been twelve months imprisoned on a judgment in debt for twenty pounds and one shilling damages, PATTESON, J. said—

"I think that when the Act of Parliament speaks of 'debt or damages,' it means to distinguish between those cases where the action is substantially brought for the recovery of a debt, as in the action of debt or assumpsit, and those where the action is brought for the recovery of damages merely, as in action of trespass."

And as this Act is remedial, and therefore to be construed liberally, it may be held that in cases of special assumpsit in form, but wherein the non-payment of a specific sum is the real cause of action, and that sum is under 20*l*., the Act would be held to apply. But there are many cases in which the sum sought to be recovered is purely a question of damages, just as much as in an action of trespass: for instance, actions against a tenant for breach of the conditions of his agreement, against bailees for negligence, &c.; and could the 57th section be held to apply in such a case? We think not, unless the law is strained to suit the cry of the day against imprisonment. A colour of authority would be perhaps found in sec. 59, where, in addition to the word debt, are the words "the liability which may be the subject of demand." We consider our view supported by the construction of the words "sum sought to be recovered" in the Writ of Trial Act, under which no claims for unliquidated damages can be tried. (See 2 Law T. 239.)

The principal cases upon the 48 Geo. 3, c. 123, may be seen collected in Chitty's Archbold, p. 868.

Sec. 58 would have been some protection to the creditor against a fraudulent debtor, but the practice has, we believe, been to allow the debtor to be discharged upon his *ex parte* affidavit, and leave the creditor to his remedy. This was contrary to the practice under 48 Geo. 3, c. 123, and we were extremely surprised that it was permitted by the learned judge who presided at chambers when the Act came into operation. By sec. 59 it was *intended* to punish the fraudulent debtor under 20*l*. by rendering him liable to imprisonment, but the same fatality of blundering is again prominent. In the first place, no time or mode is pointed out for making the inquiry. Then the power is only given to "the judge who shall *try* such cause." So that if judgment is obtained on demurrer or by default, and damages assessed on writ of inquiry, the fraudulent debtor would be safe.

Again, the power is given only to "a judge of one of the superior courts, or a barrister or attorney at law," being judge in the inferior court; consequently, in the numerous local and inferior courts, where the judge or judges, as in many Courts of Request, are neither barristers nor attorneys, fraudulent debtors have unlimited protection. Any one who had predicted that such an Act as this would have passed would have been laughed at as a dreamer. But it is now law, and the remedies must be sought by an Act to *amend the Act for amending the Act* relating to Insolvency.

Suspending execution.—The 62nd section is one of which all must approve. It confers upon the judge power "to suspend or stay any judgment, order, or execution given, made, or issued," in case "defendant is unable, from sickness or unavoidable accident, to pay and discharge the debt *or damages* recovered against him." That such a discretionary power was needed was shewn by the case of *Jones* v. *Robinson* (2 D. N. S. 1044), where a *ca. sa.* had been issued against a man who had been ill for three years, during sixteen months of which he had kept his bed. The sheriff had been obliged to incur the cost of keeping a man in the house, as the defendant could not be removed without danger of his life, and he applied to the Court for relief, but could obtain none, except an enlargement of the time for his return until the following term.

Executions from small debt courts.—All sales under executions from all courts for the recovery of small debts will in future be regulated by 7 & 8 Geo. 4, c. 17, and 57 Geo. 3, c. 93.

Claims to goods seized under process of any court for the recovery of small debts.—The 68th section will diminish the number of actions of trover and trespass in respect of goods of small value. It empowers the clerk of the court out of which the execution issues, in case any claim is made to or in respect of any goods or chattels seized under such execution, upon the application of the officer charged with the execution of such process, at any time, whether before or after any action brought against the officer, to summon the claimant and the execution creditor before the inferior court; and upon such summons all proceedings in the action are to be stayed, and the judge of the inferior court is to adjudicate upon the claim. This is giving a large power to the inferior courts of judicature, without the intervention of any jury, and is another instance of the tendency which we think is evident in many quarters to get rid of that ancient institution.

Landlord's lien for rent.—The effect of this entirely new enactment, contained in sec. 67, will probably be to lessen the extent of credit given by landlords, for it deprives them, in a great degree, of that preference which they have hitherto enjoyed. It is as follows:—

That no landlord of any tenement let at a weekly rent shall have any claim or lien upon any goods taken in execution under the process of any court of law for more than four weeks' arrears of rent, and if such tenement shall be let for any other term less than a year, the landlord shall not have any claim or lien on such goods for more than the arrears of rent accruing during four such terms or times of payment.

The last alteration deserving of our notice is contained in sec. 72, which empowers the commissioners of any inferior court to appoint, with the approval of one of the secretaries of state, a barrister of seven years' standing, or an attorney of ten, to act as assessor to any such court. There is a proviso, that no assessor so appointed shall be deemed entitled to compensation by reason of the passing of any general Act for the recovery of small debts. A similar proviso ought, in our opinion, to be inserted as to every appointment under any future Court of Requests Act, or else the great increase of these courts will be found an absolute bar to the establishment of any general system, by reason of the number of compensations required.

We now conclude this sketch without noticing the Act for facilitating Arrangements between Debtors and Creditors," for we do think the details are so cumbrous and troublesome, that it will be almost a dead letter. We had intended to have devoted another article to an exposure of the manifold blunders and omissions in this Act, but they are already so notorious, that we have, for the present, postponed it. We only trust that a Bill so truly discreditable to our legislators will never again pass.

We extract from the *Morning Chronicle* the following admirable article on PROFESSIONAL MALPRACTICES.

THE BENCH AND THE BAR.

There sits not on the judicial bench, adorned as that bench is by a DENMAN, a PATTESON, and a POLLOCK, a more amiable and gentlemanlike man than Mr. Baron ROLFE, nor a more discreet, painstaking, and learned judge—

"*In Israel's courts ne'er sat Abethdin*
With more discerning eyes, or hands more clean."

Considering that by far the greater portion of Mr. Baron ROLFE's life has been spent in the Equity Courts, the precision, the patience, the accuracy, and the despatch with which he administers the criminal law, are the alternate themes of wonder, praise, and gratulation, among even his best friends. But with all these amiable and excellent qualities—with the best judgment, the best temper, and the best sense—Mr. Baron ROLFE is, like the best among us, fallible; and with all respect for his high office, and unaffected admiration for himself personally, it seems to us that he fell on Thursday afternoon into as great a mistake as one wholly unacquainted with the genius of the locality of the Old Bailey could well perpetrate. The upright and calm-thinking baron will pardon the strength of the word when we tell him that an incidental expression, which he unguardedly let fall, involves no less an issue than the honour, the credit, and the respectability of the Bar of England.

That we may not be accused of overstating the case, we shall here give an account of the transaction obtained from a barrister who was present—which, though .. somewhat differs from the reports published yesterday in the *Chronicle* and the *Times*, corroborates these reports in every main particular;—

James Ball, indicted for a serious offence, appeared at the bar to plead, and informed the Court that he had no counsel. Upon being asked, he said he did not know the gentleman's name, but that he had given some money into the hands of the deputy-governor, who said that he had paid it over to Mr. Cope, the governor; the latter having been requested by him (prisoner) to *recommend* to him a barrister for the defence, and that he expected one to be retained for him. After waiting a short time, Mr. Ballantine (who had conversed for a minute or two in an undertone with a turnkey in the dock), addressing the Court, said, from what he had heard, he had reason to believe the prisoner spoke the truth, and shortly afterwards remarked that he appeared for the prisoner. Several barristers here observed that Mr. Ballantine ought not to conduct the defence under such circumstances. Mr. Wilkins then rose, and commented strongly upon the way in which the instructions had been given to Mr. Ballantine, observing with much force and truth, that the interests of the bar must necessarily suffer most seriously if such methods of procuring counsel were allowed, that the prisoner appeared to have no actual choice in the matter, and that nothing could be more improper than that such a power should be allowed to be in the hands of the governor of the gaol, who was in effect acting as an attorney without the responsibility, and favouring a particular counsel.

Mr. Baron ROLFE said he could not interfere. That he considered the prisoner had a right to ask for advice from the governor, as to the party most fit to conduct his defence, and that he could not prevent the governor naming any gentleman at the Bar in preference to another, and that he considered that Mr. Cope was, in so doing, acting as the prisoner's agent (Mr. Cope had entered the court about this time). At the conclusion of the case, Mr. Parry rose, and said he trusted the Court would excuse him if he humbly asked whether the Bar was to understand that he, Mr. Baron Rolfe, approved of the course pursued in the above case, as the opinion of the Court would relieve many juniors from the doubts entertained, and observations lately made in particular quarters as to the practice in defences in this court, that in his humble opinion the course above alluded to was most improper, and would seriously affect the character of the Bar. Mr. Baron ROLFE said he did not 'approve or disapprove' of the matter, that it was impossible for him to interfere, and made a few other observations to the same effect as he had previously.

These few sentences are of the very gravest and most vital importance to the character and honour of the Bar. Every thing that a judge says, even incidentally, carries with it, as it ought to do, great weight; but we say advisedly, that unless the effect of such observations as fell from the bench on Thurs-

day last be counteracted by some decision of the fifteen judges, or some explanation from the learned baron himself, there is an end to the independence and honour of the Bar of England. We have always understood that the Bar was a learned and liberal profession, occupying a high social, and a still higher mental and moral rank; but if the observation of Mr. Baron ROLFE be allowed for one moment to influence the conduct of the Bar, at the Old Bailey or elsewhere, then one of the most elevated of professions will sink from its "high estate," and instead of being, as it now is, the guide of the weak, the refuge of the oppressed, the terror of the oppressor, and the shield of the innocent, the Bar must and will inevitably degenerate into the humble clients and fawning flatterers of the gaolers—not alone of the Old Bailey, but of the turnkeys and prison fags throughout the length and breadth of England.

With an independent, a high-spirited, and an intellectual Bar, it is impossible for tyranny or oppression to prevail in any country; but if the Bar are to become the dependents of gaolers and the governors of gaols, we shall have men allured to the trade of law, to use the words of Milton, "grounding their purposes not on the prudent and heavy contemplation of justice and equity which was never taught them, but on the promising and pleasing thoughts of litigious terms and fat fees." Pasquier, the celebrated French magistrate and jurisconsult, exalts the wisdom of Charles V. because, says he, the calling of an advocate was not alone honoured in his time, but the profession was the road to the highest dignities in the state. But advocates were then "*omnium rerum magnarum atque artium scientiam*," and did not stoop to the patronage of the great and powerful, much less did they cringe and fawn to gaolers and turnkeys. The notorious John Wilkes was fond of declaring, that the name of a lawyer was but another name for a scoundrel; and so it must unquestionably become, if the members of the profession ever degrade themselves so low as to be the retainers of turnkeys and thief keepers. The Bar, after all, it must not be forgotten, is the raw stuff from which judges are made; and if our advocates be not alone pure, but above all taint of suspicion, how can our judges be honest? It was said of Jefferies by Charles II. that he had more impudence than ten carted strumpets, but at the time he was on the bench the Bar was no better nor purer than those who sate above them. Trevor, who afterwards became a judge, began by being clerk to his brother, Arthur Trevor, who allowed him, says North, "to learn the knavish part of the law. After this he courted the society of gamesters, and brought his knowledge to bear well with them, so that he was their *point d'appui* when in difficulties." There was then at the bar one Wallop, whom Jeffries addressed from the bench as follows:—"Mr. Wallop, I observe you are in all those dirty causes. If you don't understand your duty better I shall teach it to you." Yet the "incomprehensible miscreant" of a judge, to use the epithet of O'Connell, who thus addressed a degraded profession which suffered such a tone even from the bench, had himself begun to plead two years before he had been regularly called; had frequented Hicks's-hall, and the lowest criminal courts, and was patronised by civic functionaries, turnkeys, gaolers, &c. By these vile and unworthy means—by "wassailing," to use the expression of Roger North, and drinking deeply with the lowest hangers-on of courts of justice—Jefferies found himself, says his biographer, Woolrych, in practice sooner than any of his contemporaries, and succeeded in places

"Where loudest lungs and biggest words prevail."

At such a time it was no uncommon thing for judges to come to the council quite drunk, or to receive bribes for the ransom of a prisoner; but the Bar was contemporateously in a state as utterly corrupt and degraded as the bench who expounded the statutes. To such inevitable degradation must the Profession come again, if the system of receiving fees from a turnkey be adopted or tolerated. The successful professional *scamp*, who thus succeeds by courting low company, may address his admiring father in the very lines of the author "*of the modern way to get on at the bar.*"

> "*Thus you see, my dear father, it answers my ends*
> *To make all these vagabond turnkeys my friends;*
> *And think just as I've hit to a tittle*
> *The way to get on, and it costs me out little.*
> *At chambers I now and then give them a lunch,*
> *Or at night a regale of hogs' puddings and punch.*"

It is essential to the independence and respectability of the Bar that no system approaching to what is called "huggery" should be countenanced or tolerated. On the northern circuit, in Lord ABINGER's or Mr. Justice CRESSWELL's time, a man guilty of "huggery" to even a first-rate attorney, would be discountenanced or disgraced at the circuit mess. How much severer would the punishment fall on the shoulders of the degraded being who consented to receive a paltry guinea on the recommendation of a turnkey.

It is the business and the duty of the press to watch over the administration of justice, without reference to Bar or Bench; and how can the administration of justice be ever pure, if the paltry arts by which vulgar and cunning pettyfoggers attempt to obtain practice are allowed to prevail? This is not a question relating simply to the Bar. It is an important national question, which may concern the liberty, which may affect the life, of any man in England. The extra-judicial opinion of Mr. Baron ROLFE can have no weight—the ominous silence of so able and honest a man as Mr. Justice MAULE (who, we regret to say, sat on the bench without interfering) no significancy. Their opinions, supposing Mr. Justice MAULE to have agreed with his brother, which nowhere appears, are repudiated and disowned by the whole Profession; nay, even by the Bar practising at the Old Bailey. It is true, the wolves and the foxes were sly, as is their wont—and silent, as best became such men; but Mr. Wilkins and Mr. Parry spoke out in a befitting and dignified tone, and for such service they merit the warm thanks of the Profession and the public.

LEGAL INTELLIGENCE.

CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

SPRING CIRCUITS, 1845.

Home Circuit.

HENRY REVELL REYNOLDS, Esq. Chief Commissioner.

Sussex—at Horsham, Monday, February 24.
Kent—at Maidstone, Thursday, March 6.
Canterbury (City and County)—Saturday, March 8.
Kent—at Dover, Monday, March 10.
Hertfordshire—at Hertford, Friday, April 4.

Northern Circuit.

JOHN GREATHED HARRIS, Esq. Commissioner.

Yorkshire—at Wakefield, Friday, February 21.
Kingston-upon-Hull (Town and County of the Town)—Tuesday, Feb. 25.
Yorkshire—at York, Thursday, Feb. 27.
Yorkshire—at Richmond, Saturday, March 1.
Durham—at Durham, Monday, March 3.
Northumberland—at the Moot-hall, Newcastle-upon-Tyne, Wednesday, March 5.
Newcastle-upon-Tyne (Town and County of the Town), on the same day.
Cumberland—at Carlisle, Friday, March 7.
Westmoreland—at Appleby, Monday, March 10.
Lancashire—at Lancaster, Tuesday, March 11.
Lancashire—at Liverpool, Monday, March 17.
Cheshire—at Chester, Wednesday, March 19.
Chester (City and County)—on the same day.
Flintshire—at Mold, Saturday, March 22.
Denbighshire—at Ruthin, Tuesday, March 25.
Anglesey—at Beaumaris, Friday, March 28.
Carnarvonshire—at Carnarvon, Monday, March 31.
Merionethshire—at Dolgelly, Wednesday, April 2.
Montgomeryshire—at Welsh Pool, Friday, April 4.

Midland Circuit.

WILLIAM JOHN LAW, Esq. Commissioner.

Essex—at Chelmsford, Saturday, March 1.
Essex—at Colchester, Monday, March 3.
Suffolk—at Ipswich, Tuesday, March 4.
Norfolk—at Yarmouth, Thursday, March 6.
Norfolk—at Norwich Castle, Friday, March 7.
Norwich (City and County)—on the same day.
Norfolk—at Lynn, Monday, March 10.
Suffolk—at Bury St. Edmunds, Tuesday, March 11.
Cambridgeshire—at Cambridge, Wednesday, March 12.
Huntingdonshire—at Huntingdon, Thursday, March 13.
Northamptonshire—at Northampton, Friday, March 14.
Northampton—at Peterborough, Monday, March 31.
Warwickshire—at Warwick, Saturday, March 15.
Warwickshire—at Coventry, Monday, March 17.
Warwickshire—at Birmingham, on the same day.
Lichfield (City and County)—Tuesday, March 18.
Shropshire—at Shrewsbury, Thursday, March 20.
Staffordshire—at Stafford, Saturday, March 22.
Derbyshire—at Derby, Tuesday, March 25.
Nottinghamshire—at Nottingham, Wednesday, March 26.
Nottingham (Town and County),—on the same day.
Lincolnshire—at Lincoln, Friday, March 28.
Rutlandshire—at Oakham, Tuesday, April 1.
Leicestershire—at Leicester, Wednesday, April 2.
Bedfordshire—at Bedford, Friday, April 4.
Buckinghamshire—at Aylesbury, Saturday, April 5.

Southern Circuit.

DAVID POLLOCK, Esq. Commissioner.

Berkshire—at Reading, Friday, Feb. 7.
Oxfordshire—at Oxford, Monday, Feb. 10.
Worcestershire—at Worcester Thursday, Feb. 13.
Herefordshire—at Hereford, Saturday, Feb. 15.
Radnorshire—at Presteigne, Monday, Feb. 17.
Brecknockshire—at Brecon, Tuesday, Feb. 18.
Carmarthenshire—at Carmarthen, Thursday, Feb. 20.
Cardiganshire—at Cardigan, Saturday, Feb. 22.
Pembrokeshire—at Haverfordwest, Tuesday, Feb. 25.
Glamorganshire—at Swansea, Thursday, Feb. 27.
Glamorganshire—at Cardiff, Saturday, March 1.
Monmouthshire—at Monmouth, Monday, March 3.
Gloucestershire—at Gloucester, Friday, March 7.
Bristol (City and County)—Monday, March 10.
Somersetshire—at Bath, Wednesday, March 12.
Somersetshire—at Taunton, Friday, March 14.
Cornwall—at Bodmin, Tuesday, March 18.
Devonshire—at Plymouth, Thursday, March 20.
Devonshire, Exeter (City and County),—Saturday, Mar. 22.
Dorsetshire—at Dorchester, Tuesday, March 25.
Wiltshire—at Salisbury, Friday, March 28.
Southampton (Town and County of the Town)—Monday, March 31.
Southampton—at Winchester, Wednesday, April 2.

JOINT STOCK COMPANIES.

Yesterday, two Acts, passed on the 5th September last, respecting joint stock companies, came into operation. The first Act is for the registration, incorporation, and regulation of companies; and the other for facilitating the winding-up the affairs of such companies unable to meet their pecuniary engagements. The first-mentioned statute contains eighty sections, with several schedules; and the second thirty-three, with one schedule annexed. The titles of the Acts disclose their objects, and the preambles (an important branch of a statute) appear to have been wrought out in the provisions. By the preamble of the first it is declared to be expedient to make provision for the due registration of joint-stock companies, with the qualities and incidents of corporations, and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of the Act. The preamble of the second is to the effect that it is expedient to extend the remedies of creditors against the property of such joint stock companies or bodies when unable to meet their pecuniary engagements, and to facilitate the winding-up of their concerns, and that it may also be for the benefit of the public to make better provision for discovery of the abuses that may have attended the formation or management of the affairs of such companies, and of ascertaining the causes of their failures. It appears that companies existing on the 1st November must, by the 58th section, register their names, purposes, and places of business within three months, under a penalty not exceeding 50*l.*; and, by the fourth clause, a provisional registration must be effected of all companies to be formed after that day, before any prospectus, hand-bill, or advertisement appears, under a penalty of 25*l.* Permission is granted by the 17th section to the public to inspect the returns made to the registry-office (which is to be opened with a registrar and other officers appointed by the Board of Trade) for a fee not exceeding [illegible]; copies may be obtained and received as evidence in all courts. Patrons and directors must be shareholders; and, to prevent the formation of fraudulent concerns, it is provided that any person who has pretended that a company was patronized or directed, whether *now existing or not*, by any eminent or opulent person, in any advertisement or other paper, whether printed or written, shall forfeit for every such offence a sum not exceeding 10*l.* Annual returns are to be laid before Parliament of all joint stock companies. The remedies provided for and against joint stock companies are, by the second Act, greatly simplified. Companies can declare their own insolvency and stop themselves when in embarrassment, without getting further into debt by fictitious capital or by offering to pay a rate of interest which they cannot *honestly* afford, and by which means many misguided people have been duped out of their money; also companies can be summoned to the Court of Bankruptcy as a "trader," and proceedings adopted as in ordinary cases. By the 27th section of the second Act it is provided that the papers may be laid before the Attorney-General, who shall direct whether any and what proceedings shall be taken against any person who was a director or officer of a company, or *any other person*, and any prosecution or other proceeding so directed shall be conducted by or under the management of the Commissioners of the Treasury. These two Acts extend to England and Ireland (Scotland being omitted), and they bring within their provisions all joint stock companies, and define the associations to which the term has reference, and place under the control of the Board of Trade, as the eye of the government, the various establishments now formed, or which may be reared under that comprehensive denomination. The Acts are known as 7 & 8 Vict. c. 90 and c. 91.

ISLAND OF SKYE.—We understand that Thomas Fraser, esq. Solicitor, Inverness, has been appointed Sheriff Substitute of the Island of Skye, district of Invergordon, in the room of the late George Robertson, esq.—*Ross-shire Advertiser.*

WESTON-SUPER-MARE.—The solicitors and other inhabitants of this rapidly-increasing town, having long felt the want of a public stamp-office, presented a memorial to her Majesty's Commissioners of Stamps, who immediately saw the propriety of it, and appointed Mr. Joseph Wherent, stationer, as their sub-distributor for Weston-super-Mare and its neighbourhood.

CHANCERY COURT OF LANCASHIRE.—Joseph Briggs Dickson, esq. of Preston, solicitor, has been appointed by Lord Granville Somerset, Chancellor of the Duchy of Lancashire, to the office of Clerk in Court, vacant by the death of the late Charles Buck, esq. The other four Clerks in Court are—R. Palmer, esq.; C. B. Walker, esq.; W. Hopkins, esq.; and John Wilson, esq.

JOINT STOCK COMPANIES REGISTRATION ACT.—The *Gazette* of Tuesday contains the regulations prescribed by the Board of Trade, under the provisions of the Act of last session, for the registration, &c. of Joint Stock Companies, respecting the *form* of such returns as are directed to be made by that Act. All the forms to be observed by the companies are pre-

scribed in five pages of the *Gazette*, to which we must refer those who stand in need of more detailed and specific information.

OFFICIAL ASSIGNEES.—As these officers are now forced on the estates of all bankrupts, whether required or not, it behoves the members of the Profession, in examining audit accounts, to see that the official assignee's allowance does not exceed the amount fixed by the order of the Court, which is "One per cent. on the moneys they receive; one and a half per cent. on the moneys actually to be divided," except under special circumstances, when it may be increased or diminished on application to the Court of Review. (*Vide* 7th order of that Court, January 12, 1832.)

TRIAL OF HENRY MURPHY, SOLICITOR.

Dublin, Oct. 29.

Henry Murphy, one of the attorneys, was charged with burning several original documents connected with a suit in Chancery, in which the prosecutor here was the plaintiff. These documents were receipts for rent, and necessary in the progress of the suit. Mr. Murphy claimed from Captain Richardson the sum of 50*l*., as the balance of a bill of costs, which, it was alleged, he never furnished, and when the legality of his charge was questioned, he wrote to the captain to say that he would burn one of the documents every day until he received the money, and until all were consumed.

The case was stated by Mr. *Brewster*, and the letters formed a remarkable portion of his address to the jury. It would appear by the letters of the prisoner that he burned four documents, as he wrote on four occasions to Captain Richardson, inclosing the ashes of burned paper, with a small portion of each document to satisfy him that they had been actually destroyed.

Thomas Morrin, one of the conducting clerks in the Rolls Chancery-office, produced the bill in the cause of *Richardson* v. *Preston*, for the purpose of shewing the Court the nature of the suit in which Mr. Murphy was engaged.

Captain Richardson deposed that he had handed Mr. Murphy all the documents necessary for conducting the suit in Chancery. He identified the portion of a burned receipt, which he received inclosed in a letter, in the handwriting of Mr. Murphy. He also identified portions of other material documents sent to him in letters written by the traverser. Some of the ashes of paper was contained in each letter.

Mr. *Curran* objected to the reading of the pieces of paper which purported to be receipts, inasmuch as they were not stamped.

Mr. *Brewster* held they were "exhibits" in the cause—as such were described in the indictment—and should be received as legal evidence in this prosecution.

Mr. *Curran* contended that the case did not come within the meaning of the Act under which the prisoner was indicted, as that Act only contemplated the protection of records in public offices.

The CHIEF BARON, in charging the jury, expressed his opinion that the documents were public, inasmuch as they formed part of a suit pending in a superior court.

The jury, after an absence of seven minutes, returned with a verdict of "Guilty."

The prisoner was then removed in custody of the gaoler.

PROCEEDINGS OF LAW SOCIETIES.

LEGAL PROTECTIVE ASSOCIATION.

(*From our own Reporter.*)

A GENERAL meeting of the Profession and members of the Legal Protective Association was held on Wednesday, 30th ult., at the Gray's Inn Coffee House, to elect officers and adopt rules for the management of the society.

Sir GEO. STEPHEN having been called to the chair, directed the attention of the meeting (which was not numerous) to the objects of the association; stated that if there was one object more than another on which through a long professional life his anxiety had always been great, it was—if he might use the word in its legitimate sense—the combination of the members of the profession to which he belonged, with a view to their own advantage, and especially with a view to their own character. It so happened, from the nature of the duties they had to discharge, that they were engaged in a fearful conflict with the world, and there was also a conflict carried on among themselves. This had always appeared to him a great mistake; and he knew of no way in which such an error could be corrected except by meeting on friendly terms in constant intercourse, with a view to promote their general interest in a way in which no such conflict could arise. (Hear, hear.) There was no doubt about the fact that, as a Profession, they had in their hands perhaps greater power than any other profession that could be named: they were admitted *ex necessitate* into the domestic confidence of their clients, who consisted of all classes, political, parliamentary, and commercial, and every class that carried with it importance and consideration in the country. If, therefore, possessing such a confidence, and possessing that highest influence which every respectable and honourable attorney must possess with his client,—if they had hitherto forborne to use that influence for legitimate purposes connected with their own protection, the fault had been entirely their own. He hailed, therefore, the establishment of this institution as an era from which they might, hereafter, be enabled to date a combination of professional influence for the legitimate objects connected with their business. They had been run down on too many occasions by public feeling; from the nature of their duties they too often provoked something like general hostility; they were exposed constantly to be carped at, and their profits to be pecked at; their means of existence, even, cut down and torn away from them for the purpose of gaining an empty popularity, and for the purpose of making a reform at their expense. (Cheers.) It was therefore most important that they should be allowed, at every such attack made upon them, professionally to join together heart and hand to resist it, and to turn the tide of prejudice that had too often, hitherto, been suffered to run riot at their expense. He rejoiced to see that one of the objects of the Association, specified in the prospectus, was that of "exposing, and if possible punishing, all persons guilty of any acts of malpractice, *whether they were members of the bar, attorneys, or solicitors.*" It was their duty to the public, not less to themselves, to correct the malpractices of others as well as themselves: but it would be most improper and ungracious to attempt a reformation of a higher department in the Profession unless they were sincere, honest, and persevering in reforming the errors of their own department. (Hear.) The next specified object was to him equally gratifying: it was, "to maintain the respectability of the Profession by an honourable and liberal mode of practice." They all knew that the practice of the Profession had been reformed very largely and simplified very much by many legislative enactments; but the greatest of all reforms was that which must spring from themselves, by giving a liberal and honourable and straightforward character to the practice in their respective houses of business; and he was bound to say, from his own experience of the Profession, that it was only by the *principals* that this could be effected. Nineteen times out of twenty when they had had occasion to complain of any thing in the nature of "sharp practice," the fault had been traced, not to the principals but to the clerks. It was therefore only from the authority which they possessed as principals that it was in their power to restrain that sort of practice which had hitherto obtained a very unfavourable reputation in society. If they combined together, as the heads of offices, to set their faces against every undue advantage—every unfair effort to extract from the pockets of their professional opponents five shillings here and ten shillings there, less for the sake of costs than for the sake of causing mortification and annoyance; and if they instructed their clerks and subordinates to act upon the principle they were desirous of establishing as the ruling principle of the Profession, their Profession would then be what it deserved to be considered in every point of view—a liberal Profession. In conclusion, he expressed his deliberate and sincere conviction that, if they combined for no other purpose than to carry out these two objects, they would confer no less a benefit on society than a benefit on themselves. (Cheers.)

D. W. WIRE, Esq., then stated that, since the last meeting of the Association, the committee had formed a series of rules and regulations (which had been printed), upon the suggestions of members of the Association both in town and country. He thought it was due to themselves that they should combine together, because he was satisfied, from an actual estimate of the working of the Law Institution in Chancery-lane, that all that the Profession needed could not be accomplished by that body—(hear, hear!)—supposing it to be as willing to work as they were anxious to see it do; and therefore he believed there was a necessity for another institution, embracing more widely all the objects necessary for the protection of the Profession, apart from that institution. He wished to dissipate the idea that the Association now about to be formed was intended as a rival to the Law Institution. He held in his hand a letter from a respectable member of that body (Mr. Fynmore), who said he deemed it advisable to withdraw his name as one of the officers of the Legal Association, because he understood that it was generally considered that that Association was intended to be in opposition to the Incorporated Law Society. He (Mr. Wire) regretted that such a letter had been sent to the secretary, because he had, on the former occasion of their meeting, distinctly disavowed any desire whatever to be placed in opposition to that institution. He believed there was room for both, and he hoped that there would be a cordial harmony between the two bodies, and a desire to assist each other in accomplishing the objects they were seeking. What he understood by reform in the law was improvement and amendment, for the benefit of the public and the Profession; that it should be what Sir Edward Coke had designated it, "the perfection of reason," and not more alteration, such as had of late been introduced under the name of reform, and which, while it did not benefit the public, only degraded the Profession. He was anxious that, while reforms of the law cut down unnecessary expense, they should still leave to the practitioner sufficient profit to enable him to maintain his station in life with respectability; and the public, he was sure, never required that the profits of the Profession should be so cut down as to reduce them to the level of the small shopkeeper. As lawyers, they were not opposed to any necessary and righteous reform of the law; and as men and Englishmen, they would assist in carrying out whatever conduced to the general prosperity, happiness, and security of society. What they objected to was innovation, miscalled legislation, by men unacquainted with the law, and whose only object was a little empty popularity. (Hear, hear!) They did not want such reforms as that by which a few young gentlemen were permitted to retire on the munificent provision of 7,000*l*. or 8,000*l*. a year, extracted from the pockets of the public; nor did they want such a reform as that which, while, under the pretence of simplifying the classification of fees, cut down the profits of the Profession, and left the revenue untouched. All they wanted was, that a living profit should be left to the solicitor. (Hear!) In conclusion, he proposed a series of rules, to the effect, "that the Association be styled the ***Metropolitan and Provincial Legal Association***, consisting of duly qualified attorneys and solicitors and writers to the signet throughout the United Kingdom, to be admitted on the recommendation of two members; that the objects of the Association be to promote and support the general interests of the Profession; to prosecute (if necessary) all unqualified persons who may usurp either the duties or privileges of the Profession; to originate and assist in obtaining all useful and practical reforms and amendments of the law; to expose and, if possible, punish all persons guilty of any acts of malpractice, whether they be members of the bar, attorneys, or solicitors; to maintain the respectability of the Profession by an honourable and liberal mode of practice; and to adopt measures for obtaining a co-operation with all law societies (provincial or local) having similar objects in view."

Then there were the usual rules for the payment of the subscription, the time of meeting, and the general government and conduct of the Association.

Mr. GODDARD seconded the adoption of these rules, and remarked, in reference to the withdrawal of Mr. Fynmore from the Society, that that gentleman had given to the interim committee full authority to put his name down as a member.

Some discussion then took place upon the rules, and many amendments were suggested.

Mr. VICKERY suggested a more explicit disclaimer on the part of this Association, of any rivalry with the Law Institution.

Mr. WIRE replied, that the committee had considered that subject, and had determined to send a letter to the *Legal Observer* disclaiming any rivalship or hostility in the two institutions, unless it began with the elder; and also to address a letter to the council of the Law Institution asking them to co-operate with this Association.

Mr. JOHNSON suggested that there should be an addition to the objects of the Association; and he was sure that many influential members of the Profession would join it, if it was known that, it would strenuously support a measure which had been proposed for throwing open Doctors' Commons to the Profession generally.

Mr. WIRE said that they could not make that a rule. It had been proposed to include the Proctors, but he objected to that, because many of the members of the Association, with himself, entertained a strong opinion against the propriety of passing the Ecclesiastical Courts Bill; and they thought, that instead of carrying into effect the little petty reform contemplated by that Bill, there ought to be a sweeping measure to throw open the Ecclesiastical Courts, and reform them in their expenditure.

Mr. DONNE suggested that some plan should be adopted in order to keep out of the Association disreputable persons; and, if they were allowed to creep in, that there should be created a power of expulsion. It was very likely they would have to put such a power in force, for many of such persons were frightened at the appearance of the Association, and were anxious to join it.

The CHAIRMAN suggested that, instead of creating a power of expulsion, the members should be eligible by ballot only. He had felt, from the first moment it was suggested to him, that if there was any one danger to be avoided with more anxiety and sedulous care than another, it was the introduction of gentlemen who wanted reform into a reforming society, because he believed self-reform was the last thing persons undertook. It was very difficult to meet the case now under discussion. The introduction of any candidate upon the personal assurance of two or three members would do.

Mr. SANGSTER did not think that many persons would lavish their money upon an institution formed avowedly for the purpose of putting down practices by which they lived. As the rules were framed, he doubted whether they could refuse the subscription of any duly qualified attorney, and he proposed that it be one of the rules that the council have power to return any subscription, or to decline receiving it from an improper person.

Mr. RUSSELL objected to the council having a power intrusted to them which ought to be exercised only by the general body of members. He did not think there were many persons who would render the exercise of such a regulation necessary; and he thought also, that until some charge could be brought against any person who desired

to belong to the Association, he should not be publicly slandered by being rejected by the council.

The CHAIRMAN entirely disapproved of the power of expulsion existing in the council or the general body of subscribers, because, he urged, however great might be his offence, it could not warrant such a public exposure unless it warranted a prosecution; and if a public prosecution was not required to meet the offence, then the exposure consequent upon expulsion, in any case of unjustifiably sharp practice, would be the infliction of a penalty which might, perhaps, involve the individual in perpetual ruin, and would be unjust and cruel.

Mr. WISE said that there were so many insuperable difficulties in the way of adopting the suggestion of Mr. Russell, that he thought the power sought to be created had better be left to the general influence of the body over all its members to promote honourable practice and upright conduct amongst themselves.

Mr. RUSSELL merely meant that if any such power as that suggested were created, it should rest in the general body, and not in the council.

The CHAIRMAN thought it very desirable that such a power should exist, and that it should be known to exist; because it would tend to keep out many persons applying to become members who might think it a convenient thing to add a *quasi* respectability to their names. It was considered an evidence of respectability for a man to belong to the Law Institution, and the same degree of reputation ought to be attached to this Association.

After some further discussion it was agreed "That the council shall have power to add to their number not exceeding ten members; and, also, when twelve in number are present (at the least), to decline to receive or return the subscription of any party."

Sir Geo. Stephen was then appointed president of the institution; Messrs. James Birchell, Thos. Pain (Dover), and D. W. Wire, vice-presidents; Messrs. W. H. Ashurst, John H. Boyce (Margate), and Thomas Mosely, auditors; Mr. Edward Clarke, secretary; and a council of inquiry and direction, consisting of twenty four members, was also appointed.

Mr. CLARKE, in returning thanks for the appointment of secretary, said that he had received a vast number of letters from attorneys from all parts of the country, all of whom gave a direct lie to the foul slander endeavoured to be affixed on the character of the Profession by an eminent and noble personage; and there was but one opinion as to the total abolition of imprisonment for debt, which was, that the Profession were not friendly to the imprisonment of parties for debt under any circumstances. There was one important subject which it would be his duty to lay before the council at their next meeting, and that related to a matter that concerned the interests, not only of the London, but the country practitioner. They were all aware that deeds, releases, deeds of composition, bills of sale, assignments, indentures of apprenticeship, and numerous other instruments were daily prepared by accountants and parties unqualified for such a purpose. But they might be to'd that there were statutes for the protection of attorneys against such an innovation, and that there were fines to be inflicted and penalties to be imposed; but they found these statutes were quite ineffectual; and, therefore, as a remedy for this evil, it had been suggested that the Association should endeavour to obtain the passing of a statute rendering invalid all deeds and instruments requiring a stamp that are not prepared and attested by a professional man. For this purpose they required the assistance of the provincial Law Societies. In conclusion, he said that most eminent services had been rendered to the Profession by that excellent periodical the *Law Times* (cheers), and he hoped that, as it had been working, with unflinching efforts and untiring zeal, with the Profession, to protect their privileges and interests, the members would not part that day without voting their thanks to the editor of the *Law Times* for his strenuous efforts in assisting them to attain their present position. (Cheers.)

Thanks were then voted to the Chairman, and the meeting separated.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In answer to the letter in your last number, addressed to me through you from Mr. Crowe, of Uckfield, I beg to inform that gentleman (what I believe he, as well as every attorney both in Lewes and Brighton, is well aware of) that for several years I had a branch-office in Lewes, and attended there regularly once or oftener every week; that such office was at the house of Mr. Hardy, and that he, during that time, acted as my clerk. As Mr. Crowe wishes for every particular, I further beg to inform him, that the reason of my giving up such branch-office was, that I was considerably out of pocket by keeping it on, and that I should have given it up long before I did (which was at the close of the summer assize in 1843), but wished to get Mr. Hardy another situation first, on account of his family. This I succeeded in doing with a friend of mine, who, having extensive connections in Sussex, took a house in Brighton; but it not meeting his views, he, after a few months, gave it up, and returned to London. From the time I discontinued my branch-office at Lewes, Mr. Hardy has been totally unconnected with me as to business; not that there is any disagreement between us, and nothing would give me greater pleasure than seeing Mr. Hardy placed in a good situation, in the common law or criminal department of some office of extensive practice, in the knowledge of which branches there are few persons who surpass him.

Now to explain the circumstances which caused my disclaiming all connection with him at the present time; they are these:—a person in difficulties, who had been served with a copy of a writ of summons, and subsequently with notice of declaration, applied to Mr. Hardy, supposing him to be still in connection with me; he advised him to put in a plea to gain time, which the other consented to, and the plea was accordingly put in as in person, Mr. Hardy going to London for the purpose, and the party stated he paid Mr. Hardy 3*l.* for so doing. The attorney who appeared at the hearing to oppose endeavoured to make out that I was a party to this proceeding, of which I was wholly ignorant, not even knowing the party until some time afterwards. Added to this, on instituting an inquiry, I found that it was generally believed, both in Lewes and other places, that Mr. Hardy had my consent to use my name in any business that might be taken to him. Under these circumstances, I thought it a duty I owed to myself, the Profession, and the public generally, to disclaim all connection with him, that no such impression might exist in future, and accordingly I put an advertisement into the county paper (the *Sussex Agricultural Express*) and a letter in the LAW TIMES.

The only query remaining unanswered is, whether Mr. Hardy's name is on the roll of attorneys? To this I can only say, I believe Mr. Hardy never professed to be an attorney; at least I never heard that he did.

I hope I have now satisfactorily answered Mr. Crowe's letter; if, however, he wishes for any further information, and will call upon me in Brighton, I shall be most happy to furnish it.

I am, Sir, yours, &c.
G. B. GOODMAN.

Brighton, October 28, 1844.

[*Note* by the EDITOR.—In a private letter, Mr. GOODMAN at first stated the circumstances; but as it contained other names, we did not deem it advisable to publish it. He need not further trouble himself about that which is now satisfactorily explained.]

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—At the last meeting of the interim committee of the above association, held on the 29th inst. (and whose duties then closed, having been superseded by the council appointed at the general meeting yesterday), I was desired to address you upon a report which has been somehow or another industriously circulated, that the association has been got up in *opposition* to the Incorporated Law Society, than which nothing can be more unfounded and untrue. The very fact of the *objects* of *both* being *similar* carries a denial of opposition on the face of it; and, as was stated yesterday at the general meeting by our worthy chairman and president, Sir George Stephen, "it is impossible to conceive what objection on earth there could be even if twenty societies were all in full operation for the accomplishment of our objects—it would be a subject of congratulation rather than regret and ill-feeling."

I assure you, Sir, that this association intends, and intended from the first, to solicit the aid, advice, and assistance of the Incorporated Law Society upon all matters of importance touching the furtherance of its objects; for considering that institution as the parent society, and as possessing, not only both power and influence, this association is bound for the interests of the Profession, but is of itself most desirous that an harmonious feeling should at all times exist; and I trust this declaration will at once check and remove the impression that has been unwarrantably and industriously circulated.

I shall do myself the pleasure next week of forwarding you a copy of the rules as passed, with the list of the executive for the ensuing year.

I am, Sir, your obedient servant,
E. CLARKE, Sec.

5, Bedford-row, Oct. 31, 1814.

BRIEFS TO COUNSEL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In one of your earliest numbers, I directed your attention to this subject, and you then appeared incredulous. The public attention has since then been brought to it, and many influential members of the Bar have pleaded guilty, "with extenuating circumstances."

I have attentively read the numerous explanatory letters and remarks which have been made upon the subject, and there appears to be only one class of cases in which the general rule established between the two branches of the Profession can be honourably broken in upon by the Bar. I mean the case of the poor prisoner who is able to raise his guinea fee for his defence and no more.

In such a case, I think I speak the general feeling of my own branch of the Profession when I state that we should willingly consent to a relaxation of the general rule, if proper precaution were taken to prevent its abuse.

Let then the poverty of the prisoner be openly stated in court, and, if the statement appear true, let him ask the Court to allow him *there* to name a counsel, to whom he may hand over his fee, without the intervention of any third party, whether *governor* or *friend*.

This would prevent the disgraceful practice of sham attorneys and agents being admitted by counsel to advise as friends of the prisoner, to draw up the briefs, and even to prompt the counsel in open court.

It is not the wish of attorneys to extort from the wretched prisoner his last guinea, under the plea of etiquette. They only wish to prevent his being thrown into the hands of those whose conduct is not under the control of the Court, and they ask the members of the Bar to co-operate with them in preventing this.

As a check upon the practices complained of, I would recommend every attorney, on delivering his brief to counsel, to instruct him to ask of the adverse counsel the name of the attorney from whom he holds the brief. This question should be asked at first privately, then, IF NECESSARY, publicly. The Court would, I am convinced, refuse to hear the counsel, unless a satisfactory answer were given.

Your obedient servant,
Hertford, October 28, 1844. J. L. FOSTER.

LETTER BEFORE ACTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Observing that some of your correspondents still entertain some doubt, and are desirous of learning the views of other members of the Profession, upon the important question whether an attorney can compel payment by a defendant of the costs of a letter written before action, although the debt be paid or tendered before any writ has been issued, I beg to offer you a few observations on the subject; and when the cases which have received judicial decisions are examined, I think it will appear quite clear that such a payment cannot, in ordinary cases, be insisted on.

I believe a great many of the Profession have been misled by the way in which the case of *Morrison* v. *Summers* (1 Barn. & Ad. 559) has been quoted or referred to in the works of Mr. Tidd and Mr. Chitty, as an authority to shew, generally, that such a fee may be legally enforced.

The facts of that case appear to be as follows:

On the 10th of April the plaintiff's attorney wrote to the defendant requiring payment of the debt, and 5s. for the letter; the defendant replied that he would remit in the course of a fortnight. On the 14th the plaintiff's attorney, in answer, stated that if the debt with 13s. 4d. his costs, were paid on the 21st, no further expenses would be incurred: but the defendant, without waiting the receipt of such answer, on the same day (14th) remitted the debt to the plaintiff through a banker, and on the following day (15th) it reached the plaintiff, who sent a receipt. But the attorney, on the 15th, in order to secure the payment of his charges, sued out a writ, and, on finding afterwards that the debt had been paid, informed the defendant that unless one guinea was paid for his costs, he should proceed in the action. The defendant refusing to pay any costs, the attorney proceeded.

The defendant then, instead of pleading payment before action brought (and which he probably could not successfully have done, as the writ was issued on the same day on which the money reached the plaintiff, and perhaps at an earlier hour), applied to the *equitable* jurisdiction of the Court for a rule to stay the proceedings. But, on argument, the Court very justly said, "Remitting the money to the plaintiff, and not to the attorney, was a *breach of good faith*; and as, if the writ, in fact, had issued before payment of the debt, the attorney would have been entitled to charge the costs of the writ and 6s. 8d. for instructions, the rule for staying the proceedings must, therefore, be absolute only on the terms of paying the 13s. 4d. and the costs of the application."

These facts, no doubt, fully justified the decision to which the Court came; but the case certainly affords no authority for the general and unqualified terms in which the above very able and talented authors have laid down the rule that "an attorney may insist upon payment by the defendant of the costs of a letter, and that he may proceed in the action unless the same be paid, even after payment of the debt before a writ issues."

The subsequent case of *Kirton* v. *Braithwaite* (5 Law J. N. C. Exchequer, p. 165) is, however, directly in point, and is decisive. There the plaintiff's attorney wrote requiring payment to be made at his office, on a day named, of the debt, with 6s. 8d. his charges. The defendant sent a person to the office to tender the debt, but the attorney not being there, the

tender was made to his clerk (a youth), who refused to receive the debt unless the 6s. 8d. costs were also paid, and which being objected to by the defendant, a writ was issued. The defendant pleaded a tender, which was denied by the plaintiff. At the trial, the under-sheriff held that the tender was sufficient, and the jury found a verdict for the defendant.

A rule for a new trial having been obtained, and cause shewn, the Court (consisting of Lord Abinger, C.B., Parke, Bolland, and Gurney, Barons) distinctly held, that the attorney had no right to claim the costs of the letter, and that the tender was a good one, and the rule was accordingly discharged.

I apprehend the observations of Mr. Dax, in his work, must be considered as applying only to the rule observed in the Masters' offices on taxation, and, to that extent, they are, no doubt, perfectly correct.

I will merely add, that I cannot agree with your correspondent, "A Subscriber," at Cheltenham, in thinking that where a demand of payment has been made by the plaintiff before the attorney's letter is written, the defendant can in that case be compelled to pay for the letter. The plaintiff to a plea of tender could not reply a *prior* demand; but if the defendant were ready to pay, and tendered the debt upon the *last* demand being made, or at any time subsequently before the issuing of the writ, the action might, I think, clearly be defeated by a plea of tender.—I am, Sir, your obedient servant,

WM. THORNE.

Wolverhampton, Oct. 30, 1844.

SMALL TENEMENT ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg to refer your correspondent, "An Old Subscriber," from Norwich, to sec. 1 of the 1 & 2 Vict. c. 74, for an answer to his query in your last week's paper; that section expressly mentioning tenants who hold premises of the kind it describes, "*either without being liable to the payment of any rent*, or at a rent not exceeding twenty pounds a year, and upon which no fine shall have been reserved or made payable."

I am, Sir, your obedient servant,
EDW. FRANCIS SLACK.

Chippenham, Wilts, Oct. 28, 1844.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It is gratifying to find that the adoption of the attorney's gown seems almost universally approved of by the Profession, and I cannot but feel some degree of satisfaction at having, with two or three of my brethren in this town, first mooted the subject. So long back as May last, myself and Mr. Abell being desirous, with others, of appearing in proper costume, made inquiries on the subject, and found that Messrs. Adams and Ede, of Fleet street, were in the habit of making attorneys' gowns as well as other robes; and having understood they were in point of fact worn in many parts of the country in local courts and otherwise, we at once gave the order, and in the LAW TIMES of 1st June last will be found a paragraph in allusion to the intended practice in Colchester, copied from our local paper, *The Essex Standard*.

As some of your correspondents seem to be in doubt as to the kind of gown or badge of distinction to be worn, I beg to observe, that no difference of opinion need prevail upon the subject; the attorney's gown is as well known amongst robe-makers as any other kind of costume.

The expense has also been glanced at, and I have therefore ventured to append a copy of Messrs. Adams and Ede's bill on me as follows: —

London, May 31, 1844.

J. H. CHURCH, Esq.

Bought of ADAMS and EDE
(Successors to the late Mr. Webb),
Robe Makers to her Majesty and the Royal Family,
193, Fleet-street, corner of Chancery-lane.

Robes for Peers, Bishops, Judges, Clergymen, Queen's Counsel, Serjeants-at-Law, Barristers, Attorneys, and robes of every corporation, executed in the neatest manner.

An Attorney's Gown of fine Princetta.... £2 10

Mr. Durrant, of Chelmsford, one of the warmest advocates of the measure, suggests that a circular should be sent to every attorney in the kingdom, through the medium of the LAW TIMES, the expense of which he estimates at about 40*l.* He also suggests that persons subscribing one guinea each should be members of a committee to carry the object into effect. As far as regards myself, I am quite willing to become a member of a committee, but I do not consider it necessary to incur the proposed expense—at any rate for the present. I would venture to suggest that an attorney favourable to the measure, and who, from a perusal of the LAW TIMES, may be aware of the movement to that end amongst the members of the Profession, should, in each town and locality, take the trouble of ascertaining the views of his Professional brethren on the subject, communicating the result of his inquiries through your valuable publication. More can be done, I think, in the first instance by *personal* communication than by circular letters, and afterwards a summary of numbers, &c. might be published in the LAW TIMES.

I intend forwarding you a copy of a memorandum signed by practitioners here in favour of the measure, who already amount to thirteen.

I am, &c.

Colchester, Oct. 30, 1844. JOHN H. CHURCH.

ATTORNEYS' GOWNS—LETTER BEFORE ACTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—So far as the opinion of the Profession can be collected from the correspondence in the LAW TIMES, the feeling in favour of the adoption of a costume seems to be uniform; it strikes me that the most proper way of effecting the object is, that the Law Institution or the new Society forming in London should address the Attorney and Solicitor-General, who might make a formal application to the Chancellor and the judges to promulgate such an order for the purpose as their lordships might think fit; this plan combines simplicity with the advantage that the change, it made, is recommended by authority.

May not the same plan be adopted with regard to the charge for letter before action? It is but right that the party who by his neglect has been the cause of the expense being incurred should pay it. By a similar order, if their lordships thought proper to make it a fair charge for writing a letter and attending to receive, debt and costs might be allowed, and if not paid, be recovered by attachment upon the Master's *allocatur*, after summons to the defendant and taxation of the costs. It would be very seldom necessary to resort to such a proceeding as an attachment, when it once became known that payment of the costs could be enforced.

Your correspondent, the "Essex Attorney," puts me in mind of the fable of the God and the Waggoner; why do not the Essex gentlemen help themselves by putting in motion their law society, and prosecuting the delinquents of whom he complains; or if they have no law society, why do not they "stir their stumps" and get up one? Who is to help them if they will not help themselves?

I am yours, &c.
JOHN RUDDOCK.

Bridgewater, Oct. 29, 1844.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Enclosed I send you a paper containing the names of two gentlemen (in addition to my own) as subscribers of 1*l.* each, and to be enrolled as members of the honorary committee of seventy, suggested in my letter in the last number of your journal.

If you will second our views, by publishing with the names sent herewith, those of any other gentlemen you may have received, you will be doing this movement most efficient service.

I am, yours truly,
GEORGE JOHN DURRANT.

Chelmsford, Oct. 31, 1844.

P. S. There are several professional gentlemen in this town *who fully concur* in the propriety of a return to the "ancient and respectable practice" of distinguishing ourselves in the ordinary way in which the members of a learned profession are distinguished, viz. by a gown, who decline to send you (Mr. Editor) their names, on account of not wishing to appear *prominent* in the movement. I am sorry for this shamefacedness. Colchester is setting the other provincial towns an excellent example in this respect by its *manly expression* of its approval of the measure.

List of solicitors willing to become members of the honorary committee suggested in Mr. Durrant's letter of the 21st ult., published in No. 82 of the LAW TIMES:—

George John Durrant, Chelmsford.
Michael Lane, Braintree.
Frederick T. Veley (of the firm of Perkins, Gepp, and Veley), Chelmsford.

SELECTIONS FROM CORRESPONDENCE.

A "SUBSCRIBER" thus treats of "ATTORNEYS' GOWNS:"—

I really do not see any advantage of an attorney adopting a gown to counterbalance the constant trouble the practitioner would be put to by being obliged to carry it about with him, and the additional expense consequent upon such a custom being adopted. I, for one, confess myself ignorant of the authorities upon which it is stated to be the ancient custom, and should really feel obliged to some of the multitudinous host of advocates for enlightenment upon the subject. At the same time I hope they will favour me with the reasons why it was discontinued. I shrewdly suspect that its excessive inconvenience led to its disuse.

"CAUSIDICUS" thus objects to the resumption of "ATTORNEY'S GOWNS:"

In two or three of your recent numbers I perceive this subject occupies no inconsiderable space, and as few, if any, of your numerous correspondents have written to you in opposition thereto, I am induced to address you in the hope that some abler pen may join in the endeavour to prevent the adoption of a costume which, however well established our right may be, is nevertheless one that I, in common with many others, am well convinced would not prove of such benefit and advantage as the promoters of it appear to imagine. An attorney, it should be remembered, is not by any means a fixture in the court; every one knows how frequently his "ingress, egress, and regress" are necessary; and, unlike the barrister, whose peregrinations are merely from one court to the other, an attorney has frequently, in the absence of witnesses for instance, to travel a considerable distance therefrom. How, in such a case, I would ask, is he to dispose of his gown? Is he to rush in all the hurry of business with its *graceful folds* waving in the breeze, and retarding the progress of his fellow-wayfarers equally with his own? It may be true that admission to the court, and when admitted, *possibly* a seat, might be considerably facilitated by some distinguishing mark by which the attorney could be readily known from a mere spectator; but is so cumbersome a garment as a gown necessary to effect this, and what is to prevent its being adopted by unqualified persons? I would, in lieu thereof, suggest that a part of each court should be exclusively appropriated to attorneys, and no person admitted thereto without previously producing his certificate to an officer appointed for its inspection; none but attorneys or articled clerks, to whom, on producing their master's certificate, I would extend the privilege. Being able to produce such a document, the intrusion of unqualified persons would be prevented, whilst it would, without the inconvenience of the gown, answer every purpose equally as well, and, with regard to the exclusion of *non-professionals*, infinitely better.

"A CORRESPONDENT" has sent the following answer to a question upon the subject of COUNTY COURTS.

The jurisdiction of the County Court does not depend upon the *residence* either of the plaintiff or the defendant. It may affect the proceedings by throwing difficulties in the way of the services and execution, as will be seen by the following requisites:—

The cause of action must arise within the county.

The summons must be served within the county; and if no attorney appears, and the defendant reside in another county, the notice of declaration and other proceedings cannot be left at his residence, but must be served upon him personally, and, I believe, when he is within the jurisdiction.

Neither the *distringas* nor the *levari facias* can be executed on property of the defendant which is not within the county.

"A BARRISTER" transmits the following on the subject of the recent revelations:—

One begins to be staggered with the revelations as to the doings in both branches of the Profession; fictitious attorneys, advertising solicitors, and now a placarding counsel is reported to appear. The Bar have long maintained a dignified silence in all matters affecting their interest, where complaint was open to the imputation of private motives. But now, Sir, I think the time arrived when it ought to disclaim all participation in, or sanction of, the wrongdoers of any class of the Profession. Ought not a meeting of the Bar to take place? Privately, if thought best, but let there be a meeting. I am ready to incur my share of any expense in calling it.

"A SUBSCRIBER" at Gloucester replies to the query as to the jurisdiction of County Courts:—

In answer to your correspondent's query on the subject of the jurisdiction of the County Court, I refer him to *Tubb* v. *Woodward* (6 T. R. 175); *Welsh* v. *Troyte* (2 H. B. 29); *Smith* v. *O'Kelly* (1 B. & P. 75); *Bayley* v. *Chitty* (2 M. & W. 31); in which cases it has been held that it is merely necessary the defendant should live in the county in which cause of action arose; and to *Prichard* v. *Macgill* (5 Dowl. P. C. 731), where it was held that it is not necessary in order to give a County Court jurisdiction that the plaintiff should reside within the county.

The following, by "LECTOR," contains an admirable suggestion for the suppression of the malpractices by pretended Lawyers and Lawyers' Clerks:—

Though I have read Mr. Durrant's and the other

letters in your journal relative to the adoption of a professional costume by our order of attorneys, I have not been convinced that such a proceeding will be attended by the results which the admirers of it seem to suppose would follow its adoption.

Though the manly toga may add to the boy's dignity, yet surely it is a strange way of raising the respectability of attorneys, to put an additional garment on their shoulders; and as your "Essex attorney" writes, what is to prevent such cigar dealers as he mentions having their coats likewise made of stuff and of what shape they please?

Even if gowns should be adopted, the plan of having distinctive habits to shew the rank or attainments of the wearers is open to still greater objection. What will be the lot of the wretches who were admitted before the system of giving honorary degrees on examination shall have come into operation? Will their gowns have to be embroidered in front and rear "Admitted 1840," "Admitted 1841," that all may know 'twas no fault of theirs that they did not attain to the dignity of broidered sleeve or coloured hood? Does there, indeed, want such an exciting cause, that a proper spirit of emulation may be raised up to induce honourable individuals to take upon themselves the duties of coroner, town clerk, &c.?

In conclusion, I would offer another plan, which I think would have all the advantages which can attend gowns, and none of the many disadvantages; especially the disadvantages of the want of a robing-room at assizes, &c. and the impediment of the loosely-flowing robe in threading the crowded alleys of the court, as well as in the court itself.

Let each attorney, when he takes out his yearly certificate, receive a card, with his name and place of residence, stamped with an appropriate stamp.

Let each attorney give an open note to his clerk as follows: "Staffordshire Summer Assizes—A B, clerk to C D, attorney," to which should be attached the above card.

On the production of the above, the officer would at once admit the attorney or his clerk; which last requires a free entry as much as his master. *Qy.* Is the clerk intended to be gowned?

All criminal cases to be entered as at Nisi Prius; or if such plan cannot be carried out—

No barrister to receive a brief from an attorney except upon the production of his card; or from a clerk, except upon the receipt of a note from the attorney whose name is indorsed on the brief.

A "Wiltshire Subscriber" submits the following query:

I shall feel much obliged if some of your readers will oblige by informing me whether it is usual for London agents to charge, in their bill of costs to their country clients, for half the charge allowed on taxation for drawing and fair copy brief to oppose a bankrupt on behalf of the assignees, when the brief is actually drawn and copied in the country, and merely sent up to agents to hand to counsel, and with instructions to attend him at the hearing at the Court of Bankruptcy?

"Eboracus" asks of the experienced of the Profession the following query on a point of *practice*:—

As the question about the proper stamp on transfer of a mortgage security has excited so much discussion, and is not yet at all clearly settled, in my opinion, I would wish to ask you, or any well-informed reader of the Law Times on the stamp duties, what is the proper stamp for a promissory note payable on demand, as follows:—"On demand, I promise to pay to A B, or order, the sum of 250*l.* with lawful interest," &c.? Now, this note may not be called in for more than six months, but is generally adopted as a continuing security. I have asked the stamp distributor his opinion, and find he always sells the lower rate or class of stamp for such a note, and therefore 5s. would be a proper stamp. Is he correct, or not?

"T. H. A." thus answers a query as to the practice in case of a Sale by a Mortgagor.

Your correspondent "A. F." moots the point in your last number, whether it is the province of the solicitor of the mortgagor or of the mortgagee to prepare the abstract of title in case of a sale by the mortgagor. This question had to be decided in a case in which I was concerned about two years since, and as I and the solicitors concerned on the other side were quite "at sea" with regard to the custom of the Profession, we agreed to refer the question to the Committee of the Law Institution for its decision, and to act accordingly. They decided, most unequivocally, that the solicitor for the mortgagee had the right to prepare the abstract.

I think, on a moment's reflection, no one can impugn the correctness of this decision. A mortgagee is a purchaser *pro tanto*, and in case of a sale of the property he must be regarded as the vendor, and the mortgagor as a releasor of the equitable interest he possesses in the property. Besides, a mortgagee is not compellable to produce the title-deeds for examination with the abstract; he is only bound to take them out of his deed-box on being tendered the mortgage-money and interest.

To Readers and Correspondents.

T. P. (Dover).—*Before we inserted the document we took care to assure ourselves of its genuineness. We never give place to any thing of the sort but upon the best authority, nor in a single instance have we yet found our information incorrect.*

Our correspondent at Winchester is entitled to our respect for his excellent arguments, but unhappily circumstances are too strong for individuals in this great metropolis. To resist would only be destruction.

J. R. (Bideford).—*The sheet Almanac of last year did not emanate from our office, as we stated at the time, but it was a speculation of Mr. Lauder, after he had quitted our service. We have no intention of publishing one this year, but we contemplate a useful legal Pocket-book and Almanac next year.*

T. A. D. (Newcastle).—*Thanks, but a similar reply to the query was already in type.*

Juvenis *should now read* "Chitty's General *Practice* of the Law."

A Subscriber from the Beginning.—*The bill in question was inserted during the temporary absence of the editor from town.*

T. H. (Corsham).—*The document is scarcely* bad *enough to justify censure.*

A Subscriber (Taunton) *will see the subject noticed in another column.*

J. C. W.—*The* Law Times *is devoted to* practice *rather than to essays on abstract law, which better suit the* "Law Magazine," *where they can be treated at length. But thanks for his kind offer.*

J. W. C.—*Thanks; but the subject is almost exhausted as a matter for discussion and the business of the legal year begins, and will compel curtailment of correspondence.*

Pee.—*We do not answer queries by anonymous writers.*

R. H. A. M. *informs us that it is his intention to adopt the gown.*

TO SUBSCRIBERS.

The Volumes of the Law Times, *handsomely and uniformly bound, at* 5s. 6*d. each, if forwarded to the Office.*

A Portfolio, *on a novel and convenient plan, for preserving the current numbers of the* Law Times *for ready reference, may be had at the Office, or by order of any Bookseller in the country, price* 5s. 6*d.*

An Alphabetical Index to the Cases in the current Volume of the Law Times *always lies at the Office for the purpose of Reference.*

In reply to repeated applications, the Publisher *begs to state that he will readily procure, and inclose in the parcels he may have occasion to forward to Subscribers, any books or forms published in London.*

THE LAW TIMES.

SATURDAY, NOVEMBER 2, 1844.

THE JOINT STOCK COMPANIES ACTS.

These important statutes came into operation yesterday, and so seriously do they affect the liabilities of every shareholder in the multitudinous speculations now afloat, that it is the duty of the Profession to instruct their clients of the great risks they incur unless the provisions of the Act are strictly complied with, and these are so numerous and complicated, that it will require the skill of a lawyer to keep any projected company, or even any shareholder, secure from danger. These statutes will necessarily throw much business, and proportionate influence, into the hands of the Profession, and we would recommend practitioners to be extremely cautious in advising their clients purposing to become shareholders in any of the new schemes.

The Board of Trade has issued its instructions relative to the forms to be observed for the regulation and establishment of Joint Stock Companies. These we have caused to be added in a Second Edition to Mr. Paterson's edition of the Statutes, which will be ready on Tuesday morning; and to those who may have purchased the first edition, the sheet containing the forms will be forwarded on application.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

A Report of the very interesting proceedings on Wednesday, when this Society was formally established, will be found in its proper place.

We are pleased to see that the name originally suggested has been changed for a more general and less invidious one. Such was not the intention of the proposers, but certainly the title at first assumed suggested the idea of an association of the Profession against the public: moreover it had the sound of exclusiveness, and gave occasion to enemies to say that it was but a second edition of the very mischief it was intended to remdey.

These objections have been entirely removed by the judicious substitution of a larger and more expressive name. The very design of the Society was to unite the provincial with the metropolitan lawyers for the protection of their common interests and the purification of the Profession. Accordingly, in the government of the Society the provinces are to have an equal share, and the monopoly that hitherto has consulted the interests of a few great London offices at the expense of all the rest of the Profession, will in the new society be impracticable. We shall not find *this* Association countenancing Chancery compensation Jobs, or employing its influence for the *private* advantage of its officers. There will be more chance now of the real welfare of the *whole* Profession being preferred to the interests of a few, and of the true objects of such a society being carried out with zeal and efficiency.

But not the least advantage we anticipate from the new Association is the stir it will make in the Law Institution. The fact is not denied that it has grown indolent and careless; certain it is that it has failed to fulfil the hopes originally formed of it, and, like all sleepy sentinels, it has proved more a hindrance than a help, for they who might otherwise have been watchful have slumbered in peace, relying upon the vigilance of their watch. The result is seen in the present state of the Profession; the monstrous compensation job is proof how the best institutions may be perverted if a jealous eye be not kept upon them. Although the new Society professes not to be a rival of the old one, it cannot fail to stimulate it to activity, to infuse into it some fresh blood, and a new and more liberal spirit. The establishment will not be permitted to exist for the benefit of two or three individuals, nor will jobbing henceforth have the sanction of a charter.

If the Legal Association do no more than this, it will be entitled to the thanks and support of the Profession; but we anticipate from it many more services when it shall have received, as soon we trust it will, the cordial *co-operation* of the Law Institution in the good work to which it is devoted.

THE ADVERTISING COUNSEL.

The publication of his advertisement, and the comments which we felt it to be our duty to make upon it, have elicited from Mr. George Farren, Chancery barrister, the following epistle:—

Oct. 28, 1844.

Mr. Editor,—Certainly you have given a prominent situation to my name, in page 63, column 3, of your Law Times. Surely it is you that are *adver-*

[illegible] my name, and establishing for me a notoriety [illegible] or not, be harmful, as future events may [illegible].

Out of courtesy to you, and the influence you possess, I write this note, but am advised by my friends, in consultation, to pay your informant no further deference. However, I certainly do make no scruples in professing that it is understood by all who attend my chambers that no *fees* are expected or taken by me for consultations or conferences, nor fees for clerk on such occasions in general; but, mind, for this reason, viz. because I do not estimate my humble services as warranting it, and because the Masters do not allow such fees when a solicitor's bill of costs is taxed in Chancery by *party and party* taxation.

Your obedient servant,
GEORGE FARREN,
Chancery Barrister.

N.B. Ought not your informant to have acted thus, viz. attended at my chambers, with the newspaper or printed advertisement you speak of, and on the pretended purpose of business? for then his reception would have convinced him and you as to whether he was justified in making you a medium of such an article.

The advertisement alluded to seems to require at any rate, unusually large fees, and few counsel would be justified in refusing them, if he measured by the present course of honorary emolument.

I now ask each of your numerous readers to communicate to you if any one of them ever knew or ever heard of my doing business as the advertisement you speak of points out, and I now leave the subject for you to deal with as you may think best, and shall not consider myself justified in prosecuting the matter further, unless you absolutely force me to do so.

G F

The first remark we have to make on this unique composition is its disingenuous tone. By the expressions in the postscript—"the advertisement alluded to seems to require at any rate, unusually large fees"—"I now ask your numerous readers to communicate to you if any one of them ever knew, or ever heard, of my doing business as the advertisement you speak of points out,"—he would have it implied that he does not acknowledge as his the paper in our possession. But if so, why does he apologize for it and vindicate its language? why does he not at once indignantly repudiate it, and demand that the imputation upon his professional character be removed by an explicit contradiction? He only does not this because he cannot.

We doubt not that Mr FARREN tells us truly that he estimates his services at their true worth when he asks no fees for consultation or clerk, and we confess that we should be surprised at his ever having done any "business as the advertisement points out." But that is no defence to our charge, which is, 1st, that he has advertised at all, 2nd, that he has advertised to give advice gratis, 3rd, that he has advertised to act as counsel without the intervention of an attorney, 4th, that he has advertised a scale of fees different from that established by the rules of the Bar.

To all these offences he has pleaded guilty and as he expresses no regret, nor makes the slightest apology for the great insult and injury he has offered to the Profession, the duty of all his fellows is plain. The Bar will shun him, of course, the Solicitors will give him no countenance, and the Benchers of the Inn of which he is so unworthy a member may rebuke him, if they will not, or cannot, remove from their society so grievous a blot upon its respectability.

ADVERTISING ATTORNEYS.

THE following, which appeared in the *Sun* of the 23rd ult. is, we believe, an old friend with a new face. But as we hope to be enabled, by help of some reader, to trace the author, we present the disgraceful document.

DEBTS RECOVERED, FREE OF COSTS. A Solicitor, of upwards of 20 years' experience, undertakes the RECOVERY of DEBTS, free of cost to Creditor, save a commission of 10 per cent on the amount of debt recovered.

Conveyances prepared on the following low terms, viz: Leases and Counterpart, 2*l* 10s; Assignments, 2*l*. 2s.; Bills of Sale, 30s; Wills, Bonds, and Deeds in general, on equally moderate terms.

Apply at the Offices, 1, Bouverie-street, Fleet-street.

Arrangements made with Creditors on behalf of Insolvents, and advice given on the New Bankruptcy Act. Letters for H. M. attended to.

SHAM LAWYERS.

SOME more of these personages have been communicated to us. Here is name and advertisement:—

MR RICHARD THEWLIS,
ACCOUNTANT, APPRAISER AND "LAW AGENT,"
Rastrick,
Near Huddersfield.

Bankrupts and Insolvents' Balance Sheets prepared with accuracy and dispatch, in accordance with the forms required by the late Bankrupt Acts.

THREATENING LETTERS.

WE place upon record more of these documents, which have been sent to us, in hope that they will have the serious attention of the Law Societies.—

Speenhamland near Newbury,
Oct 14th 1844.

SIR,—I am instructed by Mr David Rubber to apply to you for payment of the undermentioned sum, and to acquaint you that unless the same, together with 3s 6d the cost of this application, be paid at Queen's Arms Speenhamland on or before Saturday next, legal proceedings will be commenced against you to enforce payment thereof without further notice.

I am your obedient servant,
HY MACGRAW
Sheriff's Officer

Mr Wm Hart

	£	s	d
Debt	1	4	5
Cost	0	3	6
	£1	7	11

Abingdon, 9th Sept 1844

SIR,—I am instructed to apply to you for £0 16s 4d due from you to Mr George Eggleton and I am requested to add that unless the same, together with 2s 6d the expense of this application be paid to me on or before Monday next proceedings will be taken against you for the recovery thereof without further notice.

I am, Sir yours obediently,
LOWD STANILAND,
Sheriff's Officer and Accountant, Bridge street

*** Office open from Ten till Seven
Mr William Herring
Warborough, Wilts

THE VERULAM SOCIETY.

THE following are the additions to the roll of members during the last week:—

Sankey and Sladden, Canterbury
Archer Thos Goodwyn Ely
Dalrymple Arthur Norwich
Tucker, William esq Croydon Park, Axminster
Holden, Thos Hull
Gordon, George Shrewsbury
Johnson, William Manchester
Latham Jno Chorley
Swarbreck, Thos Thirsk
Beresford, William, esq special pleader, Elm-court, Temple
Barr, Lofthouse, and Nelson Leeds
Monk, John esq barrister-at law, Manchester
Pollock, Jos esq barrister-at law, Manchester

THE LAWS OF FRANCE.

No. II.

In France foreign manufacturers cannot obtain damages for the counterfeit of their stamps and labels bearing their signature.

An important decision was given a short time since respecting the rights of foreign manufacturers, upon the appeal of Messrs Gueland and Amabet, and other perfumers in Paris, against Messrs Rowland and Son, perfumers in England.

The house of Rowland and Son manufacture and export to Europe India and America, large quantities of a cosmetic known under the name of Macassar Oil. Messrs Gueland and other perfumers, in Paris, manufactured also what they called Macassar Oil, and imitated the wrappers and labels of Rowland and Son. The English house brought an action against them before the Tribunal de Commerce, and damages were awarded.

Messrs Gueland and others appealed; but the Cour Royale of Paris, by its decree of the 28th Nov. 1840, confirmed the judgment of the Tribunal de Commerce.

These decisions were grounded upon the following reasons:—

That the name of a tradesman is property which the laws of all countries should cause to be respected, that to the name is annexed a commercial reputation, which becomes family property; that a foreigner bringing into France either a business or manufactured goods ought to be protected equally as natives; that good faith and equity belong to all countries; that the French courts ought not to allow purchasers to be deceived by speculations reprobated by good faith and equity; and finally, that if it were true that French tradespeople in England were exposed to similar frauds, yet nevertheless true and faithful justice should be rendered to foreigners placing themselves under the protection of France, in order to claim and obtain the same protection for French citizens residing abroad.

Messrs Gueland and other perfumers asserting, however, that the law had been wrongly applied, appealed to the Court of Cassation, and after mature deliberation, the Civil Chamber of that Court gave a judgment on the 14th August, 1844, annulling the decree of the Cour Royale of Paris.

This judgment is too important not to be given in full:—

"According to Art. 11 of the Civil Code, thus worded:—A foreigner shall enjoy in France the same civil rights as those which are or shall be granted to Frenchmen according to the treaties with the country to which the foreigner belongs.

"According to Art 1 of the law of 28th July, 1824, thus worded:—Whoever has put to or made appear on manufactured articles, either by adding or suppressing or any alteration whatsoever, the name of a manufacturer who did not manufacture them shall be punished by the penalties attached to Art 423 of the Penal Code, in addition to damages, if they are awarded.

"According to Art 18 of the law of the 22nd Germinal year 11 thus worded:—*No one can bring an action for the counterfeit of his mark unless he has previously made it legally known by the deposit of a copy at the register of the Tribunal of Commerce in the capital or principal town to which his manufactory belongs.*

"Inasmuch as the object of the disputed judgment was to grant to the plaintiffs reparation for the damage occasioned them by the apposition of the name of Rowland and Son to the commercial products sold by the defendants,

"Inasmuch as this action was not legally authorized either by general or by special right,

"Inasmuch as the special legislation which admits of an action for reparation of damage caused by the apposition on manufactured articles of the name of a manufacturer who did not manufacture them, is the law of the 28th July combined with the law of the 22nd Germinal, year 11, that these laws do not intimate that the benefit of them may be applied to foreigners not admitted to enjoy the civil rights of France.

"Inasmuch as the civil rights of foreigners in France are ruled by Art 11 of the Civil Code,

"Inasmuch as, according to Art 11 and 13 of the Civil Code, foreigners not admitted to the enjoyment of the civil rights by the king's authority only enjoy in France the civil rights which are reciprocally granted to Frenchmen by the treaty with the nation to which the foreigners belong,

"Inasmuch as exceptions to this general rule are only made in cases especially provided for by an express law, and that no express law gives the right of action to foreign manufacturers for reparation of commercial damage caused by the use of their name,

"Inasmuch as it is by no means alleged that Rowland and Son had, by the king's authority, been admitted to the enjoyment of the civil rights of France,

"Inasmuch as no treaty between France and England reciprocally admits manufacturers of both countries to exercise in each their rights of action on account of the use of their names,

"Inasmuch as Bonneret,(*a*) a French subject, would be entitled to complain of the use of the name of Rowland and Son only so far as these last had legally transmitted him a right to that effect, and that Rowland and Son could not transmit to Bonneret the right of action in the French courts, since they were not themselves invested with this right,

"From thence it follows that the disputed judgment, so far as it pronounces a condemnation against the defendants for the use of the name of Rowland and Son, has undoubtedly violated the above-mentioned laws,

"Annul and make void the said judgment."

(*a*) This said Bonneret had been a party in the action as consignee of the goods of Rowland and Son.

This judgment was, in our opinion, dictated by a narrow apprehension of the tenets of the law, and is in opposition to the tendencies of the whole of our legislation, which for upwards of fifty years has been endeavouring to assimilate foreigners to natives with regard to the exercise of civil rights; and indeed there is no country where foreigners enjoy so many rights as in France, and this judgment is an isolated case, and will not form a precedent.(5)

The Court of Cassation, which you are aware only pronounces upon the application of the law, has referred the suit to the Cour Royale of Rouen, where it is now pending. If this Court shall decide as the Cour Royale of Paris, interpreting the law in a liberal sense, and if this decree is the subject of another appeal, the case will be tried before all the united chambers of the Court of Cassation; on that occasion they will sit in their red robes, and the attorney-general, M. Dupin, will give his opinion.

It has often happened that the united chambers have decided differently from a single chamber. These solemn decrees form authorities in our jurisprudence, and all the courts and tribunals are compelled to submit to them.

At all events, until this point is settled, or until between the two countries there is a reciprocal understanding as to the mutual enjoyment of the property of a manufacturer's marks, we recommend all manufacturers of both countries to appoint abroad a confidential person—a *fictitious partner*, who would be able, availing himself of his right as a native, to bring an action for damages in cases of counterfeit.

N. A. TREITT,
Avocat à la Cour Royale.

Paris, Oct. 14, 1844.

LECTURES ON MEDICAL JURISPRUDENCE.

BY ALFRED S. TAYLOR.

Delivered at Guy's Hospital, 1844.

LECTURE V.

WE now pass on to the consideration of poisons individually, and first we will take up the class of irritants. The irritant poisons are divided into two kinds, the non-metallic and the metallic, and of these we will first consider the non-metallic, beginning with the mineral acids, of which the sulphuric, nitric, and muriatic acids are the principal. These are both corrosive and irritant poisons, being corrosive in the concentrated state, and irritant in the diluted state. Muriatic acid differs very little in its operation on the system from the sulphuric and nitric acids; indeed, they all produce effects so similar on the body, that we may describe the symptoms together. When either of these acids is swallowed, the first symptom is a violent burning and a disagreeable taste, acute pain in the fauces and œsophagus, extending to the stomach and bowels, and this pain is observed to be increased by pressure, or by any action that affects the muscular system. Muscular exertion, or even the simple act of deglutition, the swallowing of water or any substance, is accompanied by intense pain; and in the case of nitric acid, gaseous matter is evolved from the mouth, and the abdomen swells from the decomposition of the organic tissues, and the evolution of gaseous matter. The stomach is rendered so irritable that whatever is swallowed is instantly vomited, and the vomited matters have a peculiar appearance. In the case of sulphuric acid the liquid is of dark brownish-black colour, something like dark coffee-grounds; in the case of nitric acid it is of a yellow-green hue. In the vomited matters there are flakes or shreds of membrane derived from the lining membrane of the œsophagus, which comes away in patches. If the vomited matter fall on a limestone pavement, there is effervescence; if on coloured articles of dress, the colour changes, and is often destroyed. Indigo is not affected by sulphuric acid, but it is destroyed by nitric acid. There is in the case of poisoning by mineral acids extreme soreness of the mouth, arising from the excoriation of the mucous membrane. If diluted vitriolic acid is taken, the matters vomited will not be so dark, and they do not corrode bodies on which they fall. There is, too, very great difficulty in respiration, and the person who has taken the poison breathes with great difficulty; the pulse is frequently irregular and scarcely perceptible; the countenance is anxious, the eyes glazed, fixed, and often redder than usual; the surface of the body is cold, and there is a clammy perspiration on the skin, and convulsive motions of the muscles of the face and the lips, arising from the sympathetic action of the poison on the nervous system. The bowels are sometimes relaxed, and often constipated. A very common peculiarity in these cases is, that the intellectual faculties are clear till the last moment of life; the person is conscious of all around him, and he dies, generally, very suddenly. The inside of the mouth is often found corrugated. You might suppose, in the case of sulphuric acid, that it would be brown, but that is not always the case. We often find that the epithelium peels off, and the skin is found of a brownish colour, as in the case of nitric acid. Spots arising from the acid are commonly seen on the lips, the face, or the neck, in the case of suicide; if the individual spills a quantity of the acid, the colour will expose its nature;—if nitric acid, they will be yellow; if sulphuric acid, brown. Another circumstance in poisoning by mineral acids is this, that the symptoms they produce are immediate—they come on instantaneously. With most other irritants, a certain time elapses before the symptoms appear. Another fact to notice is, that no disease that occurs suddenly in the human system bears any resemblance to poisoning by mineral acids; no disease known to come on suddenly at all resembles poisoning by sulphuric acid; and besides, no disease produces such well-marked symptoms in an instant. It is rather important to attend to this fact—*i. e.* the occurrence of the symptoms immediately, and not gradually, as in some other cases of poisoning. The following case of murder by sulphuric acid occurred in Scotland in 1830. Jean Aitkin, or Humphreys, was tried at the Aberdeen September Circuit, in that year, for the murder of her husband, by poisoning him with sulphuric acid, which she poured down his throat as he lay asleep in bed. It was proved by Dr. Christison that the deceased died from the effects of the poison, the administration of which took place in the following manner. The parties frequently quarrelled, and were both addicted to habits of intoxication. On the night in question, some friends had passed the evening with them drinking. They went away about twelve o'clock at night, and soon after this, the deceased went to bed, perfectly in health, and soon after fell asleep. The only persons in the house at the time were the prisoner and a servant-maid, and the street-door was locked, so that no other person could have access. The prisoner left the servant's room on her stocking soles, a thing unusual for her; and when she returned, in about twenty minutes, she told the servant that her husband was roaring mad with drink. The girl, upon going to him, found him lying upon his back, declaring he was all roasting. The prisoner at first shewed an unwillingness to send for a medical man, but at length did so. When the deceased left the guests at twelve, there were only two glasses on the table in the room; but when the neighbours came in after the alarm there were *three;* and the third was proved to have come from a room above stairs, of which the prisoner had the key. The glass contained, it was supposed, sulphuric acid. In the room where the deceased was lying was a phial which had contained sulphuric acid, but was then nearly empty. The deceased complained of a burning pain in the throat and stomach, and expired in great agony. He evidently died from the effects of sulphuric acid, large quantities of which were detected on his shirt, on the blanket and bed-cover, and a little on the prisoner's bed-gown and handkerchief; but not a trace of the poison could be found in the stomach or intestines of the deceased, though sulphuric acid is a poison so easily detected. It was quite impossible that the man could have taken it himself, for he was asleep at the time, and it was quite impossible he could have received it at the time he was drinking with his friends, as was alleged, for the symptoms produced by mineral acids come on suddenly, and cannot be suspended; and as he had not taken any thing else after his friends left, it was clear the poison must have been poured down his throat while asleep, the administration of which was rendered easy by the practice the deceased had of sleeping on his back with his mouth wide open. After the alarm was given, the door was found fastened, just as when he went to bed; therefore it was clear it could not have been administered by anybody but the servant or the wife, and no suspicion attached to the servant.

The facts connected with poisoning by the mineral acids were here noticed, and these, with the whole of the circumstances, led to the conclusion that the wife gave it, and she was convicted and executed. Suppose it had been arsenic, it might have been given by the wife after his friends left, or by his friends while they were with him. One very singular circumstantial point connected with this case was, that some sulphuric acid was found on the bed-gown of the wife, shewing that she must have administered it while she was undressed. It commonly takes place that the clothes exhibit marks of sulphuric acid if it be highly concentrated. In a case of that kind where the poison is in the ordinary state, the stomach is corroded, the parietes are soft, and give way sometimes under the effect of the gaseous distension. On which do the dangerous effects of these mineral acids depend? Is it on the quantity taken, or the strength? It is not so much on the quantity as on the concentration of the acids; the more concentrated they are, the more dangerous are they to life, so that it is rather the strength of the acid to which we must look than the proportions swallowed. In one case one drachm of strong sulphuric acid destroyed life in seven days; but had this been very much diluted, the person might have escaped. Persons do recover in a very extraordinary way; a person has been known to recover after taking six drachms of oil of vitriol; but it appears in this case the stomach was filled with food. This is a very rare case of recovery, after taking so much of a powerful substance like sulphuric acid. The general rule is, that the strength has more influence in producing fatal results than the quantity. Sometimes death takes place from secondary causes, as from fever or irritation, after a lapse of some days, or the effects of the acid on the lining membrane or fauces, after the lapse of many months. A person may die at a considerable period of time after swallowing sulphuric acid. Dr. Wilson met with a case where the person died forty-five weeks after having taken this acid. Now what is the cause of death in these protracted cases? On examining the œsophagus you see the manner in which it is acted upon, and that the result of the corrosive action is to produce inflammation of the structure. In some subjects the matters vomited appear to be a complete cast of the œsophagus, the epithelium being peeled completely off. In the case recorded by Dr. Wilson, the patient, during a violent fit of coughing, brought up a large piece of sloughy membrane, which was found to consist of the inner coats of the œsophagus, much thickened, and very firm in texture. Its length was eight or nine inches, and its width that of the œsophagus; it was of a cylindrical form, and pervious throughout its whole extent.

You may find on these occasions that the following question will be put to you:—Will sulphuric acid kill a person without entering the stomach? This may undoubtedly occur, and it takes place chiefly in young subjects. When a quantity of the poison is swallowed, it acts on the posterior parts of the larynx and the trachea, affecting the rima glottidis and producing suffocation, from which the child dies. Then, again, persons may die from the effects of mineral acids even after the lapse of many years.

Now, with respect to the *post mortem* appearances: when we examine the body of a person who has died from sulphuric acid, the lining membrane of the stomach and intestines is generally more or less inflamed in patches; where death takes place from the effects of the concentrated poison, the stomach, if not perforated, is found collapsed and contracted, and on laying it open, the contents are commonly found of a dark brown or black colour, and of a tarry consistency, arising from the carbonizing action of the sulphuric acid on the blood and mucus. There is another point to which I must call your attention: that portions of the stomach are broken down, or softened in patches. The same effect we have noticed takes place with regard to the œsophagus. These patches are often acid, and when washed out, the membranes are more or less inflamed beneath, and the coats are softened and readily break down under the finger. Sometimes, however, they are hard and corrugated. The lining membrane of the mouth and œsophagus is white, softened, corroded, and strips off in shreds. Strong sulphuric acid produces the effects of nitric acid, with the exception of the yellow tinge, and it is the same with the muriatic, though the tinge is of a yellow or greenish colour. The mineral acids are not always to be found in the stomach, even when taken in a large quantity. This is owing to their ready expulsion

(5) The law on patents voted during the last session, and modifying the previous one voted 1791, has placed foreigners on the same footing as Frenchmen.

by vomiting. Some doubt has arisen, sometimes, as to whether the poison might not have been introduced after death, to simulate suicide or murder. This is an erroneous notion, because in the case of poisoning during life the mucous membrane is entirely destroyed, accompanied with more or less effect on the surrounding structures, while in the case of introducing poison after death, there is found merely a local action; the substance acts on no other part except that on which it is directly applied, producing, if very recently after death, a slight charring. We do not commonly find that sulphuric acid chars the cold and dead animal structures unless we apply heat to it.

With regard to antidotes in a case of poisoning by sulphuric acid, the best plan is to administer water holding in suspension chalk or magnesia, as speedily as possible. The carbonates are not to be recommended, because when administered the carbonic acid evolved has the effect of distending the stomach to a very great degree, and, supposing the poison to have been taken in a highly concentrated state, and the stomach softened, it may determine the perforation of the organ; therefore it is desirable to mix up whiting in a small quantity of magnesia and water. In many cases the administration of barley-water, or starch, is useful; even common flour mixed up in a thick paste, has been exhibited: all these things combine with the acid, and thus cut off its action on the mucous membrane. The administration of a strong solution of yellow soap has been found, from its alkaline quality, as well as its oily nature, to tend considerably to counteract the effects of the mineral acid. Of all remedies, calcined magnesia is the best.

Sulphate of indigo, which is nothing more than sulphuric acid mixed with colouring matter, has been taken for the purpose of suicide. In cases where it is taken, the matters vomited are of a bluish tint, and among them we find coloured shreds of mucous membrane. One remarkable result observed to arise from the action of sulphate of indigo is, that the colouring matter is absorbed, and passes off with the urine. Cases of this kind can present no difficulty. A question has arisen as to whether the mineral acids act by absorption. Now, it does not appear that they do. In the first place, it is difficult to conceive how the absorbents can take up a strong acid and carry it to the blood-vessels; and in the next place we find that dilution, which always facilitates absorption, generally retards the action of these acids. Thus, if we dilute sulphuric acid with a very large quantity of water, we disarm it of its power and diminish its effects, if we do not altogether destroy them. In the case of oxalic acid, which acts by absorption, the administration of much water is attended with dangerous consequences, and unless it be removed it spreads over the larger surface of the intestines. Dilution retards, and does not accelerate, the action of mineral acids. One fact, however, is worthy of notice, that the blood, in cases of poisoning, has been sometimes found coagulated. In one or two cases coagula have been taken from the heart, the aorta, and the large blood-vessels, but here does not seem to be any reason for believing that these coagula result from the action of a portion of sulphuric acid absorbed. In analyzing these coagula taken from persons who have been killed by sulphuric acid, I have never found a trace of that acid present in them. It does not appear that the coagulation is produced by the action of any acid absorbed, because in all cases in which sulphuric acid is combined with the albumen, it is easily separated and detected by boiling the substance in water.

We now proceed to the consideration of the chemical process required for the analysis of sulphuric acid. Our analysis may be directed, for medico-legal purposes, to three forms or conditions in which the acid is found:—1st, as it exists in the pure state; 2nd, as it exists in all liquids, when mixed with organic matters, as with articles of food, or the contents of the stomach; 3rd, as it is found on articles of clothing. We will first take the substance in its pure state. It may come before us in the shape of oil of vitriol of commerce. Now the properties by which the concentrated oil of vitriol are identified are, 1st, it carbonizes organic matters, either by contact, or by the application of a very slight degree of heat. Any dry organic substance, the moment it is introduced into the acid, becomes charred, that is to say, it loses oxygen and hydrogen as water, and carbon becomes free. 2nd. When the highly-concentrated acid is boiled with copper-cuttings, mercury, and some other metals, it produces sulphurous acid gas, which is immediately evolved, and is known by its odour, its acid reaction, and by its action on iodic acid. 3rd. When we mix oil of vitriol with an equal bulk of water, a very great heat is evolved, the temperature being from 160° to 170°.

In the diluted state there is no such action. In order to test it in the diluted state, the best substance we can employ for this purpose is the soluble salt of barytes, chloride of barium, or the nitrate of barytes. Having ascertained by test-paper that the solution is acid, we add to a portion of it a few drops of nitric acid, and then a solution of nitrate of barytes. If sulphuric acid be present, a dense white precipitate of sulphate of barytes will fall down, which is insoluble in all acids and alkalies. By decomposing this with charcoal, we get sulphuret of barium; unless we do this, we cannot infer that the substance precipitated by the test is sulphuric acid. To determine whether it is a sulphuret that is produced by the decomposition above mentioned, we moisten a piece of filtering paper with solution of acetate of lead, and suspend it over the charred precipitate, having previously added to it a little dilute muriatic acid. Immediately on the mixing of the two substances, a gas is given out (sulphuretted hydrogen), which has the property of rendering the salt of lead of a brown colour, while there is evolved a very offensive odour. Thus we establish the poison to be sulphuric acid beyond all dispute.

The delicacy of the test is such, that if a solution contains the smallest possible quantity of the acid, it will be precipitated; and half a grain of sulphate of barytes, which will yield sufficient evidence, is equal to one-third of a grain of oil of vitriol. Now, are there any other acids affected by this test? There are several—sulphurous acid, selenic acid, and iodic acid. Selenic acid is scarcely known in England, and is a very rare substance. Sulphurous acid is immediately known by its odour of burning sulphur, and there can be no doubt about the nature of the substance. Iodic, or fluo-silicic acid, precipitates the salt of barytes when it is quite pure; but when first added there is no precipitate. The fluo-silicate of barytes is precipitated by this very powerful acid, but the precipitation is very slow; it is very like diluted sulphuric acid. This acid is very easily mistaken for sulphuric acid. We do not, however, find the precipitate to yield the same results on calcining it with charcoal. There is a salt met with in commerce, by which we are very liable to be deceived in our experiments; it may be pronounced to be sulphuric acid, as it possesses all the properties of that acid; but it is nothing more than a common solution of alum. If we evaporate a portion of this liquid, there will be a saline residue if it be a solution of alum, otherwise not; for sulphuric acid should be entirely dissipated by heat, or should leave only the faintest trace of sulphate of lead. The quantity of free sulphuric acid present might be erroneously estimated, in consequence of some simple medicinal substance (as Epsom salt) being mixed with it; but the presence of this may be determined by evaporation, and the free sulphuric acid separated by warming the liquid, and adding finely powdered carbonate of barytes until effervescence ceases. The precipitate formed would be a sulphate of barytes, and would represent only the free sulphuric acid present. But there is another source of error to which we are exposed, and many of these errors are not referred to in the way they ought to be by toxicologists. Any acid mixed with a common sulphate employed in medicine might be mistaken for free sulphuric acid; as, for example, a small quantity of citric acid, acetic acid, or tartaric acid mixed with Epsom salts, or sulphate of magnesia. In a case like this, we can easily detect the real acid present by evaporation, and thus ascertain of what the substance is compounded. Such a mixture may be always suspected to exist where any saline residue is left on evaporating it. In such a case carbonate of barytes would not separate the free acid, for it might form a soluble barytic salt with the extraneous acid, and this, by reacting on the sulphate of magnesia, would precipitate the sulphuric acid of that salt, and thus lead to error. In order to extract from the solution the foreign acid, concentrate the acid liquid and sulphate by evaporation, and then mix it with its bulk of alcohol. This will dissolve the free acid and leave the sulphate, which may be afterwards washed with alcohol until all traces of acidity are then lost.

We now pass on to the consideration of sulphuric acid in the second condition, that in which we have to examine it. It may be presented to us in articles of diet,—porter, coffee, and tea; and here the process for its detection is substantially the same,—the liquid being rendered clear by filtration previously to adding the test. If it is presented to us in the vomited matters, as in the contents of the stomach, the liquid is in general dark-coloured, and mixed with a large quantity of mucus; the first point, therefore, is, to separate from it all insoluble matter, such as shreds of mucus; and then having determined its acidity, add the test of barytes. The sulphate of barytes thus obtained, if mixed with organic matter, may be purified by mixing with it strong nitric acid; but this is not commonly the case, as the reduction of the precipitate of charcoal may be equally well performed with the impure as with the pure sulphate. Some common liquids generally contain a portion of sulphuric acid, or a sulphate, such as vinegar or porter; but the acid is in very minute proportion; therefore, if there be an abundant precipitate, there can be no doubt that free sulphuric acid has been added to them. Should the liquid be thick and viscid like gruel, it may be diluted with water, and then boiled with the addition of a little acetic acid. The matters vomited from the stomach will generally be found highly acid; but it may sometimes happen that the liquids from the stomach of a person who has taken sulphuric acid may be quite neutral. In such a case as this, should we say that no sulphuric acid was given? Surely not. If, in testing the neutral liquid by the barytic salt, there be a precipitate, sulphuric acid can be present only in the state of a sulphate; if this precipitate be abundant, it cannot be due to the presence of minute traces of sulphate in the gastric and salivary secretions; but still it would be improper to infer from this chemical fact alone, that sulphuric acid had been swallowed, since it is well known that some saline sulphates, such as those of magnesia and soda, are often administered in large quantities medicinally; and it might be fairly objected to this evidence, that the precipitate was due to one of those salts being present in the stomach. It will be necessary to examine the mouth, the fauces, and œsophagus; for if the individual has taken sulphuric acid, there will be found traces of its action on all these parts, whereas, if he took simply a sulphate, there would be no action on these parts. Then you may be asked the question, is not this salt of barytes precipitated by many soluble salts met with in common life? and the answer is, that it is. It is precipitated by the carbonates, the phosphates, the borates, the tartrates, and the oxalates; but every one of these precipitates is soluble in nitric acid, whereas sulphate of barytes is insoluble in that acid. Perhaps there is one exception to this remark, in the fact that the fluo-silicate of barytes is insoluble in nitric acid. Now, supposing you find no sulphuric acid in the contents of the stomach, then the corroded parts of the stomach and the fauces are to be boiled in water, filtered, and the tests applied. In many cases no poison is found in the body, or only a very small quantity. We have had many cases in this hospital of poisoning by sulphuric acid, in which we have not been able to detect any trace of the poison in the body. This shews the effect of treatment. In cases of this kind what are we to do? We must proceed to examine the clothes, the furniture, and all articles about the room, or around the person of the deceased, on which it may have fallen, and here we generally find some evidence of it. Dr. Christison, by his excellent knowledge of the subject, and his extraordinary acuteness, was able to bring out the whole of a case of poisoning—the case of Humphreys, already mentioned. He found not a trace of sulphuric acid in the stomach or fauces, and there was a want of chemical evidence. He examined the dresses of the parties all over, and found them rather damp; he boiled them in water, and detected sulphuric acid in the dress of the man, and also of the woman, and this made up for what might have been a serious deficiency in the evidence. There is a condition in which sulphuric acid is met with, combined with other matter, and that is the sulphate of indigo; but poisoning by this substance is very rare. In the case of a child who swallowed some sulphate of indigo, the contents of the stomach, and the urine, were tinged with blue, and this appearance, which it constantly presents, is one of the means of detecting these cases of poisoning. It is the only vegetable blue not affected by acid, and it is tested in the same way as sulphuric acid.

Now we may be called upon to analyze sulphuric acid in articles of clothing, and here we may detect it when all other means fail. If the acid is strong, it produces a sort of deep brown colour upon black cloth. It often happens that oil of vitriol is thrown upon persons for the purpose of seriously injuring them; this is an offence against the law which was at one time very prevalent. It does not produce any immediate change on the cloth on which it is thrown, but in a short time a brownish colour, mixed with red, appears, which becomes of a still lighter brown, and the cloth appears crumpled up as if scorched or burned. If it stands for a few days, a further change ensues; the stain in the centre is brown, and of a deep red colour around. The part always remains damp, for the sulphuric acid is a fixed acid, and absorbs water from the air. The common diluted vitriol does not produce this effect, but it gives a red or reddish brown colour to cloth. In consequence of sulphuric acid being fixed and remaining on the cloth, it may be detected after a very considerable period of time. Dr. Christison says, after a period of several weeks, but it may be discovered after many years. In January 1831 a small quantity of this acid was spilled on a black cloth dress; it has been exposed in an open jar to the air for upwards of thirteen years. The cloth has gone down to a black pasty mass, something like tar, in which a large quantity of sulphuric acid can be detected. In a case of poisoning that occurred in the year 1832, the acid was partly spilled on a dress of printed cotton: this has been likewise exposed for twelve years, and the organic substance is completely corroded, and reduced to a kind of humid powder, but sulphuric acid is still easily detected in it. It may be sometimes necessary to determine the quantity of sulphuric acid present in a particular liquid. In order to settle this point, a portion of the liquid may be measured off, and the whole of the sulphuric acid present may be precipitated by the salt of barytes. The sulphate of barytes should be rendered pure by boiling it in nitric acid, then washed, dried, and weighed. For every 100 grains of dried sulphate obtained, we must allow about forty-one and a half grains of common oil of vitriol to have been present; and so on in the same proportion for any other quantity. If we thus obtain the weight of the sulphuric acid present, it is very easy, from its known specific gravity, to calculate the quantity by measure.

THE CRITIC.

A Practical Treatise on the several Counts and Pleas allowed to be pleaded together in Civil Proceedings, under the Statute 4 Anne, c. 16, and the New Rules of Hilary Term, 4 Wm. 4, and other Rules and Statutes. By Henry Macnamara, Esq. of Lincoln's-inn, Special Pleader. London, 1844. Benning.

Some time since, we had occasion to notice with warm commendation a Treatise upon Nullities and Irregularities in Pleading, from the pen of Mr. Macnamara; and we expressed a hope that ere long we should meet him again in that branch of the Profession to which he has evidently devoted much profound study—the difficult principles and practice of Pleading. The well-deserved success of the former volume has led to the publication of the present one, which is likewise devoted to a single branch of his science, but one of extreme importance, and a familiar acquaintance with which is essential to the pleader. He has accomplished this task in the same clear, well-arranged, and practical manner as characterized his former production; so that the precise information sought may be readily found when required, and the student will gather from its perusal a store of knowledge which is nowhere beside collected in so accessible and intelligible a shape.

Mr. Macnamara observes in his preface, that the practice relating to several counts and pleas has been formed within ten years. Since the rules of 4 Wm. 4, no branch of common law practice has been so frequently called into use. The numerous decisions upon those rules may now be deemed to have elucidated them; and few cases could arise to which some or one of these decisions would not be applicable.

The time, then, has arrived for their collection and methodical arrangement; and this work, so much wanted by the Profession, has been successfully performed by Mr. Macnamara.

He divides his treatise into two parts, and each part into two chapters. The first chapter contains the history of this branch of practice, the second, such general rules as seemed to be deducible from the decided cases. The first chapter of the second part gives the practical mode of obtaining an order and rule to plead or add several matters; of rescinding such order and of striking out counts, &c., and the results of pleading several counts and pleas as regards costs; the imposition of terms; proof at the trial; signing judgment, &c. The second chapter sets forth alphabetically instances in civil proceedings of the counts and pleas which have been allowed or disallowed. In this chapter he has further given the most important and recent cases as to the evidence that may be offered under certain pleas, for it is a reason for disallowing pleas, that they set forth facts which may be given in evidence under other pleas in the record.

As of more general interest to our readers, and more easily severable from the context, we extract the succinct history of this branch of pleading, recommending all who desire acquaintance with the practice to seek it where it will be found complete, in Mr. Macnamara's volume:—

At a very early period in the history of pleading, the plaintiff in an action was not allowed to state more than one cause of action, nor was the defendant permitted to allege more than one ground of defence.(a) This course of proceeding was more in accordance with the simplicity of *vivâ voce* pleading than with the artificial system which at present exists, and which has gradually adapted itself to the complicated affairs of a commercial and highly civilized country.

By an ancient relaxation of practice, the use of several counts was permitted to the plaintiff. (b) Not so, however, with pleas; the defendant was bound to make his selection of several defences which he might have, and to rely on one answer alone. And even in regard to counts, the semblance of a distinct cause of action was and still is preserved by the introduction of the word "other" in every count succeeding the first. (*Deer* v. *Ivey*, 12 L. J., Q.B., N. S. 132, *per* Parke, B.)

As the defendant was confined to one plea, and as the rule against duplicity prevented him from setting forth several defences in that one plea, much injustice was found to be caused in practice, and the defendant in many instances was prevented from going into the real merits of his answer to the claim; in addition to this evil it was a cause of perplexed and inartificial pleading, the defendant endeavouring to crowd as many reasons and facts as he could into his plea, however intricate, repugnant, and contradictory he made it by so doing. (Eunomus, 207.)

This rigour towards the defendant was deemed, we are told, a great reproach to our law, and as such was cast upon the Courts at Westminster by the civilians, who said it was forcing a man to fight with one hand tied behind him; (c) and they urged the maxim of their own favourite law, "*Pluribus defensionibus uti permittitur.*" (Dig. l. 44, t. 1, s. 5.)

At length, to remedy this defect, the statute 4 & 5 Anne, c. 16, was passed, whereby it was enacted that "any defendant or tenant in any action or suit, or any *plaintiff in replevin* in any Court of *record*, might, *with leave of the Court*, plead as many several matters thereto as he might think necessary for his defence."

In the words of the learned author of Eunomus, "the legislature have enabled the defendant, as it were, to open as many trenches against the enemy as the nature of his ground will permit. By these means the fort indeed is sometimes rendered impregnable, but sometimes the siege is only protracted." (P. 207.)

The leave of the Court was required by this statute in order to prevent inconsistent and contradictory pleas from being put upon the record, and at first the courts were strict upon this point.(c) But afterwards this enactment was treated as a remedial law (*Steel* v. *Pindar*, Barnes, 347), and the defendant, with very few exceptions, was allowed to plead as many different matters as he pleased, however inconsistent they might be. (*Jackson* v. *Warwick*, Barnes, 361.)

The Crown not being named in the Act was not bound by it, and therefore informations in the nature of a *quo warranto* were not within its operation (*Attorney-General* v. *Allgood*, Parker, 1), but by the next statute on the subject (32 Geo. 3, c. 58) a defendant to any such proceeding for the exercise of any office or franchise in any city or town corporate may plead that he had actually taken upon himself such office six years or more before the exhibiting such information, which plea may be pleaded singly or together with such plea as he might have lawfully pleaded before that Act, or *such several pleas as the Court on motion should allow*.(d)

And for the same reason, a defendant was not allowed under the statute of Anne to plead several matters to a declaration in prohibition, but by the stat. 1 Wm. 4, c. 21, declarations in prohibition shall be expressed to be on behalf of the real party, and not, as heretofore, on behalf of the party and the Crown, and therefore, the reason being removed, the defendant may now plead several pleas in prohibition. (*Hall* v. *Maule*, 4 A. & E. 283.)

The privilege of pleading several counts and pleas, however, in course of time, was much abused, and the same cause of action or defence was stated in every imaginable shape and form, chiefly with a view to avoid a variance between the allegation and the proof. This naturally caused prolixity and expense.

The Common Law Commissioners had pointed out the nature and extent of the inconvenience resulting from this state of the law. "The multiplication of counts and pleas," they say, "has long been considered as one of the chief abuses in the system of pleading. . . . . Records containing from ten to fifteen special counts or pleas are by no means rare, and fail to excite remark. Of these the greater proportion, and frequently the whole, relate to the same substantial cause of action or defence. . . . . The length of a count or plea is very uncertain, but cannot be stated on an average at less than four law folios, and at that length the addition of each count or plea is an addition of 4s. to the taxed costs on the draft. . . . . With respect to pleas it is certain the practice is not older than the 4 Anne, c. 16, and though it has been of much longer duration with respect to counts, yet the precedents from the time of Queen Elizabeth to that of King William and Queen Mary shew that in the use of several counts the pleader was at that period incomparably more sparing than at present; and the still existing rule, which requires each count always to set forth a cause of action ostensibly different from the preceding (even when in fact the same), combines with other reasons in support of the opinion that at an antecedent era one count only upon each cause of action was allowed."

They then state the principal reason for the necessity of several counts and pleas to be the state of the law on the subject of *variances*. In accordance with their views, the stat. 3 & 4 Wm. 4, c. 42, provided for the amendment of variances between the proof and allegation in matters not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced in the conduct of his action or defence, and it also has provided for variances not material to the merits of the case, but which *may* have prejudiced the opposite party. By this statute also the judges were empowered to make rules altering the mode of pleading, and, in pursuance of such authority, the *Regulæ Generales* of Hilary Term, 4 Wm. 4, after reciting that by the mode of pleading thereinafter prescribed, the several disputed facts material to the merits of the case would before the trial be brought to the notice of parties more distinctly than before, and by the Act of Wm. 4, the powers of amendment at the trial in cases of variance in particulars not material to the merits of the case were greatly enlarged, declared that "several counts shall not be allowed, unless a *distinct subject-matter of complaint* is intended to be established in respect of each; nor shall several pleas or avowries or cognizances be allowed unless a *distinct ground of answer* or defence is intended to be established in respect of each."

These rules have the force of an Act of Parliament, being made under the authority of one, and therefore they deprive the Courts of any discretion as to the allowance of several counts or pleas, which are clearly opposed to them. (*Bastard* v. *Smith*, 1 N. & P. 242.)

Thus then a summary review of the history of this branch of our law shews that the modern practice is an approximation to the ancient system of pleading, from which custom and statute law had sanctioned such wide deviations.

That great advantages have accrued from these modern alterations few, I believe, will deny; but in order that adequate benefit may be derived from them, it is absolutely necessary that the powers of amendment now given by the statute of William the Fourth should be exercised with liberality, and it may be found to be advisable to invest the judges with more extensive powers for this purpose, than they at present possess. The pleader is frequently placed in a position of much difficulty by being confined to only one statement of the complaint or defence, and in many instances great injustice will be inflicted on a party to a cause by first tying him down to one statement, and by then taking advantage of his being so tied down.

(a) Co. Lit. 303 a; 1 Eunomus, 207 (4th edit.); Boote's Suit at Law, 169 (5th edit.); Cooper's Eq. Pleading, 227. And see the history of this subject traced by Best, C. J. in Gulley v. Bishop of Exeter, 5 Bing. 45.

(b) But as late as the time of Charles the Second it seems to have been the general practice to adopt only one count. See instances in "A concise View of Pleading," by J. Chitty, p. 16 (1834), and Report of Common Law Commissioners.

(c) Boote's Suit at Law, p. 169.

(d) This Act does not extend to any but corporate officers, and a port-reeve appointed at a court-leet was held not to be within it, although he was also returning officer of members of Parliament: Rex v. Richardson, 9 East, 469.

The exercise of the power of amendment should be correlative with the alteration as to several counts and pleas.

"In the present state of the rules of pleading I think," observes Mr. Justice Bosanquet (*Cholmondeley* v. *Payne*, 4 Scott, 422), "it behoves the judges to be very liberal in allowing amendments under 3 & 4 Wm. 4, c. 42." Where an amendment would be refused at the trial, the party should still be allowed to guard against the variance by setting forth his case, so as to meet the proofs in one form or another, as it was chiefly on the ground of such amendment being allowed, that the rules confining him to one count or plea were promulgated. But in practice it is found that the power of amendment is not commensurate with the restrictions imposed on pleadings by the new rules. (*Per* Maule, J. *Temple* v. *Keiley*, 1 M. & G. 906.)

JOURNAL OF PROPERTY.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	100	99⅞	100	100⅛	100¼	100
Three per Cents. Reduced	99½		99¾	99½	99¼	100⅛
New Three-and-a-quarter per Cents.	102	102¼	102	102⅛	102	102⅛
Long Annuities..............	12⅛	12	12	12	12	12
Bank Stock	203	203	203	204	204	204
India Stock	287	287½	288	288	289	288½
India Bonds, prem..........	92	91	93	92	94	94
FOREIGN.						
Spanish Five per Cents.	22	22¼	24	23	23½	23¾
Spanish Three per Cents.	34	34	34½	35	35	35⅛
Russian	118	118	118	118⅛	118	118½
Peruvian..............	24½	24¾	25	25	25¼	25½
Portuguese	52	52¼	52½	52¼	52½	53
Mexican..............	34½	34	34½	34¾	34	34¾
——— Deferred	15¼	15	15½	15	15	15¼
Dutch Two-and-a-Half per Cents..............	62	62¼	62	62¼	62⅜	62⅛
——— Five per Cents.	98⅛	98⅛	98¼	98⅛	98¾	98¾
Danish	88	88¼	88	88⅛	88½	88¼
Colombian..............	13½	13¾	14	13¾	14	14
Chilian	101	102	101	102	103	103
Buenos Ayres	36	37	36	37	37	37
Brasilian..............	85⅛	85½	86	86	86⅛	86½
Belgian	103½	100⅛	103	103⅜	103¼	103⅜

RAILWAY TRAFFIC.—The following are the receipts of railways for the past week—that is to say, up to the date to which the respective returns are made, together with the receipts for the same week of the previous year:—

	Last Week.			Corresponding Week, 1843.		
	£	s.	d.	£	s.	d.
Birm and Gloucester, Oct. 18 ..	2,729	10	10	2,035	7	10
Bristol and Gloucester, Oct. 19 .	1,153	1	1			
Eastern Counties, and Northern and Eastern, Oct. 20 ..	4,692	3	8			
Edinburgh and Glasgow, Oct. 19	2,208	15	5	2,339	1	4
Great Western, Oct. 20	17,151	7	0	15,046	9	3
Grand Junction, Oct. 19	8,551	8	7	8,487	8	9
Glasg. Paisley. and Ayr, Oct. 19	1,469	14	10	1,268	6	4
Great North of England, Oct. 19	1,080	5	9	1,721	19	4
London and Birm. Oct. 19	16,983	0	11	17,565	7	9
London and Blackwall, Oct. 2	812	19	1	754	0	0
London and Brighton, Oct. 19	5,173	13	10	4,394	10	2
London and Croydon, Oct. 22	444	16	3	249	13	0½
London and Greenwich, Oct. 20	754	0	2	710	12	1
London and South-West. Oct. 22	6,869	2	0	7,000	4	7
Liverpool and Manchest. Oct. 18	4,943	4	11	4,095	19	6
Manchester, Leeds, and Hull Associated Com. Oct. 19 ..	7,292	4	2	5,987	1	4
Manchester and Birm. Oct. 19				3,054	19	1
Midland, Oct. 19..............	10,859	12	9	9,233	0	7
Newcastle and Carlisle, Oct. 19	1,773	19	3	1,454	17	8
Newcastle & Darlington, Oct. 19	1,068	13	9			
Paris and Rouen, Oct. 21	5,857	0	0	4,401	0	0
Paris and Orleans, Oct. 21	6,261	0	0	5,984	0	0
South-Eastern and Dover, Oct. 24	5,176	10	8	3,867	3	2
Sheffield & Manchester, Oct. 19	868	5	9	575	1	7
York and North Midland, with Leeds and Selby, Oct. 19 ..	2,645	15	1	1,749	5	11
Yarmouth and Norwich, Oct. 20						

EXTRAORDINARY DEPRECIATION OF THEATRICAL PROPERTY.—On Thursday, at one o'clock, a sale by auction was proceeded with by Mr. G. Robins of the interest of the late Hon. D. Kinnaird in the property respectively of the Theatres Royal Drury-lane and Covent-garden, by direction of the executors, the deceased having been for many years one of the most active of the Drury-lane Theatre committee. The room, at the Auction Mart, where the sale took place, was well attended by several of the *corps dramatique*. The first lot put up consisted of an annuity or rent-charge in the Theatre Royal Covent-garden, and which originally cost 500*l.* with a free admission to any part of the theatre except the private boxes, the interest of which had been reduced from 25*l.* a year to 12*l.* 10s. which sum was paid the 16th ult. The auctioneer observed that there was one entertainment that the shareholders would be prevented from having a free admission to, as the proprietors did not consider the representation he alluded to a dramatic entertainment. This was the exhibition of the Anti-Corn-Law League. They would, however, have something more agreeable in the course of the season, which would be more acceptable than the rubbish that body afforded. (Loud laughter.) The auctioneer then stated that the Anti-Corn Law League had engaged to give 3,000 guineas for the next season, and that M. Laurent had taken the theatre, in which he would give a great variety of entertainments, he having obtained the services of about 200 performers of the first eminence in Europe. On the 20th of December there would be other extraordinary entertainments. The offer for the lot commenced at 50 guineas, and was knocked down at 105 guineas. The next lot was a 500*l.* renter's share in Drury-lane Theatre, with a free admission, and transferable annually. The renters originally received 2s. 6d. per night of performance, but which is reduced to 1s. 3d. The share was knocked down for 100 guineas. Mr. Robins observed that he had received 6*l.* and 4*l.* per cent. on a share, but that since they had been rather shy of paying a dividend. (Laughter.) The next three lots consisted of fifteen subscription shares (five in each lot) of 100*l.* each, in the same theatre, entitling the purchaser to attend the annual meetings and partake of any dividend that in a future day will accrue and all the arrears. They went for five guineas each lot, this being the only offer. The last lot comprised five similar shares in the same theatre, and an admission (quite distinct from the shares) for any one person's life. The auctioneer said, that he had often sold an admission for fifty guineas. Twenty guineas were first offered, and twenty-eight guineas taken.

DARTMOOR.—About 5,000 acres of this extensive common have been purchased by a company, who have already fenced and drained part of it, and calculate on letting the whole at 10s. per acre. Hitherto the land has been waste.—*Devizes Gazette.*

IMPORTANT SALE.—We understand that the Duke of Devonshire has announced his intention of disposing of his extensive estates in the neighbourhood of Ripon, situated at Merton-le-Moor, Rainton, and Baldersby, by private contract, in one purchase, and that the several occupants of the respective farms have received notice of his Grace's intention. It is confidently asserted, that ample recompense will be made to each of the tenants for the improvements they have made on the estate.—*Leeds Mercury.*

Public Sales.

By Messrs. SHUTTLEWORTH and SONS, at the Mart.

The extensive and valuable freehold and copyhold landed estates of the late Mrs. Sarah Quincey, in the county of Essex, containing 1,261a. 0r. 22p. and producing a rental of 1,372*l.* 5s. per annum; sold in fourteen lots, as follows, viz.:—

A freehold estate, comprising Greenstead-green Farm, situate on the verge of the green, and in the parish of Greenstead, about a mile from Chipping Ongar, consisting of 28a. 2r. 29p. of arable, meadow, and wood land, together with a small farm-house—1,080*l.*

A freehold estate, comprising Domsey Farm, situate on the border of the high-road from Kelvedon to Colchester, consisting of 75a. 2r. 15p. of arable land—1,800*l.*

A freehold Estate, comprising Haynes-green Farm, situate five miles from Kelvedon, in the parishes of Layer Marney, Great Wigborough, and Messing, containing 214a. 0r. 36p. of arable, pasture, and wood land, together with a neat farm-house—5,300*l.*

A freehold estate, comprising the Grove Farm, formerly called the Rookery, consisting of 61a. 3r. 14p. of arable land, in the parishes of Little Wigborough and Feldon; also a farm cottage—1,600*l.*

A copyhold estate, comprising Lucas's Farm, situate adjoining the Well House Farm, and containing 39a. 3r. 35p. of excellent arable land, together with a double cottage—1,380*l.*

An estate, partly freehold and partly copyhold, comprising Well House Farm, situate in the parish of West Mersea, in Mersea Island, about eight miles from Colchester, containing 128a. 2r. 18p. of arable, pasture, meadow, and wood land, with a neat farm-house—4,000*l.*

A copyhold estate, comprising Pratt's Garden Farm, situate adjoining the preceding lots, and containing 89a. 1r. 20p. together with a large ancient farm-house—3,260*l.*

A copyhold estate, comprising Baker's Farm, situate adjoining the preceding lots, and comprising 31a. 34p.—1,240*l.*

A copyhold estate, comprising Pele Tye Farm, containing 109a. 1r. 22p. with a farm-house and offices, &c.—2,920*l.*

A freehold estate, comprising Peldon Lodge Farm, containing 281a. 2r. 15p. of arable, meadow, pasture, and wood land, situate in the parishes of Peldon, Great Wigborough, Little Wigborough, and Layer-de-la-Hay, together with an excellent farm-house—6,120*l.*

A freehold estate, comprising 97a. 2r. 34p. of arable, meadow, pasture, and wood land, situate on the borders of the turnpike road from Colchester to Harwich, being part of the Woodlands Farm—2,320*l.*

A freehold estate, comprising a second portion of Woodlands Farm, containing 44a. 2r. 25p. together with a residence distinguished as Woodlands Cottage—1,300*l.*

A freehold estate, being a third portion of Woodlands Farm, containing 13a. 2r. 22p.—460*l.*

A copyhold estate, situate on the borders of the high road from Colchester to Harwich, containing 44a. 3r. 23p. of arable and meadow land, together with a farm-house—2,600*l.*

By Messrs. HOGGART and NORTON.

An estate, part freehold and part leasehold, for the terms of 1,080 and 930 years, situate in the parishes of Cricklade St. Sampson, in North Wilts, and South Cerney, Gloucestershire, comprising a dairy and grazing farm, with a farm-house and 92a. 2r. of pasture, meadow, and arable land—5,480*l.*

A freehold estate within a mile of the town of Cricklade, comprising 26a. 1r. 12p. of pasture and arable land—1,720*l.*

A villa residence, situate on the summit of Herne Hill, Surrey, with coach-house, stabling, and large garden; held for 40 years from Midsummer last, at a ground-rent of 20*l.* 5s. per annum—830*l.*

A freehold estate, comprising a farm-house in the village of Stanton, North Wilts, together with 45a. 3r. 19p. of pasture, meadow, and arable land—2,260*l.*

A freehold orchard in the village of Stanton, containing 3r. 31p.—150*l.*

Two freehold meadows in the parish of Stanton Fitswarren, containing 9a. 5p.—480*l.*

A freehold meadow, near the above, containing 4a. 1r. 14p.—330*l.*

By Messrs. BROOKS and GREEN, at Garraway's.

A freehold estate, situate in the village of Walmer, in Kent, and within two miles of Deal, comprising the elegant marine residence of the late George Joad, esq. together with its beautiful pleasure-grounds, ornamental gardens, park-like paddocks, and rich arable land, containing in all about fifty acres, commanding most extensive views of the sea and the grounds and plantations of Walmer Castle—10,500*l.*

By Mr. HAMMOND.

A copyhold estate, situate near the Royal Military College, Blackwater and Yately, in Hampshire, known as the Upper House Farm, with farm residence, cattle and farm yard, and 24a. 3r. 28p. of pasture, meadow, and arable land, subject to a fine of 1*l.* 7s. 2d. and heriot of 12s. 6d.—700*l.*

A ditto, near the preceding lot, known as the Rosemary Farm, comprising a farm residence and 9a. 3r. of arable land, subject to a fine certain of 5s. and a heriot of 21s.—400*l.*

Three inclosures of meadow and arable land, containing 14a. 1r. 19p.—360*l.*

A plot of building ground near the above, containing 3a. 3r. 4p.—170*l.*

Two inclosures of copyhold meadow and arable land, containing 5a. 2r. 6p.—170*l.*

18a. 1r. 1p. of rich arable land, situated near the above. The tenure is copyhold, as the five preceding lots, nearly equal to freehold—440*l.*

A freehold farm contiguous to the estates of Lord Cornwallis and Sir E. Dering, near the village of Smordon, Kent, consisting of inclosures of arable land, farm buildings, and a farm-house, divided into three lots, as follows—viz.:—

The first lot comprises a farm-house, agricultural buildings, and 55a. 2r. 32p. of meadow and arable land—940*l.*

An inclosure of arable land, with the timber thereon, near the above, containing 2a. 5p. land tax redeemed—95*l.*

A ditto, containing 4a. 3r. 6p. near the above, land-tax redeemed—140*l.*

The three lots producing 1,175*l.*

The life-interest of a bankrupt in two freehold houses, Nos. 1 and 4, White-street, Poplar, let at 33*l.*; also a policy in the Provident for 300*l.* on the life of the bankrupt, aged 46 years, at the annual premium of 12*l.* 0s. 6d.—266*l.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

A'BECKETT.—On the 25th ult. at Portland House, Hammersmith, the lady of Gilbert Abbott A'Beckett, esq. barrister-at-law, of a son.

BURROWS.—On the 26th ult. in Torrington-street, the wife of Arthur Burrows, esq. of Lincoln's-inn, barrister-at-law, of a daughter.

CHUTE.—On the 29th ult. at the Vine, Hampshire, the lady of W. Wiggett Chute, esq. M.P. of a daughter.

POLLOCK.—On the 24th ult. at the Lord Chief Baron's, at Hatton, Lady Pollock, of a son.

MARRIAGES.

HART, Septimus Vander Wyden, son of the late Charles Hart, esq. of Kensington-gore, and Captain in the 2nd Grenadier Regiment of the Bombay Native Infantry, to Catherine, eldest daughter of Thomas Joshua Platt, one of her Majesty's counsel, on the 26th ult. at St. Pancras Church.

SEWELL, the Rev. Henry D., M.A. fourth son of the late Hon. Jonathan Sewell, LL.D. Chief Justice of the province of Lower Canada, to Elizabeth Charlotte, youngest daughter of the late Robert Monypenny, esq. of Merrington-place, in the county of Kent, on the 25th ult. at Haddow, Kent.

DEATHS.

COLLINSON, Frederica Anne Murray, the beloved wife of Robert Collinson, esq. solicitor, on Sunday last, at Great Driffield, Yorkshire.

DEHANY, William Knight, esq. late solicitor to the Excise, on the 24th ult. at his house in Belgrave-square, aged 54.

FOOKS, Thomas, esq. of Sherborne, Dorsetshire, on the 24th ult. aged 70.

HALL, Mrs. Susannah, relict of Samuel Hall, esq. of Castle-court, Budge-row, London, on the 29th ult. at the house of her brother, R. Arderne, esq. of Tarporley, Cheshire, aged 84.

MANGLES, Alice, the infant daughter of Ross D. Mangles, esq. M.P. on the 29th ult. at Woodbridge, Surrey.

POWELL, Charlotte, the wife of the Rev. Baden Powell, Savilian Professor of Geometry in the University of Oxford, on the 24th ult. at Tunbridge Wells.

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OLDAKER, Woodward, and Ball, Messrs. Pershore
Oliver, G. A. Twickenham
Ormond, W. Wantage
Otter and Oldman, Messrs. Gainsborough
Overell, W. Christchurch
Owens, J. Newtown
Owen, William, Liverpool.

PAIN, T. Banbury
Palin, R. Shrewsbury
Palmer, C. Barnstaple
Palmer, H. Upwell
Palmer, T. E. Tonbridge Wells
Parker and Adam, Messrs. Halifax
Parsons, R. Shaldon, Devon
Pass, W. Altrincham
Passman, C. B. Stafford
Paterson and Hanbury, Messrs. Leamington
Patrick, C. G. H. S. Worcester
Paynter, F. E. 13, South-square, Gray's Inn
Pearse, J. Hatherleigh
Peed, A. Cambridge
Peele, J. J. Shrewsbury
Peers, J. Ruthin
Pell, G. jun. Welford
Pendlebury and Taylor, Messrs. Bolton
Phelps, W. J. K. Newport, Monmouth
Phillips, J. Chippenham
Phillips, J. R. Cheltenham
Pinniger, H. Westbury
Pitts, J. Exeter
Plaskitt, W. Gainsborough
Pollard, E. Gloucester
Pollock, Jos. esq. barrister-at-law, Manchester
Ponsonby, Hon. F. 3, Cavendish-square
Poole, F. Hartlepool
Poole, T. L. Gloucester
Poole, W. S. Kenilworth
Popplewell, W. South Cave
Potts, C. T. Sunderland
Powell, J. Chichester
Powell, E. L. Abergavenny
Powell, J. K. Haverfordwest
Powell and Sons, Messrs. Knaresborough
Preston, C. A. Debenham
Price, W. E. Torrington
Price, Deakin, and Dent, Messrs. Wolverhampton
Price, W. Abergavenny
Prideaux, G. F. Albion Chambers, Bristol
Pritchard, E. East-street, Hereford
Pruen, S. Cheltenham
Pullen, H. Warminster
Pyke, H. H. 87, Chancery-lane.

RADFORD, J. Newcastle-upon-Tyne
Radford, J. G. Sidmouth
Rance, H. Cambridge
Rands, G. jun. Northampton
Rawlings, B. W. Romford
Rawlinson, A. L. Chipping Norton
Read, R. Llanrwst
Reade, G. Congleton
Reade, J. Mildenhall
Rendell, T. L. T. Tiverton
Richardson, J. T. Rochdale
Richardson, R. Oundle
Rider, J. Thirsk
Roberts, B. Birmingham
Roberts, E. Delph, near Manchester
Robinson, H. T. Edgley
Robinson, J. S. Sunderland
Robinson and Preston, Messrs. Tavistock
Robinson, W. Gainsborough
Robinson, W. York
Roche, T. C. Daventry
Rooker, J. Bideford
Rouse, Messrs. Knutsford
Rowden and Druitt, Messrs. Christchurch
Rushworth, Messrs. 10, Staple Inn.

SABEN, H. Stone
Sadler, T. D. Dorking
Salmon, W. Bury St. Edmunds
Sams, W. H. Clare
Sankey and Sladden, Messrs. Canterbury
Saville, W. S. Clare
Sawkins, G. Leek
Scholefield, W. Dewsbury
Scholey, J. Wakefield
Serjeant, S. B. Callington
Seymour, G. H. York
Seymour, W. H. Coventry
Shapland, J. F. Southmolton
Sharp, R. Christchurch
Sharpins and Sweetman, Beccles
Shattock, J. Bristol
Shepherd and Tassell, Messrs. Faversham
Sherwood, J. Chichester
Shipton, J. Stroud
Shuckard, T. L. Wellingborough
Sills, R. Ashby-de-la-Zouch
Simcox, A. Birmingham
Simpson, J. B. Richmond, Yorkshire
Simpson, T. B. Whitby
Simpson, T. York
Skelton, S. Thornton, near Pickering
Smale, Mr. 50, Arundell-street
Smallbridge, C. Gloucester
Smallpiece, Messrs. Guildford
Smetham, J. O. King's Lynn
Smith, H. G. Hambledon
Smith, J. Devonport
Smith and Argles, Messrs. Biggleswade
Smith, J. A. Hinckley
Smith, Jno. Warwick
Smith, J. R. Newnham
Smith, R. Richmond, Surrey
Smith, R. H. Folkestone
Smith, R. jun. Bridgwater
Smith, W. T. Leeds
Smith and Crowther, Messrs. Wolverhampton
Smithson, Messrs. York
Spencer, W. Birmingham
Sperling, J. N. Walton-on-the-Naze
Spilsbury, G. Stafford
Spooner, T. Leicester
Stafford, R. Durham
Stallard, G. Bath
Stamp, E. Honiton
Steavenson, A. F. Darlington
Stephens, T. K. Presteign
Stephens, W. Preston
Stevens, S. W. Clare
Stevenson, R. Hanley
Stiles, H. Cheltenham
Stone and Paget, Messrs. Leicester
Stone and Wall, Messrs. Tonbridge Wells
Stringer, J. Stratford-on-Avon
Stringer, W. New Romney
Stubbs, G. B. Walsall
Swarbreck, Thos. Thirsk
Swinburn, T. Gateshead
Symons, W. Saltash
Sydney, M. J. W. Blyth
Sykes, E. Wakefield

TAGART, C. F. 1, Raymond-buildings, Gray's-inn
Talbot, W. Kidderminster
Tate, A. T. Llanelly
Taylor and Andrews, Messrs. Bolton
Taylor, W. Greenwich
Taylor, T. F. Wigan
Terrell, J. Exeter
Thackwray, J. W. 58, Beaumont-street, Portland-place
Thairlwall, F. Richmond, Yorkshire
Thomas and Matterson, York
Thompson, A. Whitehaven
Thompson, G. T. Dover
Thompson, J. N. G. Liverpool
Thompson, T. Hull
Thorncroft, S. Brighton
Thorney, J. Hull
Thorpe, W. Thorne
Thurgood and Son, Messrs. Saffron Waldon
Tindall, J. Huddersfield
Tinley, Messrs. Tynemouth
Titt, C. P. Broughton
Toms, J. A. Tiverton
Toogood, H. Bridgwater
Tournay, R. Ticehurst
Townsend, G. H. Bilston
Trappes, H. Chorley
Trenfield, D. Winchcomb
Tripp, W. U. Tiverton
Truscott, G. F. Exeter
Tucker, R. Ashburton
Tucker, W. Coryton Park, Axminster
Turner, H. Wolverhampton
Turner, J. G. Rothwell
Turner, W. C. Bicester
Tyas, J. Barnsley
Tyndall and Sons, Messrs. Birmingham.

UMBERS, T. Stratford-on-Avon.

VALLACK, James, Derby
Vaughan, H. B. 30, Craven-street
Veley, F. F. Chelmsford.

WAGSTAFF, W. G. Grantham
Wagstaffe, Son, and Marsh, Messrs. Warrington
Waldron, J. Wiveliscomb
Walford and Beesley, Messrs. Banbury
Walker, J. Faversham
Walker, J. Chester
Wallingford, [illegible]. A. St. Ives, Hunts
Walsh, J. W[illegible]s, Lincoln's-Inn-fields
Wane, R. Far[illegible]gdon
Ward, E. Pres[illegible]
Ward, J. New [illegible]et, D[illegible]am
Ward, J. Warw[illegible]
Wardroper, E. [illegible]urst
Wareing, R. Or[illegible]
Wartnaby, G. Lu[illegible]orth
Wart[illegible] W. M[illegible] Harborough
Watkins, [illegible] K. Bo[illegible]
Watson, J. Newcastle-upon-Tyne
Watts, J. K. St. Ives, Hunts
Watts, W. Dewsbury
Wavell, E. [illegible] Halifax
Webb, J. M. [illegible]t
Webster, J. Sheffield
Welsh, J. W. Wells, Somerset
Wetherhead and Burr, Messrs. Bingley, Yorkshire
Wetwan, G. Bridlington-quay
Weymouth, J. Knightsbridge
Whatley, J. Reading
Wheldon and Heyworth, Messrs. Barnard's Castle
White, W. Moretonhampstead
Whitehead, G. Bury
Whitehead, H. Rochdale
Whitworth, Messrs. Manchester
Whytehead and Champney, Messrs. York
Wickham, H. Strood
Wilcocks, J. B. Plymouth
Wilkins, L. jun. Blackburn
Wilkinson, J. Hull
Wilkinson, R. T. Bishop's Wearmouth
Wilkinson, W. M. Market Drayton
Willan, R. Thetford
Williams, E. Knighton
Williams, J. Cheltenham
Williams, J. Merthyr Tydvil
Willoughby, E. C. Sutton Coldfield
Wills and Francis, Messrs. Newton Bushell
Wilson, F. W. Sheffield
Wilson, J. R. Salisbury
Wilson and Turnbull, Messrs. Hartlepool
Withers, J. F. Sherborne
Witley, S. Colchester
Wood, J. Bradford, Yorkshire
Woodhouse, J. Bolton
Woodward, J. H. March
Wright, L. Ormskirk
Wright, R. Shelton.

YEWENS, W. Camborn.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.
HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.
ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.
VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law.
The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.
The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law.
The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.
The EXCHEQUER CHAMBER by J. A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.
ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.
BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.
CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.
NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.
WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.
OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.
NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.
SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and H[illegible] TINDAL ATKINSON, Esq. of the Middle Temple, B[illegible]ster-at-Law.
ELECTION C[illegible]MMIT[illegible]ES by EDWARD W. COX, Esq. of the Midd[illegible] [illegible]arrister-at-Law.
REGISTRAT[illegible] C[illegible]TS, collected and edited by EDW. W. COX, Esq. [illegible] [illegible]dle Temple, Barrister-at-Law.

[illegible] REPORTS.

The LORD CH[illegible]LLO[illegible] COURT by WILLIAM DUGGAN, Esq. [illegible]ster-at-[illegible]
QUEEN'S BEN[illegible] CRI[illegible]L COURTS by WM. ST. LEGER BABI[illegible]TON, [illegible] [illegible]rrister-at-Law.

N. B.—The names of [illegible] reporters of such important points as may arise upon [illegible] it will be announced as the arrangements for each a[illegible] completed.

Equity Courts.

LORD CHANCELLOR'S COURT.

Saturday, Nov. 2.

OLDFIELD v. COBBETT.

Vexatious litigation—Leave to move—Practice.

Cobbett in person applied to the Court for leave to make a motion in this suit; he said he understood that his lordship had prohibited him from doing so without special leave.

The LORD CHANCELLOR.—I made no such order. What I did was to stay proceedings on any motion until I had communicated with the other side; and I made that order to put a stop to very harassing proceedings which were manifest injustice. You are at liberty to give such notice, and make such motion as you may be advised; but I offer neither counsel nor direction in the course you are to pursue.

FRISBY v. STAFFORD.

Monday, Nov. 4.

Jurisdiction—Practice—Petitions.

Where an interlocutory order by the Vice-Chancellor dismissing a petition is appealed from, and another petition in the same matter has been presented at the Rolls by other parties in the cause, the Lord Chancellor will not hear the appeal until the petition at the Rolls has been heard and decided.

Tinney, with whom was *Wakefield*, moved to discharge an order of the Vice-Chancellor of England, dismissing a petition in this cause. The cause was heard in 1830, and in 1833 an order was made directing certain inquiries before the Master, and the sale of some canal shares, and the petition had been presented, praying that such order might be varied. The other side had also presented a cross-petition at the Rolls, which was set down for argument. It was now also asked that the Rolls petition and this application might be heard together in this Court.

Koe, Teed, James Parker, and *Freeling* for various parties.

The LORD CHANCELLOR.—The Rolls petition may be heard first. The Master of the Rolls may hold that the order made in 1833 was erroneous, or that circumstances have occurred since which induced him to say that that order ought not to be carried out. I will not hear this application until the petition at the Rolls had been decided. I cannot say that this petition shall not be heard by the Master of the Rolls. It would be proper to mention the circumstances to the Master of the Rolls.

ANDREWS v. WALTON.

Prisoner's attendance on reference before the Master.

In this case the plaintiff, who is a prisoner in the Queen's Prison for contempt, had procured an order for a reference to the Master, and that he should be brought up to the Master's office to attend such reference. But the reference was likely to occupy more than one day, and the registrar declined to insert in the order a direction that the plaintiff should be brought up from day to day.

The LORD CHANCELLOR.—If the reference will occupy several days, the plaintiff is entitled to have an order to be brought up from day to day to attend. Let the order be so drawn up.

The following day *Teed*, for the plaintiff, stated that there was still some difficulty as to naming the days of attendance in the order, when his lordship directed that after one attendance the Master should indorse on the order the next day appointed for proceeding with the reference.

MALCOLM v. SCOTT.

Lien—Varying instructions received contemporaneously.

This was an appeal from a decision of Vice-Chancellor Wigram, which was argued in this court upwards of twelve months ago. The plaintiff claimed a lien for 10,000*l.* on the ship *Forfarshire*, and moved for an injunction to restrain its disposal by the defendants, the owners; the Vice-Chancellor, conceiving the lien not proved, had refused the injunction, and the plaintiff then moved in this court by way of appeal.

JUDGMENT.

The LORD CHANCELLOR.—It appeared that the house of Scott and Co. of Calcutta were indebted to the plaintiff Malcolm, and that he pressed for payment of a portion of his debt. Scott and Co. had despatched a ship called the *Forfarshire* to Canton for a cargo of tea, and the question raised at present between the parties is, whether the defendants have given the plaintiff a lien on the ship and cargo as a security for his debt. It was the intention of the defendants that the ship should be sold on her arrival in this country, and they wrote to Adam Scott, their agent in London, giving him instructions to that effect, and directing him to let Malcolm have a portion of the proceeds in discharge of his demand against them, which demand, it seems, arose out of a claim on a former partnership, and was the capital of the plaintiff in that partnership. Three letters were written, two in December 1841, and one in January 1842. In the letters of December the defendants direct Adam Scott to sell the vessel, and pay 10,000*l.* to the plaintiff; but in the letter of January there also occurs this passage:—"You are to understand that the direction to pay Malcolm the 10,000*l.* is only conditional, and depends on the advices you may receive by the next packet." These three letters arrived by the same mail, and, although written at different periods, must be looked at, and treated as, one set of instructions. It is quite clear, therefore, that they gave the plaintiff no lien, for they left the payment to the plaintiff dependent on a future order, to be sent by the defendants to their agent. On the 21st of January the defendants wrote another letter to Adam Scott, which was received in March. In that letter they complain that the plaintiff had sent an agent to Calcutta, in order to harass them by disputing their accounts, and they then use this language:—"It was our earnest desire to give Mr. Malcolm a portion of his demand against us; but since he seems determined to dispute the accuracy of our accounts, we shall not pay him anything. We desired you to make this payment with all needful despatch, but if he intends to give us trouble, we must combat him with his own weapons." The letter concluded by directing the sum of 10,000*l.* to be raised on the *Forfarshire*, and sent out to Calcutta with all reasonable despatch. This, beyond doubt, puts an end to all claim of lien under the instructions given to the agent of the defendants. But then the principal reliance of the plaintiff's counsel, in the course of the argument, is placed on the correspondence between Malcolm and the house in Calcutta. I have read that correspondence with attention, and I find it amounts to nothing more than a statement of the circumstances under which the defendants, as debtors, proposed, and hoped to relieve themselves from the claims of their creditor. Their obvious meaning was that the payment should be made when the *Forfarshire* was sold. They carry the matter no further, and create no lien in favour of the plaintiff. This is the case, if those letters are read in connection with the correspondence between the defendants and Adam Scott, who was specially directed to make the payments depend on instructions from Calcutta. As the case, therefore, stands at present, the claim of lien resting solely on the correspondence between the parties, I am of opinion that it does not establish such a claim, and I agree with the Vice-Chancellor that the application for the injunction must be dismissed, with costs.

DALLIMORE v. OGILVIE.

Practice—17th order of 1828—Dismissal of bill for want of prosecution—Discretion of the Court—Negotiation—Costs.

Where a plaintiff has filed a replication he is bound, under the 17th order of the 3rd of April, 1828, as amended in 1841, if he requires a commission for examining witnesses, to obtain and serve an order for such commission within three weeks: and a plaintiff who obtains and serves such an order, though he may afterwards abandon it, is held to be a person requiring a commission within the terms of the order. But where a plaintiff, having obtained and served an order for a commission, takes no further step until after the second term following that in which he obtained the order, the Court will not dismiss the bill for want of prosecution, if the plaintiff abstained from proceeding under a fair expectation that pending negotiations for the settlement of the suit would prove successful.

Quære, whether the plaintiff should not in such case pay the costs.

Walker and *Collins* moved to discharge an order of the Vice-Chancellor of England, which directed the plaintiff's bill to be dismissed for want of prosecution, with costs.

The plaintiff, George Dallimore, had made a mortgage for 3,000*l.* to his brother, Thomas Dallimore. Previous to the death of Thomas Dallimore, he made a voluntary settlement of this mortgage-money upon his wife and children. Shortly before the death of Thomas, the plaintiff gave him two promissory notes, one for 100*l.* and the other for 500*l.* in part payment of the mortgage debt. The 500*l.* note was not paid when due, and remained unpaid at the death of Thomas, who by his will appointed his wife and Haydon his executors. The widow had married the defendant Ogilvie, and an action had been brought and judgment recovered against George Dallimore upon the 500*l.* He then filed the present bill against Ogilvie and wife. Haydon, the other executor of Thomas Dallimore, and the children of Mrs. Ogilvie by her first marriage to have the 500*l.* recovered on the note applied in part discharge of the mortgage debt. The plaintiff filed a replication on the 4th of Nov. 1843, and within three weeks obtained and served an order for a commission to examine witnesses, but took no further steps to obtain a commission before the notice of motion to dismiss the bill for want of prosecution. It appeared that some negotiations for the settlement of the suit had terminated in October 1843, but were renewed early in the January, at the earnest solicitation of Mrs. Ogilvie and her children. The defendant Ogilvie, who was confined for debt in Wilton gaol, consented to the negotiation, provided it was brought to some conclusion by the 2nd of March, 1844. No terms could be arranged by that time; but the efforts of Mrs. Ogilvie and Wilfred Dallimore, one of her sons, to effect an arrangement, were still continued. On the 18th of May, Ogilvie gave notice of this motion to dismiss the bill. By the terms of the 17th order—"Where the plaintiff files a replication without having been served with a notice of motion to dismiss the bill for want of prosecution, he shall serve the subpœna to rejoin, and in case he requires a commission to examine witnesses, shall obtain and serve an order for such commission within three weeks from the filing of the replication; and such commission shall at the latest be returnable on the first return of the second term then next following; and the plaintiff shall give his rules to produce witnesses and pass publication at the latest in the same term, and shall set down his cause for hearing and duly serve the subpœna to hear judgment returnable in the succeeding term; and if the plaintiff shall make default herein, then, upon application by the defendant upon notice of motion, the plaintiff's bill shall stand dismissed out of court with costs, unless the Court shall make special order to the contrary." And it has been held, that this order applies only to cases in which the plaintiff requires a commission to examine witnesses, and that in other cases the old practice prevails. Some difference had existed in the different branches of the court as to the effect of a plaintiff obtaining and serving an order for a commission, and not proceeding to ob-

tain a commission. The Master of the Rolls had held such a plaintiff to be a person requiring a commission within the terms of the seventeenth order, and that therefore all the rest of the order applied to him, though he might afterwards abandon, or not act upon his order for a commission. (*Rayson* v. *Lees*, 1 Keen, 15.) On the other hand, the Vice-Chancellor of England had held that a party might abandon an order for a commission at any time, and that by such abandonment the case would be taken out of the operation of the seventeenth order. The practice had, however, been settled by the decision in *Lewis* v. *Hinton* in July last, reported in the *Jurist* and 3 LAW TIMES, No. 465. That order was made after the petition of appeal in this case had been presented, and it was now asked that the plaintiff might be allowed to go on with the suit as was permitted in *Lewis* v. *Hinton*.

The LORD CHANCELLOR.—Do you mean that if there is a question to be tried I am to retain the cause? I presume there is a question to be tried. Am I to enter into the merits of the cause to decide this motion? If there is anything connected with the irregularity, such as mistake or negotiation, I may retain the cause. I cannot go further into the merits than to learn that there is a fair question to be tried. I take it as admitted that there is such a question to be tried.

Walker.—The negotiations had not terminated at the time of the notice of motion.

Cooper and *Simpson*, for the respondents.—The defendants contended that the plaintiff had been guilty of negligence, and that his bill was properly dismissed for want of prosecution.

The LORD CHANCELLOR (without hearing a reply). —The plaintiff has precluded himself by obtaining an order for a commission; the circumstance of obtaining such an order, and not proceeding with it, is provided for by the seventeenth order. In the Rolls, the decisions have been uniform from 1828. It appears that a strong and urgent application was made to the plaintiff by the wife of the defendant Ogilvie and her children, and in consequence he recalled the instructions to proceed which he had given to his solicitor. The only difficulty in the way of an arrangement was as to the payment of Mr. Physic's costs. Are not these circumstances such as to justify the Court in refusing to dismiss the bill? Here the plaintiff was acting *bonâ fide*; he had suspended in consequence of earnest solicitations. The plaintiff may have until the last return day of next Hilary Term for a commission.

Cooper asked for costs.

The LORD CHANCELLOR.—It is an application to the discretion of the Court. I think the plaintiff ought to pay the costs. He has a decision of the Vice-Chancellor against him.

Walker.—The practice of Lord Cottenham was not to make any order as to costs.

The LORD CHANCELLOR.—I will consider as to the costs.

Tuesday, Nov. 5.

Re FRANK, a Lunatic.

Costs in lunacy—Apportionment.

JUDGMENT.

The LORD CHANCELLOR.—Under an order in this matter, Robert Copeland's debt was directed to be paid out of the moneys received upon the policies effected upon the lunatic's life, which was in effect out of the mortgaged property. That is not inconsistent with the settlement. That property might have been charged with the remainder of the debt, but he had directed it to be paid out of the money advanced by Mr. Day, not describing on what fund it should be ultimately charged. It appears that what remains is inadequate to pay the costs which have been incurred under the order of the 15th of July, 1831. It is now asked that the Court should direct payment of the general costs in the lunacy out of the money advanced by Day, which is out of the general estate of the lunatic, and that the estate should be re-imbursed out of the policies. That is not inconsistent with the order of the 9th of April, 1813. If these funds are not sufficient, the latter costs must be paid by the petitioners out of the policies, before payment over of the money to the person entitled under the settlement. There must be a reference to the Master to inquire how much had been paid out of Mr. Day's money towards Copeland's debt. Reserve the consideration of the costs of the petition.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, June 4.

YOUDE *v.* JONES.

Marriage articles—Deed—Construction of—Description of parcels—General words.

Upon an intended marriage (which was afterwards solemnized) between T. Y. and S. E., certain articles, in 1773, were entered into, by which it was agreed that several estates in fee simple, to which S. E., the intended wife, was entitled, situate in the counties of Montgomery and Denbigh, describing the hereditaments, but not including in the description that an estate called P. M. should be settled as therein mentioned in tail, with an ultimate remainder to T. Y. in fee. There was issue of the marriage, T. W. Y., the eldest son; E. Y., a second son (the plaintiff); and two daughters. No settlement was made.

In 1802, two recoveries were suffered by the husband and wife and T. W. Y. who had come of age. The description of the property in the deed, creating the tenant to the præcipe, was sufficiently extensive to include the estate of P. M.; but the object of the recoveries, as stated in the instrument, was, for barring, docking, and extinguishing all remainders and reversions thereupon expectant and depending of and in the several capital and other messuages, &c. therein mentioned, and for resettling, limiting, conveying, and assuring the same to such uses therein mentioned, and in default thereof upon such provisoes, &c. as the said hereditaments and premises were, and stood limited to immediately before the execution of the then present indenture, by virtue of the said marriage articles, or upon such and so many of them as should be then existing and capable of taking effect.

E. Y., the second son of the marriage, upon the death of his brother, T. W. Y., without issue, and of his mother, S. Y., claimed P. M. as remainder-man in tail.

Held, that, in construing the deed of 1802, the articles of 1773 ought not to be referred to, there not having been any actual limitation of the estates by these articles, and that P. M. was not included in the deed and recovery of 1802.

By articles of agreement, dated 18th October, 1773, and made on the marriage of T. Youde and Sarah Edwards, it was agreed that the capital messuage, or tenement, &c. of her the said S. Edwards, commonly called Clockfan, and all other her real estates in the county of Montgomery, and all that other capital messuage or tenement, with the lands, &c. thereunto belonging, called Rhydomen, with all other the messuages, tenements, &c. of her the said S. Edwards, situate in the hundred of Ruthin, in the county of Denbigh (but not including therein a capital mansion belonging to her called Plas Madoc, with its appurtenances, in the parish of Ruabon, in the said county of Denbigh), should be settled upon the said T. Youde and Sarah, his intended wife, during their lives, and the life of the longest liver of them; and from and after the decease of the survivor of them to the use of the first and other sons of the marriage severally and successively in tail; and for default of such issue, to the uses of the first and other daughters of the marriage; and in default of such issue, to the same uses as to the issue of the said Sarah Edwards by any after-taken husband; and for default of issue generally, of the said S. Edwards, remainder to the use of the said T. Youde in fee.

There was issue of the marriage, T. W. Youde, who attained the age of twenty-one years, another son, Edward Youde, the plaintiff, and two daughters.

No settlement was made in pursuance of the above articles, but in the year 1802 there were two common recoveries suffered by E. Youde and Sarah, his wife, and their eldest son, T. W. Youde. The description of the property in the deed creating the tenant to the *præcipe* was sufficiently ample to include the estate of Plas Madoc, the object of the recovery, as stated in the instrument, being for "barring, docking, and extinguishing all estates tail, and remainders and reversions thereupon expectant and depending, of and in the several capital and other messuages, tenements, farms, mills, lands, tithes, and hereditaments of them the said T. Youde and Sarah, his wife, and T. W. Youde, or any or either of them, situate, lying, and being in the several parishes of Llangerrig, Llanidloes, *Ruabon*, Llanynys, Llanfwrog, Ruthin, and Wrexham, or elsewhere, in the several counties of Montgomery and Denbigh, and all those three fourth parts or shares of the tithe of corn, grain, and pulse, arising in the township of Christionydd Kenrick, in the said county of Denbigh; all which hereditaments and premises were theretofore the estate and inheritance *of the said Sarah, the wife of the said T. Youde*, and for resettling and assuring the same hereditaments and premises to such uses, &c. thereinafter declared;" and it was declared that such recovery, when suffered, should enure to such uses as the said T. Youde, Sarah Youde, and T. W. Youde should appoint, together with other powers of appointment to the several parties therein mentioned, and in default of such several appointments, upon such powers, provisoes, limitations, and agreements, as the said hereditaments were and stood limited to *immediately before the execution of the then present indenture by virtue of the articles of settlement* made previous to and in contemplation of the marriage of the said T. Youde and Sarah, his wife, or upon such and so many of them as should be then existing, undetermined, and capable of taking effect.

T. Youde died, and by indentures of lease and release of 21st and 22nd Dec. 1809, S. Youde and T. W. Youde (by virtue of the indenture of the 2nd April, 1802, and the common recoveries suffered pursuant thereto, and all other powers enabling them in that behalf) appointed all the said estates (except Plas Madoc, which was reserved to the said S. Youde, and her assigns during her life) to trustees for one thousand years, upon the trusts therein mentioned, and subject thereto to the use of T. W. Youde, his heirs and assigns for ever. T. W. Youde by his will devised all his real estates to trustees upon certain trusts, and died in 1821, without issue. Sarah Youde died in 1838, having by her will devised estate Plas Madoc to her daughters.

Edward Youde, the second son, upon the death of his mother, S. Y., claimed Plas Madoc as remainder-man in tail, and commenced the present suit, when, upon the original hearing of the cause in 1842, a case was made and sent for the opinion of the Court of Queen's Bench upon the questions following: First, Whether under the indentures of the 1st and 2nd of April, 1802, and the recoveries pursuant thereto, Sarah Youde was entitled to any and what estate in the hereditaments at Plas Madoc, and whether Edward Youde was entitled to any and what estate in the said hereditaments? Secondly, Whether under the indentures of 21st and 22nd Dec. 1809, T. W. Youde took any and what estate in the same hereditaments at Plas Madoc? And accordingly the case being argued before the Queen's Bench in Michaelmas Term, 1843, on the 8th February following Lord Denman delivered the unanimous opinion of the Court to the effect that the case turned exclusively upon the conveyance of 1802, whereby Plas Madoc was imported into the settlement, and because subject to the uses thereby declared, and that the settlement was referred to, not for a description of the property, but for a statement of the uses, and that therefore on the death of T. W. Y. the eldest son without issue, E. Y. had an estate tail, who was consequently entitled to estate Plas Madoc in tail under the deed and recovery of 1802.

The cause was now argued upon further directions.

Koe, *Anderdon*, *Simpkinson*, *Bethel*, *Wray*, *Stuart*, *Parry*, *Coote*, *Montague*, *Daniel*, *Bacon*, *Tennant*, and *Campbell*, for the different parties to the suit.

The VICE-CHANCELLOR.—I am really very sorry that I cannot accede to the judgment of the Court of Queen's Bench. By the rules of law you are bound to take the words as you find them, and you are not at liberty, merely for the sake of giving effect to the deed, to interpret those words in a manner which the words themselves will not admit of. [His Honour here alluded to the Bill recently brought into Parliament, giving power to construe a deed according to the meaning of parties, although contrary to their expressions, as an authority against the judgment of the Court of Queen's Bench.] That the judges to whom the case was directed have taken the right view of what the parties *intended*, I readily admit; and I am only sorry that under my present view of the case as it now stands, the real intention of the parties cannot be accomplished without having the legal question first disposed of; because if the state of things were such as to render a further application to a court of law unnecessary, I, for one, should be very glad, but must confess, with sorrow, that the decision at which they arrived appears so clearly to be not right, that I feel I should not be acting justly myself were I to give up my own opinion upon the subject and not have recourse to the further assistance which the constitution of this Court permits me. By the articles of agreement in 1773, strictly speaking, there was really no limitation of the estates whatever—and this agreement forms no limitation at law—because the estate which the husband had, and the estate which the intended wife had in the tenements respectively, remained in them just in the same manner after as before the execution of the articles, although I must admit that in the contemplation of a court of equity the estates were equitably bound by the agreement, and that this Court would have no hesitation in compelling a conveyance by the husband and wife of the estates vested in them to the uses and upon the trusts expressed in the articles of 1773. It would seem that in 1801 there was what is usually denominated a resettlement of the husband's estate, and then this instrument of 1802, the intention of which is quite manifest, was prepared, its object being to include certain estates belonging to the wife. Now I have no doubt that at this time it was not the intention of the parties in any degree to affect the husband's estates, which had been the subject of resettlement by the deed of 1801; but when I observe in this instrument the expression that the husband and the wife and their eldest son did grant, bargain, and sell, all and singular the hereditaments of the three, or any or either of them, it is impossible not to conclude that so far as the deeds operate at law, the estates of the husband were affected by these foolish words, although, I have no doubt, contrary to the intention of the parties themselves. Now it is not the province of a court of law to carry into effect the intention of parties in any other manner than what is consistent with the expressions to be found in the deed executed by the parties, and I only throw out this remark to shew the negligence and want of thought with which the instrument of 1802 was prepared. The deed goes on to describe what it was the parties granted, in such a manner that had not the parishes been mentioned, the words, "or elsewhere,

in the several counties of Montgomery and Denbigh," must of necessity have carried all the wife's lands in question. The parties have, in fact, used general terms, which describe both the wife's tenements and the husband's. And it appears to me that there is one nominative case which governs the whole string of limitations, and being once given, it is a complete sentence from beginning to the termination of the uses. Then follow the uses, viz. "as the same hereditaments and premises are and stand limited to immediately before the execution of these presents by virtue of the articles or settlement made previous to and in contemplation of the marriage." But, in point of fact, the "said hereditaments and premises" did not in any sense of the word stand limited by the articles of 1773 immediately before the execution of these presents. It is perfectly clear that, by virtue of the articles of 1773, and the subsequent recovery and settlement of 1801, the estates of the husband were limited in a certain manner, but those of the wife were not subject to any limitation whatever. It seems to be quite clear that one set of uses were intended to be expressed. And it is unnecessary to repeat my former observation that in contemplation of law, and in strictness, no uses were declared of the hereditaments by the articles of 1773, and my opinion is, that it is the duty of a court of law to construe the words as they appear upon the instrument, and if the words are plain and unambiguous, to adopt a plain and unambiguous construction. But, instead of so doing, the Court of Queen's Bench have adopted a mode of construction which would be very consistent for a Court of Equity to put upon an instrument in a case where the simple question arose as to what was the intention of the parties. I am exceedingly sorry that the parties must undergo the additional expense of taking the opinion of another Court of Law, but I do feel so strongly that the Court of Queen's Bench is wrong with respect to the legal construction of the deed itself, although right as regards the intention of the parties, that I am compelled to ask the opinion of another Court of Law. This I leave to the option of the parties.

The case sent to the Court of Exchequer.

NOTE.—In the case of *Cockran* v. *Cockran*, reported 4 Law T. p. 49, the Reporter cannot ascertain the date of the will, it not being stated in the brief, but it was certainly *before* the year 1838.

ROLLS COURT.

Saturday, Nov. 2.

STANLEY v. BOND.

A decree in an injunction suit having been obtained against a defendant, he went abroad, and the plaintiff being unable to obtain payment of the costs, got an order nisi, under 1 & 2 *Vict. c.* 110, *for a distringas on stock standing in the defendant's name; the solicitor of the defendant then paid the costs of the suit, but refused those of the order, &c.: on motion, the defendant was ordered to pay the latter.*

This was a suit instituted to restrain the defendant from proceeding at law to obtain payment of certain bills of exchange; and the injunction having been obtained, the costs amounted to nearly 300*l.* The defendant, after the institution of the suit, had gone abroad, and the bill was taken *pro confesso* against him. The plaintiff being unable to take out personal process against him, and having heard that 6,600*l.* Three and a Half per Cent. Annuities, were standing in his name in the Bank of England, obtained an order nisi under the 1 & 2 Vict. c. 110, to restrain the Bank from transferring the stock. The defendant's solicitor then paid the costs of the suit, which the plaintiff, however, would only receive without prejudice to his right to the costs of the order, which the defendant's solicitor refused to pay. The defendant then gave notice that he would move for an injunction to prevent the plaintiff from proceeding to make the order absolute, and give the payment of the costs as a ground. The plaintiff then gave notice of a motion, which he afterwards abandoned, and declared his intention of moving to make the order absolute. The motion now came on to be heard.

Kindersley and *Wright*, for the plaintiff.

Toller, for the defendant.

The MASTER of the ROLLS.—The defendant was out of the jurisdiction, and no personal process could be put in force against him; it was not unreasonable, therefore, to attach the stock in the bank, even without giving notice to the defendant's solicitor; the law of courtesy was not so very stringent. As to the objection that the *distringas* was put on all the stock, when a small portion would have answered, it seems to be answered by the statement that the bank in attaching any part will restrain all from being transferred. That is very likely to be so. The defendant must pay the costs of the order and of this motion.

Monday, Nov. 4.

REED v. O'BRIEN.

An answer to a bill being sent from abroad by a messenger, who left it with the porter at the office of the Records and Writs, and an application to take the bill pro confesso for want of an answer being made, the Court refused to make any order, but by consent the answer was afterwards received upon terms.

In this cause an answer was sent from abroad by the post, and arrived here directed to the Office of the Records and Writs. A motion was made upon the 5th of July last (3 Law T. 319) to take the bill *pro confesso* for want of an answer, and a counter-motion to have the answer so sent filed, or that a new commission should issue. A new commission was accordingly granted, and the answer taken under it was sent to this country by a messenger, who left it on the 9th of September last in charge of the porter at the office of the Clerk of Records and Writs, the office not being then open. A motion was now made to take the bill *pro confesso* against the defendant for want of an answer.

Turner for the motion.

Kindersley, contrà.

The MASTER of the ROLLS.—I shall make no order if the plaintiff is so very absurd as to refuse the answer because of this accident. Let it stand over for the parties to consider. Accordingly,

Tuesday, Nov. 5.—The plaintiff having consented to take the answer upon terms, his Lordship ordered it to be so taken, and gave the plaintiff the costs of the defendant's motion for the commission in July, but no more.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, Nov. 5.

GIBSON v. STEWARD.

Practice—Benefit of demurrer saved until the hearing—Unnecessary defendant.

A prayer for general relief held to include a prayer for an account.

A director and the secretary of a public company (either of whom sufficiently represented the company) were joined as defendants in a suit; discovery being sought against both generally, a demurrer was put in to the bill, and the Court, under the circumstances, reserved the benefit of the demurrer until the hearing.

This was a suit for the specific performance of an agreement, dated the 31st of January, 1839, entered into with the plaintiff by four of the originators and directors of the North of England Mining Company, by which it was agreed that the plaintiff should be employed as coal-fitter to the company for the term of fourteen years. The plaintiff continued to be employed in that capacity until the 1st of October, 1841, when he was discharged. On the 1st of January, 1842, the plaintiff commenced an action against the company for the breach of covenant, and shortly afterwards, Harrod, who was the secretary and represented the company, filed a bill against Gibson (the plaintiff) and others, praying the delivery up of the agreement, and for an account of all the plaintiff's transactions in his capacity of coal-fitter to the company. The present bill was filed against Steward as one of the directors of the company, and in whose name the action had been brought, and against Harrod, who was the secretary of the company, and as such made capable by the company's Act of Parliament of representing the company in actions and suits, and who was the plaintiff in the suit commenced against the present plaintiff. To this bill separate demurrers were filed by the two defendants, and the grounds upon which they were supported were the nature of the agreement, the nature of the action, the nature of the previous suit, and the joinder of the two defendants.

Russell and *Bates*, for the demurrers.

Wigram and *Anderson*, for the bill, were not heard.

The cases of *Kimberley* v. *Jennings* (6 Sim. 340); *Lowndes* v. *Davies* (6 Sim. 468); and *Palk* v. *Lord Clinton* (12 Ves. 48) were cited.

The VICE-CHANCELLOR.—This is a bill praying general relief in respect of transactions which were connected with the employment of the plaintiff as a coal fitter by a company represented by the defendants. Supposing the agreement under which that employment was undertaken to be of legal or equitable validity, there seems fair ground for contending that the parties are entitled to an account. Supposing the equitable validity to exist, independent of any question of specific performance, I think the prayer for general relief will include a prayer for an account, if an account should appear to be necessary. There is, however, that upon this bill from which it appears that these transactions are already the subject of a suit in this court. Every one conversant with the practice of this court knows that a cross bill is capable of being maintained upon much less grounds than another bill. An action has also been brought by the present plaintiff in respect of matters covered by that bill. Independently, then, of another point, to which I shall allude immediately, it would be far too much to allow the demurrer in the present stage. Another question raised, however, is upon the joinder of the present defendants. There being a right to sue either a director or the secretary of this company, they are both brought here. There is no statement upon this contained in the bill, even as to the expediency for the purpose of discovery; but considering the right the plaintiff had to make either of these persons a defendant, and that without any such specific statement as I before alluded to, discovery is sought against both the defendants, one of these defendants being the plaintiff in the equity suit, and the other a party in the action; considering, too, that this Court has control over the costs, in case the expense should be unnecessarily increased, I think it would be too much to interfere in the present stage of the cause. I am disposed, therefore, to make an order to save the benefit of the demurrers until the hearing of the cause, the plaintiff, in the meantime, proceeding as he may be advised in the suit, and amending or not amending his bill.

ROCKE v. COOKE.

Statute of Limitations—Lunacy—Practice.

A B in 1823, *brought an action for a simple contract debt against a person who was shortly afterwards found a lunatic. A bill being filed by the committee to restrain the prosecution of the action, an injunction for that purpose was, without the consent of A B, issued, he being allowed to prove under the lunacy before the Master. His claim, however, was never allowed, and in* 1843 *the lunatic died, and A B then filed a bill against the executors of the lunatic, to which a demurrer was put in, on the ground of the length of time which had elapsed since the debt was contracted. The Court overruled the demurrer, without prejudice to any question that might be made at the hearing, reserving the costs.*

This was a bill for an account filed by a simple contract creditor of the late Sir Gregory Page Turner. The plaintiff's demand originated in some bills to a large amount given by Sir G. P. Turner in the years 1821 and 1822. The plaintiff, during the life of Sir G. P. Turner, had brought an action against him for the amount of his debt, but Sir G. P. Turner having subsequently been found, by a commission *de lunatico inquirendo*, to have been a lunatic since the 1st of July, 1823, a bill was, on the 22nd of June, 1825, filed by his committee in his name against the present plaintiff, to have the above-mentioned bills delivered up, and the action brought upon them restrained. In that suit an order was, with the consent of the present plaintiff, made for restraining the continuance of the action, he being allowed to go in before the Master and establish his claim under the lunacy. The claim, however, was never allowed, and the Master made his report as to the debts on the 9th of August 1828. Sir G. P. Turner remained a lunatic until his death, which happened on the 6th of March 1843. He had, however, made a will in 1840, which contained a direction for the payment of his just debts, and this will was duly proved. On the 5th of February 1841, the present bill was filed, and a demurrer was put in to it on the ground of the claim being barred by lapse of time.

Wigram and *Freeling*, for the demurrer, cited *Pulteney* v. *Warren* (6 Ves. 73); *Fyson* v. *Pole* (3 Y. & C. Exch. Ca. 266), and *Ex parte M'Dougal* (12 Ves. 384).

Russell and *Glasse*, for the bill, were not heard.

The VICE-CHANCELLOR.—It does not appear to me that I ought, for the present purpose, to infer that, so far as the lunacy is concerned, the plaintiff is precluded from establishing his claim from the length of time which has elapsed. I think, notwithstanding the lapse of time, I ought, upon this record, to infer that if Sir G. P. Turner were alive, and the lunacy had continued, and supposing that the debt might not then have been already established, it was competent for the plaintiff to go before the Master and establish his claim. Assuming that to be so, there was at the time of the death of Sir G. P. Turner a demand for which there was a remedy open. I must then see, before I allow this demurrer, that this remedy is still open. I am not bound to know the particular rules and practice in lunacy, and I am not sure that the course of practice is so fixed as to preclude the person intrusted by the Crown with the administration in lunacy from departing from it. I have no means of ascertaining whether the plaintiff has now the opportunity of proceeding in the lunacy to establish his claim. If he has not, the remedy which existed at the death of Sir G. P. Turner does not now exist, and if he cannot have the remedy for which the action was stayed, is he now to be precluded, the alleged debtor being dead, from suing his executors? I think it would be dangerous and imprudent on the present record, and in this case to say so, by allowing the demurrer. I, therefore, shall allow this cause to go on, and I propose to overrule the demurrer, without prejudice to any question that may be made at the hearing of the cause, reserving the costs.

Monday, Nov. 4.

SAMMONDS v. GREEN.

Practice—24th Order of 26th August, 1841.

An affidavit of a person proving that on a certain day he sent a parcel to A B in the country, containing a copy of the bill, accompanied by an affidavit by N B that he received on the following day such a parcel,

and that he served the copy he received, was held not sufficient proof of the service.

Speed, in this case, applied, pursuant to the 24th Order of the 26th August, 1841, for leave to enter in the Six Clerks' Office a memorandum of the service of a copy of the bill upon one of the defendants. To support his application he read two affidavits, the first by a person who deposed to his having, on a certain day, inclosed a true copy of the bill in a parcel, and sent it by the Great Western Railway to another person residing in the country; the second by the person to whom the parcel was directed, deposing that he had received such a parcel on the following day, and that he had served the copy inclosed in it upon the defendant.

The VICE-CHANCELLOR considered that the evidence was not sufficient, it not being proved that no other parcel had been sent by the first deponent.

November 6 and 7.

BRISTOWE v. WOOD.

Vendor and purchaser—Specific performance—Costs. Where a vendor had entered into a covenant for himself, his heirs, executors, and administrators, not to erect certain buildings upon a piece of land contracted to be sold, and neither in the agreement for sale of the land nor the abstract of title was any notice taken of the covenant, the Court held that the purchaser was not bound to complete his contract.

Unnecessary evidence having been gone into on both sides, and some untenable exceptions having been taken to a title in a suit for specific performance of a contract for the purchase of land, the Court, though it gave judgment for the defendant, would not allow him his costs of the evidence or the costs occasioned by the untenable exceptions.

This was a suit instituted for the purpose of compelling a specific performance of an agreement entered into by the defendant for the purchase of some land from the plaintiff, part of a piece of land called the New Hey, situated near Liverpool. A reference to the Master as to the title having been made, he, on the 1st of July 1844, reported that a good title could be made, and that such title was shewn before the filing of the bill. To this report the defendant filed exceptions, which now came on for argument. The principal objection to the title was the following:— By a memorandum indorsed on an indenture of the 16th of May, 1832 (which was the deed of conveyance to the plaintiff), it appeared that by indentures of the 16th and 17th of November, 1833, a part of the piece of land called the New Hey was conveyed by the plaintiff to one Henry Jenkins in fee, and that in this conveyance were contained mutual covenants on the part of the plaintiff and Jenkins, for themselves, their heirs, executors, and administrators, not to erect certain buildings on their respective portions of the piece of land called the New Hey. The abstract having been prepared before this memorandum was made, no notice was taken of it therein. It was now argued by the defendant that this objection to the title was such that he could not be compelled to complete the purchase.

Russell and *Rudall*, for the exception.

Wigram and *Smythe*, for the plaintiff, relied principally upon *Keppell* v. *Bailey* (2 Myl. & Keen. 517).

The VICE-CHANCELLOR considered this title to be too doubtful to force upon the purchaser. He thought that if the purchaser had taken this title from the plaintiff, he would have taken it under circumstances of great risk and danger. It was too weighty and too serious a question, whether he would be liable under the covenant, taking, as he would do, with notice of it, for the Court to be justified in forcing the title upon him. He would, therefore, neither overrule nor allow the exception, but would make a declaration, that the title was too doubtful to force upon the purchaser.

The question of costs was then argued, and it appeared that the second and third exceptions were untenable, and that a great quantity of evidence had been entered into with regard to them, and that much unnecessary evidence on the whole case had been gone into on both sides.

Wigram and *Smythe*, for the plaintiff.

Russell and *Rudall*, for the defendant, cited *Williams* v. *Edwards* (2 Sim.) and *Vancouver* v. *Bliss* (11 Ves. 458.)

Wigram, in reply.

The VICE-CHANCELLOR.—In considering this question of costs, the plaintiff is entitled not to have it forgotten that the Master has thought his title good; and, on the other hand, the defendant is entitled not to have it forgotten that the main objection or difficulty must be taken, for every purpose of litigation, to have been known to the plaintiff, and that it was not disclosed in the agreement or the abstract, though I am perfectly satisfied that no injustice was intended by the plaintiff. On the whole, however, the plaintiff has failed; and, therefore, subject to what I am about to say, the plaintiff must pay the costs. Looking at the evidence in the cause and the considerable quantity of superfluous evidence—I think that justice will be done by my directing that, as to the costs of the evidence up to the hearing, there shall be none on either side. The costs in the Master's office must abide the usual result, except as to the second and third exceptions. So far, then, as the costs in the Master's office have been increased by the discussion of the second and third exceptions, let there be no costs on either side. Dismiss the bill, with costs, except as I have mentioned.

VICE-CHANCELLOR WIGRAM'S COURT.

Wednesday, Nov. 6.

WOODS v. WOODS.

Production of counsel's opinion—Privilege.

The opinion given by counsel, upon a case submitted for the purposes of a suit, is privileged from the usual order for the production of papers admitted to be in a defendant's possession by his answer.

This was a motion for the production of papers admitted by the defendant in the suit to be in his possession. Amongst the papers was a case submitted to counsel, and the opinion thereon; the defendant was willing to produce the case, but insisted that he was entitled by privilege to withhold the opinion.

His HONOUR said, that *primâ facie* the plaintiff would be entitled to its production, but if it could be considered as a privileged document, the defendant must be allowed to retain it in his possession. In the case of *Lord Walsingham* v. *Goodriche* (3 Hare, 122) he had stated, and he saw no reason now to change his opinion, that, as long as the law rendered it necessary not to act without professional advice, it could not be otherwise than that the privilege usually allowed to professional communications ought to be respected and maintained. In the present case, the opinion was taken, doubtless, for the purpose of aiding the plaintiffs in instituting proceedings in this court, and was given upon a consideration of those differences which have since become the subject of litigation. There can be no doubt that an opinion, taken at that time and with that view, would be privileged; and his opinion was, that it retained its privilege *pendente lite*. *Motion refused.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, Nov. 2.

FLIGHT v. NICHOLSON, Clerk.

Application to set aside proceedings, and plead a plea of forgery.

Platt, Q. C. moved for a rule to shew cause why the proceedings should not be set aside in this action, and defendant allowed to plead a plea of forgery. The defendant had accepted two bills, one on the 14th November, 1843, for 250*l.* and another in October, for 60*l.* In March 1844, the defendant received a letter from an attorney called Boucher, demanding payment for a bill, but mentioning neither the name of the party nor the date. A writ and declaration were served. In May last an execution was put in; the *fieri facias* was, however, subsequently withdrawn, and a writ *de bonis ecclesiasticis* issued. The defendant then discovered that the bill he had drawn in November was in the hands of a person named Denge, but that the bill on which the action was brought was dated *October* 1813, drawn for 250*l.*, and that it consequently was a forgery; the defendant never having in that month accepted any such bill.

By the COURT.—The application is late; the letter of the attorney appears to have been in March, and the declaration also would have shewn the date.

Platt.—The defendant never saw the declaration.

By the COURT.—But his attorney must have known it.

Platt.—He had no attorney. *Rule to shew cause.*

REG. v. CLEASBY.

Appointment of collector of money for support of bastard children—Practice on moving for rules to bring up judgments.

Pashley moved for rule to set aside verdict, or for a new trial.

The defendant had been indicted for disobeying an order of magistrates for the payment of the maintenance of a bastard child, of which he was the putative father. This order had been made by the mere entry of a minute by the guardians at one of their board meetings in 1843, that one Anthony Carter should be appointed to collect this and other like moneys, for the support of bastard children; but there was no power to indict a person for disobeying such order, and not paying such sum, inasmuch as the collector had not been appointed by a deed under seal. (*Arnold* v. *The Mayor of Poole*, 2 Dowl. N.S. 574; 12 Law Jour. N.S. 97.)

DENMAN, C. J.—You had better not enter into these matters at present. When the judgment is brought up, it will be early enough to do so. We do not usually enter into particulars on moving for a rule. *Rule to shew cause.*

WOOD v. DRAKE.

Sale of goods on eve of execution.

Humfrey moved to set aside the verdict obtained in this action on the ground of misdirection by the learned judge (Coltman, J.) who tried the cause. In October 1843, one Phillips had execution issued against him by one Norton for a debt of 200*l*, when the plaintiff lent Phillips 123*l.* to enable him to pay the debt. This loan Phillips was unable to pay, but assigned over a public-house and furniture in it, which formed the matter of the action on a subsequent execution. The learned judge directed the jury that a preference thus given to one creditor, if in the contemplation of a pending execution, was fraudulent, on which ground of misdirection the motion was made. *Rule to shew cause.*

REG. v. ARCHDEACON OF COVENTRY.

Mandamus to compel the admission of churchwardens.

Mellor applied for a peremptory *mandamus* to compel the Archdeacon of Coventry to swear in and admit to their offices Messrs. Sutton and Bagshawe, who had been respectively and duly elected in vestry assembled, churchwardens for the township of Thurlaston, being a part of the parish of Dunchurch, in the county of Warwick, which had always had churchwardens, who acted for that township, which comprised one-third of the entire parish, and in which it had always been customary to lay separate rates.

It was submitted that the duty of the archdeacon being purely ministerial, and he was bound to comply with the act of the vestry.

DENMAN, C. J.—Has he assigned a reason?

Mellor.—None.

DENMAN, C. J.—Then take the rule for the *mandamus*, absolute in the first instance, but not peremptory, so that a return may be made to it. *Rule absolute.*

Monday, Nov. 4.

New Trials.

RICHARDS v. SIMONDS.

This was an action of trespass for taking plaintiff's cow. *Pleas*—1st, not guilty; 2nd, that the cow was not the cow of the plaintiff. The case was tried at the last assizes for Cornwall, and a verdict found for the defendant.

Butt now moved, pursuant to leave given at the trial, for a rule to shew cause why this verdict should not be set aside, and a verdict entered for the defendant, on the ground that the defence set up at the trial was not admissible under the pleadings. *Rule nisi.*

REG. on the Prosecution of OSBORN MYLNE v. THE CORPORATION OF MANCHESTER.

In this case *mandamus* had issued commanding the defendants to award compensation to Mr. Mylne, under 5 & 6 Vict. c. 111, for the loss of the office of clerk to the justices of petty sessions for the borough of Manchester, from which office he had been removed some time since, on the borough obtaining a charter under the Municipal Corporations Act. The proceedings under the *mandamus* went down for trial at the last Lancaster Assize, when a verdict was found for the Crown.

Kelly, Q. C. now moved for a rule to shew cause why this verdict should not be set aside and a verdict entered for the defendants, on two grounds; 1st, that Mr. Mylne was not such an officer as was contemplated by the Act which awarded the compensation (5 & 6 Vict. c. 111); 2nd, that, even if he was such an officer, he had not sustained any loss. *Rule nisi.*

BARNETT v. DUNCAN.

This was an action brought against the defendant for an injury to plaintiff's reversion in a house in Buckingham-street by darkening the windows.

Platt, Q. C. now moved for a rule for a nonsuit, on the ground that, as it was shewn at the trial that there was an outstanding term in the executors or administrators of one Donalson, deceased, which did not expire until after action brought, the immediate reversion was not in the plaintiff, and therefore he was not entitled to maintain his action. Case cited: *Green* v. *Cole* (3 Williams' Saunders, 251, n. 7). *Rule nisi.*

NEW TRIAL PAPER.

CLIFTON v. HOOPER.

Where a sheriff neglects to arrest a party against whom he has a writ of final process, when he has it in his power so to do, an action lies against him. SEMBLE, *that the party bringing the action is only entitled to nominal damages, unless the jury find that he has sustained loss by the non-arrest.*

This was an action against the sheriff of Middlesex for not arresting a party against whom the plaintiff in the present action had obtained final judgment, and issued execution. At the trial the jury found a special verdict, that the sheriff might have arrested the party; but that the plaintiff had not sustained any damage by reason of the non-arrest.

Kennedy now shewed cause against a rule obtained by *Warren*, which was to enter a verdict for the plaintiff either with nominal damages or for the whole debt, and contended that, as the jury had found that the plaintiff had not sustained any damage, the verdict

must be for the defendant; he further contended, that the jury had only found that the sheriff *might* have arrested the party, but had not found that he *ought* to have arrested him; it might be, therefore, that he was a privileged person, who might have immediately regained his liberty by a judge's order, and so the plaintiff would not have gained any thing by the arrest; that it was not like a case of an escape after an arrest on final process, as in that case the debt would be discharged, which was not the case here.

Cases cited: *Williams* v. *Mostyn* (4 M. & W. 145); *Jones* v. *Pope* (1 Saun. 38, n. 2); *Brown* v. *Jarvis* (1 M. & W. 709); *Barker* v. *Green* (2 Bing. 317); *Plank* v. *Anderson* (5 Term Re. 37, 2 Leon. 87); *Lewis* v. *Moreland* (2 B. & Ad. 66).

Warren, in support of his rule.—The jury have found that the sheriff could have arrested; therefore, as the plaintiff has lost a right, there must be damage, and he is at least entitled to nominal damages. This he contended on the broad principle laid down in *Marzetti* v. *Williams* (1 B. & Ad. 415), the words of Buller, J. (5 Term R. 40), and other cases there cited. But he further contended that the plaintiff was entitled to recover the whole debt.

By the COURT.—We are of opinion that the rule must be made absolute to enter the verdict for the plaintiff. *Williams* v. *Mostyn* is an authority in point for the plaintiff as to that part of the case; then the question arises as to the amount of damages, and in this we can only be guided by the finding of the jury; they have found that there is no loss, and so, therefore, it must stand.

Rule absolute to enter a verdict for the plaintiff with nominal damages.

Warren then said, that as the effect of the above entry would be to deprive the plaintiff of his costs, he hoped the Court would certify *nunc pro tunc* for costs.

By the COURT.—We have no power to do that.

Tuesday, Nov. 5.

DOE *dem.* BLAYNEY *v.* SAVAGE and ANOTHER.

Title—Fraud—Forgery.

Talfourd, Serjt. (with whom was *Gray*), moved to set aside the verdict for the plaintiff, or for a new trial, on the ground of misdirection, and that the verdict was against the evidence. The title under which the defendants held the property in question, which consisted of a farm of 870 acres, with house, &c. near Pershore, had passed under a number of assignments, and a deed fifty years old was impeached at the trial of the cause, on the ground of forgery. The lessor of the plaintiff claimed as the heir-at-law of the trustee of sale under the will of one Mary Phillips, made in 1791; and the root of the defendant's title was the deed sought to be impeached. It was left to the jury whether this deed was forged, and also whether it *had been obtained by fraud*. The jury found that there was no forgery, but that the deed was obtained by fraud. It was contended that the judge was not justified in putting the fraud to the jury, and also, that though some suspicious circumstances attended the defendant's title, here was no sufficient evidence of fraud. *Rule nisi.*

REG. *v.* THE MAYOR AND CORPORATION OF DOVER.

Practice—Amendment of defective rules.

M. D. Hill (with whom was *A. J. Stephens*) applied for leave to amend a rule for a writ of *certiorari* to bring up certain orders made by the borough council of Dover for the payment of expenses of watching, lighting, &c. The rule was to call for the payments instead of the orders whereby the payments were made. Notice had been given not to appear to this defective order.

Kelly, Q.C. (with whom was *Crompton*), opposed the amendment on the ground that, in the first place, the pretext for the rule was frivolous, inasmuch as it purported to be that one of the three councillors by whom the orders were signed had died before the payments were made. In the next place, the writ would bring up above 200 orders since 1839; and, in the third place, though the rule was obtained on the 10th of June, the notice of amendment was served only on the 29th October last.

Hill, in reply.—The rule as restricted by the learned judge who granted it would only bring up the orders payable under one bond from June 1, 1843, to June 4, 1844. We apply simply to amend a technical error.

DENMAN, C. J.—We understand that the rule was sent to the counsel when drawn up, to see whether it was what he wished. We should be sorry to tie up the hands of the Court in every case, but in this instance we cannot interfere. The entire fault is with the party who neglected to see that the rule was rightly drawn up. It cannot be permitted that the practice should obtain of amending rules when they do not happen to suit the purpose of the parties who obtain them. The proper course in such case is to give notice that they will move to discharge the rule with costs, and then to bring forward a new motion for another rule. We ought by no means to encourage these applications for amending rules which are defective, owing to the neglect of the parties themselves. We cannot sanction so great a waste of the time of the Court.

Rule discharged with costs.

BURGESS *v.* BLACKWALL RAILWAY COMPANY.

Chilton, Q.C. moved to set aside the verdict for the plaintiff on the first count.

This cause was tried before Rolfe, B. on the ground that the contract on which the plaintiff declared in the count for work and labour as a secretary to the defendants, was a mere minute of proceedings, and was not to be completed within a year, being therefore required to be in writing (*Snelling* v. *Lord Huntingfield*, 1 C. M. & Ros. 20); and by the Act of the company no contract in writing was valid unless signed by three directors. On this ground the verdict was sought to be set aside. *Rule nisi.*

DE PREES *v.* LITTLEWOOD.

Order for goods to be made to be in writing.

Jervis, Q. C. moved to set aside the verdict.

This was an action of *assumpsit*, to recover, on the common count for goods sold, the value of plated glass made by agreement, and to be paid for with bills at three months, on delivery. The ground for setting aside the verdict against the defendant was, that the plaintiff should have declared specially on the agreement, and that the goods not being ready made, the agreement should have been in writing. (*Atkinson* v *Bell*, 8 B. & Cr. 277.) *Rule to shew cause.*

HOPKINS *v.* WALLER.

Assault—Parish officer.

Whateley, Q C. moved to enter a verdict for the defendant in this action.

The defendant was a parish officer of St. Leonard's, Shoreditch, and had been indicted for an assault on the plaintiff. A vestry had been held on the subject of a church-rate, and a scrutiny had been taken. The defendant was acting in his functions as parish officer. *Rule nisi.*

WEBSTER *v.* WILSON.

Right of the mayor to hire a room for taking the votes of the burgesses at an election, and to exclude the public.

Knowles, Q. C. moved to set aside the verdict in this action, on the ground of misdirection, and that the verdict, though really for the plaintiff, was ordered to be entered for the defendant by the Lord Chief Baron, who tried the cause. The defendant was the Mayor of Kendal, who, at the annual election in 1843 of town councillors, had a partner who was a candidate. There being a contest, the defendant hired a small room for a polling-booth, on which defendant stuck up a notice making it private, and a sort of close borough. The plaintiff, who was a burgess, accompanied a voter, who tendered his vote, into the middle of this room. The defendant, who was presiding there as mayor, ordered the plaintiff to quit the room, which he refused to do, whereupon the defendant left his chair of office, and proceeded, *vi et armis*, to put his own edict into execution. The learned judge told the jury that the mayor had a right to hire the room and make it private, and that if they thought his arrangement reasonable as to the size of the room, for the conduct of the business of the day, to find a verdict in his favour. The jury found that the arrangements were not proper, and that the plaintiff had a right to be in the room. The Lord Chief Baron directed the verdict to be entered for the defendant. *Knowles* contended that, under 5 & 6 Wm. 4, c. 76, sec. 4, the mayor had no right to make it a close court, the burgesses having a right openly to assemble. By the 33rd section the same direction is given where the borough is divided into wards; and by the 34th the right is given to the burgesses to question the votes given, and, therefore, the mayor could have no right to exclude them. The mayor could have no greater authority than a justice of the peace, who would be liable in trespass for such an act. (*Daubney* v. *Cooper*, 10 B. & Cr. 237.) All persons had a right to enter the room, remaining quietly there, without taking a part in the proceedings. (*Collier* v. *Hicks*, 2 B. & Adol. 663; *Spilbury* v. *Micklethwaite*, 1 Taunt.) *Rule nisi.*

PORTMAN *v.* WRIGHT.

Forged bills of exchange.

Martin, Q. C. moved to set aside the verdict for the plaintiff on the second plea to the second count in this action, which was brought to recover the amount of six bills. The jury found for the defendant on the other issues, on the ground that five of the bills were forgeries. The motion was first to set aside the verdict on the ground of the improper reception in evidence of an acknowledgment of notice of dishonour signed by one Sarah Wright, who was proved to be dead. (*Doe dem. Paleshall* v. *Turford* (3 B. & Adol. 890).

Martin also moved as to the sixth bill, to set the verdict aside on the ground that the name of Joseph Wright had been put to the bill, although he was not at Liverpool at the time it purported to be drawn; and there were affidavits to shew that the name of Joseph Wright had been fraudulently substituted for that of William Wright, over the door of an inn, and that a person called Turner signed the bills for Portman the plaintiff.

Rule nisi on both motions.

REG. *v.* BESSÉ.

Habeas corpus—Convention Act with France for the arrest of fugitive criminals—Form of warrant.

Chambers moved that the return to the *habeas corpus* be read, and the prisoner discharged, on the ground that the warrant whereby he was in custody was informal and defective. The warrant was read. It was issued in virtue of the recent convention between France and England for the arrest of criminal fugitives in either country from the other. It declared that by the said warrant B. was committed to custody till "he shall be discharged by due course of law," and described the prisoner as arrested for a crime committed in France, but did not say that he was a native of that country.

E. James shewed cause against the rule, and proposed to read affidavits to shew that Bessé was a subject of France, and therefore disentitled to the writ of *habeas corpus*.

Chambers objected to any affidavit being used; the proper course was, to make a return to the writ.

E. James.—How could it be shewn that a person was an alien enemy but by an affidavit to that effect? It is therefore the right course.

DENMAN, C. J.—But is not the warrant itself defective? It does not mention the requisition by which the committal took place. The Act requires the party to be arrested and kept in custody "until delivered, pursuant to such requisition as aforesaid, from the foreign country." Here the warrant says, "till discharged by due course of law," but we are bound by the requisition which is not mentioned.

James submitted that the creditors could detain the party in custody until the requisition should come from the foreign country. Here, in fact, there had been the requisition from the foreign country; on that there had been a warrant from the Secretary of State, which was necessary to set the magistrate in motion. But the writ of *habeas corpus* could only lie according to 31 Charles 2, which is confined to the king's subjects charged with crimes, and cannot be held to apply to this case, which is the crime of fraudulent bankruptcy committed in France, and one unknown to the law of this country. Where a person was committed for treason done in Scotland, he was held not to be within the Habeas Corpus Act, because he could not be tried here for that crime committed in Scotland (*Rex* v. *M'Intosh*, 1 Strange, 312) The writ is not under the 36 Geo. 3, c. 100, for it merely affects civil suits.

By the COURT.—Is the writ not issued at common law?

James—If the case in Strange decides that it cannot issue under the statute, it could not at common law. There has been no case at common law since the statute.

DENMAN, C J—Then are our gaolers to be gaolers for the King of the French, without reference to the Convention Act?

James.—I do not hold so broadly as that. The writ is rightly drawn in directing the prisoner to be held in custody till discharged by due course of law. (*Goff's case* 3 M. & Sel. 203) This means till delivered up to justice.

DENMAN, C J.—In fact, that our gaolers are to keep the prisoner for the gaolers of France?

WIGHTMAN, J.—What was the case cited by Mr. Chambers to me at chambers?

James. *Marsh's case* (2 Wm. Bl. 805). It decides that a prisoner committed by the authority of an Act of Parliament, concluding, "till he shall be discharged by due course of law, is ill." It should be till he conform to the requisites of the statute.

WIGHTMAN, J.—What do you say to that judgment?

James contended next, that if the present commitment was deemed informal, the court would grant his application to recommit the prisoner upon the facts alleged in the depositions, in which a case was proved within the provisions of the Act of Convention.

COLERIDGE, J.—You now put the warrant out of the question, and assume that, *proprio vigore*, we have power to commit.

James.—I submit that the Court has power to commit *de novo* upon its own warrant.

DENMAN, C. J.—We much regret that this warrant should have been so defectively drawn up, and that this, being the first case under a statute of so much importance to all nations, should have this termination; but it is quite clear that we have no power to retain the prisoner. The warrant cannot be maintained. We are called upon to act upon a crime unknown to our law, and a crime only in another country. We cannot do this. Then we are asked to remand the prisoner as a person accused of a crime. But we know nothing of this crime, except from the warrant, and we find it defective in most important respects. We have no power, but under this statute, and if its provisions are not complied with, we have no power at all. If we had the power we are asked to

use, there would have been no need for the regulation or the Convention Act. The prisoner is discharged. Let it be understood that the writ of habeas corpus was issued at common law; a right coeval with the law itself, and so declared in the Bill of Rights. The statutes merely facilitate the means of effecting it.
Prisoner discharged.

DOE dem JOHN LEQUEUX v. HARRISON.
Feigned issue—Non admittance of heir as copyholder.
Gurney moved to enter a nonsuit in this action, which was an issue directed to inform the conscience of the Court touching the admission of the lessor of the plaintiff to certain copyhold property, to which it was objected that he was not the heir, there having been a devise of the property in question to the "London Annuity Society," in which the testator's words were, "I give for ever the whole of my property to the London Annuity Society of which I was formerly a member." It was agreed that an action of ejectment should be brought against the lord of the manor, and that it and the non admittance of Lequeux should be waived. The non admittance of the society however had been objected and it was submitted that the waiver must be taken to apply to both.
Rule nisi.

JOHNSTON v. HILL.
Second particulars of demand.
E. James moved to set aside nonsuit, and enter a verdict for 8*l.* for the plaintiff.
This was an action tried at Guildhall for goods sold and delivered, and the question was, whether the proof was consistent with the demand. The sum of 49*l.* had been demanded according to the particulars of demand, and subsequent particulars had been afterwards delivered, which was not an abandonment of the former particulars though it had been so held, but left a balance of 8*l.* due to the plaintiff upon which ground the motion was made.
Rule nisi.

Wednesday, Nov. 6.
NEW TRIALS.
ATTWOOD v. JOLIFFE and ANOTHER.
This was an action brought against the defendants who are magistrates, for the false imprisonment of the plaintiff. At the trial before Mr. Justice Wightman, at the last assizes for Somerset, the conviction-order, on which the warrant of commitment had been made, was held to be bad, and a verdict taken by consent, for the plaintiff damages 10*l.* with leave to the defendants to move to set aside that verdict: there were also objections to the commitment, which were not gone into at the trial.
Crowder, Q.C. now moved accordingly and contended that the conviction was good, but even if it was not, it was supported by a good commitment which was sufficient to protect the magistrates.
Cases cited: *Wickes* v. *Clutterbuck* (2 Bing. 483), *R.* v. *Taylor* (7 Dowl. & Ry. (22), *Daniel* v. *Phillips* (12 M. & R. (12), *R.* v. *Wilson* (1 A. & E. 627), 7 & 8 Geo. 4, c. 30, s. 39.
Rule nisi.

COLLIER v. PARK and ANOTHER.
In this case *Jervis, Q.C.* moved for a rule to shew cause why the verdict, which was found for the defendant, should not be set aside, and a verdict entered for the plaintiff, or for judgment *non obstante veredicto*.
Case cited: *Doe dem. Bagley* v. *Oxenham* (7 M. & W. 131).
Rule nisi.

REG. v. THE LIVERPOOL AND MANCHESTER RAILWAY COMPANY.
This was an indictment preferred against the Liverpool and Manchester Railway Company for a nuisance for erecting four pillars on the public highway. A verdict was found for the Crown.
Wortley, Q.C. now moved for a rule to shew cause why the verdict should not be set aside, and a new trial had, or the judgment of abatement confined to one issue, on the ground of misdirection, and that the verdict was against evidence.
Case cited: *R.* v. *Sharp* (1 Carrow & Oliver, 33).
The Court directed that it be turned into a special case.

DE MEDINA v. GROVE, WEYMOUTH, and RIGGIN.
This was an action brought against the defendants for issuing execution against the plaintiff, and arresting him on a certain judgment for a larger sum than it was alleged was due on it at the time the defendant was arrested, and a verdict was found for the plaintiff against the defendants Grove and Weymouth,—damages 250*l.*
Watson, Q.C. now moved to set aside the verdict as against Grove, and to enter a verdict for the defendant, or to arrest the judgment, or to reduce the damages to nominal damages, on the ground that the verdict was against evidence, and that the damages were excessive.
Case cited: *Saxon* v. *Castle* (6 A. & E. 652).
Rule nisi.
Crowder, Q.C. then applied for a similar rule on behalf of the defendant Weymouth.
Rule nisi.

DOE dem. THE DEAN, &c. OF SALISBURY v. LAMPORT.
This was an action of ejectment, tried at the last assizes for Somersetshire, when a verdict was found for the lessor of the plaintiff.
Kinglake, Serjt. now moved for a rule to shew cause why this verdict should not be set aside, and a new trial had, or why a nonsuit should not be entered, on the ground of misdirection.
Case cited: *Doe dem. Berkly* v. *The Archbishop of Canterbury* (6 East, 200).
Rule nisi.

COOPER v. HARDING and ANOTHER.
Whitehurst, Q.C. moved in this case for a rule to shew cause why the verdict should not be set aside and a verdict entered for the defendant, or for a nonsuit.
Rule nisi.

THE RECTOR and SCHOLARS of EXETER COLLEGE, OXFORD v. HARDING and OTHERS.
This was an action of trespass against the defendants for breaking and entering into Exeter College, and making an illegal distress: the real question being whether the old part of the College was liable to be rated to the poor of the parish of St. Michael, Oxford. A verdict having been found for the plaintiffs.
Talfourd, Serjt. now moved for a rule to shew cause why this verdict should not be set aside and a new trial had on the ground of misdirection.
Cases cited: *Rodd* v. *Morton* (2 Sid. 501), *Hilton* v. *Port* (Cro. Car. 12), *Inclesv. Waller* (Ib. 394).
Rule nisi.

HILTON v. LORD GRANVILLE.
This was an action against the plaintiff for improperly working a mine so that the foundation of the plaintiff's house were injured. Verdict for plaintiff.
Wilde, Serjt. moved for a rule to shew cause why this verdict should not be set aside and a new trial had on the ground of misdirection and that the verdict was perverse as against evidence.
Rule nisi.

THE CORPORATION OF PETERSFORD v. TATER.
This was an action against the plaintiff for the use and occupation of a house. Verdict for plaintiff.
H. Hill moved for a rule to shew cause why the verdict should not be set aside and verdict entered for the defendant, on the ground of misdirection, and that the verdict was against evidence.
Case cited: *Phipps* v. *Sculthorp* (1 B. & Al. 50).
Rule nisi.

REG. v. NORMAN.
This was an indictment against the defendant for a nuisance, and it appeared that there was also an action against the defendant by the party who preferred the indictment for the said nuisance. At the trial, the whole matters both in the indictment and also in the suit, were referred to arbitration. The arbitrator made his award, but did not decide the various issues raised in the suit between the parties.
Peacock now moved, on behalf of the defendant, to set aside the award, as not deciding all the matters in difference.
Rule nisi.

DOBSON and ANOTHER v. GROVES and ANOTHER.
This was an indictment for a nuisance. At the trial it was referred to arbitration.
Bodkin moved to set aside the award on the ground of irregularity of conduct in the arbitrator, in seeing some of the witnesses and the attorney of one party in the absence of the other, and refusing to allow the attorney for the other side to be present, although he so requested.
Rule nisi.

BUSINESS OF THE WEEK.
Saturday.
GOODALL v. LOWNDES.—*Whateley, Q.C.* moved to set aside nonsuit, and enter verdict for 80*l.*
Cur. adv. vult.
PARTRIDGE v. BANK OF ENGLAND.—*Erle, Q.C.* moved for rule to enter a verdict for the defendant, or a new trial.
Cur. adv. vult.
LOCKWOOD v. WOOD.—*Watson, Q.C.* moved for rule to set aside verdict for defendant, or for a new trial.
Cur. adv. vult.
Re JEAN BISSET.—The prisoner was ordered to be brought up on Monday by writ of *habeas corpus*.
BIRCHER v. GUBBO.—*Platt, Q.C.* moved for a new trial on the ground of misdirection of the judge.
Rule to shew cause.
Monday.
HUNTER v. CALDWELL.—*Crowder, Q.C.* and *Ball* shewed cause. The *Solicitor-General* and *Robinson*, contrà.
Cur. adv. vult.
FULLER v. SHEA and ANOTHER.—*Watson, Q.C.* moved for a new trial.
Rule refused.
DOE dem. COPELAND v. BURRELL.—*Bramwell* moved to set aside the verdict in this case, and enter a verdict for the defendant, or for a new trial.
Cur. adv. vult.
Tuesday.
LAKE v. THE DUKE OF ARGYLL.—Motion to set aside the verdict and enter a nonsuit.
Cur. adv. vult.

BRADSHAW v. WARD and ANOTHER.—Motion to set aside nonsuit. *Rule discharged.*
Wednesday.
BAKER v. GIBSON.—*Platt, Q.C.* moved to set aside the verdict in this case and enter a verdict for the defendant, or for a new trial, on the ground of misdirection.
Rule refused.
ALDIS v. GARDINER.—In this case *Bowler, Q.C.* moved for a new trial on the ground that the verdict was against evidence.
Cur. adv. vult.
GREENE and COX, Assignees of PUSEY, v. BRODFIELD.—*Godson, Q.C.* moved to set aside the verdict in this case, or for a new trial, on two grounds.
Rule refused on one point as to the other, Cur. adv. vult.
DOE dem FOOKES v. VERRIER.—*Shee*, Serjt. moved in this case for a new trial on the ground of misdirection.
Cur. adv. vult.
LANDSWELL v. BIDWELL.—*Palmer* moved to set aside the verdict in this case and enter a verdict for the defendant.
Rule refused.
CORBETT v. COLLINS.—*Henderson* moved to set aside the verdict in this case and enter a verdict for the defendant.
Rule refused.
NEWTON v. HOLFORD and OTHERS.—In this case *Newton*, in person, moved to set aside the verdict or to rescind a judge's order in the cause, and for a repleader.
Rule refused.
Thursday.
DOE dem. LONEY v. BENHAM.—*Crowder, Q.C.* moved to set aside verdict and enter nonsuit.
Rule nisi.
DOE dem. LONEY v. BILLETT.—*Crowder, Q.C.* moved to set aside verdict and enter nonsuit.
Rule nisi.
DOE dem. CLARKE v. SMALLRIDGE.—*Crowder, Q.C.* moved to set aside verdict and enter nonsuit.
Rule nisi.
GALE, Executrix of WARE, v. LEWIS.—*Rogers, Q.C.* moved to set aside verdict and enter nonsuit or for new trial.
Rule nisi.
DOVIN v. GEE.—*Cockburn, Q.C.* moved to set aside verdict and enter nonsuit, or for new trial.
Rule granted with undertaking to refer.
WHITE v. HILL.—*Cockburn, Q.C.* moved to set aside verdict and enter nonsuit, or for a new trial.
Rule discharged.
SHANK v. BEARD.—*Crowder, Q.C.* moved to set aside verdict and enter nonsuit, or for a new trial.
Rule nisi.
ELLIOT v. STOBART.—*Knowles, Q.C.* moved to set aside verdict and for a new trial, on the ground of misdirection or to enter judgment for the defendant, *non obstante veredicto*.
Rule nisi.
REG. v. BARON DE BODE.—*M. D. Hill* moved that the first issue be found for the suppliant in this petition of right, *non obstante veredicto*.
Rule nisi.

COURT OF COMMON PLEAS.

Saturday, Nov. 2.
SCHWANFELDER v. LEIAGE.
Practice—Cause tried in absence of defendant's counsel.
Chadwick Jones, Serjt. moved for a new trial, on payment of costs, on an affidavit of defendant and of the clerk to defendant's attorney, which stated that counsel had been instructed for the defence, but that the cause was tried before the under-sheriff for Middlesex, in absence of such counsel, although the under-sheriff was informed of counsel being so instructed, and that the defendant, who was present, was not allowed to address the jury in his defence; that the usual hour for the sitting of the Sheriff's Court is 10 o'clock, and that the defendant's counsel was in attendance at a quarter past 10 o'clock, but the cause was then concluded.
Rule nisi.

FOWLER v. RUSSELL.
Malicious prosecution—Probable cause—Direction of the judge.
Channell, Serjt. moved on behalf of the defendant for a nonsuit or a new trial, on the ground of misdirection of the learned judge.
The declaration was for maliciously and without reasonable or probable cause, preferring a charge, before a magistrate, against the plaintiff, of having stolen a pair of steps belonging to the defendant.
Plea, not guilty.
At the trial before Lord Denman, at the last Warwickshire assizes, the defendant, at the end of the plaintiff's case, contended that there was no evidence of want of reasonable or probable cause, and it was for the judge to determine whether there was such evidence or not. His lordship, however, left it to the jury, but gave the defendant leave to move the Court if the Court should be of opinion that it was a question for the judge to determine, and ought not to have been left to the jury.
Panton v. *Williams* (2 Q. B. 169) was cited.
It appeared that the *postea* was indorsed to the effect that leave was reserved if the Court should be of opinion that there was no evidence of want of rea-

sonable or probable cause, which made it doubtful, therefore, as to the question upon which leave was reserved. *Rule nisi.*

BATHAM v. HORN.

Practice—Writ of trial—Teste antedated.

Quære, if a party is liable on an account stated with the agent of an unknown principal.

Byles, Serjt. moved for a new trial in this cause, which had been tried before the Secondary, on the ground of misdirection, of the verdict being against evidence, and on account of an irregularity in the writ of trial.

The 1st count of the declaration was on a bill of exchange drawn by the defendant, and indorsed to the plaintiff, the 2nd count was on an account stated. Amongst other pleas, the defendant pleaded to the 1st count, a traverse of the notice of dishonour, and to the 2nd count, *non assumpsit* The jury found for the defendant on the issue joined on the 1st count, and for the plaintiff on the account stated

There was evidence given at the trial of an admission of the debt, made by the defendant in a conversation with one Dickinson, who applied for payment of the bill, but the defendant did not at the time know that Dickinson was the agent of the plaintiff, there was, however, evidence of a subsequent conversation, in which the defendant confirmed this admission, but this occurred after the action had been brought The misdirection on the part of the Secondary, as contended by the defendant, was, that he did not tell the jury that there was no evidence of an account stated, but left the case to them, saying that the effect of their finding was merely a question of costs

The irregularity was, that the writ of trial was tested the 20th June, although the issue was not entered until the 26th of June On this point 2 Chit Arch 294, and *Blissell* v *Tenant* (1 Bing N C 168) were referred to

The COURT said that they would grant a rule to shew cause on the last ground (which was as to the irregularity) but not on the others, that as to the conversation between the defendant and Dickinson in which there was evidence of an account stated, the Court neither assumed nor denied the proposition to be law that an agent cannot state an account if the principal is unknown, but that as the defendant had afterwards, when he knew for whom Dickinson was agent adopted the admission made by him in the former conversation, the jury were at liberty to consider them both together, and to draw from them the conclusion they did *Rule nisi accordingly*

Monday, Nov 4

JOHNSTON and OTHERS v NICHOLS

Guarantee—Consideration Variance

Channell, Serjt moved, pursuant to leave reserved at the trial, for a rule to shew cause why the verdict which had been found for the plaintiffs in this cause, should not be set aside, and a nonsuit entered

The declaration was upon a guarantee contained in the following letter from the defendant to the plaintiffs dated 1st June, 1843 —"As you are about to enter into transactions in business with Messrs Claridge and Brothers, with whom you have had dealings in the course of which Messrs Claridge and Co may from time to time become largely indebted to you, in consideration of your doing so, I agree to be responsible for, and to guarantee the payment of, such sums which that firm, whether consisting of its present members or not, now is or may at any time be indebted to you, so that I may not be called upon for more than 2,000*l*" The declaration, after alleging three particular debts due at the time of giving the guarantee, for money lent, money paid, and goods sold, stated the consideration for the defendant's promise to be in consideration that the plaintiffs would *continue such* dealings

It was objected on behalf of the defendant, either that that there was no consideration for the guarantee, or that there was a variance between the proof and the consideration laid in the declaration

The cases cited were *Wood* v *Benson* (2 C & J 94), and *Raikes and Another* v *Todd* (8 Ad & Ell 846).

Rule nisi in the alternative for a new trial or arrest of judgment.

BLACKHAM v PUGH

Libel—Privileged communication—Direction of judge

Shee, Serjt. moved, on behalf of the defendant, for a new trial, on the ground of misdirection of the learned judge, and of the verdict being against evidence.

The declaration was in *case* for a libel contained in a letter from the defendant's solicitors, written at the defendant's direction, to Mr. Southey, the auctioneer, who had been employed by the plaintiff to sell his stock in trade as a currier, in which letter notice was given to the auctioneer not to part with the proceeds of such sale, as the plaintiff had committed an act of bankruptcy, and the defendant was a creditor of the plaintiff. The defendant pleaded, amongst other pleas, not guilty, and a plea of justification, alleging that the plaintiff had absented himself from his place of business with the intent to delay the defendant, to being his creditor, and had thereby committed an act of bankruptcy.

The cause was tried before Parke, B. at the last Surrey assizes, when a verdict was found for the plaintiff, damages 50*l*.

The notice to the auctioneer, the defendant contended, was a privileged communication; but the learned judge, at the trial, ruled otherwise. This, it was now submitted, was a misdirection, inasmuch as the question ought to have been left to the jury.

The cases of *Fairman* v *Ives* (5 B. & Ald. 642), *Woodward* v *Lander* (6 C. & P 548); *Shepley* v *Todhunter* (7 C & P 680); and *M'Dougall* v. *Claridge* (1 Camp 267) were cited

Upon the issue on the plea of justification, there was evidence at the trial of a conversation between the plaintiff and a witness, who was called, as to the intent of plaintiff in absenting himself from his place of business, and it was now submitted that the learned judge should have told the jury that, unless they disbelieved the witness, it was clear an act of bankruptcy had been committed

The COURT, however said that there appeared to be other evidence besides the admission made by the plaintiff in the conversation with the witness there was evidence of his selling his goods and leaving the premises, and it was proper, therefore, that the whole should be left to the jury, as it had been, and upon this point a rule was refused, but upon the other a *rule nisi* was granted

Rule nisi accordingly

BURTON v KNIGHT

Shee, Serjt moved for a rule to shew cause why the verdict, which had been found for the defendant, should not be entered for the plaintiff for 25*l* pursuant to leave given at the trial

The action was for dismissing the plaintiff, who was a yearly servant of the defendant, in the course of the year without a cause

The action was tried before Cresswell J at the sittings after last Trinity Term, when the learned judge thought that there was no evidence of the plaintiff being discharged by the defendant, but gave leave to move if the Court should think there was

Rule nisi

RAYMUZ v SMITH.

Practice—Sale under fi fa—Sheriff's expenses

Murphy Serjt moved for a rule to shew cause why the late sheriffs of London should not refund the sum of 6*l* 4s as an overcharge made by them for expenses attending a sale under a *fi fa* issued by the plaintiff

The sale had taken place by private contract, and not by auction The sum of 6*l* 4s was claimed for the auctioneer's charge of valuing the goods, but which it was submitted the sheriff had no right to deduct from the proceeds according to the cases of *Slater* v *Hames* (7 M & W 413), and *Phillips* v *Viscount Canterbury* (11 M & W 619) *Rule nisi*

Tuesday, Nov 5

HODDING v SITCHFIELD

Where the amount of the demand and the costs indorsed on a writ are paid after the fourth day to the plaintiff's attorney's clerk, who receives it in ignorance that further costs have been incurred, the Court will not rescind an order made by a judge at chambers, staying proceedings in the action, unless the amount paid be returned to the defendant

Murphy, Serjt moved for a rule to shew cause why an order of Cresswell, J made on the 26th June staying proceedings in this cause, should not be rescinded A writ had been served on the defendant bearing the usual indorsement of the amount of the debt sued for and the costs The writ was served on the 7th June, and on the 13th six days after, the defendant's wife went to the plaintiff's attorney's office and paid to his clerk the debt and costs, which he received not knowing at the time that any further costs had been incurred When the plaintiff's attorney came home, he wrote to the defendant, disclaiming his clerk's authority and stating that, after the fourth day a special pleader had been employed and further costs incurred, and which, if not paid the action would be continued (*Bowditch* v *Slaney* 2 Bing N C 142)

TINDAL, C J —In that case there was only an offer to pay Here the money was not paid back again by the attorney, so as to place the parties in the same position as before the payment If there has been a mistake on one side, there has been a mistake on both *Rule refused*

WILMOT v WILLIAMS

Where it is shewn that a letter containing a bank post bill has been received by a witness and he states at the trial he did not read the letter, the contents of the letter are not evidence in the cause

An allegation in a declaration on a bill of exchange in an action by indorsee against the drawer stating that when the bill became due it was presented "to him," although a particular place for presentment is described, is a sufficient allegation of presentment

Pyles, Serjt moved for a rule to shew cause why a new trial should not be had in this case, on the ground of the improper rejection of evidence, as also on the ground of a variance. The action had been brought by the indorsee of a bill of exchange against the indorser. The bill was directed to one Cottingham, to pay to the order of the defendant 185*l*., and then indorsed to George Rose Innis, and by him indorsed to the plaintiff. The declaration stated that the acceptor had not paid the said bill when it became due, although the same was presented *to him*, and it was alleged the variance arose on the two last words. The pleas were—

1st. Failure of presentment.

2nd. No notice of dishonour.

3rd. That an agreement had been made between George Rose Innis, who was then the holder of the bill, the defendant, and the drawer, to take a new bill for 100*l* and a bank post-bill for 87*l* in satisfaction of the original bill, the subject of the present action.

It was shewn that a letter had reached the hands of the clerk of George Rose Innis, containing the bank post-bill for 87*l*, and it was further shewn that the bill had reached the hands of the latter, but on Innis swearing he had never read the letter, the learned judge refused, at the trial, to allow it to be received as evidence The next point was, that in an action against the drawer of a bill of exchange, the stat 1 & 2 Geo 4, c 78, does not apply, being confined to the case of actions against *acceptors* and this being the case of a drawer, the bill should have been presented at the place described in the bill, presented to him is not sufficient *Rule refused.*

BENTLEY v FLEMING

Verdict against evidence—Irregularity in recording verdict

Sir *T Wilde*, Serjt moved for a rule to shew cause why the verdict in this case, which had passed for the plaintiff should not be set aside, on the ground of the verdict being against evidence, and on the further ground of a miscarriage on the trial with respect to the verdict Three question had been left to the jury, the judge had retired, and when the jury came in, the associate put the question, "Do you find for the plaintiff or the defendant?" On which the jury said "for the plaintiff" It was insisted by the counsel for the plaintiff, that no further questions could be asked, and the associate refused to ask any further question There is an affidavit of the foreman of the jury, and a written paper made at the time by the jury, stating the issues really found by the jury, namely, the two first for the plaintiff and the last for the defendant *Rule nisi.*

Wednesday, Nov 6

HESELTINE v BROWN

C Jones, Serjt moved, on behalf of the plaintiff, to set aside the verdict which had been found in this cause for the defendant, and for a new trial, on the ground of the verdict being against evidence

Rule nisi.

HOWELL v SAUNDERS

Amending award—Misnomer Postea

Talfourd, Serjt applied to have the *postea* in this cause delivered to the plaintiff, or that the award which had been made might be sent back to the arbitrator to be amended

The cause had been referred to an arbitrator, the submission containing the modern clause, by which, if any dispute should arise upon the award, the Court were empowered to send the award back to be amended if necessary A mistake had been made in the award as to the Christian name of the defendant, he being there called Joseph instead of James and the defendant having given notice to the associate, the latter had refused to part with the *postea* *Rule nisi.*

WILLIAMSON v PAGE

Evidence Commission to examine witnesses

Channell Serjt moved for a rule to shew cause why the verdict which had been found for the plaintiff should not be set aside and a new trial had, on the ground of improper rejection of evidence

The cause was tried at the last Liverpool assizes, before Cresswell, J when a verdict was found for the plaintiff for 2 *l*

It appeared that there had been at the instance of the plaintiff, a commission sent abroad to examine witnesses, under which the commissioners were authorized to put or cause to be put, additional questions when they should consider it necessary and proper, such additional questions being put into writing and returned with the answers to the same. Under the commission the plaintiff had exhibited interrogatories in chief, and the defendant six cross interrogatories

The commissioners returned the answers to the questions in chief, and to such three of the defendant's cross interrogatories as the defendant required to be answered, and to additional questions which the commissioners said they had put at the defendant's request At the trial, upon the defendant's counsel requiring the answers to these additional questions to be read, the learned judge refused, on the ground that the commissioners had power only to put such question as might be necessary to elucidate answers to the interrogatories exhibited, but not to originate fresh ones *Rule nisi.*

WILLIAMS *v.* TREGERFEN.

Byles, Serjt. moved for a new trial in this cause, which had been tried before the under-sheriff for Monmouthshire, when a verdict was found for the defendant, on the ground of the verdict being against evidence. *Rule nisi.*

MAUGHAN *v.* EDE.

Construction of covenant to make a road.

Talfourd, Serjt. moved for a rule to shew cause why the verdict in this cause should not be set aside, and a new trial had on the ground of misdirection.

The action was on covenant to recover from defendant a moiety of expenses of keeping a certain road in repair. As a condition precedent to the liability of defendant, the plaintiff by his covenant was bound to make a good carriage road and footpath upon a piece of ground of forty-two feet wide, which had been staked out and conveyed to a trustee for that purpose.

The plaintiff had made two footpaths, leaving only the intervening space for the road, which he had accordingly made. The defendant contended, that there should have been a road occupying the whole forty-two feet wide.

On the issue which raised the question, whether the plaintiff had made a road according to the deed of covenant, the learned judge left it to the jury to say whether a good carriage road had been made. This, it was submitted, was a misdirection; but

The COURT thought that it was not necessary that the whole space allotted should be made a road of, and that the covenant, on the part of the plaintiff, had been virtually performed, by making the road and footpath on both sides, as had been done. *Rule refused.*

CALMADY *v.* ROWE and ANOTHER.

A grant of wreck to the lord of a manor is strong evidence of a grant of the sea-shore between high and low water-mark.

Channell, Serjt. moved for a new trial, on the ground of misdirection.

The declaration was in trespass for breaking and entering the plaintiff's close, being part of the sea-shore between high and low water-mark of the manor of Langdon, in the county of Devon. The pleas were, not guilty, a traverse of the plaintiff's possession, and that this close was the close of the Queen, with a justification by the defendants as her servants. The cause was tried at the last Exeter assizes before Pattison, J. when a verdict was found for the plaintiff with nominal damages. It was objected to the learned judge's summing up, that he had treated the defendants as wrong-doers, and had not required the same proof of the plaintiff's right to the close as if the cause had been between the lord of the manor and the Crown; that the learned judge had attached too much importance to the grant of wreck contained in a charter of Queen Elizabeth dated 1564, which had been put in evidence by the plaintiff, and under which passed the reversion in fee of the manor in respect of which the close was claimed: and that as to the evidence which had been given by the plaintiff of his tenants having been in the habit of taking sand and sea-weed from the sea-shore in question, the learned judge should have adverted to the rights of tenants and owners of lands in Devon to fetch sea-weed for manure, by virtue of 7 James 1, c. 18, and directed the jury accordingly.

The COURT thought that the inference from the evidence was, that the right of soil between high and low water-mark was in the lord of the manor, and that the defendants were *primâ facie* wrong-doers, and therefore properly treated as such. The grant of the wreck was almost conclusive evidence that with it the sea-shore was included. As to the statute of James, the grant of the manor by Queen Elizabeth, being prior, could not be affected by it, since there was nothing in the statute of James to take away previously existing rights. *Rule refused.*

DAVIES *v.* LOWNDES.

Talfourd, Serjt. moved for a rule to shew cause why the new trial of this writ of right should not be had at bar. *Rule nisi.*

CHARLTON and ANOTHER *v.* GIBSON.

Parol evidence to explain a written contract—Meaning of the word "building."

Byles, Serjt. moved, pursuant to leave reserved at the trial, to set aside the verdict which had been found for the plaintiffs, and to enter the same for the defendant.

The action was brought to recover for work done by the plaintiffs under a written agreement with the defendant, dated Oct. 26, 1843, by which the plaintiffs were to win stones and burn lime for the purpose of building sixty cottages at a colliery of the defendant, for the price of 1s. 4d. per superficial yard.

The questions were, what was the construction of this agreement, particularly as to the meaning of the words "building" and "superficial yard?" and also whether parol evidence might be admitted to explain these words?

The cause was tried before Cresswell, J. at the last Durham assizes, when a verdict was found for the plaintiff, leave being reserved to enter a verdict for the defendant if the Court should be of opinion that the defendant was so entitled upon the true construction of the agreement without reference to any extrinsic evidence, or if the Court should think that parol evidence was admissible, and that the defendant was so entitled upon the construction of the agreement as explained by certain tenders for work which had been previously thereto made by the plaintiffs. *Rule nisi.*

NEWTON *v.* ROWE and ANOTHER.

Plaintiff in person moved for a new trial, unless the defendants consented to a verdict for nominal damages being entered for the plaintiff on the 2nd and 4th counts, on the ground of the verdict found by the jury on those counts being against evidence and contradictory with the finding of the jury on the other counts. *Rule nisi.*

BAGGELEY *v.* RILEY.

Dowling, Serj. moved to set aside the verdict which had been found for the plaintiff and enter a nonsuit, or for a new trial. *Rule refused.*

WILKES *v.* HOPKINS and ANOTHER.

Evidence—Effect of admission under notice to admit documents pursuant to 3 & 4 Wm. 4, c. 42.

Byles, Serj. moved to set aside the verdict which had been found for the plaintiff, on the ground of the improper admission by the learned judge of evidence on the part of the plaintiff.

The action was brought against the defendants as the acceptors of a bill of exchange for 121*l.* 10s. and as drawers of a bill of exchange for 62*l.* 13s. and for money lent.

The defendants were part owners of a gale in the Forest of Dean. The bill for 121*l.* 10s. was directed to the New Bridge Coal Company, and purported to be accepted "For the New Bridge Coal Company—Henry Bishop." The bill for 62*l.* 13s. was drawn by one William Bishop, and indorsed—"For the New Bridge Coal Company—Wm. Bishop."

The plaintiff, at the trial, before Tindal, C. J. at the last Gloucester Assizes, gave in evidence an admission by the defendants, under a judge's order, of the documents described in a notice to admit, delivered pursuant to 3 & 4 Wm. 4, c. 42, s. 15. In this notice the bill for 121*l.* 10s. was described as accepted by Henry Bishop for the New Bridge Coal Company, and the learned judge was of opinion that evidence was, therefore, not required of the authority of Bishop to accept for the company.

In evidence of the money lent, an admission of receipt of money by Francis Bishop, one of the part owners, was received as evidence against the others; this, also, was now objected to. *Rule nisi.*

WILLES *v.* FISHER and ANOTHER.

Channell, Serjt. applied, on behalf of the defendants, for a new trial, on payment of costs. *Rule refused.*

CANNEY *v.* SPANTON.

Byles, Serjt. moved to set aside the verdict which had been found for the plaintiff for 16*l.* and to have a new trial, on the ground of misdirection. *Rule refused.*

Thursday, Nov. 7.

ROSS *v.* MOSES.

Entering verdict for plaintiff.

Talfourd, Serjt. moved for a rule to shew cause pursuant to leave at the trial, to move to set aside the verdict which had passed for the defendant on one issue, and to enter instead a verdict for the plaintiff for 30*l.* *Rule nisi.*

BEVERLEY *v.* LEIGH.

Award—Power to award judgment.

Byles, Serjt. moved for a rule to shew cause why an award made in this cause should not be set aside, on the grounds that the umpire had exceeded his authority in awarding that judgment should be entered up; in also having omitted to find several issues; in having neglected to ascertain the defendant's cross demands. The affidavits also imputed partial and imprudent conduct on the part of the umpire. *Rule nisi.*

THOMPSON *v.* CULLEN.

Channell, Serjt. moved for rule to shew cause why a rule obtained in this cause on the first day of Term should not be set aside. *Rule nisi.*

WOODGATE *v.* WALLER.

Change of venue.

Byles, Serjt. moved for a rule to shew cause to discharge a rule obtained in this cause to change the venue on the grounds laid down in *Topps* v. *Fisher* (2 Dowl. N. S. 22).

THOMAS *v.* DUNN.

Cur. adv. vult.

BUSINESS OF THE WEEK.

Saturday.

NEWTON *v.* HOLFORD and OTHERS.

Costs—Set off.

Talfourd, Serjt. obtained a rule to shew cause why the costs in this action should not be set off against the costs in another action between the same parties. *Rule nisi.*

LEICESTER *v.* CHATHAM.

Practice—Notice of trial.

Channell, Serjt. moved to set aside the verdict in this cause, and for a new trial, on the ground that there had not been a proper notice of trial. *Rule nisi.*

LEWIS, executor of JAMES WATERFALL, *v.* BAILEY.

Byles, Serjt. moved to enter a nonsuit or verdict for the defendant, pursuant to leave reserved at the trial; or if this should be unsuccessful, then for a new trial, on the ground of misdirection, and of the verdict being against evidence. *Rule nisi.*

Tuesday.

WOOD *v.* WEDGWOOD.

Shee, Serjt. moved for a rule to shew cause why the verdict in this cause should not be set aside, and, instead thereof, a verdict entered for the defendant, pursuant to leave at the trial. *Rule nisi.*

CAPTAIN *v.* BROOKES.

Rescinding judge's order—Set-off.

Byles, Serjt. moved for a rule to shew cause why an order made by Cresswell, J. at Chambers should not be rescinded, and why the defendant should not be allowed to add a plea of set-off. *Referred to a judge at Chambers.*

HALL *v.* IVE.

Suing in formâ pauperis.

Halcombe, Serjt. moved for a rule absolute to allow a party to the suit to sue *in formâ pauperis*, notwithstanding application made pending the action. *Rule absolute.*

BUSH *v.* SAYER.

Taxation of costs.

Sir *Thomas Wilde*, Serjt. moved for a rule to shew cause why an order of Coltman, J. requiring certain bills of costs to be taxed under the recent stat. 6 & 7 Vict. c. 73, s. 36, should not be set aside. *Rule nisi.*

MUMMERY *v.* PAUL.

New trial—Verdict against evidence.

Shee, Serjt. moved for a rule to shew cause for a new trial, on the ground of the verdict being against evidence, and also that matters had been submitted to the jury which ought to have been decided by the judge. *Rule nisi on the first ground only.*

POCKING *v.* WARD.

Nonsuit—Interest in land.

Sir *T. Wilde*, Serjt. moved for a rule to shew cause why the verdict in this cause should not be set aside and a nonsuit entered, pursuant to leave reserved.

The question turned upon a contract, on which the action was brought, relating to an interest in land. Cases cited: *Buttemere* v. *Hayes* (5 M. & W. 456); *Mayfield* v. *Wadsley* (3 B. & C. 357, Gow. N. P. 109).

DAVIS *v.* ——.

Sir *T. Wilde*, Serjt. moved for a rule to shew cause to set aside the verdict, and for a new trial. *Rule nisi.*

HOLME *v.* ASPINALL.

New trial—Misdirection.

Sir *T. Wilde*, Serjt. moved for a rule to shew cause why the verdict in this cause should not be set aside and a new trial had, on the ground of misdirection.

The action should have been special, and not in the common form of *assumpsit*. *Rule nisi.*

REGISTRATION APPEALS.

BOROUGH OF WAKEFIELD.

NETTLETON, Appellant; BURRELL, Respondent.

Where the signature of the revising barrister is required to a case for the decision of the Court, and he dies before his signature is attached, but while the case signed by the attorneys for the appellant and the respondent is in his possession, the Court will allow time to obtain the affidavits of both parties as to the facts.

Kinglake, Serjt. applied to the Court for leave to enter an appeal under the following circumstances. The case for the decision of the Court had been drawn up by the revising barrister in his own handwriting, and signed by the attorneys for the appellant and the respondent; before, however, the signature of the barrister was attached, he died. The 6 Vict. c. 18, s. 42, it was submitted, was merely directory. [TINDAL, C. J.—Are the facts agreed to by both parties?] Perhaps the Court will allow time to obtain affidavits from all parties.

TINDAL, C. J.—Take a week.

BOROUGH OF WENLOCK.

JOHN HINTON, Appellant; THE TOWN CLERK OF WENLOCK, Respondent.

Construction of 65th section of the Registration Act—The Court will not remit the case to the revising barrister for the insertion of a fact which he has refused to state.

Keating applied, on behalf of the appellant, for a

rule to shew cause why the case should not be sent back to the revising barrister for the insertion of a material fact which had been omitted. It was admitted that the revising barrister had stated facts sufficient to enable the Court to give judgment, but as it appeared upon affidavit that the revising barrister had expressly refused to insert what was deposed to be material, although requested to do so, the Court was asked, under the 65th section of the Registration Act (6 & 7 Vict. c. 18), to remit the case for such insertion.

The COURT, however, said that the 65th section of the Registration Act applied only to a case in which the Court should be of opinion, upon the hearing, that the statement was not sufficient to enable them to give judgment, when the Court might send it back. The Court had only to give their judgment upon the facts as stated by the revising barrister. The party aggrieved might perhaps have a remedy by *mandamus* if the revising barrister improperly refused to insert what was material, but the Court would not, therefore, remit the case. *Application refused.*

COURT OF EXCHEQUER.

MICHAELMAS TERM, 8 VICT.

Saturday, Nov. 2.

BOOSEY *v.* PURDAY.

Copyright Act.

Plaintiff had declared against the defendant for pirating "La Sonnambula," an opera which plaintiff had introduced into England from Milan in 1831. The defendant had for seven years printed and sold the opera in England; but the plaintiff had, since the passing of 5 & 6 Vict. c. 45, taken advantage of the 13th section of the Act to get himself entered as the proprietor of the opera, and three days afterwards had brought his action against the defendant.

Crompton applied to the Court, under the 14th sec. for a rule to shew cause why such entry should not be expunged. (*Chappel* v. *Purday*, 12 M. & W. 303.) *Rule nisi.*

FERGUS *v.* BRADSHAW.

Bill of Exchange, variance by alteration in acceptance.

This case was tried at Bristol at the last summer assizes, before Patteson, J. and the plaintiff was nonsuited.

Crowder, Q. C. moved, pursuant to leave reserved at the trial, for the verdict to be entered for the plaintiff for 49*l*.

The action indorsee *v.* indorser of a bill of exchange, and non-acceptance pleaded.

The plaintiff proved that the name of the defendant written as acceptor of the bill was in defendant's handwriting, but the words "payable at Messrs. A. and Co." followed in a different handwriting. There was no evidence as to when this was done. On this the plaintiff was nonsuited. (*Calvert* v. *Baker*, 4 M. & W. 478.) *Rule nisi.*

DOE *dem.* ROBERTS *v.* PARRY.

Elegit.

The sheriff's inquisition on an elegit by judgment, recovered since 1 & 2 Vict. c. 110, s. 11, need not set out the land with metes and bounds.

This case had been tried before Coleridge, J. at the last circuit. Verdict for plaintiff.

Jervis, Q. C. moved, pursuant to leave reserved at the trial, for a rule to shew cause why the verdict should not be set aside and entered for the defendant, or limited to one messuage and 25 acres; or why a new trial should not be had.

The lessor of plaintiff was tenant by *elegit* by judgment recovered since 1 & 2 Vict. c. 110, s. 11, authorizing the delivery of all the lands of a judgment debtor.

The sheriff's inquisition had not set out the lands delivered by metes and bounds, but mentioned the land by name, and with a misdescription of the number of acres.

The jury at the trial, however, found the identity of the lands delivered under the *elegit* with the lands now sought to be recovered.

Jervis argued, that as the sheriff was before bound to set out a moiety, which was all that heretofore was delivered, he was now bound to set out the metes and bounds to that which he was now to deliver, viz. the whole.

But the Court thought the reason for setting out the land with metes and bounds had expired, now that all was to be delivered. *Rule refused.*

LAWRENCE *v.* GALLOUIN.

New trial.

This case was tried at Monmouth, before Atcherley, Serjt. at the last assizes, and verdict was obtained by the plaintiff for 73*l*. 13s. 6d.

Godson, Q. C. now moved for a new trial as to the whole amount, or for verdict to be reduced to 61*l*. 1s. 5d. on the ground that the verdict as to the 73*l*. 13s. 6d. was against evidence, and as to the excess, that there was misdirection.

The action was for goods sold and delivered, and for money paid to defendant's use. The defendant had employed one Stonehouse, of Newport, to ship coal to defendant's correspondents abroad, not as an agent to go between the defendant and any other person, but as one acting on his own account, but the defendant knew that Stonehouse did not himself supply the coal. The plaintiff contended, by Stonehouse's evidence, that this practice had been altered in the case of a particular shipment by means of one Daly, whom the defendant had sent to Newport, but Daly himself was not produced. As to the 12*l*. 12s. (the difference between 61*l*. 1s. 5d. and 73*l*. 13s. 6d.), Stonehouse, as defendant's agent, had advanced this sum to the captain of a vessel that had taken a former shipment, but not having included it in his accounts at the proper time, whereby the defendant had lost his opportunity of deducting it from the freight, defendant had refused to pay Stonehouse; the plaintiff, however, paid Stonehouse, and sought to recover it by this action. *Rule nisi.*

PITTS *v.* BECKETT.

New trial—Evidence.

This case was tried at Liverpool before Cresswell, J. at the last assizes. Verdict for defendant.

Knowles, Q. C. moved, by leave reserved, to enter verdict for plaintiff for 149*l*. or for new trial.

The action was for goods sold and delivered. Plea, general issue.

The defendant had employed a broker to buy for him a quantity of wool, to be delivered *in good condition*, and the same broker was employed by the plaintiff to sell the wool in question. The broker made an entry of a sale of the wool in question by plaintiff to defendant. This entry was an impression taken by him into his memorandum-book of a sold note, which he he sent to the plaintiff, and which said nothing as to the condition that the wool was to be delivered in good condition. The broker did not send a *bought* note to the defendant. The wool was sent to defendant at Birmingham, and, not being in good condition, was returned.

Under these circumstances, *Knowles* urged that the sold note containing all the requisites of a contract under the Statute of Frauds, the plaintiff was entitled to recover; but the Court thought that the evidence shewed (the broker was himself examined) that the broker had been employed to buy wool to be delivered in good condition. He was not the defendant's agent to make such a contract as he had made.

POLLOCK, C. B. said the effect of admitting evidence that the authority was not pursued, is not admitting evidence to vary a written agreement. *Cur. adv. vult.*

Note.—In the above case, *Knowles*, Q. C. said, the evidence as to the conditions under which the wool was to be delivered had not been adduced at the trial as evidence that the broker's authority had not been pursued. From what I could gather when the rule was applied for, Cresswell, J. at the trial seemed to have considered that the sold note had not been written by the broker as agent—making a memorandum in that character—of the contract (no bought note had been delivered), and that the memorandum in the book was nothing.

FOLLET *v.* FORREST and OTHERS.

Judgment non obstante—Replevin.

This case was heard before Cresswell, J. at Lancaster, at the last assizes. Verdict for defendant.

Martin, Q.C. pursuant to leave reserved, moved for a rule to shew cause why verdict should not be set aside, and verdict for three guineas entered for the plaintiff, or why there should not be judgment *non obstante veredicto*.

This was an action of replevin. The defendant avowed distraining on the plaintiff to recover as rent a sum which, by terms of tenancy between them, was to be recoverable as rent on breach of condition. Among other pleas, the plaintiff set out an unsealed lease, whereby it was stipulated that if plaintiff sold hay off the premises, defendant might distrain as for rent.

Martin submitted that a right of distress could be founded on such a condition. It was an introduction of hypothecation into English law—a prospective lien on property not in the creditor's possession. *Rule nisi.*

WATSON *v.* BOVILL.

Liability of messenger in the Courts of Bankruptcy for detaining a witness in custody by order of the Commissioner.

This case was tried at Northampton before Coltman, J. at the last assizes. Verdict for plaintiff, 10*l*. 10s. damages.

Humfrey moved, pursuant to leave reserved, to enter verdict for defendant. The defendant was messenger in Commissioner Daniell's Court of Bankruptcy at Birmingham. He had apprehended the plaintiff under a warrant from the commissioner to bring him before the commissioner to give evidence, and had, by commissioner's order, detained him in custody, after he had given evidence, because he would not pay the fees attendant on his apprehension. *Humfrey* urged that the messenger could not be liable, nor was an action against him the proper mode of trying the commissioner's right to order his detainer. He cited in illustration the cases *Painter* v. *Liverpool Gas Company* (3 A. & E. 433), and *Andrews* v. *Morris* (1 Q.B. 3). *Rule nisi.*

CHOUNDES *v.* BROWN.

Arrest of judgment.

This case was tried at Huntingdon before Williams, J. at the last assizes, and plaintiff obtained a verdict for 196*l*. 14s. 4d.

Byles, Serjt. moved for a rule to shew cause why judgment should not be arrested on the first count. The action was *assumpsit*, with a special count for use and occupation, and the money counts. The special count was in consideration that plaintiff had let the premises to defendant, defendant had promised to use the same in a tenantlike, husbandlike, and proper manner.

No previous request was alleged, nor was the nature of the premises, whether the same consisted of arable land or houses, or what, at all described.

Byles, Serjt. submitted that a past consideration would support no promise but what the law would imply, and that in this case the statement of the premises was not sufficient to shew aught from which the law would imply a promise. *Rule nisi.*

Monday, Nov. 4.

ASHMORE *v.* BRAMALL.

New trial—Judgment non obstante.

This case was tried before Denman, C. J. Verdict for defendant.

Whitehurst moved, pursuant to leave given at the trial, for a rule calling on the defendant to shew cause why the verdict should not be entered for the plaintiff for 45*l*. 5s. 5d., also, why judgment should not be entered *non obstante veredicto*.

The action was on a promissory note, dated 11th Nov. 1842, for 60*l*. with lawful interest. The material plea was, that the defendant had given the note as surety, upon the terms of a contemporaneous written agreement, that the note should be cancelled as soon as the principal debtor, or any one else, should pay 60*l*. to the plaintiffs, on account of certain shares which such debtor held in a Building Society whereof the plaintiff was trustee; that the debtor had paid 52*l*. and that the defendant had, before the suit, tendered 8*l*.

Replication traversed the payment of the 52*l*.

The facts were, that the 52*l*. had been paid *before* the making of the note.

Whitehurst submitted that there had been misdirection in construing the agreement to refer to by-gone instead of prospective payments; and that as the plea did not cover the interest, plaintiff was entitled to judgment *non obstante*. *Rule nisi.*

M'INTIRE *v.* MILLER and OTHERS.

New trial.

This case was tried at Guildhall, before Pollock, C.B. Verdict for the plaintiff.

Martin moved, pursuant to leave reserved, for a rule calling on the plaintiff to shew cause why verdict should not be entered for the defendant, or a new trial had.

It was an action by the secretary of the United Legal Insurance Company, against certain members of the Marylebone Joint Stock Bank. The Marylebone Joint Stock Bank were indebted to the United Legal Insurance; and, proceedings being threatened, Mr. Walker, a director of the Marylebone Bank, and liable, jointly with the rest of that company, advanced the money due to the United Legal Insurance Company, upon four of the directors of that company executing a deed whereby the debt was assigned to a Mr. Richards. Mr. Richards was produced at the trial, and swore he knew nothing about his name having been used.

The question was whether this transaction supported the plea of payment. Pollock, C. B. at the trial thought that the employment of Richards's name was merely colourable, and the true question was, whether a co-debtor could go to his creditor and arrange with him, so that, on payment of the amount of the joint debt, he, the co-debtor, might employ the creditor's name in a suit against the party who was before jointly liable with him: that this was a question for the Court to decide.

Martin said the facts should have gone to the jury as evidence in support of a plea of payment.

PARKE, B. did not think that the facts would support a plea of payment. It was a very usual thing for a surety not to pay the debt, but to take an assignment of it, and then put the creditors' remedies in suit.

Martin contended that it violated a rule of law; it enabled a party to be plaintiff and defendant. The surety was in a different position from a principal co-debtor. *Rule nisi.*

NORTONSTRONG *v.* PITT.

This case, in which *Martin*, Q. C. also moved, was tried before the same judge, on the same day as the last case, and raised the same point, with this addition, that the plaintiff had been willing to give evidence, and had been tendered in evidence by the defendant, but the Lord Chief Baron had refused to

admit him. (*Morden v. Williamson and Another*, 1 Taunt. 378.) *Rule nisi.*

BENBOW *v.* JONES.
Nonsuit.

This case had been tried before Atcherley, Serjt. at Worcester. Verdict for plaintiff for 45*l*.

Talfourd, Serjt. moved, pursuant to leave reserved, for a rule calling on the plaintiff to shew cause why verdict should not be set aside, and a nonsuit entered, on the ground of misdirection.

The defendant was secretary to a certain race, which was proposed to be run upon certain written terms; among them, that no horse should be ridden by any professional jockey, and that all disputes should be decided by the steward, and that an umpire should be appointed to decide as to the winner. Before the race, the proposed rider of the plaintiff's horse had been objected to on the ground that he was a professional jockey. Nevertheless, on the morning of the race, the same rider presented himself on the plaintiff's horse, and took up his position with the others who were to race. The umpire notified that the others were to consider the plaintiff's horse as out of the race. The race was run, and plaintiff's horse came in first. The umpire ordered the secretary to give the money to the owner of the second horse, and he had done so.

The misdirection complained of was that the learned judge had left it to the jury to say there was no decision by the umpire in favour of the second horse, he not having called the parties regularly before him, and examined witnesses; at any rate, said *Talfourd*, there had been no decision in *favour* of the plaintiff.

Talfourd moved also on another ground, viz. that by the terms of the race all disputes were to be submitted to the steward; but the Court said this prospective submission did not preclude resort to this court. *Rule granted on the first ground only.*

DOE *dem.* BOYD *v.* INGLEBY.
Question as to construction of 6 Geo. 4, c. 16, s. 15.

This case had been tried before Coleridge, J. Verdict for plaintiff.

Jervis moved, pursuant to leave, for rule calling on plaintiff to shew cause why verdict should not be entered for defendant; the Court to draw the same conclusions from evidence as a jury. The demise in the ejectment had been laid 12th April, 1841, whereas the title of the lessor of the plaintiff had only commenced on the 12th *May*, 1841, by writ of possession in an antecedent ejectment.

Jervis also submitted that there had been no sufficient petitioning creditor's debt to make out a title in this case under a bankruptcy, since the requisite amount was made up by debts due to several *partnerships*, whilst on strict construction of 6 Geo. 4, c. 16, s. 15, the section did not extend to that case; it extended to *persons* - not partnerships.

Rule granted.

CLARK *v.* GEES and OTHERS.
New trial.

This case was tried before Pollock, C. B. at York, at the last assizes.

W. H. Watson, Q. C. moved for a rule to shew cause why nonsuit should not be set aside, and new trial had, or verdict entered for plaintiff.

The plaintiff was a carpenter, and brought his action for a balance of account in respect of extras, over and above the work to be done in the specification of work which had been entered into between the parties, and which specification provided that the extra work should be approved of by the defendant's architect, who was also to settle the prices.

Watson submitted that because the defendant's own architect was to settle the prices, it never could have been intended that his approbation was to be a condition precedent; it was trusting too much; but the Court thought it was a condition precedent; it had not been complied with, and so— *Rule refused.*

GEACH *v.* INGALL.
New trial. Right to begin.

This case was tried at Warwick, before Denman, C.J. Verdict for plaintiff.

Humfrey moved for a rule to shew cause why the verdict should not be set aside, and a new trial had, on the ground that the learned judge had misdecided that the plaintiff was entitled to begin, and also on the ground of misdirection.

The action was by the assignees of Scott, to recover the amount of a life-policy of insurance.

The question as to the right to begin arose on the seventh plea, which was, "that a certain thing averred by the plaintiff in his declaration was not true in this, that Scott, at the time of making the policy, was in good health." Verification, but the replication to this was a *similiter*.

Humfrey said Lord Denman laid down at the trial that plaintiff should begin in every case where there are unliquidated damages. And he (Humfrey) wished the Court in this case to decide whether misdirection as to the right to begin, and it was always spoken of as the *right* to begin, did not entitle the party to a new trial.

PARKE, B.—The Court will only grant new trial on that ground where manifest injustice is done. Could the objection be taken by a bill of exceptions? If it could not, then it was with the discretion of the Court to grant a new trial or not.

The misdirection complained of was, that the learned judge had left it to the jury to say whether Scott had ever before effecting the policy had a disorder that tended to shorten life; whereas he should have left it to them, whether he had not denied that he had ever had spitting of blood, of which there was evidence, and by which means he had not been subjected to as stringent an examination as he otherwise would have been. *Rule granted.*

WILSON and WIFE *v.* Executors of HARROW.
Leave to amend.

Addison moved for leave to amend a plea.

The action was on a promissory note given to the plaintiff's wife *dum sola*.

Among other pleas, there was a plea of no consideration, which did not state the circumstances under which it was given. *Leave granted.*

There was a demurrer as to this plea. Upon other pleas issues in fact were joined.

Application for leave to amend had been made at Chambers, and refused, on the ground that the plaintiff had been delayed in proceeding to trial on the issues in fact, in consequence of the plea of no consideration having been framed to catch a demurrer.

Addison was about to detail the circumstances of the case, but the Court

Granted a rule to shew cause.

CLARK *v.* ROYSTON.
New trial.

This case was tried at York at the last assizes. Verdict for plaintiff on the first count.

Hugh Hill moved, pursuant to leave, for a rule to shew cause why verdict should not be entered for defendant on the ground of variance.

The declaration was in *assumpsit* on a special contract, which stated that, in consideration the plaintiff would give up land on which he had spread manure, defendant promised to become tenant, and to pay *according to the custom of the country*.

Plaintiff put in a written contract, which contained a memorandum that the defendant should leave the land in the same state, or pay for the manure at a valuation.

Defendant proved that by custom of the country the manure should be paid for on entry, and so argued that there was variance.

Rule to shew cause granted.

NORTON *v.* SWEENEY.
Evidence.

Evidence that plaintiff had handed defendant a note, without proof of the value of such note, is good evidence of money lent to the extent of 5l. the lowest English current note.

This case had been tried before the sheriff. Verdict for plaintiff 5*l*.

Best moved, pursuant to leave, for a rule to shew cause why verdict should not be entered for defendant, or why new trial should not be had.

He handed the sheriff's notes to the Court.

The action was in debt for money lent.

The defendant had borrowed money of the plaintiff on a race-course; the evidence was, that he had handed a *note* for the payment of money to the plaintiff, but what note, or what amount, did not appear.

The sheriff held that this was good evidence of money lent to the extent of 5*l*. the lowest English current note; and so thought the Court.

Best then said that the sheriff had prevented him from addressing the jury, which he was desirous of doing, and moved for a new trial on this ground.

It appeared, however, that Best had acquiesced in what the sheriff did, though his acquiescence had been reluctant. *Rule refused.*

UTHWATT *v.* ELKINS, LYMES, PAVIOR, KEMP, and TOMKINS.
New trial.

This case had been tried before Williams, J. at Huntingdon at the last assizes. Verdict for plaintiff.

Gunning moved, pursuant to leave, for rule calling on plaintiff to shew cause why a nonsuit should not be entered.

This was an action for use and occupation.

The two first-named defendants were surveyors of highways; the third was churchwarden and also an overseer of the poor; and the fourth and fifth were overseers of the poor of a certain parish. The land had been let to them by an unsealed instrument *nominatim*, with their official description, and the limitation was to them, their executors, administrators, and assigns, and successors in office.

The ground of the motion was, that though the churchwardens and overseers were a *quasi* corporation to take land for the use of the poor, under 59 Geo. 3, c. 12, ss. 12, 13, and 17; yet the surveyors of highways were not. That therefore they took in moieties as tenants in common. (Co. Litt. sec. 297, p. 190, a.) Another ground of motion was, that in two receipts, which were produced at the trial, the receipt was for rent on the behalf of the "overseers." But

PARKE, B. said, You can't make out a second demise from the receipts.

Rule granted on first ground.

MILLS *v.* GROFF.
New trial.

This case was tried before Williams, J. at the last assizes for Suffolk. Verdict for defendant.

Palmer moved for a rule calling on defendant to shew cause why a new trial should not be had on the ground of misdirection.

This was an action of trespass for breaking into plaintiff's house, and turning him out of possession. The question turned on the sufficiency of a notice to quit. The learned judge had directed the jury to find for the defendant if they found that a certain notice, then produced, had been given. The notice was dated the 17th June, 1840; it was served on the 18th; it required the plaintiff to deliver up possession on the 11th of October next, or on such other day thereafter as should be six months before the day when his tenancy would expire.

Palmer said this notice was bad for uncertainty as to the day from which the six months were to commence. It should have been to give up on a named day, or at the expiration of the six months which would then next expire with the expiration of the tenancy. *Rule to shew cause granted.*

Re WILLIAM WHITCHURCH.
New trial.

—— moved for a rule calling on the plaintiff to shew cause why the plaintiff's bill of costs should not be referred in the usual way for taxation.

The plaintiff had brought an action for costs, and had recovered them by writ of execution.

Rule granted.

BERKEY and ANOTHER *v.* FLETCHER.
New trial.

This case had been tried before the Recorder of Chester, who has a palatinate jurisdiction. Verdict for plaintiff, with nominal damages.

Jervis, Q. C. moved for a new trial, on the ground that the verdict was against evidence, and for misdirection. *Rule granted.*

CROOKE *v.* WILSON and OTHERS.
Principal and agent.

This case had been tried at Lancaster, before Cresswell, J. at the last assizes. Verdict for plaintiff for 15s.

Martin, Q. C. moved, pursuant to leave, for a rule calling on defendant to shew cause why the damages should not be increased to 4*l*.

It was an action for distraining more rent than was due.

The object of the application was to get the damages above 40s.

The ground of the motion was, that the defendant's agent (to whom the collection of rent and the keeping of divers houses in repair, among them the plaintiff's house, was intrusted by the defendant, who was landlord thereof) had ordered sewerage work to be done, and had authorized the plaintiff to pay for beer to the workmen, promising that the amount so paid should be deducted out of the rent. No rent was due at the time of the authority thus given. The plaintiff had paid for the beer; nevertheless the distress had been made without the promised allowance.

The COURT, however, thought that the case was parallel to that of the agent borrowing money; that, authority like that of the agent, was no authority to borrow money, nor to get others to pay for beer. It might have been different if there had been any rent due. *Rule refused.*

Tuesday, Nov. 5.

BROWN *v.* NEWCASTLE AND DARLINGTON RAILWAY COMPANY.

Is lessee entitled to sue for penalties for non-construction of road in pursuance of a Railway Act, which directs the penalty to be paid to the "owner" of the interrupted road?

Knowles, Q. C. moved to set side the verdict for the defendant, on the ground of misdirection.

This was an action of debt for penalties under the said company's Act, for the non-construction within the time specified of a road in substitution of one which had been rendered impassable in the formation of the above railway.

Pleas—Not guilty, and leave and license.

The Act required such substituted road to be made upon the old one (if a private road) being rendered "impassable for the person entitled to the use thereof," but gave the penalties in such case "to the owner thereof." It appeared that the plaintiff was lessee of lands to which was attached the use of the obstructed road. At the trial, before Cresswell, J. Mr. Wortley submitted that the plaintiff was not "owner," and therefore should be nonsuited. The case, however, went to the jury. They could not agree, and Cresswell, J. then directed them to find a verdict for defendant, which was done.

The declaration described the plaintiff "as possessed of certain lands, and by reason thereof entitled," &c.; but did not state that he was "owner thereof." *Lister* v. *Lobley* (7 A. & E. 124) was cited. After some discussion as to the meaning of the term, the rule was granted, but a special case was recommended. *Rule nisi.*

CHAPMAN, P.O. of North Shields Banking Company, v. ANNETTE.

Effect of admission of debt as proof of notice of dishonour.

Watson, Q. C. moved to set aside verdict for defendant, and to enter verdict for plaintiff, pursuant to leave reserved.

This was an action by the indorsee of a bill of exchange against the drawer, upon dishonour by the acceptor.

The material plea was denial of notice.

It appeared that neither of the two agents of the bank, whose duty it was to give notice of dishonoured bills, could state that he gave due notice; but a few days after the bill was dishonoured the defendant admitted the debt to one of the said agents, wished the bill to be renewed, and promised to pay it. A verdict was found for the defendant.

Watson now argued that such a promise to pay would entitle the plaintiff to a verdict, or at least that it should have been left to the jury to infer notice from it. It was suggested that the defendant might have had notice from the acceptor, and that this would be sufficient (*Roshier* v. *Kieran*, 4 Campb. 87; *Chapman* v. *Keane*, 3 Ad. & E. 193); but Parke, B. doubted this. As to the effect of the admission, *Lundie* v. *Robertson* (7 East, 231) was cited. *Rule granted.*

ECCLES v. HARVEY.

Admissibility of Lloyd's List—Evidence of underwriters as to amount of premium.

Martin, Q.C. moved for a rule *nisi* to set aside the verdict for the plaintiff in this cause: 1st, as being against evidence; 2nd, for admission of improper evidence; 3rd, for rejection of evidence. It was an action upon a policy of insurance, effected upon the ship *Caledonia*, for a total loss, and was tried at the last Liverpool assizes.

Plea—That the policy was effected by fraud.

It involved a number of facts and dates, but the principal question was, whether the underwriter had knowledge of the day of sailing. To shew that he had, *Lloyd's List* was put in evidence, and also the contents of a New York paper mentioned in the said List as having been received. The jury wished to return a verdict "for the plaintiff, on the presumption that defendant, as an underwriter, had the means of learning" the necessary facts. This the learned judge refused to receive, and a verdict was then found for the plaintiff.

Martin now cited, as to the concealment of material facts, *Rickards* v. *Murdock* (10 B. & C. 527), and argued the inadmissibility of the above evidence, and that proof of knowledge was necessary, and not merely the possession of the means of knowledge. The opinions of underwriters as to the proper amount of premium had been rejected at the trial. On this point he cited *Chapman* v. *Walton* (10 Bing. 57); *Rickards* v. *Murdock*, (10 B. & C. 527); *Campbell* v. *Rickards* (5 B. & Ad. 840); *Berthon* v. *Loughman* (2 Stark. 258). *Rule granted on all the points.*

AMPHLETT v. GARBUTT.

Right of surviving assignee to sue, and mode of stating the contract under 1 & 2 *Vict. c.* 110, *s.* 65.

Godson, Q. C. moved to set aside the nonsuit in this case, and for leave to enter the verdict for the plaintiff for 760*l.* or 76*l.*

This was an action brought by one assignee of an insolvent against the defendant, upon a contract of purchase entered into by him with the plaintiff and a co-assignee, who was subsequently, but before the action, removed by order of the Court under 1 & 2 Vict. c. 110, s. 65.

The plaintiff sued as assignee, and the promise was laid to him as assignee. There was also a count upon the account stated.

Pleas—Non assumpsit, and denial that plaintiff was assignee.

There was no evidence of any promise or account stated with the plaintiff singly.

PARKE, B.—You have the right to sue under the Act, but the contract is misstated.

Godson said leave to amend had been refused at the trial.

By the COURT.—The declaration is clearly framed wrongly. As to the first issue, the rule must be refused; but as to the other issue, it will be granted, as you are entitled to the costs of that issue. *Rule accordingly.*

Re ROSE v. THE GREAT WESTERN RAILWAY COMPANY.

Jurisdiction of Court of Exchequer.

Jervis, Q.C. applied for a rule to shew cause why the bill of Mr. Rose should not be referred to the proper officer of this court.

The bill was for proceedings under the company's Act, 6 Wm. 4, c. 38, the 9th and 10th sections of which regulated the proceedings thereon.

The practice had been for the equity side of the court to exercise those powers, and the question was, whether, since the 5 Vict. c. 5, transferring the equity jurisdiction, the Court had any power. Under the 6 & 7 Vict. c. 73, it would be taxable by the Master of the Rolls. *Rule nisi.*

WATSON v. WHITMORE.

Practice as to setting aside verdicts.

Whitehurst, Q.C. moved to set aside the verdict for the defendant in this case, for misdirection.

It was an action brought against the official assignee of the Birmingham Bankruptcy Court for improperly causing a summons and warrant to be issued against the plaintiff, under which he was brought up before the commissioner.

Pleas—Not guilty, and a traverse of an allegation about the nature of the dispute, which was held to be immaterial.

Coltman, J. had directed the jury to find for the defendant, as there was reasonable and probable cause.

Whitehurst did not then draw his attention to the second issue. He now went into the facts at length, and in the course of the argument stated that Lord Denman had at the last assizes left the question and probable cause to the jury.

POLLOCK, C. B.—The commissioners should be very careful how they allow these summonses to be issued; but here there was reasonable and probable cause on the part of the official assignee, although I do not say that the warrant would have been issued had the commissioner known the facts. The question of reasonable and probable cause upon admitted facts is clearly for the judge's decision. Then as to the second issue, it seems immaterial to the merits, and applications of this kind are a substitution for a bill of exceptions (although also at the discretion of the Court), and on a misdirection *unobjected to*, a bill of exceptions would not lie. This Court will not interfere with the verdict merely for the purpose of costs in such a case. *Rule refused.*

WHITMORE, Assignee, v. BLACK.

Rights of assignees.

Humfrey moved to set aside the verdict for the defendant, pursuant to leave reserved, and to enter it for the plaintiff; the amount of damages to be referred.

It was an action of trover tried before Pollock, C.B. on July 3rd. The defendant had put in an execution after the fiat, and upon notice the sheriff applied under the Interpleader Act. An action was directed, and the goods ordered to be sold. The defendant did not continue the action; the amount that the goods sold for had been paid to the assignees, but they now sought to recover the value at the time of seizure. Humfrey had at the trial sought to establish the identity of position between the assignees and a third party whose goods are tortiously seized and sold, who is clearly entitled to receive the value of the goods at the time of seizure; citing *Glasspoole* v *Young* (9 B. & C. 697); *Clark* v. *Nicholson* (1 C. M. & R. 726).

POLLOCK, C.B. ruled that there was a difference, for although in matter of right the assignees might be allowed to recover such difference, yet as a matter of experience and practice, the fact that they were bound to sell made a distinction between the two cases. The Court agreed with this view, and the rule was refused. *Rule refused.*

SMITH v. LLOYD.

Peremptory undertaking discharged on account of 7 & 8 *Vict. c.* 96.

Atherton moved for a rule *nisi* why the plaintiff in this case should not be discharged from his peremptory undertaking, or a *stet processus* entered, on an affidavit that the action was brought prior to the late Insolvent Act, with the intention of arresting the defendant, and that he had no then or now any goods or chattels. *Rule granted.*

CHARINGTON v. JOHNSON.

Surplus of distress.

O'Malley moved to set aside the nonsuit in this case, and for a new trial, for misdirection.

It was an action for money had and received against the surveyor of highways, to recover the overplus of a distress made by him. It was tried at Cambridge before Alderson, B. at the last assizes. The questions were, whether a demand could be made without an authority in writing from the plaintiff; and whether it was an action within the protecting clause of the Highway Act. On the first ground the judge nonsuited the plaintiff, and was also inclined to think that it was within the Act.

Authorities cited: 43 Eliz. c. 2, s. 4; 27 Geo. 2, c. 20; *Moyse* v. *Corksedge* (Willes, 636). *Rule granted.*

REDMAN v. WILSON.

Tomlinson moved in arrest of judgment or for a new trial for misdirection.

It was an action on a policy of insurance, effected upon the *Lord Wellington* from London to Sierra Leone and back. The loss alleged was by perils of the sea. The point intended to be raised was, that the words of the declaration did not include the cause of the loss of the vessel, which was the negligence of those employed in loading her at Sierra Leone, and that to hold the underwriters liable in this case would be to extend the cases, which have already gone far enough.

Cases cited: *Barber* v. *Phillips* (5 B. & A. 161); *Devaux* v. *J. Ansen* (5 B. N. C. 519); *Dixon* v. *Sadler* (5 M. & W. 405). *Rule nisi.*

BROWN v. FULLARTON.

May a writ be amended to save the Statute of Limitations?

In this case a motion was made to amend the writ of summons and subsequent proceedings by adding the name of the assignee, upon an affidavit that the action would be barred without the amendment was allowed. An application had been made to Pollock, C. B. at chambers, but he had refused, thinking that the very reason why the amendment should not be allowed; following *Roberts* v. *Bate* (6 A. & E. 778), rather than *Eccles* v. *Cole* (1 Dowl. N. S. 34).

Pollock, C. B. had referred to the Court for argument. *Rule nisi.*

Wednesday, Nov. 6.

SINCLAIR v. SINCLAIR.

New trial.

Jervis, Q. C. moved for a rule to shew cause why the verdict in this case should not be set aside, and a new trial had, on the ground of improper reception of evidence. The action was tried before Rolfe, B. at the last assizes, and was brought to recover wages. *Pleas—Non assumpsit*, and a set-off. One of the witnesses examined on the part of the plaintiff was stated in the declaration to be the *prochein ami* of the plaintiff, and he is clearly an incompetent witness, either before or since the 6 & 7 Vict. c. 85, he not only being named on the record, but liable to costs. (1 Strange, 505.) [ROLFE, B.- Being named on the record must mean being a party. The merely being named is not enough, or the attorney by whom the plaintiff appears would be incompetent.] Here the party has an interest in the suit in the form of costs. *Rule nisi.*

BISS v. ARKILL.

New trial.

Whateley, Q.C. moved to enter a nonsuit, in pursuance of leave reserved at the trial, which took place at Worcester before Atcherley, Serjt. The action was brought to recover a forfeit of 10*l.* under an agreement for a steeple-chase, for which the defendant's horse was entered by a previous owner. The plaintiff's horse was the winner. There was evidence that, by the rules of steeple-chases, the obligations of a horse attached to his owner for the time being. It was insisted that there was no privity of contract between the parties which could support the contract at law. *Rule nisi.*

BUSINESS OF THE WEEK.

Saturday.

GEAR v. FINDEN.

Taxation of costs—Award.

Bramwell moved for a rule, calling on the plaintiff to shew cause why the Master should not proceed to tax the costs in the case.

The action had been decided by the award of an arbitrator, the plaintiff had got possession of the award, and refused to produce it, and the Master refused to proceed without it.

Rule to shew cause why plaintiff should not produce the award before the Master, or the Master proceed without it.

Note. A copy of the award had been produced to the Master.

HAWKE v. BAZELEY.

Tapril moved for a rule to shew cause why the defendant should not have leave to plead several matters.

Case to stand over till Monday.

Monday.

HAWKE v. BAZELEY.

This case stood over till to-day, in order that counsel might consult whether two of the proposed pleas might not be consolidated, and then the rule was granted, with an intimation from the Court that the parties might arrange to go back to the said judge (Baron Gurney) at chambers to settle the question.

TWYFORD v. ARNFIELD.

This case was tried at the sittings of the Court, before Rolfe, B. Verdict for the plaintiff.

Knowles, C. C. moved for a new trial, on the ground of misdirection. *Rule refused.*

Tuesday.

HEYWOOD v. HEYWOOD.—*Crowder*, Q. C. moved to set aside the verdict for the plaintiff in this action, tried at the last Wiltshire assizes, as against evidence. The COURT said they would confer with the learned judge who tried the cause. *Cur. adv. vult.*

LEDSAM v. ——.—At the suggestion of *Kelly*,

Q. C. the motion for a new trial in this case was fixed for Thursday week, that Alderson, B. might be present.

Ex parte C. M. Smith.— —— moved that C. M. Smith might be struck off the rolls, for the purpose of going to the Bar upon the usual affidavit.

Rule granted.

Alexander *v.* Pratt.

Kelly, Q. C. moved for a rule, pursuant to leave reserved, to set aside the verdict for the plaintiff, and enter it for the defendant. It was an action on a time policy of insurance, and the plaintiffs claimed a total loss.

Plea—Unseaworthiness.

The point turned wholly upon the construction of the pleadings, and whether certain words were material or not.

Rule granted, with leave reserved to amend if the Court should think the merits had not been decided.

Wednesday.

Verey *v.* Law.

Knowles moved for a rule to shew cause why the verdict in this case should not be set aside and a new trial had. *Rule refused.*

James *v.* Williams.

Chilton, Q. C. moved for a rule *nisi* to enter up judgment *non obstante veredicto* on the first plea, which has passed for the defendant. *Rule nisi.*

Bartlett *v.* Diamond.

Martin, Q. C. moved for a rule *nisi* to enter up a verdict in this cause, tried before Rolfe, B. at the last assizes, for 1,080*l.* *Rule nisi.*

Kynaston *v.* Crouch.

Crowder, Q. C. moved for a rule *nisi* to shew cause why a non-suit should not be entered in this case, tried before Patteson, J. at Bristol, or the damages reduced to such a sum as the Court should direct.

Rule nisi.

Staples *v.* Peck.

Dundas, Q.C. moved for a rule *nisi* to set aside the verdict on the second issue, which had passed for the defendant. *Rule nisi.*

Harrison *v.* Wright.

M. D. Hill, Q.C. moved for a rule *nisi* for a new trial in this cause, tried before Coltman, J. at the Nottingham Assizes, on the ground of misdirection, the improper reception of evidence, and the verdict being against evidence. *Cur. adv. vult.*

Doe *dem.* William the Fourth and Others *v.* Roberts and Others.

Evans, Q.C. moved for a new trial. The case was tried at the last assizes at Chester, before Coleridge, J. The motion was on the grounds of a verdict against evidence, the improper admission of evidence, and misdirection.

Deferred in order to consult the judge.

Brogden *v.* Buxton.

Wortley, Q.C. moved for a new trial, on the ground of misdirection, or to reduce the damages by an amount given by the jury for interest. The case was tried at the last assizes at Lancaster before Cresswell, J. and a verdict found for the plaintiff. *Rule refused.*

Frewd and Wife *v.* Powell.

Cockburn, Q.C. moved for a rule to enter a verdict for the plaintiff, upon the count for an account stated, pursuant to leave reserved by Wightman, J. at the trial. *Rule nisi.*

BAIL COURT.

Saturday, Nov. 2.

(Before Mr. Justice Patteson.)

Young *v.* Crompton.

Application to tax the amount of costs indorsed on a writ of summons.

Gray moved for a rule calling upon the plaintiff's attorney to shew cause why the order of Maule, J. should not be set aside, and why the costs indorsed on the writ of summons should not be referred to taxation, and why the attorney should not refund what should appear to be overpaid, and pay the costs of taxation, if more than a sixth should be taxed off.

The writ of summons in this case was indorsed 2*l.* 5s. for debt and 2*l.* 10s. for costs. By the defendant's affidavit it appeared that, according to an account sent in and signed by the plaintiff, the real amount of the debt was only 2*l.* 1s. 5d. which amount, together with the 2*l.* 10s. for costs, the defendant remitted within the four days to the plaintiff's attorney, who replied by letter, as follows :—

"Young against yourself.

"Sir,—I beg to acknowledge the receipt of a post-office order for the amount of debt and costs herein.

"Yours, &c.

"W. Fletcher, for J. C. Ward."

Subsequently a summons was taken out by the defendant calling upon the plaintiff's attorney to shew cause why the costs indorsed upon the writ of summons should not be referred to taxation (*as in the present application*). Upon the hearing before Maule, J. the plaintiff's attorney objected that, inasmuch as the amount of the debt indorsed (2*l.* 5s.) had not been paid, but only a part thereof (2*l.* 1s. 5d.), the defendant was not entitled to have the costs taxed under the rule H. T. 2 Wm. 4, r. 2, and the learned judge dismissed the summons, with costs. It was now contended that, as the plaintiff's attorney had in fact accepted the 2*l.* 1s. 5d. and acknowledged the receipt as the debt, he could not defeat the rule of H. T. 2 Wm. 4, and that if he had not intended the receipt to be as for the debt, he should have refused to have accepted the amount. *Rule nisi.*

Reg. *v.* The Justices of the West Riding of Yorkshire, in the matter of the appeal between Stanley-cum-Wrenthorp, Appellants, and Alverthorp-cum-Thorns, Respondents.

Quære, whether, when the appellants do not give notice of appeal within the twenty-one days, and the pauper is not afterwards removed, they have a right, under the 4 & 5 Wm. 4, c. 76, s. 79, to enter and try their appeal against the order of removal.

Pashley moved for a *mandamus*, commanding the above justices to enter continuances and hear an appeal between the before-mentioned parishes. On the 29th July last an order of removal was made. On the 2nd August the order, copies of the examinations, and notice of chargeability were served. On the 23rd of August the appellants signed notice of appeal, and served same on the 24th. The pauper was not removed, and on the 25th of September grounds of appeal and notice of trial were served. At the trial, the respondents objected to the right of the appellants to appeal, they having omitted, during the running of the twenty-one days, to give notice of appeal, and the pauper in fact not having been removed that the 4 & 5 Wm. 4, c. 76, s. 79, prescribes that the appellants shall give their notice within the twenty one days after the sending of the copy, order, &c. ; and that the appellants not having done so, and no removal having in fact taken place, no right to appeal arose under this Act. nor under the 13 & 14 Car. 2, c. 12, which makes an actual removal the condition of a right to appeal. The justices took this view of the case, and refused to hear the appeal. It was now contended that the justices were wrong, for that the 4 & 5 Wm. 4, c. 76, s. 79, makes the sending of the copy, order, &c. the grievance against which the appellants are entitled to appeal, and that the limitation of the twenty-one days is merely to prevent the removal, and that the only effect of not having given notice of appeal within this period was that the pauper *may* afterwards have been removed, and this notwithstanding the giving of the notice, which not being within the twenty-one days, could not operate to restrain the removal under the order. (*R.* v. *Justices of Suffolk*, 4 Ad. & Ell. 319 ; *R.* v. *Justices of Leicester*, 6 Dowl. 633.) *Rule nisi.*

Monday, Nov. 4.

Reg. *v.* The Recorder of Bolton.

Mandamus to hear an appeal.

Cowling moved for a *mandamus* commanding the Recorder of Bolton to hear and determine the matter of an appeal of one Barlow against a conviction. It appeared that Barlow, who was a counterpane weaver, had been summarily convicted under the 17 Geo. 3, c. 56, s. 8, for neglecting to do up the work upon which he was employed, and sentenced to one month's imprisonment. Upon this he gave notice of appeal, and entered into recognizances to enter and try his appeal at the next sessions, and abide the judgment of the Court, whereupon he was discharged. The conviction was duly drawn up and forwarded to the court. On the 22nd of October, two days before the sessions, Barlow served a notice of abandonment. At the sessions the respondents applied to enter the appeal, but it was objected that the Court had no jurisdiction to permit this to be done, and the Recorder accordingly refused to allow the respondents to enter the appeal. Thus nothing was done, and the defendant remained at large, the convicting parties having no longer power to commit in execution of the conviction. (*Rex* v. *Twyford and Grove*, 5 Ad. & Ell. 430.)

Ex parte Marsh, Esq. Mayor of Yarmouth.

Criminal information.

Martin, Q. C. moved, on the behalf of the above gentleman, for a rule *Nisi* for leave to file a criminal information against a person of the name of Aldred, for using threatening and insulting language relative to this gentleman's conduct as a magistrate.

Rule nisi.

Tunley *v.* Evans.

When a cause in the superior courts has been tried before the judge of the Sheriff's Court, the counsel who attended the trial may move for a new trial without the production of the judge's notes.

Lush moved in this case, which had been tried before the Judge of the Sheriffs' Court of London, to set aside the verdict, which had been returned for the defendant, and for a new trial, on the ground of the improper reception of evidence, of the verdict being against evidence, and misdirection.

In this case application had been made for a copy of the judge's notes of the trial, but they had been refused, on the ground that this Court never gave a copy until the rule *nisi* had been obtained. The learned counsel had himself attended the trial, but in one case in the Exchequer (*Edes* v. *Britten*, 9 Dowl. 245), it had been held that in *all* cases the notes must be produced on moving for the rule *nisi*.

Patteson, J.—If you were there yourself you may make the motion upon your own recollection of the facts. In the Sheriffs' Court I believe counsel invariably attend, which would form an exception to the general rule. *Rule nisi.*

Tuesday, Nov. 5.

Edney *v.* Poole.

The Court will not admit of any equivalent for actual personal service of the writ of summons.

H. Hill moved for leave to enter an appearance *sec. stat.* for the defendant. In this case, the party attempting to serve the writ had called at the defendent's residence whilst he was at home, with the copy writ inclosed in a letter, which he gave to the defendant's wife, with directions to give it to her husband. She took it in, and shortly afterwards returned with the copy, saying that "Mr. Poole said he was to take this (meaning the copy writ) back again." On leaving the premises he saw the defendant through the area. After referring to the various cases upon the subject of constructive service, the learned counsel thought it right to draw the attention of the Court to the case of *Goggs* v. *Lord Huntingtower* (12 M. & W. ; 2 L. T. 330), in which the Court of Exchequer had said that the judges had some to the determination of allowing no equivalent for personal service.

Patteson, J.—There was a discussion amongst the judges, and we all thought that allowing such services would be likely to create great inconvenience, and unless you can get an affidavit from the party that the copy writ was actually delivered, you will only be entitled to a *distringas*.

Distringas granted.

Ex parte ———.

The rule for discharging a party out of custody, where he has been taken on an attachment for not obeying a judge's order, is nisi only.

Crowder, Q.C. moved to discharge an attorney out of custody, he having been taken on an attachment for not obeying an order of Coleridge, J. for delivering his bill costs, and having complied therewith.

Patteson, J.—The rule will be *nisi* only, as the facts may be disputed.

Rule nisi, returnable in two days.

R. *v.* Elizabeth Hassell.

Motion for a certiorari to quash a coroner's inquisition, the inquest having been holden by a deputy-coroner, in the presence of the coroner himself.

Jervis, Q.C. moved for a *certiorari* to bring up a coroner's inquisition, with a view to quashing the same, it having been taken by the deputy coroner of a coroner of Worcestershire, the coroner himself being present, and the 6 & 7 Vict. c. 83, s. 1, empowering the deputy to act only in cases of the illness or *absence* of the coroner. *Rule granted.*

Wednesday, Nov. 6.

Ex parte Charles Carus Wilson, Gent.

Habeas corpus to the keeper of the Queen's Prison in the island of Jersey to bring before this Court the body of a person in confinement there.

Peacock moved for a writ of *habeas corpus*, to be directed to John Kaudick, the keeper of the Queen's Prison, in the Island of Jersey, commanding him to bring up to this court the body of the applicant. It appeared from the affidavit on which the motion was made that on the 23rd of September last Mr. Wilson was taken into custody and lodged in the above prison by the deputy-viscount of the island ; that he demanded a copy of the warrant of commitment, upon which Kaudick, the keeper, told him he had nothing of the sort ; that some days after, Kaudick brought to the cell a paper, by which it appeared that he was condemned to pay a fine of 10*l.* and to make an apology, or in default to remain in gaol. The paper did not state why he was to pay a fine, nor what apology he was to make, or where to make it. The affidavit further stated that the applicant believed that the ground of his committal was a supposed contempt of the Royal Court of Jersey, which he believed was a court improperly constituted.

Patteson, J.—Does the writ of *habeas corpus* run from this court into Jersey ?

Peacock.—Yes, my lord ; the 11th section of the 31 Car. 2, c. 2, provides for its being directed, besides to every place in England and Wales and Berwick-upon-Tweed, to the islands of Jersey and Guernsey ; and the 56 Geo. 3, c. 100, contains a similar power. The applicant does not appear to be imprisoned by the judgment of any Court.

The learned counsel requested the Court to name the sum to be indorsed on the back of the writ to be paid by the prisoner as and for the expense of his being brought up, pursuant to s. 1 of 31 Car. 2.

His lordship named 5*l.* as the amount.

Writ granted.

Thursday, Nov. 7.

(Before Mr. Justice WIGHTMAN.)

ALLISON *v.* ADDY.

The rule that a motion for a new trial must be made within the four days is imperative, and where, therefore, counsel was instructed too late on the fourth day to move on that day, the Court refused to hear him on the following day.

Hoggins was instructed to move for a new trial in this case, on the points reserved by the Undersheriff of Yorkshire; he had not received his brief, however, until a quarter before seven o'clock last evening, which was the last day for moving, and long after the Court had broken up for the day.

WIGHTMAN, J.—It seems to me that you could not have moved yesterday, as you were not instructed in time. The motion is now too late.

Rule refused.

BUSINESS OF THE WEEK.

Saturday.

Re ESCOURT.—*Martin*, Q.C. moved that the applicant might be admitted an attorney on the last day of term, under peculiar circumstances, notwithstanding the regular notices had not been given. (*Re Hancock*, 4 Ad. & Ell. 979; *re Hulm*, 4 Dowl.)

Application granted.

WEBSTER *v.* CHANDLER.—Sir *J. Bayley* moved, on behalf of the stakeholder of a race run at the Ellesmere races, between Hopping Kate and Fairy Queen, for an interpleader rule. *Rule nisi.*

LAMBERT *v.* HOLT.—*Kennedy* moved to set aside an order made by Maule, J. herein. *Rule nisi.*

SKIPPER *v.* FENDALL.—*Phinn* moved to set aside an order of Maule, J *Rule refused.*

REG. *v.* THE MAYOR, &c. OF SANDWICH.—*Peacock* moved to enlarge this rule.

Rule enlarged for a fortnight.

WILLIAMS *v.* WEAVER.—*Hoggins* moved for a rule *nisi* in this case, which was tried before the undersheriff of Middlesex, for a nonsuit, for leave to enter a verdict for the defendant, or for a new trial.

Rule nisi.

ALFRED *v.* FARLOW.—*Warren* moved for a rule calling upon the defendant to shew cause why the judgment of *non pros.* for want of a joinder in demurrer, should not be set aside under the facts stated in his affidavit. *Rule nisi.*

Ex parte THE POOR LAW COMMISSIONERS.—*Tomlinson* moved for a *mandamus* to be directed to the guardians of the Bradfield Union, commanding them to appoint a schoolmaster, pursuant to their order.

Rule nisi.

PITCHER *v.* VICARS.—*Wordsworth* moved to set aside an order of Maule, J. herein. *Rule refused.*

Monday.

COOK *v.* COPLEY.—Sir *John Bayley* moved for judgment as in case of nonsuit for not proceeding to trial pursuant to a peremptory undertaking.

Rule granted.

SHARP *v.* CUMMINGS.—*R. Allen* moved in this case, which was tried before the Sheriff of Monmouthshire, for a rule to enter a nonsuit, pursuant to leave reserved, or to reduce the damages from 6*l.* 15*s.* to 15*s.* *Rule nisi.*

Tuesday.

LAMBERT *v.* LYDDON.—*Jervis*, Q.C. moved for a rule calling upon an attorney to shew cause why, on payment of a sum of money, he should not deliver over certain papers, and pay the costs of the application.

Rule nisi.

JUSTICE *v.* ———.—*Martin*, Q.C. moved for the costs of the day against the plaintiff, for not proceeding to trial. (*Walker* v. *Massey*, 1 Car. & Mar. 366.)

Rule nisi.

MORGAN *v.* MORGAN.—*Wordsworth* moved for a rule to rescind an order of Maule, J.

Rule refused.

SCOTT *v.* ENGLAND.—*Udall* moved in this case, which was tried before the Secondary, when a verdict was given for the plaintiff, with 3*l.* 15*s.* damages, for a nonsuit or a new trial. (*Alexander* v. *Gardiner*, 1 Bing. N.S. 676; *Elliott* v. *Pybus*, 10 Bing. 517; *Dixon* v. *Yates*, 5 B. & Ad. 340.) *Rule nisi.*

STANDERWICK *v.* WATKINS.—*Prideaux* moved in this case, which was tried before the Undersheriff for Somersetshire, and in which a verdict was found for the plaintiff, with 5*l.* 14*s.* damages, to set aside the verdict, and for a new trial, on the grounds of the improper reception of evidence, of the verdict being against evidence, and of the misconduct of the plaintiff and jury. *Rule nisi.*

Wednesday.

MUNIETA *v.* OLDFIELD and ANOTHER.—The *Solicitor-General* moved for leave for the defendant to plead *de novo* or for liberty to add other pleas.

Rule nisi.

JAMES *v.* EVANS and ANOTHER.—*Jervis*, Q.C. moved to set aside a writ of inquiry, and all subsequent proceedings for irregularity, the defendants having appeared by an attorney, and the notice of inquiry not having been delivered to him, but to the defendants themselves. *Rule nisi.*

BLAKEWAY *v.* DOREE.—*V. Lee* moved in this case, which was tried before the Undersheriff of Worcestershire, when a verdict was found for the plaintiff, with 6*l.* 6*s.* 2*d.* damages, for a new trial, on the ground of the improper reception of evidence.

Rule refused.

WHITE *v.* KEANE.—*Humfrey* moved to set aside the declaration herein for irregularity, the writ being in "*trespass on the case*," and the declaration "*on promises*." *Rule nisi.*

WALKER *v.* VISCOUNT RICHMOND.—*Hindmarsh* moved to discharge the defendant out of custody, he having been in custody more than two terms on a *ca. sa.* and not having been charged in execution.

Rule nisi.

BLACKWELL *v.* HARRIS.—*V. Williams* moved in this case, which was tried before the Secondary, for a rule to set aside the verdict for the defendant, on the ground of perverseness, and for a new trial.

Rule nisi.

TURLEY *v.* PRAY and ANOTHER.—*Hoggins* moved in this case, which was tried before the Undersheriff, when a verdict was found for the defendant, for a new trial, on the ground of misdirection. *Rule nisi.*

REG. *v.* THE MAYOR, &c. OF CAMBRIDGE.—*Gunning* moved for a rule calling upon the Mayor, &c. of Cambridge to shew cause why they should not pay Mr. Stephen Fryer, the younger, the costs of a *mandamus*. (See *Reg.* v. *Joseph John Deighton*, 3 Law T. 71.)

Thursday.

STUBBS *v.* HOLLIDAY and ANOTHER.—*Robinson* moved in this case, which was tried before the Undersheriff of Cumberland, when a verdict was returned for the plaintiff, for a rule to set aside the verdict, and enter a nonsuit. *Rule refused.*

MILNER *v.* HART.—*Hoggins* moved to set aside the judgment and warrant of attorney herein, on the ground of its having been given by an insolvent debtor, contrary to the 1 & 2 Vict. c. 110, s. 91.

Rule nisi.

SKELTON *v.* POTTER.—*Pashley* moved for a rule calling upon the plaintiff to bring in the writ of trial herein, that a suggestion might be entered on the roll to deprive him of costs, the case coming within the jurisdiction of a Court of Requests. *Rule nisi.*

REG. *v.* TOLLEMACH.—*Cleasby* moved for a rule calling upon the defendant to shew cause why he should not pay the costs of the *mandamus* herein. (See 3 Law T. 159.) *Rule nisi.*

MAIL *v.* BAYSE.—*O'Malley* moved in this case, which was tried before the Undersheriff of Cambridge, for a nonsuit or a new trial, on the ground of a variance between the plaintiff's replication and the evidence to support it at the trial, and for misdirection.

Rule nisi.

ALFORD *v.* PICKERING.—*Lush* moved for a rule calling upon the Master to review his taxation herein.

Rule nisi.

ALEXANDER *v.* ODEY and DUMAS.—*Borill* moved to set aside a judge's order holding the defendants to bail, on the ground of the insufficient statement of the debt in the affidavit, and on the affidavits of the defendants and others denying their being about to leave the country. *Rule nisi.*

Bankrupt and Insolvent Courts.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner Serjt. STEPHEN.)

Friday, Nov. 1.

Re ARCHIBALD.

Costs ordered out of insolvent's estate—Amending schedule.

This was the day appointed for the first examination of the insolvent.

Stone applied for leave to amend the schedule by adding the names of several omitted creditors and a better description of the insolvent's property. A previous application had been made by Mr. Packwood, the insolvent's attorney, after the schedule had been filed, and a few days only before this hearing, when his Honour refused to permit the amendments without an affidavit by the insolvent that he had not made the omissions wilfully. Stone now produced the required affidavit.

Homes, who appeared for the majority of the creditors, said, that the creditors were not desirous for a dismissal of the petition, therefore he would not oppose the application; but he asked for an adjournment, at the costs of the insolvent, to enable the creditors to examine into the amendments before hearing.

His HONOUR.—In this case it is stated that there is property sufficient in the end to pay all the creditors, and the insolvent has sworn that the omissions were not wilful. Let the examination be adjourned, *the costs of this and the adjourned sitting to be paid out of the estate.* *Adjournment accordingly.*

Re HENNESSEY.

Preference under 7 & 8 Vict. c. 96, s. 19.

This insolvent was a trader, who had lately owed more than 300*l.*; but a short time previous to filing his petition he paid a composition to a number of creditors, who signed a release of their debts; the debts of the creditors remaining unsettled with did not exceed 300*l.*

Homes now appeared to shew cause against the final order, and contended that the payment of the composition within three months of the filing of the petition was a preference, and void under the 19th section of the 7 & 8 Vict. c. 96; that the creditors who took it might be compelled to refund, whereupon the original debts would revest, and the total amount of the insolvent's debts exceed 300*l.*

His HONOUR.—The payment was void only *as against the assignees.*

Homes.—It is the duty of the assignees to recover back the sums paid to these creditors, and to insert their names in the schedule for the full amount of their debts. Thus it must appear on the face of the proceedings that the debts exceed 300*l.* and the Court has no jurisdiction further in the case.

His HONOUR.—At present, the debts of the creditors who took the composition are barred, and they have signed a release, shewing that they have no claim on the insolvent. The payment of the composition was good for all purposes, except as against the assignees. I shall not refuse the final order on account of what the assignees may do hereafter.

Final order granted.

REGISTRATION COURTS.

WESTBURY.

(Before F. W. SLADE, Esq. R. B.)

CASE.

John Dyer, for himself and other parties interested, appellant.

Ebenezer Gough (the objector), respondent.

The name of John Dyer appeared on the list of persons entitled to vote in the election of a member to serve in Parliament for the borough of Westbury, in respect of property situate in the parish of Westbury. Notices of objection proved. John Dyer appeared; and being called on to prove his qualification —"It was proved that the said John Dyer was at the time of making out the said list of voters, and still was, a person employed in collecting the duties on windows, and that he was appointed such collector by a warrant of appointment under the hands and seals of two of the commissioners for executing the several Acts of Parliament relating to the duties of assessed taxes. It was admitted that the two commissioners making the said appointment were also commissioners of the land-tax, but this fact did not appear in any way recited, or otherwise upon the said appointment."

The REVISING BARRISTER was of opinion that John Dyer was not entitled to have had his name inserted, as it appeared he was, at the time of making out the said list, and still was, a person employed in collecting the duties on windows within the meaning of 22 Geo. 3, c. 41, s. 1, and expunged his name accordingly.

The question for the opinion of the Court is, whether the Revising Barrister was right in so deciding. If the Court should be of opinion that the Revising Barrister was right, the name is to remain expunged; if otherwise, the name of John Dyer—house—Market-place, is to be inserted in the list of voters.

Eight other cases depending on this decision were consolidated.

John Dyer, for himself and others, signed the appeal, and agreed to prosecute.

Ebenezer Gough, the objector, signed as agreeing to appear and answer the appeal.

THE LEGISLATOR.

Summary.

THE business of the Term claims all our available space, and there is nothing in the matter of legislation requiring special notice just now, save to note a growing hostility to the proposed new settlement law.

PARLIAMENTARY RETURNS.

PARLIAMENTARY SITTINGS, &c.—Returns moved for at different periods by Mr. Brotherton, Mr. Hawes, and Mr. Estcourt, having reference to the sittings of the House of Commons, the divisions of the House, and public and private Bills, have just been published for the use of members. From the first of these it appears, that from the 1st of February to the 9th of August (being the session of 1844) the House sat 119 days and four Saturdays, the hours of sitting being 906¾, of which 69 hours were after midnight, and the average time of sitting being 7 hours and 36 minutes. The total number of divisions in the same period was 167, of which 126 were on public matters before midnight, 28 on public matters after midnight, and 13 on private Bills before midnight. The largest division appears to have been upon a

motion of Lord J. Russell's, for a committee of the whole House on the state of Ireland, when there were 554 members present, including the Speaker, of whom 227 voted for the motion, and 326 against it. The smallest division was on a motion for discharging Mr. B. Denison from further attendance on the poor relief (Gilbert's union) committee, when only 32 members voted, 12 being for the motion, and 20 against it. During the same session 136 public Bills which commenced in the House were introduced, and 23 Bills which commenced in the House of Lords. The Bill which occupied the longest period in passing was the Poor Law Amendment Bill, which occupied six months, the stages being as follows:—Bill ordered February 10, read a first time February 10, read a second time February 23, considered in committee May 10, July 4, 5, 12, 13, 15, 17, and 18; reported with amendments and considered July 24 and 25; read third time July 26; received the Royal assent August 9. The Bill which required the shortest period to pass was the Exchequer-bills Bill (18,407,300*l*.), which only occupied ten days. It was ordered and read a first time April 30, read a second time May 2, considered in committee May 3, reported May 6, read a third time May 7, and received the Royal assent May 10. The number of private Bills read a first time was 148; the number read a second time was 137; the number reported was 128; the number of private Bills brought from the Lords was 44, and the number of opposed Bills was 82.

Poor Law Returns.—A return, procured by Mr. Manners Sutton, has been printed by an order of the House of Commons, in which is afforded a good deal of information on several branches of the Poor Law Amendment Act. The statement extends to 109 printed pages. By the summary it appears that there were at Lady-day in the present year 587 unions in England and Wales, in which were comprised 13,803 parishes. The area in statute land extended to 28,791,726 acres; the population of the same in 1841 was 13,761,577, and the number of medical officers employed 2,825, which was an increase of 207, as compared with the preceding year. The amount of salaries of the medical officers was 103,198*l*. 1s. 6¾d. which was a decrease of 328*l*. 7s. 2¼d. from that of the previous year, notwithstanding the increase in the number employed. The fees for midwifery and surgery were 21,244*l*. 7s. 6d. which was an increase of 9,708*l*. 12s. 11d. The total amount paid to medical officers in one year was 151,442*l*. 9s. 0¾d. shewing an increase of 9,380*l*. 5s. 8¾d. There were in the year 108,898 paupers relieved in workhouses, making a decrease, compared with the preceding year, of 5,892. The rate per head of the total medical expenses, according to the population table of 1841, was 2¾d. making an increase of one-fourth, compared with the preceding year. The return does not include places not in union with the Poor Law Act, which contain a population of 2,150,180, nor the amount of fees paid to vaccinators. The importance of this return consists in the details given; there are nine Assistant-Commissioners mentioned, and information is afforded respecting the number of unions each one has under his charge, with the parishes therein comprised, and the number of statute acres to which each union extends. Mr. Austin has 67 unions, containing 1,585 parishes, the area of statute acres is 2,983,610, exclusive of Newport, Pontipool, and Crickhowel Unions, the extent of which was not known. The population in his district was, according to the census of 1841, 1,419,749. In Mr. Clement's district there are 53 unions, with 1,168 parishes, comprising 2,591,479 statute acres, with a population of 2,621,503; Mr. Hall has 72 unions, 838 parishes, 1,738,512 acres, and a population of 2,012,627; Mr. Hawley 58 unions, 1,862 parishes, 4,562,982 acres, and a population of [illegible]31,574; Mr. Parker 77 unions, 1,247 parishes, 3,438,364 acres, and a population of 1,015,597; Mr. Tufnell 70 unions, 1,590 parishes, 4,372,397 acres, and a population of 1,628,131; Colonel Wade 56 unions, 1,497 parishes, 1,021,174 acres (exclusive of the Welsh unions), and a population of 1,164,865. Sir John Walsham 69 unions, 1,891 parishes, 3,776,480 acres, and a population of 1,225,820; and Mr. Weale has 65 unions, 2,125 parishes, 4,306,228 acres, with a population of 1,541,511.

Lunacy in Ireland.—The report of the Inspector-general on the district, local, and private lunatic asylums in Ireland, for the last year, has only just been published, for the use of members of both Houses of Parliament, though it bears date June 1, 1844. The report commences by stating that a steady progressive improvement in the general management of the lunatic asylums in Ireland is clearly perceptible, and that when the improvements in contemplation shall have been completed, a most perfect system for affording relief to insane persons will be the result. On the 1st of January, 1843, there were in the ten district asylums which are under the immediate control of the Lord Lieutenant and Privy Council, 2,112 patients under treatment, and there were very few vacancies in any of them. Since then, all the vacancies have been filled; most of the asylums are overcrowded, and the number of applicants had considerably increased. To add to the untoward state of things, the number confined in gaols at the date of the report was 228, of whom 81 were reported as curable cases, if proper treatment could be afforded them. There were also upwards of 600 confined in the several union workhouses throughout Ireland, "which," adds the report, "are very imperfect, and not capable of affording the requisite accommodation." It is therefore recommended that increased accommodation for pauper lunatics in that country should immediately be provided. Whilst the number of patients has increased, however, the expense has diminished; for whereas in 1842 there were 2,061 patients in the district asylums, at an expense of 31,491*l*. 14s. 4d. there were last year 2,112 patients, at an expense of 29,132*l*. 8s. 1d. being an increase in the number of patients of 51, and a decrease in the expense of 2,359*l*. 6s. 3d. Of this number no less than 1,160 are incurable cases; but it is added, "in confirmation that a judicious and humane system of management is adopted, considerably more than four-fifths of the entire number have been industriously employed, and the total net produce of their labour for the previous year amounted to 1,609*l*. 6s. 4d." There are 13 duly licensed private lunatic asylums in Ireland, the whole of which the inspectors-general state that they have minutely inspected, and have found to be conducted upon a humane and judicious system.

THE MAGISTRATE.

Summary.

The Game Laws continue to be exposed to very merciless attacks from many quarters. We have read with some attention the leading articles and correspondents' letters upon the subject that have appeared in the daily papers, and we cannot find in one of them a sober practical proposition for the amendment of the law so fiercely assailed. Surely, they who abuse the existing law ought to be prepared with a substitute. But this the fault-finders never attempt, and then they turn round upon us, and call the lawyers narrow-minded and bigoted, and so forth, because we refuse to get rid of an existing law until a better be propounded. It is still more unjust to vilify the magistrates for merely doing their duty and executing the law as they find it. Nobody would assert that the Game Laws are incapable of improvement; but nobody who has not seriously set to work to construct a new one can have any conception of the difficulties of satisfactory legislation upon the subject. But, as we observed before, we suspect the clamourers look not for the improvement, but for the abrogation, of the law; for leave to go on any land and shoot anybody's hares and pheasants without let or hindrance.

Downing-street, Nov. 1.—The Queen has been pleased to appoint Thomas Horne, esq. to be her Majesty's Attorney-General, and Valentine Fleming, esq. to be her Majesty's Solicitor-General, for the colony of Van Diemen's Land.

Whitehall, Nov. 4.—The Queen has been pleased to constitute and appoint Mark Napier, esq. Advocate, to be Sheriff Depute of the shire or Sheriffdom of Dumfries, in the room of Sir Thomas Kirkpatrick, bart. deceased.

The Queen has also been pleased to constitute and appoint George Dundas, esq. Advocate, to be Sheriff Depute of the shire or Sheriffdom of Selkirk, in the room of James Miller, esq. deceased.

Crime and its Increase.—We were glad to see that last week there was not a single committal to the county gaol. Such a circumstance is cheering, and leads to the hope that the proposed enlargement of the prison will be found unnecessary. The rogues probably sympathize with the ratepayers.—*Hampshire Independent.*

The South Wales Turnpike Trusts Commissioners have concluded their circuit, and have examined into the affairs of every trust in the southern division of the principality. The monetary affairs of the different trusts have been ascertained to be in a much more healthy state than was supposed to be the case. We understand the award to the creditors of the trusts will be given on the 1st of January, 1845, and of course the necessary arrangements for carrying the Act into effect by the appointment of county roads boards and district boards and officers will be commenced at the quarter sessions, which will take place in the week following the beginning of the year.—*Welchman.*

The following buildings are certified as places duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—The Independent Chapel, Bishop's Castle, Shropshire; Charles Rhodes, superintendent registrar. The Wesleyan Chapel, Lancaster; J. Grant, superintendent registrar. The Protestant Dissenting Chapel, Lancaster; J. Grant, superintendent registrar. The Independent Chapel, situated in Grindor-street, in the parish of Monmouth, in the county of Monmouth, in the district of Monmouth. The Bethel Chapel, situated at St Margaret's Bank, Rochester, in the parish of St. Margaret, in the county of Kent, in the district of Medway.

THE LAWYER.

Summary.

As the reports of the Term claim so much space, we are compelled to curtail every other kind of intelligence, and we refer the reader to a notice among the leading articles for a detail of the adopted improvements, by which we hope to make those reports the most valuable, because the most complete and earliest, ever offered to the practitioner. The resignation of Mr. Justice Erskine, and the appointment of Mr. Erle to the vacant seat, is an event of the week which we must record here, though we have commented upon it elsewhere. Other matters of less moment will be found abundantly collected among the Legal Intelligence.

THE POWER TO DIS-BAR.

(From the Justice of the Peace.)

The question of the conduct of two members of the Bar has lately been the subject of much discussion, and some of the newspapers have spoken in a style of unfriendliness to the whole body, appearing or affecting to entertain the opinion that a barrister is a person privileged to misconduct himself; and that having once obtained the character of barrister, nothing short of a crime can occasion the forfeiture of it. Our excellent contemporary, *The Legal Observer*, has, in a recent number, unwillingly assisted to confirm this most erroneous opinion by referring to Lord Coke's reading (2 Inst. 212, 313) of the statute of Westminster 1, in which penalties are prescribed against serjeant counters (translated by him serjeants-at-law), and against attorneys, both of whom are sworn, and then noticing Lord Coke's statement that apprentices-at-law (barristers) are not sworn. This swearing, however, does not make any difference in their liability to be punished for misconduct. The statute includes them in its purview, if not in its actual phrase. But whether it does not actually name them, is doubtful; for though Lord Coke says, that "serjeant being a general word, counter—that is, narrator of the count or declaration—is added to it, to restrain it to a serjeant-at-law," still, there is some reason to question whether the learned commentator was quite right in this opinion. In all the copies of the statute of Westminster Primer (3 Edw. 1, c. 29) which we have seen, there is a comma after the word serjeant (it is so even in the copy printed in the second Institute), and narrator of the count or declaration, is a phrase which so exactly answers a junior counsel opening the pleadings—a task very likely to be performed by the apprentices, to qualify them for the future dignity of serjeant—that the probability seems to be in favour of the word counter being a distinct substantive appellation, and not a mere adjectival expression. But whether this criticism should be deemed to be well founded or not, it is plain that the judges have always treated all those actively engaged in the administration of justice as amenable to their summary jurisdiction. Lord Coke himself enumerates apprentices among those whose bad behaviour, in the "irregular reign" of Henry 3, had rendered this statute necessary; and afterwards, commenting on the word "auter," expressly says, "this extendeth to apprentices, attorneys, clerks of court, or any other;" and he afterwards (2 Inst. 216) says, "this punishment extends as well to the apprentice, as to the serjeant." His observation, therefore, that the apprentices are not sworn, could not be cited with effect to raise by implication a restriction on the application of the statute. But even if cited, it would not be allowed to have any weight against the practice of centuries. The judges have always claimed and exercised a jurisdiction over those who practise before them, and this jurisdiction is in itself so consonant to reason and to public policy, that no one can doubt that it would be maintained in these days. It has been several times exercised. (Palm. 288, 2 Salk. 517, 2 Wils. 369.) It is true that the act of dis-barring is now performed, if at all, by the benchers of that inn of court where the offending barrister was first called to the Bar. But against the decision of the benchers he has an appeal to the judges, whose power has again and again, since *Mitchell's* case (2 Atkins, 173), been declared to be that of visitors, and who can therefore exercise a very high degree of superintendence over the proceedings of inns of court. (Dugdale's Origines Jurid.; *The King* v. *The Benchers of Gray's-inn*, 1 Doug. 353; and *Savage's* case, there cited from Mr. Justice Gould's MS.; *Boorman's*

case, March, 177; *The King* v. *Benchers of Lincoln's-inn*, 4 Barn. & Cress. 855; and *in re The Justices of the Court of Common Pleas at Antigua*, 1 Knapp's Priv. Coun. Cas. 267.) In the event, therefore, of the necessity arising, there is ample power in the benchers to visit punishment upon the head of a barrister against whom any serious misconduct is proved; and that, too, in addition to the penalty which the statute 3 Edw. I inflicts upon him in the shape of imprisonment; while, on the other hand, the facility of appealing to the judges would secure an innocent man from being unjustly, and a mistaken man from being harshly treated.

The power to punish is clear; the necessity for exercising that power must in every individual case be strictly proved. The power is that of inflicting ruin; and for that reason it ought not to be called into action upon any but really serious occasions. That such occasions may not arise, every one must hope. There is no surer safeguard for the liberty of the people than the unsullied honour of those who are engaged in administering the laws. The forms of law have often been employed, and with success, as the means of popular defence against tyranny of every kind; but should the character of the Legal Profession become degraded,—should the members of that Profession abuse their powers, betray their trust, and dishonour their station, those forms, instead of continuing the "shield of the innocent," would indeed become "the sword of the oppressor." The probability of such a result, however, diminishes every day; and the statute of Edward I, which has, to the honour of the Profession, been very rarely called into operation,—so rarely, that it is now deemed almost obsolete,—will become nothing but a historical fact, recording the necessity which existed in ancient times for providing by law and penal enactments against those offences which advancing intelligence, and improved morals and manners, have completely prevented.

LEGAL INTELLIGENCE.

Court Papers.

N.B. The following were omitted last week through an accidental mistake in the office.

CHANCERY CAUSE LISTS.

MICHAELMAS TERM, 1844.

APPEALS BEFORE THE LORD CHANCELLOR,
And Causes, &c. for hearing before the other Equity Judges.

Before the LORD CHANCELLOR.

Clun Hospital v. Earl Powis
Attorney-gen. v. Earl Powis
Marquis of Westminster v Morrison
Sheffield Canal Company v. Sheffield and Rotherham Railway Company
Tulloch v. Hartley
Strickland v. Strickland, three appeals
Brown v. Bees, appeal
Bruin v. Knott, appeal
Matthew v. Brise
Duke of Leeds v. Earl Amherst
Spalding v. Ruding
Millar v. Craig
Cochrane v. Cochrane, two appeals
Davenport v. Bishop
Clifford v. Turrell
Parsons v. Bignold
Forbes v. Peacock
Forman v. Nevill
Marquis of Hertford v. Lord Lowther
Tyler v. Hinton
Miln v. Walton
Sandon v. Hooper
Vanderleur v. Blagrave
Marquis of Hertford v. Lord Lowther
Livesey v. Livesey, ten appeals
Crosley v. Derby Gas Company
Parker v. Bult
Marquis of Hertford v. Lord Lowther
Ladbroke v. Smith
Hitch v. Leworthy
Caore v. Lowndes
Minor v. Minor, two appeals
Drake v. Drake
Dalten v. Hayter
Baggott v. Meux
Payne v. Banner
Dobson v. Lyall
Moorat v. Richardson
Millbank v. Collier
Deeks v. Stanhope
Wiltshire v. Rabbitt
Smith v. Earl of Effingham
Archer v. Hudson
Decks v. Stanhope.

Before the MASTER OF THE ROLLS.

Attorney-gen. v. Commonalty and Citizens of London
Gibson v. Chaytor
Cruikshank v. M'Vicar
Barker v. Walters
Same v. Same
Taylor v. Wild
James v. James
Johnson v. Todd
Walton v. Potter
Attorney-gen. v. Potter
Langley v. Fisher
Richardson v. Horton, three causes
Conolly v. Farrill
The Attorney-gen. v. Bedingfield, two causes
Marshall v. Mellersh
Hornby v. Houghton
Snook v. Watts
Hale v. Bexley, two causes
Chidwick v. Prebble
Gibson v. Nicol, two causes
Westfield v. Stipworth
alton v. Gilmore
omfield v. Eyre
ard v. Audland
adley v. Groom
bertson v. Morrice
llcross v. Hibberson, six causes
Otley v. Gilby
Curtis v. Robinson
Powell v. Wright, four causes
The Mayor of Ludlow v. Charlton
The Attorney-Gen. v. The Ironmongers' Company
Score v. Ford
Bordic v. Brom y
Waring v. Lee
Kightley v. Frimley, two causes.
The Attorney-gen. v. Lewis
Earl of Dundonald v. Norris
Marquis of Hertford v. Lord Lowther
Beauclerk v. Ashbromham
Wiggins v. Wiggins
The Attorney-gen. v. Troughton
Barlow v. Gains
The Attorney-Gen. v. Long, three causes
Wynn v. Heavingham
Fernhough v. Gurdis, three causes
Rogers v. Masey
Radburn v. Mervis
Fraser v. Wood
Hammett v. Ledsam
Collins v. Bure
Flown v. Hartopp
Montrison v. Montrison
Davenport v. Charlesworth
Watson v. Parker
Johnston v. Rowlands
Lewis v. Lewis
Barton v. Chambers, three causes
Boschette v. Power
Kirkland v. Kirkland
Wintle v. Burton
Farquhar v. The East India Company
Morgan v. The East India Company
Dick v. Lacy
Hotham v. Somerville
Conolly v. Dutcher
Vince v. Overton.

Before the VICE-CHANCELLOR OF ENGLAND.

Sharp v. Le Pipre
Gaucias v. Ricardo
The Peninsular Company v. Claxton
Huxtable v. The State of Illinois
Forman v. Brooks
Coulstring v. Coulstring
Fanshawe v. Walter
Manton v. Rowe
Tremlett v. Lamb
Richards v. Wood, two causes
Bazalgette v. Kirlew
Frankum v. Bunny
Palmer v. Paterson
Branscomb v. Branscomb
Montague v. Cator, three causes
Wilson v. Jones
Milnes v. Fay
Rainbow v. Lamb
Templeman v. Brelsforth
Freeman v. Roberts
Carter v. Jeffery
Carmichael v. Hughes
Shackel v. Marlborough
Matthews v. Gabb, three causes
Avarne v. Browne
Boydell v. Golightley, three causes
Breeze v. Hawker, two causes
Bonner v. Hatch
Carrington v. Joyce
Burfoot v. Moore, two causes
Minter v. Wraith
Trulock v. Robey
Calley v. Brooking
Cooper v. Richardson, seven causes
Palmer v. Horton
Lipscombe v. Purkes
De Medina v. Ginger
Lechmere v. Oakley
Baxter v. Atkinson
Craddock v. Piper, four causes
Johnson v. Johnson, three causes
Shute v. Shute
Rogers v. Rogers
Greenwood v. Taylor, two causes
Preston v. Melville
Dowley v. Winfield
Watson v. England
Bruce v. Macpherson
Williams v. Prideaux
Orred v. Whitley
Marsh v. Pike
Pearse v. Brooke
Knight v. Wilmot
Ryle v. Sharpe
Player v. Watson, two causes
Dunhelm v. Vent
Anson v. Ingram.

Before Sir J. KNIGHT BRUCE.

Rocke v. Cooke
Tiley v. Smith
Gibson v. Steward
Dodsworth v. Kinnaird, two causes
Nedby v. Nedby, two causes
Clayton v. Lord Nugent
Thwaites v. Foreman
Bristow v. Wood, two causes
Cuming v. Thrower, two causes
Lyon v. Colvil, two causes
Doyne v. Cartwright, two causes
Craik v. Lamb
Barber v. Leggatt
Dean v. Hall
Chillingworth v. Chillingworth, two causes
Lodge v. Gray
Wood v. Cooper
Boazman v. Cazenove
Mason v. Birkett
Hunt v. Roberts, four causes
Lewis v. Lipscombe
Forbes v. Lawrence
Wood v. Anderson
Holland v. Lipscombe
Branson v. Bickley
Williams v. Wood
Smith v. Meyrick, two causes
Murrells v. Vialls
Childs v. Fountain
Artis v. Artis
Thompson v. Lewell, two causes
Pemberton v. Pemberton
Davis v. Morrier
Adams v. Paynter, three causes
Hawley v. Spencer
Lampkin v. Royle
Brigg v. Hobson.

Before Sir J. WIGRAM.

Ridgway v. Roberts
Lund v. Blanshard
Broad v. Robinson
Barnett v. Deane
Vincent v. The Bishop of Sodor and Man
Neeld v. The Duke of Beaufort, two causes
Johnson v. Child
Butler v. Fleming
Harris v. Harris
Rawlins v. Moss
Bond v. Graham
Clements v. Tibbs
Cooke v. Fryer, three causes
Woodward v. Conebeer, two causes
Percival v. Carter
Mallalieu v. Miller
Penfold v. Bonch
Neesom v. Clarkson
Vivian v. Cochrane
Roberts v. Marchant
Hughes v. Wall
Hedger v. Yates
Thompson v. Tooley
Gerner v. Hallam
Dobson v. Hooper, two causes
Egginton v. Burton
Fry v. Fry
Stonard v. Stiff
Lee v. Pain
Massey v. Moss
Turner v. Pott, two causes
Rochester v. Gibson, two causes
Phillips v. Burwash
Cartledge v. Johnson
Sharp v. Collard, two causes.

COMMON LAW COURTS.

Sittings appointed to be held in Middlesex and London in and after Michaelmas Term, 1844.

COMMON PLEAS,
Before Sir N. C. TINDAL, C. J.

IN TERM.

MIDDLESEX.	LONDON.
Friday, Nov. 8.	Wednesday, Nov. 13.
Friday, Nov. 15.	Wednesday, Nov. 20.

AFTER TERM.

Tuesday, Nov. 26.	Wednesday, Nov. 27.

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Wednesday, the 27th of November, in London, no causes will be tried, but the Court will adjourn to a future day.

CAUSE LISTS, MICHAELMAS TERM, 1844.

COURT OF QUEEN'S BENCH.

New Trials remaining undetermined at the end of the sittings after Trinity Term, 1844.

For Judgment.

Corporation of Colchester v. Brooke
Pritchard v. Powell and Others
Stamp v. Sweetland
Leeman v. Lloyd
Wilkinson v. Lloyd
Bird v. Jones.

Michaelmas Term, 1842.

Corporation of Colchester v. Brooke (second case).

Michaelmas Term, 1843.

Middlesex—Rogers v. Brenton
Willoughby, clerk, v. Willoughby, bart.
Same v. Same
Norfolk—Berney v. Read
Surrey—Angell v. Angell
Todd v. Stewart, part heard.

Hilary Term, 1844.

Middlesex—Clifton v. Hooper and Another
Phillips v. Shervill
Hunter v. Caldwell
Needham, esq. v. Rawbone
Balls, Executrix, &c. v. Thick
Bax v. Beetham
London—Gillett v. Whitmarsh and Others
Hart, Administrator, &c. v. Stephens
Bate and Another v. Rowlinson
Yates, a pauper, v. Tearle and Others
Middlesex—Lyon the younger v. Boroughs, tried during Hilary Term. 1844.
Hopkins v. Richardson, ditto.

Easter Term, 1844.

Middlesex—Duncan v. Louch
Same v. Same
Doe dem. Tebbutt and Others v. Brent and Others
Holloway v. Turner
London—Rolfe v. Reynolds the Elder
Martin v. Wright
Cobb v. Beck and Another
Kent—Allen v. Hayward
Doe dem. Muston v. Gladwin
Mayor, &c. of Rochester v. Levey
Surrey—Hopkinson v. Lee
Baynton v. Seal and Another
Bucks—Doe dem. Brise v. Brise
Cambridge—Reg. v. Mortlock
Norfolk—Hunt and Another v. Jones
Chester—Wharton v. Walton
Worthington v. Grimsditch, sp. c.
Worcester—Reg. v. The Rev. M. Smith
Stafford—Bromley v. Spurrier
Gloucester—Holford v. Bailey
Green v. Pryce
Hants—Doe dem. Edney and Others v. Wise
Devon—Mayor, &c. of Saltash v. Finnymore
Woolcombe v. Sleeman
Somerset—Gale v. Bernal
Northampton—Simons v. Spier
Lincoln—Mayfield v. Robinson
Doe dem. Swinton v. Coote
Notts—Spencer v. Carlen
Derby—Doe dem. Vevers v. Ault
Winterbottom v. Ingham
Warwick—Elliott v. Blackwell
Carlisle—Topping v. Hayton
Yorkshire—Doe dem. Corporation of Richmond v. Morphett
Gibson v. Call and Others
Adams, a pauper, v. Hartley
Ferrand v. Milligan
Dawson v. Gregory
Liverpool—Hargreaves and Another v. Wood and Another
Pow v. Taunton and Another
Aikin v. Faith and Others
Middlesex—Littlechild v. Banks, tried during Easter Term, 1844
Brooks v. Bockett, 1844
Same v. Same
Skilbeck and Another v. Garbett.

Trinity Term, 1844.

Middlesex—Harrison v. Varty
Same v. Same
Gladman v. Plumer
Mercer v. Bartlett, tried during Trinity Term, 1844.
Croucher v. Currie
Moses v. Jacobson.

SPECIAL PAPER.

Special Cases and Demurrers.

Howard v. Gossett, dem.
The Corporation of the London Assurance Company v. Bold, sp. case
Doe several dems. Warwick and Another v. Coombes and Another, sp. case
Adams v. Adams, ditto
Fletcher the younger v. Calthrop and Another, dem.
Van Sandau v. Turner and Another, ditto
Planché v. Hooper, sp. case
Lane and Others v. Hooper and Another, dem.
Kendall v. Corles, ditto
Baker v. Beadle the elder, ditto
Graham v. Jackson, sp. case
Graham and Others v. Witherby and Another, ditto
Pargeter and Others v. Harris, dem.
Perry v. Fitz Howe, ditto
Green and Another, Lessees, &c. v. Wood and Another, sp. case
Ekin and Another v. Flay, ditto
Graham and Others, Assignees, v. Lynes, ditto
Prothero v. Phelps, dem.
Mortimore v. Moore and Another, ditto
Gregory v. The East India Company, ditto
Miles v. Bough, ditto
Scarpelini v. Atcheson, ditto
Orgar v. Horne, ditto
Doe dem. Wood and Another v. Clarke, sp. case
The St. Catherine's Dock Company v. Higgs, ditto
Hanmer v. Eyton, case from New Trial Paper
The Company of the Proprietors of the Kennett and Avon Canal Navigation v. The Great Western Railway Company, sp. case
Fannin v. Anderson, dem.
Teece v. Brown and Others, ditto.
Robins v. Marchant, ditto
Elwell v. Birmingham Canal Company, sp. case
Nicholls v. Stretton, dem.
Peake v. Screech, ditto

Belcher and Others, assignees, &c. v. Campbell and Anor. sp. case
Selby v. Brown, dem.
Edmunds v. Punniger and Others, ditto
Doe dem. Dand v. Thompson, sp. case
De Minton and Others v. Goode, dem.
Vine v. Bird, ditto
Rance v. Dyball, ditto
Alderson v. Cargill and Others, ditto
Taylor v. Stendall, ditto
The Mayor, &c. of Lichfield v. Simpson, ditto
Wrightup v. Greenacre, ditto
Clarke and Others v. Tinker, sp. case
Penny v. Gabriel and Others, dem.
Findon v. Mc Laren, jun. ditto
Hartley and Another v. Manton and Another, ditto
Pilkinhorn v. Wright, ditto
Nicholas v. Wright, ditto
Bonlet v. Maire, ditto
Coopers' Company v. East India Company, ditto
Shield v. Loraine, ditto.

ENLARGED RULES.

First Day.

Bland v. Dax
Wright v. Madocks and Another
Re Remington and Others
Mc Intosh v. Hamilton
Re Fenton and Another
Twycross v. King
Bunnett and Another v. Breeze and Another.

Second Day.

Evans and Another v. Collins and Another
Price v. Carter
Re Robert Whall
Doe dem. Spilsbury v. Burdett
Richmond v. Earl of Oxford
Young v. Hickens
Reg. v. Inhabitants of Darton
——— Clement Royds and Others, Justices, &c.
——— George Wilson and Others
——— The Trustees of the Weymouth and Dorchester Roads
——— Hodgson and Others, Justices, &c.
——— William Mousley, clerk.

Third Day.

Re Anderson in a cause—Keir v. Leeman
Munn v. Ditch
Same v. Same
Dursdale v. Atkinson
Apted v. Tichner
Reg. v. J. Sydserff and Another
——— Inhabitants of Heanor.

COURT OF COMMON PLEAS.

REMANET PAPER.—*Michaelmas Term*, 1844.

Enlarged Rules.

Enlarged generally.

Johnson and Others, assignees, v. Shaw and Another
Dawson and Another v. Sunley
Wood v. Weatherby and Another.

New Trials of Easter Term last.

Middlesex—Collins v. Savage and Another
London—The Fishmongers' Company v. Robertson and Ors.
Iley v. Frankenstein
Wilkinson v. Earl of Lichfield
Metcalf and Another v. Busby
Glamorgan—Doe (Morgan and Others) v. Powell and Ors.
Suffolk—Carmac, knight, v. Warrner
Chester—Doe (Caldecott v. Johnson).

New Trials of Trinity Term last.

Middlesex—Eliot v. Allen and Others
Gilling v. Dugan
London—Walton v. Rumsey
Gerish v. Chartier.

CUR. ADV. VULT.

Grinnell v. Wells
Coxhead v. Richards
Pontifex and Another v. Wilkinson
Lunn v. Thornton
Pim v. Grazebrooke and Another, argued 2nd June, 1843.

DEMURRER PAPER.

Friday, November 8.

Grant v. Hunt, P. O.
Aspinall v. Andus
Williams v. Burrell, bart. and Another
Nicholls v. Payne
Steele v. Pope
Rastrick v. Beckwith and Others
Bentley v. Goldthorp and Another
Marriage v. Marriage
Burgess v. Beaumont
Rannie v. Irwin
Beckett v. Bradley
Walker v. Petchell
Harrup v. Cooke
Griffiths v. Dunnett
Thompson and Another v. Small
Legge v. Boyd
Edgell v. Curling.

Wednesday Nov. 13.

Bittleston and Another, Assignees, v. Timmis
Roberts v. Tayler and Others.

Friday, Nov. 15, *and Wednesday, Nov.* 20, *Special Arguments.*

COURT OF EXCHEQUER OF PLEAS.

SPECIAL PAPER.

Remanets for Michaelmas Term, 1844.

For Argument.

Smith, secretary, &c. v. Hopkinson, sp. case. (To stand over until similar case disposed of in Court of Error.)
Denton v. The North Midland Railway Company, sp. case
Youde v. Jones, sp. case from Chancery
Mallan and Another v. May, ditto
Coulton v. Ambler, sp. case, order of Mr. Baron Rolfe.

NEW TRIAL PAPER

For Judgment. Moved Easter Term, 1844.

Liverpool—Mr. Baron Rolfe. Rogers v. Maw.

For Argument.

Moved Hilary Term, 1844.

London—Lord Abinger. Acraman v. Cooper and Others

Moved Trinity Term, 1844.

Middlesex—Mr. Baron Parke. Heath v. Unwin
Franklin v. Neate

London—Lord Chief Baron. Daily and Another v. Loveday.

PEREMPTORY PAPER,

To be called the First Day of Term after the Motions, and to be proceeded with the next day, if necessary, before the Motions.

Date Rule Nisi.

4th June, 1844. The Mayor, Aldermen, and Burgesses of the Borough of Ludlow, in the county of Salop, v. E. L. Charlton, esq.

Sittings in Michaelmas Term, 1844.

	Banc.	*Nisi Prius.*
Saturday, Nov. 9	Lord Mayor sworn in and Crown cases	......
Monday 11	Special Paper	Midd. 2nd sitting.
Tuesday 12	Errors and Sheriffs chosen	......
Wednesday 13	Special Paper	......
Thursday 14	......	......
Friday 15	......	......
Saturday 16	......	......
Monday 18	Special Paper	Lond. 2nd sitting.
Tuesday 19	......	Ditto by adjournmt.
Wednesday 20	Special Paper	Midd. 3rd sitting.
Thursday 21	......	......
Friday 22	......	......
Saturday 23	......	......
Monday 25	......	......

COURT OF REVIEW.

Michaelmas Term, 1844.

Before the Right Hon. Sir J. L. KNIGHT BRUCE.

Adjourned Petitions.

Norton v. Wood | Price v. Gibbs
Fell v. Fell.

New Petitions.

Alexander v. Burbey
Whitmore v. Hunt
Cotton v. Nutter
Jones v. Morrison
Gregory v. Fairclough
Hornby v. Prichard
Burridge v. Winchester
Smoulten v. Halford
Burt v. Page
Swainson v. Leecene
Falls v. Jackson
Kitching v. Jackson
Cleoburey v. Mills
Vignoles v. Whitmarsh
Johnson v. Davis
Garnett v. Garnett
Hammond v. Hammond
Stratton v. Deakin
Norton v. Wood
Turner v. Cundrey
Wilde v. Wilde
Price v. Gibbs
Hedley v. Emmerson
Robson v. Combeere
Wood v. Smith
Honnofield v. Crick
Sorby v. Sayle.

OFFICIAL RAILWAY ANNOUNCEMENT.

(From Friday's *London Gazette*.)

Railway Department, Board of Trade, Whitehall, Oct. 24, 1844.

Referring to the notice in the *Gazette* of the 23rd of August, announcing the intention of the Railway Board to examine into certain schemes therein enumerated, with a view to the presentation to Parliament of minutes or reports thereon, in the event of their becoming the subjects of application to Parliament, the board hereby give notice, that it is further their intention to examine, with a similar view, into the following schemes—viz.:—

1. Schemes for extending railway communication to Goole and to Great Grimsby.

2. Branches from and extensions of the Eastern Counties and Northern and Eastern Railways.

3. Railway communication between London and Norwich, and other schemes, in the counties of Norfolk, Suffolk, Cambridge, and Essex.

4. Branches from the Edinburgh and Glasgow Railway, Clydesdale Junction, and Edinburgh and Galashiels schemes.

5. Extension of the York and Scarborough and Hull and Selby Railways to Bridlington and Driffield.

6. Schemes for connecting Birkenhead with Manchester and Stockport.

7. South Junction through Manchester, Ashton and Stockport Junction, and Manchester and Buxton.

8. Bolton, Wigan, and Liverpool, and other schemes, in the district between the Bolton and Preston and the Liverpool and Manchester Railways.

9. Blackburn, Burnley, and Accrington, and other railway schemes, in the district between the Bolton and Preston and Manchester and Leeds Railways.

10. Birmingham and Shrewsbury and Shrewsbury and Chester schemes.

11. Worcester and Wolverhampton and other schemes for extending railway communication in Worcestershire and Staffordshire.

12. Schemes for extending railway communication to the Potteries.

13. Schemes for extending railway communication to Falmouth.

14. Schemes for extending railway communication to Staines and Windsor.

15. Schemes for making railway communication in Ireland from Dublin to Cork, Limerick, Cavan, Galway, Enniskillen, Londonderry, and Waterford; between Londonderry and Enniskillen; between Cork and Bandon; between Cork and Waterford; between Cork and Limerick; and completing railway communication between Dublin and Belfast.

The principal points into which inquiry will be made, in connection with the above schemes, are as follows:—

1st. The ability and *bonâ fide* intention of the promoters to prosecute their application to Parliament next session for Bills to authorize the several undertakings.

2nd. The advantages to be obtained, in a national point of view, in completing or extending important lines of railway communication.

3rd. The amount of local advantage afforded to the towns and districts more immediately affected.

4th. The engineering circumstances of the line, so far as may be necessary to form a general judgment of the character of the undertaking.

5th. The estimates of cost of construction, and of traffic and working expenses, so far as may be necessary to judge of the probability of the line being completed and efficiently worked in the event of its being sanctioned by Parliament, and with a view to drawing a comparison between the merit of competing lines of railway.

The inquiry, in conformity with the recommendation of the fifth report of the Select Committee on Railways, will not embrace questions of private property or interest, which will be reserved altogether for the consideration of the Legislature.

(Signed) DALHOUSIE,
C. W. PASLEY, G. R. PORTER,
D. O. BRIEN, S. LAING.

LAW INSTITUTION—SIX CLERKS' COMPENSATION.

In our report of the annual meeting of the above institution, on the 28th of August last, it was admitted by Mr. Bryan Holme, of New Inn, one of the committee of management, at that meeting, that the sub-committee of that institution, to whom the Act under which these enormous compensations had been awarded had been submitted by Mr. Wainwright (one of the compensated to whom the task of drawing it had been intrusted), consisted of Mr. Foss (not then a solicitor, and now no longer a member of the committee of management), of Mr. Martineau, and Mr. Follett, who had both obtained the appointment of taxing-masters under the Act, and of Mr. Field, who had written in defence of these compensations; neither Mr. Follett nor Mr. Field being upon the committee of management, and being, therefore, utterly incapable of forming part of a sub-committee of the committee of management. Mr. Foss, the chairman of the meeting, in order to relieve the society from the imputation cast upon it of having sanctioned these compensations, stated at the meeting that, though it was true papers had been submitted by the committee of management to the Master of the Rolls, it was not true that they had in any manner sanctioned these compensations: they had followed the example of Lord Cottenham in not giving any opinion upon the subject, trusting that they would have received due consideration in the House of Commons.

Mr. Martineau and Mr. Foss, the only members of the committee of management who were upon the pretended sub-committee, have since severally sent in their resignation as members of the committee of management; the society has, therefore, done all in its power to purge itself of the imputed offence of having sanctioned these compensations.

We are happy to learn that it is the intention of Mr. Watson to renew his motion in the Commons for inquiry into these compensations, and the several other charges on the suitors' funds, early in the ensuing session; in support of which motion a petition has been prepared from the solicitors of the Court of Chancery, and is lying for signature at the Law Institution in Chancery-lane.—*Morning Chronicle.*

THE LORD CHANCELLOR'S DEJEUNER.

On Saturday last, being the first day of Michaelmas Term, the Lord Chancellor gave his customary breakfast to the judges and law officers at his private mansion in George-street, Hanover-square. From these entertainments having been reduced from four annually to only two, namely, on Michaelmas and Easter Terms, the attendance of Queen's Counsel is now more numerous than was generally the case before, and on this occasion we remarked a very full meeting. Previous to the arrival of the judges, the Lord Mayor elect, attended by the Sheriffs, the Recorder, Sir Chapman Marshall, Sir Claudius Hunter, Sir John Key, and Alderman Farncomb, waited upon the Lord Chancellor, as usual upon the first day of Michaelmas Term, to receive the formal approval of the Queen to the election of the citizens of London.

The Lord Chancellor then received the judges. Among the guests of his lordship were the Lord Chief Justice of the Queen's Bench, Lord Denman; the Master of the Rolls, Lord Langdale; the Vice-Chancellor of England, Sir Lancelot Shadwell; the Lord Chief Justice of the Common Pleas, Sir Nicholas C. Tindal; the Lord Chief Baron of the Exchequer, Sir Frederick Pollock; Baron Parke, Baron Alderson, Justice Patteson, Baron Gurney,

Justice Coleridge, Justice Coltman, Justice Maule, Baron Rolfe, Justice Wightman, Justice Cresswell; the Solicitor-General, Sir Frederick Thesiger; Sir Thomas Wilde, Mr. Horace Twiss (Vice-Chancellor of the County Palatine of Lancaster), Mr. Harrison, Mr. Pemberton, Mr. Law, Mr. Knight, Mr. W. F. Boteler, Mr. A. Simkinson, Mr. Joy, Mr. D. Pollock, Mr. J. Balguy, Mr. Serjeant Andrews, Mr. Serjeant Merewether, Mr. Serjeant Atcherley, Mr. Serjeant Talfourd, Commissioner Holroyd, Commissioner Barlow, Commissioner Winslow; Masters in Chancery—Sir Giffin Wilson, Mr. J. E. Dowdeswell, Mr. S. Duckworth, and Sir George Rose; Messrs. W. Erle, M. D. Hill, W. Burge, D. Wakefield, H. J. Shepherd, H. Barber, J. Miller, G. Spence, T. Kindersley, T. J. Platt, Fitzroy Kelly, C. Swanston, R. Alexander, J. Stuart, Wakeford, William Whateley, R. Godson, R. Bethel, C. J. Knowles, Thomas Baines, C. Austin, the Hon. Jas. Stuart Wortley, A. J. E. Cockburn, George J. Turner, D. Dundas, R. B. Armstrong, F. Whitmarsh, Matthews, Koe, Lowndes, Purves, Walker, Parker, Russell, Roupell, Anderton, L. Wigram, R. Parker, Davies, Cooper, Wood, &c.

The Attorney-General, Sir William Follett's, absence was unavoidable, the learned gentleman being on the Continent for the benefit of his health.

The entertainment was of the usual character, mulled wine being served round to the company as well as confectionaries.

At the conclusion of the *déjeûner* the party proceeded in procession to open the courts of law at Westminster.

The Lord Chancellor has appointed Benjamin Roore, of Amlwch, in the county of Anglesey, gentleman, a Master Extraordinary in the High Court of Chancery

The Lord Chancellor entertained Lord Denman, Lord Langdale, Sir Lancelot Shadwell, Sir N. C. Tindal, Lord Chief Baron Pollock, Baron Parke, Justice Patteson, Baron Alderson, Justice Coleridge, Mr. Erle, Mr. H Twiss, Commissioner Barlow, and Mr. Stewart, at dinner on Tuesday evening, at the noble and learned lord's residence in George-street, Hanover-square.

Mr. Erle was on Monday sworn in as successor to Mr. Justice Erskine This appointment reflects credit upon the Government. It will give the highest satisfaction to the public, as it has already done to the Bar.

INDISPOSITION OF SIR L. SHADWELL.—The following notice was posted in the Vice Chancellor's Court on Wednesday morning.—"His Honour the Vice-Chancellor of England will not sit to-day in consequence of indisposition. Nov. 6, 1844."

COURT OF COMMON PLEAS, THURSDAY.—THE NEW JUDGE.—Mr. Erle, of the Western Circuit, at the sitting of the Court this morning, was admitted, with the usual ceremonies, to the estate and degree of a serjeant-at-law, preparatory to the learned gentleman's taking his seat on the bench of this court.

ATTORNEYS.—MICHAELMAS TERM.—194 gentlemen have given notice of their intention to apply to be admitted to practise during the present Term, and there are 21 notices for re-admission.

WINTER ASSIZES.—It having been finally decided to hold an additional gaol delivery at the following places, the judges met on Tuesday, and made the following arrangement. The days for holding the assizes have not been appointed:—Mr. Baron Alderson will preside at Winchester, Exeter, and Wells; Mr. Justice Patteson, at Nottingham, Derby, Leicester, and Warwick; Mr. Baron Gurney at Liverpool and Chester; Mr. Justice Williams, at Norwich, Bury, Chelmsford, and Maidstone; Mr. Justice Coleridge, at York and Durham; Mr. Justice Coltman, at Stafford, Shrewsbury, Worcester, and Gloucester.

REGISTRATION APPEALS.—Monday, the 18th of November, and Thursday, the 21st of November, are the days appointed by the Court for hearing the appeals from the decisions of the Revising Barristers.

CLERK OF THE CROWN-OFFICE IN CHANCERY.—By an Act of the last sessions (7 & 8 Vict. c. 77) the salary of the Clerk of the Crown in Chancery was increased from 500*l.* to 1,000*l.* a year. Power was also given to give superannuations to officers and clerks in the office out of the fee fund, which fund was to be replenished, if occasion required by the consolidated fund.

PROCEEDINGS OF LAW SOCIETIES.

LINCOLNSHIRE LAW SOCIETY.

This Society has prepared the following petition upon a a subject of very great importance, to which the early attention of the Profession should be given:—

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble petition of the undersigned attorneys, solicitors, and proctors, residing at ———, within the county of Lincoln,

Sheweth,—That by an Act of Parliament, 25 Geo. 3, c. 80, for granting duties on certificates to be taken out by solicitors, attorneys, and others, every attorney, solicitor, and proctor, was required to take out an annual certificate, on which, if he resided in London or Westminster, or within the Bills of Mortality, there was charged a stamp duty of 5*l.*; and if he resided in any other part of Great Britain, a stamp duty of 3*l.*

That such annual certificate duties have, by various Acts, and ultimately by the Act 55 Geo. 3, c. 184, been increased to the following amounts, viz.:—

	£	s.	d.
Every attorney, solicitor, and proctor, residing within the limits of the twopenny post, having been admitted for three years or upwards	12	0	0
If he has not been admitted so long	6	0	0
If he resides elsewhere, and has been admitted three years	8	0	0
If he has not been admitted so long	4	0	0

That by the last-mentioned Act a stamp duty of 120*l.* is also charged upon all articles of clerkship to an attorney, solicitor, or proctor, without reference to the amount of premium; and a further stamp duty of 25*l.* is charged upon every admission of an attorney, solicitor, or proctor, and which, with the fees paid thereon, amount in the whole to the sum of 150*l.*; while the clerks or apprentices in all other businesses only pay a stamp duty on the indentures, calculated by a scale in proportion to the amount of premium paid, and in no case does such stamp duty exceed 60*l*

	£	s.	d.
That the duties on articles of clerkship, upon an average for 10 years, ending July 1835, have amounted annually to	69,960	0	0
On admissions, to	8,330	0	0
And on certificates, to	72,187	0	0
Making a total annual sum of	£150,477	0	0

That the supposed profits of the business of an attorney, solicitor, or proctor, are greatly over-rated; for his bill of costs generally contain large sums of money disbursed for stamps, counsel's fees, and otherwise, which are frequently not repaid to him for so long a time, that the mere loss of interest on the capital very much reduces, and sometimes wholly exhausts, his profits.

That by the operation of some recent alterations in the law and the practice thereof, and enactments referring to the preparation of deeds and other documents, the profits of an attorney and a solicitor have been much diminished, although his disbursements continue very nearly the same as they have been for several years past.

That your petitioners, from their position in society and habits, are necessarily paying considerable sums to the assessed taxes, and also with members of the other profession) an income tax on their profits, which are uncertain and cease with their lives.

Your petitioners submit these duties, and particularly the duty on annual certificates, are not founded on any just and equal principle of taxation, but are a direct personal and partial tax upon persons exercising one particular branch of the legal profession only, whilst persons exercising other professions, and those engaged in the higher branch of the profession of the law, are exempt from similar taxations.

Your petitioners, therefore, most humbly pray your honourable House that they may be relieved, either wholly or in part, from the payment of the annual duty on certificates; or that your honourable House will be pleased to grant such further or other relief in the premises as to your wisdom and justice shall seem meet.

And your petitioners shall ever pray, &c.

THE LONDON POLYGLOT LEGAL AND COMMERCIAL TRANSLATING INSTITUTION AND BUREAU DES ETRANGERS.—A meeting, numerously attended by gentlemen connected with British and Foreign law and commerce and with the translating business, took place at Tom's Coffee-house, Cornhill, on the 6th inst. Charles Trautvetter, esq. in the chair, for the purpose of considering the best mode of carrying into effect the views of H. F. Edwards, esq. the promoter of the institution. A long discussion ensued, during which was elicited much curious information, and many facts brought under consideration highly important to the legal and commercial world. Ultimately resolutions were passed, highly laudatory of the plan, and pledging the meeting to carry it out in its fullest extent, and the meeting separated. It will be seen from an advertisement in another place, that the Institution has since been provisionally registered, pursuant to the Joint Stock Companies Act of the 7 & 8 Vict. c 110, which has just come into operation, the object of which, by the way, is as excellent as its provisions are ill-considered and badly arranged. The present *locale* of the new Institution is 15, New Broad-street.

CORRESPONDENCE.

TRANSFER OF PROPERTY ACT.

(Points as to Duty, &c.)

TO THE EDITOR OF THE LAW TIMES.

Sir,—I wish to draw the attention of yourself and your readers to the provision relative to stamp-duty under the above Act, and, as incidental thereto, the like provisions under two other Acts.

The words in this Act are, "Provided always, that every such deed shall be chargeable with the same stamp-duty as would have been chargeable if such conveyance had been made by lease and release." And truly may this be characterized as a rare specimen of legislative bungling. A deed shall have a certain effect, forsooth, provided always that it be chargeable with a certain duty! But is it made chargeable therewith? Does this proviso amount to a *charge*, or whence shall the chargeability arise? I submit, Mr. Editor, that this proviso does *not* constitute a charge, that there is no imposition of a duty to be levied and raised, &c.; and, consequently, that the proposed new deed, until it be by some means made chargeable within the language and literal meaning of the proviso, must needs be a mere nullity, and the Act itself, so far, a mere laughing-stock; worse even than that of the *Great Britain* steamer, or Sterne's hapless bird, with its "can't get out."

But, even were the provision sufficient to effect a chargeability, to what does it amount? Grant that the deed is *chargeable*,—to whom, by whom, when, and in what manner is the duty to be paid? Suppose such a deed produced in court, having only the conveyance-duty impressed, without any lease-duty; the adverse counsel objects to its being received in evidence: "This deed," says he, "is chargeable with further duty; here is the Act 7 & 8 Vict. c. 26, s. 2, which says, 'every such deed shall be chargeable,' &c." "Nay, but," replies my Lord Judge, "the Act does not require that the parchment or paper should be stamped; for aught we know, the duty has been paid; at all events we cannot presume, nor can any one prove, non-payment; all we know is, that the Act made the deed chargeable; it does not go on to say that any duty shall be *paid*, still less that the duty shall be denoted on the instrument. If it has not been paid (which we really cannot presume), it would still remain chargeable, and that is all that can be said about it; the objection, therefore, must be overruled."

Passing over this, however, and taking up the question upon another ground, we are to observe, that such deed shall be chargeable with the same duty as would have been chargeable if such conveyance had been made by lease and release—not, be it observed, by lease *for a year* and release, but by any kind of lease and release. Now, at the present moment, there are four several heads of lease-duty in force, viz. the lease (or bargain and sale) for a year; the lease in consideration of fine; the lease at a yearly rent; and the lease not otherwise charged; and it is competent to her Majesty's liege subjects so to frame their conveyances as that any one or other of these leases shall form the basis or groundwork thereof; nay, by introducing a lease *for less* than a year in the same instrument with a release, there is an avoidance of all duty on the lease, as such, and hence a fifth chance of variance in the duty on a lease and release. Now, I pray you, my noble Lords and honourable Commons, which of these said duties are the identical ones wherewith our new deed is to be chargeable? Why, the learned judges themselves would be absolutely bewildered in the attempt to arrive at any legal solution of the question! In the all-honoured words of Lord Denman, it is "a mockery, a delusion, and a snare."

I write not thus from any bitterness towards the Act itself; on the contrary, I admire and welcome it in a general sense; but this careless botching about the stamp-duty I cannot help treating with the most unreserved contempt—the concoctors were no hands whatever at that part of the business, and better far that they had wiped their hands of it.

Turn we now to the previous lease-dispensing Act of 4 & 5 Vict. and we find the same fault was there committed in creating a chargeability without saying how, where, by whom, or *when payable*; but this is as nothing compared with the Wills Act of 1 Vict. s. 4, which enacts, that persons claiming copyholds under certain circumstances shall not be entitled to admittance except upon payment of such stamp duties, &c. as would have been payable in respect of the surrendering such estate to the use of the will (but upon which, in fact, there is no stamp-duty whatever payable); and then the clause goes on to provide against admittance under certain other circumstances, "except upon payment of all such stamp-duties," &c. as would have been payable if the ancestor had been admitted, &c.; but it is not so much as declared that the steward of the manor shall account for those duties, or that they shall be denoted upon any instrument, or in any other way made available to her Majesty's Exchequer, &c.; all these and the like regulations of a fiscal character being left entirely to the honour and good understanding of the manorial steward!!!

I advert to these latter instances as being links of the same chain with the former, and I have expressed myself the more unsparingly, seeing that these petty provisions in regard to a paltry stamp-duty are alike,

in letter and in spirit, a disgrace to the enactments wherewith they are bound up.

I am yours, &c.

Oct. 28, 1844. GEORGE AUSTIN.

STAMPS ON PROMISSORY NOTES PAYABLE ON DEMAND, WITH INTEREST.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reply to the question of your correspondent "Eboracus," contained in your last paper, "What is the proper stamp for a promissory note, payable on demand, as follows,—'On demand, I promise to pay to A B, or order, the sum of 250*l*. with lawful interest, &c.?'" I would observe that, as far as my experience goes, the practice of the Profession is to use the lower rate or class of stamp for such a note, and that 5*s*. would be the proper stamp in the case put. This practice seems reasonable enough, for what limit *could* be declared in regard to the amount of the sum to be recovered, and which, with the accruing interest, might not be demanded for six years? Under the recent Non Usury Acts, further obvious difficulties would arise if this practice were not correct. I would refer your correspondent to *Pruessing* v. *Ing* (4 B. & A. 204) and *Wills* v. *Noot* (4 Tyrhw. 726).

I am, &c.

THOS. LEONARD SHUCKARD.

Wellingborough, Nov. 5, 1844.

ATTORNEY'S LETTER—RIGHT TO DEMAND FEE FOR.

TO THE EDITOR OF THE LAW TIMES.

SIR,—This subject, which has been discussed by some of your correspondents in two or three of the late numbers of the LAW TIMES, is of considerable importance to the Profession, as well as to those of their clients who may be plaintiffs. An instance of some hardship lately occurred to a country attorney. He applied by letter, in the usual way, for payment of a debt due to a client, to which no attention was paid; a few hours after he had posted a letter instructing his agents to send him a writ of summons, a tender of the net debt was made; and although the writ was issued before he could countermand his instructions, his agents informed him the tender was effectual, and advised him to accept the debt. He ended the matter by doing so, and charged his own client costs out of pocket only.

Notwithstanding this, we apprehend an attorney's right to recover for letters *nisi* is recognized law. The subject is mooted in the 19th number of vol. 8 of the Justice of the Peace (May 11, 1844), and the editors of that work there give it as their opinion that he has such right, and treat the case of *Morrison* v. *Summers* (1 B. & Ad. 559) as establishing the point. *Kirton* v. *Braithwaite* (5 Law J. Exch. 165) does not appear to be conclusive. 6*s*. 8*d*. was an unreasonable charge for an application for payment of a debt of 8*l*. 6*s*. 9*d*.; besides, the case turns more upon the point whether the tender was made to a proper person, than upon the amount tendered. It appears that in the latter case the attention of the Court was never called to the previous case of *Morrison* v. *Summers*.

Yours respectfully,

Nov. 4, 1844. A CUMBERLAND FIRM.

STAMP ON PROMISSORY NOTE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reply to the query by "Eboracus" as to the proper stamp on a promissory note for 250*l*. payable to A B or order, on demand, I beg to refer him to the case of *Armitage* v. *Berry* (5 Bing. 501; 3 M. & P. 211), from which he will learn that a 5*s*. stamp would be correct.

I am, &c. J. CHAPPLE.

85, King-street, Cheapside, Nov. 2, 1844.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Much has recently appeared in your paper relating to professional costume; it may perhaps be interesting to your readers to be informed that in this borough, where we have a court of record, the practice of attorneys wearing gowns is still preserved and very generally adopted. In this court, the attorneys, being advocates, the Recorder, who is the judge, is in the habit, as in the superior courts, of calling upon each attorney by name to move before the business of the sessions commences; and this mark of attention he does not pay to those gentlemen who appear without the usual professional costume, who also are not recognized by the Recorder on their first appearance in court, as is usual to those who pay the expected deference to the ancient practice.

I am, Sir, yours obediently,

SAM. B. LAMB.

Reading, November 5, 1844.

TO THE EDITOR OF THE LAW TIMES.

SIR,—We, the undersigned attorneys resident at Colchester, beg to signify, that for the reasons stated by various correspondents in your journal, and otherwise, we are in favour of the practice of wearing the gowns whilst in the discharge of our public professional duties.

Dated the 30th day of October, 1844.

John H. Church.	Wm. Sparling.
F. G. Abell.	J. S. Barnes.
W. W. Francis.	Sayers Turner.
F. H. Newell.	Robt. Marriott.
Edgar Church.	F. P. Keeling.
Thos. Maberly.	Edward Daniell.
Philip Smith Sparling.	James Inglis.

SELECTIONS FROM CORRESPONDENCE.

"H. W. J." submits the following question of professional etiquette for the advice of the experienced of our readers, by which he is desirous of being guided.

I cannot help congratulating you on the progress your periodical is making in the opinion of the Profession. With the respectable members of that Profession you will doubtless be regarded as the arbiter in most of our *practical* differences. My attention has lately been drawn to the query of "A. F." in No. 82 of the LAW TIMES, and the reply of "T. H. A." in No. 83.

I am concerned for the first mortgagee of an estate, other solicitors for a second mortgagee; both mortgages having been called in, the mortgagor, for a loan to discharge them, applied to a third solicitor, who, in ignorance of my being concerned, wrote to the solicitors of the second mortgagee for an abstract of the title, which, as far as they could, they furnished *from an old abstract* in their possession, and *a draft of my client's security*, which latter was some years since prepared in their office. Upon applying to verify abstract with title-deeds, which I hold as solicitor to the first mortgagee, the proposed mortgagee's solicitor, much my senior in the Profession, stated, upon learning the facts, that the solicitors to the second mortgagee had committed a breach of professional etiquette; that *I should have furnished the abstract* (with the exception, of course, of the second mortgage-deed), and *was entitled to the fees for preparing that which he had received.* The solicitors of the second mortgagee are highly respectable, and, *if they erred at all*, did so in ignorance of any practice to the contrary—not, I think, from any wish to deprive me of fees to which I might be entitled; and I should be much obliged for the opinion of your correspondents on the point, which may at least be our guide in future similar cases. I confess I was inclined to imagine, that, having the deeds, and being concerned for the first incumbrancer, the abstract should have been furnished from my office; still, as a young practitioner, I may be mistaken, and my present intention is not to argue the question, but merely to state the facts.

"P. B. T." thus addresses us on the subject of "SALE BY MORTGAGOR:"—

It appears to me most unreasonable that a mortgagee and his solicitor should have full control over a sale by a mortgagor, and that the mortgagee's solicitor should claim a right to furnish the abstracts at the mortgagor's cost. How would it be if the mortgage-money was paid off, without the title-deeds being given up, or a reconveyance being taken? Why, of course the mortgagee must re-convey and give up the title-deeds, on being satisfied that the deed of re-conveyance was properly made; and should he demur, or cause needless delay, I apprehend a Court of Equity would saddle upon him the expense of compelling a re-conveyance and delivery of the title-deeds, on a bill being filed for such purpose. As a young practitioner, I am anxious to receive a little information on this subject, and trust your valued correspondents, "T. H. A." and "A. F." will fully discuss it, as I apprehend it is one of great practical importance to all members of the Profession.

To Readers and Correspondents.

We have received the following on the subject of Attorneys' Gowns, but the heavy business of Term will compel us to limit correspondence upon this topic to letters only of special importance. It has had enough, and perhaps too much, of discussion. *Thanks, however, to the following* opponents *of the scheme.* R. GENT, CLERICUS, J. N. (Bolton), A. Z., A SUBSCRIBER, A CONSTANT SUBSCRIBER, *who says, "there are old women enough in the Profession already,"* AN OLD PRACTITIONER; *and to the following, who approve it:* ALPHA BETA, MR. DURRANT, A GENT. One, &c. (Wakefield.)

CALEB *and* W. C. (Dudley) *have been anticipated*

A STAFFORDSHIRE SUBSCRIBER'S *is a question of* Law, *and not of Professional practice, and, therefore, within the rule of exclusion.*

ONE, &c.—*His remarks on the necessity of union among the members of the Profession are excellent, but too long for insertion at this busy season.*

E. C. E. (Sidmouth).—*Thanks for the hint. It will be adopted.*

A SUBSCRIBER (Birmingham).—*We are sorry we cannot help him to the address he seeks.*

T. B. (Norwich).—*The publication of the pocket-book is not intended for the next, but for the following year.*

AN ARTICLED CLERK *may, we think, not only with safety, but with advantage, study two or three branches of law at once, reading them at different times in the day. He should always read pen in hand, and analyse and extract the principles deduced from the cases, as he goes along.*

AN ARTICLED CLERK (Plymouth).—*The subject has long been in deliberation, and we have planned a little work on the subject, which we now only wait for leisure to execute.*

We should feel obliged to any reader who could give us information of the whereabouts of a person calling himself VALENTINE WILSON, *a managing clerk. Also, of that of a* MR. JAMES, *calling himself proprietor of* The Pianista, *and who resided some time since at St. Leonard's, in Sussex, as we have heard.*

LANCASTRIENSIS *when we have room, and* A SUBSCRIBER (Cheltenham).

F. T. D. *next week, if possible.*

W. J. POOLE (Kenilworth).—*The date of the will is not known, but it was certainly* before 1838.

G. M. Jun. *is sent to the author of the article.*

G. D. *will find the subject noticed elsewhere.*

A great number of documents relating to Sham Lawyers, the Heir-at-Law Society, and Professional Malpractices, have been received. They will be made use of in due season.

TO SUBSCRIBERS.

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at 5s. 6d. each, if forwarded to the Office.*

A PORTFOLIO, *on a novel and convenient plan, for preserving the current numbers of the* LAW TIMES *for ready reference, may be had at the Office, or by order of any Bookseller in the country, price 5s. 6d.*

An Alphabetical Index to the Cases in the current Volume of the LAW TIMES *always lies at the Office for the purpose of Reference.*

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

TO SUBSCRIBERS.

THE PUBLISHER *respectfully intimates that Subscribers who desire to avail themselves of the advantages of prepayment, should transmit their subscriptions for the current half-year in the course of the next week.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

THE LAW TIMES.

SATURDAY, NOVEMBER 9, 1844.

TO SUBSCRIBERS.

IN consequence of the flood of reports, we purpose next week to publish a Supplement.

THE REPORTS.

WE have to announce to the subscribers to the LAW TIMES, and to the Profession generally, that arrangements have been completed by which a permanent value, as well as a vast increase of immediate interest, will be given to our Reports.

In addition to placing *two* reporters in each of the Common Law Courts, so that, by lightening the labour, each reporter will have time to digest his reports with care, and verify the citations, skilful short-hand writers will attend the courts and take *verbatim* reports of all written judgments.

By these arrangements, there will be placed

in the hands of the Profession, *within a week of their delivery*, ALL THE DELIBERATE DECISIONS OF THE JUDGES, IN THEIR VERY WORDS, forming a complete record of the law, such as nowhere beside will exist, and invaluable for study and for reference, and unquestionable as authorities.

We may be permitted, perhaps, to direct attention to another peculiar feature of the Reports in the LAW TIMES. Here alone are found reported the arguments and cases cited in motions for rules *nisi*, and here only can the opposing party obtain information of the points he must be prepared to meet. Feeling the great value and importance of this to the Profession, the reporters have been requested to pay *special* attention for the future to such cases, and report them with more particularity, as being the only legal report of them that can be procured by the practitioner.

If any other desirable improvement should suggest itself to our readers, whose experience of the sort of information they want in practice will be our best instructor, we shall feel greatly obliged by a frank communication of suggestions either for addition or alteration.

THE NEW JUDGE.

THE vacant seat upon the judicial bench, occasioned by the resignation of Mr. Justice ERSKINE, has been worthily filled by Mr. ERLE, an appointment which, we venture to say, has received the unanimous approval of all the lawyers in England. The fitness of Mr. ERLE in all the qualifications for the high and responsible office of judge,—profound learning, large experience, an intellect remarkably clear and comprehensive, an unsullied reputation in public as in private life,—will be denied by no man of any faction. All other considerations apart, looking only to the individual, without reference to political or party considerations, we believe that if the votes of the Profession could have been taken, nineteen-twentieths of its members would instantly have selected Mr. ERLE from out the whole Bar of England for the post to which he has been invited by that which we cannot but applaud as a most generous and highly creditable resolution on the part of the Government.

It was therefore with great regret that we read the angry effusion of the *Times* on this appointment, an article which we are fain to attribute rather to its resolve to find fault with every act of the Ministry than to hostility to the principle of impartial choice of the best man without reference to party, of which so excellent an example has been set by the Government. For our own part, and we believe that in this we speak the opinion of the Profession, we look upon this appointment of a political opponent to the judicial bench, simply on the score of his fitness, to be a departure from the rules of party for the benefit of the public, that deserves the applause and respect of the country, proportioned to the courage required to defy the clamour of faction —a courage that may be estimated by the violence of the attack in the *Times*.

Undoubtedly the whole tendency of public opinion is now towards the overthrow of faction in all its shapes, and we hail this nomination, not only as in itself so excellent, but as cheering evidence that the public welfare is beginning to be preferred to party, and as an example, which we trust all future governments will follow, of preserving the ermine of the judge for the highest merit, without reference to politics or partisanship. The office of Judge is wholly unconnected with party, and so should be the selection for it. Then would the country at all times have the services of the very ablest men in the most responsible situation to which a citizen can be called.

While, therefore, we heartily congratulate Mr. Justice ERLE upon the honour so deservedly conferred upon him, still more do we congratulate the country that it has obtained such a judge; and the Ministry, for the admirable example it has set in thus preferring the claims of merit to the claims of party.

THE LAW INSTITUTION AND THE CHANCERY COMPENSATION JOB.

IT will be seen by a paragraph among our Legal Intelligence, which we extract from the *Morning Chronicle*, that the alleged connection of the Law Institution with the Chancery Compensations, about which so much mystery has been thrown, is denied. It seems, that though some of the committee had a hand in it, they acted in their individual, not in their official, capacities, and that they have since resigned their post.

It is due to an institution which might be made so beneficial to the Profession, if directed more to public and less to private ends, to promulgate as widely as possible this denial of a rumour which had gained extensive credit; for though the paragraph appears without authority affixed, we doubt not that it proceeds from some who desire that the suspicion should be removed.

Still, however, we think that the Profession, and especially the members of the Law Institution, ought not to be satisfied with the denial of so grave an imputation by means so questionable as an anonymous paragraph in a newspaper. It is due to themselves, and to the credit of the Institution, that they should institute the most rigorous inquiry into this mysterious affair. The strictest examination should be made as to all the facts; *by whom* the compensation job was *really* framed, *where* it was concocted, and if any person or persons ventured to take upon themselves to give to it this pretended sanction of the Institution. All this the members, nay, the whole Profession, whom they as a chartered body represent, have a right to demand, and it is their duty to be satisfied with nothing less than such a full revelation of all the facts as shall either prove to the world beyond the reach of doubt, that the Institution, as such, had nor art nor part in the compensation job; or, that proper measures have been taken to purge itself of those if any there be, who may have perverted a noble public institution to private ends.

THE LAWYERS' FLIGHT.

WE will not repeat all the jokes that have been going the round of Westminster-hall in consequence of the sudden irruption of some hundreds of Attorneys from the most remote, as well as from the nearest, of the provinces, and the crush and jostle in the courts when, to the amazement of Judges and Masters, they presented themselves *en masse* to be sworn and admitted.

It seems that a general impression had gone abroad that, by the provisions of the new Act, they could not practise in any court in which they had not been duly admitted; nor are we prepared to say that such an impression was an erroneous one.

We are fully aware of the conflict of opinion upon the construction of the provisions of the statute to which we allude, and we had at first designed to recommend to our readers to avoid the possibility of error by taking the first opportunity to be admitted in such of the courts as they had omitted when they were first enrolled.

But when we reflected that, after all, it was a doubtful question, and that it was a very serious matter to drag some hundreds of gentlemen from their homes and put them to considerable cost, which assuredly would have been the result of such a notice here, we declined the responsibility, and preferred to leave it to the agents of the country practitioners to advise them what to do.

And it would seem that the agents generally recommended that they be admitted in each of the courts; and in this, we think, they were right; for if an error, it is an error on the side of *safety*. But we would have qualified the advice thus:—"Do not incur the cost of coming up on purpose, but wait the first opportunity that might bring you to Town in Term-time. We are confident that, even if an admission be necessary, no member of the Profession would take advantage of your omission to defraud you of your costs."

THE JOINT STOCK COMPANIES ACTS.

BY great exertions our publisher succeeded in bringing out, on Tuesday morning, the SECOND EDITION of Mr. PATERSON'S *Joint Stock Companies Acts*, containing, in addition to the Introduction, Notes, and Index, the Regulations and Forms just issued by the Board of Trade.

The sheet containing these essential documents, which can be had nowhere beside, save in the *Gazette* (and that costs nearly as much as Mr. PATERSON'S volume), will be forwarded gratuitously to those who had previously purchased the first edition.

These sweeping statutes have not yet attracted in any quarter the attention they deserve. The entire law of joint stock companies is placed by them upon a new footing, and there is not a shareholder in the United Kingdom who is not directly and personally affected by their enactments. At the first glance they strike the reader as admirably calculated to protect the public against the frauds practised by bubble companies; but it may be questioned whether this advantage is not too dearly purchased by the shackles which are imposed upon *bonâ fide* speculations, and the liabilities thrown upon shareholders and all connected with them.

Great responsibility devolves upon attorneys in advising their clients upon dealings in joint stock shares, with the provisions of these statutes before them; and they should be especially careful to see that all the directions of the Legislature and the Board of Trade have been complied with before they permit an advance of money, or hazard the liabilities of the new law.

THE ADVERTISING COUNSEL.

MR. GEORGE FARREN, the advertising barrister, has sent us a copy of a long letter, which, he informs us, he has addressed to the *Legal Observer*, full of vituperation against us, of course, but very scant of vindication of himself. We shall see whether the *Observer* will take under its protection the mal-practices of the Profession. We suspect Mr. FARREN will find the *Observer* no more lenient to his "no fees required," and his printed scale of charges, than we have been.

But though it sickens us to dwell upon such a topic, we cannot but note again his extremely shabby mode of meeting our charge.

He begins by saying that he neither admits nor denies the printed paper in our possession, of which the copy in the LAW TIMES was *verbatim*. And then he ends by denying that he has ever asked or taken such a scale of fees as that stated in the advertisements.

It is, perhaps, scarcely necessary to observe, that our charge was not that he had *taken* them, for probably none had been offered; but that he had caused a paper to be printed, of which we published a copy, in which he announced the scale of fees, and the various other unprofessional doings set forth in that paper.

The simple question is, did Mr. FARREN cause that paper to be printed, with his name affixed, or did he not?

If he did, he is guilty of all that is imputed to him.

If he did *not*, why does he not disavow it?

But instead of this he says, "I neither admit nor deny it."

What an answer from a man charged with a grave misdoing!

Surely the manner of meeting it aggravates the offence. There would be courage at least in a bold avowal and defiance of opinion, and a confession of error and apology would have been received with generous forbearance by the Profession which has been thus wronged; but neither to admit nor deny is a lamentable endeavour at evasion, that cannot serve its purpose, and will be despised by every high-minded man.

VERULAM SOCIETY.

The second number of *Criminal Law Cases* will be published on Tuesday; and the fifth number of the *Real Property and Conveyancing Cases*, and the *first* number of *Practice Cases*, are in the press.

The following new members have been enrolled during the past week:—

Sproule, Anthony, Tewkesbury.
Jones, Edward, Brynhyfryd, Ruthin.
Thompson, Thomas, Bishop Wearmouth.
Berryman, W. R. Devonport.
Terry, B. Bradford, Yorkshire.
Minshall and Sons, Oswestry.
Carr, C. and W. Gomersal, near Leeds.
Weymss, Fred. Appleby.
Carslake, John B. Bridgewater.
Phillips, Joseph, Chippenham.
Brown, Alfred H. Wolverhampton.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Atkinson, J. R. victualler, first and final, 3d. Hope, Leeds. —*Balme*, J. N. woolstapler, first and final, 2s. 2¾d. Fearne, Leeds.—*Brook*, T. cloth merchant, first and final, 2d. Hope, Leeds.—*De Alzedo*, J. R. merchant, 0¼d. Turquand, London.—*Elliott*, C. tallow merchant, first and final, 1s. 2¼d. Fearne, Leeds.—*Green* and *Vanderplank*, final, 1s. 6d. Turquand, London.—*Hague*, D. paper manufacturer, first, 1s. 6d. Fearne, Leeds.—*Hentig*, R. merchant, first, 3s. 4d. to new proofs. Fearne, Leeds.—*How*, R. corn factor, first and final, 7s. 0¾d. Fearne, Leeds.—*Knapton* and *Co.* stuff manufacturers, first and final, 2s. 2d. Fearne, Leeds.—*Newman*, R. D. corn factor, first, 4s. 9d. Young, Leeds.—*Nicholson*, W. F. worsted spinner, first, 4s. Freeman, Leeds. —*Peel* and *Co.* cotton spinners, final, 0¼d. Turquand, London.—*Pitt*, H. wine merchant, second and final, 0¾d.; first and final, 4s. 0¾d. to new proofs. Fearne, Leeds.—*Proctor*, N. tanner, first and final, 2s. 6d. Fearne, Leeds.—*Robinson* and *Co.* cloth manufacturers, first, 2s. Fearne, Leeds. —*Sayle* and *Booth*, iron masters, first, 5s. Fearne, Leeds.—*Slagg*, T. merchant, first, 3s. 8¾d. Fraser, Manchester.—*Southern*, T. grocer, first, 5s. Miller, Bristol.—*Speakman*, S. ship builder, first, 8¾d. Hobson, Manchester.—*Vanderplank*, B. and S. drapers, final, joint, 11d.; final, B. V. 1s. 2d. Turquand, London.—*Vanzeller*, J. merchant, fifth, 0¼d. Groom, London.—*Walker* and *Co.* woolstaplers, second and final, 4¾d. and first and final, 1s. 10¾d. to new proofs. Fearne, Leeds.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Nov. 1.

Bradder, J. butcher, Stafford, Sept. 3. Trust. J. Meeson, Stafford. Sol. Hall, Stafford.—*Cooper*, J. grocer and brewer, Springfield, Oct. 7. Trust. J. Powel, tobacconist, Cannon-st.-rd. Sol. Ross, Wine-office-court.—*Middleton*, E. grocer, High-st. Pentonville, Oct. 9. Trusts. W. Smith, tea dealer, Fenchurch-st. and R. Twentyman, warehouseman, Wood-st. Cheapside. Sols. Reed and Shaw, Friday-st.—*Saturley*, S. cook and confectioner, Taunton, Oct. 4. Trusts. C. Gibbs, miller, Bishop's Lydeard, R. Street, grocer, Taunton, and R. Williams, draper, Dulverton. Sol. Hazeland, Taunton.

Gazette, Nov. 5.

Beatson, G. innkeeper, Thorne, Yorkshire, Oct. 31. Trusts. S. Johnson, wine merchant, Wath-upon-Dearne, and J. C. Casson, maltster, Thorne. Sol. Nicholson, Wath-upon-Dearne.—*Dyson*, T. drysalter, Halifax, Oct. 29. Trusts. G. Farrar, drysalter, and J. Fielding, manufacturing chemist, Halifax. Sol. Mitchell, Halifax.—*Goodhall*, T. farmer, Eccleshall, Staffordshire, Oct. 10. Trusts. S. Proctor, farmer, and C. Beeston, maltster, Eccleshall. Sols. Thurstans and Liddle, Newport.—*Mills*, G. linen draper, Pimlico, Oct. 21. Trusts. J. Baggallay, Love-lane, and W. White, Cheapside, warehousemen. Sols. Messrs. Sole, Aldermanbury.—*Pearce*, J. W. draper, Canterbury, Nov. 1. Trusts. J. Gibbons, tailor, and W. Todhunter, perfumer, Canterbury. Sol. Walker, Canterbury.—*Perkins*, W. draper, Bethnal-green-road, Oct. 24. Trusts. S. Wreford, Aldermanbury, and J. Baggallay, Love-lane, warehousemen. Sols. Messrs. Sole, Aldermanbury.—*Reeve*, J. miller, Campsey Ash, Suffolk, Oct. 26. Trusts. H. Collins, wheelwright, and B. Moulton, auctioneer, Woodbridge. Sol. Churchyard, Woodbridge.—*Tuke*, S. tanner, Stratton, Cornwall, Oct. 28. Trusts. J. Haycroft, merchant, Bideford, and J. S. James, merchant, Stratton. Sol. Bramwell, Holsworthy.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Nov. 1.

Briddick, William Barrett, dealer in iron and steel, Durham, Nov. 12, at half-past eleven, Dec. 16, at two, Newcastle. Com. Ellison; Wakley, off. ass.; Hartley, Southampton-st. and Brignal, Durham, sols. Date of fiat, Oct. 22. W. Brown, and J. and J. G. Abbott, iron merchants and iron and brass founders, Gateshead, pet. crs.

Brooke, William, ale-house keeper, beer-house keeper, and coffee-shop keeper, Snow-hill, Nov. 12, at half-past eleven, Dec. 17, at one, Basinghall-st. Com. Williams; Turquand, off. ass.; Wood and Blake, Falcon-st. sols. Date of fiat, Oct. 22. J. and T. Ward, builders, Jewin-st. pet. crs.

Chandler, William, chemist and retailer of drugs, druggist, 95, Minories, Nov. 12 and Dec. 17, at twelve, Basinghall-st. Com. Williams; Turquand, off. ass.; Shearman and Slater, Great Tower-st. sols. Date of fiat, Oct. 30. T. Grover, gent. Gloucester-buildings, Walworth, pet. cr.

Goldsworthy, Thomas, merchant, Clifton-villas, Maida-vale, Middlesex, Nov. 18 and Dec. 17, at eleven, Basinghall-st. Com. Williams; Graham, off. ass.; Lawrance and Co. Bucklersbury, sols. Date of fiat, Oct. 29. M. Myers, gent. South-place, Kennington-common, pet. cr.

Owen, Robert, provision dealer, Manchester, Nov. 15 and Dec. 20, at eleven, Manchester, Pott, off. ass.; Gregory and Co. Bedford-row, and Cooper, Manchester, sols. Date of fiat Oct. 25. R. Entwistle and T. Labrey, tea and provision dealers, Manchester, pet. crs.

Pitt, Charles, licensed victualler, Stratton-st. St. Paul, Bristol, Nov. 12, at one, Dec. 10, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Watts, Bristol, sol. Date of fiat, Oct. 17. Bankrupt's own petition.

Robertson, Alexander, and Fowler, Lewis Henry, cabinet makers, and upholsterers High-st. Shoreditch, Nov. 13, at three, Dec. 18, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Messrs. Harrison, Walbrook, sols. Date of fiat, Oct. 30. J. P. and G. J. Bradley, wine merchants, Great St. Helen's, pet. crs.

Gazette, Nov. 5.

Bragg, Henry, bottle merchant (firm of Bragg and Wyberd), Montague-close, Southwark, Nov. 19, at one, and Dec. 20, at twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Ashley, Shoreditch, sol. Date of fiat, Oct. 31. Bankrupt's own petition.

Clark, John, carman, Brunswick-cottage, City-rd. Nov. 15, at eleven, Dec. 14, at twelve, Basinghall-st Com. Goulburn; Green, off. ass.; Tucker, Sun-st. Chambers, sol. Date of fiat, Nov. 4. J. F. Barwick, wheelwright, Old-st. pet. cr.

Cleaver, Joseph, the Younger, victualler, Coventry, Nov. 12 and December 10, at eleven, Birmingham; Valpy, off. ass.; Troughton and Lea, Coventry, sols. Date of fiat, Oct. 17. T. Towsend, maltster, Coventry, pet. cr.

Crosfield, Thomas, the Elder, linendraper and spirit merchant, Kirkham, Lancaster, Nov. 18, at one, Dec. 10, at twelve, Manchester; Fraser, off ass.; Cornthwaite and Adams, Old Jewry Chambers, and Fisher and Stone, Liverpool, sols. Date of fiat, Nov. 1. R. C. Gardner and J. Sykes, wine and spirit merchants, Liverpool, pet. crs.

Eaton, Richard, butcher, No. 33, Featherstone-st. City-rd. Nov. 22, at half-past one, Dec. 18, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Taylor and Wickings, Finsbury-ter. City-rd. sols. Date of fiat, Nov. 4. J. Hudson, patten maker, Featherstone-st. pet. cr.

Fitzhugh, William Henry, and Walker, Robert Edwards, merchants and ship brokers, Liverpool, Lancaster, Nov. 20 and Dec. 17, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Ardger and Blake, London-wall, and Dodge, Liverpool, sols. Date of fiat, Nov. 1. J. M. Arry, joiner, Liverpool, pet. cr.

Holbein, Walter, dealer in flour, late of No. 67, Upper Seymour-street, New-road, St. Pancras, Middlesex, Nov. 19, at twelve, Dec. 20, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Buchanan and Co. Basinghall-st. sols. Date of fiat, Oct. 31. Bankrupt's own petition.

Jacobs, Mark Israel, tailor and draper, Ashton-under Lyne, Lancashire, Nov. 19, Dec. 9, at twelve, Manchester; Stanway, off. ass.; Reed and Shaw, Friday-st. and Sale and Worthington, Manchester, sols. Date of fiat, Oct. 25. J. and W. Opershaw, manufacturers, Manchester, pet. crs.

Pim, John Bedford, stationer and rag merchant, Tweed's-ct. Great Trinity-lane, London, Nov. 13, at two, Dec. 17, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass. Buchanan and Grainger, Basinghall-st. sols. Date of fiat, Oct. 31. Bankrupt's own petition.

Rudge, George Bickerton and Arthur Jeffery, japan leather manufacturers, Gloucester-st. Curtain-road, Middlesex, Nov. 13, at two, Dec. 14, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Norton and Son, New-street-buildings, sols. Date of fiat, Nov. 1. T. and H. Burton, builders, Aldersgate-st. pet. crs.

Staples, Jonas, plumber, painter, glazier, and paper hanger, Cottenham, Cambridgeshire, Nov. 15, at two, Dec. 18, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Johnson, Walcot-sq. sol. Date of fiat, Oct. 4. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Oct. 29.

Batt, M. and *Allen*, A. milliners, Birmingham, Oct. 21. Debts paid by Batt.—*Battye*, R. and *Taylor*, J. woollen manufacturers, Holmfirth, Oct. 16.—*Booth*, J. R. and *Nelson*, R. deceased, curriers and grocers, Rochdale, June 28. Debts paid by Booth.—*Bradbury*, J. *Anderson*, J. *Bettany*, T. *Lawton*, I. china manufacturers, Longton and elsewhere, so far as regards Lawton, Oct. 21. Debts paid by the remaining partners.—*Browne*, W. and *Martin*, J. under the firm of the St. Austell Naphtha Company, Sept. 25. Debts paid by Martin.—*Buckley*, N., A., and J. cotton spinners, Saddleworth, May 27, 1831.—*Buckley*, N., A., J., and J. S. cotton spinners, Ashton-under-Lyne, May 27, 1831.—*Buckley*, N., J., and R. H. cotton spinners, Saddleworth, Jan. 1, 1834.—*Chance*, G. F. and *Foxton*, W. cigar manufacturers, Clapham, Oct. 25. Debts paid by Fraser.—*Day*, G. G. and *Swallow*, W. N. attorneys, St. Ives, Oct. 28, —*Garbutt*, T. S. and J. wine merchants, Easingwold, Oct. 21. Debts paid by T. S. Garbutt.—*Kellet*, W. and *Foxcroft*, J. extract of indigo manufacturers, Salford, Oct. 23. Debts paid by Chance.—*Mayall*, M., J., R., and C. cotton spinners, Ashton-under-Lyne, Oct. 24. Debts paid by R. Mayall.—*Rayner* J. and *Walker*, G. tanners, Rothwell, Oct. 26. Debts paid by Walker.—*Reynolds*, W. and *Drapsey*, A. copperplate printers, Chapel-st. Penton-st., Clerkenwell, Oct. 28.—*Simpson*, T. *Rostron*, L. *Young*, J. S. and *Langdon*, W. G. calico printers, Foxhill-bank, Manchester, and London, and coal merchants, Oswaldtwisle, so far as regards Rostron, Oct. 26. Debts paid by the remaining partners.—*Smelt*, T. and *Dean*, J. commission agents, Manchester, Oct. 26. Debts paid by Smelt.—*Sykes*, M. and *Wade*, G. jun. calenderers, Barnsley, April 1. Debts paid by Sykes.—*Taylor*, T. and *Marshall*, W. C. grocers, Newcastle, Oct. 14. Debts paid by Taylor.—*Tyer*, G. J. and W. shoe makers and post masters.—*Wilkinson*, C. and A. machine makers, Huddersfield, Feb. 5 last. Debts paid by C. Wilkinson.—*Willis*, W. and *Gibson*, E. chemists and surgeons, Croydon, Oct. 23.—*Wyatt*, W. H. and *Blashfield*, J. M. Roman cement manufacturers, Oct. 26.

Gazette, Nov. 1.

Adlam, S. and *Gregory*, G. plumbers, Devizes, Oct. 30.—*Ayre*, W. jun. and *Sucelbye*, J. attorneys, Hull, Oct. 29.—*Bray*, E. G., T. G. and A. G. masons, Petertavy, Devonshire, June 24.—*Brooks*, J. jun. and *Williams*, M. bell-hangers, Birmingham, Oct. 22.—*Colren*, T. and *Smith*, J. bricklayers, Counter-st. and Trinity-place, Borough, Oct. 19.—*Combe*, H. and *Delafield*, W. and the executors of Joseph Delafield, deceased, Castle-st. Long-acre, so far as regards the executors, Oct. 10.—*Comfield*, T. and *Rudbard*, F. schoolmasters, Dorking, Oct. 28.—*Cowie*, H. and *Hall*, J. P. jun. ship brokers, Liverpool, Oct. 29. Debts paid by Cowie.—*Ford*, M. and *Tyler*, M. shopkeepers, Wickwar, Oct. 22. Debts paid by Ford.—*Forster*, E., E. jun. and J. grocers, Colchester, Brightlingsea, and Alham, so far as regards J. Foster. Oct. 24.

Henderson, G. and *Hole*, W. drapers, Totnes, Oct. 25. Debts paid by Hole.—*Jones*, W., *Hughes*, R. D. and *Jones*, G. slate merchants, Pimlico, as regards W. Jones, Oct. 31. Debts paid by the remaining partners.—*Jones*, T. and *Davies*, J. drapers, Chester, Oct. 29.—*Jupp*, W. and H. corn and coal merchants, Old Brentford, Jan. 1.—*Lacomber*, W. and *Thyer*, J. cabinet makers, Manchester, Oct. 29.—*Lea*, H. and *Wells*, J. machine makers, Victoria-mill, Wakefield-road, near Bradford, June 9, 1841.—*Merson*, J. and *Wright*, T. jun. drapers, Saint Helen's, Oct. 26. Debts paid by Wright, jun. *Moyse*, R. V. and *Cork*, G. cattle salesmen, West Smithfield, Oct. 29.—*Neal*, E., T., and J. wine merchants, Tonbridge-wells, so far as regards E. Neal, Oct. 25. Debts paid by the remaining partners.—*Palmer*, B. and *Adams*, B. ironforgers, Birmingham, Oct. 26. Debts paid by Palmer.—*Pinhorn*, H. and *Strachan*, J. tailors, Southampton, Aug. 1.—*Ryder*, J. W. W. and R. J. pawnbrokers, Devonport, Sept. 28.—*Samuels*, S. L. and *Engel*, J. umbrella manufacturers, Little Alie-st. Goodman's-field Oct. 11.—*Tarbotton*, W., R., and J. C. curriers, Hull, so far as regards J. C. Tarbotton, Oct. 24.—*Topham*, G. and *Jones*, M. A. straw hat manufacturers, St. Alban's and Ipswich, Oct. 28.—*Unsworth*, J. and J. farmers, Pemberton, Oct. 30. —*Vernon*, W. J. and *King*, W. R. type founders, Newcastle-st. Strand, Oct. 20.—*Walker*, J. W. C. and *Martin*, T. attorneys, Havant, Oct. 30.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Oct 29.

Goodwin, J. jun. marine-store dealer, Princes-street, Edgeware-road, Nov. 13, at one.—*Town*, J. accountant, Acre-terrace, Clapham, Nov. 15, at eleven. *Ward*, G. W. farmer, Nov. 14, at eleven.

Gazette, Nov. 1.

Dixon, R. green grocer, Great Cherry Garden-st. Bermondsey, Nov. 15, at eleven.—*Keinch*, W. dealer in calves, Whitchurch, Nov. 15, at eleven.—*Lancaster*, E. R. dramatic author, Three Falcon's-court, Fleet-st. Nov. 15, at twelve.—*M'Demott*, D. V. gentleman's-servant, Lodge-rd. Regent's park, Nov 15, at one.—*Milton*, M. dealer in horses, Somerset-st. Oxford-st. Nov. 15, at half past twelve.—*Willock*, M. H. Breams-bldgs. Chancery-lane, Nov. 15, at half-past eleven.

Country — Gazette, Oct. 29.

Alsop, J. jun. joiner, Glossop, Nov. 14, at eleven, Manchester.—*Brown*, J. painter, Newcastle-under-Lyme, Nov. 19, at eleven, Birmingham.—*Carbuet*, J. out of business, Liverpool, Nov. 12, at twelve, Liverpool.—*Crompton*, J. out of business, Oldham, Nov. 14, at twelve, Manchester.—*Holden*, W engraver, West Derby, Nov 12, at eleven, Liverpool.—*Roberts*, A. out of business, Liverpool, Nov. 8, at eleven, Liverpool.

Gazette, Nov. 1.

Appleton, R. warehouseman, Manchester, Nov. 14, at twelve, Manchester.—*Atkinson*, G. G. joiner, Stockton-upon-Tees, Nov. 19, at half past one, Newcastle.—*Brewer*, S. innkeeper, Falmouth, Nov. 14, at eleven, Exeter.—*Chadwick*, R. shopkeeper, Tideswell, Nov. 12, at twelve, Manchester.—*Hawarden*, J. clerk, Charterhouse Hinton, Nov. 19, at one, Bristol.—*Hill*, T. schoolmaster, Gloucester, Nov. 19, at eleven, Bristol.—*Morris*, W. P. wine and spirit dealer, Bristol, Nov. 26, at twelve, Bristol.—*Page*, J. coal dealer, Gloucester, Nov. 19, at eleven, Bristol.—*Russell*, G. mason, New Sleaford, Nov. 14, at twelve, Bristol.—*Scholefield*, B. clothier, Almondbury, Nov. 15, at eleven, Leeds.—*Sperring*, T. P. blacksmith, Benager, Nov. 19, at twelve, Bristol.—*Taylor*, George, farmer, Charlton King's, Nov. 19, at eleven, Bristol.—*Webster*, J. farmer, Salton Cheaney, Nov. 20, at one, Birmingham.—*Wilson*, J. cabinet maker, Morpeth, Nov. 13, at half-past twelve, Newcastle.—*Wood*, D. cabinet maker, Cheltenham, Nov. 19, at eleven, Bristol.

From the Gazette of Friday, November 8.

Bankrupts.

Raper, J. tailor, Bridge-road, Lambeth.—*Dogood*, H. J. wine merchant, Camden-terrace West, Camden-town.—*Edey*, W. silk manufacturer, Aldermanbury.—*Blythe*, F. E. porter merchant, Colchester.—*Hubbard*, J. auctioneer, Ramsgate.—*Pegrum*, J. carpenter, Robert-st. North Brixton.—*Maynard*, J. bookseller, Panton-st. Haymarket.—*Row*, J. chemist, Torrington, Devonshire.—*Tozer*, J. L. auctioneer, Birmingham.—*Makepeace*, S. woollen printer, Mitcham, Surrey.—*Brooke*, W. grocer, Gilbert-st. Grosvenor-square.—*Bate*, G. horse dealer, Birmingham.—*Gibson*, H. G. wine merchant, Northaw, Hertfordshire.—*Swift*, T. and *Hensman*, J. A. bill brokers, Copthall-court, Throgmorton-st.—*Bridick*, J. jun. bookseller, Durham.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Wednesday, Nov. 6.

BREVOR *v.* MAUDSLAY.

Practice—Payment of money to receiver.

Lloyd, on behalf of Mr. Erskine, who had been ordered in this cause to pay a large sum of money to the receiver, applied for an order that the money should be received in a fortnight. The time within which the money was previously ordered to be paid had elapsed. *Ordered accordingly.*

Re AUSTIN, a Lunatic.

A person of unsound mind, resident in a foreign country, and who has property in this country, will be ordered to be brought here that a commission of lunacy may be issued.

Walpole supported a petition for a commission by two persons who had been the guardians of the lunatic when an infant, and also were executors of a will under which he was entitled to various sums of stock, his only property. Since 1830 the lunatic had been confined in a lunatic asylum at Milan, and affidavits of various persons resident there, amongst whom were the British consul and an English surgeon, were read, to prove that, having been for some time subject to fits of maniacal violence, he had now sunk into complete imbecility. The guardians would undertake to bring him here, having the sanction of his lordship's order for that purpose. When brought here, there was some doubt into what county the commission should issue.

The LORD CHANCELLOR.—Let him be brought home before the commission is issued.

Walpole.—The authorities at Milan will not permit him to be removed without a commission.

The LORD CHANCELLOR.—Then let the commission be ordered to be issued, without stating into what county. *Ordered accordingly.*

Re JAMES, a Lunatic.

Authority in lunacy—Access to an alleged lunatic—Duty of the solicitor of the lunatic.

An order had been made on the 24th of July last, directing that Dr. Davis, of Birmingham, should have access to the alleged lunatic, and that Mr. Pasmore, his solicitor, should render Dr. Davis every kind of assistance in conducting his examination of the patient. No one was, it appeared, admitted to see him without a card from Mr. Pasmore.

Lowndes, for the petitioner, now applied for a further order on Mr. Pasmore, who had both refused and declined to assist Dr. Davis. On one occasion, when Dr. Davis had applied to Mr. Pasmore to go with him to the lunatic's, he had declined, alleging engagements; but on Dr. Davis afterwards going alone, he found Mr. Pasmore with the lunatic, who was in such a state of excitement that no satisfactory examination could then be made.

Goodere, for Mr. Pasmore.

The LORD CHANCELLOR.—If the solicitor does not do what he ought, other steps must be taken to enforce the order. He should be reminded that he is an officer of the Court, and that, if necessary, he may be compelled to perform its orders. The further time of a fortnight may be allowed for the purpose of enabling Dr. Davis to make his examination and report.

Re EDWARDS, a Lunatic.

Practice in Lunacy—Attendance on the inquiry.

Roupell supported a petition for a commission of lunacy against Jane Edwards. She was entitled, under the will of her father, to an annuity of 300*l.* and some further benefits after the death of her uncle.

Follett, for the executors of the father's will, made no objection to the commission, and did not wish to appear upon the inquiry.

The LORD CHANCELLOR.—The executors must be served with notice of all the proceedings, but they need not add to the costs by appearing on the execution of the commission, unless they shall in the progress of the matter find it necessary to do so.

Re WOODCOCK.

Practice—Allowance to lunatic for defence.

Lowndes, in support of a petition for a commission, handed to his lordship Dr. Southey's report.

The LORD CHANCELLOR (after reading it).—I do not think you will obtain a verdict from the jury. Dr. Southey states that, in reply to some questions he had put to the patient, with reference to his religious monomania, he said, "That every clergyman had a right to say that he is inspired, and that he was called upon to act as minister by the Holy Ghost." Dr. Southey thinks that his state was more nearly approaching to sanity then is usual in such cases, and that in all probability he will appear perfectly sane before a jury. *Commission ordered to issue.*

Kinglake, for the solicitor of the alleged lunatic, asked that Dr. Munro might be directed to pay him 100*l.* towards the defence. The only property he possessed was an annuity charged upon property which had come into Dr. Munro's hands.

The LORD CHANCELLOR.—I think 100*l.* should be paid.

Re BIRD, a deceased Lunatic.

Costs of a petition to compel the lunatic's heir to amend a bill—Solicitor on the record.

Wakefield and *Heathfield* moved in this matter that the plaintiff in the suit of *Taylor* v. *Bence* should be ordered to amend his bill, and pay the costs of this application. The plaintiff claimed to be the heir-at-law of the lunatic, and had filed a bill against the administratrix in her maiden name, for the recovery of such of her personal estate as had arisen from the surplus rents of real estates. The application had been made in July last, and his lordship had ordered the bill to be amended before the first day of the present Term. The bill was amended on the 28th of October last, and the object of the petitioners now was, that the plaintiff should pay the costs of the application. It appeared that, in January last, the defendant applied to Mr. Church, the plaintiff's solicitor, to amend the bill, and in May received a letter from Mr. Church, stating that he had nothing further to do with the matter, and that the plaintiff was to be met with at 51, Vauxhall-walk, Lambeth. No personal application appeared to have been made to the plaintiff, but the present petition was presented.

Baily, for the plaintiff, opposed the application, on the ground of the petitioner's misconduct, and because no personal application had been made to the plaintiff. The defendant is a married woman resident in Nova Scotia, who on the death of the lunatic, obtained administration as next of kin in her maiden name; but the fact of her marriage having been discovered, the first letters of administration were recalled, and final administration granted to her by her proper name, under which she had received all the personal estate. It was her own misconduct which rendered the amendment of the bill necessary. No application was made to the plaintiff, though Church, who had been his solicitor, had stated he had ceased to be so, and had given the plaintiff's address. The bill was amended before the Term.

Wakefield, in reply.

The LORD CHANCELLOR.—Church was the plaintiff's solicitor when the first application to amend the bill was made in January, and in May he refused to take any steps in the suit. Then the petition was presented, and Church continued to be the solicitor on the record up to the very day of the amendment, the 28th of October last. The application was made previously to the amendment, and was necessary. The defendant, therefore, ought to have the costs of the application.

Re RADCLIFFE, a Lunatic.

Practice in lunacy—Costs of next of kin on passing receiver's accounts.

Shee suported a petition by a former receiver of the lunatic's estates to confirm the commissioner's report, which stated that his accounts had been passed, and that, after retaining his costs out of the balance in his hands, the surplus might be paid over.

Chandless, for the next of kin, asked that the costs of the next of kin in atttending the passing of the accounts might also be paid out of the balance in the receiver's hands. That balance had been increased by a surcharge carried in, which had been allowed. The attendance of the next of kin was necessary on passing the receiver's accounts, and it was, of course, to have the costs of so attending. *Ordered.*

ROLLS COURT.

Thursday, Nov. 7.

HARROD *v.* GIBSON.

The common order to amend or discharge for irregularity, having been obtained one day after the time allowed by the 4th and 19th Orders of 3rd April, 1828, owing to a mistake in not taking into account leap-year, in reckoning.

The bill in this cause was filed on the 14th Nov. 1842, by the plaintiff, who is the public officer of the North Coal Mine Company. On the 6th of August, 1843, the bill was amended, and on the 10th Oct. following the answer thereto was put in. The last seal after Michaelmas Term 1843 was on the 18th Dec. and the common order to amend, now sought to be discharged, was obtained on the 2nd March, 1844. The two months allowed by the 4th Order of April 1828, at the expiration of which an answer is to be deemed sufficient, did not, therefore, by the 19th of the same Orders, begin to run till the 2nd of Nov. 1843, and, passing over the time between the 18th of Dec. and the 11th of Jan. 1844, would expire on the 19th of the latter month. The time within which, therefore, to obtain the common order to amend would, in ordinary years, expire on the 2nd of March, but 1844 being leap-year, it expired on the 1st, and the order being obtained on the 2nd, the defendant now moved to discharge it for irregularity. On the 11th of March notice of the order was served on the defendant in the usual way, but was only received without prejudice to the right to move to discharge.

Turner, for the motion, contended that the order was irregular, and

Anderson, on same side, insisted upon acquiescence, the motion to discharge not having been made till now, and also cited the following cases, as to dismissing bills for want of prosecution: *Marriott* v. *Tarpley* (8 Sim. 18); *Barnes* v. *Taddle* (10 Sim. 481); *Goldsworthy* v. *Crossley* (2 Hare, 639).

Bates, contrà.

The MASTER of the ROLLS.—The defendant is entitled to the order, but it is very strict practice. The order to amend is irregular, and I cannot make it regular; I cannot strike a day out of the calendar. Acquiescence is out of the question, for there was an agreement that the right to move should remain. The order must be discharged, but there is nothing to prevent you from applying for leave to amend.

Friday, Nov. 8.

Re WOOD.

In an affidavit by a solicitor it was sworn generally that his bill of costs was paid on a particular day (twelve months before the date of a petition, under 6 & 7 Vict. c. 73, for taxation thereof); but in a written paper, purporting to be a statement of particulars, one item was, "on account of bill of costs, 100l.;" the evidence was not deemed conclusive, but the solicitor was allowed to file a more special affidavit.

Mr. Wood was the solicitor of the petitioner, Thomas Shillito, up to March 1844, when the latter became bankrupt, and as such solicitor delivered to the petitioner two several bills of costs. After the bankruptcy, the assignees discovered, as they conceived, improper items in the bills, and a petition was presented on the 5th of June, 1844, to have them referred to the taxing-master. The petitioner swore that the first bill was paid on the 27th of August, 1842, and referred to a written statement of the items of the account delivered to the petitioner. As to the second bill, some part thereof was paid in March 1843, but the last payment was made on the 5th of October following.

Turner, for the petitioner.—The written statement contains merely an account of certain debts received for the petitioner, and then an item in these words: "On account of bill of costs, 100*l.*" This is no settlement, it is no appropriation of the balance to the payment of the bill of costs.

Wright, contrà.—The solicitor swears the payment was made on the 27th of August, 1842, and the bankrupt does not deny this. The 100*l.* is exactly the balance of the bill of costs, after giving credit for the small debts received. It was paid, therefore, twelve months before the petition was presented. As to special circumstances, to make the bills taxable under the 6 & 7 Vict. c. 73, they only produce the affidavit of Mr. Clapham, a solicitor, who swears he is informed, and believes, the assignees have discovered improper items, and that it would be so found if the bills were referred.

The MASTER of the ROLLS.—This petition is for a reference of two bills for taxation after payment thereof. Two things, by the Act 6 & 7 Vict. c. 73, are to be made out: first, that payment was made within twelve months before the petition was presented; and, secondly, special circumstances. As to the second bill, full payment has been made within the time, but the evidence is imperfect as to special circumstances. I will inquire and decide myself. As to the payment of the first bill, the evidence is not satisfactory. Mr. Wood has not thought fit to say when the items were received; and the written paper does not quite bear out his statement. After taking credit for several items, consisting of small debts received, he adds,—"To 100*l.* on account of bill of costs." This does not conclusively shew payment twelve months before the petition; the probability is in favour of it, but it is not quite clear. I shall, therefore, allow Mr. Wood to file a more special affidavit.

Re SPRINGALL.

The solicitor for several plaintiffs in a suit prosecutes an indictment against a defendant therein on the retainer of only one of the plaintiffs. A general order for taxation of two bills of costs, of which the second related only to the indictment, being obtained, and all the plaintiffs attending thereon in the taxing-master's office, the order cannot be varied on petition so as to relieve all but the one plaintiff from liability on the second bill.

Previous to 1842 the petitioners, among others, were plaintiffs in a cause, and sued by their next friend. Messrs. Springall, Thomson, and Power were the solicitors for the plaintiffs. In March 1844 a change of solicitors took place, and soon after Messrs. Springall and Co. delivered two bills of costs. Of these the second related solely to an indictment for perjury against one of the defendants, brought by the solicitors at the instance and on the retainer of Mellish Turner, one of the plaintiffs, alone, and not of the petitioners. An order of re-

ference to the Master to tax generally having been obtained, the petitioners attended and took part in the proceedings; and now finding themselves made liable for both bills, they brought their petition to have the order varied.

Turner (*Prior* with him) insisted that the mere taking of the order to tax generally could not make the petitioners liable. The order itself states merely the limited retainer and the delivery of the bill.

Kindersley, contrà, was stopped by the Court.

The MASTER of the ROLLS.—The clause in the petition merely asks the order to be varied, not discharged; therefore they admit their liability by the order, and now come here and ask me to vary the order, that is, to alter their liability. They ought to have taken the objection before the taxing-master, and if he persisted, they should have refused to go on before him, and come here for relief. I must dismiss the petition with costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, Nov. 2.

LOCKWOOD *v.* WOOD.

Stallage dues—Easement.

Watson, Q.C. moved to set aside the verdict in this action, and enter a verdict for the plaintiff, or for a new trial.

It was an action brought to recover money due to the plaintiff for stallage in the market of Easingwold. The defence was that the defendant, as an inhabitant of the place, was free from stallage dues. The motion was made on the ground of misdirection, and verdict against evidence. The right to exact stallage was traced down from a royal charter of 15 Chas. 1, granted in 1639, which granted the right of Easingwold likewise to hold markets and take tolls. Conveyances had been also put in at the trial, describing the site by metes and bounds where the fairs were held, and shewing that the tolls had been received for eighty years back. An exemption from tolls had been shewn in favour of the inhabitants of Easingwold, and the question arose how far toll included stallage, and whether the inhabitants of Easingwold were free of stallage. Proof on the part of the plaintiff had been given that three out of every five of the inhabitants paid stallage. On the other hand, six witnesses had been called to shew that there was an exemption founded on immemorial usage. The ground on which the motion was chiefly made was, that in the conveyance of the land by certain deeds, the rights of tollage and stallage were conveyed without any reservation, and that the inhabitants were assenting parties thereto. *Rule nisi.*

Thursday, Nov. 7.

DOE *dem.* EDNEY *v.* BENHAM.

Crowder, Q. C. moved for a rule to set aside verdict and enter nonsuit, in an action of ejectment, tried by Patteson, J. to recover a cottage occupied for more than twenty years by the defendant.

It appeared, at the trial, that the defendant, who was a poor man, had been employed by the parish to sweep the church, and it was therefore held that the parish was entitled to recover the cottage, as the defendant occupied in virtue of his employment, and that this was a payment of rent within the 3 & 4 Wm. 4, c. 27, s. 3. It was contended for the defendant, that it could not be so held, and that the parish was barred by the occupation of the premises for above twenty years.

Case cited: *Doe dem. Robinson* v. *Hinde* (2 M. & Rob. 441). *Rule nisi.*

DOE *dem.* EDNEY *v.* BILLET.

Crowder, Q. C. moved for a rule in this case to set aside the verdict, and enter a nonsuit against the same plaintiff as in the last case.

The defendant Billet had occupied another of the same cottages for upwards of twenty years, but having been employed to ring the parish bell at four and eight o'clock, it was held that this also was a payment of rent within the statute. In this case, however, there was a lease to the defendant, dated 1752, by the Mayor of Whitchurch and burgesses. The demise was in the mayor and corporation and the churchwardens. It was objected, for the defendant, at the trial, that the demise ought to have been in the corporation only, as it was corporation property. The learned judge held, that as there was a dispute whether the title was in the parish or the corporation, the parish might recover a moiety of the premises. The jury found that the present defendant had nothing to do with the corporation.

Cases cited: *Doe dem. Jackson* v. *Hiley* (10 B & Cr. 883); *Goldsworth* v. *Knights* (11 M. & W. 337). *Rule nisi.*

DOE *dem.* CLARKE *v.* SMALRIDGE.

Rent admitted to be due after expiration of notice proves a tenancy from year to year.

Crowder, Q. C. moved for a rule to set aside verdict and enter a nonsuit in this action, tried before Patteson, J. at Exeter.

The defendant held under a lease, terminating on Lady-day 1842. He continued in possession afterwards, and notice to quit was given to him at Michaelmas 1843, which notice would terminate at Lady-day 1843. After this notice had expired, a distress was put on the premises for 125*l.* for a *balance* of rent then due, thus shewing that rent beyond Lady-day was due, and that the relation of landlord and tenant was admitted to continue; which, it was contended for the defendant, created a tenancy from year to year, and gave the tenant certain occupancy for two years from Lady-day. (*Doe dem. Chadburn* v. *Green*, 9 Ad. & Ell.)

It was submitted that this could not be a tenancy on sufferance or at will, and could be alone a tenancy from year to year. The action, therefore, could not lie. *Rule nisi.*

GALE, Executrix of Ware, *v.* LEWIS.

Admissibility of record as evidence of facts not specially traversed therein—Notice of assignment of policy before bankruptcy.

Rogers, Q. C. moved for a rule to set aside the verdict and enter a nonsuit, or for a new trial in this action, which was tried before Patteson, J. at Bristol, on the ground, first, that the verdict was against evidence; second, the mode in which it was left to the jury, and, thirdly, that the facts went to the jury without proof.

It appeared that one Ware, now deceased, of whose estate the plaintiff is executrix, effected a policy of assurance in September 1838, on his life for 200*l.* which he shortly after assigned to one Benson, and subsequently, in March 1841, became bankrupt, and died in 1844. Two actions were then brought, one by the executrix of Ware, the other by the assignees under the bankruptcy, against the assurance company. On application to a judge in chambers, it was ordered that instead of an interpleader, the bankrupt's assignees should defend the action brought by the executrix, which was the action in question, the company being discharged from liability. The defendants pleaded the bankruptcy, the plaintiff replied the prior assignment, with a vast deal of matter which was read as evidence, and which the judge held to be evidence, because not traversed on the record. There was a rejoinder that the policy was a *chose in action* in the order and disposition of the bankrupt at the time of his bankruptcy, according to the 72nd section of the Act. The surrejoinder traversed this. [PATTESON, J.—The real issue was, whether the company had due notice of the assignment. Mr. Loosemore's evidence was, that the assignment went to secure the original debt.] There was no evidence of those facts. [PATTESON, J.—They were facts stated in the replication, and not denied in the rejoinder, and I held, that being traversable, and not denied, they were evidence in the cause. There is a difference of opinion about this, but I do not know what is the use of reading pleadings to the jury otherwise.] They were traversable facts, they were traversed in the rejoinder, which is general, and applies to the whole replication. If not, they could not be evidence. (*Bull* v. *Leigh*, 1 Ad. & Ell. 804.) Loosemore was dead, and the evidence went to shew that notice of assignment was alone given to him, and that he was not the general agent of the office. The office had no sufficient notice of the assignment. Constructive knowledge is not enough. (*Ex parte Patch*, Jurist, 29th July, 1843; *Ex parte Hennesey*, 1 Connor, 559.) Although not called on to prove express facts, the jury must be satisfied that the bankrupt was, at the time of his bankruptcy, no longer the reputed owner. (*Edwards* v. *Scott*, 1 M. & Gr. 972.) This cannot be done by a mere admission on the record. (*Edwards* v. *Groves*, 2 M. & W. 642.)

PATTESON, J.—There was certainly no evidence as to the original arrangement; Loosemore was dead, and there was no other evidence of the notice than the untraversed facts in the replication. *Rule nisi.*

DOVIN *v.* GEE.

Deeds poll—Reference.

Cockburn, Q. C. moved to set aside the verdict for the defendant in this action, or for a new trial.

The cause was tried by Patteson, J. at the last assizes, and the motion was made for misdirection. The action was brought to recover certain deeds poll. At the suggestion of the Court, counsel on both sides agreed to take a rule, subject to a reference. *Rule accordingly.*

SHANK *v.* BEARD.

Acts of ownership for 20 years—Description of land.

Crowder, Q. C. moved to set aside verdict for the plaintiff, or for a new trial.

This was an action of trespass, tried before Patteson, J. for breaking the plaintiff's close, and cutting down trees. The defendant pleaded not guilty, not possessed, and that the land belonged to one Saunders, under whom the plaintiff held. It appeared that the plaintiff came to certain property under the devise of his uncle, Admiral Shank, which abutted on the land of the defendant, between which, and contiguous to a mill leat, lay the slip of land in dispute, which had for many years formed a walk in the pleasure-grounds of the defendant, who, at the trial, proved acts of ownership for above twenty years. In 1807 land called the Tunnicliffe waste was conveyed to two trustees by the lord of the manor in trust for Admiral Shank. One question raised at the trial was whether the slip of land in dispute was sufficiently described thereby to pass under that grant. The misdirection complained of was that if this deed included the slip of land, mere acts of ownership would not suffice to take the property out of the plaintiff. *Rule nisi.*

ELLIOT *v.* STOBART.

Copyhold tenure—Manorial customs as to mines.

Knowles, Q.C. moved to set aside verdict and enter judgment *non obstante veredicto*, or for a new trial, on the ground of misdirection.

This was an action of trespass tried before Cresswell, J. at the last Durham assizes, for breaking and entering the close of the plaintiff, and digging mines therein. The chief defence made was under a plea of manorial custom, and to prove this custom evidence was admitted of the custom in an adjacent manor. It was proved, however, at the trial, that the manor in question had come into the possession of the see of Durham within the time of legal memory, and by records in the custody of the bishop, that though held under the same lord, the waste in question had been granted out anew by the lord to the bishop, who had a right to do as he wished with this portion of the manor. The plaintiff gave evidence of acts of working done in a corner of the manor as proof of the custom in the rest of that manor, and also as evidence of the custom in the neighbouring manor in question, to which objection was taken. The second plea alleged joint customs in the three manors of Bondham, Walsingham, and Evenwood, containing divers beds and mines, of which, from time immemorial, the lord of the manor had been seized, and that the bishop is the lord, and as lord is seized.

It appeared that though the bishop may grant a portion of the waste, if he leases it, he destroys an inalienable incident of copyhold tenure. (Bac. Ab. F. 2, Copyhold.) He had done so, and it was contended for the plaintiff that acts done in this leased portion could not support acts done in copyhold. *Rule nisi.*

DOE *dem.* ROBINSON and OTHERS *v.* BOUSFIELD.

Right of copyholder to demise only according to manorial license.

Knowles, Q.C. moved to set aside verdict in this action.

This was an ejectment brought to recover property of which a lease from one Scott to the lessor of the plaintiff was put in for a term of twelve years. The property in question was copyhold, and, according to the custom of the manor, the tenant had a right to demise for three years without license, but not more. It was objected at the trial that a copyholder, having a right to demise for a limited time, who demises for a longer time, thereby destroys his right and interest (*Jackson* v. *Neale*, Croke Eliz. 391), and that the party granting has a right to oust the tenant. (Com. Dig. Copyhold, K. 3.) *Rule nisi.*

REG. *v.* BARON DE RODE.

Petition of right—Statute of Limitations—Jurisdiction of Courts of Queen's Bench and Chancery.

M. D. Hill moved that the first issue in this case should be entered altogether for the suppliant *non obstante veredicto*. This was a petition of right, in which it was admitted that the second and third issues must be entered for the Crown. The chief ground for the motion was that arising upon the construction of the Statute of Limitations, which, it is contended, applies in terms to actions alone, and does not affect a petition of right, which is not an action. (Com. Dig. Action, C. 1.) It was also contended that there is no authority for the distinction between Acts accruing in one reign or another. (*Banker's* case; Howell's State Trials.) The last point to be raised is that of the respective jurisdiction to try petitions of right by the Courts of Queen's Bench or Chancery. In favour of the Queen's Bench as the proper tribunal, *Hill* cited Staunford on Prerogative, 72, 73, 77, 78; Rastall's Entries, 461; 8 Hen. 8, Pet. 1; Brooke's Abridg. Placit. 135; Leach's Rep. 3.

Against the jurisdiction of the Queen's Bench were cited, 4 Coke's Instit. 79, 80; West's Symbolography (Presidents), ed. 1610, p. 177. *Rule nisi.*

Friday, Nov 8.

New Trials.

WILSON *v.* AINDERSON.

Misdirection—Construction of covenants in a deed.

This case was tried at Durham, before Cresswell, J. and a verdict found for the defendant.

Watson, Q. C. moved for a new trial on the ground of misdirection. The action was for money had and received.

Plea—Non assumpsit.

It appeared that the plaintiff had purchased a farm, over which two railways ran; one leading from Lord Londonderry's coal-pits, and the other from the Hetton colliery; and that Lord Londonderry had by deed covenanted to pay 500*l.* a year for the privilege of running his railway across the farm in question, and by a separate deed covenanted to pay 3*l.* per

acre per annum for so much of the land of the farm as should be wanted for the construction of the railway "to the person or persons for the time being seized or possessed or entitled to the rents and profits" of the said farm. The plaintiff, on getting possession of the farm, wrote a letter to the defendant, offering in general terms to "let him the farm" for 100 guineas per annum; which offer the defendant, also by letter, accepted, and went into occupation of the farm, no lease being executed. After the defendant had been some time in the farm he received a sum of money in respect of the 3*l.* per acre secured by the deed from Lord Londonderry, which sum the plaintiff sought to recover back in this action. At the trial, Cresswell, J. left it to the jury to say whether, according to the custom of the country, this money should have been paid to the owner of the fee or to the occupier of the land.

Watson, Q. C. objected to this ruling; contending that the point so about to be left was one of law, and not of fact, and should be determined by his lordship; and that the only question the jury had to determine was the amount that had been received by the defendant.

His lordship, however, overruled the objection, and the jury found a verdict for the defendant.

Rule nisi, with a suggestion from the Court that it be made a special case.

MUSGROVE *v.* EMERSON.

This was an action of replevin. Verdict for the defendant, damages 49*l.*

Bliss now moved to set aside this verdict and for a new trial, or to arrest the judgment, or to reduce the damages to 1*l.* 19s. 1d. on the ground of misdirection, and the improper admission of evidence.

Cases cited: *Higham* v. *Ridgeway* (10 East, 109); *Bulpit v. Clark* (1 New Rep. 56); 11 G. 2.

Rule nisi.

HODSON *v.* SMITH and WIFE.

Nonsuit—Where it appears at the trial that a party holds under a written agreement which is not produced.

Debt for use and occupation.

Plea—Never indebted.

In this case it appeared that, on cross examination of one of the plaintiff's witnesses, it was elicited that the holding had been under a written agreement; and the defendant's counsel submitted that the agreement must be produced or the plaintiff nonsuited. The learned judge, however, directed a verdict for the plaintiff, giving the defendant leave to move.

Thomas now moved for a nonsuit accordingly.

Case cited: *Brewer* v. *Palmer* (3 Esp. 213).

Rule nisi.

SAMUEL *v.* ABRAHAMS.

Falsehood of witness—Surprise—New trial.

This was an action for goods sold and delivered. Verdict for plaintiff; damages, 26*l.*

Jervis, Q. C. now moved for a rule to shew cause why this verdict should not be set aside and a new trial had, on the groun of surprise, and of the falsehood of a witness whom he was obliged to call for the defendant, and who had since been indicted for perjury.

Rule nisi, on payment of the money into Court to abide the issue.

DOE *dem.* PULKER and ANOTHER *v.* WALKER and ANOTHER.

In this case there was a verdict for the lessors of the plaintiff, with leave for the defendant to move to enter a nonsuit.

Keating now moved accordingly, or for a new trial, on the ground of the improper admission of evidence.

Cases cited: *Woodward* v. *Cotton* (1 C. M. & R. 44); 27 Eliz. c. 2; *Moulton* v. *Bingham* (2 T. R. 511, n.)

Rule nisi.

REG. *v.* SEWELL.

This was an indictment against the defendant for disobeying an order of two justices of assize, made under 11 Geo. 2, cap. 19, secs. 16 & 17. At the trial, various objections were taken to the order on the construction of the words of the Act of Parliament, and the learned judge directed a verdict to be entered for the defendant, giving leave to the prosecutor to move to enter a verdict for the Crown.

Shea, Serjt. now moved accordingly.

Cases cited: *Basten* v. *Carew* (3 B. & C. 649); *Ashcroft* v. *Bowen and Others* (3 B. & Ad. 684).

EXLEY *v.* TASSELL.

Improper conduct of jury—Ground for a new trial, or to reduce damages.

In this case, *Wilkins* moved for a new trial, or to reduce the damages, on the ground of misconduct of the jury, and that the damages were excessive. The action was for a false imprisonment, and at the close of the trial the jury retired to consider their verdict, and were absent two hours; they then came into court, and stated their wish to be discharged from giving a verdict, as there was no chance of their agreeing. This was refused by the attorneys on both sides, and they again retired. After they had been shut up three hours more, they sent the officer into court to request some refreshment, stating that they were in a great state of bodily exhaustion, and that there was no chance of their agreeing in their verdict. Some refreshment was directed to be supplied them, by the consent of both parties to the cause, on which they sent for three gallons of stout, which they drank in ten minutes, and wished two gallons more sent them. On this being refused, they immediately came into court, and gave their verdict for the plaintiff, damages, 100*l.*

Rule nisi for a new trial unless the other party consented to reduce the damages.

Rule nisi.

DOE *dem.* COUSINS *v.* COUSINS.

New trial—Alteration of will.

In this case, *Platt*, Q.C. moved that the verdict (which was for the defendant) should be set aside, and a new trial had, on the ground of misdirection, and that the verdict was against evidence. The principal ground that he relied on was, that a will under which the defendant claimed, and which was put in evidence at the trial, had been altered, both by erasure and interlineation, which alterations had not been shewn to have been made before the will was executed.

Rule nisi.

REG. *v.* THE INHABITANTS OF HICKLEY.

This was an indictment for the non-repair of a road. Verdict for defendants.

Waleman moved for a rule to shew cause why the entry of judgment in this case should not be stayed until a new indictment could be preferred, on the ground that the verdict was against evidence, and of misdirection of the learned judge.

Cases cited: *Fawcett* v. *Fowl*[illegible], B. & C. 394); *Brittain* v. *Kinnaird* (1 Bro. & Bing. 432); 54 Geo. 3, c. 64.

Rule nisi.

Saturday, Nov. [illegible]

BARON DE BODE.

The *Solicitor-General* applied to the Court to take the point of the jurisdiction of the Court of Queen's Bench separately.

Leave granted.

BODMER *v.* BUTTERWORTH.

Specification of patent—Surface motion for roving of cotton wool.

Watson, Q.C. moved to set aside the verdict for the defendant on the first and fourth issues in this action, which was brought for violation of a patent. The defendant had pleaded, first, not guilty, and, fourthly, that the invention was not properly specified in the patent, which was for the carding, roving, coiling, and uncoiling cotton wool. The object of this invention is to take the roving off the cylinder and transfer it to the drawing-frame by means of a surface motion given to the upper cylinder in such manner that the wool is taken through the entire process at one uniform speed, and without straining or stretching it on an endless track, instead of by the old system, and by depositing the roving in tanks, in which it used to be carried by hand to the drawing-frame. The defect relied on in the specification was the omission of any mention of the surface motion, but *Watson* contended for the plaintiff that the patent was accompanied by such plates and plans of the rollers or cylinders as would at once shew any competent workman that the motion must be surface motion, and on this ground he moved to set the verdict aside.

Rule nisi.

MERCER *v.* WARD.

Breach of articles of clerkship—Justification of dismissal.

Whitehurst moved to set verdict aside, or for new trial.

This was an action to recover damages for the breach of articles of clerkship. The defendant was the clerk of the plaintiff. Misconduct had been proved against the plaintiff in endeavouring to injure the defendant's interest, and play into the hands of an attorney named Gratton. The motion was made on the ground of misdirection, the judge having left it to the jury to find what was a justification of the dismissal of the defendant in point of law, instead of telling the jury what facts would amount to one. Several instances of misconduct had been proved on the part of the clerk, and it was sufficient that the jury should find one of these sufficient justification, and nowise necessary that they should find that the dismissal was grounded on such specific misconduct. (*Baillie* v. *Kell*, 4 B. N. C. 638; *Ridgway* v. *Hungerford Market*, 3 Ad. & Ell. 171.)

Rule nisi.

ALFORD *v.* ASHWOOD.

Credit, what amounts to evidence of.

Kinglake, Serjt. moved for a new trial, the verdict in this action having been against evidence, and for misdirection.

This was an action of *assumpsit* for goods sold, and use and occupation. The defendant was the secretary of a cricket club, and evidence was put in that he had ordered dinners and refreshment for the members. The defendant called witnesses to prove that a Mr. Marshall had presided at one of the dinners, that he was president of the club, and that the plaintiff had been heard to say that he had sent a bill of the dinners, &c. now charged to the defendant, to Mr. Marshall. This was the entire evidence for the defendant, and it was not shewn that he had ever repudiated the debt himself.

Rule nisi.

OLDFIELD *v.* DALRYMPLE.

Attorney's bill—Inspection of deeds.

Townsend moved to set aside the verdict on the third issue in this action for the defendant for 515*l.* and to enter it for the plaintiff on all the issues for 622*l.* 5s.

This was an action on an attorney's bill on a special undertaking for the sale of an estate. There were nine pleas on the record. The plaintiff and his deceased brother had been in partnership. The first point taken was as to the time when the contract accrued, and this turned chiefly on the fact of certain deeds relating to the Marquis of Anglesey's property or not. Another point was that of the non-production of these deeds, which it was contended for the plaintiff he was not required to produce, but only to allow of the inspection of them.

Rule nisi.

REG. *v.* JOSEPH LEE.

Delivery of paper books.

Pashley was about to move to set aside a conviction, when it was discovered that the paper books were not delivered by the plaintiff; the rule being, that they should be delivered for both sides before the case comes on to be heard. (*Abraham* v. *Cook*, 3 Dowling, 215; *R.* v. *Stafford*, 10 Ad. & Ell. 417.) Such had been the rule in civil proceedings, and the Court will not confirm a conviction on this ground, this being, Pashley submitted, the first time the rule had been enforced in a criminal matter. The plaintiff, too, would, if the rule were applied in this case, be subjected to a term of imprisonment upon a bad conviction, in the event of not being able to pay the fine. On these grounds he wished the case to stand over till the delivery of the paper books.

DENMAN, C.J.—We see no reason whatever why this rule should not be acted upon. The conviction may be ever so bad, but it is not because in particular cases of peculiar hardship we may have relaxed the rigour of the established rule that we are therefore to be told that we are bound to let a case stand over where no reason or pretext can be assigned for doing so.

Order quashed and conviction confirmed.

REG. *v.* ELLIS.

Where a county lunatic asylum is full, a lunatic pauper cannot on that account be sent elsewhere under 9 Geo. 4, c. 40.

On appeal against an order of justices for the removal of Harriet Ellice, a pauper lunatic, settled in St. Luke's, Middlesex, to a lunatic asylum in Surrey, the sessions quashed the order, subject to a case, by which it appeared that the Hanwell Lunatic Asylum, to which the pauper ought to be removed under 9 Geo. 4, c. 40, s. 38, had not at that time room for the accommodation of the pauper, and they therefore, in consideration of the premises, ordered that the pauper should be conveyed to a lunatic asylum in Surrey, and directed the parish of St. Luke to pay 6s. 6d. as the cost of the removal, and 10s. per week as the cost of the pauper's maintenance. The ground of appeal was that, under the Pauper Lunatics Act, the justices had no jurisdiction to send the pauper out of the county of Middlesex, in which county there were several duly licensed houses for the reception of lunatics.

Prendergast, in support of the order, contended that the justices could not extend the Act, which had clearly not provided for this case. If the Legislature has made no provision for cases of this sort, there were abundant means of providing for lunatics in workhouses. Whatever the equity of the case, the Court will adhere to the words of the statute. (*Rex* v. *Chatford*, 1 B. & Ald. 235.)

Bodkin (with whom was *Pashley*), contra.—The words of the 38th section—"to such county lunatic asylum as shall have been established,"—mean so established as to be fit to receive paupers. In this case the asylum was so full that the order, if made, to remove them would be nugatory. The preamble of the Act shewed that the intent is to deal summarily with persons found in a state of lunacy, but the result of confirming this order would be to throw such persons loose on the country, and 4 & 5 Wm. 4, c. 76, ss. 4 & 5 forbid the reception in workhouses of dangerous lunatics. In penal statutes only is a close construction of the words required. (*Doe dem. Richardson* v. *Thomas*, 9 Ad. & Ell. 556, per Coleridge, J.; *Henderson* v. *Sherborne*, 2 M. & Wel. 236; *Edmonds* v. *Lawley*, 6 M. & Wel. 285.) In these cases the statutes, being penal, were strictly construed, but the rule is otherwise where no penalty attaches. The meaning of an Act of Parliament is to be sought less according to its strict etymological exactness and propriety of terms than by such reasonable construction as shall avoid manifest inconvenience and repugnance to its obvious intent. Suppose all the county lunatic asylums were swallowed by an earthquake; are all the pauper lunatics to be thenceforth turned adrift? That construction must be put upon the statute most in unison with equity and reason. (Plowden, 363, 4; Bacon Dig, 3, 25.)

DENMAN, C. J.—The sessions have done quite

right in quashing this order. This is a case for which it is clear that the legislature has made no provision. Were we to give the construction, and import the addition into this statute, which it is required of us to do, we should in effect be making a new Act of Parliament. Section 48 empowers the justices to order the removal of the pauper to the county lunatic asylum where one shall have been established, and only in case none shall have been established, then to some other asylum. Here a county lunatic asylum has been established, and there is no likelihood that, where once established, there will ever cease to be a county asylum. In this case there is no authority in the statute to remove pauper lunatics elsewhere, and the order of the sessions must be confirmed.

WILLIAMS, J.—The argument falls short in convincing us that we can uphold the order of the justices. It is said that the asylum, being full, is practically the same thing as no asylum; but for this case the Act has not provided, and we cannot supply that which it has not provided for.

COLERIDGE, J.—The object of the statute is to provide for the proper reception of lunatic paupers; it provides a new mode of getting rid of that miserable parochial care which had previously formed the chief resource. They are all to be sent to the proper place—the county asylum, and only where there is none, to a private or other asylum; this is the uniform practice, and it must be regarded as an inflexible rule that the justices are bound by the strict condition imposed by the Act, that only where there is *no* asylum, can the pauper be sent elsewhere. Here there was one. The order must be confirmed.

WIGHTMAN, J. concurred.

Order of sessions confirmed, quashing order of removal.

ST. ANN'S, WESTMINSTER, v. ST. JAMES, WESTMINSTER.

The order was quashed for defect of statement of chargeability.

Adolphus, for the order.

Pashley, contrà.

PAINE v. THE GUARDIANS OF THE STRAND UNION.

If a witness at an appeal is asked to attend for the benefit of a party, the party must pay him. Quære, Must contracts by guardians be under seal as corporations?

Platt, Q.C. moved to enter a nonsuit in this action on two grounds. This was an action brought to recover a sum of money for work and labour by the plaintiff, in executing a new survey of the parish of St. Clement Danes, which was one of the six parishes forming the Strand Union. The defendants entered into an agreement with the plaintiff and another to perform this work, and to furnish maps for the whole six parishes, for the sum of 250*l*. each. The plans and valuation were to be subject to the approbation of the Poor-law Commissioners and the Tithe Commissioners, without whose approval of them the parties were not to be paid; and it was further stipulated that the plaintiffs were to attend at the two next sessions after the completion of the valuation, in order to support it against any appeal. There was a time fixed for the completion of the plan and valuation, but they were not ready till long afterwards, and when they were sent in, it was found necessary to have a reduced plan made. This was executed by the plaintiff, and he attended at other sessions before the two mentioned in the contract, where he was not asked to attend. For this extra work he claimed payment. The only question for the jury was one of amount, and the verdict was for 23*l*. 2*s*. The questions raised were, 1st, whether the plaintiff could recover expenses for attending an appeal at sessions as a witness: it not be[illegible]g like an action.

COLERIDGE, J.—Was he subpœnaed? [No.] If you had put the stringency of the law upon him you might then say he had no claim to pay; but here you ask him to come, and he attends for your own benefit.

The 2nd question was, whether this contract, being by a corporation, could be binding, not being under seal. Trading companies had broken in upon that rule, but *Arnold* v. *Mayor of Poole* (4 M. & Gran. 840, and 2 Dowl. N. S. 574) has established the law *qua* corporations. (*Mayor of Ludlow* v. *Charlton*, 6 M. & Wel. 815.) The guardians here unite all the parishes, and are bound to act for all.

Rule nisi on the last point.

Monday, Nov. 11.

REG. v. THE INHABITANTS OF KENT.

Mandamus—Return to—Who may make.

Platt, Q.C. moved for a rule to shew cause why the Commissioners of the Dartford and Crayford Navigation should not be allowed to make a return to a *mandamus* which had issued in [illegible] cause to the justices of Kent under 1 Wm. 4, c. 2[illegible].

It appeared that a *mandamus* had issued, commanding the justices to issue a distress warrant against the treasurer of the commissioners for alleged damage to the land of a party, who claimed compensation under their Act.

The justices had made a return, which did not raise the question which the commissioners wished to litigate, which was, that the justices had no jurisdiction to make the order. It further appeared that the rule *nisi* for a *mandamus* which had been granted had been enlarged until the next Term, of which the commissioners had no notice, and therefore they had been prevented from shewing cause against the rule being made absolute.

Case cited: *Reg.* v. *St. Saviour's, Southwark* (7 A. & E.).

Rule nisi to amend the return; the justices to be served, and the proceedings stayed in the meantohile.

BAX v. BEETHAM.

Where a party deals with an article, which he has ordered, to which nothing remains to be done to make it complete, as by directing a different lining to be placed in a cloak, this is exercising such a dominion over the article as constitutes an acceptance within the Statute of Frauds.

This was an action for goods sold and delivered, work and labour, and on account stated.

Plea—Never indebted.

Verdict for plaintiff for the amount claimed, with leave for the defendant to move to enter a nonsuit. A rule *nisi* having been obtained,

M. Chambers now shewed cause. It appeared that the plaintiff was a tailor in Regent-street, and that the defendant called at the plaintiff's shop, and ordered a cloak; he at the same time took a pattern of a lining to the shop, which he requested the plaintiff to get and line the cloak with. The order was to be a ready-money transactio[illegible], for a price agreed on. The cloak was made according to order, and sent home, but the defendant, who was present when the cloak was brought to his house, requested the man to take back the cloak and tell his master to take out the lining and make it into a chaise-cloth, as it was too heavy, and did not answer so well as he thought it would, and line the cloak with silk. This was accordingly done, and the cloak and chaise-cloth sent to the defendant's house; the defendant then objected to the fit of the cloak, but wished the chaise-cloth to be left. This the man would not do, as it was a ready-money transaction, and the articles were both taken back. Shortly after this the plaintiff brought his action, and at the trial it was objected that there was no delivery or acceptance within the Statute of Frauds. On these facts it was now contended that direction of the defendant to have the cloak re-lined was a sufficient dealing with the property to constitute an acceptance within the statute, and that the act of ordering the lining to be taken out and made into a chaise cloth was exercising such dominion over the article as constituted an acceptance.

Bagley, same side.

Cases cited: *Atkinson* v. *Bell* (8 B. & C. 277); *Wilkins* v. *Bromhead* (13 Law J. C.P. 74); *Richardson* v. *Dunn* (1 G. & D. 417).

Platt, Q.C. contrà. *Beetham*, same side.

Cases cited: *Tempest* v. *Fitzgerald* (3 B. & C. 680); *Mucklow* v. *Mangles* (1 Taun. 318): *Howet* v. *Palmer* (3 B. & A. 321); *Boltz* v. *Packer* (2 B. & C. 37); *Thomson* v. *Macceroni* (3 B. & C. 1); 11 Law J. Ex. 81.

By the COURT.—The question here is, whether there is any evidence in this case of an acceptance of goods to satisfy the Statute of Frauds. We think there is. The article was clearly taken into the possession of the defendant by the act of desiring the alteration of the lining to be made; no objection was made to the fit of the article when it was first sent home, and nothing remained to be done to complete the cloak until the alteration as to the lining. The jury have found that there was a sufficient acceptance, and we shall not disturb that verdict.

Rule discharged.

GILLETT v. WHITMARSH.

Death of plaintiff after rule nisi obtained by him for new trial—Practice in.

In this case *Lush*, who appeared for the defendant, claimed that the rule *nisi*, which had been obtained for a new trial, should be discharged, on the ground that the plaintiff was dead, and that as no will had been proved, or any letters of administration taken out, no one could appear to represent him, citing *Sloman* v. *Allen* (1 M. & G. 96).

The *Solicitor-General*, contrà.

By the COURT.—The case had better stand over for a few days, to see what steps are taken by Mr. Gillett's representatives. *Stands over accordingly.*

HOPKINS v. RICHARDSON.

New trial.

In this case *Platt*, Q. C. moved for a new trial, on the ground that the verdict was against evidence, the work for which the action was brought being done by order and special agreement for another party, and that the defendant was not liable.

Rule nisi.

Tuesday, Nov. 12.

LONDON ASSURANCE v. BOLD.

A surety for A. "as agent," is not a surety for A. and B. as joint agents, though the guarantor knew there was none other than a joint agency at the time he made a bond as surety for A.

This was a special case, whereby it appeared that, in the year 1836, Thomas Addison, jun. with one Bolton, became joint agents for the plaintiffs at Liverpool for the negotiation of their business and the receipt of moneys on the company's behalf. The defendant at the same time entered into a bond conditioned for the due account of moneys received by Addison in these terms: "Whereas the said Addison has been appointed agent to the London Assurance, if the said A. shall in his said office or employment duly and faithfully demean and conduct himself, and whenever thereto required, pay, account, and deliver to the said corporation all and every sum or sums of money he the said A. shall or may hereafter receive for and on account of the said company as such agent, then this bond," &c. Up to this time Bolton had a board up at his office in Liverpool, with his name alone on it: but after the appointment of himself and Addison as agents to the assurance, the two names were placed together on the board as partners.

In June 1841 the agents failed. On the 25th June, and the 7th August, the Assurance wrote to Bold, the surety, informing him that the debt due to them from the agents was 445*l*. 6*s*. 10*d*. which they requested him to pay. On the 8th August the defendant Bold answered, saying that he would make the necessary arrangements, and begged to see the bond. He subsequently refused payment, on the ground that he was responsible for Addison alone in his capacity of agent; that no such capacity existed, inasmuch as he was joint agent with another, and not sole agent, as the bond implied.

Kelly, Q. C. for the plaintiffs, contended, that as the only capacity in which Addison could become accountable to the assurance at all, was a *joint* and not a *separate* agency, it must be taken to have been the intent of the parties at the time that the defendant should be responsible for him in that joint capacity; that the fact of the joint agency was fully known to the defendant at the time he entered into the bond, and that if it were not so intended, the bond was nonsense and a mere nullity; that this could not be the intent of the parties at the time, and that to the intent the Court must look. (*Harper* v. *Lucas*, 1 T. R. 291, n.) The facts themselves, *Kelly* argued, as well as the condition and recital in the bond, shew what must have been the intent. This case is distinguishable from *Bellairs* v. *Ebsworth* (3 Camp. 53); and where the bond admits of two constructions, the attendant circumstances must be taken into account. The allegation that A received money, would be as well satisfied by the receipt of A and B as of A alone. So in this case, obligation to answer for one of two joint agents is an obligation for both. (*Richards* v. *Heather*, 1 Barn. & Ald. 29.) This is not a latent ambiguity. The law says the receipt of one is the receipt of both.

Watson, Q. C. contrà.—The argument of Kelly goes to make the defendant surety for two, when he in terms undertook for only one. The true mode of construing a bond is to take its plain terms, and not to import external circumstances. (*Chapman* v. *Beckington*, 3 G. & Dav. 33.) He was stopped by the Court.

DENMAN, C. J.—The question in this case is what does the bond mean? When A makes himself surety for B, does he become surety for C likewise? It appears, according to the recital, that Addison was agent for the assurance, and then the instrument goes on to say that the defendant binds himself for Addison alone, without mention of the other agent. Mr. Kelly says that the evidence shews that the defendant must have been aware that there was a joint agent, and that therefore the intent must have been to become surety for both agents; but I think that the more clearly it appears that the defendant knew that there was a joint agency, the stronger does the meaning of the defendant appear in mentioning one only to be surety for that one alone. There is no difficulty in coming to a conclusion without the aid of cases. Mr. Kelly put an ingenious turn in his favour upon the engagement in *Bellairs* v. *Ebsworth*, of the defendant to be bound for the money which Nott should receive. I think the case quite against Mr. Kelly. Lord Ellenborough, with his usual good sense, says, "When the plaintiff entrusted their agency to the new firm, the defendant's responsibility was at an end. He by no means undertook for the good conduct of any future partner with whom P. Nott might associate. The recital and the whole scope of the condition shews that the suretiship was confined to P. Nott individually." We are told we must look to the intent of the parties; we do so, and think the intent is quite plain here to be bound for Addison alone. The expression of alarm in the letter of the defendant before his memory was refreshed with a sight of the bond is quite consistent with that intent.

WILLIAMS, J.—Nothing can be much more distinct than a security for the accountability of A, and a security for the accountability of A and B. There would be no limit to the responsibility of sureties if the guarantor has the good conduct of two individuals to answer for, when he in terms undertakes alone for

the good conduct of one. Nothing that Mr. Kelly has said has, in my judgment, extended the meaning of the bond one iota beyond its express terms. Some cases, certainly, in his argument, went to shew that parol evidence was admissible to explain latent ambiguities in the devise of lands; but there is nothing of the sort here. The defendant uses the letters in question to shew whether there was a breach, or not, of the bond itself, and not to extend its terms. Though Mr. Kelly divided his argument into two or three distinct heads, they really resolve themselves into one question,—does the language of the instrument confine the responsibility of the defendant to the party he specifies? I think it does, and to extend its scope is to violate the bond.

COLERIDGE, J. and WIGHTMAN, J. gave similar judgments.

Wednesday, Nov. 13.

CROWN PAPER.

REG. v. THE INHABITANTS OF SKIPTON.

Order of removal under 9 Geo. 4, c. 40, s. 38—Requisites of—Appeal against—Who proper party to be respondent.

In this case *Hall* had obtained a rule calling on the defendants to shew cause why an order of sessions, confirming a certain order of justices, should not be quashed. The order of justices was made under 9 Geo. 4, c. 40, s. 38, for the removal of a pauper lunatic to an asylum, and for the payment of certain expenses by the overseers of the parish, in which the order adjudged the pauper to be settled.

Bliss now shewed cause; but, as it appeared that the order of justices, which was in the form No. 5 in the schedule of the Act, as required by section 38, did not contain any statement that the surgeon called in by the justices to examine the lunatic, had been examined *on oath*, or that the justices themselves "upon view and examination of the said poor person, or from other proof," to be set out, "were satisfied" that the pauper was insane;

The COURT were of opinion that the order of the justices was bad, and were about to quash it, when it was objected to by

Bliss.—That as the justices had been made respondents in the appeal, instead of the clerk of the peace, as required by the 54th sec. of 9 Geo. 4, c. 40, there had been no appeal in fact, and therefore the order of the justices was not before the Court.

Cases cited: *R. v. The Justices of Kent* (2 Q. B 686); *R. v. The Justices of Middlesex* (5 A. & E. 626); *R. v. Hareby* (Bur. S. C. 103). The rule also obtained by the other side was only for quashing the order of sessions.

Hall, contrà.

By the COURT.—We have looked at the rule, and find that it is confined to the order of sessions, therefore as that is the only point before the Court, we cannot direct the order of justices to be quashed, but only the order of sessions.

Rule absolute to quash order of sessions

REG. v. THE INHABITANTS OF FAZIBEY.

Special case from sessions—Form of.

In this case the sessions had confirmed an order of removal subject to the opinion of this Court, or a special case, the submission of which concluded in these words, "and if the Court shall be of opinion that the said objections are not fatal, and that the sessions ought to have heard the appeal, continuances to be entered and the appeal heard."

Archbold, for the respondents, contended that the form of the submission was a bar to the case being heard, as the Court had decided in several late cases.

DENMAN, C. J.—We have repeatedly said that we will not hear cases sent up to us in this form, and the reason we have given has been to prevent continued litigation.

Bain, for the appellants.—The rule is for quashing the order of sessions generally.

COLERIDGE, J.—That will not help you, for we can only quash the order of sessions on the case, and that is so framed as to prevent our entertaining it.

Rule for quashing order of sessions discharged.

BUSINESS OF THE WEEK.

Friday, Nov 2.

WHITE v. HILL.—*Cockburn*, Q. C. moved to set aside verdict for the plaintiff in this action.

Rule discharged.

Thursday.

BRACEGIRDLE v. PEACOTT.—*Platt*, Q.C. moved to set aside verdict, and for new trial, or to enter verdict for defendant on last issue. *Cur. adv. vult.*

Friday.

PEARSON v. COBB and OTHERS.—*Watson*, Q. C. moved for a new trial, on the ground of misdirection and that the verdict was against evidence.

Cur. adv. vult.

DOE *dem.* HUGHES v. WALL.—*Whateley*, Q. C. moved for a new trial, on the ground that the verdict was against evidence. *Cur. adv. vult.*

BATE and ANOTHER v. BLUNDEN and ANOTHER.—*V. Lee* moved for a new trial.

Cur. adv. vult.

DOE *dem.* HOPE v. HURROCKS.—*Hugh Hill* moved to set aside a nonsuit and to enter a verdict for the lessor of the plaintiff. *Rule refused.*

DARBY v. CAUDREY.—*Jervis*, Q. C. moved for a new trial in this case. *Cur. adv. vult.*

STRATTON v. MALINS.—In this case, *Godson*, Q. C. moved for a new trial. *Cur. adv. vult.*

SKINNER v. GUNDRY.—*Cockburn*, Q. C. moved for a new trial. *Rule refused.*

NEVILL v. LICHFIELD.—*Talfourd* Serjt. moved for a new trial. *Rule refused.*

DALLY v. POOLEY.—*Platt*, Q. C. moved to enter a nonsuit pursuant to leave given at the trial.

Cur. adv. vult.

DOE *dem* BUTLER and OTHERS v. LORD KENSINGTON and OTHERS.—*V. Williams* moved for a new trial. *Rule nisi.*

DOE *dem.* WOODHOUSE v. POWELL.—*V. Williams* moved to set aside the verdict in this case and enter one for the defendant, on ground of misdirection.

Rule nisi.

SUTTON v. MAGUIRE.—*Flood* moved to set aside the verdict and for a new trial. *Cur. adv. vult.*

GREEN v. ELIOT.—*Henderson* moved for a new trial. *Rule refused.*

CLIGELY v. WOLLEY.—*Simonds* moved to set aside the nonsuit in this case and for a new trial.

Cur. adv. vult.

Saturday.

REG. v. THE INHABITANTS OF KIRKBY LONSDALE.—(*Certiorari.*)—*Baines*, Q.C. shewed cause.

Cur. adv. vult.

DOE *dem.* JACOBS v. PHILLIPS.—*Wordsworth* moved for a new trial *Cur. adv. vult.*

DOE *dem.* WARWICK v. COOMBS.—*Watson*, Q.C. was heard in this special case for the plaintiff. *Kelly*, Q.C. for the defendant *Cur. adv. vult.*

Monday.

NEW TRIAL PAPER.

PHILLIPS v. SHERVILLE.—*Chilton*, Q. C. shewed cause. *Hugh Hill*, s. s. *Platt*, Q. C. *Pashley*, and *Pearson*, contrà. *Cur. adv. vult.*

NEEDHAM v. RAWBONE.—*Platt*, Q. C. shewed cause. *Whitehurst*, Q. C. s. s. *Cockburn*, Q. C. and *Petersdorff*, contrà. *Cur. adv. vult.*

PARK v. STEPHENS.—*Pashley* appeared to support his rule; no one appeared to shew cause.

Rule absolute.

Tuesday.

WHITE v. HILL.—*Cockburn*, Q.C. moved to set aside verdict in this action, and for a new trial.

Rule discharged.

BRACEGIRDLE v. PEACOCK.—*Platt*, Q.C. moved to set aside verdict in this action, and enter it for the defendant on the last issue or for new trial.

Cur. adv. vult.

CASTRIQUE v. BERNABO.—*Willis* moved to enter verdict for defendant. *Rule discharged.*

DOE *dem.* JACOBS v. ———.—*Wordsworth* moved for rule for new trial in the action.

Cur. adv. vult.

Wednesday.

REG. v. THE GREAT WESTERN RAILWAY COMPANY.—*Whateley*, Q.C. *Tyrwhitt*, and *Bross*, for the respondents. *M. D. Hill*, Q. C. and *Carrington*, contrà. *Cur. adv. vult.*

REG. v. THE MAYOR, ALDERMEN, AND BURGESSES OF WEYMOUTH.—*Kingslake*, Serjt. was heard in support of demurrer.

Further hearing adjourned.

COURT OF COMMON PLEAS.

Saturday, Nov. 9.

RUSSELL v. KNOWLES.

Where the party to be served with a notice has a dwelling-house, service at his office, although his clerks say they have communicated the fact of service to him, and it also appears he keeps out of the way, is not sufficient.

Dowling, Serjt.—In this case, on a former occasion, the Court had said that calls made at the office of the defendant were not sufficient. In the present instance the persons employed by the defendant at his office had stated they had communicated the fact of service of the notice to the defendant: and in addition it was sworn the defendant keeps out of the way.

By the COURT.—The common course is to go to the party's dwelling-house. *Rule refused.*

DOE *dem.* WYATT v. ROE.

Where ejectment is brought for unfinished buildings which appear to be deserted, the possession must be treated as a case of vacant possession.

C. Jones, Serjt. moved for a rule *nisi* for judgment against the casual ejector.

The service had been made at the last known place of abode of the plaintiff, by delivering there a copy of the declaration to a man whom the deponent believed to be in communication with the defendant. The premises sought to be recovered were two unfinished buildings, which had been for some time deserted.

By the COURT.—This must be treated as a case of vacant possession. The course to be followed is pointed out in Arch. Prac. 770. *Rule refused.*

DARLEY v. FIELD.

Writ of summons—Defective indorsement.

Byles, Serjt. moved for a rule *nisi* why the writ of summons in this cause should not be set aside with costs; the indorsement on the writ not conforming with the R. H. 2 Wm. 4, r. 11; the indorsement in this case stating that the plaintiff claimed 26*l.* 5s. 11½d. together with interest thereon, at the time when certain bills of exchange became due. There is nothing to shew how much interest was due or what were the bills referred to, or what was their date. *Rule nisi.*

Monday, Nov. 11.

MAKEPIECE v. LORAINE.

Where an action for obstructing a stream was referred to an arbitrator, with power "to give such directions as he should think proper consistently with the legal rights of the parties;" Held, that he was not bound to give any directions as to the use of the stream.

Shee, Serjt. moved, on behalf of the plaintiff, to set aside the award which had been made in this cause, or to have it sent back to the arbitrator, under the power for that purpose, given to the Court by the submission in case of dispute arising on the award.

The action was on the case for the obstruction of a stream which worked the plaintiff's mill.

The defendant pleaded not guilty; that the stream ought not to have flowed as in the declaration alleged; and, lastly, a justification by reason of the plaintiff having accelerated the flowing of the water and caused an injury to a dwelling-house of the defendant situate below the plaintiff's mill.

To this last plea the plaintiff replied *de injuriâ*, with a new assignment of excess, and on the others joined issue.

The cause was referred at Nisi Prius, with power to the arbitrator "to give such directions as he should think proper consistently with the legal rights of the parties." The arbitrator, by his award, decided all the issues against the plaintiff, except the issue on the plea of not guilty.

It was submitted, on the authority of the opinion of Parke, B. in *Angus* v. *Redford* (11 M. & W. 69), that the arbitrator should have given some directions as to the use of the stream, and that the award was, therefore, bad, or at all events the award ought to be referred to the arbitrator for determining the right of the plaintiff as to the use of the water for his mill.

The COURT said that the arbitrator was not bound to give any such directions; that he had, by his award, in substance found that the plaintiff had no right to the stream; and that, as a dry point of law, which was the only way in which the question appeared then before the Court, the award was good. As they had no statement of the facts deposed to, shewing any limited right of the plaintiff to the use of the stream, they would not refer it to the arbitrator. *Rule refused.*

ILEY v. FRANKENSTEIN.

Goods sold on a contract of sale or return on notice. The judge left it to the jury to say whether the goods were sold on sale or return, or out and out. There being no evidence of the goods being kept beyond a reasonable time:—Held, that this direction was right.

This was an action for goods sold and delivered.

Plea—Non assumpsit.

At the trial before Maule, J. the plaintiff proved his case by simply giving evidence of the delivery of the goods in question. The defendant, on the other hand, proved that the goods were delivered on sale or return, on notice. The learned judge left it to the jury to say whether the goods were sold on sale or return, or out and out, and the jury found a verdict for the defendant.

Murphy, Serjt. now shewed cause against a rule obtained by *Dowling*, Serjt. to set aside this verdict on the ground of misdirection, in not having left to the jury the question whether the defendant had not, by his conduct in keeping the goods beyond a reasonable time, rendered the sale an absolute one.

Dowling, Serjt. in support of the rule, relied on the cases of *Bianchi* v. *Nash* (1 M. & W. 545), and *Beverley* v. *Lincoln Gas-light and Coke Company* (6 Ad. & Ell. 829).

The COURT said that the plaintiff had only given *primâ facie* evidence of a contract of sale, which was quite consistent with the evidence given by the defendant of its being a sale on the terms that he was to keep them until sold, or until they should be demanded by the plaintiff; that the present was to be distinguished from the cases cited on the part of the plaintiff, as they only shewed that a conditional sale became absolute on the condition being performed; but here there was no evidence of its being such a conditional sale as suggested by the plaintiff, but only of its being on sale or return, which was shewn to mean that they might be kept until notice to return. The question of retaining them beyond a reasonable time did not arise: there was no evidence in support of such, and the direction of the learned judge was therefore right. *Rule discharged.*

Tuesday, Nov. 12.

COVINGTON v. [illegible].

Stay of proceedings.

Channell, Serjt. moved for a rule nisi why the proceedings in this action should not be stayed, on the ground that the plaintiff has received the amount of the debt by virtue of proceedings taken in the Court of Bankruptcy. *Rule nisi.*

Cases cited *Kemp* v. *Potter* (6 Taunt. 549); 4 Rose's Bank Cases 394, *Ransford* v. *Barry* (8 Dowl 607). This case is said not to be correctly reported. See 3 Jurist, 655, S C.—(Reporter.)

METCALF and ANOTHER v. BUSBY.

New trial—Payment of costs.

Talfourd, Serjt. shewed cause against a rule for a new trial.

Shee, Serjt. contra.

By the COURT.—We are inclined to think it will be more satisfactory to give another opportunity of trying the question.

Rule absolute on payment of costs. The plea to be taken as an ended at Nisi Prius.

POOLE v. CRANSHAW.

Taxation of costs. Lord Denman's Act.

Byles, Serjt. moved for a rule nisi why the Master should not review his taxation in this cause, or why he should not tax to the plaintiff the full costs of the action. There were issues of law which had been found for the plaintiff, and issues of fact on which a general verdict had passed for the plaintiff for 20s. The Master had refused costs on the ground that the verdict was for less than 40s. But in this case it was contended Lord Denman's Act, the 3 & 4 Vict. c. 24, did not apply. *Taylor* v. *R*[illegible] (1 [illegible] Q B), was strictly in point. *Rule nisi.*

Wednesday, Nov. 13.

NICHOLS v. PAYN.

Debt for work and labour.—Plea to the further maintenance, that defendant [illegible] presented a petition for protection to the Court of Bankruptcy, under the 5 & 6 Vict. c. 116, whereupon all the estate and effects of defendant vested in one W. the official assignee, and that after action the commissioner made a final order for the protection of the person of the defendant from all process, and for vesting his estate and effects in the said W. the official assignee.—Held, on special demurrer, that the plea was properly pleaded to the further maintenance and not in bar [illegible], that it was not necessary to allege that such notice had been given as is required by the first section of 5 & 6 Vict. c. 116, but that the plea was bad for not shewing that the final order was for distribution or for vesting the estate in the official together with a creditor's assignee.

The declaration in this action was for work and labour. The defendant pleaded to the further maintenance that after the accruing of the debts and before the commencement of the suit the defendant being a trader within the meaning of the statutes in force relating to bankrupts, and having resided twelve calendar months in London and having given due notice then duly presented a petition for protection from process to the Court of Bankruptcy, which petition was duly subscribed by the defendant, and contained all such matters as were required by the Act, and that upon the presentation of such petition all the estate and effects of the defendant became vested in [illegible] Whitmore, the official assignee duly nominated by R. Fane, esq. the commissioner then acting in the matter of such petition, that the petition was duly filed, and that after the filing thereof, and after the commencement of the action, R. Fane, esq. then being the commissioner in the said Court of Bankruptcy to whom the petition had been referred made a final order according to the provisions of the said Act, for the protection of the person of the defendant from all process, and for the vesting his estate and effects in the said F. Whitmore, the official assignee duly named by such commissioner. The plea then alleged that such order still remained in full force, and prayed judgment if the plaintiff ought further to maintain his action. To this plea there was a special demurrer assigning, amongst other causes, that it did not sufficiently appear from the plea that notice was inserted twice in the *London Gazette* and some newspapers circulating within the county where the defendant resided, that the final order was not shewn to be a final order for the distribution of the defendant's effects, or for vesting the estate and effects in Whitmore, the official assignee, together with an assignee chosen by the creditors, and that the plea, if a defence at all, was in bar of the whole action, and ought not to be pleaded to the further maintenance.

Manning, Serjt. in support of the demurrer, relied first on the last point.

ERLE, J. Although the first order was made before the action was commenced, the final order was not made until after action, and it is the final order only which by the [illegible] 5 & 6 Vict. c. 116, is made [illegible].

Manning, Serjt.—The next objection is, that there is no allegation of notice having been given according to the first section of the Act, and that the statement of due notice being given was not sufficient.

TINDAL, C.J.—Does not the 10th section allow the defendant to rely on the final order?

Manning, Serjt.—It does not give any form of plea.

TINDAL, C.J.—If you take a defence and plead it in the words of the statute, it is good enough. The 10th section does not say merely that it shall be a sufficient defence, but a sufficient plea in bar.

Manning, Serjt. objected then that the final order was not shewn by the plea to be a final order for distribution according to the provisions of the statute.

ERLE, J.—The 4th section directs the final order to be for the vesting of the estate and effects in an official assignee, together with an assignee chosen by the creditors; the plea omits this.

TINDAL, C.J. to *Talfourd*, Serjt. who appeared in support of the plea.—You do not follow the words of the 10th section but go back to the fourth, which require an order for vesting in the creditors, as well as the official assignee.

Talfourd, Serjt.—The plea alleges that the commissioner made his final order.

MAULE, J.—But you do not rely simply on the terms of the 10th section, which enables you to plead in that short way.

TINDAL, C.J.—The plea does not adapt itself with the terms of any final order described in the statute.

Talfourd, Serjt. then asked for, and obtained, leave to amend on payment of costs, otherwise

Judgment for the plaintiff.

RASTRICK v. BECKWITH and OTHERS.

[illegible] of this court being sued with an attorney of this court, loses his privilege to be [illegible] in the court of which he is an attorney, and this rule is not altered by the Uniformity of Process Act.

The declaration was in *assumpsit* against three defendants for work and labour money paid and on an account stated. Dyc, one of the defendants, pleaded in abatement to the jurisdiction that each of the three defendants were at the commencement of the suit and still are attorneys of the Court of Queen's Bench. The plaintiff replied to the plea, that Kitton one of the defendants was and still is, one of the attorneys of this court, to which the defendant Dyc rejoined that defendant Kitton was and still is one of the attorneys of the Court of Queen's Bench. To the rejoinder there was a special demurrer assigning among other causes, that Kitton, being an attorney of this court, although an attorney of the Court of Queen's Bench, was not privileged to be sued in the last court only and therefore the defendant Dyc, being sued jointly with a person not privileged, was himself not privileged to be sued in such court.

Talfourd, Serjt. (with him Sir *T. Wilde*) in support of the demurrer, cited the following cases to shew that, where an attorney is sued with a non privileged person, he loses his privilege:—Bac. Abr. title "Privilege," B. 33. *Roberts* v. *Mason* (1 Taunt. 251). *Newton* v. *Harland* (6 Dow. [illegible], 2 Roll. Ab. 274. Salk. 544 and 12 Mod. 1 3).

Channell, Serjt. contra, admitted that, according to the old law an attorney sued with an unprivileged person lost his privilege, but the reason was because the process would otherwise be different, and in attorney had a right of being sued only by bill and that this was the reason of the rule, as is shewn by the cases where the attorney was sued jointly with a person having privilege of Parliament, and where it was held he did not lose his privilege (*Ramsbottom* and *Others* v. *Harvett* and *Another*, 4 M & S. 25.) Now since the right of being sued by bill has been abolished by the Uniformity of Process Act (2 Wm. 4 c. 39), and an attorney may be sued by the same process as any other person, his privilege is not lost by being joined with an unprivileged person (*Kemp* v. *Biggs*, 2 Dowl. 278, *Pitt* v. *Pocock*, 2 Cr. & M. 110) and it is clear from *Lewis* v. *Kerr* (2 M. & W. 26) and *Price* v. *Smith* (6 Dowl. 99) that an attorney's privilege of being sued in his own court still exists.

Talfourd, Serjt. replied.

TINDAL, C.J.—The defendant Kitton is an attorney of this court, and it is therefore clear that he would have no right to remove the action to the Court of Queen's Bench and it would be singular that, if he cannot do it himself, the other defendant, Dyc, should be able to do it for him. The case is this, the plaintiff has a right of bringing an action in this court against one of the defendants, and he ought not the less to have such right because such defendant is joined in the action with another, who, if sued alone, might have had the action removed into the Court of Queen's Bench. The case stands only on the old rule, that where a privileged person is joined in an action with an unprivileged person, he loses his privilege.

COLTMAN, J.—It would be subjecting the plaintiff to great hardship if the circumstance of one of the defendants being an officer of the Queen's Bench were to deprive the plaintiff of his right of continuing this action in this court. I think, however, that such defendant stands here in the situation of an unprivileged person, and that the plea must not, therefore, be allowed.

MAULE, J. concurred.

ERLE, J.—The general rule in this respect has not been altered by the Uniformity of Process Act. That Act relates only to the mode of proceeding, and not to the court in which the proceedings are to be had; besides the particular mode of being sued, an attorney had a distinct privilege of being sued in his own court, and this privilege remains the same as before the Act. If the old rule on this subject were not to prevail, great inconvenience might ensue, and defendants might have it in their power to prevent their being sued in any court.

Judgment, respondeat ouster.

Thursday, Nov. 14.

NEWTON v. HOLFORD and OTHERS.

Newton shewed cause against a rule obtained by *Talfourd*, Serjt. on the first day of term, why the costs incurred by the defendants in defending an action should not be set off against costs incurred in an action against the defendants in this court. Since the rule was obtained a writ of error had been taken out in the Queen's Bench, and the usual practice did not apply.

Rule enlarged for a week, to be conditional on the defendant's obtaining a rule absolute for execution for the costs in the Queen's Bench.

WILKINSON v. EARL of LICHFIELD.

New trial. Handwriting.

Shee, Serjt. shewed cause against a rule obtained in Easter Term last for a new trial. The cause of action arose out of a promissory note for 1,200*l.* purporting to be made by the defendant, and indorsed by him to one Margaret Edmonds. The plaintiff being the holder there was conflicting evidence respecting the handwriting of the defendant, but it was contended the jury having found on that evidence that the handwriting was the defendant's, there were not sufficient grounds for disturbing the verdict.

Manning, Serjt. contra, stopped by the Court.

Rule absolute, on payment of costs.

BUSINESS OF THE WEEK.

Friday.

ASTINALL v. ANDES. Sir *T. Wilde*, *Talfourd*, Serjt., *Channell*, Serjt., and *Byles*, Serjt. were heard in this case which was sent to this court by Vice-Chancellor Wigram. *Cur. adv. vult.*

WILLIAMS v. BURRELL and ANOTHER.—*Byles*, Serjt. for the plaintiff and *Channell*, Serjt. for the defendant, argued this case which was sent by the Master of the Rolls for the opinion of this Court. *Cur. adv. vult.*

Saturday.

BENSON v. CHAPMAN.—*Case to be sent into the judges' room to be settled.*

HARRIS v. HILL.—*Rule nisi for a distringas.*

COLLINS v. SAVAGE. *Dowling*, Serjt. shewed cause against a rule nisi obtained by *Shee*, Serjt. for a new trial, on the ground of misdirection. *Shee*, Serjt. contra. *Rule discharged.*

FISHMONGERS' COMPANY v. ROBERTSON and OTHERS.—*Talfourd*, Serjt. (*Hindmarsh* with him) shewed cause.

Further hearing postponed until Monday.

VENNING v. HAMMOND. *To amend affidavit.*

Monday.

FISHMONGERS' COMPANY v. ROBERTSON.—*Murphy*, Serjt. for defendant, Robertson, *Byles*, Serjt. for defendant, Staines, shewed cause, and *Channell*, Serjt. for the plaintiff, in support of the rule. *Cur. adv. vult.*

Tuesday.

WENTWORTH v. BRYANT. *Rule nisi.*

LEWIS v. MARSHALL.—Sir *T. Wilde*, Serjt. moved for a rule nisi to enter a verdict for the plaintiff for 123*l.* 11*s.* 2*d.* *Rule nisi.*

Wednesday.

STEEPE v. POLE.—Struck out of the paper, no counsel appearing.

BENTLEY v. GOLDTHORPE.—*Channell*, Serjt. (with him *Spinks*) for the plaintiff. *Manning*, Serjt. (with him *Addison*) for the defendant. *Cur. adv. vult.*

WAILER v. DEAN.—*Channell*, Serjt. applied to enter a suggestion on the record under the Middlesex Court of Requests Act, to deprive plaintiff of costs. *Refused.*

LANGLEY v. FAIRCLOTH.—*Dowling*, Serjt. moved to set aside nonsuit on payment of costs, on the ground of surprise. *Rule nisi.*

PIRIE v. CROWLEY.—*Byles*, Serjt. moved for a new trial. *Rule refused.*

Thursday.

DOE dem. MORGAN and OTHERS v. POWELL and OTHERS. *Partly heard.*

JACKSON v. GALLOWAY.—Sir *T. Wilde*, Serjt. moved for a rule *nisi* why the postea in this cause should not be amended. Cases cited: *Scales* v. *Cheese* (1 Dowl. & Lowndes, 657); *King* v. *Harrison* (1 B. & Ald. 161) contra. *Rule nisi.*

HINTON v. ACRAMAN.—*Manning*, Serjt. moved for a rule *nisi* to amend the declaration. *Rule nisi.*

VENNING v. HAMMOND.—*Rule nisi.*

COURT OF EXCHEQUER.

Thursday, Nov. 7.

ESDAILE and OTHERS v. LUND.

Joint stock banks—Execution against shareholders.

This case was tried before Pollock, C. B. at the sittings of this Court in London. Verdict for plaintiff on 1st issue; verdict for defendant on 2nd issue.

The *Solicitor-General* now moved, pursuant to leave reserved, for a rule calling on the defendant to shew cause why verdict on the 2nd issue should not be entered for the plaintiff. He moved also for a new trial, on the grounds of misdirection, and of the verdict being contrary to the evidence; and also for judgment *non obstante*.

The facts were, that the defendant was a shareholder in the Yorkshire Agricultural and Commercial Company, against which a judgment for 20,000*l.* had been recovered, and *sci. fa.* had been issued against divers shareholders to compel them to pay their contributions towards this amount; among others, *sci. fa.* had issued against Tomlinson, a shareholder.

The defendant pleaded that Tomlinson had been taken in execution and discharged by the authority of the plaintiffs. This plea gave rise to the present application.

The point reserved was, whether any evidence had been adduced at the trial that Tomlinson had been discharged by the authority of the plaintiffs. If the Court should be of opinion that there was no evidence, then the verdict on the 2nd issue was to be entered for the plaintiff.

This point depended on the construction of certain letters from Messrs. Roy, Blunt, and Co. the plaintiffs' solicitor, to Mr. Seymour, an attorney in the country, touching the execution of the *sci. fa.* against Tomlinson, and on the evidence of Mr. Roy.

The alleged misdirection was, that the learned judge had submitted the letters to the jury, instead of having construed them himself.

The ground for judgment, *non obstante veredicto*, was, that under the 7 Geo. 4, c. 46, s. 12, the discharging Tomlinson after he had been taken in execution, was no release to the other shareholders.

Rule nisi.

ACRAMAN v. COOPER.

New Trial—Pledging collateral security.

This case was tried before Pollock, C. B. at the last sittings at Guildhall. Verdict for defendant.

Kelly, Q. C. moved for rule calling on the defendant to shew cause why the verdict should not be set aside and new trial had, on the ground of surprise, and verdict contrary to evidence.

The action was trover for certain script receipts for 300 shares in the Royal Mail Steam Packet Company.

The script had been deposited with Messrs. Colls, Thompson, and Co. bill-brokers, in the city, as collateral security for bills discounted by them to the extent of 20,000*l.* The bills had been renewed, and the renewed bills had been paid when at maturity; but Messrs. Colls, Thompson, and Co. had fallen into difficulties, and had parted with the possession of the script.

The action was brought against the defendant, into whose hands the script had come.

The plaintiff had brought witnesses at the trial to disprove that any usage existed whereby bill-brokers might pledge their collateral securities; but these witnesses, at the trial, rather gave countenance to the idea; for they gave it as their opinion that the broker might resort to the collateral security, or to the principal security, though not to both.

The defendant called no witnesses, and the above were the circumstances under which the motion was made. *Rule nisi.*

GRIFFITHS and ANOTHER v. BULESTOCK.

New trial refused—Outgoing tenant is in law in possession of the land on which his standing crops remain.

This case was tried before Coleridge, J. at Chester at the last circuit. Verdict for defendant.

Evans, Q. C. moved for a new trial on the ground of misdirection.

It was an action of trespass for breaking and entering plaintiff's close; there was verdict for defendant on plea of not possessed. The facts were, that the plaintiff was in-coming tenant to certain lands, of which one Williams had been tenant immediately preceding him. Williams's crop was on the ground at the time that the plaintiff had entered as in-coming tenant; Williams had sold the crop to defendant; crop was cut, and defendant entered to take it away.

The point simply was, in whom is the legal possession of a close (in the outgoing or the in-coming tenant), so long as the outgoing tenant's crop is by custom of the country allowed to remain on the ground.

The learned judge at the trial decided that the possession was in the outgoing tenant, and of that opinion was the Court.

PARKE, B. cited *Beavan* v. *Delahay* (1 H. Blackstone, 5) in proof that outgoing tenant is tenant, and said in effect the outgoing tenant was in *possession* till all that he is entitled to do by the custom of the country is done. He has not a *mere easement*.

Rule refused.

Note.—Cases are collected—Coote's Landlord and Tenant, 410.

WOOD v. LEADBITTER.

New trial—Is license (founded on executed consideration) to enter land revocable?

This case was tried before Rolfe, B. on the 29th June last. Verdict for defendant.

Jervis, Q. C. moved for a new trial on the ground of misdirection.

It was an action of trespass for an assault in turning the plaintiff out of a close "wherein he then was."

The facts were, that the plaintiff had purchased a guinea ticket to the grand stand at Doncaster races; he had been admitted and then turned out by defendant by order of Lord Eglinton, on the representation of parties then present. Lord Eglinton was steward of the races.

The 4th plea and replication set out the facts; there was no traverse of Lord Eglinton's possession of the close, and the ticket was virtually issued by him through the corporation of Doncaster. The simple question was, whether the ticket conferred a license irrevocable to go there, or whether it gave a leave which might be withdrawn, and the party left to his action.

Jervis, Q. C. cited cases in Gale and Whatley on Easements. *Rule nisi.*

CHAPPELL v. PURDAY.

New trial—Copyright in foreign works.

This case had been tried before Pollock, C. B. Verdict for plaintiff.

Jervis, Q. C. moved, pursuant to leave reserved, for rule calling on plaintiff to shew cause why verdict should not be entered for the defendant on point reserved, or why there should not be a new trial on the ground of surprise.

The facts were, that the overture to the opera of *Fra Diavolo* had been composed by Auber, a foreigner, and performed in the first instance at Paris. The right of Auber to this overture had, by various assignments, passed to the plaintiff.

The point of law was whether, before the late International Copyright Act, there was any copyright in the works of foreign authors first published abroad, *Michaud* v. *More*, 9 Law Journal, 227), or, admitting there was none in the author, could there be any in his English assignees? As to this, *Jervis*, Q. C. said he should have to contend against *Dalmen* v. *Boosey* (1 Yo. & Col. 295).

The alleged surprise was that the plaintiffs, instead of producing the witnesses to a certain assignment, had adduced in evidence depositions in Chancery in a suit between the parties, whereby defendant had lost the opportunity of cross-examining the witnesses.

Rule nisi.

N.B. *Jervis* moved in the above case on a further ground, viz. for the rejection of evidence, but he abandoned this. The ground was, that when the depositions were produced at the trial, *Jervis*, for defendant, contended that the bill and answers in Chancery should be read; but the Chief Baron ruled that they ought not to be read, but only to be submitted to the judge, that the judge might see that the depositions were relevant to a point in issue between the parties.

VESEY v. JAMES.

Bankruptcy—Act of trading.

This case had been sent by the Chief Judge in Bankruptcy to try a question which arose on the petition of Vesey to supersede his bankruptcy.

Jervis, Q.C. who made the motion, and the Court also, seemed in some doubt as to the point intended to be raised by the Chief Judge's order; but it appeared to be whether the sale of stock left on the hands of one of two persons, on dissolution of partnership between himself and another, was an act of trading so as to make him a trader, and so amenable to the bankrupt laws in respect of a debt that accrued due from him after the dissolution of his partnership, and before the disposal by him of the stock?

Pollock, C. B. held at the trial, that if the object was merely to convert the stock into money, and not with a view of trading, it was no act of trading, any more than if the property had devolved on him as executor, and he had sold it. *Rule nisi.*

PITT v. HARRISON and BEVAN.

New trial—Evidence to affect petitioning creditor with liability for messenger's acts.

This case was tried before Tindal, C. J. at Gloucester, at the last circuit. Verdict for plaintiff; damages, 75*l.*

Talfourd, Serjt. pursuant to leave reserved, moved for a rule calling on plaintiff to shew cause why verdict should not be entered, on the plea of not guilty, for the defendant Harrison; and for a new trial, on the ground that the verdict was contrary to evidence.

The defendant Harrison was the petitioning creditor, and Bevan a messenger in Bankruptcy.

The action was trespass for seizing and taking plaintiff's goods.

The plaintiff was brother to A B, who had been made bankrupt on the petition of Harrison. Bevan had seized some goods of the bankrupt, which the plaintiff contended were his.

Talfourd, Serjt. left the point as to the verdict being contrary to evidence to the Court, to be decided on perusal of the Chief Justice's notes. The point raised was whether the defendant Harrison, the petitioning creditor, was liable; for though the 31st and 32nd secs. of the Bankrupt Act make the petitioning creditor liable for what the messenger does, yet the messenger's warrant was not produced in this case; so it did not appear that the seizure had been under the bankruptcy. *Rule nisi.*

SPILLER v. MASON.

Pleading—Effect of alleging that goods removed in breach of covenant to leave in the same state, were goods of the plaintiff.

This case was tried before Rolfe, B. at the last sittings in Middlesex. Verdict for the defendant on the 7th issue.

Crowder, Q. C. moved the Court, pursuant to leave reserved, to enter a verdict for the plaintiff on the 7th issue for 20*l.*

This was an action of covenant; the plaintiff was assignee of the reversion, and the defendant assignee of a lease of a house, which lease contained a covenant to repair, and to yield up the premises at the end of the term in like condition, together with all "*locks, keys, &c.*" The plaintiff declared on this covenant, and laid as a fourth breach, that the defendant had removed certain *shelves* "*of the plaintiff's*;" but did not state that they were belonging to the house.

The plea denied that the defendant had removed any shelves of the plaintiff's.

At the trial, it appeared that the defendant had removed some shelves; but these, he alleged, were *his own*, not the plaintiff's.

The point of the case was, whether (even admitting that the shelves were things forbidden to be removed), the fourth breach, as laid, did not, by the insertion of the words "of the plaintiff's," make the charge one altogether irrespective of the lease; for, during the tenancy, the shelves were the *tenants*, and though under a properly framed breach the tenant would be liable for removing the shelves appurtenant to the premises, a breach, charging him with removing the shelves of the plaintiff was not framed to meet that state of facts. *Cur. adv. vult.*

COOK v. STRATFORD.

Gambling—Amendment at trial.

In this case there had been a verdict for the defendant.

Crowder, Q. C. moved, pursuant to leave reserved, to enter verdict for the plaintiff.

The action was on a bill of exchange for 500*l.*

There were two pleas material to the question before the Court,—one, that the defendant had played with one A B, at *ringt un*, and had at one sitting lost above 100*l.*, and had played at hazard and lost, also at one sitting, above 100*l.*, and had given the bill in question for part of the aggregate amount thus lost; that the bill had been indorsed to the plaintiff with full notice of the above.

The second plea stated the circumstances as above, and varied from the former in asserting, not that the plaintiff had notice, but that he had given no consideration for the bill. If the Court were of opinion that there was not evidence to sustain either plea, then the verdict was to be for the plaintiff.

Rule nisi.

[*Note.*—Leave was reserved at the trial in the above case for the Court to amend the 1st plea to suit the evidence, if they thought the amendment allowable. *Crowder*, however, left this to be moved for by the defendant.]

CHESTON v. GIBBS.

Sheriff is bound by the official admissions of the under-sheriff—The admission of under-sheriff, made officially, that A B, one of the sheriff's officers, is in possession, is evidence that he is in possession under warrant from the sheriff.

This case was tried before Pollock, C. B. in July last. Verdict for the plaintiff.

Jervis, Q. C. moved, pursuant to leave reserved, to enter verdict for the defendant.

The action was trover.

The plaintiff sought to recover from the defendant, the sheriff, the amount produced by the sale of certain goods which had been taken in execution and sold.

The evidence on which it was sought to fix the sheriff was, that inquiry had been made at the under-sheriff's office, in the presence of the undersheriff, as to who was in possession of the goods, meaning by virtue of the writ of execution.* The answer was,—Levi (a sheriff's officer); whence it was sought to fix

the sheriff for the acts of the officer. Neither the writ of execution nor warrant to the officer was produced at the trial. As to admission by undersheriff, see *Snowball* v. *Goodrick* (4 B. & Adol.)

Rule refused.

[*Note.*—For the inference to be deduced from this case see head-note.]

DOE *dem.* WORTHINGTON *v.* OULTON.

Effect of devise for payment of debts on estate of devisees over.

Knowles, Q.C. moved, pursuant to leave reserved, for a rule calling on plaintiff to shew cause why nonsuit should not be entered on point reserved.

This was an action of ejectment. The question simply was, whether, when testator first makes devise for payment of his debts, he does not thus convert the interest of devisees over into that of *cestui que* trust. (See 3 Beavan, 1.) *Rule nisi.*

SMITH *v.* BOUCHER.

New trial—Right of ship-broker to employ another and make principal liable.

This case was tried at Liverpool, before Cresswell, J. Verdict for the plaintiff.

Martin, Q.C. moved for new trial on the ground of misdirection and verdict against evidence.

The facts were, that the defendant was a ship-owner, the plaintiff a ship-broker. The plaintiff had employed one Blackall, a ship-broker in London, to procure a freight. The plaintiff was a correspondent of Blackall, and the terms of business between them were, to act as agents in their trade for one another on the terms of sharing the profits of the job. The defendant knew nothing of the plaintiff. The plaintiff procured a freight, but the bargain went off. Blackall would not claim any agency charges. Plaintiff then sued the defendant for his share. The learned judge left the case to the jury to say if, by usage, one ship-broker was thus authorized by his principal to employ another. The misdirection complained of was in his letting the case go to the jury at all. *Rule nisi.*

Friday, Nov. 8.

KIRKPATRICK *v.* PATERSON.

Martin, Q.C. moved for a new trial upon the ground of misdirection. The case was tried before Cresswell, J. at the last assizes at Liverpool.

The question was, whether a bankrupt is bound by a promise made after his bankruptcy and before his certificate, to pay a debt contracted before his bankruptcy. The learned judge thought he was not bound, and a verdict was found for the defendant.

Case cited: *Biggs* v. *Braham* (1 Bing. 281).

Rule nisi.

LEWIS *v.* REED and OTHERS.

Welsby moved for a new trial upon the ground of misdirection. The case was tried before Coleridge, J. at the last Montgomeryshire assizes.

The action was case for an excessive distress, with a count in trover. The distress was made for rent due from another person than the plaintiff, and the question arose whether the sheep distrained upon were at the time of the distress upon the sheep-walk of the plaintiff, or upon that of the tenant from whom the rent was due. Much conflicting evidence having been given as to the boundary, the jury found this point for the plaintiff, and they were then directed by the judge to find a verdict against all the defendants. The landlord, who was one of the defendants, had taken no part personally in the distress, which had been made in the usual way by bailiffs under a written authority for him. The proceeds of the sale had been paid to, and accepted by one Owens, who, it was admitted, was the landlord's agent for that purpose. It was contended that the landlord could not be liable for acts committed by the bailiffs beyond the scope of their authority, and that his subsequent receipt of the proceeds of the distress did not amount to a ratification of the manner in which it was made.

POLLOCK, C.B.—If he has the money, he is surely bound to know how it was obtained. What remedy is the plaintiff to have if he may not sue the landlord? Must he sue the bailiffs, who are perhaps paupers?

The COURT, however, after some consultation granted the rule. *Rule nisi.*

JONES *v.* NICHOLLS and ANOTHER.

What is sufficient notice of action to a constable under 2 & 3 Vict. c. 93.

Welsby moved for a new trial, upon the ground of misdirection. This case was also tried before Coleridge, J. at the last assizes.

The action was for trespass against the defendants, one of whom was a county constable, under 2 & 3 Vict. c. 93, which requires a notice of action. The following notice had been given, and was held by the learned judge to be sufficient, and a verdict was found for the plaintiff:—

"To R. N. one of the superintendents of police in the Denbighshire constabulary force, and T. R. wine merchant, and one of the constables of the parish of St. Asaph, in the county of Flint, I do hereby, as the attorney of and for J. J. of St. Asaph, in the said county of Flint, victualler, according to the form of the statute, &c., give you notice that the said J. J. will, at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons to be issued out of her Majesty's Court of Exchequer, at Westminster, against you at the suit of him, the said J. J. and proceed thereon according to law for trespass and false imprisonment committed by you, the said R. N. and T. R., by arresting and imprisoning the said J. J. with force and arms at A. in the said county of F. *on Tuesday, the 30th day of January last*, on a charge of felony, and taking him from thence, in custody, to D. in the county of D. and for detaining him in custody on such charge *for twelve hours or thereabouts*, and also for causing the said J. J. to be brought before divers of her Majesty's justices of the peace, at D. aforesaid, in the said county of D. *on the 31st day of the said month of January*, in the year aforesaid, on the said charge of felony, whereby the said J. J. was greatly injured in his character, and forced to incur great expenses, to wit, about 20*l.* in manifesting his innocence of the said charge, and other wrongs to the said J. J. then doing, to his great damage of 100*l.* and against the peace of our Lady the Queen.

"Dated, &c. "Yours, &c.

"J. V. H.

"Of V.-street, in the town of D., in the county of D. attorney for the said J. J."

Welsby contended that the above notice did not sufficiently specify the time of each part of the trespasses mentioned in it, and cited *Martins* v. *Upcher* (1 Dowl. N. S. 555), and *Breeze* v. *Jerdein* (2 G. & D. 720). *Rule refused.*

GRIFFITHS *v.* EDWARDS.

Welsby moved to set aside an order of Gurney, B. The plaintiff was father of defendant's wife. An attorney had consented, on behalf of defendant, to a judge's order for payment of debt and costs. The defendant afterwards took out a summons to set aside the proceedings, upon the ground that he had given no authority, and that there had been collusion between his wife and the plaintiff, her father. Gurney, B. made the order as prayed with costs, and the Court now refused to set it aside. *Rule refused.*

Saturday, Nov. 9.

MOSSOP *v.* JOHNSTONE.

Commissioners of sewers—Joinder of case and trover where count in case is misconceived.

This case was tried at Lincoln, before Denman, C.J. on the last circuit. Verdict for the plaintiff, damages 137*l.*

Clarke, Serjt. pursuant to leave reserved at the trial, moved for a rule calling on the plaintiff to shew cause why the verdict should not be set aside and a nonsuit entered, or a verdict entered for the defendant; and he also moved for a new trial on the ground of the verdict being against evidence.

This was an action against the collector of the commissioners of sewers, who had rated the plaintiff in respect of 800 acres of land, which they alleged were drained by a certain drain of theirs.

The action was in case, with a count in trover. One hundred acres of the land were drained by the sewer of the commissioners; but, nevertheless, as the commissioners had rated him for 800 acres in other words, in respect of land for which he ought not to have been rated, the whole rate was bad.

Clarke, Serjt. contended, that as the statute 4 & 5 Vict. c. 45, s. 8, had appointed how to appeal against an excessive rate, the rate was to be deemed good, as no appeal had been made; but the Court said this was not a question as to the amount being excessive, but where lands out of the jurisdiction of the commissioners had been assessed by them.

There were divers points raised at the trial of this cause. For example—it was objected that the first count in the action was misconceived; it should have been *trespass*, not case. 2nd. The commissioners, and not the collector, should have been sued. But these objections were not insisted on; and the question before the Court was reduced to the simple question of the verdict being against evidence; as to which, the Court said they would consult with the learned judge who tried the case.

[*Note.*—If the plaintiff had been nonsuited at the trial on the first count, he might have obtained a verdict on the second, which would have answered all his purposes. As to the objection, that the collector should not have been sued, but only the commissioner, the plaintiff had full right to waive the trespass constituted by the taking, and sue for it as a conversion to sustain trover; to this effect was an observation of Pollock, C. B.]

COOKE *v.* TREDELLIAN.

New trial—Right to return goods which are not according to sample.

This case was tried at Liverpool before Cresswell, J. at the last circuit. Verdict for the plaintiff.

Watson, Q. C. moved for a new trial, on the ground of improper admission of evidence and misdirection.

This was an action to recover the price of certain muslins which had been ordered and chosen by sample: and they had been returned as not corresponding to the sample. It seems the muslins had to be manufactured for the defendant, or at any rate the plaintiff had not got them at the time of the contract of sale.

The learned judge, at the trial, admitted evidence that by usage goods sold by sample were not to be returned to the seller if they did not correspond, but an allowance was to be made; and, with reference to evidence given by the defendant's clerk, he directed the jury, that a man who had purchased by sample might retain the goods so long that he would be precluded from returning them, and must be deemed to have kept them to pay for them as much as they were worth.

Watson cited *Hibbert* v. *Shee* (1 Camp. 113), where Lord Ellenborough directs the jury that usage as to compensation is to be considered as existing to settle what is to be deemed a fair compensation; but is not to be deemed to shew that the parties contract that compensation may be substituted for compliance with the primary terms of their contract. He cited also, with like view, *Yates* v. *Pym* (2 Marshall, 141, reported also 5 Taunt. 446).

The COURT seemed inclined to the opinion of the learned judge who tried the case, but they granted a rule. *Rule nisi.*

GOULDTHORPE *v.* HARDEN.

Arrest of judgment—Form of declaration for injuries caused by rubbish on highway.

This case was tried at York before Pollock, C.B. at the last assizes. Verdict for plaintiff on the first count.

Watson moved to arrest the judgment, on the ground that the count was bad.

The action was in case to recover damages which the plaintiff had sustained by having in the night-time walked over some rubbish on to the top of a wall, and so fallen into a canal beneath, the rubbish having been piled at the side of a public highway against the aforesaid wall by the defendant.

Watson objected that the declaration did not state that the injury had happened in the night-time, nor negative the existence of lights or fences about the rubbish. It did not in fact shew that which was necessary to negative that the plaintiff had gone over the rubbish into the canal by his own wilfulness or neglect. He then cited ——— v. *Stanley* (1 Scott, N.C. 392) as collecting the cases.

The COURT suggested that the declaration implied enough in charging the existence of the rubbish as the *cause* whereby the plaintiff's injuries had accrued, which could scarcely be asserted if lights &c. had existed, and he had gone there of his own accord.

CRELLIN *v.* CALVERT.

New trial.

Does plea in abatement admit the contract in respect of which the action is brought to be a partnership contract so as to dispense with proof of partnership on assessment of damages?

This case was tried at Liverpool before Cresswell, J. at the last circuit. Verdict for plaintiff.

Watson, Q.C. moved for a new trial under the following circumstances; in fact, that there was no evidence to support the verdict.

The declaration was in *indebitatus assumpsit*, for money lent and money had and received.

The defendant pleaded in abatement the non-joinder of fourteen other persons as co-contractors.

At the trial the plaintiff was the only person who adduced witnesses, and he undertook and succeeded in the disproof of the defendant's plea, by shewing the existence of *more* than fourteen co-contractors. (See 3 Chitty's Precedents Plead. 6th ed. s. 719, m.)

There was no proof by *witnesses or documents* that the defendant was partner with these fourteen and more co-contractors.

A debt, however, of 400*l.* was proved against these persons, and verdict was entered for that amount against the defendant, on the presumption that his plea in abatement admitted he was partner with these persons in respect of the subject of the action, viz. the debt in question; so that if the debt was proved against them it was proved against him also.

Watson submitted, it dispensed with no proof which would be required on the assessment of damages in case of judgment by default, and that plaintiff was entitled to verdict only for 1s. damages.

The Court will consult with the learned judge who tried the cause.

PARFITT *v.* THOMPSON.

Arrest of judgment—In declaring on policies of insurance on ships, as for total loss, query as to extent of estoppel by admission that vessel is seaworthy.

This case was tried by Patteson, J. at Bristol at the last assizes. Verdict for the plaintiff.

Cockburn, Q. C. moved in arrest of judgment, and for new trial, on the ground of misdirection on the second count.

The declaration was on a policy of insurance on the ship *Hutchinson*. It stated that whilst the vessel was on its voyage, by stormy winds, &c. the vessel became leaky and greatly damaged, so that it became necessary to put into the next port, and that it put into the port of Gambier. And then the declaration

went on to state that when at Gambier the vessel was found to be wholly unfit to proceed; but it does not state that this was *in consequence of the premises*, or in any way connect the state of the vessel with the previous perils. This constituted the 1st objection.

The 2nd objection was that the learned judge had ruled that the admission in the policy of insurance that the vessel was seaworthy operated to preclude the defendant from attributing the loss of the vessel to the existence of an un-seaworthiness that had continued from the time of the policy to that time; whereas *Cockburn* submitted that though the admission would estop him from inquiring how far the vessel had been lost in consequence of this un-seaworthiness, if it had experienced any hurt from perils *at all*, yet if, in point of fact, the vessel had been abandoned purely in consequence of a continuing un-seaworthiness, he was entitled to shew this, because abandonment or loss on this account *was not a loss by perils of the sea*—was not a loss by any thing which the underwriter had insured against.

Rule granted on 1st point. Court will consult Patteson, J. as to the misdirection.

CRELLIN *v.* BROOKE.

With one difference, this case was like the last. The defendant was a shareholder in the Isle of Man Bank, and he was sued by the plaintiff, who had deposited money, not at the head bank, but at a *branch* of it. By the terms of the partnership deed of that bank, branch banks might be established, certain formalities being first observed. There was no proof that this branch had been established pursuant to those forms or not.

Watson, Q. C. moved, with *Same result.*

PARFITT *v.* JANSEN.

This cause occurred at the same time with the last, and declaration is subject to the same objection; but the policy of insurance in this case contained no admission of seaworthiness.

Cockburn moved in arrest of judgment, as above. *Rule nisi.*

BALDWIN *v.* AINSAGER and OTHERS.

Stamp Act.

By the value of the subject-matter of a contract is to be understood the value of the consideration passing between the parties.

This case had been tried before Pollock, C. B. Verdict for the plaintiff.

Cockburn moved for a new trial, on the ground of improper admission of evidence.

The action was trover against the assignees of Sewel, a bankrupt, to recover certain barrels of ale which they had taken possession of as being in the reputed ownership of the bankrupt.

The plaintiff adduced in evidence a memorandum, addressed to him by the bankrupt, which stated that plaintiff had left so many barrels of ale in bankrupt's cellar, that he might remove the same at any time within three months, on giving a day's notice; but if they were kept there afterwards, *rent must be paid.*

This document was unstamped. It was objected, that it ought not to be admitted unless it was stamped; but the learned Chief Baron, at the trial, and the Court now, thought that, even treating the letter as a contract, it was not a contract about any matter of 20*l.* value; for the value to be looked to was the *consideration* passing between the parties, not the mere subject-matter of their dealing, and so that it required no stamp. *Rule refused.*

PARRY *v.* NICHOLSON.

New trial.

Alteration in acceptance of bill of exchange.

This case was tried before Gurney, B. at the last Sussex assizes. Verdict for defendant.

Shee, Serjt. moved for a new trial, on the ground of misdirection and of surprise.

The action was on a bill of exchange against the defendant as acceptor. The defence set up at the trial was, that the original date of the acceptance had been altered from the 2nd of March to the 22nd, and so the bill vitiated.

The learned judge had directed the jury that if they thought the bill had been altered, it lay on the plaintiff to shew that the alteration had been made before acceptance.

Shee, Serjt. cited *Cock* v. *Coxworth* (2 M. & R. 291), and *Calvert* v. *Baker* (4 M. & W. 417), which he said were with the learned judge, but relied on *Selby* v. *Fisher* (2 N. & P. [illegible]) and the notice taken of *Calvert* v. *Baker* in 1[illegible] W. 590. As to the surprise he moved on affidavits that the plaintiff had been taken by surprize, and could produce evidence that the bill had been made on the day it bore date.

Rule nisi.

LANE *v.* IRONMONGER.

Mere marital relation will not render husband liable, will not raise the presumption of agency in favour of his wife, where it is opposed by the extravagance of her orders.

This case was tried before Pollock, C.B. Verdict for defendant.

Humfrey applied for a new trial on the ground of misdirection.

The action was against a husband for goods supplied to his wife. The misdirection complained of was, that the learned Chief Baron had read to the jury the words of Lord Abinger in *Freestone* v. *Butcher* (9 Car. & Payne, 643), as a part of his own charge, viz.—that if the order is so extravagant that the husband could not have sanctioned it, then they should infer that the wife had not acted as his agent therein.

Humfrey objected to extravagance as a test to the point of agency; for it might be that there was authority to order goods to some extent, but that the agent had gone beyond.

But the Court were all against him, and

GURNEY, B. said he was glad that this case might now be added to *Freestone* v. *Butcher*.

Rule refused.

[*Note.*—Extravagance beyond a man's authority is very justly no ground for defeating an action, except as to the excess; but when agency is only to be implied from the acts of the agent, extravagance, considered with reference to the means of the principal, is very good ground for supposing that the agent had *no* authority from him.]

WOOD *v.* PEYTON.

Variance between jury process and award of venire—The Court will leave the complainant to bring error—if the variance is merely the non-insertion of an ad inquirendum clause to authorize the assessment of damages on an issue in law.

This case had been tried before Pollock, C.B. on the 2nd of July at Guildhall. Verdict for plaintiff.

Humfrey moved for a rule, calling on the plaintiff to shew cause why the trial, and all subsequent proceedings, should not be set aside for irregularity.

There had been two issues—one in law, the other in fact. On the determination of the issue in law, the case had gone for trial before the jury.

The issue had been made up correctly, but the jury process did not correspond with the award of the *venire* in the matter of assessing damages contingently on the issue in law. The verdict, however, had been entered as if the process had warranted the inquiries on that point.

Humfrey moved, on the authority of *Codrington* v. *Lloyd* (1 Perry & Davison, 175), but in that case the objection had been taken at the trial.

PARKE, B. said—If we grant the rule they may amend the jury process. If it is really serious error, you may bring your writ of error *coram nobis*. We have said, in two or three cases, we will not help the party for this variance. You may get the verdict entered according to the fact, and bring error if you like. *Rule refused.*

HEWIT *v.* KNOWEL.

Award—Application to set aside award on the ground of surprise.

This case had been brought for trial before Tindal, C. J. at Gloucester, at the last assize, and had been referred by the Court to an arbitrator.

Greaves moved for a rule to shew cause why the award in this case should not be set aside on the ground of surprise.

The declaration was for work and labour, goods sold, &c.; and the point in the case was as to the price of a very large quantity of bricks; the plaintiff claimed 20s. 6d. per 1,000; the defendant contended the price was 18s. A witness before the arbitrator gave his evidence that plaintiff had said to defendant that the price was 18s. This witness was suffered to go away without cross-examination. He had been examined on a former occasion, and had given no such evidence; and the next day the attorney for plaintiff applied to have him put into the box again, that he might cross-examine him, or that the arbitrator would hear evidence to shake his credit, he having on a former occasion stated, not that he had heard the plaintiff say so, but that he had heard some one else say that he (this other person) had heard the plaintiff say so. The arbitrator refused to do either of these things without the consent of the attorney for the defendant.

The COURT said the arbitrator had a right to do so, though they should have consented; that the application took the form of a charge of misconduct.

Greaves said the arbitrator was a most respectable gentleman: that there was no complaint against him that his motion was made on the ground of surprise.

The COURT asked if he had any objection to the case going back to the same arbitrator.

Greaves had none whatever.

Rule nisi, the case to go back to the same arbitrator.

Monday, Nov. 11.

HARRISON *v.* LUTTON.

In what cases does an alteration of a bill after it has been accepted call for a fresh stamp?

Thomas, for a new trial. The case was tried before the Under-sheriff of Middlesex.

The action was upon a bill of exchange drawn by the defendant. Not having been able to discount it for some days after it was made, he altered the date of it to some days later.

At the trial, it was contended that this alteration made it a fresh bill, and that it required a new stamp. There was conflicting evidence as to whether it was an accommodation bill, or whether it was held for value at the time of the alteration, and it was stated that one of the witnesses who swore it was an accommodation bill was in custody for perjury. It was now contended that, although an accommodation bill may be altered at any time before it is in the hands of a holder for value, yet it is otherwise with a bill drawn for value; and that as there had been perjury upon this point, there should be a new trial. There was another point as to the notice of dishonour. Upon the first point the Court thought that as the value was so small, and as the defendant at all events was only trying to take advantage of his own wrong, there should be no rule. On the second, *Rule nisi.*

DOE *dem.* ——— *v.* ROE.

Judgment against casual ejector.

Willes, for judgment against casual ejector. The tenants were two sisters. One had been served at the premises, and, upon being asked for her sister, she answered that she was ill on the premises, and could not be seen, but that she would convey any thing to her. A second copy declaration was given her for her sister. *Rule granted.*

RUSSELL *v.* LEDSAM.

Kelly, for a new trial, and also to enter verdict for defendant on the seventh and ninth issues, and also for judgment *non obstante veredicto.*

The action was tried before Alderson, B. and was brought by the plaintiff as assignee of a patent originally granted to one Whitehouse against the defendant for an infringement.

The original patent having expired, the plaintiff had prayed for and obtained an extension of it under the provisions of 5 & 6 Wm. 4, c. 83. The extension had, however, been coupled with a condition that the plaintiff should secure to Whitehouse an annuity of 500*l.* during the continuance of the patent. Several objections were taken to the manner in which this condition was alleged to have been fulfilled. The date of the security appeared to be before that of the instrument by which the extension was granted, and it was also accompanied with certain undertakings on the part of Whitehouse which rendered it of less value. It was also argued that, under the 5 & 6 Wm. 4, c. 83, the Crown had no power to grant an extension of time to the assignee of a patent, but only to the original inventor, and that the late statute of 7 & 8 Vict. c. 69, s. 4, was passed expressly to remedy that defect. *Rule nisi.*

D'ARMAY *v.* CHESNEAU.

Willes, to enter a verdict pursuant to leave reserved, or for a new trial.

Cases cited: *Dangerfield* v. *Thomas* (9 Ad. & E. 292); *Leslie* v. *Guthrie* (1 Bing. N. C. 697); *Carvalho* v. *Burn* (4 B. & Ad. 182). *Rule nisi.*

HOPKINS *v.* FRANCIS.

An action having been brought for a sum under 20l. and a judgment recovered, the amount of which, including costs, is over 20l. the Court will not stay proceedings in an action brought upon the judgment, though the defendant swears that the only object, in his belief, of the second action is to evade the statute called Lord Brougham's Act, and arrest him for a debt originally under 20l. and, semble, such a case is not within the Act at all.

In this case *Pearson* moved to stay further proceedings.

The action was upon a judgment, and the motion was made upon an affidavit, in which the defendant swore that the original debt was under 20*l.* but that the judgment for debt and costs was for a sum above 20*l.* and that he believed that the second action upon the judgment was brought for the purpose of evading the provisions of 7 & 8 Vict. c. 29, commonly called Lord Brougham's Act, and enabling the plaintiff to take him in execution for a debt, which was originally under 20*l.* It was argued, that the Court would take notice of so clear an attempt to escape the provisions of a statute, and that even at common law they would consider a second action for the same cause *primâ facie* a vexatious proceeding.

Case cited: *Williams* v. *Thacker* (1 Brod. & Bing. 514).

POLLOCK, C. B.—The utmost that you can say is, that this is a *casus omissus* by the statute; but how can we take away a right of action from the subject? At all events, you are too early. It will be time enough for you to apply when your client is taken in execution.

PARKE, B.—I agree with my lord, that you are too soon. You must come when the plaintiff does that which you say is contrary to the principle of the statute, though I abstain from saying that even then the Court could interfere. The plaintiff would not get the costs of his action on the judgment, unless he shewed the Court that it was properly brought.

Rule refused.

Tuesday, Nov. 12.

REDMAN *v.* HAY.

New trial—Commencement of risk in case of insurance on freight of chartered vessel.

This case had been tried before Pollock, C. B. at London on the 4th July. Verdict for plaintiff on all the issues—six in number.

The 3rd issue was subject to the same grounds for arrest of judgment, or for new trial, as the case of *Redman* v. *Wilson*, and it was to follow the fate of that case in that respect.

Tomlinson now moved for a new trial on the 6th issue, on the ground of misdirection.

The action was to recover on a policy of insurance of freight of the ship *Wellington*. The vessel had been chartered to perform a voyage from London to Sierra Leone and back; when the vessel arrived at Sierra Leone, she was so injured, that though she might have performed the voyage back in ballast, she was not in a condition to do so with a cargo; and, further than this, she received a material hurt at that port.

The question for the Court simply was, whether the existence of the charter-party gave the assured such an interest in the freight to be earned as made the risks of the insurance relate backwards before any cargo loaded, or whether the case stood upon the same grounds as though there had been no charter-party, in which case the risk would only begin to run from the loading.

The learned judge directed the jury in favour of the plaintiff on this point at the trial; this was the misdirection complained of. The point was quite new.

Rule nisi.

TOWNSEND *v.* JACKSON.

New trial.

Set-off is not to be treated as pleaded to the balance of plaintiff's account, though he in his particulars states that the action is brought for the balance of the account. He is not by such particulars bound to prove to any greater extent than he would have been if the particulars had stated that the action was brought for the amount of the account generally, instead of for the balance due on the account.

This case had been tried before Pollock, C. B. at Appleby, at the last circuit. Verdict for plaintiff.

Atkinson moved for a new trial, on the ground of misdirection. The action was in debt on the common counts. The particulars of demand set out an account of more than 100*l.* and stated that the action was brought to recover 37*l.* 6s. 6d. the balance of the account, but it did not give credit for any specific sums. The defendant, among other pleas, pleaded a plea of set-off as to 5*l.* The question was whether this plea of set-off should be regarded as applied to the whole account set out in the particulars, or to the balance only.

Evidence was given that the defendant had acknowledged that the plaintiff's balance of account was 37*l.* 6s. 6d.

Atkinson contended that the plea of set-off should be taken as applying to this balance, and that Pollock, C.B. should so rule as a matter of law; but Pollock, C.B. left it to the jury to say whether the admission was to be treated as acknowledging a balance due after, or without, the allowance of the set off.

This was the misdirection complained of. He cited *Eastwick* v. *Harman* (8 Dowl. 399) as directly in point.

The COURT held the direction of the learned judge to be right.

GURNEY, B. said the facts in the case of *Eastwick* v. *Harman* were not correctly reported.

PARKE, B. said, in effect, that when a plaintiff in his particulars states that he claims for the balance of account, but does not give credit for any specific amount, the effect is not to compel him to prove the account until he clears it of items and gets into those for which the alleged balance is due. It is simply as if he had brought the action generally for the whole account; and though the account were for 100*l.* and the claim for a balance of 50*l.* yet plaintiff might recover if he proved any amount whatever. The mention in the particulars that the action is brought for a balance only is but an intimation that the plaintiff is willing to take that amount for his demand.

Rule refused.

[*Note.*—If the above case be looked into, it will be seen that, strictly speaking, there were two questions—viz. one for the Court,—Whether the plaintiff in his particulars was obliged to prove for a balance, *i. e.* was restricted to recover only for what was beyond the difference between his alleged balance and his whole account. 2nd, one for the jury: Admitting plaintiff was not obliged to prove any thing more than he would have been if he had said nothing about a balance in his particulars, then, whether, on the evidence, the defendant's admission was an admission of a balance due, after all allowance, or whether it was an admission of a balance, but against which the set-off existed. Parke, B. in the above case, cited *Rowland* v. *Blakesley* (2 G. & D. 734), as authority that the new rules that payments credited in the particulars need not be pleaded, do not apply to sets-off.

Two practical lessons may be learned from this—viz. that though the plaintiff gives credit in his particulars for a set-off, still the defendant should plead set-off.

2nd. That the plaintiff should be careful not to give credit in his particulars for sets-off, as if they were payments; for defendant at trial would be able to take advantage of this admission; and yet, if he had pleaded set-off, get the benefit of his set-off as a set-off.

If plaintiff has so framed his particulars he should amend.]

STEDMAN and ANOTHER *v.* BARNETT.

Practice—On making an application to rescind an order made, all the materials adduced at chambers should be adduced before the Court.

Jerris, Q. C. applied for a rule to shew cause why an order made in this case by Pollock, C. B. should not be rescinded and execution stayed till decision on a bill of exceptions between the same parties.

The action was brought on a judgment obtained in Jamaica. On a former application, the costs had been ordered to be taxed and judgment signed, but execution was to be stayed till the decision on the bill of exceptions.

The cause was tried in Nov. 1842, and on the 19th of October last, Pollock, C. B. had rescinded the order to stay.

The present application was made on the affidavits on the one side only, which had been adduced before the Chief Baron at chambers. The Court inquired if this was the practice; and laid it down that, in cases of application to rescind orders made at chambers, all the materials on which the order had been made at chambers should be brought before the Court; and they directed that the rule in this case should be drawn up as having been made on reading "the office copies of affidavits on the other side."

Rule nisi.

NORTH *v.* TERRINGTON and OTHERS.

New trial—Churchwardens—Their authority as maintainers of decorum towards the church.

This case was tried at Norwich, before Alderson, B. at the last assizes. Verdict for plaintiff.

O'Malley moved for a new trial, on the ground of misdirection.

The declaration was in trespass, for assaulting the plaintiff, and for other torts, not material to the object of this report.

The pleas were numerous; among them, a plea which justified the assault, on the score that the defendants were churchwardens, and that the plaintiff was behaving himself in an irreverent and turbulent manner in church during divine service. The misdirection complained of was, that the learned judge had left it to the jury to say whether the allegation as to divine service going on at the time was made out; whereas, as the defendants contended, the authority of the churchwardens, as superintendents of the church, was such, that the allegation was perfectly immaterial and might have been left out of the plea. Thus the question for the Court was, whether the functions of a churchwarden are such as intrust him with the preservation of the church from indecency and irreverence not only during divine service, but at all other times.

Rule nisi.

Wednesday, Nov. 13.

BURON *v.* DENMAN.

In this case, which was argued at great length, and occupied several days last term,

Sir *T. Wilde* appeared, and having declined to make some amendments suggested to him by the Court at the last hearing, proceeded to reply on behalf of the defendant. After hearing him,

The COURT took time to consider its judgment.

The case will be reported when judgment is delivered.

Cur. adv. vult.

YOUDE *v.* JONES.

This was a case from Chancery. It was argued at length by *Kelly*, Q.C. for the plaintiff, and by *Hodgson*, Q.C. *Watson*, Q.C. *Aldridge*, and *Daniel*, on behalf of the different defendants. This case will also be reported when judgment is delivered.

Cur. adv. vult.

HOGARTH *v.* PENNY.

This was an action of *replevin* tried before Pollock, C.B. at Westminster, when a verdict was found for the defendants.

Jerris, Q.C. now moved for a new trial, or to enter a verdict for the plaintiff, pursuant to leave reserved at the trial. There were thirty-one issues.

The question in dispute was the right of some of the defendants to certain annuities; and the points now moved upon had relation principally to the sufficiency of the stamps upon the annuity deed.

Rule nisi.

Re SMITH, Attorney.

In this case Mr. Smith had acted as attorney for defendant in an action for a sum less than 20*l.* Shortly before the trial, his client came to him, and insisted upon having counsel retained. He then told him that the expenses would not be allowed as against the other party; but the client insisted upon having them incurred at his own expense. Nevertheless, the Master felt a difficulty in allowing them to Mr. Smith against the client, thinking the words of the late "Directions to taxing officers" peremptory to the contrary in every case, notwithstanding an express order.

Jerris, Q. C. now moved that they should be allowed.

Rule nisi.

CLEMENTS *v.* CULLEN.

Newton moved to set aside proceedings, on the ground that no writ of summons had ever been served. Upon receiving the notice of declaration, the defendant applied by summons at chambers, and was met by the positive affidavit of the attorney's clerk, that the writ had been served. The summons was discharged. Afterwards the defendant met with a person who actually had been served with the writ instead of himself.

The COURT thought him too late.

Rule refused.

BUSINESS OF THE WEEK.

Friday.

ALLEN *v.* KINGSTON RAILWAY COMPANY.—*Talfourd*, Serjt. moved to set aside a nonsuit and verdict for plaintiff for 9*l.* 10s. *Rule refused.*

CHRISTIAN *v.* PROBBYN.—*Godson*, Q. C.—For a new trial. *Cur. adv. vult.*

STAMFORD *v.* DUNBAR.—*Whitehurst*, Q. C.—To enter a verdict for defendant, or for a new trial. *Rule nisi.*

LISTER *v.* HUNT.—*Whitehurst*, Q. C.—For a new trial, on the ground of misdirection. *Rule nisi.*

HALL *v.* PASCOE.—*Whitehurst*, Q. C.—For a new trial. *Rule nisi.*

HARGREAVES *v.* PARSONS.—*Watson*, Q. C.—To enter a nonsuit or verdict for defendant. *Rule nisi.*

ELKINS *v.* JANSON.—*Watson*, Q. C.—To enter a verdict for defendant, pursuant to leave reserved at the trial, or for a new trial. *Rule nisi.*

GREGORY *v.* WILLIAMS.—*Watson*.—For a new trial, on the ground of excessive damages. *Rule refused.*

HOCKTON *v.* HARRIS.—*Wordsworth*.—For a *distringas*. *Rule gran. 1.*

KILBURN *v.* KILBURN.—*Pashley*.—To set aside award. *Cur. adv. vult.*

CONWORTH *v.* BOOTH.—*Huddleston*.—To postpone trial. *Rule nisi.*

COCK *v.* GENT.—*Wordsworth*.—To set aside an award. *Rule refused.*

PALMER *v.* BULL.—*Gunning* moved for a new trial, or to enter a verdict for the defendant, or to reduce the damages. The COURT granted the rule upon one point only. He subsequently stated that this client would not pray for the rule on those terms. *Rule refused.*

LIDDINGTON *v.* PALMER.—*Gunning*, for a new trial on affidavits. *Rule nisi.*

JAMES *v.* WILLIAMS.—*V. Williams* moved for a new trial upon the ground of misdirection. The case was tried before Rolfe, B. at the last assizes for Glamorganshire. *Rule refused.*

Saturday.

COMBER *v.* SOUTH EASTERN RAILWAY COMPANY.—*New Trial.*—This case had been tried before Gurney, B, at the last assizes for Kent. Verdict for the plaintiff on the first count for 49*l.* 19s. and on the second count for 1s. *Platt*, Q. C. moved to set aside the verdict on the first count, and to enter it for the defendant, or for a new trial, on the ground of the verdict being contrary to evidence. The action was trespass for breaking and entering plaintiff's close. So far as I could make out, the verdict had been entered for the plaintiff at the trial, subject to the opinion of the Court, whether his replication, which confessed and avoided an hostile title set up in one of the pleas, by claiming under an alleged lessee of the person whose title the plea set up, was made out. *Rule nisi.*

ROBERTS *v.* DENHAM.—*New trial.*—This case was tried before Parke, B. at the last Surrey assizes. Verdict for the plaintiff, damages 800*l.* *Platt*, Q.C. moved for a new trial, on the ground that the damages were excessive. The action was for breach of promise of marriage. *Platt*, Q. C. held the damages to be excessive because the defendant's relations were opposed to the marriage, therefore if he had married the plaintiff, she would have been very uncomfortable. *Rule refused.*

CROSSKILL *v.* GROUNDSELL.—*New trial—Patent.*—This case had been tried at Liverpool, before Cresswell, J. Verdict for the plaintiff. *Watson*, Q.C. moved for a new trial, on the ground of misdirection. The action was case, for the infringement of plaintiff's patent for rolling and breaking land. At the trial the defendant produced the roller of some other person, which he alleged proved plaintiff's machine neither to be his own invention or a new invention; but the learned judge who tried the case thought the two things very different, and so did the Court. *Rule refused.*

EKINS *v.* HUNTER.—*New trial—Horse warranty.*—This case was tried at Northampton before Coleman, J. at the last Circuit. Verdict for plaintiff 297*l.* *Humfrey* moved for a new trial on the ground of surprise. The action was an action on the warranty of a horse. The plaintiff, at the trial, gave evidence of a declaration by defendant which imported

a general warranty. The defendant now moved on affidavits to shew that the plaintiff and defendant had a common knowledge relied on as breach of warranty, and to that plaintiff had not been prepared to rebut evidence which imported a general warranty.
Rule nisi.

ELLAM v. BULLER.—To be struck out.

DOE *dem.* WOODWARD v. DEEKINS.—*New trial.*—This case was tried before Atcherley, Serjt. at Worcester. Verdict for the plaintiff. *Greaves* moved, pursuant to leave, to enter nonsuit or verdict for defendant. The lessor of the plaintiff claimed as assignee of the sheriff. His point was that a tenancy at will was proved by construction of a clause in mortgage-deed which was produced, which was not an interest that the sheriff could seize. Second, that an adverse title was established by defendant in favour of defendant's son. He requested also to be allowed to take advantage of an objection that the stamp on the mortgage-deed, and on the assignment from the sheriff, was insufficient. *Rule nisi.*

Monday.

MASSEY v. WAYLETT.—*Thomas*, to enter a nonsuit, or for a new trial. *Rule nisi.*

DORAN and ANOTHER v. WARBOYS.—*Butt*, for a new trial. *Cur. adv. vult.*

CARTLAND v. ROGERS.—*Butt*, for a new trial. *Cur. adv. vult.*

DOE *dem.* DUDGEON v. MARTIN.—*O'Malley*, for a new trial. *Rule nisi.*

NORRIS v. LORD BERNERS.—*O'Malley*, for a new trial, on the ground of a verdict against evidence. *Rule refused.*

DE BENARDY v. GRIMSTON.—*Wordsworth*, for a new trial. *Rule nisi.*

PARRY v. EDWARDS.—*Hoggins*, for a new trial. *Rule refused.*

MAHON v. DUMBERLEY.—*Hoggins*, for a new trial. *Cur. adv. vult.*

BROOKE and OTHERS v. FAWTHORNE.—*Hoggins*, to set aside award. *Rule refused.*

THOMAS v. SPELMAN.—*Peacock*, to shew cause why, upon payment of debt and certain costs, further proceedings should not be stayed. *Rule refused.*

BAIL COURT.

Friday, Nov. 8.

(Before Mr. Justice WIGHTMAN.)

PITCHER v. HUMPAGE.

Motion to review taxation.

Charnock moved for a rule to review the Master's taxation herein. The action was brought to recover 6*l.* The cause was set down for trial, but the record was withdrawn by the plaintiff. The defendant afterwards obtained a certificate for the costs of the day, which were taxed at 18*l.* including two refresher fees of 3*l.* 5*s.* 6*d.* and 2*l.* 4*s.* 6*d.* On the 30th of October the defendant took out a summons to stay the proceedings on payment of debt and costs. It was now contended that, as the defendant had consented to pay the debt and costs, the refresher fees ought to be disallowed, as the defendant would, of course, not pay any. It was also urged that the costs had been taxed upon the wrong scale.

WIGHTMAN, J.—The Master will set all this right when he taxes the plaintiff's costs.

Charnock.—That cannot be done; the defendant will seek to set off his 18*l.* against our debt and costs.

WIGHTMAN, J.—If there is any difficulty upon the point, you can come again to the Court.

The Master stated that he had intimated that he would take the allowance of the refresher fees into his consideration on taxing the plaintiff's costs.

WIGHTMAN, J.—It seems to me to be a very inconvenient mode to tax prospective costs, which, as in this case, may never in fact be incurred. All that should be done should be the taxing of costs actually due. The Master will, however, do all that is right.
No rule.

REG. v. THE NORWICH AND BRANDON RAILWAY COMPANY.

Mandamus to a railway company, commanding them to build a bridge pursuant to their Act.

Cleasby moved on behalf of the Norwich Insurance Company for a *mandamus*, commanding the above railway company to construct a bridge over the river Yare, in the county of Norfolk, pursuant to the terms of their Act. By the 7 Vict. c. 15, s. 241 (Railway Act), the company are empowered to build a bridge over the river Yare (on which the Norwich Insurance Company have some mills), so as to leave the same width of water-way as before, and to leave a height of five feet, &c. between the ordinary level of the river and the inner surface of the crown of the bridge. The company have built a bridge over the river, but have built it on a number of piles driven into the bed of the river; the piles being twenty-eight in number, and each thirteen inches square, and occupying forty feet out of the fifty-six feet which is the width of the river. It was sworn that the effect of this is to obstruct the flow of the water. *Rule nisi.*

Saturday, Nov. 9.

(Before Mr. Justice PATTESON.)

Ex parte JOHN CRESSWELL.

Habeas corpus to bring up a party committed under the 4 Geo. 4, c. 34 (the Masters and Servants Act).

Miller moved for a writ of *habeas corpus* to be directed to the keeper of the Stafford Gaol, directing him to bring up the body of the above party, with the view to his being discharged. It appeared that on 13th of January, 1844, the applicant agreed to serve his master for twelve months (having before been in his employment), and at that time he signed a memorandum in his master's book as follows:—

"I, John Cresswell, agree to work for Mr. John Poolton Whitehead, as his hired servant, for twelve months, from this day to the 13th of January, 1845."

The business at which the applicant was to work was that of a tray manufacturer, for which he was paid so much per tray. Under this contract he served until July last, when he applied to his master for an increased scale of remuneration, which being refused, he declined to work. Upon this he was taken up and convicted, and sentenced to a month's imprisonment. At the expiration of the sentence no application was made to him to continue his services, and he abstained from returning to his work, whereupon he was again taken up on an information laid by his master for absenting himself, and committed to gaol for fourteen days. It was now insisted that this was not a contract within the meaning of the 4 Geo. 4, c. 34, s. 3, inasmuch as from no mention being made of wages or remuneration, it was not legally binding on the servant, or, in other words, that there was no mutuality.

The learned counsel also applied for a *certiorari* to bring up the proceedings before the justices, and, in order to save expense, that the rule for the *habeas* should be *nisi* only, as the prosecutor and justices would willingly abide by the opinion of the Court on the argument.

PATTESON, J.—This is a new practice, but I understand it is sometimes done; but the rule for the *certiorari* must be absolute. *Rules accordingly.*

REG. v. FRANCIS GRAHAM MOON, Esq.

Ex parte DAVID SALOMONS, Esq.

Quo warranto to try the validity of an appointment to a corporate office.

The *Solicitor-General* (with whom were *James* and *Lush*) moved, on the behalf of Mr. Salomons, for a rule *nisi*, calling upon Mr. Moon to shew cause by what authority he fills the office of alderman of the city of London for the ward of Portsoken.

It appeared that a vacancy in the above ward having taken place in consequence of the retirement of Mr. Alderman Johnson, Mr. Salomons was elected by a large majority. After his election he attended, on the 15th of October, pursuant to notice, the Court of Mayor and Aldermen, with the view of being admitted by that court. On this occasion he applied for time, in order that he might consult counsel (who were then out of town) as to the peculiar features of his case. This request the Court refused to concur with, and inquired of him whether he had made and signed the declaration pursuant to the 9 Geo. 4, c. 17, s. 2, which is as follows:—"Be it therefore enacted, that every person who shall hereafter be placed, elected, or chosen in or to the office of mayor, alderman, recorder, bailiff, town clerk, or common councilman, or in or to any office of magistracy or place, trust, or employment relating to the government of any city, corporation, borough, or cinque port, within England and Wales, or the town of Berwick-upon-Tweed, shall, within one calendar month next before or upon his admission into any of the aforesaid offices or trust, make and subscribe the declaration following:—

"I, A B, do solemnly and sincerely, in the presence of God, profess, *testify*, and declare, upon the true faith of a Christian, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of , to injure or weaken the Protestant church as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church or the said bishops and clergy are or may be by law entitled."

To the question thus put Mr. Salomons replied in the negative; he then offered to take the customary oaths, but this was refused, unless he would first make and sign the foregoing declaration. Mr. Salomons hereupon declared himself ready to make the declaration in such a form as would be binding on his conscience, namely, by leaving out the words "*upon the true faith of a Christian*," he being of the Jewish persuasion. This the Court refused to permit, and declared the office of alderman vacant; whereupon Mr. Moon was elected and sworn in.

On behalf of Mr. Salomons it was now contended, that he was entitled to hold the office, and that he had done, or had offered to do, all that the law required of him. It was sought to distinguish the present case from that of *Reg.* v. *Humphreys*, Esq. (10 Ad. & Ell. 335), which was argued in the Exchequer Chamber, and which turned upon the same point as that involved in the present case, and in which the Court decided that the words "upon his admission" mean *at the time*, and not within a reasonable time, and that the authorities whose duty it is to admit may prescribe the order in which the ceremonies forming part of the admission shall take place; and it was now contended that that decision was made in ignorance of a decision of Lord Eldon in the *Queen's College* case (1 Jacob, 1), which was not at all referred to, and which decided that such words, or rather the words "at the time of," merely mean "on the occasion of the admission;" and, therefore, that the Court of Mayor and Aldermen should not have declared the office vacant until they had done every thing which is required from them; and that they should have tendered the oaths, which they did not do, after which it would have been time enough to have required the making of the declaration.

It was further contended, that the words "*upon the true faith of a Christian*" are no part of the declaratory portion of the declaration, but are merely formal and introductory, and could be legally omitted. Independently of which, it was insisted, that the declaration itself amounted to an oath, inasmuch as it is a solemn calling upon God to witness the truth of the assertion, and, therefore, was within the operation of the 1 & 2 Vict. c. 105, which enacts, "That in all cases in which an oath may lawfully be and shall have been administered to any person, either as a juryman, or as a witness or a deponent, in any proceedings civil or criminal in any court of law or equity in the United Kingdom, or on appointment to any office or employment, or on any account whatever, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding; and every such person, in case of wilful false swearing, may be convicted of the crime of perjury in the same manner as if the oath had been in the form and with the ceremonies most commonly adopted;" and being so, Mr. Salomons had a right to modify the declaration in conformity with his conscientious scruples.

PATTESON, J.—The 1 & 2 Vict. applies to *oaths*, and it is difficult to see how this is an oath. It is one thing to say, "I make this in the presence of God," and another to invoke God by the words "So help me God." If a man were to come before me and say, "I will take an oath in any form I please," I should not permit it. The Act of Parliament is worded very strangely.

The *Solicitor-General.*—Much must in such a case be left to the discretion of the Court in determining whether the scruples are conscientious.

PATTESON, J.—This case certainly differs from the former one, as Mr. Salomons did here offer to take the oaths; and it raises, certainly, the question whether these words are a material part of the declaration. In the former case, I believe, he refused to take the oaths.

The *Solicitor-General.*—He did so.

PATTESON, J.—You may take your rule to shew cause. It is difficult for me to say, after the decision of the Exchequer Chamber, that we will now run counter to it. That case, however, was not taken to the House of Lords. *Rule nisi.*

Monday, Nov. 11.

REG. v. THE JUSTICES OF DERBYSHIRE.

Mandamus to justices to enter continuances and hear an appeal under the 4 & 5 Vict. c. 59.

Mildmay moved for a rule *nisi* for a *mandamus* to the above justices, commanding them to enter continuances and hear an appeal under the 4 & 5 Vict. c. 59 (an Act to authorize for one year, and until the end of the then next session of Parliament, the application of a portion of the highway rates to turnpike roads in certain cases). The first section of the above Act enables justices at special sessions for highways, on proof of the deficiency of the funds of any turnpike trust, to order a payment to that trust of a certain portion of the highway rate. The second section provides, that if the surveyor shall refuse to pay over such portion of the said rate at the time mentioned in the order, the same shall be levied upon his goods. The third section provides, that if any person shall feel himself aggrieved by any order, judgment, or determination made, or by any matter, &c. done, &c. such person shall be at liberty to make his complaint thereof by appeal to the justices at the next Quarter Sessions, first giving ten days' notice in writing of the grounds of such appeal within six days after such order, judgment, or determination shall be so made or given as aforesaid, &c. Under this statute an order was pronounced on the 23rd of April, but was not served until the 5th of June. On the 11th of June notice of appeal was served, being within six days of the service of the order, though not within six days of the special sessions at which the order was pronounced. At the sessions it was objected on the part of the respondents, that, as the notice was not given within the six days of the *making* of the order (which bore date the 23rd April), the appellants were too late; and the justices being of this opinion, they refused to hear the appeal.

It was now insisted that the obvious meaning of the 3rd section is to give the power of giving notice of

grounds of appeal within six days of the order itself coming to the hands of the appellants, they having no certain knowledge of its contents until its delivery.

Rule nisi.

REG. v. THE JUSTICES OF DERBYSHIRE.

Mandamus to justices to enter continuances and hear an appeal against an order of bastardy, they having refused to hear the appeal, because no grounds of appeal had been given.

Willmore moved for a rule *nisi* for a *mandamus* commanding the above justices to enter continuances and hear an appeal.

The facts of the case were these. One John Weston having been summoned under the provisions of the 7 & 8 Vict. c. 101, upon an application for an order of bastardy, he duly appeared, and the justices having adjudicated, he gave notice of appeal. At the following Derbyshire sessions the appellant entered his appeal, when it was objected on the behalf of the respondent (Jane Morley, the mother of the child), that as no *grounds* of appeal had been served, the appellant was not entitled to have his appeal heard, and the justices being of this opinion, they refused to hear the appeal.

It was now contended that in this course the justices were wrong, for that upon such an appeal no statement of grounds is necessary; for that the 7 & 8 Vict. c. 101, requires none to be given, neither does the 2 & 3 Vict. c. 85, and the clause in the 4 & 5 Wm. 4, c. 76 (the Poor Law Amendment Act), requiring grounds to be given, applying only to orders of removal, and, indeed, that Act containing no machinery for an appeal in matters of bastardy, the original application being, by that Act, to the Quarter Sessions. *Rule nisi.*

Tuesday, Nov. 12.

(Before Mr. Justice PATTESON.)

REG. v. THE CORONER OF WIGAN.

Ex parte BLUNDEN.

Certiorari to remove a coroner's inquisition, with the view to quashing same.

Cowling moved for a *certiorari* to the coroner of Wigan, commanding him to return into this court an inquisition taken before him on the body of Michael Ashcroft, with a view to quashing the same for defects apparent on its face.

In this case an inquest had been held on the body of Ashcroft, who was killed by the explosion of a steam-boiler attached to the colliery of Mr. Blunden, at Wigan, in Lancashire when the jury assessed a deodand on the boiler of 130*l*. It was now objected that the inquisition was bad for the following reasons:—

1st. That it did not appear that the jury came from the proper district. The inquest was held before the borough coroner of Wigan, but the jury were not described as of that town, but as "good and lawful men of the said county" (Lancashire), "duly chosen," &c. (Jer. on Cor. 252; 2 Hawk. c. 25, s. 126.)

2nd. That the deodand is on the boiler for having killed the deceased, who was a child only six years old, and it being doubtful whether or not there can be a deodand in the case of an infant. (Jer. 199.)

3rd. That it does not appear with sufficient certainty how the deceased came by his death, the allegation being that he was killed "by the force and violence of the explosion." (*Rex* v. *The Constable of the Tower of London*, Jer. 408; 2 Man. & Ry. 397.)

4th. That it does not sufficiently appear that the deceased was killed in consequence of the boiler, as he may have been killed by *fright* occasioned by the *explosion*.

5th. That the deodand should have been upon the fragments of the boiler, and not upon the boiler itself. (*Reg.* v. *Brownlow* 11 Ad. & Ell. 119.)

6th. That it does not appear that the boiler was a chattel, and a deodand can only be imposed upon a chattel. *Rule nisi.*

Ex parte JOHN HOWARD.

Habeas corpus to bring up a party committed to gaol under the Master and Servants Act (4 *Geo.* 4, *c.* 34).

J. P. Cobbett moved on behalf of the above party, who is now a prisoner in the New Bailey at Saltford, for a *habeas corpus* to bring him up with the view to his being discharged. This party had been committed to gaol under the 4 Geo. 4 c. 34, s. 3, for absenting himself from his employment as a spindle-maker, and it was argued that the warrant of commitment was bad on its face, for the following reasons:—

1st. That it does not state any complaint by the person with whom the contract was made.

2nd. That it does not shew any contract *in fact* with the person who makes the complaint.

3rd. That the place where the commitment was made is not stated.

4th. That from the statement of the contract no offence is clearly shewn. *Rule nisi.*

Wednesday, Nov. 13.

(Before Mr. Justice PATTESON.)

Ex parte JOHN GRAY.

In a commitment under the Masters and Servants' Acts, 6 Geo, 3, c. 25, and 4 Geo. 4, c. 34, s. 3, the warrant (which must be construed as a conviction) should state that the evidence was taken in the presence of the defendant on oath.

In this case a rule *nisi* for a *habeas corpus* had been obtained, with the view of discharging the above party out of the custody of the keeper of the House of Correction, at Salford, in the county of Lancaster. It appeared that the applicant had, on the 11th of October last, been committed to the above gaol for three months, for an offence under one of the Masters and Servants' Acts, viz. for absenting himself from his service before the term of his contract had expired, and in support of the application it was insisted that the commitment was bad for several reasons, but principally because there was no allegation that the examination of the witnesses was taken *upon oath*, which was the objection upon which the decision ultimately turned. The statement upon this point in the warrant of commitment was as follows:—"And whereas, in pursuance of the statute in that case made and provided, the said John Gray was on the 11th day of October, at Wigan, in the said county, duly brought before me to answer the said complaint, and I, the said justice, duly thereupon then and there, in the presence as well of the said John Johnson as of the said John Gray, examine and inquire into the proofs and allegations of the said parties, touching the matter of the said complaint, and, upon due consideration had thereof, I had adjudged and determined that the said John Gray did contract with the said John Johnson to serve him as a collier for the said term of twelve months, and did afterwards, before the term of his said contract was completed, to wit, on the said 2nd of October in the same year aforesaid, unlawfully absent himself from his said service, contrary to the form of the statute in that case made, and I do therefore convict him," &c.

Bodkin and *Huddleston*, for the prisoner, argued that the warrant, which also, on the authority of *Reg.* v. *Tordoff* (13 L. J. M. C. 115), is in effect a conviction, and therefore must be construed as such, should have stated the evidence to have been taken in the presence of the defendant, *on oath*, and that the case of *Reg.* v. *Lewis* (13 L. J. M. C. 46) is precisely in point.

A variety of other objections were urged.

Cowling, in support of the commitment, argued that the commitment was in the nature of an *order* and not of a *conviction*, and should be construed as other orders; and that, as an order, it was not necessary that there should be any statement of the evidence having been taken on oath, since it would be implied that the magistrate had done his duty, and had only taken the evidence upon oath (*Rex.* v. *Cheshire*, 5 B. & Ad. 441; *Rex.* v. *Staffordshire*, 12 East, 572; *Johnson* v. *Reid*, 6 M. & W. 124; *Mungerhunger* v. *Warden*, Set. & Rem. 166); and that this view of the case was not taken in *Reg.* v. *Lewis*. The other objections were also met by the learned counsel.

PATTISON, J. however, thought the objection against the warrant above stated was fatal, and that after the cases of *Reg.* v. *Tordoff* and *Reg.* v. *Lewis*, he was not at liberty to decide otherwise than against this commitment; that the commitment was in effect a conviction, and ought to have alleged that the evidence was taken in the presence of the prisoner *upon oath*; and that, in the absence of any positive statement, he could not infer that it had been so taken.

Prisoner discharged.

Ex parte HUGH BLANEY.

This was another case similar in all its particulars to the foregoing. *Prisoner discharged.*

Ex parte The Rev. JAMES MEADE NISBETT.

A warrant which directs police-officers to arrest a defendant and keep him in custody, so as to produce him at the next quarter sessions, is bad, such a custody being illegal.

In this case the above gentleman was brought before this Court on the return of a *habeas corpus*, which set out that he was in custody (having been arrested whilst attending the London Court of Bankruptcy), by virtue of an Irish warrant backed by a magistrate of London, of which warrant the following is a copy:—

"County of Tipperary, to wit.	By the worshipful the justices of the peace, at the general quarter sessions of the peace, held at Thurles, in and for the county of Tipperary, the

20th day of October, 1844. Whereas James Meade Nesbitt, late of Barrisokane, in the county of Tipperary, stands indicted in the peace-office of the county of Tipperary for a rescue at the prosecution of Martin Corban and John Morgan, and also for a riot, for which he has not received his trial: These are, therefore, in her Majesty's name, strictly to charge and command the police of the county of Tipperary forthwith to apprehend the said James Meade Nesbitt, if he may be found in the said county of Tipperary, and him so apprehended in safe custody keep, so that you may have his body before her Majesty's justices of the peace at the next sessions of Nenagh, to be held in the said county on the 13th day of January next, to answer for the said offence. And this shall be your warrant. Dated as above. "J. P. PRETTIE,

"Clerk of the Peace.

"To the police of the county of Tipperary."

Indorsed—

"To all Constables of the Metropolitan Police-office, and others whom it may concern.

"Metropolitan Police District, to wit,	Let this warrant be executed within the said district, proof upon oath having been made before me, one of the magistrates

of the Police-Court, Bow-street, of the due signature and hand-writing of the above-named John Ponsonby Prettie.

"Given under my hand at the Police-court, Bow-street, this 8th day of November, 1844.

"D. JARDINE."

Humfrey, *Bodkin*, and *Sturgeon* now moved for his discharge, contending that the warrant was insufficient to justify his detention, because, 1st, it does not appear that the clerk of the peace who signed the warrant had any authority to issue it; 2nd, that the allegation that the applicant "stands indicted in the peace-office," is unmeaning and nonsensical; 3rd, because it avers merely that the applicant "has not received his trial," which is no ground for his being taken up on a warrant, since he may have been lawfully at large upon bail; and that the warrant should shew that he is liable to be arrested; 4th, the name of the applicant was mis-spelt, it being Nisbett and not Nesbitt.

Dowdeswell, in support of the return, argued that the warrant and backing were sufficient; that the clerk of the peace, who is the officer of the Court of Quarter Sessions, is the proper party to issue the warrant on the direction of the Court, and that the indictment is properly in his custody; that the warrant, which was merely to bring the defendant before another tribunal, was sufficient. (*Mead's case*, 2 Wilson; *Rex.* v. *Wyndham*, 1 Str. 2; 1 Hale, P. C. 595. 609; *Rex.* v. *Chubb*, 2 T. R. 255.

PATTISON, J. held the warrant to be bad, particularly for two objections; 1st, because it states that the applicant "stands indicted in the peace-office;" which to him appeared to be nonsensical, and to mean nothing which could justify his arrest; 2nd, because the warrant directs the police of the county to apprehend the defendant, and "*keep him in safe custody till the next sessions*," which was a course of proceedings manifestly contrary to law, since, if the party is arrested on a bailable offence, he had a right to give bail to it, and if not, the constable's duty is to hand him over to gaol for safe custody, but certainly not to detain him in his own custody.

Prisoner discharged.

Thursday, Nov. 14.

(Before Mr. Justice WIGHTMAN.)

REG. v. WESTON, in BROWN v. EDWARDS.

Where a party is taken on an attachment for not obeying a judge's order, the Court will not discharge him out of custody on an allegation that he has purged his contempt by complying with the order, unless it is satisfied that such compliance is bonâ fide, and not merely colourable.

Platt, Q.C. shewed cause against a rule *nisi* obtained by *Crowder* to discharge the defendant, who had been taken on an attachment, out of custody. It appeared that in January, 1843, an order had been obtained to compel Mr. Thomas Eyre Weston, an attorney, to deliver his bill of costs, and also an account of all moneys received by him on account of his client. This order he did not obey, and in Trinity Term following a rule absolute for an attachment was obtained, but, in consequence of Mr. Weston not being to be met with, he was not taken upon it until the 2nd of November instant. On the 4th of November he caused his bill and account to be delivered, whereupon this application was made for his discharge. In opposition to this rule, it was contended that he had only colourably complied with the order, for that the bill and cash account were verified only by the defendant's clerk, who swore that the account gave credit for all sums of money received, "as he was informed and believed," no affidavit verifying the documents having been made by the defendant himself, and the accounts themselves being manifestly untrue, and that before the Court would discharge him from custody, therefore, it would require to be satisfied that he had *bonâ fide* complied with the order.

Crowder, Q.C. contrà, contended that as the order was merely for the delivery of a bill and accounts, to the end that they might be submitted to taxation, the defendant, in having delivered them, had entitled himself to be discharged; it being a question for the Master alone, whether or not, or to what extent, the bill and accounts were correct. (2 Dowl. 231.)

His LORDSHIP, however, considered the conduct of the defendant as far from satisfactory, particularly when he remembered how long a period he had resisted the order of the Court, and the vague manner in which he at last complied; but he thought that the bill of costs and accounts should be at once referred to the Master to tax, who should report on what terms the defendant should be discharged.

Rule accordingly.

BAXTER v. COPE.

Motion for a nonsuit.

Symons shewed cause against a rule obtained herein by *Pashley*, to set aside the verdict for the plaintiff, and enter a nonsuit.

The action had been brought to recover a sum of money for the keep of the illegitimate child of the defendant. On the trial it appeared that the mother of the child had been living in the house of her father, the plaintiff, with the child for some time, and on the plaintiff's declaring that he would not keep the child unless the defendant contributed to its support, a friend represented the case to the father of the child, who said that he would pay 1s. 6d. a week for seven years. The jury gave a verdict for the plaintiff for 6*l.* 19s. 6d. being the amount claimed; and this rule was moved on the ground that, as the putative father was not primarily liable to support the child, this was a *collateral* contract, namely, to be answerable for the debt of another (the mother), and therefore void under the Statute of Frauds, as not being in writing.

PATTESON, J., however thought that this was not a collateral, but an original contract, and not within the statute. *Rule discharged.*

BUSINESS OF THE WEEK.

Friday.

MORGAN v. CHAMBERS.—*Williams* moved in this case, which was tried before the Undersheriff of Carmarthenshire, when a verdict was returned for the plaintiff, with 18*l.* 16s. 6d. damages, for a new trial. *Cur. adv. vult.*

RANDALL v. HUMPHRIES.—*Bull* moved in this case, which was tried before the Undersheriff of Devon, when a verdict was returned for the plaintiff, damages 5*l.* 2s. 6d. for a nonsuit, or to enter a verdict for the defendant, or a new trial. *Rule refused.*

REG. v. THE INHABITANTS OF LUDGERSHALL.—*Rose* moved for a *certiorari* to remove this indictment, which was preferred at the sessions, for the nonrepair of a highway, into this court, as the question as to liability would be raised, and it would also be necessary to have a view. *Rule granted.*

Ex parte THE OVERSEERS OF HAMSTHWAIT, *Re* DAVID SMITH.—*Wilkins* moved for a *certiorari* to remove the recognizances of the defendant and his sureties, entered into by them on an application for an order of affiliation under the 2 & 3 Vict. into this court, with the view to proceeding against the parties by *sci. fa.* (*Rex v. Wablin*, 2 C. & P. 10.)

Re The Arbitration between COLES and BARKER.—*Best* moved for an attachment for the nonpayment of costs. *Rule nisi.*

Saturday.

JOB v. THOMPSON.—*Flood* moved to set aside the verdict for the plaintiff herein and for a new trial, and for a return of the amount levied, on the ground of the cause having been tried contrary to good faith. *Rule nisi.*

PAGDON v. PAGDON.—*James* moved to set aside the warrant of attorney and for a return to the assignees of the defendant of the amount levied. *Rule nisi.*

HOBBS v. YOUNG.—*Atkinson* moved to set aside the copy and service of the writ of summons herein, on the ground of the debt sought to be recovered not having been indorsed. *Rule nisi.*

BROWN v. EDWARDS.—*Platt*, Q.C. shewed cause against a rule obtained by *Crowder*, Q.C. to discharge an attorney out of custody who had been taken on an attachment for not obeying an order of a judge to deliver his bill of costs, and he took a preliminary objection that the affidavits on which the rule was moved were entitled as between the parties, instead of "The Queen on the prosecution, &c.," the proceedings being now on the Crown side of the Court. *Rule discharged.*

Monday.

WHEELER v. BRANSCOMBE (three actions) and HARLEY v. BRANSCOMBE (two actions).—*M. Smith* moved for a rule calling upon the plaintiffs in these actions to shew cause why they should not enter discontinuances under the peculiar facts of the case. *Rule nisi.*

Tuesday.

REG. v. THE INHABITANTS OF BLOXHAM.—*Pigott* moved for a rule *nisi* to quash the *certiorari* obtained to remove an order of sessions, on the ground that the writ had issued on an insufficient affidavit, the words "before me" being omitted in the jurat.

Rule nisi, to come on with the case in the Crown paper.

Ex parte DUNN.—*Birch* moved for an attachment against Mr. Drake, an attorney, for not obeying an order of Maule, J. directing him to assign or cancel the articles of clerkship of the applicant; but on Sir *John Bayley* intimating that he was about to move for a rule to rescind this order, it was agreed that the whole question should be discussed on the return of this rule. *Rule nisi to rescind the order.*

REG. v. THE CAPITAL BURGESSES OF TREGONY.—*Smirke* moved for an attachment against three of the capital burgesses of this borough, and for a *peremptory mandamus* to elect a mayor. In this case a *mandamus* had been issued, commanding the eight capital burgesses of this corporation to elect a mayor. On the day appointed four only had met (in consequence of which no election took place), and of the remaining four, one was of unsound mind; it was therefore against the three others, who had not met to elect, that the attachment was sought. (See 3 Law T. 185.)

Rule absolute for a peremptory mandamus and for an attachment.

Ex parte JOHN GRAY.—This case was part heard to day.

Wednesday.

Ex parte the next of kin of GEORGE GARDINER.—*Mellor* moved for a *certiorari* to remove a coroner's inquisition, finding the deceased a *felo de se*, into this court, with a view to quashing the same, for defects apparent on its face. *Certiorari granted.*

HAWKINS v. BENTON.—*Best* moved for a rule, calling upon the defendant to shew cause why he should not pay a sum of money on an award. *Rule nisi.*

ALFRED v. FARLOW.—*Bramwell* shewed cause against the rule obtained by Warren in this case. (See 4 Law T. 101.) *Rule discharged on terms.*

HOLMES v. NEWLANDS.—The defendant in person moved for a rule for the Master to review his taxation. *Cur. adv. vult.*

Thursday.

DOE *dem.* LORD BRAYBROOKE v. RISING.—*Byles*, Serjt. moved for a rule *nisi*, that the plaintiff may be at liberty to enter up judgment pursuant to the arbitrator's award. *Rule nisi.*

Ex parte DUNN.—*Birch* moved for an *attachment* against Mr. Drake, for not obeying a judge's order; the rule obtained by Sir John Bayley not having been drawn up, and it being of the greatest importance to the applicant that the question should be disposed of this term (see report for Tuesday).

Nisi Prius.

In the Common Pleas, Nov. 8.

(Before Mr. Justice CRESSWELL.)

LONGUEVILLE v. FAIRCROSS.

Practice—Calling witnesses on subpœna.

In this case, after *Dowling*, Serjt. had stated the facts to the jury, he called the witnesses for the plaintiff, but not one of them answered. They were then called by the officer of the court, and on their nonappearance *Dowling* asked the learned judge to order them to be called on their *subpœnas*.

CRESSWELL, J. declined to do so without the *subpœnas* were produced in court; for, he said, that he could not tell that they had been ever issued

The plaintiff was then nonsuited.

[*Note.*—It is not quite clear that an attachment could be obtained unless the witness was called on the *subpœna*. In *Rex* v. *Stretch* (3 Dowl. P. C. 359) Patteson, J. refused a motion for an attachment on that ground; but in *Dixon* v. *Lee* (*ibid.* p 359), the Court of Exchequer granted the rule under similar circumstances. In *Rex* v. *Stretch* (4 Dowl. P. C. 30) the question was again mooted, but it became unnecessary to decide it. Patteson, J. however, observed, that "the case of *Dixon* v. *Lee*, in the Exchequer, was before that of *Rex* v. *Stretch*. If it had been brought to my attention at the time I decided *Rex* v. *Stretch*, I certainly should not have expressed so strong an opinion as to the necessity of the defendant being called on his *subpœna*." *Rex* v. *Fenn* (3 Dowl. P.C. 546) decides that the officer need not actually hold the *subpœna* in his hand, when the witness is called, provided it be produced in the court. By calling the witnesses on their *subpœnas*, before the jury are sworn, the additional expense of a nonsuit may be saved. (See *Mullett* v. *Hunt*, 1 C. & M. 752.)]

THE LEGISLATOR.

Summary.

THE opposition to the proposed new Law of Settlement is growing daily. In the manufacturing districts many meetings have been held and petitions against it agreed to.

THE MAGISTRATE.

Summary.

WE have only to call the attention of our readers among the magistracy to the letter that follows, and the commentary upon the subject, for which we are indebted to a very able legal writer.

COSTS IN BASTARDY.

TO THE EDITOR OF THE LAW TIMES.

Guildhall, Taunton, Nov. 2, 1844.

The New Bastardy Law—Important Decision as to Costs.

PRING, Spinster, v. HARTNELL.

This application for an order upon the putative father was heard some weeks since, when the justices determined to grant the order; whereupon Mr. H. W. Shillibeer, who appeared on behalf of the mother, called their attention to the clause in the new Act, empowering them to include costs in the order, which, he contended, applied to professional charges as well as to the other expenses; for otherwise the alteration in the law, instead of conferring a boon upon the unfortunate mother, would be a manifest disadvantage to her, inasmuch as the Act expressly prohibits the interference of any magisterial, parochial, or union officer, as such officer, in such cases; and that, therefore, without professional aid, nineteen applications out of twenty must fail. The magistrates fell in with Mr. Shillibeer's views, and intimated their disposition to order one guinea for his fee in this case; but at the next meeting, whereon the order was to have been completed, they upon consideration expressed their doubts as to whether they were legally justified in including such expenses in the order. Upon this, Mr. Shillibeer suggested that an opinion should be obtained; when Mr. Pinchard, the justices' clerk, kindly undertook to write to Sir James Graham on the subject; who, a day or two since, in reply to Mr. Pinchard, stated that magistrates were justified in ordering the payment of reasonable professional charges in all such cases for the conducting of which they may consider the employment of a professional man necessary.

GENTLEMEN,—The above is from the *Taunton Courier* of Wednesday. Will you kindly give your opinion in your next, as to the mode to be adopted to enforce the payment of costs on the defendant; whether by an action at law, or by distress-warrant from the justices? The bastardy clauses in the New Poor Law are in many cases extremely difficult to act under; and any light you can throw on them, through the means of your valuable journal, will be a great boon to the justices in general and the public at large.

Your obedient servant,

WILLIAM TUCKER,
Justice of the Peace for Devon, Somerset, and Dorset.

Colyton Park, Axminster,
Nov. 8, 1844.

We immediately forwarded the above to a Barrister of great experience in Poor Law Practice, requesting an article upon the subject, with which he has favoured us, and we subjoin it.

COSTS OF BASTARDY.

Can justices under the 7 & 8 *Vict. c.* 101 (*the late Poor Law Act*) *s.* 3, *include in the costs directed by their order to be paid by the putative father the fees of the attorney who attends on behalf of the applicant?*

A question of much interest and importance has recently arisen under the late Act, "For the further amendment of the Laws relating to the Poor in England" (7 & 8 Vict. c. 101), upon which some considerable diversity of opinion exists, but which we think is capable of solution in a way at once clear and satisfactory. It arose out of an application under the above statute to the justices of Somersetshire for an order of bastardy. About the propriety of making the order there was no doubt, but some hesitation existed amongst the magistrates as to whether or not the statute enabled them to include in the amount of costs which they intended to award the applicant the professional charges of the attorney who attended on her behalf at the hearing. The inclination of the justices was to allow the professional gentleman a *guinea*, but upon further reflection, and upon the suggestion of their clerk that the case should be represented to Sir James Graham, it was resolved that their ultimate decision should abide the event of the application to the Home Office. With that promptness and attention which characterize the proceedings of this department of the Government, an answer was speedily returned, which stated, "*That the magistrates were justified in ordering the payment of reasonable professional charges in all such cases, for the conducting of which they may consider the employment of a professional man necessary.*"

Although we are not in general disposed to place much confidence in legal opinions emanating from the Home-office, expressed, as those opinions but too frequently are, upon a hasty and untechnical view of the subject, we are nevertheless upon the present occasion inclined to the belief that the correct view has been taken of the question proposed. Indeed, we have no doubt whatever that the opinion above given is in strict accordance with law and justice, and that the magistrates were justified in including in the costs allowed, the moderate charge for professional assistance. The power to give costs in legal proceedings is not of common-law origin; the right to costs in every case is dependent upon statutory provisions, and the

earliest provision upon the subject is the Act of the 6 Edw. 1 (statute of Gloucester), c. 1, s. 2, which provides "that the demandant may recover against the tenant the costs of his writ purchased" (which, says Mr. Tidd, has been construed to extend to the whole costs of his suit), "together with the damages abovesaid; and this Act shall hold place in all cases where the party is entitled to recover damages." This statute is still in operation, and, in fact, is the one which in all actions in which damages are recovered gives the plaintiff his costs. Slighter words could scarcely well be used upon such a subject, and yet with such favour have our Courts looked upon the right to costs, that an effect has been given to them of the most powerful character. Indeed, the courts of law have ever manifested a liberal spirit upon the question of costs, acting upon the principle that the party who, by the conduct of another, is injured and necessarily incurs expenses in obtaining redress, should be reimbu sed from the pocket of the wrong-doer. Our courts of law are constantly expressing themselves favourably to a full satisfaction in the shape of costs being made to the injured party, in all cases in which by a favourable construction of the Act of Parliament it can be made. Thus, in the case of *Reg.* v. *The Justices of Merionethshire* (13 L. J. N. S. M. C. 114), in which the case mainly rested upon the fact, that these justices were in the habit on appeals of allowing only thirty shillings for costs, the Court of Queen's Bench censured the practice, and expressed a hope that the justices would exercise a discretion as to the amount of costs to be given, and would therefore reconsider their practice and ascertain the *real* amount of costs. It may be taken, therefore, that our courts favour costs, and that they will extend rather than restrict the operation of a clause giving them.

As regards the case in question, what are the terms of the Act? By the 3rd section of the 7 & 8 Vict. c. 101, it is enacted, "that after the birth of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person or left at his last place of abode, six days at least before the petty sessions, the justices in such petty sessions shall hear the evidence of such woman and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order or the putative father for the payment to the mother of the bastard child, under the provisions of this Act, of a sum of money weekly, and of *such costs as may have been incurred in the obtaining of such order*, including, if they think proper, ten shillings for the midwife and ten shillings towards the funeral expenses of the child, provided it has died before the making of such order," &c. &c. Here, then, there is an express power given to the justices to award *such costs as may have been incurred in the obtaining of the order.* Would such costs include the reasonable fee to an attorney for conducting the case of the applicant before the magistrates? We think they would; because in every case the application under the Act must be made at the instance of the woman herself, and because the Act requires a course of proceeding on her part before the justices which necessarily involves the possession of some technical legal knowledge, rendering, therefore, the assistance of a legal person almost indispensable. To deprive the female, under such circumstances, of this professional assistance, by throwing the burden of payment exclusively upon her—her who, by her necessities and the arts of her paramour, is driven to this course, would be to render the Act in this respect a nullity, and injure instead of serve the objects for whose advantage it was intended. Professional aid under such circumstances is an absolute necessary, and a needful instrument in carrying the Act of Parliament into execution. In granting the reasonable expense of professional attendance, the justices will of course be guided by the circumstances of the case, remembering that that only is necessary which the party cannot well do without; a fee for attendance before them may well be considered as a proper cost, and may with safety be embodied in the aggregate amount of costs which they may direct to be paid. Nor need the magistrates fear being involved in litigation for allowing this item, since it is not open to an appellant to question the particular sums forming the total of the costs, the justices not setting forth the particular items, but directing the payment of a sum certain.

Upon this subject we are glad to have the concurrence of Mr. Lumley, who, in his excellent treatise upon this statute, says, in a note to the third clause, "These costs would include, apparently, the costs of the complainant's attorney, if, as it has been suggested, she is entitled to appear by attorney. The Poor Law Commissioners advised that the words '*full costs and charges incurred by the person intended to be charged*,' in 4 & 5 Wm. 4, c. 76, s. 73, would authorize the allowance of the cost of an attorney employed by a defendant in proceedings in bastardy under that Act. The words in the text do not substantially differ. The allowance in respect of costs in civil proceedings, which depend upon the statute of Gloucester or other statutes, are not supported by stronger words. Perhaps it may not be incorrect to consider that it is discretionary with the justices to determine in any particular case whether the woman was justified in employing an attorney, and to allow his expenses as part of the costs incurred by her or not, as they think proper. Opinions of weight have, however, been given, to the effect that the justices cannot allow the expenses of the attorney employed by the woman. At the same time it is to be remembered that the award of costs by the justices is not open to question by any other tribunal, except, perhaps, on appeal under sec. 4;" and we are perfectly at a loss to know how any appeal could be supported upon such a ground. Upon a careful consideration, therefore, of the Act of Parliament itself,—of the general policy and principle of our law upon the subject of costs, and of the absolute necessity of professional assistance in the case suggested, we feel satisfied that, in the language of the Home Secretary, "the magistrates are justified in ordering the payment of reasonable professional charges in all such (like) cases, for the conducting of which they may consider the employment of a professional man necessary." These costs are directed, in default of payment within one month, to be levied by distress and sale of the offender's goods, for which purpose ample and intelligible provisions are contained in the third clause.

Downing-street, Nov. 11.—The Queen has been pleased to appoint Richard C. Pennell, esq. to be Colonial Secretary and Registrar, and John Doveton, esq. to be Treasurer, for the island of St. Helena.

The Prince of Wales Council Chambers, Somerset-house, Nov. 11.—The names of those who were this day nominated by the Council of his Royal Highness the Prince of Wales to serve the office of Sheriff of the county of Cornwall:—Francis Rodd, of Prebartha Hall, esq.; Augustus Coryton, of Pentille Castle, esq.; John Davies Gilbert, of Trelissick, esq.

The Lord Lieutenant for the county of Middlesex has appointed George Nicholson, esq. of 21, Abingdon-street, Old Palace-yard, to be Clerk to the Lieutenancy.

Affiliation Cases under Sir J. Graham's Poor Law Amendment Act.—(From a Correspondent.)—It is not generally known that, by the operation of the late Act of Parliament (7 & 8 Vict. c. 101), intituled, "An Act for the further Amendment of the Laws relating to the Poor in England," a considerable portion of business, until lately transacted at the metropolitan police courts, has been withdrawn from the jurisdiction of the police magistrates (who, until the passing of the late Act, had concurrent jurisdiction with the county magistrates), and placed wholly in the hands of the county justices. At a meeting of the magistrates of the several metropolitan police courts, lately held to consider the Act, it was decided that the opinion of the law officers of the Crown should be taken as to their powers in the administration of the affiliation clauses of the Act, and those functionaries have just given it as their opinion that the county magistrates alone have jurisdiction. In consequence of this decision, their worships of the county are now making the necessary arrangements within their several divisions for the performance of the not very pleasing duty which has thus devolved upon them. In several districts the arrangements for taking the affiliation cases and the other business under the Act have been matured, and the weekly meetings arranged. In our neighbouring densely populated district of the Strand, and the various parishes within that union, Messrs. Ebenezer Fernie, Salisbury Butler, and J. Smith, have undertaken the duty, meeting every Saturday at 12 o'clock, at the office in Bow-street, to grant summonses and hear cases. The justices have now power to award costs as against the putative father, including 10s. to midwife and 10s. in the event of the death of the child.

Judicial Resignation in the Isle of Man.—We understand that his Honour Deemster Christian, who has filled the important situation of Deemster for both the southern and northern districts of this island for the last twenty years, is about to retire from the duties of public life, in consequence of the infirmities of old age.—*Mona's Herald.*

By the death of Iltid Nicoll, esq. an important appointment reverts to the Crown. That gentleman, since the year 1815, has held the office of her Majesty's Procurator-General, more commonly called Queen's Proctor. Although there is no salary attached to this appointment, the emoluments, especially during the time of war, are very large. They then have been estimated at 20,000*l.* a year; being derived from fees on droits of Admiralty, and on legal proceedings connected with prizes and booty captured in war. Of late years the fees for business performed in all cases of property escheated to the Crown have, we believe, constituted the principal portion of the emoluments of the office. The form of appointment of her Majesty's Procurator-General is by letters of privy seal, emanating from the Home Department, although, we believe, the nomination does not rest with the Secretary of State, but with the First Lord of the Treasury.—*Observer.*

Of the yearly total levy of 12,000,000*l.* sterling for "local rates and taxes" in England and Wales, 10,750,000*l.* are raised in England; of that, above 30 per cent. are upon houses, and 56 per cent. or 6,000,000*l.* are levied upon (30,500,000*l.* sterling as not value or rental of) land in cultivation, comprising 25,500,000 acres of cultivated land. The Report on Local Taxation says—"This burden was so intolerable as in some places to throw land out of cultivation." These local rates extend over above 14,000 parishes, and engage above 180,000 persons in their collection and expenditure, which the Poor Law Commissioners (report) recommend should be placed in their hands! On 27 English railways, 1,200 miles in length, and averaging 12,000 acres, the statistics (taking the actual figures on six months of 1843 as a guide) are as follows:—for one year, gross receipts, above 5,000,000*l.*; working expenses, 1,500,000*l.*; interest on loans, &c. 750,000*l.*; Government duty of 5 per cent. 161,081*l.*; local rates and taxes, 111,000*l.* (besides tithes, land and assessed taxes, &c.), leaving only 2,000,000*l.* for dividend, which was subject to some deductions, the income-tax being about 60,000*l.* The yearly assessment to the poor-rate of those 27 railways was 555,000*l.* being an average of 48*l.* an acre, and a yearly payment of 9*l.* 2*s.* per acre (at 4*s.* in the pound) towards local rates for a quantity of land, which, as such, averaged less than 8,000*l.* assessed value, or 15*s.* per acre, and would have paid (at 4*s.* per acre) less than 2,400*l.* Every year the traffic and the taxation increase. There are above 2,000 miles of railways now in work, with a capital sunk of above 100,000,000*l.*; another 1,000 miles in progress of formation, and another 1,000 to be applied for next session. This enormous difference in local taxation arises from including the profits of the railways and their trade—a principle from which canals, Irish, Scotch, and continental railways are exempt. This contribution is, besides that to 5,000,000*l.* of tithe (the commutation increasing it from 3,500,000*l.* under the old law, and a portion of which was never recovered), 1,250,000*l.* of land-tax and sewers, assessed, and state taxes, &c. and for which and all other taxes the poor-rate assessment is the guide. —*Railway and Land Taxation.*

The following buildings are certified as places duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—Adulum, Felinfoel, Carmarthenshire.—William Rees, superintendent registrar. Church of the Annunciation, Glossop, Derbyshire.—Ebenezer Adamson, superintendent registrar. Beaulah, Little Newcastle, Pembrokeshire.

THE LAWYER.

Summary.

We trust that the great inconvenience of the Winter Circuits will rouse the Profession to a united endeavour to urge upon the Government the necessity of substituting for their imperfect Local Courts Bill a measure for reconstructing the Courts of Quarter Sessions, by placing in them lawyer judges, and enlarging their jurisdiction, with an appeal, so that then the work both of a Winter Circuit and of Local Courts may be done, as it would be, with despatch, with satisfaction to the public, and without the inconveniences of the system just begun, and the still worse one threatened.

LEGAL INTELLIGENCE.

WINTER ASSIZES, 1843.

MIDLAND CIRCUIT.

Mr. Justice Patteson, who proceeds on this circuit, has appointed the days for holding a special session of Oyer and Terminer and Gaol Delivery at

Warwick, Nov. 26	Derby, Dec. 9
Coventry, Nov. 30	Nottingham, Dec. 11
Leicester, Dec. 5	Lincoln, Dec. 18.

OXFORD CIRCUIT.

Before Mr. Justice Coltman.

Gloucester and City, Nov. 26	Shrewsbury, Dec. 6
Worcester and City, Dec. 2	Stafford, Dec. 10.

HOME CIRCUIT.

Before Mr. Justice Williams.

Maidstone, Nov. 26.	Chelmsford, Dec. 3.

NORFOLK CIRCUIT.

Before Mr. Justice Williams.

Bury St. Edmunds, Dec. 10	Norwich and City, Dec. 17.

NORTHERN AND CHESTER.

Mr. Justice Coleridge will proceed to

York and City, Nov. 28	Durham, Dec. 14.

Mr. Baron GURNEY will hold a Session at
Chester and City, Dec. 2 | Liverpool, Dec. 14.

WESTERN CIRCUIT.

Winchester, Dec. 3 | Taunton, Dec. 10
Exeter, Dec. 17.

CENTRAL CRIMINAL COURT.

The following days have been appointed for holding the sessions for the jurisdiction of the Central Criminal Court for one year :—

1844.

MONDAY.	MONDAY.
25th November.	16th December.

1845.

6th January	16th June
3rd February	7th July
3rd March	18th August
7th April	15th September
12th May	27th October.

TESTIMONIAL

TO MR. CARTER, SOLICITOR, BIDEFORD, ON HIS RETIREMENT FROM PRACTICE.

(*From the North Devon Journal.*)

In our last number we stated that the professional friends of Charles Carter, esq., of Bideford, had subscribed and presented to him a piece of plate as a token of their regard, and of their sense of his high character for professional ability and integrity, on his retirement from the profession after the unusually lengthened period of fifty years' practice. We are now enabled to state, that the subscription list contains (in addition to the names of Richard Preston, esq. the celebrated conveyancer, William Mackworth Praed, esq. the Recorder of the boroughs or Barnstaple, Bideford, and Southmolton, and J. W. Willcock, esq. of the Chancery bar, formerly an articled clerk of Mr. Carter) the names of eight others of his articled clerks, now in full practice in different parts of the kingdom, and of thirty-three other members of the legal profession, mostly resident in the North of Devon. Many of Mr. Carter's clients and private friends wished to become subscribers, but they were not admitted, it being intended that the offering should be strictly professional.

On Wednesday, the 23rd ult. the subscribers invited Mr. Carter to dinner at the "Marine Hotel," Instow, at which Charles Roberts, esq. the senior practitioner present, was chairman, and Charles Smale, esq. the senior practitioner at Bideford, was vice-chairman, and which was attended by several county magistrates, all of them having been long standing clients and friends of Mr. Carter. After the removal of the cloth, and the disposal of some general and professional toasts, the chairman proceeded to the business of the evening by proposing the health of Mr. Carter, and presenting to him, in the name of the subscribers, a massive silver tureen, which stood on the table in front of the chair, and is to bear the following inscription :—

"To CHARLES CARTER, ESQ. OF BIDEFORD, THIS TUREEN was presented on his retirement from the Profession of the Law, after fifty years' practice, by forty-four members of the same Profession, residing in his neighbourhood, and by whom he was well known ; in testimony of their esteem and warmest regards for the strict integrity and most honourable conduct manifested by him while in the Profession : 23rd October, 1844."

The presentation was accompanied by the following address, which had been unanimously adopted by the Subscribers present, and was read by Cadwallader Palmer, esq.

"To Charles Carter, esq.

"SIR,—On the announcement of your retirement from the profession, after a practice of fifty years, it appeared to many of your professional friends that the event should be marked by some testimonial of their personal respect and esteem, and of their approbation of your more public and professional conduct which has earned for you so distinguished a reputation. A subscription was accordingly opened, limited in amount to one guinea each, and confined to members of the legal profession, for the purchase of a piece of plate to be presented to you in the name of the subscribers. It might have been more massive and splendid had the subscription list been opened to those clients and private friends who wished to add their names as contributors; but such an extension would have been incompatible with our design ; and perhaps the offering will not be the less regarded, on account of its being the spontaneous and exclusive gift of those who have the best opportunity of forming a judgment of professional character; and it is with pleasure we point to the names of Richard Preston and William Mackworth Praed, esqrs. the one at the head of that branch of the law in which you were more particularly distinguished, and the other at the head of the profession in the town in which your professional life has been passed. We therefore, who are present on this occasion, in the name of the whole of the subscribers, present to you

THIS TUREEN

as a public testimonial of our respect and esteem for your private character, of our estimation of the superior legal attainments and ability which have marked your professional career, of our admiration of the unvaried integrity by which it has been distinguished, and of our desire that such attainments and ability, and such integrity, may be exhibited as a model for the imitation of those who are commencing their professional life. And now, dear Sir, permit us in conclusion to congratulate you on the success which has rewarded your exertions; on the circumstances of domestic happiness by which you are surrounded; and above all, on the unblemished reputation you are privileged to enjoy ; and to express the hope that in your declining years you may have the continued enjoyment of health, and every blessing that can render life desirable ; that you may be useful as a magistrate, a citizen, and in every relation of life ; and whenever it shall please divine Providence that this life shall terminate, you may enter upon a state of bliss that shall know neither interruption nor decay."

Mr. CARTER then rose, and spoke nearly as follows : "My Professional Friends,—In rising to return you my thanks for the honour you have this day conferred upon me, I do so with feelings of gratification and embarrassment. My feelings of gratification are, that an humble individual, like myself, should be so highly distinguished by respectable professional friends and fellow-countrymen, and that by the spontaneous bounty of those friends a token of plate so splendid should be presented to me, and a banquet so sumptuous provided, in testimony of your approbation of my professional conduct, during a period of fifty years. My feelings of embarrassment are, in consequence of my utter inability to unbosom the feelings of a grateful heart, in the elevated station to which your kindness has raised me. But my friends, is not the highest honour reflected on yourselves, as well individually as collectively, by your fixed determination, in the display now made, to maintain and uphold the profession and practice of the law in its purity and integrity? And is not the honour thus conferred on me conjointly participated by yourselves and me? And now, my friends, I have again to offer you my thanks for the honour you have this day conferred upon me : and may all of you, when arrived at the age of seventy-three, enjoy the blessings of health and happiness in retirement from a useful professional life."

Other toasts followed, and the meeting separated highly pleased with the proceedings of the day.

THE BAR.

It appears by an examination of the records of admissions to the bar by the four Inns of Court—Lincoln's-inn, the Inner Temple, the Middle Temple, and Gray's-inn—that there are now on the books of these societies, as members of the bar, no less than 2,243 individuals.

Of this number we find there are seven gentlemen who were called at periods varying from 50 to 54 years since—namely,

		called in
Mr. J. Wyatt, of the Inner Temple	..	1790
Mr. T. Quayle, of the Middle Temple	..	1790
Sir C. E. Carrington, ditto	.. ..	1792
Mr. R. Smith ditto	.. ..	1792
Mr. G. N. Best, ditto	.. ..	1793
Mr. R. Gresley, ditto	.. ..	1794
Sir C. Wetherell, of the Inner Temple	..	1794

Of these the latter gentleman is the only one who now practises at the bar.

There are 17 who have been called at respective periods varying from 45 to 50 years, most of whom are benchers of the several inns of court, and have altogether discontinued practice.

There are 28 who have been called from 40 to 45 years since.

There are 122 at periods varying from 30 to 40 years since, that is to say, from 1814 up to 1804 ; in this number we find most of the senior Queen's Counsel of the Chancery and Common Law Bar, as Messrs. Simpkinson, Wakefield, Twiss, Tinney, Swanston, Burge, Temple, Barber, Spence, Wilbraham. Mathews, Koe, &c. of the Chancery ; and Messrs. Preston, Shepherd, Starkie, and Armstrong of the Common Law Bar. In the above number of 122 there are but few "without the bar" who still practise as barristers or conveyancers, but there are several metropolitan and local commissioners, retired police magistrates, and others who have ceased to practise. Of those who have been called from 20 to 30 years, that is, from 1824 to 1814, the number is 308. In this number we find the present Attorney-General, Sir W. Follett, who was called in 1824, and the Solicitor-General, Sir F. Thesiger, who was called in 1818 [also the newly-appointed judge, Mr. Justice Erle, who was called in 1819]. Of the Chancery Bar, we have Messrs. Cooper, Teed, Kindersley, Stuart, Walker, Kenyon Parker, Turner, James Russell, Anderdon, Roupell, Bethell, &c. Queen's Counsel and of the Common Law Bar, Messrs. Platt, Rogers, Law, Chilton, Evans, Andrews, Whateley, Godson, Crowder, Dundas, Jervis, Kelly, Knowles, Lewin, Whitehurst, &c. Queen's Counsel. A considerable number of senior members of the bar who are now in practice and retain their stuff gowns were called during the above time, whilst many who hold commissions and most of the police magistrates are of the same standing.

Many who were practitioners, but whose business has ceased from effluxion of time, are also comprised in the above 308. Of those of 10 to 20 years, that is to say, from 1834 up to 1824, there are 701 members of the bar; of these Messrs. Romilly, Loftus, Wigram, &c. are of the Chancery ; and Messrs. Austin, Cockburn, Talbot, Martin, Stuart Wortley, Roebuck, &c. Queen's Counsel, of the Common Law. Most of the men of "business," both in Equity and Common Law, were called during the last-mentioned time, whilst no small portion belong to the class "briefless."

From 1834 to the present time about 1,200 have been called to the bar, and of this number upwards of 1,100 appear as members of it, and no inconsiderable portion have a share in the legal business of the day. The senior member of the bar was called by the benchers of the Inner Temple in 1790 ; the junior, Mr. T. H. Ware, was called by special order of the bench of the Middle Temple, June 12, 1844, the last day of Trinity Term.

The senior Queen's Counsel in years' standing at the bar is Sir C. Wetherell ; the junior Queen's Counsel in point of time at the bar is Mr. Roebuck.

REDUCTION OF CHANCERY FEES.

When the Bill for the abolition of certain offices of the Court of Chancery, which passed in the year 1842, was first contemplated, one great object in the view of those who projected it is understood to have been, the reduction of expense to the suitors, by remitting from time to time a portion of the fees which, before the passing of that Act, were received for their own benefit by persons whose offices have been abolished by its provisions.

This object has been already accomplished to an extent of which the public are little aware.

It appears, by a return printed in February last, that the amount of fees and sums of money which became payable to the clerks of enrolments, six clerks, sworn clerks, and controller of the Hanaper, under the old constitution of the Six Clerks' Office, in the year ending on the 29th of October, 1842, was 77,319*l.* 19s. 1d.

Since the printing of that return, four orders for the reduction of fees have been issued, having for their object the diminution of the charge for office copies.

By the first of them, dated the 22nd of March last, an old fee was reduced from 10d. to 8d. per folio of 90 words. Thus a reduction of *one-fifth* was effected in the office of the Clerks of Records and Writs.

By the second order, dated the 15th of April last, an old charge of 1s. 2d. per folio was reduced, in the Examiners'-office, to 8d.

By the third order, dated the 21st of June last, the reduced charge of 8d. per *folio*, in the two offices of the Clerks of Records and Writs and of the Examiners, was again reduced to 6d.—*i. e.* by *one-fourth*.

By an order just issued, dated the 13th of November, the reduced charge of 6d. per folio upon copies in these two offices, has been still further reduced to 4d. per folio.

We have been informed that the estimated amount of these several reductions exceeds the sum of 18,000*l.* a year, which is nearly one-fourth of the whole receipts in the four departments existing prior to the passing of the Court of Chancery Offices' Abolition Act, as these receipts appear stated in the return to which we have adverted ; and this is the result of reductions in the course of less than eight months, under an Act which has been in operation about two years.

REGISTRATION APPEALS.

The Court of Common Pleas has appointed Monday and Thursday next for the hearing of the registration appeals. There are thirty-three set down for hearing, being twenty more than the number heard last year. The following is a list of the thirty-three appeals :—

1. Westminster City—Pitts, appellant ; Smedley, respondent.
2. Tewkesbury, Borough — Whitbom, appellant ; Thomas, respondent.
3. Lancashire, South Division — Gadsby, appellant ; Warburton, respondent.
4. Lancashire, South Division—Gadsby, appellant ; Burrow, respondent.
5. Lancashire, South Division—Eckersley, appellant ; Barker, respondent.
6. Totnes, Borough—Cuming, appellant ; Toms, respondent.
7. Yorkshire, West Riding—Baxter, appellant, overseers of Doncaster, respondents.
8. Yorkshire, West Riding—Baxter, appellant ; Newman, respondent.
9. Northampton, Northern Division—Davies, appellant, Waddington, respondent.
10. Northampton, Northern Division—Simpson, appellant ; Wilkinson, respondent.

11. Bury St. Edmund's—Nunn, appellant; Denton, respondent.
12. Lichfield City—Moss, appellant; overseers of St. Michael, Lichfield, respondents.
13. Lichfield City—Marshall, appellant; Brown, respondent.
14. Totnes, Borough—Toms, appellant; Cuming, respondent.
15. Westminster, City—Score, appellant; Hugget, respondent.
16. Bristol, City—Daniel, appellant; Camplin, respondent.
17. Bristol, City—Daniel, appellant; Coulsting, respondent.
18. Northampton, Borough—Jeffery, appellant; Kitchener, respondent.
19. Northampton, Borough—Stanton, appellant; Jeffery, respondent.
20. Cambridge—Cooper, appellant; Harris, town-clerk, respondent.
21. Cambridge—Cooper, appellant; Harris, town-clerk, respondent.
22. London, City—Wansey, appellant; Perkins, respondent.
23. London, City—Wansey, appellant; Perkins, respondent.
24. London, City—Bage, appellant; Perkins, respondent.
25. London, City—Dyer, appellant; Gough, respondent.
26. Westbury, Borough—Allen, appellant; House, respondent.
27. Taunton, Borough—Crocker, appellant; overseers, respondents.
28. Lambeth— appellant; overseers, respondents.
29. London, City—Wansey, appellant; overseers of St. Peter's, respondents.
30. Wenlock, Borough—Hulon, appellant; town-clerk, respondent.
31. Wenlock, Borough—Hulon, appellant; town-clerk, respondent.
32. Wakefield, Borough — Nettleton, appellant; Burrell, respondent.
33. Blackbury, Borough — Dewhurst, appellant; Fielder, respondent.

Sir W. Follett and family left Milan on the 29th ult. for Genoa and Leghorn. The learned Attorney-General continued to improve in health.

Middle Temple.—The undermentioned gentlemen were called to the bar on Friday the 8th inst:—Messrs. Thomas Edward Lloyd, William Eldridge, Richard Meade, Charles Molloy Campbell, George Thomas Jenkins, Richard Levinge Swift, Sidney Billing, Frederick Last.

The New Vice-Chancellors' Courts.—A meeting of the Queen's counsel and Chancery barristers took place on Saturday last, at Westminster, for the purpose of taking into consideration the great inconvenience which all the members of the Chancery bar are now suffering, by reason of no efficient courts having been provided for the two Vice-Chancellors, Sir J. K. Bruce and Sir J. Wigram, the former of whom has been sitting in the Sessions Court, Westminster, whenever that court was vacant; and the latter has been occupying the large dining-room appropriated to the use of the county magistrates. The distance of these courts from those in Westminster-hall has been felt most severely during the late inclement weather. A deputation of three Queen's counsel has been appointed to wait upon the Lord Chancellor, to request that, since the Government have thought proper to appoint two new equity judges, they will also provide proper courts for them within the precincts of Westminster-hall.—*Observer*.

Newcastle District Court of Bankruptcy.—*Re* John Lambton Loraine's Bankruptcy.—A decision given by the learned Commissioner, last week, on a question arising in the above matter, demands notice, the point being one of very considerable importance to the public, though the amount involved was, in this particular case, but small. It appeared that Mr. Loraine, in 1840, deposited with the North of England Joint Stock Banking Company, by way of equitable mortgage, to secure advances on a banking account, certain certificates of his shares as a proprietor in the Newcastle and Gateshead Union Gas Company. Mr. Loraine continued, after the deposit of the shares, to exercise the rights of a proprietor in that co-partnership, and appeared to the world in that character, down to the time of his bankruptcy, when, it appearing that direct notice of the pledge had not been given to the gas company, the assignees contended that the shares (which, it was admitted by the banking company, came under the meaning of the provisions in the bankrupt laws relating to reputed ownership), passed to them for the benefit of the general creditors. The banking company, on the other hand, contended that Mr. Loraine, being a partner in the gas company, he, in point of law, gave notice to that partnership of the transfer of his interest in the shares at the moment when he deposited them with the banking company, and that this constructive notice was sufficient to take the shares (or the proceeds of the shares, for they were sold) out of the operation of the clause relating to reputed ownership. With the view to save the estate the expense of trying the question at law, the learned Commissioner permitted the question to be argued before him, the banking company having agreed to be bound by his decision. The question was, therefore, gone into at considerable length on two former days. The arguments were of a strictly legal nature, and cannot be intelligibly reported in a small space. It may be sufficient to state, that Mr. Commissioner Ellison, in his judgment, elaborately reviewed the case of *Duncan* v. *Chamberlain*, decided by the present Vice-Chancellor of England, on the rule of law which renders notice to one partner a sufficient notice to the partnership, which case was relied on by the banking company, the case of *Ex parte Hennessey*, decided by the present Lord Chancellor of Ireland, and other cases referred to in the argument; and, deducing from the whole that the principle which guided the judgment of Sir Edward Sugden in the last-mentioned case was good law, conformable to reason and public policy, and applicable to the present question, decided that a direct notice by the banking company to the gas company was requisite, in order to take the case out of the clause relating to reputed ownership, and that no such notice having been given, the shares passed to the assignees, and were assets divisible among the creditors. A dividend of the estate was declared on Monday. In the estate of Johnson, Adamson, and Hope, of Whitehaven, bankers, the final dividend will probably be not less than tenpence in the pound. The Court was occupied on Monday in receiving proof of further debts, and the dividend will be formally declared in the course of a few days.—*Newcastle Journal*.

Local Legislation.—The *Gazette* of Tuesday extends to the extraordinary length of seven sheets, and is almost entirely occupied with "notices" for Railway Bills; among which, some others of greater interest are not unlikely to escape observation. The New Zealand Company are to apply for enlargement and amendment of the powers conferred by their charter, and for the granting to them of "further and other powers, rights, and privileges;" and also "for regulation of the conveying of lands in the colony to and by the company." Several Enclosure Bills are mentioned - one for Nottingham. There appear to be projects for erecting a new bridge over the Floating Harbour in Bristol; for enabling the London and Birmingham Company to raise more capital; for the improvement of the harbours of Harwich and Lowestoffe (in connection with railways); for regulating further the police of Birmingham; for giving small debt courts to Devonshire; for the further improvement of Bridgewater, Newcastle, &c. Among the plans connected with the metropolis, may be mentioned that for forming an embankment along the Thames from Vauxhall to Battersea, and one for building a suspension-bridge at Hungerford-market. New streets are also projected from Westminster to Pimlico (abolishing the "Almonries" and other low places in Westminster), and from Lothbury to London wall (with some "colonnades") and other minor improvements.

The Attorney-General v. Gibbs.—We are enabled to state, that in this suit there is no likelihood of a report being made. The suit was originally referred to Sir George Rose, but from the alleged anxiety to bring the cause to a conclusion, an order was obtained to refer it to the vacation Master, who has done nothing, and sent it back to Sir George Rose.—*Times*.

A New Case.—The question of whether the Crown can grant a commutation of capital punishment in opposition to the wish of the culprit has been raised at the Hague, and resolved in the following manner: Two men named Fox and Van Link, who were condemned to death, refused to solicit their pardon. The King, however, commuted their punishment to that of being flogged, and having their neck marked with a rope, which sentence was executed on the 26th ult.—*Constitutionnel*.

Will of Lord Keane, G.C.B.—The will of Lord Keane has just been proved in Doctors' Commons. His lordship by this instrument gives to his wife, Charlotte Maria, his mansion, carriages, wine, several articles of plate, and the sum of 10,000*l*. To his daughter Charlotte, 5,400*l*. He observes:—"As my son Edward Arthur Wellington Keane is entitled to a pension of 2,000*l*. a year from government, I consider him sufficiently provided for, and bequeath him my Ghuznee sword." To his son George Keane he gives "the sword given me by the king of Cabul, and the Lahore matchlocks and artillery models brought from India." To his son Hussey Fane Keane, his "Cutch sword and Scinde rifle." He observes:—"My collar, ribbon, and badge of the Order of the Bath will have to be given up to the Herald's Office, but my other stars are my own property, and I bequeath them to my wife." He gives to his sons a bond of Lord Vivian for 10,000*l*. To his executors he gives 2,000*l*. to purchase a company in one of her Majesty's regiments for his son John, and directs them to apply an additional 2,000*l*. for his benefit till such company is obtained. To his "faithful servant, Richard Hyman, 200*l*." The remainder of his property is bequeathed to his wife and two sons, Hussey and George Keane. The executors appointed are Ronald Macdonald, esq. George Keane, esq. and Charles Hopkinson, esq. (the banker). The property is sworn under 45,000*l*. The will bears date July 1844.—*Britannia*.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—With reference to the forms of Conveyance and Mortgage (in other respects very useful), in the Law Times of August 31, p. 420, it appears highly desirable to call the attention of the Profession to an error therein, as regards the setting out or description of the statute dispensing with the necessity of a lease for a year; the title of the statute being "An Act for rendering a Release as effectual for the Conveyance of Freehold Estates," &c. not "valid," as in the forms in question. The mistake, I doubt not, would lead to considerable difficulties on a future disposition of property so conveyed; there being, indeed, no such statute as the one therein described or referred to, I am very much disposed to think the conveyance would be void for want of a lease for a year.

I am, &c.

Edgar Church.

Colchester, 12th Nov. 1844.

VETERANS OF THE LAW.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Under the title of "Veterans of the Law," you a short time ago gave the names of Mr. Cross, of Bolton, who was stated to have been admitted an attorney so long ago as 1775, and then followed that of "Thomas Eyde, Montgomery, admitted in 1779." I presume by the latter you meant my father, whose name is Edmund Edye, and who, I am happy to say, is still in good health, in the eighty-eighth year of his age, and has completed the sixty-fifth of his practice, having been admitted in the beginning of Michaelmas Term, 1779, and I have reason to believe is the Father of the Profession, for I have ascertained that Mr. Cross is considerably his junior, having been born only some few years before my father's admission.

How the error arose I know not, but as some other "gentleman, one, &c." may be entitled to the honour, I should be sorry to rob him of it, and, therefore, should be gratified in seeing him prefer his claim, which, perhaps, you will allow him to do through your valuable columns.

I am, yours, &c.

Thomas Edye.

14, Clement's inn, Nov. 14, 1844.

SELECTIONS FROM CORRESPONDENCE.

"A Solicitor" submits to the experience of practitioners the following query:—

Can you, or any of your numerous readers, inform me whether a solicitor or attorney, not having taken out his annual certificate, or having retired from practice, can take affidavits in the common law courts by virtue of his commissions for that purpose, and whether such affidavits made before him are or would be received? The commissions themselves do not seem to take any notice about an annual certificate being taken out, but appear to be granted to him quite independent of it. The same thing applies to a Master in Chancery Extraordinary.

The following complaint of S. S. is not new; but the remedy is in his own hands. He should not give his briefs to counsel whom he cannot insure. He does it with his eyes open, knowing the hazard, and has absolute free-will to give them to some obscure man. The monopoly is of his own making.

I have been a subscriber to your valuable paper but for a very brief period—a trifle to your loss, much to mine—yet I have not failed to observe, and as a member of the Legal Profession to feel thankful for, your strenuous exertions in endeavouring to bring into prominent view those blots and stains on our system that now so unhappily degrade and disfigure it, in order that the exposure and notoriety may lead to their removal. Feeling, therefore, Sir, perfectly assured that it is your desire, as far as in you lies, to render our system as perfect as its nature will allow, and free from any just cause of complaint, I trouble you with this letter, in order to draw your attention, and that of the Profession, to an injustice and hardship that ought not to be overlooked or allowed. Many of the evils and abuses in our system are too deeply seated to admit of removal, but the one to which I allude is not of that class. It

might, and ought to be remedied. I mean the *migration of Counsel*. Surely, Sir, in our courts of equity (falsely so called), the natural inherent procrastination and delay are sufficiently tormenting without being further aggravated by the avarice of counsel (for no milder term will meet the case) in accepting briefs when they know full well it is quite impossible for them to attend when the cause is called. The following case has just happened to myself, and therefore I speak feelingly. I have a cause down for hearing before the Vice-Chancellor of England. Shortly before the commencement of Term my agent wrote and informed me it was sure to be heard early in the first week; I came up to town accordingly. Now what is the result? This is the eleventh day of Term, and his Honour has only been on causes four days. This is bad enough, but is it all? By no means! Two days out of the four he was compelled to close his court, because counsel were not in attendance. Now, Sir, this, I say, is "too bad." It ought not to be tolerated. Let me entreat you to attend to the matter, and perhaps you, or some of your numerous and experienced readers, may be enabled to devise a remedy. A very simple one is, in my opinion, available and practicable. Confine counsel to one particular court, or, if that is objected to—and I cannot see why it should—then, in case a cause is called, and goes over on account of the absence of counsel for anything save ill-health, inflict upon the absentee a fine—say 50*l*.—payable to his suffering client. It would be a trifling balm to his wounded feelings, and, I am confident, mitigate, if it did not entirely remove the evil. The confinement of counsel to one court would be beneficial in every way. It would assist the despatch of business, and in some degree check the monster monopoly that now exists to such a baneful degree, warping the energies, blasting the hopes, tiring the patience, and keeping empty the pockets of many a man deserving a better fate, and who would prove a bright star in our hemisphere could he but once break through the impervious misty veil that now obscures him.

"A SUBSCRIBER," with great justice, complains of the inconvenience of the present Law Courts.

Perceiving that the Bar of the Chancery Courts have applied to the Lord Chancellor for accommodation for the two new Vice-Chancellors at Westminster, pray exert your influence for the removal of all the Chancery courts, if not the common law courts also, to Lincoln's-inn, or its neighbourhood, where a sufficient site could be easily and cheaply obtained, at the back of the Law Institution, for the erection of proper courts, in a locality really centrical and convenient to the suitors, barristers, and solicitors.

The Lord Chancellor of England now sits, by sufferance, in a dining hall!! The two new Vice-Chancellors occupy (by sufferance also) temporary courts in Lincoln's-inn, unwholesome to enter from their small size and bad ventilation!! and during Term have to *sit where they can* at Westminster!! Surely this scattering of judges, with no sufficient accommodation *anywhere*, should, long ere this, have been removed, and *all the courts* brought to a centrical point in the neighbourhood of those who frequent them.

I am sure barristers and solicitors would generally sign a petition having this object.

To Readers and Correspondents

J. R. and SUBSCRIBER.—*On Attorneys' Gowns, are necessarily omitted for want of room.*

C. F.—*It is our rule to notice only* public *malpractices. After the case has been formally before the Court and reported we can comment on it. If we were to enter upon the misconduct of one professional man to another, we should be involved in endless quarrels. The duty of a* public *journal is strictly limited to the* public *conduct of persons and parties.*

COCHRAN *v.* COCHRAN.—*The date of the will in this case was* 1831. *In the first statement of the words of the will, the word* now *was improperly inserted. It is right in the second citation.*

J. D. *could not be both an articled clerk and an auctioneer, either with help of a partner or clerk.*

X.—*A barrister might certainly draw his own deeds, but perhaps he is trespassing beyond strict bounds when he draws the leases of his father to his tenants and sends them to a stationer to engross without charge; and undoubtedly to do so for strangers would be wrong.*

J. R.—*We have reason to believe that the form in question is incorrect, and we have so notified to the publisher, who is causing inquiry to be made.*

We regret that there should have been cause for such complaint of the reports of three days in the Exchequer. By mischance one of the reporters there did not receive the instructions as to the altered arrangements for reporting rules nisi, and therefore took no note of them. We trust the omission will not occur again.

AN ARTICLED CLERK.—*Ayckbourn's is the best Chancery Practice.*

A SUBSCRIBER.—*There is, we believe, no institution for the benefit of the widows of solicitors. We are very anxious to secure to them this advantage by means of such an insurance office as we suggested a few weeks since.*

Many Correspondents' letters in type, but postponed to make way for the reports.

TO SUBSCRIBERS.

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at 5s. 6d. each, if forwarded to the Office.*

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THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

THE PUBLISHER *respectfully intimates that Subscribers who desire to avail themselves of the advantages of prepayment, should transmit their subscriptions for the current half-year in the course of the next week.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

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N.B. *For Scale for Estate Advertisements, see* JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, NOVEMBER 16, 1844.

TO READERS.

A SUPPLEMENT to-day enables us to bring up a small portion of the long arrear. It contains some valuable matter. The Table of Abbreviations has been prepared with great labour and research. It will be printed, with some additions, both on paper, for transmission by post, at 6d. postage included; and also on stout pasteboard, for hanging in offices or chambers, for ready reference, price 1s. 6d. and may be either inclosed in parcels or had through the booksellers by the description of the *Table of Reports*, published at the LAW TIMES Office. We fear that its size, not its weight, would prevent its transmission by post.

HONOUR TO WHOM HONOUR.

WE have had occasion to denounce many malpractices, and to expose to the indignation and scorn of their injured brethren not a few disreputable members of the Profession.

A very different and more grateful duty now devolves upon us. With extreme pleasure we direct the attention of our readers to the report, which they will find among the Legal Intelligence of the week, of the presentation of a piece of plate, by his professional brethren, to an attorney on his retirement from a practice of fifty years, conducted with unsullied honour and integrity, and with a strict observance of all those established rules of etiquette which distinguish the profession from the trade, and which are based upon the presumption that those who belong to a profession are gentlemen, and are to be bound by the simple law of honour which with a gentleman is more potent than an Act of Parliament.

We trust that the example of this patriarch will rouse in the breasts of the younger lawyers an emulation to deserve by the like conduct the like esteem. Let this be to them a proof that a scrupulous observance of the strict rules of professional bearing, without turning aside for any seeming temporary advantages, will in the long run be their interest, in the most worldly sense of the term. Let them be assured that by such conduct they will secure the confidence of the public, and confidence will bring clients. It will be seen that the public would have been eager as the Profession to pay their tribute of respect to this honourable lawyer and honest man, but that the testimonial was to be limited to his brother lawyers. It is, therefore, certain that to maintain a lofty professional character in every respect is a man's *interest* as well as his *duty*.

This is the first of such delightful tributes of esteem we have had to record since the commencement of our labours; we trust they will become more and more frequent, and that, as the Profession wakens to the necessity for purification from those who disgrace it, it will confer honour upon those by whose conduct it has been itself honoured.

MR. GEORGE FARREN.

ABUSIVE and angry as it was, we regret that we did not print Mr. FARREN's letter, addressed to the *Legal Observer*, and of which a copy was sent to us, because, our contemporary having declined its insertion, we cannot exhibit in its true colours the meanness of the insinuation attempted in that epistle, with even more effrontery than in the previous one addressed to the LAW TIMES, that the document we published had *not* emanated from him, Mr. FARREN, that he had *not* offered to take any such fees as there are set forth, and that he was *not* cognizant of its circulation.

But, if report speaks truly, for we have no authorized information on the matter, these letters to us and to the *Legal Observer* are not the only shufflings of which Mr. FARREN has been guilty. The Benchers of his Inn have taken up the affair with commendable spirit, and, it is said, that to them he has played the same double part as with us; not, perhaps, expressly disowning the advertisement, but insinuating that we had no authority for attributing it to him, and that he had never published any such advertisement, &c.

As by the LAW TIMES the utmost vigilance has been and ever will be employed to authenticate any statements it may make, and especially such as affect Professional reputations, it being a rule with us to publish no document on any less authority than actual possession of the document itself, we certainly felt somewhat annoyed that a *printed* paper (and nothing less would we have ventured to make the foundation of such a charge), should have been, even though by implication, denied by the person whose name was attached to it. Improbable as it was that any other person should have incurred the trouble and cost of writing, printing, and circulating such an advertisement for the benefit of Mr. FARREN, still we felt that if we could personally affix him with it we ought to do so. And that self-justification we are now enabled to establish, beyond the possibility of quibbling even by Mr. FARREN himself.

The correspondent by whom that memorable advertisement was forwarded to us, seeing how Mr. FARREN had denied its authorship, has felt himself bound, in justice to us, to place us in a position to *prove* the fact. Accordingly he has given us permission to publish the letter which accompanied the advertisement (it was addressed to an attorney), and which is now in our possession, and beyond all doubt in the handwriting of Mr. FARREN. Here it is:—

SIR,—Believing the communication I now make may prove of some convenience to you in the course of your business, I send a printed table, framed entirely from the suggestions and experience of solicitors, who have induced me (after having found that during the eight years I have been at the Chancery Bar, my services have been chiefly required in "*will*" cases) to confine myself to that branch of law.

The table shews the "*fixed fees*" on which I shall conduct business, and enables all expense to be calculated in every case, previously, and at once.

As I should feel proud to be indulged with your confidence, you may rely on my being assiduous in the fulfilment of your instructions, and I desire to hear from you on an emergency happening.

I remain, Sir, truly yours.
GEORGE FARREN.

1, Symond's-Inn, Chancery-lane.

N.B.—If you will allow me to estimate you as an agent, I shall be happy to forward you a commission of 5*l*. per cent. on any sum forwarded to me through you.

This letter is, as a professional misdoing, even worse than the advertisement. A barrister deliberately offering an attorney a commission of 5 per cent. on business he may send him.

But what must that man be, who, after writing that letter, inclosing that advertisement, attempted a denial of the document, and insinuated that the charge against him was false!

We will not add to the pain with which we have discharged our duty in this sad affair one word by way of reproach or reproof. His own sense of shame, if he have any, will be Mr. FARREN's best monitor.

THE BANKRUPTCY COURTS.

EVERY body is complaining,—counsel, solicitors, and the public,—of the inconvenience of the present Commissioners' Courts in Basinghall-street. The business has grown to be of such magnitude and importance that it is quite time we should have a suitable court for conducting it, in which there may be accommodation for all whose duties take them there, and in which a speedy access may be had from one court to another. The formation of a regularly attending Bar would add much to the dignity of these, as it certainly does to that of all other courts; but counsel will not, unless specially brought there, submit to the present inconveniences. We believe a good site might readily be procured, and that there needs but an energetic remonstrance from the Profession and the public to obtain the much required erection of a regular court-house with every convenience that could be desired, and this, too, without any cost to the country; for the accumulations of the interest of the funds of the court are ample for the purpose.

Since the above was in type, we find by an advertisement that the Legal Association has prepared a memorial on this important subject, which now lies for signature.

PROFESSIONAL MALPRACTICES.

THERE has been a world of discussion about the power of the Benchers to disbar a barrister for misconduct, and the journals, both legal and general, have been calling for the exercise of that power in certain cases that have recently come before the public. Many wits have been at work to devise more efficient means of preserving the Bar from the invasion of men without character or responsibilities, for it is most truly said that the reputation of the Bar in a free country is not so much a professional as a public concern. The liberty of the subject is not unfrequently dependent upon the influence of the advocate; that influence can only be maintained by the holding of the office in honour; and that honour will be given so long only as it is commanded by the characters of those who claim it. Thus, whatever lowers the Bar in position and esteem, deprives the citizen of his surest safeguard against the invasions of power, and the first step in the decline of a nation would assuredly be seen in the degradation of its Bar. Some have recommended a more strict examination previous to the call; but this would not effect the particular object sought, for a candidate might be a very good lawyer and a very indifferent gentleman. Nor will the more frequent exercise of the power of suspension, or of disbarring, serve to deter the unscrupulous and the needy. All such schemes will fail in practice.

But there is a remedy for the acknowledged evil which we believe would be found efficient, and the application of which is so easy, that we are surprised it should have been recommended by none of those who have already treated the subject with so much ability. By the existing regulations of the Inns of Court, a rein is now in the hands of the benchers, and if they please to make proper use of it they might effectually prevent the entrance of disreputable persons into their societies. Before admission as a member, the applicant must obtain a certificate of character from two barristers and a bencher. The former are too numerous and too irresponsible to permit a hope that they might all be induced to exercise due viligance in the scrutiny of those for whom they vouch. But the benchers are comparatively few, and if they feel a becoming regard for the honour of their societies, they will refuse to sign any certificate unless the party they recommend be personally known to them, or they obtain the most satisfactory assurances from some other person known to them and knowing to the applicant. In like manner, a bencher must propose the student for his call. That proposition should be deemed a sort of voucher for personal knowledge, and should not be made without such knowledge, or the most satisfactory assurances of fitness for the position to which he is to be called from some persons competent to judge, in whom the proposer has confidence. If a minute were made of the certificates and propositions of each bencher and he were to feel that he was in some measure responsible to the society for those he has introduced into it, we are satisfied that the Bar would speedily be purged, and that there would not be again such professional malpractices as we have lately recorded, with shame and sorrow, but with no other desire than by exposure to deter the wrongdoers and prevent the spread of the mischief through the contagion of example.

ADVERTISING ATTORNEYS.

THE following appeared in *Lloyd's Weekly London Newspaper* of the 3rd inst. page 11, col. 4 :—

TO DEBTORS AND CREDITORS.

A Solicitor, experienced in the law of Debtor and Creditor, begs to inform debtors who are unable to meet their engagements with creditors, that he is enabled, under Lord Brougham's recent Act, not only to obtain the protection of the person from arrest without advertising or gazetting, but also to procure an order from the Court of Bankruptcy (with the consent of one-third of the creditors), to carry out any proposal for future payment or compromise of debts which they have been unable to effect through the opposition of some particular creditor.

JOHN TINSLAY, Solicitor,
55, Basinghall street.

A sort of circular letter from a personage unknown to us, even by name, but whom some of our readers may recognize, will amuse by its cool reference to the writer's "engagements as advocate." Is he an attorney, or a sham lawyer, or what? Can any one inform us?

Dear Sir,—My engagements as advocate in the courts not detaining me generally later than twelve o'clock in the day, I am anxious to increase my business as a referee. Having had considerable experience in mercantile business, AS WELL AS LEGAL, it appears to me the combination would in most cases be desirable. I, perhaps, need not add, that I should give my best attention to any case you or your friends might favour me with.

I remain, dear Sir, yours truly,
S. TUFFLEY HARDING,
No. 1, Brown-street, or 47, Princes-street.

31st Jan. 1844.

To B. G. Green, esq. 30, King-street.

SHAM LAWYERS.

WE select from the pile of papers before us a few more of these pests for the *surveillance* of the Law Societies :—

COURT OF PLEAS OFFICE.

To Mr. Gervase Wood.

I am desired by John Wood, Uttoxeter, to apply to you for the money you owe him, and to inform you that if the same (together with the Costs of this application) is not paid into my hands on or before the 20th of November instant, proceedings will be commenced against you for recovery thereof without further notice. Yours, &c.

WM. KENYON.
Bailiff, Uttoxeter, Staffordshire.

	£	s.	d.
Debt......	1	5	0
Costs	0	2	6
	£1	7	6

9th November, 1844.

Another. The variety of shapes these fellows assume certainly shews their ingenuity :—

V.  R.

SIR,—The Money owing by you to Mr. William Holden, beer-seller, King-street, must be paid at my Office, Clayton-street, Blackburn, this day, or my orders are to issue a Writ of Summons from the Blackburn Court of Requests, and issue an Execution against your Goods, and also to cause your Body to be immediately taken and committed upon a Judge's Order to Lancaster Castle, without any further notice, which I hope you will prevent by discharging the same, together with the costs. Yours, &c.

S. FORREST.

Blackburn, Sept. 12, 1843.
Page

Another, in a more business-like strain, but in open violation of the existing law. Let the Legal Association look to it.

G. STREET,
GENERAL AGENT APPRAISER & ACCOUNTANT,
111, GOSWELL-ROAD.

Houses let, Businesses disposed of, Money advanced upon approved Security.

Rents and Debts collected, and Estates managed.

Tradesmen's Accounts arranged, Compositions effected, Bankrupts and Insolvents passed the Courts.

Petitions, Memorials, Letters & Advertisements drawn up and forwarded.

Partnerships negociated, Leases, Assignments, Agreements, & Indentures of Apprenticeship, &c. prepared.

Reversionary property purchased.

Executors and Administrators instructed in passing their Accounts.

Valuations for Legacy Duty.

Searches made for Wills, Marriages, &c. Claims to Property investigated.

Advice respecting Licenses and Informations.

LEGAL BUSINESS IN GENERAL.

VERULAM SOCIETY.

THE second number of *Cox's Criminal Law Cases* is ready for delivery, but as it is of no instant interest, we wait until the fifth number of the *Real Property and Conveyancing Cases* shall be ready, on Monday or Tuesday, to transmit both together, which will be a saving of time and trouble.

Able writers have been secured for some of the proposed Practical Text-Books :—namely, *the Practice of Conveyancing; the Practice of Vendors and Purchasers*, and *the Practice of the Common Law*.

Many of the members urge the propriety of publishing, at the close of the present year, a complete digested Index to all the Reports and Statutes of the year; a sort of alphabetical summary of the law made or decided during the preceding twelvemonth. At the rate of sixpence per sheet, large 8vo. (the Society's price), it would require a sale of six hundred copies to repay the expenses. Would so many of the members order it? Before the hazard of engaging authors can be incurred, it will be necessary to ascertain this, for which purpose a

circular will, in the course of a few days, be forwarded to the members, with a form, which they are requested to return by the following post.

Another work much in request is one in the nature of a continuation of Chitty's Practical Statutes.

The general Digest cannot be attempted until there are more members, as its cost will necessarily be very great.

We have again to report a very gratifying addition to the roll of members during the last week. They are—

Greaves, Edwin Ley, Belper.
Rutter, John, Shaftesbury.
Wallingford, E. A. St. Ives, Huntingdonshire.
King, A. 27, Queen street Cheapside.
Pearce, William, Portsea.
Gervis, Henry, Thorverton, near Collumpton.
Pearson, Thomas Turner, Crowle, near Bawtry.
Stanton, E. D. Chorley.
Bennett, John, 44, Bloomsbury square.
Broomhead, Henry, Sheffield.

THE REPORTS.

So many misunderstandings appear to exist as to the plan of the reports of the LAW TIMES, that, in reply to all past correspondents, and to prevent the necessity of future explanations, we will state that plan as briefly but as intelligibly as possible.

In the EQUITY COURTS, only cases of permanent interest for their law, or present interest as points of practice, are reported.

In the COMMON LAW COURTS *every* case is noticed.

Where *cur. adv. vult.* the case is only so noted among the business of the day and it is not reported until the judgment is given.

Every case in which a point of law is raised and decided is briefly reported, stating the point so raised, the cases cited, and the judgment, with only so much of the facts as may be necessary to elucidate the point.

Cases that involve no reportable point are merely noted among the "Business of the Week" at the close of each week's report.

Motions on rules *nisi* are reported (stating concisely the grounds of the motion and the cases cited), both when the rule is granted, that the opposing party may learn what is the case he has to meet, and also when the motion is refused, and the refusal is in itself a decision of a point of law raised in the motion. In all other cases a rule *nisi refused* is *not* reported, but only noted among the "Business of the Week."

All *written* judgments will be reported *verbatim* by short-hand writers.

The Exchequer Chamber, for its great authority, will be more fully reported.

The Nisi Prius reports are limited to cases in which the decision of a single judge is an authority, such as those on *practice* and *evidence.*

May we ask our readers, before they complain of apparent omissions, to cast their eyes over the foregoing scheme, and they will probably find the cause of postponements and curtailments which may at first perplex them. This plan is the result of long experience and mature deliberation, and we believe it will be found to give to the Profession all the intelligence that can be required for immediate use, and a great deal more than they can obtain from any other source. Still it is open to improvement, and we shall be obliged by suggestions from any quarter.

THE FRENCH BAR AND PRESIDENT SEGUIER.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I hasten to forward to you the result of the quarrel between the Parisian Bar and the President Seguier, which was only terminated at the annual meeting of the beginning of term, called *L'Audience de rentrée de la Cour Royale de Paris.*

Custom has long regulated the ceremonies of that solemnity, which usually creates little or no excitement even at the Palais de Justice; but this year the quarrel between the magistracy and the Bar lent great interest to the scene.

Out of respect to tradition and to the Court, as well as from deference to the law, the council of the Order of Advocates had resolved upon appearing at the Bar. Prudent and private negotiations had warranted the hope that the opening speech of the Procureur-General would pave the road to a reconciliation, and it was even generally understood that a few words of explanation from the First President would close the debate.

Accordingly, as early as ten in the morning, the Palais de Justice presented an unusual scene of agitation. The library of the barristers was thronged with members of the Bar in their gowns. The council of the order, in their [illegible], were there assembled; precisely at twelve o'clock, a beadle announced that the Court was sitting, and they entered the audience chamber.

The whole Court was assembled— the counsellors [illegible] members of the [illegible] Attorney-General Hebert [illegible] Court. The [illegible] though [illegible] benevolent, and the First President Seguier [illegible] evidently [illegible] affected.

An immense crowd thronged the passages, [illegible] of the barristers and [illegible] numbers of those who had interested themselves in the contest were most anxious to know the result. At the opening of the doors, therefore, the seats reserved for the Bar were soon filled, and the rush became so great, that cries for air were heard, and it was some little time before the tumult could be appeased and silence restored.

The subject selected by the Attorney-General Hebert for his [illegible] was, the influence of ideas of justice [illegible] on society; and his discourse, [illegible] simple, constantly kept alive the attention of his auditory. After observing that stability in the laws is the first element of a good organization of the social body, he proved the importance and the benefits arising from ideas of right and equity, propagating wise and moderate freedom, and assisting the uninterrupted progress of public liberties. He concluded with the following words:

"Barristers, how shall we not think of you in speaking of the interests of justice and truth? [illegible] to some [illegible] and [illegible] from these daily debates, [illegible] by your knowledge and talent. Without you the judicial family is incomplete, its toil less easy, its appearance less brilliant. Who then would [illegible] impossible separation, who would wish to divide what the laws have united, to destroy our ancient traditions and to deprive justice of one of its means of success.

"Let us yield to other feelings in this accustomed meeting, when, confident of your respect, the magistracy is glad to testify to you its esteem and regard.'

"Let us hasten to meet again in the judgment-hall, animated by the same zeal and pursuing the same end, and, glad of each other's assistance, let us renew together the useful labours we have assembled to inaugurate.

"And to you, lawyers (avoués), we are only awarding a well-deserved acknowledgment, in thanking you, conformably, we believe, with the wishes of the Court and the Bar, for your useful concurrence, amidst circumstances often unforeseen and difficult. It is our duty to inform you that, during the course of this year, you have gained a further right to the confidence of litigants and the goodwill of magistrates."

The First President then announced that the barristers present at the bar were admitted to renew their oath, which is thus worded:—

"I swear to be faithful to the King and to obey the constitutional Charter; never to say or publish any thing, either as defender or counsel, contrary to the laws, rules, good morals, the safety of the state and public peace; and never to fail in the respect due to the Courts and to the public authorities."

Each member of the council was summoned by his name, and took the oath.

The First President Seguier then immediately read the following speech, which had been previously deliberated upon and drawn up, it is said, by all the presidents of the cour. His voice betrayed his emotion.

"The Court recognizes the oath the barristers here present have just renewed, and always sees them with satisfaction assembled at the opening of the courts. The members of the Bar are aware of the esteem entertained by the Court for their character, and of its confidence in their talents. With regard to the zeal of the magistrates, that has long been tried. The Court will, therefore, again return to its accustomed labours. The barristers will contribute by their efforts to the good and prompt distribution of sovereign justice. The concurrence so desirable of the magistracy and the Bar will not be wanting in the King's service and for the peace of the citizens."

The First President added—

"The court is suspended, and will retire to its respective courts to proceed to business."

The audience retired in the greatest silence, and the members of the Council of Discipline withdrew to deliberate, and, after two hours' absence, they made known the result. The conciliatory words of the Attorney-General, and the First President's speech, which was the opinion of the whole Court, appeared to them sufficient and complete satisfaction. The decision met with the unanimous assent of the Bar, and a decree, expressing the motives of the resolution, was immediately drawn up, to the following effect:—

"The undersigned members of the council of the order of Advocates met together in consequence of the beginning of Term, in their usual place of sitting.

"Considering that in consequence of the grievous circumstances in which the Bar has been placed, the Attorney-General, in his opening discourse, addressed the Barristers in the following manner:—

"'Barristers, how shall we not, &c.'

"Considering that after the renewal of their oath by the audience the First President, in recognizing the oath, pronounced these words:—

"'The Court, &c.'

"That these words, pronounced at the *audience solennelle de rentrée*, not only in the name of the First President, but in the name of the Court, are calculated to efface all recollection of the past, and to re-establish *the concurrence*, indeed, so desirable, of the magistracy and the Bar.

"Decide that they will immediately return to the exercise of their profession before the first chamber of the Court."

Here follow the signatures.

Thus has ended a lamentable conflict. A last question remains to be proved. A judgment has been given inflicting a disciplinary penalty upon honourable men, justly careful of their dignity. An appeal to the Court of Cassation has been lodged by them. New discussions have become impossible after this day's reconciliation, and it is to be hoped that the Cour Royale will simply withdraw its judgment.

THE CRITIC.

New Books.

The Joint-Stock Companies Acts of the 7th and 8th Victoria, comprising the Joint-Stock Companies Regulation Act, cap. 110; *the Joint-Stock Companies Insolvent Act, cap.* 111, *and the Banking Companies Act, cap.* 113; *with Introduction, Notes, and copious Index.* By WILLIAM PATERSON, Esq. of Gray's-Inn, Barrister-at-Law. *Second Edition, containing the Orders, Regulations, and Forms relating to Joint-Stock Companies, framed by the Board of Trade, in pursuance of the Statute.* London, 1844. Law Times Office.

FOR obvious reasons we do not offer an opinion upon the merits of this volume. We purpose merely to describe it, and the reader will then judge if it be, in its arrangements at least, likely to be useful.

It opens with an elaborate Introduction, in which the alterations effected by the new statutes, and the forms to be observed by joint-stock companies, are described with great particularity. Then follow the Rules and Orders of the Board of Trade, with the forms prescribed by them under the directions of the Act; information which, we may observe, can be found nowhere but in the *Gazette*, and that now cannot be procured. The three statutes then follow in the order set forth in the title-page. The editor has adopted with these the very convenient plan of placing the illustrative note at the close of each section, and it is distinguished from the statute by a larger type. In these notes, all the cases bearing upon the subject-matter of the new statutes are cited for the purpose of explanation. The volume is rendered complete by an Index, which we may venture to describe as the most copious we have ever seen in a law book. It extends to upwards of *fifty* pages of close print. The ex-

treme value of such a means of ready reference will be appreciated by every lawyer; and we cannot but express our obligations to Mr. Paterson for the immense labour he must have bestowed upon this curious index, as well as for the research and legal ability he has displayed in a Commentary, which gives to an edition of statutes the value of a treatise.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Andrews, J. banker, 1s. 1d. Wakley, Newcastle.—*Arnold*, T. bookseller, second, 1s. Graham, London. *Ball*, W. bookseller, first sep. of Ball, 15s. 3d.; third of Ball and Hayward, 3½d. and second of Ball, Arnold, and Hayward, 1¾d. Graham, London.—*Bent*, J. grocer, second, 6d. Whitmore, Birmingham.—*Carruthers*, J. distiller, first, 1s. 9d. Graham, London.—*Gowing*, J. S. grocer, 2s. Pennell, London.—*Hurst*, R. 4d. Wakley, Newcastle.—*Kearsley*, T. cotton spinner, first, 1s. 8½d. Stanway, Manchester.—*Maniglier*, A. merchant, second, 1d. Graham, London.—*Manning*, F. J. scrivener, first, 3½d. Belcher, London.—*Meadows*, J. miller, first, 2½d. Morgan, Liverpool.—*Smith*, D. worsted manufacturer, first and fin. 2s. 11d. Hope, Leeds.—*Stevens*, R china dealer, first, 1s. 1½d. Belcher, London.—*Stockdale*, R. merchant, final, 3½d. Belcher, London.—*Thorpe*, T. plumber, first, 2s. 2d. Graham, London.—*Turner*, H. F. baize manufacturer, first, 2s. Graham, London.—*Vernon*, J. victualler, first, 2s. 1½d. Morgan, Liverpool.—*Ward*, J. tailor, 1s. to new proofs. Whitmore, Birmingham.—*Webb*, C. H. corn dealer, fourth, 4d. and 39-64ths of a penny. Christie, Birmingham.—*Wheeler* and *Co.* saddlers, final, 4½d. Belcher, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Nov. 8.

Bellingham, E. upholsterer, Great Titchfield-st. Nov. 4. Trust. J. Heaps, victualler, Angel st. St. Martin's le Grand. Sol. Kennett, Chatham-pl.—*Compton*, M. A. widow and administratrix of J. A. J. W. N. Compton, outfitter, Chatham, Aug. 27. Trusts. W. Merralls, cheesemonger, Tottenham-court-rd. and C. B. Baird, boot-maker, Chatham. Sol. Wickham, Strood.—*Miller*, P. innkeeper, Bury St. Edmunds, Oct. 25. Trusts. F. Nunn, gent. and J. W. Lockwood, merchant, both of Bury St. Edmunds. Sol. Cambridge, Bury St. Edmunds.

MEETING OF CREDITORS.

Taylor, G. W. deceased Dec. 18, 1838, Edinburgh, Nov. 27, at half-past eleven, at Crown and Anchor Tavern, Strand, as to considering a claim made by the trustees for the creditors to the balance of a sum of 15,000*l.* retained for the liquidation of other debts, and on other affairs.

Gazette, Nov. 12.

Attree, C. hosier, Brighton, Nov. 6. Trusts. J. C. Margetson, warehouseman, and H. Nalder, warehouseman both of Cheapside. Sols. Reed and Shaw, Friday-st.—*Hill*, H. corn-factor, Leeds, Oct. 25. Trusts. T. Craven and H. Woffenden, corn merchants, Leeds. Sol. Shackleton, Leeds. *Randall*, S. farmer, Charsfield, Suffolk, Nov 8. Trusts. W Page, Charsfield, and G. Watkins, Clopton, farmers. Sol. Gissing, Woodbridge.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Nov. 8.

Bate, George, horse dealer, Birmingham, Warwick, Nov. 19, at eleven, Dec. 17, at one, Birmingham; Christie, off. ass.; Motteram, Birmingham, sol. Date of fiat, Nov. 2. Bankrupt's own petition.

Blythe, Frederick Edmund, porter merchant, Colchester, Essex, Nov. 19, at half-past one, Jan. 2, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Ogle and Younghusband, Great Winchester-st. sols. Date of fiat, Nov. 2. I. Beard, maltster and brewer, Great Coggeshall. pet. cr.

Bridick, Joseph, the younger, bookseller and stationer, Durham, Nov. 20, at eleven, Dec. 16, at half-past two, Newcastle, Com. Ellison; Baker, off. ass.; Hodgson, Broad-st.-bldgs. and Maynard and Middleton, Durham, sols. Date of fiat, Oct. 30. T. Brown, B. E. Green, T. Longman, and W. Longman, booksellers, Paternoster-row, pet. crs.

Brookes, William, grocer, 13, Gilbert-st. Grosvenor-sq. Nov. 22, at three, Dec. 17, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Comyn, Lincoln's-inn-fields, sol. Date of fiat, Nov. 6. C. B. Feeks, auctioneer, Serle-st. Lincoln's-inn-fields, pet. cr.

Dogood, Henry John, wine and porter merchant, 3, Camden-terr. West, Camden-town, Middlesex, Nov. 15, at twelve, Dec. 14, at one, Basinghall-st. Com. Goulburn; Follett, off. ass.; Ross, Barnard's-inn, sol. Date of fiat, Nov. 2. Bankrupt's own petition.

Embry, William, silk dresser and manufacturer, Aldermanbury, city of London, Nov. 19, at half-past twelve, Jan. 2, at twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Jones, Sise-lane, sol. Date of fiat, Oct. 31. W. Smith, W. Leaf, J. Coles, M. Brankston, and W. L. Leaf, warehousemen, Old Change, pet. crs.

Gibson, Henry Gould, wine merchant, late of Great St. Helen's, Bishopsgate-st. city of London, but now of Northaw, near Potter's-bar, county Hertford, Nov. 19, at three, Dec. 18, at two, Basinghall-st. Com. Evans; Belcher, off. ass.; Hughes, Bedford-st. Covent-garden, sol. Date of fiat, Nov. 5. G. Pork, banker, Bedford-st. Covent-garden, pet. cr.

Hubbard, John, auctioneer and upholsterer, High-st. Ramsgate, county Kent, Nov. 20, at one, Dec. 17, at half-past eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Dyte, Hare-ct. Temple, sol. Date of fiat, Nov. 6. Bankrupt's own petition.

Makepeace, Samuel, silk, cotton, and woollen printer, Mitcham, county Surrey, Nov. 19, at two, Jan. 2, at one, Basinghall-st. Com. Williams; Graham, off. ass.; Reed and Shaw, Friday-st. sols. Date of fiat, Oct. 4. E. Eyles, C. Evans, J. C. Hands, and R. Wells, warehousemen, Ludgate-hill, pet. crs.

Maynard, James, bookseller, Panton-st. Haymarket, county Middlesex, Nov. 22, at two, Dec. 17, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Bennett, Queen-sq. sol. Date of fiat, Oct. 31. T. Hodgson, bookseller, Fleet-st. pet. cr.

Pegrum, John, carpenter and builder, No. 1, Robert-st. North Brixton, county Surrey, Nov. 20, at two, Dec. 17, at half-past twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Smith, Basinghall-st. sol. Date of fiat, Nov. 6. Bankrupt's own petition.

Raper, John, tailor and outfitter, Bridge-road, Lambeth, county Surrey, Nov. 19, at two, Dec. 19, at half-past eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Jones, Sise-lane, sol. Date of fiat, Nov. 2. G. Howes, W. Cook, sen. and jun. F. Cook, W. Hocken, and F. Cook, warehousemen, St. Paul's Church-yard, pet. crs.

Row, John, chemist and druggist, Torrington, Devon, Nov. 15, at one, Dec. 12, at eleven, Exeter, Com. Bere; Hernaman, off. ass.; Rowse, Great Torrington, Holme and Co., New-inn, and Turner, Exeter, sols. Date of fiat, Oct. 31. Bankrupt's own petition.

Swift, Thomas, Rotherfield-st., Islington, and Hensman, Joseph Alfred, Margate, bill brokers, Nov. 15, at one, Dec. 17, at twelve, Basinghall-st., Com. Goulburn; Green, off. ass.; Weir and Smith, Cooper's-hall, sols. Date of fiat, Nov. 7. Bankrupt's own petition.

Tabberner, John Loude, auctioneer and contractor, Birmingham, Warwick, Nov. 16 and Dec. 17, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Slaney, Birmingham, sol Date of fiat, Oct. 31. Bankrupt's own petition.

Gazette, Nov. 12.

Bates, James Davis, ginger beer, soda water, and blacking manufacturer, 2, Lower Chapman-st. St. George's-in the-East, Nov. 22, at one, Jan. 3, at eleven, Basinghall-street, Com. Williams; Turquand, off. ass.; Taylor, North-buildings, Finsbury, sol. Date of fiat, Nov. 7. Bankrupt's own petition.

Burrows, Joseph Sirett, coal merchant, Wimbledon, Nov. 2?, at half-past twelve, Jan. 2, at one, Basinghall-st. Com. Williams; Graham, off. ass.; Ogle, Great Winchester-st. sol. Date of fiat, Nov. 6. M. Ogdon, butcher, Wimbledon, pet. cr.

Cox, John, cabinet maker and upholsterer, Norwich, Nov. 22 and Dec. 18, at twelve, Basinghall-st., Com. Goulburn, Follett, off. ass.; Wood and Blake, Falcon-st. and Durrant Norwich, sols. Date of fiat, Nov. 5. J. E. Solomon, cabinet maker, Norwich, pet. cr.

Hoggins, Albany, commercial agent and ship and insurance broker, 5, Jane-st.-sq. City, and Grosvenor-place, Camberwell, also of Apollo buildings, Dec. 3 at one, Dec. 21, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Hutchinson, Crown-court, Threadneedle-st. sol. Date of fiat, Oct. 29. R Turner, cooper, Wapping, pet. cr.

Jones, James, apothecary, 69, Berner-st. Oxford-st. Nov. 19 and Dec 17, at half past eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Hand, Chancery-lane, sol. Date of fiat, Nov. 11. Bankrupt's own petition.

Kinsey, Evan, innkeeper and maltster, Newtown, Montgomeryshire, Nov. 26 and Dec. 20, at twelve, Liverpool. Com. Phillips; Cazenove, off. ass.; Sargeant, Norfolk-st. Strand, Hughes, Llanidloes, and Evans, Liverpool, sols. Date of fiat, Nov. 7. T. Pugh, yeoman, Newtown, Montgomeryshire, pet. cr.

Oliver, Herbert, and Hastings, Henry, butchers, Cheltenham, Nov. 26, at one, Dec. 24, at eleven. Bristol, Com. Stephen; Kynaston, off. ass.; Packwood, Cheltenham, sol. Date of fiat, Nov. 1. G. Bartley, cattle dealer, Cheltenham, pet. cr.

Sawyer, William, out of business, 9, Louisa-st. Stepney, Nov. 19, at two, Dec. 17, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Morel, West-sq. Southwark, sol. Date of fiat, Nov. 4. Bankrupt's own petition.

Vaile, Joseph, wine and spirit merchant, Cheltenham, Nov. 28, at one, Dec. 27, at eleven, Bristol, Com. Stephen, Kynaston, off. ass.; Bubb and Co. Cheltenham, and Bevan and Co. Bristol, sols. Date of fiat, Nov. 6. W. Ridler, manager of the Cheltenham and Gloucestershire Bank, Cheltenham, pet. cr.

Vaughan, Griffith, innkeeper, Llandy, Carmarthen, Nov. 26, at twelve, Dec. 30, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Jeffreys, Swansea, and Haberfield, Bristol, sols. Date of fiat, Oct. 31. J. Robert, farmer, Llandilotalybout, Glamorganshire, pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, Nov. 5.

Annesley, G. and *Reade*, C. attorneys, Lincoln's-inn-fields, Nov. 1.—*Bullock*, R. W. and T. silk throwsters, Macclesfield, Oct. 28.—*Crowder*, W. W. and *Parkes*, J. wool staplers, Birmingham, Nov. 1.—*Crowther*, G. H. J. and J. cloth finishers, Huddersfield, June 30, so far as regards H. Crowther. Debts paid by the remaining partners.—*Curry*, J. and *Kelson*, W. timber dealers, Bristol, Sept. 28. Debts paid by Kelson.—*Eason*, M. and *Upton*, H. farmers, Nash, near Margate, Nov. 1. Debts paid by M. Eason.—*Eaton*, J. and *Moores*, B. tea dealers, Wareham, Oct. 29. Debts paid by Eaton.—*Fairbrother*, S. G. and R. C. printers, Bow-st. Nov. 4.—*Ford*, H. and *Merrett*, R. G. cabinet makers, Bath, Oct. 9. Debts paid by Ford.—*French*, J. K. and *Stead*, J. cloth merchants, Leeds, Sept. 10. Debts paid by Stead.—*Griffith*, P. jun. and J. D. brewers, Vine-st. Lambeth, May 17.—*Jenkinson*, W. and *Bentley*, H. roller and spindle makers, Salford, July 25. Debts paid by Bentley.—*Pearse*, T. and *Hawken*, W. mercers and drapers, Bodmin, Sept. 28.—*Shadbolt*, G. and *Alcen*, F. G. funeral feather warehousemen, Walbrook, and Church-st. Soho, Nov. 4. Debts paid by Shadbolt.—*Stokes*, L. and *Jenkins*, J. seminary keepers, Watchet, Somersetshire, Sept. 29, 1843.—*Taylor*, J. and H. Oct. 26.—*Ward*, C. and *James*, J. bottled beer merchants, Hungerford-wharf, Nov. 1.—*Williams*, G. D. and J. B. tailors, Liverpool, Nov. 1.—*Unsworth*, H. and *Dandy*, J. bleachers, Blackrod and Manchester, June 30. Debts paid by Unsworth.

Gazette, Nov. 8.

Ainsworth, J. and J., booksellers, Blackburn and Manchester, Dec. 20.—*Barnes*, C. H. and *Rowntree*, F. milliners, Mount-st. Grosvenor-sq. Nov 4.—*Bell*, W. and *Cowen*, R. iron founders, Nottingham, Oct. 31.—*Brett*, H. jun. and *Higgs*, J. A. hotel-keepers, Southampton, Oct. 26. Debts paid by Brett, jun.—*Cobb*, W. M. and *Eastwood*, J. tailors, Liverpool, Nov. 5.—*Fisher*, R. sen. and jun. attorneys, Newport, April 30. Debts paid by either partner.—*Fisher*, R. sen. and jun. and *Washbourne*, W. attorneys, Newport, Oct. 31, so far as regards Fisher, R. sen. Debts paid by the remaining partners.—*Grimond*, J. and *Warden*, R. D. merchants, Manchester and Dundee, Oct. 5. Debts paid by Grimond.—*Hillhouse*, G. and *Hill*, C. merchants, Bristol, Nov. 6. Debts paid at the Counting-house, Bristol.—*Howitt*, W. B. and *Everett*, E. E. drapers and mercers, Edgeware-rd, Nov. 7.—*Humphreys*, W. C. C. and *Gauthorp*, W. T. attorneys, Newgate-st. Nov. 1.—*James*, C. *Cheetham*, S. (deceased), and *Lancaster*, J. dyers, Salford, October 11. Debts paid by Lancaster.—*Leverett*, J. and *Francis*, J. sack manufacturers, East Dereham, Nov. 5. Debts paid by Francis.—*Rhodes*, T. and J. machine-makers, Morley, July 5. Debts paid by Rhodes, J.—*Schlutow*, J. J. T and *Burmeister*, F. D. ship and insurance agents, Colonial-chambers, John-st. Minories, Nov. 6. Debts paid by Schlutow.—*Sheppard*, W. and *Wilson*, J. manufacturing chemists, Wakefield, Oct. 31. Debts paid by Sheppard.—*Sorby*, J. A., and J. F. and *Lockwood*, W., J., and J. merchants and edge-tool manufacturers, Sheffield, Feb. 5.—*Taylor*, P. and *Jenkins*, H. flax-spinners and merchants Chaderton and Manchester, Nov. 6. Debts paid by Jenkins.—*Turner*, J. A. and *Garstang*, J. W., cotton-spinners, manufacturers, and merchants, Liverpool and Manchester, Dec 31, 1843, and March 31, so far as regards Garstang, W.—*Ward*, C. and *James*, J. bottled beer merchants, Hungerford wharf, Nov. 1.—*Wood*, W. L. and *Waygood*, R. furnishing ironmongers, Gracechurch-st. Debts paid by Wood.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Nov. 5.

Albin, F. printer, Old Bailey, Nov. 19, at half-past one.—*Bell*, G. out of business, Forrest-hill, Camberwell, Nov. 20, at half-past twelve.—*Cohen*, V. tobacconist, Trafalgar-place East, Hackney-road, Nov. 20, at half-past eleven.—*Epps*, J. boot and shoe maker, Maidstone, Nov. 20, at eleven.—*Evens*, C. A. boot maker, Chapel-st. Pentonville, Nov. 19, at two.—*How*, G. butcher, Hammersmith, Nov. 19, at half-past one.—*Stubbing*, C. traveller to a ginger-beer manufacturer, Lower Chapman-st. Commercial-road East, Nov. 19, at two.

Gazette, Nov. 8.

Bar, W. supervisor of excise, Gibraltar-row, St. George's-road, Nov. 22, at half past eleven.—*Cotton*, J. A. clerk, Wellington-street, Kent-road, Nov. 25, at half past eleven.—*Fletcher*, C. watch maker, Regent-st. Nov. 25, at eleven.—*Freshwater*, F. steward, Portsmouth, Nov. 25, at twelve.—*Hankins*, W. furniture broker, Horseferry-road, Nov. 25, at half-past twelve.—*Peacock*, H. officer in the [illegible] Court, Earl-street, London-road, Nov. 25, at half past two.—*Holloway*, E. [illegible], Banbury, Nov. 25, at one.—*Kelly*, C. stone mason, Charles-st. Horselydown, Nov. [illegible] at half-past eleven.—*Maltby*, W. B. gentleman, Weston-st. Southwark, Nov. 27, at half-past one.—*Mead*, H. [illegible], Gravesend, Nov. 25, at eleven.—*Ryan*, J. gentleman, M[illegible]-road, Bayswater, Nov. 25, at twelve.—*Stoddard*, R. [illegible] traveller, Union-road, Clapham-road, Nov. 25, at half past one.—*Strong*, W. butcher, Fetter-lane. Nov. 25, at one.

Country—Gazette, Nov. 5.

Emery, W. out of business, Burslem, Nov. 26, at twelve, Birmingham.—*Gould*, W. joiner, Liverpool, Nov. 11, at twelve, Liverpool.—*Hilton*, M. provision dealer, Manchester, Nov. 20, at twelve, Manchester.—*Isherwood*, T. organist, Salford, Nov. 15, at twelve, Manchester.—*Jackson*, J. farmer, Hopton, Yorkshire.—*Nash*, I. sen. out of business, Bristol, Nov. 25, at eleven, Bristol. *Scutter*, [illegible] S. builder and joiner, Nov. 20, at half-past ten, Birmingham.—*Smith*, S. boarding-house keeper, Nov. 12, at half past eleven, Liverpool.

Country.—Gazette, Nov. 8.

Dallimore, R. J. beer retailer, Bristol, Dec. 2 at eleven, Bristol.—*Gifford*, H. clerk, Bath, Dec. 3, at twelve, Bristol.—*Goodard*, J. woollen cloth manufacturer, Almondbury, Nov. 25, at eleven, Leeds. *Hardy*, H. cutler, Sheffield, Nov. 28, at eleven, Leeds.—*Hardy*, W. labourer, Great Barr, Nov. 26 at half-past ten, Birmingham.—*Harrison*, J grinder, Sheffield, Nov. 25, at eleven, Leeds.—*Hickman*, W labourer, Almondbury, Nov. 28, at eleven, Leeds.—*Holcroft*, A. grocer, Burslem, Dec. 2, at twelve, Birmingham.—*Macey*, J. T. carpenter, Bristol, Nov. 28, at eleven, Bristol.—*Naylor*, J. tailor, Waddington, Nov. 25, at eleven, Leeds.—*Nicol*, P jun. out of business, Bourn Dec. 4, at half-past ten, Birmingham.—*Parnaby*, J. farmer, Methley, Nov. 28, at eleven, Leeds.—*Richardson*, W. painter, Leeds, Nov 25, at eleven, Leeds.—*Spark*, G. traveller, Leeds, Nov. 25, at eleven, Leeds.—*Thornton*, E. beer retailer, Bradford, Nov. 25, at eleven, Leeds.—*Wade*, J. jun. stone mason, Dobcross, Nov. 22, at eleven, Leeds.—*Wales*, J. clothier, Spinkwell, Nov. 21, at eleven, Leeds.—*Westell*, S. millwright, Bury, Nov. 23, at twelve, Manchester.

From the Gazette of Friday, November 15.

Bankrupts.

Dore, W. L. innkeeper, Egham, Surrey.—*Parry*, C. furniture broker, Cleaver-st. Kennington-road.—*Argent*, I victualler, Fleet-st.—*Higgins*, W. and T. hosiers, Old Bond-st.—*Norwood*, W. grocer, Kettering, Northamptonshire.—*Bourne*, J. G. builder, Battersea.—*Barwick*, J. F. wheelwright, Old-st. St. Luke's.—*Davidson*, G. F. John-st Adelphi.—*Sedman*, J. colour merchant, Queen-st. Cheapside.—*Boulter*, T. innkeeper, Cromer, Norfolk.—*Barry*, H. lodging-house keeper, Worthing.—*Soul*, C. grocer, Long alley, Moorfields.—*Collinson*, W. carpenter, East Butterwick, Lincolnshire.—*Watson*, J. grocer, Carlisle.—*Dowling*, T. brewer, Chippenham.—*Jones*, W. linendraper, Usk, Monmouthshire.—*Colville*, J. and H. merchants, Liverpool.—*Cottrill*, E. linen dealer, Redditch, Worcestershire.

THE LEGISLATOR.

NEW STATUTES.

Of the Session 8 Victoria.

[In this record of Annual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page 74.*)

44. *Contracts: requisites of contracts. Report to secretary. Liability.*—And for the purpose of regulating contracts entered into on behalf of any joint stock company completely registered under this Act (except contracts for the purchase of any article, the payment or consideration for which doth not exceed the sum of fifty pounds, or for any service, the period of which doth not exceed six months, and the consideration for which doth not exceed fifty pounds, and except bills of exchange and promissory notes), be it enacted, That every such contract shall be in writing, and signed by two at least of the directors of the company, on whose behalf the same shall be entered into, and shall be sealed with the common seal thereof, or signed by some officer of the company on its behalf, to be thereunto expressly authorized by some minute or resolution of the board of directors applying to the particular case; and that in the absence of such requisites, or of any of them, any such contract shall be void and ineffectual (except as against the company on whose behalf the same shall have been made); and that every such contract for the purchase of any article, the consideration of which doth not exceed the sum of fifty pounds, or for any services, the period of which doth not exceed six months, and the consideration for which doth not exceed fifty pounds, entered into on behalf of any joint stock company completely registered under this Act, may be entered into by any officer authorized by a general bye law in that behalf; and that every such contract, whether under seal or not, shall, immediately after the same shall have been entered into, be reported to the secretary or other appointed officer of the company on whose behalf the same shall have been entered into, who shall enter the same in proper books to be kept for that purpose; and that if any such contract be not so reported and entered, then the officer by whose default such contract shall not be so reported or entered shall be liable to repay to the company on whose behalf such contract may be made the amount of the consideration agreed to be paid by or on behalf of such company in respect of such contract.

45. *Requisites of bills and notes by company. Signatures of two directors. Countersign of secretary. Indorsation. Report and entry thereof. Liability. Directors and officers not personally liable. Liability of company and members.*—And be it enacted, with regard to bills of exchange and promissory notes made, accepted, or indorsed on the behalf or account of any such company, as far as relates to the mode of making, accepting, or indorsing the same, and to the liability of any such company thereon, That if the directors of the company be authorized by deed of settlement or bye law to issue or accept bills of exchange or promissory notes, then every such bill of exchange or promissory note shall be made or accepted (as the case may be) by and in the names of two of the directors of the company on whose behalf or account the same may be so made or accepted, and shall be by such directors expressed to be made or accepted by them on behalf of such company; and that every such bill of exchange and promissory note so made or accepted as aforesaid shall be countersigned by the secretary or other appointed officer of the company in whose behalf the same is expressed to be made or accepted; and that every bill of exchange so made as aforesaid, or received by or on behalf of the company, may be indorsed in the name of the company by any officer authorized by deed of settlement or bye-law in that behalf; and that every such bill of exchange or promissory note so made, accepted, or, indorsed as aforesaid shall, immediately after the making, accepting, or indorsing of the same, be reported to the proper officer of the company on whose behalf the same shall have been made, accepted, or indorsed, and such last-mentioned officer shall enter the same in proper books to be kept for that purpose; and that if any such bill of exchange or promissory note be not so reported and entered, then the officer by whose default such bill or note shall not be so reported and entered shall be liable to repay to the company the amount which the company shall pay or be liable to pay in respect of such bill or note: provided always, that nothing herein contained shall be deemed to make any such secretary or officer personally liable upon any such bill of exchange or promissory note, nor be deemed to make any such directors personally liable thereon, except as shareholders of the company; and that every such company on whose behalf or account any bill of exchange or promissory note shall be made, accepted, or indorsed, in manner and form aforesaid, shall and may sue and be sued thereon, as fully and effectually, and in the same manner, as in the case of any contract made and entered into under their common seal.

46. *Deeds, &c. to be signed by two directors.*—And be it enacted, That all deeds and instruments bearing the seal of the company shall be signed by two at the least of the directors of the company.

47. *Bye laws. Form of bye laws. Registration and publication thereof.*—And be it enacted, That all bye laws made by any joint stock company completely registered under this Act, in pursuance of the power hereinbefore given, must be reduced into writing, and must have affixed thereto the common seal of the company; and that such bye laws must be registered at the office for registering joint stock companies, and until they be so registered they shall not be of any force; and that such bye laws must be printed and circulated for the use of the shareholders, and a copy thereof must be given to every officer of the company, and to every shareholder who shall require the same.

48. *Bye laws to be evidence.*—And be it enacted, That in all actions, suits, and other legal proceedings for the enforcement of such bye laws, or other penalties for the breach thereof, the production of a written or printed copy of the bye laws of the company, having the seal of office of the registrar of joint stock companies affixed thereto, shall be sufficient evidence of such bye laws.

49. *Capital: register of shareholders.*—And be it enacted, That it shall be the duty of the directors of every joint stock company registered under this Act to keep or cause to be kept a book, to be called the "Register of Shareholders," and from time to time in such book to enter the following particulars; that is to say: —

The names and addresses of all persons or corporations being shareholders of the company; and also,

The number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number; and also,

The amount of the instalments paid on such shares.

50. *Inspection of register of shareholders.*—And be it enacted, That it shall be lawful for every shareholder, or if such shareholder be a corporation, then the clerk or principal officer of such corporation, at all convenient times to search the register of shareholders gratis, and to require a copy thereof or of any part thereof; and that the company may demand a sum not exceeding sixpence for every one hundred words so required to be copied.

51. *Requisites of certificates of shares. Fee for certificate. Form of certificate.*—And be it enacted, That, on demand of the holder of any share in any joint stock company completely registered under this Act, the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder, specifying the share in the undertaking to which such shareholder is entitled, and the amount paid up in respect of such share at the date of such certificate, and shall have the common seal of the company affixed thereto; and for such certificate the company may demand any sum not exceeding one shilling; and that such certificate must be according to the form in the schedule (I) to this Act annexed, or to the like effect.

52. *Legal effect of certificate as evidence.*—And be it enacted, That it shall be the duty of all courts of justice, judges, justices, and others to admit such certificate as *primâ facie* evidence of the title of the shareholder to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

53. *Renewal of certificate. Substituted certificate. Entry thereof.*—And be it enacted, That if any such certificate be worn out or damaged, then, upon such certificate being produced at some meeting of the directors, it shall be lawful for them to order such certificate to be cancelled; and that thereupon another similar certificate shall, if he require the same, be given to the party in whom the property of such certificate and of the share therein mentioned shall at the time be vested; or if such certificate be lost or destroyed, then, upon proof thereof, a similar certificate shall, if he require the same, be given to the party entitled to the certificate so lost or destroyed; and that in either case it shall be the duty of the secretary, and he is hereby required, to make a due entry of the substituted certificate in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the sum of one shilling.

54. *Transfer of shares. Deed to be registered. Indorsement of transfer. Effect of non-delivery of transfer. No transfer if shares not paid up.*—And be it enacted, That, subject to the regulations herein contained, and to be contained in any deed of settlement of any joint stock company completely registered under this Act, it shall be lawful for every shareholder of such company, and he is hereby entitled, to sell and transfer his shares therein by deed duly stamped, in which the full amount of the pecuniary consideration for such sale shall be truly expressed, and which instrument of transfer must be according to the form in the schedule (K) to this Act annexed, or to the like effect; and that the directors of the company shall cause a memorial of such instrument of transfer, when produced at the office of the company, to be entered in a book to be called "The Register of Transfers," and the entry thereof to be indorsed on the instrument of transfer; and for every such entry and indorsement the company may demand any sum not exceeding one shilling; and that until such instrument of transfer shall have been so produced at the office of the company the purchaser of the share shall not be entitled to receive any of the profits of the company, or to vote in respect of such share: provided always, that if at the time of such transfer the shareholder shall not have paid the full amount due and payable to the company on every share held by him, then he shall not be entitled to transfer any share, unless there be a provision to the contrary in the deed of settlement.

55. *Proceedings to recover instalments of capital. Form of declaration for instalments. Evidence. Recovery of instalments and interest.*—And be it enacted, That if any shareholder fail to pay any instalment of capital due upon or in respect of any share held by him, when the same shall become due, it shall be lawful for any such company, and they are hereby authorized, to sue such shareholder for the amount in an action of debt in any court having competent jurisdiction in respect of the same; and that in the declaration in any such action it shall be sufficient to state only that at the time of the commencement of the suit the defendant, as the holder of certain shares (stating how many) in a certain company or undertaking, as the case may be (naming it), was indebted to the company in a certain sum (stating the amount of the instalments, or so much thereof as is sought to be recovered), for certain instalments of capital then due and payable in respect of the said shares, and that the defendant hath not paid the same; and that if upon the trial of any such action it shall be proved that the defendant was the holder of any share when such instalments, or any of them, in respect of the same, and for which the action is brought, became due, then such company shall recover such instalments, or so much thereof as is due, together with interest for the same, at the rate of five pounds per centum per annum, to be computed from the day on which such instalment shall have become due.

56. *Notification to joint proprietors.*—And be it enacted, That if any share be held jointly by several persons, then any notice required to be given shall be given to such of the said persons whose name shall stand first on the register of shareholders, and notice so given shall be sufficient notice to all the proprietors of such share, and the person so standing first shall be entitled to vote, and to have all the privileges hereby conferred on shareholders.

57. *Deeds of settlement. Publication thereof. Inspection thereof on demand. Penalty.*—And be it enacted, That at every principal place of business of any joint stock company completely registered under this Act it shall be the duty of the directors and officers of the company, and they are hereby respectively required, to have written or printed copies of an index or abstract of the deed of settlement, approved by the Registrar of Joint Stock Companies, and a list of the shareholders of the company, and the number of shares held by each, and also a list of the directors and officers thereof, and a copy of the bye laws sealed with the seal of the company, as returned to the said registry office; and that if at any reasonable time any shareholder, or any person authorized in writing by him, apply at any such place of business of the company, to inspect the same, then, on demand thereof made during the usual hours of business, it shall be the duty of the directors or officers, and they respectively are hereby required to permit such inspection; and that if on such demand any such director or officer to whom such demand is made do not thereupon permit such inspection, then, on conviction thereof, he shall be liable to pay for every such offence a sum not exceeding forty shillings.

58. *Existing companies. Registration of existing companies. Returns of matters for registration. Certificate of registration gratis. Penalty.*—And be it enacted, with regard to all joint stock companies to which this Act is hereinbefore made to apply, and which shall exist on the first day of November, one thousand eight hundred and forty-four, whether incorporated by Act of Parliament or by charter, or privileged by letters patent, or established by virtue of a deed of settlement, or of any other instrument, or by virtue of any authority whatever, or in any other way whatever, that within three months from the said first day of November the directors, managers, officers, or others having the direction, management, conduct, superintendence, or execution of the affairs of any such company, shall register such company at the office for the registration of joint stock companies, and for that purpose shall make or cause to be made a return of the following particulars, according to the schedule (I) hereunto annexed; that is to say,

1. The name or style of the company; and also,
2. The purpose of the company; and also,

3. The principal or only place for carrying on its business:

And that on such registration every such company shall be entitled to have a certificate of registration, without paying any fee either for such registration or for such certificate, but such certificate shall be for the purpose of shewing that such company had registered, and shall not be considered as a certificate of complete registration, so as to confer on any such company the powers and privileges of this Act; and that if within the said period the persons hereby required to register any such company fail so to do, then, on conviction thereof, every such company so failing shall forfeit for every such offence a sum not exceeding fifty pounds.

59. *Privileges of future companies under this Act extended to existing companies fully constituted, or existing companies fully complying. Effect of certificate of complete registration. Incorporation. Alteration of deeds of settlement in compliance with this Act. Fees for certificates of complete registration for existing companies.*—And be it enacted, with regard to such existing companies as aforesaid (except assurance companies), That if any such existing company be so constituted as is by this Act required with regard to any future company, or if the deed or deeds of settlement of such existing company contain the particulars by this Act required to be contained in some one or other deed of settlement of such future company, and if any other conditions required to be fulfilled by or in respect of any such future company, in order to obtain a certificate of complete registration, be fulfilled in respect of any such existing company, then such existing company shall be entitled to obtain a certificate of complete registration; but if such existing company be not so constituted, or if such deed of settlement do not contain such particulars, or if such other conditions be not fulfilled, then, on such existing company returning a deed or deeds according to the provisions of this Act, and also, in addition to any other matters by this enactment required to be returned by such existing company, such other matters as are by this Act required to be returned by any future company in order to obtain or before obtaining a certificate of complete registration as aforesaid, or such modification of the said deeds or returns, or any of them, as the Committee of Privy Council for Trade shall direct by any regulation to be made in that behalf, either on the part or in respect of any one company or of any class of companies, and signed by one of the secretaries of the said committee, such existing company shall be entitled to a certificate of complete registration; and on such certificate of complete registration being granted by the Registrar of Joint Stock Companies, it shall be lawful for such existing company, its shareholders, its directors, and its officers, and they are respectively hereby empowered, to have and exercise all such powers and privileges as are by this Act conferred upon joint stock companies to be hereafter formed; subject nevertheless, with respect to all such powers and privileges, to the provisions of this Act, or of any other Act to be hereafter passed for regulating the same; and that every such company not incorporated shall be incorporated for the purposes of this Act, as from the date of the certificate of complete registration, in such manner as hereinbefore provided with regard to companies to be formed after the first day of November next; and that any directors or other managers of any such company as last aforesaid, with the consent of at least three-fourths in number and value of the shareholders of such company present at a general meeting summoned for that purpose, may at any time or times hereafter make any alterations in the constitution of the said company or otherwise as shall be necessary for enabling such company to come within the provisions of this Act, so as the same shall be approved of by the said Committee of Privy Council for Trade; and the order of such committee, signed as aforesaid, shall be sufficient evidence of such provisions having been complied with, and that any such company has come within the provisions of this Act: provided always, with regard to existing companies, that in the event of any such company becoming entitled to a certificate of complete registration as aforesaid, it shall not be necessary to pay in respect of such certificate any higher fee than the sum of five pounds, and also the sum of sixpence additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority.

60. *Registration of companies begun or formed after the passing of this Act.*—And be it enacted, That so much of the provisions of this Act as are applicable to companies formed after the first day of November next shall apply to companies begun or formed since the passing of this Act, so far as such provisions shall on or after the first day of November be applicable to such last-mentioned companies.

61. *Effect of incorporation of existing companies in respect of their obligations.*—Provided always, and be it enacted, That, notwithstanding the incorporation of any existing company in pursuance of this Act, every such company, and the members and officers of every such company, shall be liable to be sued in respect of any valid obligation incurred before such incorporation, in the same manner and with the same legal consequences as if such company had not been incorporated.

62. *Modification of conditions and regulations as to companies. Board of Trade to receive and decide applications. Return to Parliament by Board of Trade.*—And be it enacted, That if at any time during the period of five years from the said first day of November a memorial be presented to the Committee of Privy Council for Trade, by or on the part of any company, whether now existing or hereafter formed, except assurance companies, making application that any of the conditions and regulations prescribed by this Act be dispensed with or modified, and setting forth the special grounds of such application, and if such application be registered at the office of the Registrar of Joint Stock Companies, and if, before such application be granted, the same be three times advertised, at intervals not less than one week, in the *London Gazette*, then from time to time during the said period of five years, and six months after the expiration thereof, it shall be lawful for the said committee, and they are hereby empowered, both as regards companies formed before this Act shall come into operation and afterwards, either to dispense with or modify such of the conditions by this Act required to be fulfilled by any future company for the purpose of obtaining a certificate of complete registration, and such of the regulations by this Act made for the government or management of such companies, as to the said committee shall seem fit for facilitating the application of this Act to the constitution and arrangements of any such company, but so that nevertheless the order or instrument by which such dispensation or such modification shall be made be in writing, and be registered at the office for registering joint stock companies; and this Act shall be construed as if such modifications or alterations were herein contained, and further, that annually it shall be the duty of the said committee to cause to be laid before both Houses of Parliament a return of all such applications for such dispensation or modification, and of the orders made on such applications.

63. *Act not to extend to certain partnerships for working mines, &c.*—Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to any partnership formed for the working of mines, minerals, and quarries, of what nature soever, on the principle commonly called the cost book principle.

64. *Nor to Irish anonymous partnerships. 21 & 22 Geo. 3, c. 46 (I).*—Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to partnerships in Ireland commonly called "Anonymous Partnerships," formed under and by virtue of an Act passed in the Parliament of Ireland in the twenty-first and twenty-second years of the reign of his late Majesty King George the Third, intituled "An Act to promote Trade and Manufactures by regulating and encouraging Partnerships."

65. *Prevention of fraudulent companies. Punishment for pretences as to patronage, &c.*—And forasmuch as great injury has been inflicted upon the public by companies falsely pretending to be patronized or directed or managed by eminent or opulent persons; now for the purpose of preventing such false pretences, be it enacted, with regard to every company or pretended company whatsoever, whether registered or not, and whether now existing or not, That if any person shall make any such false pretences, knowing the same to be false, in any advertisement or other paper, whether printed or written, and whether published in any newspaper, or handbill, or placard, or circular, then every such person shall forfeit for every such offence a sum not exceeding ten pounds.

66. *Legal proceedings. Effect of judgments against a company and shareholders. Former shareholders. No execution against former shareholders beyond three years after ceasing to be a shareholder.*—Provided always, and be it enacted, That every judgment and every decree or order which shall be at any time after the passing of this Act obtained against any company completely registered under this Act, except companies incorporated by Act of Parliament or charter, or companies, the liability of the members of which is restricted by virtue of any letters patent, in any action, suit, or other proceeding prosecuted by or against such company in any court of law or equity, shall and may take effect and be enforced, and execution thereon be issued, not only against the property and effects of such company, but also, if due diligence shall have been used to obtain satisfaction of such judgment, decree, or order, by execution against the property and effects of such company, then against the person, property, and effects of any shareholder for the time being, or any former shareholder of such company, in his natural or individual capacity, until such judgment, decree, or order shall be fully satisfied; provided, in the case of execution against any former shareholder, that such former shareholder was a shareholder of such company at the time when the contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained; provided also, that in no case shall execution be issued on such judgment, decree, or order against the person, property, or effects of any such former shareholder of such company after the expiration of three years next after the person sought to be charged shall have ceased to be a shareholder of such company.

67. *Reimbursement of shareholders against whom execution issued. Contribution by other shareholders.*—Provided always, and be it enacted, That every person against whom, or against whose property or effects, execution upon any judgment, decree, or order obtained as aforesaid shall have been issued as aforesaid shall be entitled to recover against such company all loss, damages, costs, and charges which such person may have incurred by reason of such execution; and that after due diligence used to obtain satisfaction thereof against the property and effects of such company, such person shall be entitled to contribution for so much of such loss, damages, costs, and charges as shall remain unsatisfied, from the several other persons against whom execution upon such judgment, decree, or order, obtained against such company, might also have been issued under the provision in that behalf aforesaid; and that such contribution may be recovered from such persons aforesaid in like manner as contribution in ordinary cases of copartnership.

68. *Proceedings in execution against the person or property of a shareholder. Alteration of orders by the Court. Notice.*—And be it enacted, That in the cases provided by this Act for execution on any judgment, decree, or order in any action or suit against the company, to be issued against the person or against the property and effects of any shareholder or former shareholder of such company, or against the property and effects of the company, at the suit of any shareholder or former shareholder, in satisfaction of any moneys, damages, costs, and expenses paid or incurred by him as aforesaid in any action or suit against the company, such execution may be issued by leave of the Court, or of a judge of the court in which such judgment, decree, or order shall have been obtained, upon motion or summons for a rule to shew cause, or other motion or summons consistent with the practice of the Court, without any suggestion or *scire facias* in that behalf; and that it shall be lawful for such Court or judge to make absolute or discharge such rule, or allow or dismiss such motion (as the case may be), and to direct the costs of the application to be paid by either party, or to make such other order therein as to such Court or judge shall seem fit; and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively for giving effect to the provision in that behalf aforesaid as the judges of such courts respectively shall from time to time think fit to order; and the execution of such writs shall be enforced in like manner as writs of execution are now enforced: provided that any order made by a judge as aforesaid may be discharged or varied by the Court, on application made thereto by either party dissatisfied with such order: provided also, that no such motion shall be made, nor summons granted, for the purpose of charging any shareholder or former shareholder, until ten days' notice thereof shall have been given to the person sought to be charged thereby.

69. *Recovery of penalties. Proceedings before two justices.*—And be it enacted, That all penalties and forfeitures inflicted or authorized to be imposed by this Act, and all costs and expenses for which any person may be liable under this Act or by virtue of any bye law and the recovery of which has not been otherwise specially hereinbefore provided, shall and may be recovered, by any person who shall proceed for the same, before any two of her Majesty's justices of the peace of the county, city, or place where the offender or person liable to pay such costs or expenses shall reside, or where the offence shall be committed.

70. *Appropriation of penalties. 3 Geo. 4, c. 46.*—Provided always, and be it enacted, That all penalties and forfeitures recovered under this Act, and not otherwise specially appropriated, shall be applied as follows; one half thereof shall be paid to the person who shall sue or proceed for the same, and the other half to her Majesty's use, and shall be paid to the sheriff of the county, city, or town where the same shall have been imposed; and that all convictions before justices shall be returned to the Court of Quarter Sessions under the provisions of an Act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more speedy return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated," and shall be paid to the sheriff of the county, city, or town, and shall be duly accounted for by him.

71. *Summons in the recovery of penalties. Proceedings.*—And be it enacted, That in all cases in which

any penalty or forfeiture or any costs or expenses are recoverable before two justices of the peace under this Act, it shall and may be lawful for any one justice of the peace to whom complaint shall be made of any such offence to summon the party complained of, and the witnesses on each side, before any two such justices; and at the time and place mentioned in such summons, or at any adjournment of such summons, the said two justices may hear and determine the matter of complaint, and upon due proof thereof, either by confession of the party or by the oath of one or more credible witness or witnesses, give judgment or sentence on such complaint, with costs, to be allowed by such justices, although no information in writing shall have been exhibited or taken; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited; and all penalties, forfeitures, and costs so adjudged may be levied by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of any one justice; and in default of such distress the offender may be committed to prison by any one justice, by warrant under his hand and seal, there to remain for any time not exceeding three months, unless such penalties, forfeitures, and costs shall be sooner paid.

72. *Compulsory attendance of witnesses.*—And be it enacted, That if any person shall be summoned as a witness to give evidence before such justices of the peace touching any matter which such justices are hereby authorized to inquire into, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justices, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence a sum not exceeding five pounds, to be levied and paid in such manner and by such means as are hereinbefore directed as to other penalties recoverable before justices under this Act.

73. *Limitation of proceedings for penalties.*—And be it enacted, That every proceeding for any offence punishable on summary conviction by virtue of this Act shall be commenced within six months after the commission of the offence, and not after.

74. *Appeal to Quarter Sessions. Proceedings.*—And be it enacted, That if any person shall think himself aggrieved by the judgment of such justices, he may, within one month next after such conviction, and upon giving ten days notice of appeal in writing to the party in whose favour such judgment shall have been given, stating the nature and grounds of appeal, and upon entering into recognizances with two sufficient sureties to the amount of the value of such penalty and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed, appeal to the next General Quarter Sessions of the peace for the county, city or place where such conviction shall have been made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of such appeal, and to award such costs as the Court shall think reasonable to the party in whose favour such appeal shall be determined.

75. *Informalities. No certiorari.*—And be it enacted, That no conviction or other proceeding before justices under this Act shall be set aside for want of form, nor be removed by *certiorari* or otherwise into any of her Majesty superior Courts of Record.

76. *Recovery of penalties by action. Specification of amount.*—And be it enacted, That in any case to which a penalty is annexed by this Act the whole or any part of such penalty may be recovered by action of debt in any court now or hereafter having competent jurisdiction, by any person who shall sue for the same; and that in every such action for the recovery of such penalty, so much of such penalty as is sought to be recovered shall be indorsed on the writ of summons, and the plaintiff shall not be entitled to recover a greater sum than the sum so indorsed; and if the party suing for any such penalty recover the sum or any part as aforesaid, he shall be entitled to full costs of suit.

77. *Actions, &c. for penalties to be in the name and with the consent of the Attorney-general; otherwise void.*—And be it enacted, That it shall not be lawful for any person to commence or prosecute any action, bill, plaint, information, or prosecution in any of her Majesty's superior courts, for the recovery of any penalty or forfeiture incurred by reason of any offence committed against this Act, unless the same be commenced or prosecuted in the name and with the consent of her Majesty's Attorney-general; and that if any action, bill, plaint, information, or prosecution, or any proceeding before any justices as aforesaid, shall be commenced or prosecuted in the name of any other person than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

78. *Miscellaneous. Authentication of acts by committee of Privy Council for Trade.*—And be it enacted, That with regard to every act, instrument, or writing by this Act required or authorized to be done or to be made or executed by the Committee of Privy Council for Trade, that if the same purport to be so done, made, or executed by or on behalf of the said committee, and be signed by one of the secretaries of the said committee, and (if it require a seal) be sealed by the seal of the said committee, then it shall be deemed to be sufficiently done, made, or executed, to all intents and purposes.

79. *Annual report to Parliament.*—And be it enacted, That it shall be the duty of the Registrar of Joint Stock Companies to make a report annually to the said Committee of Privy Council for Trade, setting forth,—

1. A list of companies provisionally registered during the past year:
2. A list of companies completely registered during the past year:
3. A list of cases in which application shall have been made for the enforcement of penalties for failure to register, and the proceedings, whether by prosecution or otherwise, taken in consequence of such applications, and the results of such proceedings:
4. A list of companies which shall have been provisionally registered but which have not obtained complete registration:
5. A return of the regulations made by the said committee with regard to the returns required to be made by companies:
6. A return of persons appointed to the office of Registrar of Joint Stock Companies, and other officers and clerks, and of their salaries or other remuneration, and of the rules made for the regulation of the said office:
7. A return of the amount of all fees paid for certificates of provisional or complete registration, and for every other purpose:
8. A return of the scale of fees appointed by the Commissioners of her Majesty's Treasury for the services to be performed by the registrar, and of the respective amounts of such fees.
9. A return of the cases in which the companies had failed to appoint auditors, and of the proceedings taken thereon:
10. A return of prosecutions under this Act for any offenses not herein before specified:
11. A return of the number of bankruptcies of joint stock companies, and of the amount of the debts and assets of such companies respectively:
12. A return of modifications made by the Committee of Privy Council for Trade, in pursuance of this Act, in the conditions and regulations to be observed by companies, whether existing or future:

And that, within six weeks after the meeting of Parliament next after the first day of January in every year, such report shall be laid before both Houses of Parliament.

80. *Amendment of Act.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

SCHEDULES to which the Act refers.

Schedule (A)—See Section 7.

List of purposes for which provision is required to be made by the Deed of Settlement of a Company before such Company can obtain a Certificate of complete Registration.

1. *For the holding of meetings, and the proceedings thereat, viz.:—*

1. For holding ordinary general meetings of the company once at the least in every year, at some appointed place and time.
2. For holding extraordinary meetings, either upon the convening of the directors of the company, or upon the requisition of no less than five shareholders.
3. For the adjournment of meetings.
4. For the advertisement and notification of meetings, and the business to be transacted thereat.
5. For defining the business which may be transacted at meetings, ordinary and extraordinary, or at adjournments thereof.
6. For the appointment of the chairman at any meeting of the company.
7. For insuring that each shareholder shall have a vote; and where it is not provided that each shareholder is to have a vote in respect of each share, the appointment of the number of votes to be given by shareholders in respect of any number of shares held by them.
8. For enabling guardians, trustees, and committees to vote in respect of the interests of infants, *cestuique trusts*, lunatics, and idiots.
9. For ascertaining what shall be the majorities or numbers of votes requisite to carry all or any questions, and where a simple majority is to decide.
10. For prescribing the mode and form of the appointment of proxies to vote in the place of absent shareholders, and for limiting the number of proxies which may be held by any one person.
11. For determining questions where the votes are equally divided, whether by the casting vote of the chairman or otherwise.

2. *For the direction of the execution of the affairs of the company, and the registration of its proceedings, viz.:—*

12. For prescribing the maximum number of directors to be appointed; the number of shares or the amount of interest by which they are to be qualified; the period for which they are to hold office, so that at least one-third of such directors, or the nearest number to one-third, shall retire annually, subject to re-election if thought fit; and for the determination of the persons who shall so retire in each year.
13. For filling up vacancies in the office of the directors as they occur: but not so as to enable the Board of Directors (if the filling up be assigned to them) to fill up such vacancy for a longer period than until the next general meeting of the company.
14. For the continuance in office of directors in default of election of new directors.
15. For regulating the meetings of directors, the quorum thereof, the proceedings thereat, and the adjournment thereof.
16. For recording the attendances of directors, and reporting the same to the shareholders.
17. For the determination of questions upon which the votes of the directors may be equally divided.
18. For the appointment of a person to take the chair of the directors, and for supplying any vacancy in the office of chairman.
19. For the appointment of the chairman of the directors at meetings at which the permanent chairman may not be present.
20. For regulating the appointment by the directors of officers, clerks, and servants.
21. For recording the proceedings of the directors.
22. For keeping and entering of minutes of such proceedings.
23. For ensuring the safe custody of the seal of the company, and for regulating the authority under which it is to be used.
24. For providing for the remuneration of the auditors of the accounts of the company.
25. For providing for the appointment of a secretary or clerk (if any) of the directors.
26. For providing for the receipt, custody, and issue of moneys belonging to the company.
27. For providing for the keeping of books of account, and for periodically balancing the same.
28. For keeping the records and papers of the company.
29. For prescribing and regulating the duties and qualifications of officers.
30. For determining what books of accounts, books of registry, and other documents may be inspected by the shareholders of the company, and for regulating such inspection.

3. *For the distribution of the capital of the company into shares, or for the apportionment of the interest in the property of the company, viz.:—*

31. For determining whether calls or instalments of payments (if any) are to be made in certain amounts and at fixed periods, and if so, what amounts and at what periods.
32. For determining whether, on failure to pay any instalments or calls, the share shall or shall not be forfeited, and if forfeited, whether and on what conditions the property in such share may be recovered by the shareholder.
33. For determining whether, and under what circumstances, and on what conditions, the capital of the company may be augmented by the conversion of loans into capital or otherwise, or by the issue of new shares or otherwise.
34. For determining whether the amount of new capital shall or shall not be divided so as to allow such amount to be apportioned amongst the existing shareholders.

4. *For the borrowing of money, viz.:—*

35. For determining whether the company may borrow money, and if so, whether on bond or mortgage, or any other and what security.
36. For determining whether the directors may contract debts in conducting the affairs of the company, and if so, whether to any definite extent.
37. For determining whether, and to what extent, the directors may make or issue promissory notes.
38. For determining whether, and to what extent, the directors may accept bills of exchange.

CAP. CXI.

An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements. (Sept. 5, 1844.)

This statute also we present entire.

If any incorporated commercial or trading company, or any other body of persons associated together for commercial or trading purposes, as herein described, shall commit any act which is hereby deemed an act of bankruptcy on the part of such company, a fiat in bank-

ruptcy may issue against the same, and be prosecuted in like manner as against other bankrupts, subject to the provisions hereinafter made.—Whereas it is expedient to extend the remedies of creditors against the property of such joint stock companies or bodies as hereinafter mentioned when unable to meet their pecuniary engagements, and to facilitate the winding up of their concerns; and it may also be for the benefit of the public to make better provision for discovery of the abuses that may have attended the formation or management of the affairs of any such companies or bodies, and for ascertaining the causes of their failure; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any commercial or trading company now or at any time hereafter incorporated by charter or Act of Parliament, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and to which any privilege or privileges or power or powers shall, before or after the passing of this Act, have been granted under the authority of the statute made and passed in the first year of the reign of her present Majesty, intituled "An Act for better enabling her Majesty to confer certain Powers and Immunities on trading and other Companies, or by any Act of Parliament," or any commercial or trading company or body which by the said statute made and passed in the first year of the reign of her present Majesty is to be considered as subsisting, and to be subject to the provisions of the said statute in manner therein mentioned, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and registered either provisionally or completely under the provisions of any Act passed or to be passed in the present session of Parliament, for the registration and regulation of joint stock companies or any joint stock company now existing and comprehended within the definition therein contained of a joint stock company, shall commit any act which by this Act is to be deemed an act of bankruptcy on the part of any such company or body, a fiat in bankruptcy may issue against such company or body by the name or style of the said company or body, upon the petition of any creditor or creditors of such company or body (whether a member or members of such company or body or not), to such amount as is now by law requisite to support a fiat in bankruptcy; and the Court authorized to act in the prosecution of such fiat, and all persons acting under such fiat, may proceed thereon in like manner as against other bankrupts, subject always to the provisions hereinafter made.

2. *Bankruptcy of company not to be construed to be the bankruptcy of any member individually.*—Provided always, and be it enacted, That the bankruptcy of any such company or body in its corporate or associated capacity (as the case may be) shall not be construed to be the bankruptcy of any member of such company or body in his individual capacity.

3. *Service of adjudication of bankruptcy on company, and surrender, how to be made.*—And be it enacted, That the duplicate of the adjudication of bankruptcy under a fiat against any such company or body shall be served on the person who was at the date of such fiat a chief clerk or secretary or registrar of such company or body, or (if there be no such person) on any person who was at such date a director of such company or body, personally, or by leaving the same at the head office for the time being of such company or body; and the surrender to such fiat for the purpose of consenting to, and the consent to, the advertisement of such adjudication before the expiration of the five days allowed for shewing cause against the validity thereof, may be made on behalf of such company or body by such person; provided such person shall, at the time of such surrender, make a deposition, and swear that he was, at the date of such fiat, such chief clerk or secretary or registrar, as the case may be, and that he is authorized to make such surrender.

4. *Declaration of insolvency in pursuance of a resolution of the board of directors under the common seal of the company, or signed by the chairman, and attested by the solicitor of the company, and filed in the office of the Secretary of Bankrupts, to be an act of bankruptcy.*—And be it enacted, That if any such company or body shall, by virtue of a resolution to be duly passed in that behalf at a board of directors of such company or body duly summoned for that purpose, file or cause to be filed in the office of the Lord Chancellor's Secretary of Bankrupts a declaration in writing, in the form specified in the schedule (A) No. 1 hereunto annexed, that the said company or body is unable to meet its engagements, and also a minute of such resolution in the form specified in the schedule (A) No. 2, such declaration and minute of resolution respectively being under the common seal of such company or body, and if such company or body have no common seal, then signed by the chairman of the board of directors who was present at the passing of such resolution, and in either case such declaration and minute of resolution being respectively attested by the attorney or solicitor of the said company or body for the time being, every such company or body shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a fiat in bankruptcy shall issue against such company or body within two calendar months from the filing of such declaration; and a copy of such declaration and minute of resolution respectively, purporting to be certified by the said secretary, or his clerk, as a true copy, shall be received as evidence of such declaration and minute of resolution respectively having been filed by such company or body, and that, upon such evidence being given, and upon proof by the attesting witness of the sealing or signature, as the case may be, of the said declaration and minute of resolution, no further evidence shall be required of the said act of bankruptcy.

5. *Company not paying, securing, or compounding for a judgment debt upon which the plaintiff might sue out execution, within fourteen days after notice requiring payment, an act of bankruptcy.*—And be it enacted, That if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand in any of her Majesty's courts of record, against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off, or which may be legally set off against such judgment, and such company or body shall not, within fourteen days after notice in writing, served upon the said company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body, personally, or by the same having been left at the head office for the time being of such company or body, requiring immediate payment of such judgment debt, pay, secure, or compound for the same to the satisfaction of such plaintiff, such company or body shall be deemed to have committed an act of bankruptcy on the fifteenth day after service of such notice: provided always, that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court of justice having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

6. *Company disobeying order of any Court of equity, &c. for payment of money after service of order for payment on a peremptory day fixed, an act of bankruptcy.*—And be it enacted, That if any decree or order shall be pronounced in any cause depending in any court of equity, or any order shall be made in any matter of bankruptcy or lunacy against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, ordering any sum of money to be paid by such company or body, and such company or body shall disobey such decree or order, the same having been served upon such company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body, personally, or by the same having been left at the head office for the time being of such company or body, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the Court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such company or body, being served in manner aforesaid with such last-mentioned order fourteen days before the day therein appointed for payment of such money, shall neglect to pay the same, such company or body shall be deemed to have committed an act of bankruptcy on the fifteenth day after the service of such order.

7. *Creditor filing an affidavit of debt in one of the superior courts, and issuing a writ of summons thereon, if the company do not, within a month, pay, secure, or compound to the satisfaction of the creditor, or satisfy a judge of their intention to defend on the merits, and enter an appearance to the action, an act of bankruptcy.*—And be it enacted, That if any creditor or creditors of any such company or body to such amount as is now by law requisite to support a fiat shall file an affidavit or affidavits in any of her Majesty's superior courts of law at Westminster that such debt or debts is or are justly due to him or them respectively from the said company or body, and that such company or body, as he or they verily believe, is a commercial or trading company, or body incorporated or associated as aforesaid (as the case may be), and shall sue out of the same court a writ of summons against such incorporated company, or against any person duly authorized to be sued as the nominal defendant on behalf of such associated company or body, as the case may be, and serve a chief clerk or secretary or registrar of such incorporated or associated company or body, as the case may be, or (if there be no officer of such denomination) any director of the said company or body, personally, with a copy of such summons, if such company or body shall not, within one calendar month after service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or make it appear to the satisfaction of one of the judges of the court out of which such writ of summons shall issue that it is the intention of such company to defend the action upon the merits, and within one calendar month next after service of such summons cause an appearance or appearances to be entered to such action or actions in the proper court or courts in which the same shall have been brought, every such company or body shall be deemed to have committed an act of bankruptcy from the time of the service of such summons.

8. *Assignees of the estate of a company may maintain action to recover a debt: and any person may claim under a fiat against a company any debt due on the balance of accounts.*—And be it enacted, That it shall be lawful for the assignees of the estate and effects of any such company or body to maintain any action, suit, or other proceeding against any person or persons (whether a member or members of such company or body or not) to recover any debt or demand on behalf of the said company or body against such person or persons, and for any person or persons to prove or claim under the fiat against such company or body such debt or demand as may be due to him or them (whether a member or members of such company or body or not) on the balance of accounts between him or them and the said company or body.

9. *Member's share not to be set off against a demand which the assignees of the estate and effects of a company adjudged bankrupt may have against such member.*—Provided always, and be it enacted, That no claim or demand which any member of any such company or body may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which the assignees of the estate and effects of such company or body may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof.

10. *No action, &c. by a creditor of a company, so far as concerns his recourse against the person or property of any individual member, to affect his right to issue or prove under a fiat against the company for any debt remaining unsatisfied: and a fiat, or a proof or proceeding thereon, not to affect any action by a creditor, so far as concerns his recourse to the person or property of any individual member.*—And be it enacted, That no action, suit, or other proceeding by any creditor or creditors of any such company or body shall, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof, be deemed to prejudice or in any manner affect the right of such creditor or creditors to sue out or prosecute a fiat against such company or body, or his or their right to prove or claim under any fiat against such company or body any debt or demand remaining unsatisfied; and that no such fiat, or proof, or proceeding thereunder, shall be deemed to prejudice or in any manner affect the right of any creditor or creditors of such company or body to institute or maintain any action, suit, or other proceeding, so far as concerns or may be necessary for the recourse of such creditor or creditors, against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof: provided always, that nothing herein contained shall prevent remedy against copartners: provided also, that no execution in respect of any debt or demand proveable under the fiat against any such company or body adjudged bankrupt shall be issued against the person, property, or effects of any member or members for the time being of such company or body, or any former member or members thereof, until after such debt or demand shall have been proved under such fiat, nor shall any such execution be issued after the appointment of a receiver in manner hereinafter mentioned, without leave of the High Court of Chancery.

11. *The law and practice in bankruptcy to extend, so far as applicable, to fiats under this Act.*—And be it enacted, That the law and practice in bankruptcy now in force shall extend, so far as the same may be applicable, to this Act, and to fiats in bankruptcy issued by virtue of this Act, and to all proceedings under such fiats, save and except as may be otherwise directed by this Act.

12. *The Court may order the directors of a company adjudged bankrupt, &c. to prepare and file a balance-*

sheet and accounts, and to make oath of the truth thereof; and the Court may make allowance out of the estate for the preparation thereof.—And be it enacted, That it shall be lawful for the Court authorized to act in the prosecution of a fiat in bankruptcy against any such company or body, at any time after the advertisement of the bankruptcy in the *London Gazette*, to order that the persons who were at the date of such fiat directors of such company or body, or such of them as such Court in its discretion shall think fit, or if there be no directors, then such members of the company as such Court in its discretion shall think fit, shall prepare such balance-sheet and accounts, and in such form as such Court shall direct, and shall subscribe such balance-sheet and accounts, and file the same in such court, and deliver a copy thereof to the official assignee ten days at least before the last examination under such fiat; and such balance-sheet and accounts, before such last examination, may be amended from time to time as occasion shall require, and such Court shall direct; and such persons shall make oath of the truth of such balance-sheet and accounts whenever they shall be duly required so to do; and such Court may from time to time make such allowance out of the estate of such company or body for the preparation of such balance-sheet and accounts, and to such person or persons, as such Court shall think fit.

13. *Persons ordered by the Court to prepare the balance-sheet to be under the like obligation to surrender at the last examination under the fiat, and to submit to be examined, &c. and to incur such danger or penalty for not conforming, &c. as is now provided against a bankrupt.*—And be it enacted, That every such person ordered as aforesaid to prepare such balance-sheet and accounts shall be under the like obligation to surrender to the Court authorized to act in the prosecution of such fiat, at the hour and upon the day allowed for finishing the last examination under such fiat, and to sign and subscribe such surrender, and to submit to be examined before such Court from time to time upon oath, and to make a full and true discovery of the estate and effects of such company or body, and shall incur such danger or penalty for not surrendering, or for not signing or subscribing such surrender, or for not coming before the Court, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the Court, or for refusing to sign or subscribe his examination, or for not delivering up at the last examination under such fiat all such part of the estate of such company or body, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power, or for removing, concealing, or embezzling any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud the creditors of such company or body, as is now by the law in force concerning bankrupts provided as to a bankrupt for not conforming to the like requisitions for the discovery of and in relation to the estate and effects of such bankrupt.

14. *Persons ordered to prepare the balance-sheet to have the same freedom from arrest, &c. as a bankrupt.*—And be it enacted, That every such person so ordered as aforesaid to prepare such balance-sheet and accounts shall have such freedom from arrest and imprisonment in coming to surrender to such fiat, and such discharge, if arrested in coming to surrender, as a bankrupt now has or may have under a fiat in bankruptcy against him; and such person or persons, if in prison, may be brought before such Court, by warrant, in like manner as such bankrupt now may.

15. *The Court, before adjudication, may summon any person, whether a member of the company or not, to give evidence as to the trading and any act of bankruptcy; and, after adjudication, the Court may summon and examine any person who is suspected to have property of the company in his possession, or to be indebted to the company, &c. and compel him to produce books, &c.*—And be it enacted, That it shall be lawful for the Court authorized to act in the prosecution of a fiat in bankruptcy, issued against any such company or body, before adjudication, to summon before such Court any person (whether a member of such company or body or not) whom such Court shall believe capable of giving any information concerning the commercial dealings or trading of, or any act or acts of bankruptcy, within the meaning of this Act, committed by, such company or body, and also to require such person so summoned to produce any books, papers, deeds, writings, and other documents in the custody, possession, or power of such person which may appear to such Court to be necessary to establish such dealings, trading, or act or acts of bankruptcy; and it shall be lawful for such Court to examine every such person upon oath, by word of mouth or interrogatories in writing, concerning the dealings or trade of, or any act or acts of bankruptcy, within the meaning of this Act, committed by, such company or body; and it shall also be lawful for such Court, after adjudication, to summon before it any person (whether a member of such company or body or not) known or suspected to have any of the estate of such company or body in his possession, or who is supposed to be indebted to such estate, or any person (whether a member of such company or body or not) whom such Court believes capable of giving information concerning any person or persons who was or were a member or members of such company or body at or before the date of the fiat, or concerning the trade, dealings, or estate of such company or body, or concerning any act or acts of bankruptcy, within the meaning of this Act, committed by such company or body, or any information material to the full disclosure of the dealings of such company or body; and it shall be lawful for such Court to examine, in manner aforesaid, every such person so summoned concerning the person of any such member, or concerning the trade, dealings, or estate of such company or body, and also to require every such person so summoned to produce any books, papers, deeds, writings, or other documents in his custody, possession, or power which may appear to such Court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which such Court is authorized to inquire into; and every such person so summoned shall incur such danger or penalty for not coming before the Court, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of such Court, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is now provided against persons summoned to be examined under a fiat in bankruptcy.

16. *As to costs where a person summoned under a fiat against a company, was a member thereof.*—And be it enacted, That where any person who, at or before the date of a fiat in bankruptcy issued against any such company or body, was a member of such company or body, shall be summoned to attend before the Court authorized to act in the prosecution of such fiat, every such person shall have such costs and charges only (if any) as such Court in its discretion shall think fit.

17. *Penalty on members (other than those who are ordered to prepare the balance-sheet), and on other persons, wilfully concealing the estate of the company, 100l. and double the value of the estate concealed; and allowance to persons, other than members of the company, for making discovery thereof.*—And be it enacted, That if any person who, at or before the date of the fiat against any such company or body, was a member of such company or body, but not being a person so ordered as aforesaid to prepare such balance-sheet and accounts, or if any other person shall wilfully conceal any real or personal estate of any such company or body, and shall not within thirty days after the issuing of the fiat against such company or body discover such estate to the Court authorized to act in the prosecution of such fiat, or to the assignees, every such person shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person, other than a person having been a member of such company or body, who shall, after the time allowed for finishing the last examination under such fiat, voluntarily discover to such Court or the assignees any part of the estate of such company or body not before come to the knowledge of the assignees, shall be allowed five pounds per centum thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit to be paid out of the estate recovered on such discovery.

18. *The Court, after adjudication, may order any treasurer, &c. or solicitor or agent of the bankrupt, to deliver to the official assignee, or to the Bank of England, all moneys and securities in his custody or power, which he is not by law entitled to retain as against the bankrupt or his assignees.*—And be it enacted, That, after the adjudication of bankruptcy under any fiat already issued or hereafter to be issued shall have been advertised in the *London Gazette*, it shall be lawful for the Court authorized to act in the prosecution of such fiat, to order any treasurer or other officer, or any attorney or solicitor, or other agent of the company or body, or person or persons, adjudged bankrupt under such fiat, to pay and deliver over to the official assignee appointed under such fiat, or to the Bank of England, or any of the branches thereof, to the credit of the accountant in bankruptcy, according to the rules now or hereafter in force with respect to payments into the Bank of England of moneys due to any bankrupt's estate, all moneys or securities for money in his custody, possession, or power, as such officer or agent, and which he is not by law entitled to retain as against the bankrupt or bankrupts, or his or their assignees.

19. *If any person disobey any rule or order of the Court duly made, the Court to commit him to prison, there to remain until he conform, or until the Court or Lord Chancellor shall otherwise order.*—And it is hereby declared and enacted, That if any person shall disobey any rule or order of the Court authorized to act in the prosecution of any fiat in bankruptcy, duly made by such Court for enforcing any of the purposes and provisions of this Act, or of any other Act relating to bankruptcy or insolvency, now or hereafter to be in force, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, it shall and may be lawful for such Court, by warrant under hand and seal, to commit the person so offending to the Queen's Prison, or to the common gaol of any county, city, or place where he shall be found or where he shall usually reside, there to remain without bail or mainprize until such person shall have fulfilled the duty required by such rule or order, or until such Court or the Lord Chancellor shall make order to the contrary.

20. *The Court may direct the assignees of the estate of a company adjudged bankrupt to petition the Court of Chancery for directions for winding up the affairs of the company, upon which petition an order of reference may be made, and accounts taken, and upon the confirmation of the Master's report a receiver may be appointed.*—And be it enacted, That it shall be lawful for the Court authorized to act in the prosecution of any such fiat in bankruptcy to direct the creditors' assignees of the estate and effects of any such company or body to apply to the high Court of Chancery, by petition in a summary way to the Lord Chancellor or the Master of the Rolls, praying that all such orders and directions may be given as shall be necessary for the final winding up and settling the affairs of such company or body, and to compel a just contribution from all the members of such company or body towards the full payment of all the debts and liabilities of such company or body, and of the costs of winding up and finally settling the affairs of such company or body, and that upon the hearing of such petition it shall be lawful for the said high Court of Chancery to refer it to one of the Masters of the high Court of Chancery to take all such accounts and make all such inquiries as shall be required for the purpose of ascertaining what sum of money in the whole, and what sums of money as proportionate parts of the whole, or what sum or sums of money from time to time on account, will (having regard to the deed of settlement of such company, and the calls, contributions, debts, or demands actually paid by the several and respective members thereof, and also having regard to any proceedings in the Court of Bankruptcy, or any district Court of Bankruptcy) be necessary and proper to be raised by calls or contributions from the respective members of such company or body for the payment and satisfaction of all the debts and liabilities of such company or body, and also of all the costs of winding up and settling the affairs of the said company; and that the high Court of Chancery, upon confirmation of the Master's report made upon any such reference, or upon making such reference, or otherwise, may order the payment of the several and respective sums of money which by such report are found necessary and proper to be paid, and may refer it to the Master to appoint a receiver to collect and receive such sums of money, and either to pay the same into the Bank of England, in the name and to the account of the Accountant-General of the high Court of Chancery, to the credit of such company or body, and may, upon the petition of such assignees, order such sums of money to be paid in or towards satisfaction of the debts which by the proceedings in bankruptcy shall have been found to be due to the creditors of such company or body, and all persons having claims and demands thereon, and also in satisfaction of costs, or may order such receiver to pay such sums of money in satisfaction of such debts, claims, and demands, and costs, in the first instance.

21. *The Court of Chancery may make order in individual claims of members in respect of the transactions of the company.*—And be it enacted, That if it shall appear that any individual members of such company or body have claims against each other in respect of the affairs or transactions of such company or body, it shall be lawful for the Court of Chancery, upon the petition of any member of such company or body, alleging that he hath any such claim against any other member of the said company or body, to make all such orders as shall be just for the purpose of finally settling and determining such claim, and may order the payment of such sum of money (if any) as shall appear to be due in respect of any such claim.

22. *The Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, to make rules and orders as to the form and mode of proceeding, for settling and enforcing contribution to be made by members of company, and the practice to be observed by the Court of Chancery and the Masters in such proceeding.*—And whereas the law is defective in the means of making the members of joint stock companies contributaries for paying their debts in full, and in the means of giving relief where execution may have been had in respect of a debt due from any such company against one or a very few members of such company, and also in the means of adjusting the rights of the members of any such company amongst themselves, and finally winding up the affairs of such company; be it enacted, That it shall be law-

ful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice-Chancellors for the time being, or any two of them, from time to time, and as often as circumstances shall require, to make and prescribe such rules and orders touching and concerning the form and mode of proceeding to be had and taken in the Court of Chancery for settling and enforcing the contribution to be paid by any member or members for the time being of any such company, or any former member or members thereof, or any real or personal representative, or other persons liable in that behalf, and the practice to be observed by such Court in or relating to such proceeding, or any matters incident thereto, and the form and mode of proceeding to be had and taken before any one of the Masters of the said Court, primarily or by reference from the said Court, in any matter for or relating to contribution, as shall from time to time seem necessary and proper for the advancement of justice in such cases, and for adjusting and determining the rights and equities of the parties concerned, and for suing for and getting in the assets, and for ascertaining and discharging the liabilities of such companies, and requiring the creditors thereof to claim their debts, and finally winding up the affairs thereof, with as little delay, expense, and uncertainty as possible: Provided always, that such rules and orders shall be laid before both Houses of Parliament within one month from the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one month from the commencement of the then next session of Parliament; and every rule and order so made shall be binding and obligatory, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament.

23. *The Act* 41 *Geo.* 3 (*U. K.*), *c.* 90, *to extend to decrees or orders made by the Court of Chancery in any suit under this Act.*—And be it enacted, That an Act passed in the forty-first year of the reign of King George the Third, intituled "An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better Administration of Justice within the same," shall extend to decrees or orders made by the said Court of Chancery in any suit, proceeding, or matter under or by virtue of this Act.

24. *Decrees or orders made under this Act by the Court of Chancery may be registered in Scotland, and execution may be had as upon a decree interponed upon a bond, with a clause of registration.*—And be it enacted, That on production of an office copy of any decree or order of the Court of Chancery made in any proceeding under or by virtue of this Act, and of an affidavit that application has been duly made to the person mentioned in such decree or order for payment of the sum thereby ordered to be paid by him, and that default has been made in payment thereof, to one of the principal clerks of the Court of Session in Scotland, or his deputy, for registration there, such decree or order shall thereupon be registrable and registered there in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained, and execution shall and may pass upon a decree to be interponed thereto in like manner as execution passes upon a decree interponed to such bond, and shall have the like effect upon and against the person named in such decree or order of the said Court of Chancery as if he had executed such bond.

25. *Previous to passing the last examination the Court shall inquire into the cause of the failure of a company, and after the last examination shall cause a copy of the balance-sheet to be transmitted to the Board of Trade, and certify the cause of the failure, and any special circumstances, and annex a copy of any examinations deemed material.*—And be it enacted, That previous to passing the last examination under a fiat against any such company or body adjudged bankrupt, it shall be the duty of the Court authorized to act in the prosecution of such fiat to inquire, by the examination of such person or persons as such Court shall think fit, into the cause of the failure of such company or body; and after the passing of such last examination, or after the time allowed by such Court for that purpose shall have elapsed, such Court shall cause a copy of the balance-sheet filed in the court under such fiat to be transmitted to the Committee of Privy Council for Trade and Plantations, and such Court shall at the same time certify in writing to the said committee what, in the opinion of such Court, was the cause of the failure of such company or body, and shall have liberty to state any special circumstances relating to the formation or management of the affairs of such company or body, and shall cause to be annexed to such certificate a copy of the examination of any person or persons taken under such fiat, and which such Court shall deem material, relating to the formation or management of the affairs of such company or body.

26. *After the Court shall have certified to the Board of Trade the cause of the failure of such company, the Queen, upon the recommendation of the Board of Trade, may revoke and make void any privileges granted to the company, and determine the company.*—And be it enacted, That after the Court shall have certified to the Committee of Privy Council for Trade and Plantations the cause of the failure of any such company or body adjudged bankrupt, it shall and may be lawful for her Majesty, her heirs and successors, upon the recommendation of the said committee, by any instrument in writing under her or their Great Seal of Great Britain, or Privy Seal, to signify her or their pleasure for revoking and making void, and thereby to revoke and make void, all the powers, privileges, and advantages at any time, by any charter or letters patent or Act of Parliament, granted to such company or body, and to determine the same; and thereupon the said powers, privileges, and advantages shall accordingly be revoked, and the same company or body shall be determined, without any inquisition, *scire facias*, or any matter or thing to make void or determine the same, any thing in such charter or letters patent or Act of Parliament contained to the contrary notwithstanding.

27. *After the Court shall have certified to the Board of Trade the cause of the failure of any company adjudged bankrupt, the Board may institute prosecutions in certain cases.*—And be it enacted, That after the Court shall have certified to the Committee of Privy Council for Trade and Plantations the cause of the failure of any such company or body adjudged bankrupt, the said committee may, whenever it shall think fit, cause all the papers relating to such failure, and to the formation and management of such company or body, and to the conduct of any of the directors or other officers of the said company or body therein, or to any or either of such matters, to be laid before her Majesty's Attorney General, who shall direct whether any and what proceedings shall be taken thereupon against any person who was a director or other officer of such company or body, or any other person; and any prosecution or other proceeding which shall be thereupon directed by the Attorney-General shall be conducted by or under the direction of the Commissioners of her Majesty's Treasury.

28. *Until determination of company by the Crown, it shall be considered as subsisting for the original purposes, and, notwithstanding such determination, shall be considered as subsisting so far as necessary for winding up.*—Provided always, and be it enacted, That until the determination of such company or body by her Majesty, her heirs or successors, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes for which the same was originally constituted, and that, notwithstanding such determination as aforesaid, the same shall be considered as subsisting and continuing respectively so long and so far as may be necessary for the winding up of the concerns of such company or body under the fiat issued against such company or body.

29. *Notwithstanding determination of company in any other manner, the same to be considered as subsisting so long as any matters remain unsettled.*—And be it enacted, That, notwithstanding the determination of any company or body incorporated or associated within the meaning of this Act, as the case may be, by any other means than as last aforesaid, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes of this Act, so long and so far as any matters relating to such company or body shall remain unsettled.

30. *Any member of a company adjudged bankrupt, with knowledge of or in contemplation of a bankruptcy, destroying or falsifying books, &c. of the company, or making false entries, &c. guilty of a misdemeanor.*—And be it enacted, That if any person, being a member of any such company or body which shall be adjudged bankrupt, shall, after and with knowledge of an act of bankruptcy within the meaning of this Act committed by such company or body, or in contemplation of the bankruptcy of such company or body, have destroyed, altered, mutilated, or falsified any of the books, papers, writings, or securities of such company or body, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud the creditors of such company or body, or to defeat the object of this or any other statute relating to bankrupts, every such person shall be deemed to be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned in any common gaol or house of correction for any term not exceeding three years, with or without hard labour.

31. *Construction of the Act.*—And be it enacted, That in construing this Act all powers given or duties directed to be performed by the Lord Chancellor may be performed by the Lord Keeper or Lords Commissioners of the Great Seal; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and bodies corporate as well as individuals; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the words "fiat in bankruptcy" shall mean also and include any commission of bankrupt; unless (in the cases above specified) a different construction shall be provided, or the construction be repugnant to the subject-matter or context.

32. *Commencement of Act.*—And be it enacted, That this Act shall commence and take effect on the first day of November next.

33. *Act may be amended, &c. this session.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

SCHEDULE to which the foregoing Acts refers.

SCHEDULE (A).—No. 1.

Declaration of Insolvency by incorporated or associated Commercial or trading Company.

By virtue of a resolution duly passed in that behalf on the day of at a board of directors of [*here state the name or style of the company*], duly summoned for that purpose, it is hereby declared, That the said company [*or society, &c., as the case may be*] is unable to meet its engagements.

Dated this day of in the year

(*Common seal of the company, or, if the company have no common seal, the signature of the chairman of the board of directors who was present at the passing of the resolution.*)

Witness *G. H.* attorney [*or* solicitor] of the Court of and attorney [*or* solicitor] of the said company, and attesting witness to the execution hereof as such attorney [*or* solicitor].

SCHEDULE (A).—No. 2.

Minute of resolution of a board of directors of incorporated or associated commercial or trading company, authorizing a declaration of insolvency.

A resolution was duly passed on the day of at a board of directors of [*here state the name or style of the company*], duly summoned for that purpose, that the said company was then unable to meet its engagements, and that a declaration of insolvency shall be forthwith filed in the office of the Lord Chancellor's secretary of bankrupts, in the form directed by the statute in that case made and provided.

(*Common seal of the company, or if the company have no common seal, the signature of the chairman of the board of directors who was present at the passing of the resolution.*)

Witness *G. H.* attorney [*or* solicitor] of the court of and attorney [*or* solicitor] of the said company, and attesting witness to the execution hereof as such attorney [*or* solicitor].

COUNTY PALATINE OF LANCASTER. — The County Palatine, of which the sovereignty is in the Queen as *Duke* of Lancaster, has an Equity court of its own, which sits alternately at Lancaster, Liverpool, and Preston, and which, for some years past, if an equity barrister had presided in it, would probably, from its comparative cheapness and great local convenience to the suitors, have been called upon to despatch a large portion of the business which has been transmitted, at a vast expense, from those populous manufacturing regions to London. The Vice-Chancellorship of this Court having lately become vacant by the death of the amiable and respectable gentleman who had long held it, Lord Granville Somerset, the Chancellor of the Duchy has, we find, availed himself of the opportunity for endeavouring to make the jurisdiction practically useful to the wide circle it extends over, by selecting as Vice-Chancellor of the Court and Councillor of the Duchy, a leading man of the equity bar, who for the last three years (during which her Majesty's law-officers have neither of them been in that department of Westminster-hall) has been, and still continues to be, charged on the part of the Government with the high and responsible functions of the Crown's Attorney-general in all the courts of equity. Our legal readers will have understood from this, that the new Vice-Chancellor is Mr. Twiss—a gentleman who is held in estimation by men of all parties for his energy, his industry, his temper, and his habits of business, and whose long Parliamentary and official experience must render him also more than commonly efficient as a member of the Duchy Council.

NEW LUNATIC ASYLUM FOR WARWICKSHIRE. —It has been officially announced that the important subject of a county lunatic asylum for Warwickshire will be taken into consideration by the magistrates at the next quarter sessions, which are fixed to be held at Warwick, on Monday, the 30th of December next.

TABLE

OF THE

ABBREVIATIONS BY WHICH THE REPORTS ARE MOST USUALLY QUOTED,

WITH THE

NAMES OF THE REPORTERS, AND THE COURTS TO WHICH THEY BELONG.

Abr. Ca. Eq.	Abridgment of Cases in Equity.	
Act.	Acton's Appeal Cases	Prize Cases.
A. & E.	Adolphus and Ellis	Q. B.
Add.	Addams's Ecclesiastical Reports.	
Al.	Aleyn's Reports	Q. B.
Ambl.	Ambler's Reports	Ch.
And.	Anderson's Reports	C. P.
Andr.	Andrews's Reports	Q. B.
Anst.	Anstruther's Reports	Ex.
Atk.	Atkyns's Reports	Ch.
Ball & B.	Ball and Beattie	Ch. Ireland.
Barn. or Barnard.	Barnardiston	Q. B.
Barnes	Barnes's Notes	C. P.
B. & Al.	Barnewall and Alderson	Q. B.
B. & Ad.	Barnewall and Adolphus	Do.
B. & C.	Barnewall and Cresswell	Do.
Bar & Arn.	Barron & Arnold's Registration Reports	Appeals in C.P.
Bar. & Aust.	Barron and Austin's Election Cases.	
Batt.	Batty's Reports	Q. B. Ireland.
Beav.	Beavan's Reports	Ch. (M. R.)
Bend.	Bendloe's Reports.	C. P.
Bing.	Bingham's Reports	Do.
Bing. N. C.	Bingham's New Cases	Do.
Bitt. & Sym. M.C.	Bittleston and Symons's Magistrates' Cases—Verulam Reports.	Q.B.
Bla. or W. Bla.	Sir W. Blackstone's Reports	Q. B. & C. P.
Bli.	Bligh's Reports	House of Lords.
Bli. N. S.	Bligh's New Series	Do.
Bos. & P.	Bosanquet and Puller's Reports	C. P. & Ex.
Bos. & P. N. R.	Bosanquet and Puller's New Reports.	
Bridg.	J. Bridgman's Reports.	
Bridg. O.	Orlando Bridgman's Reports	C. P.
Bro. C. C.	Brown's Chancery Cases.	
Bro. P. C.	Brown's Cases in Parliament.	
Brod. & Bing.	Broderip and Bingham's Reports	C. P.
Brown. & G.	Brownlow and Gouldsborough	Do.
Buck.	Buck's Bankruptcy Cases.	
Bulst.	Bulstrode's Reports	Q. B.
Bunb.	Bunbury's Reports	Ex.
Burr.	Burrow's Reports	Q. B.
Burr. S. C.	Burrow's Settlement Cases	Do.
C. M. & R.	Crompton, Meeson and Roscoe	Ex. & Ex. Ch.
Cald. S C.	Caldecott's Settlement Cases	Q.B.
Camp.	Campbell's Reports	Nisi Prius.
Ca. t. Finch	Cases temp. Finch	Ch.
Ca. temp. Hard.	Cases temp. Hardwicke	Q. B.
Ca. temp. Talb.	Cases temp. Talbot	Ch.
Cart.	Carter's Reports	C. P.
Carth.	Carthew's Reports	Q. B.
Car. & Kir.	Carrington and Kirwan	Nisi Prius.
Car. & M.	Carrington and Marshman's Reports	Do.
Car. & P.	Carrington and Payne's Reports	Do.
Carr. Ham. & Al.	Carrow, Hamerton, & Allen's Reports	Sessions Cases
Carr. & Ol.	Carrow and Oliver's Reports	Railways & Canals.
Ch. Ca.	Cases in Chancery.	
Ch. Prec.	Precedents in Chancery.	
Ch. Rep.	Reports in Chancery.	
Chit. Rep.	Chitty's Reports	Q. B.
Clay.	Clayton's Reports.	
Cl. & Finn.	Clark and Finnelly	House of Lords.
Co. Rep.	Coke's Reports.	
Cockb. & R.	Cockburn and Rowe's Election Cases.	
Colles	Colles's Cases in Parliament	House of Lords.
Coll.	Collyer's Reports	Ch. (V. C. Bruce).
Com. Rep.	Comyn's Reports	Q. B. & C. P.
Comb.	Comberbach	Q. B.
Cooke	Cases of Practice in the Common Pleas.	
Coop. t. Brough.	Cooper's Cases in the time of Brougham	Ch.
Coop.	G. Cooper's Chancery Reports	Do.
Coop. P. P.	Cooper's Points of Practice	Do.
Corb. & D.	Corbett and Daniel's Reports	Election Cases.
Cowp.	Cowper's Reports	Q. B.
Cox Cas.	Cox's Cases in Chancery.	
Cox & Atk.	Cox and Atkinson (Verulam Reports)	Regis. Appeals & Elec. Cases.
Cox. Crim. Cas.	Cox's Criminal Cases (Verulam Reports).	
Cr. & Ph.	Craig and Phillips	Ch.
Cresswell	Cresswell's (R.) Reports	Insolvent Debtors'
Cro. Eliz.	Croke's Reports in the time of Elizabeth.	
Cro. Jac.	Ditto in the time of James.	
Cro. Car.	Ditto in the time of Charles.	
C. & J.	Crompton and Jervis	Ex. & Ex. Ch.
C. & M.	Crompton and Meeson	Do.
Cunn.	Cunningham's Reports	Q. B.
Curt.	Curteis's Reports	Eccles. Courts.
Dal.	Dalison's Reports	C.P.
Dan. & Ll.	Danson and Lloyd's Reports	Nisi Prius.
Dav.	Davis's Reports	King's Courts in Ireland.
Dav. & Mer.	Davison and Merivale's Reports	Q. B.
Deac.	Deacon's Bankruptcy Cases	Court of Review & Ch.
Deac. & Ch.	Deacon and Chitty's Bankruptcy Cases.	
Dick.	Dicken's Reports	Ch.
Dods.	Dodson's Reports	Admiralty.
Doug.	Douglas's Reports	Q. B.
Doug. E. C.	Douglas's Election Cases.	
Dow. & Ry.	Dowling and Ryland's Reports	Q. B.
Dow. & R. M. C.	Dowling and Ryland's Cases for Magistrates.	
Dow. & Ry. N. P.	Dowling and Ryland's N. P. Cases.	
Dow.	Dow's Reports	House of Lords.
Dow. & C.	Dow and Clark	Do.
Dowl. P. C.	Dowling's Practice Cases	Q. B., C. P., & Ex.
Dowl. N. S.	Dowling's New Series	Do.
Dowl. & Lownd.	Dowling's and Lowndes's Practice Cases	Do.
Drur. & Warr.	Drury and Warren, temp. Sugden	Ch. Irish.
Durn. & E.	Durnford and East	K. B.
Dy.	Dyer's Reports.	
Eag. & Yo.	Eagle and Younge's Tithe Cases	In all the Courts.
East	East's Reports	Q. B.
Eden Cas.	Eden's Cases in Chancery.	
Edw.	Edwards's Reports	Admiralty.
Eq. Abr.	Equity Cases Abridged.	
Esp.	Espinasse's Reports	Nisi Prius.
Fitzg.	Fitzgibbon's Reports	Q. B. & C. P.
Forrest.	Forrester's Cases, temp. Talbot	Ex. & Ch.
Forr.	Forrest's Reports	Ex.
Fort. or Fortesc.	Fortescue's Reports.	
Fos. C. C.	Foster's Crown Cases.	
Fraser	Fraser's Reports of Contested Elections in 1790.	
Free. K. B.	Freeman's Reports	Q. B.
Free. C. H.	Freeman's Chancery Cases.	
Gale	Gale's Reports	Ex.
Gale & D.	Gale and Davison's Reports	Q. B.
Gale & Mer.	Gale and Merivale's Reports	Do.
Gilb. Ch.	Gilbert's Chancery	Ch. & Ex.
G. & J.	Glyn and Jameson	Bankruptcy.
Glanv. El. C.	Glanville's Election Cases in 1623-24.	
Godb.	Godbolt's Reports.	
Goulds.	Gouldsborough's Reports.	
Gow.	Gow's Reports	Nisi Prius.
H. Bl.	H. Blackstone's Reports	C. P. & Ex.
Hag. Ec.	Haggard's Reports	Ecclesiastical.
Hag. Cons.	Haggard's Reports	Consistory.
Hag. Adm.	Haggard's Reports	Admiralty.
Hanm.	Hanmer's Notes of Cases by Lord Kenyon	K. B.
Hardr.	Hardres's Reports	Ex.
Hare	Hare's Reports	Ch. (V. C. Wigram.)
Harr. & Woll.	Harrison and Wollaston's Reports	Q.B.
Het.	Hetley's Reports	C. P.
Hob.	Hobart's Reports.	Do.
Hodg.	Hodges' Reports	
Holt's Rep.	Reports temp. Holt	C. P.
Holt's N. P.	Holt's Reports	Nisi Prius.
Horn & Hurlst.	Horn and Hurlstone's Reports	Exchequer.
Hut.	Hutton's Reports.	C. P.
J. B. Moore	Moore's Reports	Do.
Jac. & W.	Jacob and Walker's Reports	Ch.
Jac. or Jacob	Jacob's Reports	Do.
Jenk	Jenkin's Reports	Ex. Ch.
Jon. (1)	Sir W. Jones's Reports	Q. B. & C. P.
Jon. (2)	Sir T. Jones's Reports	Do.
Ir. Term R.	Irish Term Reports.	
Jur.	The Jurist	All the Courts.
Keb.	Keble's Reports	Q. B.
Keen	Keen's Reports	Ch. (Rolls.)
Keil.	Keilway.	
Kel. J.	Sir J. Kelyng's Reports	Q. B.
Kel. W.	Sir W. Kelyng's Reports	Q. B. & Ch.
Keny.	Kenyon's Notes by Hanmer.	Q. B.
Kn.	Knapp's Reports	Privy Council.
Kn. & O.	Knapp and Ombler	Election Cases.
Lat.	Latch's Reports	Q. B.
Law T.	Law Times	All the Courts.
Lea. C. C.	Leach's Crown Cases.	
Ld. Raym.	Lord Raymond's Reports	Q. B. & C. P.
Leon.	Leonard's Reports	
Lev.	Levinz's Reports	Q. B.
Lew. C. C.	Lewin's Crown Cases.	
Lill.	Lilly's Reports	In Assize.
Lit. Rep.	Littleton's Reports	C. P. & Ex.
Llo. & Goo.	Lloyd and Goold's Reports	Ch. (Ireland.)
Loff.	Lofft's Reports	Q. B.
Lud. E. C.	Luder's Election Cases.	
Lumley P.L.C.	Lumley's Cases on the New Poor Law	Q.B. &c.
Lut. or Lutw.	Lutwyche's Reports	C. P.
M'Cle.	M'Cleland's Reports	Ex.

M'Cle. & Yo.	M'Cleland and Younge	Do.
Madd.	Maddock's Reports	Ch. (V. Chan.)
Mad. & G.	Maddock and Geldart's Reports.	
Man. & G.	Manning and Granger's Reports	C. P.
Man. & Ry.	Manning and Ryland's Reports	Q. B.
Mar.	March's New Cases.	
Marsh	Marshall's Reports	C. P.
Mer.	Meriva'e's Reports	Ch.
Mau. & S.	Maule and Selwyn's Reports	Q. B.
M. & W.	Meeson and Welsby's Reports	Ex.
Mo.	Sir F. Moore's Reports.	
Mod.	Modern Reports	Q. B., C. P., Ex., & Ch.
Mont.	Montagu's Reports	Bankruptcy.
Mont. & B.	Montagu and Bligh's Reports	Do.
Mont. & Ch.	Montagu and Chitty's Reports	Do.
Mont. D. & D.	Montague, Deacon, and De Gex's Reports	Do.
M. & McAr.	Montagu and McArthur's Reports.	
M. & Ayr.	Montagu and Ayrton's Reports	Bankruptcy.
Moo. C. C.	Moody's Crown Cases.	
Moo. & M.	Moody and Malkin's Reports	Nisi Prius.
Moo. & R.	Moody and Robinson's Reports	Do.
Moo. Ind. App.	Moore's Indian Appeals	Privy Council.
Moo.	J. B. Moore's Reports	C. P. & Ex. Ch.
Moo. & P.	Moore and Payne's Reports	Do.
Moo. & S.	Moore and Scott	Do.
Moore	R. F. Moore's Reports	Privy Council.
Mos.	Mosley's Reports	Ch.
Myl. & K.	Mylne and Keene's Reports	Do.
Myl. & Cr.	Mylne and Craig's Reports	Do.
Nic. Ha. & Car.	Nicholl, Hare, and Carrow	Railways & Canals.
Nels.	Nelson's Reports	Ch.
Nev. & M.	Nevile and Manning's Reports	Q. B.
Nev. & P.	Nevile and Perry's Reports	Do.
Nolan	Nolan's Reports of Cases as to Justices	Q.B.
O. Benl.	Old Benloe.	
Ow.	Owen's Reports	Q. B. & C. P.
Palm.	Palmer's Reports	Q. B.
Park.	Parker's Reports	Ex. (Revenue).
P. N. P.	Peake's Cases	Nisi Prius.
Peak Ad. Ca.	Peake's Additional Cases	Do.
Peckwell	Peckwell's Reports	Election Cases.
P. Wms.	Peere Williams's Reports	Ch.
Phill.	Phillip's Reports	Do.
Pol.	Pollexfen's Reports	Q. B.
Poph.	Popham's Reports	
Pre. Ch.	Precedents in Chancery	
Per. & D.	Perry and Davison's Reports	Q. B.
Per. & K.	Perry and Knapp's Reports	Election Cases.
Phillim.	Phillimore's Reports	Ecclesiastical Court
Pract. Cas.	Practice Cases (Verulam Reports)	In all the Courts.
Pri.	Price's Reports	Ex.
Q.B.	Adolphus and Ellis, New Series	Q. B.
Ridgw.	Ridgway's Reports temp. Hardwicke	Q. B. & Ch.
Real Prop. Cas.	Real Property and Conveyancing Cases (Verulam Reports)	In all the Courts.
Rep. or Co. Rep.	Coke's Reports.	
Rep. t. Finch	Reports temp. Finch	Ch.
Rep. t. Holt	Reports temp. Holt	C. P.
Rep. Ch.	Reports in Chancery.	
Rob.	Robinson's Reports	Admiralty.
Roll.	Rolle's Reports.	
Rose	Rose's Cases in Bankruptcy.	
Russ.	Russell's Reports	Ch.
Russ. & M.	Russell and Mylne	Do.
Russ. & R.	Russell and Ryan	Crown cases.
Ry. & M.	Ryan and Moody	Do.
Salk.	Salkeld's Reports	Q.B., C.P., & Ch.
Sav.	Saville's Reports	C. P. & Ex.
Saund.	Saunders's Reports	Q. B.
Say.	Sayer's Reports	Do.
Sch. & Lef.	Schoales and Lefroy's Reports	Ch. (Ireland).
Sco. or Scott	Scott's Reports	C. P.
Sco. N. R.	Scott's New Reports	Do.
Sel. Ca. Ch.	Select Cases in Chancery.	
Sess. Cas.	Sessions Cases between Reign of Anne and 1760.	
Show	Shower's Reports	Q. B.
Show, P. C.	Shower's Parliamentary Cases.	
Sid.	Siderfin's Reports	Q.B., C.P., & Ex.
Sim.	Simon's Reports	Ch. (V. C.)
Sim. & St.	Simons and Stuart	Do.
Skin.	Skinner's Reports	Q. B.
Sm.	Smith's Reports	Q. B. & Ch.
Stra.	Strange's Reports	Q. B., C. P., Ex., & Ch.
Sty.	Styles's Reports	Q. B.
St. Tri.	State Trials.	
Stark.	Starkie's Reports	Nisi Prius.
Swanst.	Swanston's Reports	Ch.
T. Jo.	Sir Thomas Jones's Reports	Q. B. & C. P.
T. R. or Term Rep.	Durnford and East's Reports	Q. B.
T. Raym.	T. Raymond's Reports	Q.B., C.P., & Ex.
Taml.	Tamlyn's Reports	Ch. (Rolls.)
Taunt.	Taunton's Reports	C. P.
Toth.	Tothill's Reports	Ch.
Turn. & Phil.	Turner and Philips	Do.
Turn. & R.	Turner and Russell	Do.
Tyrw.	Tyrwhitt's Reports	Ex. & Ex. Ch.
Tyrw. & G.	Tyrwhitt and Granger.	Do.
Vaug.	Vaughan's Reports	C. P.
Vent.	Ventris's Reports	Q. B.
Vern.	Vernon's Reports	Ch.
Vern. & S.	Vernon and Scriven's Reports	Q. B. (Ireland).
Ves. sen.	Vesey, sen. Reports	Ch.
Ves.	Vesey, jun. Reports	Do.
Ves. & Bea.	Vesey and Beames	Do.
Webster	Webster's Patent Cases.	
West	West's Reports	Ch. Appeals.
Wight.	Wightwick's Reports	Ex.
Win.	Winch's Reports	C. P.
W. Jo.	Sir William Jones's Reports	Q. B. & C. P.
W. Kel.	William Kelynge's Reports	Q. B. & Ch.
Willes.	Willes's Reports	C. P.
Wilm.	Wilmot's Notes.	
Wils.	Wilson's Reports	Q. B. & C. P.
Wils. Ch.	Wilson's Chancery Reports.	
Y. B. or Year B.	Year Book.	
Yelv.	Yelverton's Reports	Q. B.
You.	Younge's Reports	Tithe Cases.
Y. & J.	Younge and Jervis	Ex. & Ex. Ch.
Y. & C. or You. & Coll.	Younge and Collyer's Equity Exchequer.	
Y. & C. C. C.	Younge and Collyer's Chancery Cases	Ch. (V. C. Bruce.)

N.B. We propose to print this Table neatly on a separate Sheet, so as to be fixed up in an office or study, for ready reference. To it will be added a List of the Irish and Scotch Reports, and a Chronological Table. If any of our readers observe omissions or mistakes, we should feel obliged if they would point them out, as it is difficult, in making a table of this kind, to avoid some errors.

THE MAGISTRATE.

POOR LAW CIRCULAR.

(*Continued from page 40.*)

PAUPERS.—1. CHARGEABILITY OF. June 8, 1844.

Chairman of the Wellington Union, Somerset—Stated, firstly, that the turnpike road leading from Beam-bridge, the present extreme western station of the Bristol and Exeter Railway, passed through the parishes of Culmstock, Burliscombe, and Uffculm, towards all the West of England: in that road, within the distance of a mile and half, or thereabouts, were situated two public inns, and one licensed beer-house; one in each parish: an accident happened to a man in the parish of Burliscombe, and he was carried to the Lamb Inn, in the parish of Uffculm, and was there supplied with all necessaries and surgical attendance. Inquired, which parish was to pay the expenses and the surgeon's bill, Burliscombe or Uffculm. Referred to the cases of *Tomlinson* v. *Bentall* (5 B. & C. 738), and *Lamb* v. *Bunce* (4 M. & S. 275). Secondly. A pauper belonging to the parish of Ashbrittle, in the Wellington Union, but residing in the town of Taunton, in the Taunton Union, met with an accident in Taunton. Inquired, whether he should be treated as casual poor, and be relieved by the guardians of Taunton Union, or whether he was a proper subject for a suspended order of removal, and as such, to be relieved by the Wellington Union. (*R.* v. *St. James, Bury St. Edmunds*, 10 East, 25.)

Ans.—Firstly. It is presumed that the pauper referred to was not settled in either of the parishes where the accident happened, or where he was removed to, though this does not affect the case as stated. The liability to relieve, in such cases, does not lie exclusively on the parish where the accident happens; but, if removed without fraud to a place, such as an inn, where the pauper can be most conveniently or readily attended to, he is apparently entitled to be relieved at the expense of the poor-rates of that place. In the present case, the inn was a more proper place of reception, as well as nearer than the beer-house. The carrying to the inn was, therefore, justifiable; and being, apparently, without fraud on the part of the parish of Burliscombe, it would seem that the burden lawfully falls on the parish of Uffculm. The Commissioners need not remark, that the question is one of great nicety, and often depends on some minute point in the individual case. The decisions of the Court are, perhaps, somewhat difficult to reconcile. The view just expressed is as precise as the Commissioners can undertake to give, without having all the circumstances of the individual case more fully before them. Secondly. The pauper was resident where the accident occurred. He was there, therefore, with the intention to settle, according to the terms of the statute 13 & 14 Car. 2, c. 12, s. 1. His case was not one of those falling within the rules applicable to casual poor; but he was liable to be placed under an order of removal, to be suspended before execution, if, at the time for its execution he remained unfit to be removed. (*R.* v. *Oldland*, 4 Ad. & E. 929.)

2. CHARGEABILITY OF PAUPER, HOW TO BE PROVED. May 29, 1844.

Clerk of Honiton Union—Transmitted a copy of a certificate of chargeability which had been used by the guardians of the Honiton Union, under the provisions of the 5 & 6 Vict. c. 57, and called the attention of the Commissioners to the decision in *Reg.* v. *The Inhabitants of High Bickington*, by which it seemed that the word "chargeable" was not sufficient. In the 17th section of the above Act a "certificate of such pauper having become so chargeable," &c. are the words used; and there might be a question whether a certificate, stating that the pauper was receiving relief, would be deemed evidence of that fact. The guardians wished the Commissioners to send them such a form of certificate as they would recommend the guardians to adopt to meet the case, and at the same time say whether they thought the chargeability could be legally proved in any other manner than by the relieving officer.

Ans.—The Commissioners have referred to two authentic reports of the case of *Reg.* v. *High Bickington*, one in 8 Jurist, p. 377, and the other in 13 Law Journal (n. s.) M. C. 74 (see Bittlest. & Sym. Mag. Cases, Ver. Rep. p. 1.—ED. Law T.), and find that the question raised was as to the sufficiency of the examinations of the pauper and the relieving officer, both of whom stated that the former was *chargeable*, but no fact was alleged of relief having been given. The Court decided that there should have been evidence of relief having been given, and that the allegation by the witnesses of chargeability merely, was not sufficient. The Court had not before them a certificate of chargeability given in conformity with the provisions of the 5 & 6 Vict. c. 57, and it may be a question whether the Court would consider such a certificate of itself evidence of chargeability.

If not, it does not appear to the Commissioners that the guardians can give that effect to the certificate by introducing any other words into it, not warranted by the statute. It is right, however, to refer to the statute, and it will be seen that the legislature authorize the reception of the certificate, not as proof of the fact of chargeability, but as sufficient proof *to what parish* and *at what time* the pauper became and was chargeable, in cases where it shall be necessary to prove to what parish a pauper has become chargeable. The Commissioners observe that the form of the certificate submitted to them goes beyond the terms of the statute; as, besides stating when the pauper became chargeable, it avers the continuance of the chargeability to the date of the certificate. Whether this be an important extension of the terms of the statute or not, the Commissioners cannot undertake to say. They have reason to believe, that certificates so framed have been rejected by justices, and they have seen other forms of certificates without these terms. As no decision has been pronounced upon the sufficiency of the certificate, for the purpose provided in the statute, the Commissioners are not prepared to recommend the adoption of any particular forms. In reference to the mode of proving the chargeability, it appears to be only necessary to prove the actual giving of relief to the pauper by the officer of the parish. This can generally be proved by the relieving officer, but it may also be proved in many cases by the pauper, or by the master of the workhouse, or other persons. All that the Commissioners can say is, that there is no rule of law which requires that the relieving officer alone can prove the chargeability.

COSTS OF RECOVERING POOR RATE, BY WHOM PAYABLE.

February 13, 1844.

Mr. J. Duncumb, Skeffling, Patrington Union—Inquired, whether the overseer of a parish was entitled to be paid the cost of summoning a party for the non-payment of his poor rates, and also the expenses of attending before the justices. Inquired, also, whether the expenses should be paid by the defaulter or the parish.

Ans.—The cost of the summons is in the first place demandable of the person at whose instance it is obtained; and is recoverable, or not, against the party summoned, according to the nature of the case, and the discretion of the justices. Where the justices may not, upon the hearing of the case, see fit to order payment of the costs by the party in arrear, the overseers will be answerable for the payment. If they had fair grounds for applying to the justices, they may charge the expense upon the poor-rates; but if they were not justified in making application, the poor-rates would not be liable. The allowance of the overseer's travelling expenses in such a case from the poor-rates will, of course, be governed by the same rule which is applicable to such expenses in all other cases—that is to say, by a consideration of the necessity of the occasion, and the reasonableness of the amount.

PROPERTY TAX.

LIABILITY TO ASSESSMENT OF INTEREST ON LOAN.

February 24, 1844.

Clerk of Ellesmere Union—Inquired whether the guardians were bound to give the surveyor of taxes a statement of the amount of interest which was paid annually by the Ellesmere Old Incorporation, for money borrowed upon bonds; and stated, that the guardians had already paid one year's property-tax upon the assessment; but in consequence of the Commissioners' circular of the 24th of June, 1843, relative to the property-tax charged upon workhouses, the clerk was directed to appeal against any further charge, and endeavour to get the duty which had been already paid, returned; the surveyor of the tax required to be furnished with an account of the interest payable by the guardians on mortgage or bond, stating that the property-tax should be charged upon the interest, to be repaid by the parties to whom it was payable, and not upon the assessment on the workhouse.

Ans.—The Commissioners consider the interest referred to in your letter is assessable to the income-tax, under schedule C of 5 & 6 Vict. c. 35; and by the rule in sec. 88, the guardians who have the payment of that interest, must be charged therewith, and are to retain the same, according to sec. 93, out of the amount payable to the bondholders. The guardians of the Ellesmere Union will thus see that the poor-rates are not affected by these payments, and the circular of the Commissioners dated the 24th of June, to which you refer, relative to property-tax upon workhouses, does not apply to this case.

RATING.—1. MACHINERY.

June 11, 1844.

Clerk of Stourbridge Union—Stated that the iron-masters in that union contended that they were not liable to be assessed to the poor-rate on the annual value of their works, *including* the steam-engines and other machinery, but only on buildings *without reference* to the steam-engines and other machinery, and requested the Commissioners' opinion on the point.

Ans.—In deciding the case of *Reg.* v. *Guest* (7 A. & E. 951) Lord Denman laid down the rule, "that real property ought to be rated according to its actual value, as combined with the machinery attached to it, without considering whether the machinery be real or personal property, so as to be liable to distress or seizure under a *fieri facias*, or whether it would descend to the heir or executor, or belong, on the expiration of a lease, to the landlord or tenant."

2. OWNERS OF COTTAGES.

May 16, 1844.

Overseer, St. Mary's, Newmarket—Stated that it had been resolved in vestry to assess the owners of certain cottages in the parish to the poor-rate instead of the occupiers; and inquired whether the 59 Geo. 3, c. 12, s. 19, applied to cottages let weekly or quarterly for sums between 6*l*. and 20*l*. a year.

Ans.—The provision of the 59 Geo. 3, c. 12, s. 19, applies to rents, the rate of which, when estimated for the whole year, would not be less than 6*l*. nor more than 20*l*. a year; and to no other rents. As regards the letting, if it be by the week, month, or quarter, or for any other term less than a year, and the rent is within the described limit, the provision of the Act applies. Or if the letting is for a whole year, or any longer term, and the rent being within the limit described, is made payable at periods shorter than three months, the provision likewise applies.

RELATIONS.

LIABILITY OF CHILDREN TO MAINTAIN PARENTS.

June 6, 1844.

Clerk of Selby Union—Stated, that Richard Liddell, a poor man belonging to the township of Cawood, had, with his wife, become chargeable to that township; and that he had two sons, either of whom was able to maintain his parent, but both refused to do so. Inquired, first, whether justices could include both sons in an order on them for maintenance, under the 43rd Eliz. and 59 Geo. 3, c. 12, s. 26, or whether the order should be confined to one son only; or, whether it should be made upon one son for one moiety of the maintenance, and upon the other son for the remaining moiety. Secondly, whether the sons should be summoned before the justices?

Ans.—Firstly. Both of the sons of Richard Liddell are liable to contribute to the support of their parent, if they are of sufficient ability. The justices can, therefore, in their discretion, make an order on each of the sons to contribute such weekly sum as, in the opinion of the justices, might be his fair proportion of the charge of maintenance. The order should be several. Secondly. The Commissioners think the most advisable course will be to summon the parties upon whom it is sought to make the order of maintenance to appear before the justices.

REMOVAL.

1. OF A PAUPER NOT INHABITING IN THE REMOVING PARISH.

June 25, 1844.

Clerk of Wellington Union, Somerset—Stated, that William Coleman, a pauper, resided with his wife and five children in the parish of West Buckland, in the Wellington Union, but his settlement was in the parish of North Curry, in the Taunton Union. He had become chargeable to West Buckland in consequence of want of work. Being an able-bodied man, the guardians could only administer relief to him through the medium of the workhouse. The workhouse was locally situate in the parish of Wellington. It has been stated, that by a recent decision of the quarter sessions in the county of Somerset, it had been held, that where a pauper, at the time of the making of an order of removal, was an inmate of a workhouse, such workhouse not being situated in the removing parish, it was not such a constructive inhabitancy in the removing parish as would support the order. Out-door relief to the pauper being illegal, and a residence in the workhouse being in that case considered not to be an inhabitancy, the guardians wished the Commissioners to suggest to them how the difficulty besetting the removal of the pauper and his family might be obviated. A similar difficulty presented itself to the removal of William Blackmore and his family, then inmates of the union workhouse, and chargeable to the parish of Sampford Arundel, in the Wellington Union, but belonging to Staplefitzpaine, in the Taunton Union.

Ans.—The Commissioners have always entertained the opinion that the union workhouse is, in respect of the several parishes whose paupers are relieved therein, to be deemed to be a part of those respective parishes, so that the relief therein will support the allegation of chargeability to any parish from which the paupers may be removed to the union workhouse. Although the Commissioners are aware that a different opinion is held by justices in some parts of the country, they think that the recent decision of *Reg.* v. *St. Giles-in-the-Fields* (8 Jur. 467, and 1 Dav. & Mer. 110) strongly supports the view which they entertain. A question there arose as to the effect of relief to a pauper chargeable to the parish of St. Giles-in-the-Fields, which was given in the house of a person who was contractor to maintain paupers, which house was situate in another parish. It was contended that this was relief to a non-resident pauper, and was therefore evidence of the settlement of the pauper in the parish of St. Giles. But the Court of Queen's Bench decided that it had not such effect, and held that the house out of the parish to which the pauper was removed in this case, was to be considered as a house of the parish, and Lord Denman stated, that it was exactly similar to the case of *R.* v. *St. Peter's and St. Paul's* (Bath. Cald. 213). If the house locally situated out of the parish is to be considered with reference to the settlement as virtually within it, the Commissioners can see no ground for applying a different principle in regard to the question of chargeability to any particular parish in the union having a central workhouse. The Commissioners make these remarks upon the difficulty which has been referred to by you on the subject of paupers, and they wish at the same time to state, that if the guardians should think fit to give temporary relief out of the workhouse, under article 4 of the Prohibitory Order, in particular cases, for the purpose of satisfying the supposed legal requirements to establish the chargeability, the Commissioners will be prepared to give their sanction to it, on the cases being duly reported to them. (See s. 56 of 7 & 8 Vict. c. 101.)

2. REMOVAL OF A PAUPER WHO HAS A SETTLEMENT BY ESTATE.

March 2, 1844.

Clerk of Aberayron Union—Stated, that a pauper of Trefilan parish had given notice of marriage with a widow of Dihewid parish, who was, with her children, then chargeable to the latter parish, in which she rented a cottage as a yearly tenant: the male pauper would, by the marriage, gain a settlement, by estate, in Dihewid, if he resided in his wife's cottage for forty days. Inquired, what steps could be taken to remove him to his parish before he completed his forty days' residence, in case the family became chargeable during that time; and whether, if the forty days should expire after the making of an order of removal, but before the twenty-one days' notice had expired, the family would be removable.

Ans.—The principle on which a settlement is derivable from the possession of an estate, is this,—that a man cannot lawfully be removed from his land, and consequently, if he reside while thus irremovable, for forty days in the parish, he will, by the operation of 13 & 14 Car. 2, c. 12, gain a settlement therein. It has been held, as you seem to be aware, that a husband, acquiring by marriage an interest in a leasehold, will thereby gain a settlement, although such leasehold would not have been sufficient, before her marriage, to confer a settlement on the wife. According to the principle above referred to, the husband, in the present case, is irremovable from his property, and his residence upon it for forty days will give him a settlement. The circumstance of the husband's becoming chargeable will not render him removable from the estate derived from his wife. (*R.* v. *Martley*, 5 East, 40; *R.* v. *North Cerney*, 4 B. & A. 463.)

3. A FRESH ORDER OF REMOVAL MUST BE TAKEN OUT WHERE A PAUPER HAS RETURNED TO THE PARISH FROM WHICH HE HAD BEEN REMOVED.

Feb. 17, 1844.

Overseer, Whitchurch, Monmouth Union—Inquired, whether it was necessary to take a second order for the removal of a pauper from a parish from which he had previously been removed by order, but to which he had subsequently returned and again become chargeable.

Ans.—Although a pauper may have been once removed, by an order of justices, to his place of settlement, if the pauper subsequently return to the parish from which he was so removed, and again become chargeable, the parish can only lawfully get rid of the burden by obtaining a second order of removal. A pauper, however, who returns to the parish from which he has been removed, under an order of justices, and becomes chargeable without certificate, is liable to be punished under the Vagrant Act.

PRACTICE—PLEADING—EVIDENCE.

By Professor Carey.

Delivered at University College, London.

LECTURE XIII.

With respect to the manner of establishing the truth of the facts in issue, our law does not in any civil case require the testimony of more witnesses than one; but it is a general rule that in proof of every fact the best evidence is to be produced; hence hearsay evidence is not admitted. Information given upon hearsay does not derive its effect solely from the credit to be attached to the witness himself, but rests also, in part, on the credit and competency of some other person from whom the information was received. If evidence of any particular fact is required, the person to be called as a witness must be one under the cognizance of whose senses the fact in question came; no statement he may have made to another person will supply the place of his own evidence.

The rule against the admissibility of hearsay does

not extend to *words* **or** *writings* **which are the ultimate fact of inquiry. Thus if the question is whether a certain person had notice of certain facts, this may be proved by evidence of letters or of conversation in which the intimation was given.** (*Cotton* v. *James*, Moody & M. 276.) As far as relates to the *truth of the facts* mentioned, this is mere hearsay; but as far as relates to the question whether *notice of the facts* was given or not, it is direct evidence. (*Whitehead* v. *Scott*, 1 Moody & Rob. 2.) So also words or writings may be given in evidence when they are part of the *res gesta*, *i.e.* when they accompany the transaction which is the subject of inquiry. (1 Phillipps, 6th Ed. 220; Phillipps and Amos, 206.) Thus in an action by husband and wife, for wounding the wife, Lord Chief Justice Holt allowed what the wife had said immediately upon the hurt received, and before she had time to devise any thing to her own advantage, to be given in evidence as part of the *res gesta*. So also words or writings may be receivable in evidence as the natural and immediate result of particular situations, impulses, or feelings. (*Thompson* v. *Trevanion*, Skinner, 402.) What is said by a person under particular circumstances of suffering, or of doing, is evidence of the nature of what is suffered, or done, and in the latter case is evidence of the intention of the agent. (*Aveson* v. *Lord Kinnaird*, 6 East, 188.) Thus, where the question is what was the impression produced on the public mind by a certain picture, the expressions used by spectators were admitted. (*Du Bost* v. *Beresford*, 2 Campb. 511.)

To the rule which excludes hearsay evidence there are the following exceptions:—

1. In questions of pedigree, the declaration of deceased members of the family may be given in evidence. Thus in such points as the following—who was related to whom—by what links was the relationship made out—was it a relationship of consanguinity or of affinity only—when did the parties die—or, are they actually dead?

2. In all such questions as these lying peculiarly within the knowledge of relatives, and many of which could never be decided if the inquiry was conducted by the same rules as in the case of an ordinary contract, the facts may be proved by evidence of the oral declaration of members of the family, or by any statement of theirs which may have been preserved either in written memorandums, descriptions in wills, family documents, inscriptions on tombstones, or the like. (*Monkton* v. *Attorney-General*, 2 Russell & Mylne, 161; *Berkeley Peerage*, 4 Campb. 401.) In the case of the Leigh Peerage, the question turned on the existence of a monument alleged to have been surreptitiously removed from Stoneleigh church. These declarations cannot be received unless made *ante litem motam*.

Another exception to the rule which excludes hearsay, is in matters of public or general interest. In questions respecting the rights of a corporation or customs of a manor—the boundaries of a parish—common reputation and the declarations of deceased persons are admissible in evidence. (*Weeks* v. *Sparke*, 1 Maule & Selwyn, 679; *Thomas* v. *Jenkins*, 6 Adol. & E. 525.) Common reputation may be shewn not only by oral declarations, but also by old deeds and other documents. Thus in an action for tolls, claimed under the corporation of Cambridge, a deed of the reign of Henry VIII. relating to the tolls in question was admitted in evidence, as being in the nature of reputation of the existence of the tolls. (*Brett* v. *Beales*, 1 Moody & M. 416.) Under this class of evidence must be included manorial documents, such as an ancient customary or the presentment of a custom entered on the rolls of the manor. (*Denn* v. *Spray*, 1 T. R. 466; *Roe* v. *Parker*, 5 T. R. 26.) Under the same head also are included verdicts obtained in other actions.

In general a verdict, followed by judgment, is binding upon the parties to an action, but does not affect the right of strangers; being, as far as they are concerned, *res inter alias acta*. But in the case of public rights, a verdict in one action is admissible between other parties, where the same right is in question. Thus in the case of customary commoners, a verdict in an action for or against one is evidence for or against another claiming in the same right; and this is the reason why one commoner was, at common law, not admissible to give evidence for another. (See 1 East, 355.) The general rule is, as we have already seen, that if a person, not being a party to the cause, makes any statement, whether by word of mouth or in writing, the statement itself cannot be adduced as evidence of the fact; but the person by whom the statement was made must be called as a witness; he is then examined upon oath, and subject to cross-examination by the party against whom he appears, who is thus enabled to test the credit due to him, or to elicit facts by which his statement may be either contradicted or explained. To this rule there are some exceptions, of a different nature to those in which mere hearsay is admitted. These are certain cases in which the statements made by a third person may, after his death, be given in evidence.

1. If he had peculiar means of knowing the truth of what he stated; and if at the time it was made the statement was against his own interest. In *Higham* v. *Ridgway* (10 East, 109), the question in issue was whether on a certain day A B was of age. It was proved that at his birth his mother had been attended by a certain man-midwife; the man-midwife being dead at the time of the trial, his entry-book and ledger were tendered in evidence to shew the day on which the child was born—were the entries admissible? Lord Ellenborough said, "that the books would be evidence in themselves as recording this and other similar events, in the course of the doctor's attendance on his patients;" but he added: "at the several times when they took place I am by no means prepared to say." The result of subsequent decisions is, that certainly they would not; but in the case I have alluded to, there was a circumstance which altered the case. At the foot of the entry was, "Pd." This made all the difference; the entry of payment was against the interest of the man-midwife, because he thereby repelled a claim he would otherwise have had for his attendance and medicines; and for this reason the statement, which would otherwise have been rejected as mere hearsay, was admitted as a declaration against the interest of the party making it. (See *De Rutzen* v. *Farr*, 4 A. & E. 53, *Stephen* v. *Gwenap*, 1 Moody & Rob. 120; *Middleton* v. *Melton*, 10 B. & C. 317, 328; *Gleadow* v. *Atkins*, 3 Tyrwh. 288; and 1 Crompton & M. 110.)

2. A statement is admissible in evidence after the death of the person who made it, if it was made in the regular course of business, and contemporaneously with the transaction to which it refers. A brewer brought an action against Lord Torrington for beer sold and delivered. (*Price* v. *Lord Torrington*, 1 Salk. 285.) The drayman who delivered the beer was dead. But the usual course of the brewer's dealing was for the drayman every night to give to the clerk a statement of the beer that he had delivered in the day. This the clerk entered in a book, and the drayman signed the entries. These were contemporaneous entries made in the ordinary course of business by a person who had no interest to mis-state what had occurred, and they were admitted by Holt, C.J. to prove the delivery of the beer; but whatever effect may be due to an entry made in the course of any office, reporting facts necessary to the performance of a duty, the statement of other circumstances, however naturally they may be thought to find a place in the narrative, is no proof of those circumstances. (*Chambers* v. *Bernasconi*, 4 Tyrwh. 531, T. T. 1834.) Where a question arose as to the place where a certain arrest took place, it appeared that the officer was dead; but after executing the writ he sent to the sheriff a written certificate, in which the place was named. It was held, then, admitting the entry to be evidence of the *fact*, and even of the *day* of the arrest, it was not admissible to prove in what particular spot within the bailiwick the caption took place; that circumstance being merely collateral to the act done.

When a person who has been called as a witness and given his evidence, afterward dies; if another action is brought between the same parties, and the point in issue is the same, the evidence of the deceased witness on the former trial is admissible, and may be proved by any one who heard it. (1 A. & Ellis, 21.) The declarations made by persons in their dying moments are admissible in criminal cases where the death of the person who made the declaration is the subject of the charge, and where the circumstances of the death are the subject of the declaration. (*R.* v. *Mead*, 2 B. & C. 607.) But in civil cases it appears that no such declarations would be admitted. (*Stobart* v. *Dryden*, 1 M. & W. 615.)

Another case in which statements are admissible, not being within the rule applying to hearsay evidence, is one of very frequent occurrence in practice. If either of the parties to the suit has at any time said or done any thing inconsistent with the facts on which he rests his claim or his defence, evidence may be given of such sayings or doings. The ***express admissions*** **of a party to the suit, or** ***admissions implied*** **from his conduct, are evidence, and strong evidence, against him. In an action for goods sold and delivered, if the defendant has stated to any one that he has received the goods, that statement may be used against him as an express admission. So in an action for goods sold and delivered, brought by a tradesman, if the tradesman originally sent in his bill to another person, this fact may be used by the defendant as an implied admission by the plaintiff that the goods were not originally supplied on his credit, but that the tradesman looked for payment to the person to whom he first sent in his bill.** Such admissions are evidence against the party who made them: but they are not in themselves conclusive evidence. It may in general be shewn that such admissions were mistaken or untrue. The force of an admission depends much upon the mode in which it is made. If a party makes a statement on oath in an answer in Chancery, the answer may be used against him in a subsequent action as an admission of any fact therein contained. A receipt given of the payment of money is in the nature of an admission, and is strong evidence of the money having been paid; but unless it be contained in a deed under seal, it is not conclusive evidence, but may be contradicted or explained. (*Graves* v. *Kay*, 3 B. & A. 318; 9 B. & C. 586.)

There is, however, one case in which an admission is conclusive against the person making it. If another person has been induced by the admission to alter his condition, the party who made the admission is estopped from disputing the truth of it with respect to that person (and those claiming under him), (*Richard* v. *Scares*, 6 A. & E. 469), and that transactions of the same nature as admissions made by the party himself are the declarations made by another person identified with him in interest. (*Carne* v. *Nichol*, 11 Brough. 430), provided he had such interest when he made the declaration; such declaration of a third person is admissible whether he be alive or not at the time of the trial. (*Woolway* v. *Rowe*, 1 A. & E. 114.)

There is another point of view in which it is necessary to consider the rule that the best evidence must always be given; in order to understand which, it is necessary to be acquainted with the distinction between primary and secondary evidence. The most apt illustration of this distinction is the rule, that what is in *writing* shall always be proved by the *writing itself*. Thus in an action for the use and occupation of a house (*Brewer* v. *Palmer*, 3 Esp. 213), if it comes out in the cross-examination of the plaintiff's witnesses that there was an agreement in writing, that agreement must be produced; no other evidence of the agreement can be given, and if the plaintiff does not produce it, he will fail in proving the agreement on which his claim is founded, and so will not be entitled to a verdict.

It frequently happens that the instrument in question is not in the possession of the party who wishes to use it. If it is in the possession of a third person, that person may be required to produce it by a *subpœna duces tecum* (*Amey* v. *Long*, 9 East, 473); that is, a subpœna which not only requires the person on whom it is summoned to appear himself, but to bring with him the documents specified in the subpœna. (*Davis* v. *Lovell*, 4 M. & W. 678.)

Sometimes the documents, of which one party wishes to avail himself, are in the possession of the opposite party; in this case the party who has the documents cannot be compelled to produce them in order to make evidence against himself; but the other party may give him notice to produce them, and if this notice is not complied with, but the documents are witheld, the party who required their production may give any other evidence of their contents. This is termed ***secondary*** **evidence, and may consist either in a copy or in the recollection of any person who has seen the orignal. For instance, if an action be brought by a tradesman, and the defendant wishes to prove that the credit was originally given to some other person; the tradesman's books could not be produced by the tradesman in support of his own claim; but they might be used against him by the defendant. And if they in fact contain an entry in which the goods are charged to the account of a third person, and not to that of the defendant, this would be a strong admission on the part of the plaintiff that credit was not given to the defendant. In such a case the defendant may give notice to the plaintiff to pro-**

duce his books. If he refuses to do so, the refusal is not to be deemed conclusive against him; the only authorized effect it has is to permit the defendant to give any other evidence he can obtain of the nature of the entries. Besides this, when the circumstances are such that it is not in the power of the party to produce the original document, he may, on proof of these circumstances, be admitted to give secondary evidence of their contents. Where a deed has been destroyed or lost, or after due inquiry in the proper quarter cannot be found, secondary evidence becomes admissible. When a document of any kind is produced (unless it be one of which the Court take judicial notice, such as a public Act of Parliament), it must be proved before it can be admitted in evidence. If a letter is tendered in evidence, purporting to be written by a particular person, it must be shewn that it was in fact written by him, which may be done either by direct proof, or by the testimony of one who knows the handwriting. But it cannot be proved merely by comparing the handwriting with other papers written by the same person. (*Doe* v. *Suckemore*, 5 A. & E. 703.)

It frequently happens that the facts about which there is no dispute are admitted by the parties, and the evidence at the trial is thus narrowed to the facts actually contested. There is no case in which this course can be more beneficially pursued than in the admission of documentary evidence; and it is now required by rule of Court that a party intending to produce written or printed documents should give notice thereof to the other party, and require him to admit them: if he refuses, the case may be brought before a judge by summons, and if he thinks that they ought to be admitted, he will make an order that unless they are admitted the party who refuses to admit them shall pay the costs of proving them. So that where no question can be raised as to the genuineness of a document, it is now made evidence without the expense of calling a witness to prove it.

The nature of the facts to be established in evidence depends upon the issue joined between the parties; hence the intimate connection between pleading and evidence. The allegations contained in the declaration may be very numerous, but the defendant, by disputing only certain facts, dispenses with the proof of the others; and if the pleadings are carried to another stage, the ground occupied by the defendant is narrowed still further by the replication: so that, however complicated the transaction between the parties may have been, the controversy may be reduced to one or two disputed facts, and to these facts the evidence must be applied. If the evidence does not prove the substance of the issue, the party on whom lies the onus of proof must fail. By the substance of the issue is meant the material allegations which it involves. If the facts proved at the trial are different from those stated in the pleadings, this is termed a *variance*; and if the difference is in any material allegation, the variance is false—that is, the party fails in proving the statement on which he has chosen to rely. In an action for goods sold and delivered, the day of the sale and delivery is not material; but in an action brought on a promissory note, if it is stated in the declaration to bear date on a certain day, if the promissory note produced at the trial bore date on another day, the action could not be supported—the note is not here identified; it is another and a different note, and this is a material variance. But, as I have before had occasion to observe, by the 9 Geo. 4, c. 15, the evil thus created was relieved by giving the judge power to amend the record (*Beckett* v. *Dutton*, 7 M. & W. 157); and this power of amendment was carried still further by stat. 3 & 4 Wm. 4, c. 42.

THE CRITIC.

Best on Presumptions of Law and Fact.
(*Continued from page* 32.)

THE following are the Rules laid down by Mr. BEST for regulating presumptive or circumstantial proof:—

I. *The onus of proving every thing essential to the establishment of the charge against the accused lies on the prosecutor.*

II. *There must be clear, unequivocal proof of the* CORPUS DELICTI.

On this he remarks:—

Every criminal charge involves two things: first, that an offence has been committed; and, secondly, that the accused is the author of it. "When a criminal fact is ascertained," says Lord Stowell, "presumptive proof may be taken to shew who did it,—to fix the criminal, having then an actual *corpus delicti*; but to take presumptions, in order to swell an equivocal and ambiguous fact into a criminal fact, would, I take it, be an entire misapplication of the doctrine of presumptions." (*Evans* v. *Evans*, 1 Hagg. C. R. 105.) Lord Hale, also, has laid down two rules, which have met with general approbation: "I would never," says he, "convict any person for stealing the goods of a person unknown, merely because he would not give an account how he came by them, unless there were due proof made, that a felony was committed of those goods. I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or, at least, the body found dead."(*a*) And Mr. Starkie states it to be an established rule, that, upon charges of homicide, the accused shall not be convicted unless the death be first distinctly proved, *either by direct evidence of the fact, or by inspection of the body*.(*b*)

Mr. BEST then takes an elaborate review of the various modes of proof of the *corpus delicti*, citing many curious cases, of which we take only the last:—

It remains to notice a class of cases where the supposed *corpus delicti* is the result of irresponsible, or unconscious agency. In one unhappy instance, in France, a respectable man was convicted and executed, on the strength of the presumption of a number of articles of silver, which were missing, having been found in a place to which he alone had access, and which were afterwards discovered to have been deposited there by a magpie. (3 Benth. Jud. Ev. 94.) Nor must the practice of sleepwalking be overlooked, of which the following curious illustration is given by a writer of the last century. Two persons, who had been hunting during the day, slept together at night. One of them was renewing the chase in his dream, and, imagining himself present at the death of the stag, cried out aloud, "I'll kill him! I'll kill him!" The other, awakened by the noise, got out of bed, and by the light of the moon beheld the sleeper give several deadly stabs with a knife on the part of the bed his companion had just quitted.(*c*) Suppose a blow given in this way had proved fatal, and that the two men had been shewn to have quarrelled previous to retiring to rest!

III. *The evidence against the accused should be such as to exclude, to a moral certainty, every hypothesis but that of his guilt of the offence imputed to him.*

IV. *The hypothesis of delinquency should flow naturally from the facts proved, and be consistent with them* ALL.

An instance of the neglect of this rule deserves to be quoted:—

But not only is it necessary to negative the existence of facts absolutely falsifying the hypothesis of guilt, but due attention should be given to all contrary hypotheses and facts tending to disprobabalise it. This rule was violated in the case of Eliza Fenning, who was convicted and executed in 1815, for attempting to poison a family with whom she lived as cook, by putting arsenic into some food. "The prisoner," says Mr. Wills, "had herself partaken of, and suffered severely, from the poisoned food, but of this important circumstance no notice was taken in the Recorder's charge."(*d*)

V. *Presumptive evidence ought never to be relied upon when direct testimony is wilfully withheld.*

VI. *In cases of doubt it is safer to acquit than to condemn.*

Having considered these six rules, Mr. BEST proceeds to the examination of the principal species of presumptive proof in criminal cases. The following are the most usual species of inculpatory evidence:—

1. Real evidence, or evidence from things.
2. Evidence derived from the *antecedent* conduct or position of the accused; such as peculiar motives, means, or facilities of committing the offence; preparations, or previous attempts to commit it; declarations of intention, or previous attempts to commit it.
3. Evidence derived from the *subsequent* conduct of the accused; such as sudden change in his life or circumstances; silence, when accused; false, or evasive statements made by him; suppression, or eloignment of evidence; forgery of exculpatory evidence; flight from justice and tampering with officers of justice; indications of fear, evidenced either by passive deportment or acts shewing a desire for secrecy.
4. Confessorial evidence.

In considering the first of these, Real Evidence, or the Evidence of Things, Mr. BEST prudently warns against the danger of trusting too much to coincidences, unless supported by corroborative proof:—

Some good illustrations of the nature and probative force of evidence derived from things are given by Mr. Starkie. (1 Stark. Ev. 562, 3rd ed.) Thus, in a case of burglary, where the thief gained admittance into the house by opening a window with a penknife, which was broken in the attempt, and a part of the blade left sticking in the window-frame, a broken knife, the fragment of which corresponded with that found in the frame, was found in the pocket of the prisoner. So, where a man was found killed by a pistol, part of the wadding of which was found in the wound, and consisted of a piece of paper, part of a printed ballad,(*e*) the corresponding part of which was found in the pocket of the prisoner. In another case of murder, a patch on one knee of the prisoner's breeches corresponded with an impression found on the soil, close to the place where the murdered body lay. In a case of robbery, the prosecutor, when attacked, struck the robber on the face with a key, and a mark of a key with corresponding wards was visible on the face of the prisoner. Mascardus also relates an instance where an inclosed ground, set with fruits, was broken into by night, and several of them eaten, the rinds and fragments of some of which were found lying about. On examining these, it appeared that the person who eat them had lost two front teeth, which caused suspicion to fall on a man in the neighbourhood, who had lost a corresponding number, and, on being taxed with the theft, confessed his guilt.(*f*) We have already seen, in the case of W. Richardson, how the fact of the accused being left-handed may become an adminiculum of evidence against a prisoner.(*g*) Strong, however, as coincidences of this nature undoubtedly are, we must be careful not to attribute to them, when standing alone, a conclusive effect in all cases. Just let it be remembered, that the men who were found in possession of the broken knife and the fragment of the ballad (the latter especially) might have picked them up, where they had been thrown away by the real criminals; that the person, the print of whose knee was visible on the soil near the murdered corpse, might have been a passer by, who knelt down to see if life were really extinct, or to render assistance to the sufferer: that the being left-handed, or having lost front teeth, are not *very* uncommon occurrences; and, even in the case of the impression made on the face by the key, the phenomenon might, by possibility, be a natural mark, &c. An excellent instance of how closely the propensity to run after coincidences ought to be watched is presented in the case of John Fitter, who was indicted at the Warwick Assizes of 1834 for the murder of a female. He was a shoemaker, and his leather apron had several circular marks, made by paring away superficial pieces, and it was supposed that they had been removed, as containing spots of blood; but it was satisfactorily proved in his defence that he had cut them off for plasters for a neighbour. (Wills on Circum. Ev. 159.) It is when taken in connexion with other evidence that physical coincidences are chiefly valuable, when they certainly press with fearful weight on a criminal.

So the possibility of accident, of the forgery of real evidence, either with a view to self-exculpation, or maliciously, or in sport, is to be carefully guarded against.

On the second presumption, derived from the existence of motives, means, and opportunity to commit an offence, it is to be observed that though the absence of a sufficient motive affords a strong presumption of innocence, the presence of one is no proof of guilt.

But here again we must rest for awhile.

(*a*) 2 Hale, P. C. 290. The coincidence between this and the following passages is singular:—"De corpore interfecti necesse est ut constet . . . . Si quis fassus se furem, confessio hæc non obest, nisi constet etiam in specie de rebus furto subtractis." (Matth. de Probat. c. 1, n. 4, p. 9.)

(*b*) 1 Stark. Ev. 575, 3rd ed. For the proof of the *corpus delicti* in cases of larceny, see 2 Russell on Crimes, by Greaves, 122; and R. v. Yend (6 C. & P. 176).

(*c*) Hervey's Meditations on the Night, note 35.

(*d*) Wills on Circumst. Ev. p. 158. The conviction of this very young woman created much difference of opinion at the time; but, Government having refused to interfere, she was executed, denying her guilt to the last. If we may credit a newspaper account, another person has since confessed the crime, when on his death-bed. Smith's Hints for the Examination of Medical Witnesses, p. 135, 136. Be this as it may, the general impression now seems in favour of her innocence. See Smith and Wills, in loc. cit.; and Beck's Med. Jur. 857, 7th ed.

(*e*) The facts are thus stated, 3 Benth. Jud. Ev. 256; in 1 Stark. Ev. 562, the paper found in the prisoner's pocket is described as a letter.

(*f*) Mascard. de Prob. quæst. 6, n. 24.

(*g*) Suprà, sect. 197; Burnett's Criminal Law of Scotland, 524. In the case of Richard Patch, who was charged with shooting Isaac Blight, in 1806, under circumstances which shewed that the assassin, whoever he was, must have been left-handed, the prisoner was pressed by his counsel, at a conference held before the trial, to say whether he was left-handed, which he protested he was not; but when put to the bar, and called on to hold up his hand and plead, he held up his *left* hand. Beck's Med. Jur. 583, 7th ed.

NEW AND PROJECTED LINES OF RAILWAY.

TO THE EDITOR OF THE MORNING HERALD.

6, Bank Chambers, Oct. 25.

SIR,—Observing in your journal of yesterday an extract from the *Mining Journal*, which states that there are about forty new projected lines of railway, I beg to hand you a statement which I prepared some days ago, to which I have added the new lines subsequently announced, and am

Yours obediently,

J. S. YEATS.

Name of Railway.	Capital.			Deposit.	
	Shares.	of	Amount.	Per Share.	
		£	£	£	s.
Aberdeen	50,000	20	1,000,000	2	0
Bandon and Cork	4,000	50	200,000	2	10
Birkenhead, Manchester, and Cheshire	20,000	50	1,000,000	5	0
Blackburn, Burnley, and Ackrington	16,000	25	406,000	2	10
Blackburn, Darwen, and Bolton	10,000	25	250,000	2	0
Bedford, and London and Birmingham	2,400	50	120,000	2	10
Belfast and Ballymena	7,700	50	385,000	2	10
Barnsley Junction	8,000	25	200,000	2	10
Bolton, Wigan, and Liverpool	16,000	50	800,000	4	0
Caledonian	36,000	50	1,800,000	5	0
Cambridge and Lincoln	50,000	25	1,250,000	1	10
Chester, Stockport, and Manchester	30,000	20	600,000	2	0
Chacnet Valley	60,000	20	1,200,000	2	0
Chatham and Portsmouth	25,000	50	1,250,000	1	0
Clydesdale Junction	8,000	50	400,000	5	0
Colchester and Diss	42,500	20	850,000	1	0
Cornwall	18,000	50	900,000	3	0
Cornwall and Devon Central	60,000	25	1,500,000	1	5
Coventry, Bedworth, and Nuneaton	3,600	25	90,000	1	5
Cheshire and Shropshire					
City South Union	15,000	25	375,000	2	10
Crediton and Barnstaple					
Dundee and Perth	8,000	25	200,000	2	10
Direct Northern	80,000	50	4,000,000	2	10
Dublin and Belfast	19,000	50	950,000	2	10
Dublin and Mullingar	15,000	50	750,000	2	10
Dublin and Galway	21,600	50	1,080,000	2	10
Dundalk and Enniskillen	17,000	50	850,000	2	10
Diss, Beccles, and Yarmouth	10,400	25	260,000	1	10
Dublin and Cavan	15,000	50	750,000	2	10
Eastern Union and Norwich	26,000	25	650,000	1	10
East Dereham and Norwich	7,500	20	150,000	1	0
Ely and Bedford	10,600	25	265,000	1	0
Exeter and Crediton	1,200	50	60,000	2	10
Exeter and Yeovil					
Edinburgh and Northern	20,000	25	500,000	1	5
Ditto	32,000	25	800,000	0	10
Eastern Counties Extensions	144,000	6 2-3	900,000	13s.	4d.
Gainsborough, Sheffield, and Chesterfield	15,000	50	750,000	3	0
Glasgow, Dumfries, and Carlisle	52,000	25	1,300,000	1	5
Glasgow, Dumbarton, and Loch Lomond	12,000	25	300,000	2	10
Great Southern and Western, 2nd Division	24,000	50	1,200,000	2	10
Great Western, Uxbridge, and Staines	2,400	25	60,000	2	0
Goole and Doncaster	6,000	25	150,000	1	10
Grand Connection	14,000	50	700,000	2	10
Great Grimsby and Sheffield Junction	12,000	50	600,000	2	15
Harwich	21,000	10	210,000	1	0
Harwich	7,000	20	140,000	1	0
Huddersfield and Manchester	20,000	30	600,000	1	10
Kendal and Windermere	5,000	25	125,000	1	10
Kentish	90,000	25	2,250,000	1	10
Lancashire and Yorkshire Junction	16,000	50	800,000	2	10
Leeds and Thirsk	16,000	50	800,000	2	10
Leeds and Dewsbury and Manchester	8,000	50	400,000	2	10
Leeds and West Riding	48,000	25	1,200,000	2	0
Liverpool, Ormskirk, and Preston	24,000	25	600,000	2	10
London and York	100,000	50	5,000,000	2	10
London and Richmond	25,000	20	500,000	1	0
London and Portsmouth	35,000	50	1,750,000	2	10
London and Norwich	35,000	20	700,000	1	0
Londonderry and Enniskillen	10,000	50	500,000	2	10
Lynn and Ely	8,000	25	200,000	1	5
Lynn and Dereham					
Midlands Extensions	62,500	40	2,500,000	2	0
Manchester and Buxton	12,500	20	250,000	1	10
Maidstone and Rochester					
Newark and Sheffield	24,000	25	600,000	1	10
Newbury and Great Western					
Newbury and South Western	8,000	25	200,000	2	10
Newcastle and Berwick	20,000	25	500,000	1	10
Newry, Armagh, and Enniskillen	15,000	50	750,000	2	10
Northumberland	20,000	50	1,000,000	3	0
North [illegible] at	30,000	50	1,500,000	3	0
North Kent by Dover Company					
Norwich and Brandon Extensions	10,000	10	100,000	1	0
Oxford, Worcester, and Wolverhampton	30,000	50	1,500,000	2	10
Portsmouth direct	35,000	50	1,750,000	1	0
Portsmouth and Guildford, by South Western Company					
Richmond and Staines	9,000	20	180,000	1	0
Salisbury and Yeovil					
Scottish Central	28,000	25	700,000	1	0
Sheffield and Lincolnshire	26,000	25	650,000	1	5
Shrewsbury and Grand Junction	12,000	50	600,000	5	0
Shrewsbury, Dudley, and Wolverhampton	18,000	50	900,000	2	10
South Wales	50,000	50	2,500,000	2	10
Southampton and Dorsetshire	20,000	25	500,000	2	0
Southport and Euxton	4,000	25	100,000	1	10
South Western and Waterloo Bridge					
Trent Valley	45,000	20	900,000	2	0
Tunbridge and Hastings, by Dover Company					
Wells and Thetford	16,000	25	400,000	1	10
West Cornwall	9,000	20	180,000	1	5
West Suffolk	7,000	50	350,000	5	0
West Yorkshire	20,000	50	1,000,000	3	0
West London Extensions	9,690	20	193,800	2	0
Westminster, Deptford, and Western Terminus	24,000	20	600,000	1	10
Wexford, Carlow, and Dublin	6,000	50	300,000	2	10
Worcester and London, viâ Weedon	30,000	50	1,500,000	2	10
Windsor, London, and South Union					
Worcester and Wolverhampton	10,000	50	500,000	3	0
Worcester, London, Oxford, and Rugby	87,500	20	1,750,000	1	0

ADVOCATES.—Mr. Christie obtained a return in the last session respecting the admission of advocates in the Ecclesiastical and Admiralty Courts of Doctors' Commons, &c. It appears that, according to the present rules, a candidate for admission as an advocate in the Arches' Court is required to deliver a certificate of his having taken the degree of Doctor of Laws. A petition is then presented to the Archbishop, who issues his fiat for the admission of the applicant, who is not to practise for one year. The admission in the Arches' Court qualifies the person for practising in any of the other ecclesiastical courts of Doctors' Commons. The present number of advocates is twenty-four. The same number practise in the Admiralty Courts. The advocates in the ecclesiastical courts of York must be barristers, and may practise by virtue of the Archbishop's fiat in all his courts, but it is not required that they should be doctors of civil law. The stamp duty on their admission is 50*l*. The number has been limited to four, but the present number is only two (Mr. Blanshard and Mr. T. H. Travis), who are of the common law bar.

SUDDEN DISAPPEARANCE OF MR. HURST, M.P.—Considerable excitement prevailed in this town (Horsham) on Thursday last, on its being ascertained that R. H. Hurst, esq. our member, had left with his family for France, having previously discharged all his servants. It has long been apparent to the tradesmen that the honourable gentleman's circumstances were much embarrassed, but none were prepared for his leaving the place on so short a notice. The household furniture and farming stock, &c. are intended to be sold by auction. Many of our tradesmen and others, we are concerned to add, are sufferers to the amount of several thousand pounds. [We hear from other sources that Mr. Hurst's liabilities exceed 150,000*l*. and that his son, Mr. R. H. Hurst, jun. has become responsible for his father's debts to the extent of 80,000*l*. The estates acquired by purchase by the late Mr. Robert Hurst are strictly entailed, and Mr. Hurst and his son only take life interests under the late Mr. Hurst's will.—ED.]—*Brighton Guardian.*

THE TRACY PEERAGE.—A NOVEL INQUIRY.—On Monday last an inquiry was held at Castleblack churchyard, before Captains Tibeaudo and Warburton and Messrs. G. Newcombe, J. W. Tarleton, and S. Sheane, magistrates, relative to the genuineness of the tombstone by which Mr. James Tracy proves his title to this long-disputed peerage, and which the House of Lords decided in his favour, subject to their proving this stone. A great number of respectable people attended to give evidence, as well as to hear such a novel inquiry. Mr. John Hafter, a stonecutter and builder, proved that the four pieces of stone produced must have originally been in one, they all corresponding with the grain, breaks, and letters when laid together closely to form one stone; and it was his opinion that the said stone was the original one belonging to the family, placed there as a tombstone; in which other witnesses also concurred, and signed declarations to that effect.—*Leinster Express.*

RIGHTS OF LANDLORDS.—In a case of assault this week (at the Middlesex Sessions) arising out of resistance offered by the proprietor of a house to the removal of her tenant's goods, on an execution, upon the ground that they were liable to a prior claim on account of rent due to her, the judge said, by the 7th and 8th of Victoria, in the case of a weekly tenancy, the landlord was not permitted to recover more than four weeks' arrear of rent, and so on in the like proportions where the tenancy was by the month, quarter, or otherwise; and in the present case (by the 66th section) the party ought to have applied to the clerk of the court out of which the process had issued, by whom her claim for rent, if clearly established, would have been satisfied.

THE LAW OF MORTMAIN.—The report of the select committee of the House of Commons on the law of mortmain, appointed last session upon the motion of Lord John Manners, has just been printed. The opinion of the committee is contained in the following passage, the concluding one in their report:—"Although your committee do not feel authorized by the terms of reference to report in favour of any specific alterations of the laws of mortmain, they feel bound to state, from an attentive consideration of the evidence submitted to them by witnesses whose means of information and authority must be held to be great, that the operation of the laws is most unsatisfactory, leads to doubt, expense, uncertainty, and litigation, and frequently defeats good and pious purposes, which the present aspect of the country would induce all men to wish fulfilled; while, from the existing facilities for evasion, they cannot be regarded as serving the main purpose for which they are supposed to be maintained, by securing the heir from the unexpected alienation of property to which he might reasonably have hoped to succeed."

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Wednesday, Nov. 6.

ROUSE *v.* JONES.

Decree in creditors' suit—Injunction to stay action at law—Notice—Delay—Costs—Administration of assets.

Where notice of the decree in a creditors' suit was served upon a bond creditor of the testator nearly three weeks before the trial of the action at law, and the motion for an injunction was made eleven days before the trial, it was held that the application for an injunction to stay proceedings at law was not made too late, and that it ought to have been granted. The bond creditor would be entitled to his costs up to the time he received notice of the decree.

Where a bond creditor succeeds in falsifying the heir's plea of no land by descent, and thereupon obtains execution against the proper goods of the heir, such heir will be entitled to stand in the place of the bond creditor against the deceased's real assets for the amount recovered by the bond creditor; and as the effect of this would be to withdraw so much of the assets from the general administration, the possibility of the bond creditor proving at law that the heir had pleaded falsely, forms no objection to an injunction to restrain such bond creditor from proceeding in his action after the decree in a creditors' suit.

JUDGMENT.

The LORD CHANCELLOR.—Owen Williams commenced an action against Robert Jones, as the heir-at-law and representative of Humphrey Herbert Jones, to recover on a bond given by him in the year 1821. The defendant in that action pleaded that he took no real estate by descent as the heir of Humphrey H. Jones; the plaintiff rejoined that he had; and on that plea issue was joined. In the meantime a bill had been filed for the administration of the estate of Jones by Rouse, on behalf of himself and the other creditors, and a decree in the creditors' suit was obtained on the 2nd of March, 1843. Notice of trial in the action upon the bond had been served for the ensuing [illegible] Beaumaris on the 21st of March. On the [illegible] March, the day of the decree, notice of the [illegible] served on the solicitor of Owen Williams. [illegible] solicitor refused to suspend proceedings in the action, and on the 10th of March notice of motion for an injunction to stay the trial was given, but the Vice-Chancellor of England refused that injunction upon the ground that the application came too late. It becomes, therefore, of importance, in deciding on this matter, to look with attention to the dates. The argument pressed upon the Court is, that the application was too late because it was made on the eve of the trial. Now the notice of the decree in the creditors' suit was given on the 2nd of March, the moment the decree was obtained; the plaintiff's attorney refused to stay the action on the [illegible]th, the notice of motion for an injunction was given on the 10th, and the trial, at the earliest, could not have taken place before the 21st of March. The attorney of the plaintiff in the action had, therefore, three weeks' notice of the decree; and as he was entitled to all costs incurred before such notice, there seems to be no sufficient reason for refusing the injunction on the ground of the lateness of the application to this Court. (*Lord* v. *Wormleighton*, Jacob's Rep.) There Sir John Leach said of the case of *Torrewest* v. *Skinner* (2 Mer. 480), which had been pressed upon him, "As to the plea of *non assumpsit*, I do not think that is a false plea; if the executor merely puts in issue the fact of the debt, that is not false. I am not sure that I had not a wrong notion of this at the time of deciding that case." Any delay on an application to stay a trial before judgment would, therefore, properly resolve itself into a mere question of costs. It was further insisted, in support of the decision of the Court below, that as the defendant at law had pleaded he had no land by descent as the heir of H. H. Jones, the plaintiff at law had a right to go to trial for the purpose of falsifying that plea. (*Brook* v. *Skinner*, 2 Mer. 481, n.) In order to understand the value of that objection, it is proper to consider the effect of the trial. If the jury found that the defendant had lands of the testator, the value of those lands would be assessed, and the plaintiff in the action would be entitled to execution against the defendant for his own debt. But on the principle of the case of *Buckley* v. *Nightingale* (1 Payne, 655), he might hold such lands in discharge of the testator's debts as far as he had paid under the execution. Otherwise he might be harassed by actions by the testator's debtors *ad infinitum*. It follows, therefore, that the plaintiff at law, if he succeeded in his action, and had been satisfied out of the real assets, would withdraw the amount of his debt from the assets that ought to be divided among the whole of the creditors. (*Lees* v. *Pocock*, 2 Ver. 601.) It has been said that the decree itself was not sufficiently comprehensive to include the plaintiff at law, but I find, on inquiry, that it was the usual and proper decree, and in the customary form. The plaintiff at law may go into the Master's office and prove his debt under this decree. All that was necessary to do in the first instance has been done, and there seems to be no occasion to make the mortgagees parties to the suit. I am of opinion, therefore, that the injunction ought to have been granted. As I understand that the trial at law has already taken place, the injunction must be to restrain the plaintiff at law from suing out execution, with payment of his costs up to the time his attorney was served with notice of the decree.

THE SHEFFIELD CANAL COMPANY *v.* THE SHEFFIELD AND ROTHERHAM RAILWAY COMPANY.

Pleading—Supplemental bill in the nature of a bill of review—Discovery of new evidence—Notice—Due diligence.

Where the question between two joint-stock companies was, whether a proposal made by the defendants had been rejected or accepted by the plaintiffs, a report and resolutions of the directors of the defendant company in which that proposal was treated as a settled matter, is evidence so important, that the discovery of it by the plaintiffs after a decree is sufficient to induce the Court to give leave to file a supplemental bill in the nature of a bill of review. And the fact that several individuals were holders of shares in the two companies, and as such had received copies of the report before the decree, was not deemed, under the circumstances of the case, to be that sort of notice of the report which would prevent such leave being given by the Court. The railway company not having entered the report in their books, as by their Act of Parliament they were bound to do, formed a strong circumstance of inducement to the Court to permit the supplemental bill to be filed.

JUDGMENT.

The LORD CHANCELLOR.—This is a motion for leave to file a supplemental bill in the nature of a bill of review. The question in the cause is, whether a proposal made to Messrs. Badger and Vickers, on the part of the railway company, in their letter of the 20th of June, 1836, was absolutely rejected by Mr. Wake, the solicitor of the canal company, at the meeting which took place the same day, or whether it was left open to allow Mr. Wake to consult Lord Wharncliffe before he finally decided. The Master of the Rolls was of opinion, on the evidence, that the proposal was definitively rejected at the meeting and the treaty closed; and that, as a necessary consequence, the plaintiff's solicitor could not, by afterwards declaring his acceptance of the offer, fasten an agreement on the defendants. It has been stated, in support of the motion before me, that since the decree at the Rolls was pronounced, the plaintiffs have discovered new and material evidence in support of their case, which, if produced at the time of the hearing, would have insured a decree in their favour. That evidence consists of a report of the directors of the railway, made at a meeting of the proprietors, and of certain resolutions passed at that meeting, by which the report was adopted. As the question depends on what passed at that meeting of the 26th of June, 1836, the representation of the transaction by the defendants themselves is undoubtedly very material. In that report they state the proposal, the counter proposition, the rejection of that of the plaintiff, and the final acceptance of the proposal of the defendants. There is no suggestion that the treaty had been broken off, or that the acceptance came too late, but they speak of the matter as something settled and agreed upon, though resting on the correspondence of the solicitors. They say, however, that it must be carried into effect by a formal document, thereby importing that the matter is settled, though informally. No one can doubt that this piece of evidence is most important; whether, in connection with other proofs, it would lead to a different result, I cannot at this moment decide. It is enough to say it would raise a question of great nicety, and would be a ground for a supplemental bill, in the nature of a bill of review, if the Court could be satisfied that the evidence was discovered after the decree, and that there has been no want of diligence in producing it.

It is necessary, therefore, to ascertain whether the plaintiffs did know of it before the decree, and whether the omission to produce it arises from their own neglect, because, if so, they are not, according to the rule of the Court, entitled to the relief they seek. It appears that some of the shareholders in the canal company are proprietors of shares in the railway, and were present when the resolutions passed. Among these are Marsh and Spencer, who were directors of the railway, and must have known of the report and resolutions, Marsh having been also a manager of the canal company in 1840, while the suit was proceeding. No affidavit was made by Mr. Parker, who was a member of the committee for some years, and his removal to Derby is not a satisfactory reason for the neglect to produce such evidence. Marsh also has not joined in the affidavit. He could not have done so, as he is one of the directors of the railway company to whom the report was presented. The affidavits say, however, that they were not aware, and that none of the canal proprietors were aware, of the report till after the judgment. The report and resolutions were, however, printed in the *Iris* newspaper, published in Sheffield, and to this paper some of the proprietors were subscribers, and they attended the news-rooms where all the papers which contained the advertisement were taken in. Copies of the report were also sent by post to each of the proprietors. It seems, therefore, very improbable that none of these persons knew of the report of 1836; but as the passage in question formed only a small portion of the report, it is not unreasonable to suppose that it may have escaped their recollection after such a considerable interval of time. With respect to the solicitor for the canal company, Mr. Wake, it is asserted that he alluded to the report in a conversation with Messrs. Badger and Vickers; but Mr. Wake is not alive to state his view of that assertion. It is proved that he kept books and made entries of all his transactions with great minuteness and preciseness, and his son swore positively that no entry was to be found in his father's book of any meeting with Mr. Badger on the subject: and that such an entry must have appeared if any meeting on the subject of the report had taken place. It seems, therefore, probable and reasonable to infer that the report was not in the recollection of Mr. Wake, by whom the bill was filed, and that he did not recollect [illegible] progress of the cause; for it would be [illegible] in any other way for his not making [illegible] part of the case. The omission is the more remarkable, as he had referred to a report presented to the canal company in which the agreement is stated; and he relied on Mr. Badger's acquiescence in that statement. In the absence of any direct evidence to impeach the statement of Mr. Badger, confirmed as it is by that of his partner, Mr. Vickers, I cannot, however, allow these things to outweigh his direct and positive testimony respecting the meeting with Wake on the subject of the report. The discovery of the report, too, is singular, as Mr. Wake, the present solicitor to the plaintiff, states it was left at this office in Sheffield, while he was absent, by a person he does not know. This is unsatisfactory, as he ought to have stated in his affidavit a reason for not giving the evidence of this person as to the circumstances of the discovery of the report. This view of the evidence will, on the whole, lead to the conclusion that the motion, according to the practice of the Court, ought not to be granted; but there is a circumstance in the case that, during the whole discussion, pressed strongly on my mind. It was the duty of the defendants to have entered the report in the books of the company according to the provisions of the Act of Parliament. Had they done so, the plaintiffs would have had the benefit of the entry, and the consequence of any neglect or mistake on the part of the solicitors would have been obviated. No satisfactory reason has been assigned for the omission. I think, therefore, I shall exercise a sound and just discretion in allowing the supplemental bill to be filed. I direct the costs to stand over till after the hearing of the cause. The circumstances are singular, and I will not now decide the question of costs.

Thursday, Nov. 7.

LORD MOSTYN *v.* SPENCER.

Suppressing depositions—Commissioner—Irregularity—Evidence—Practice.

Where, after the publication of depositions, it was discovered that one of the commissioners was the nephew and agent of the plaintiff, such depositions will be suppressed. And the fact that publication has passed will not prevent such suppression, if the application for that purpose be made within a reasonable time after the discovery of the objection.

This was a motion on the behalf of the defendant to suppress the deposition of a witness named Pugh, who had been examined under a commission on the behalf of the plaintiff, for irregularity. The commission was issued in pursuance of an order made in Jan. 1841, for the examination of the plaintiff's witnesses, but the defendant did not join in such commission. Cymric Lloyd, one of the commissioners named by the plaintiff, was his nephew and agent; though the nature of his agency did not appear. The defendant did not become aware of the relationship and connection between Lloyd and the plaintiff until some time after publication had passed. The commission was executed on the 5th of March, 1841, at Caen, by Lloyd and another commissioner, when Pugh was examined. The depositions were delivered out in December, 1841. In January, 1842, the defendant made an objection to the evidence of Pugh, on account of his interest. During the progress of the cause in the Master's office the name of Cymric Lloyd was observed by the defendant's solicitor on the 15th December, 1842, when an inquiry was made, and his relationship to, and connection with, the plaintiff ascertained. Notice of motion at the Rolls was then given. The Master of the Rolls directed the depositions to be suppressed, and the plaintiff appealed to the Lord Chancellor.

The following cases were referred to on the argument: *Cooke* v. *Wilson* (4 Mad. [illegible]); Practical Register, 121; Hinde, 304; *Gordon* v. *Gordon* (1 Swanst. 166; 1 Wils. C. C. 155); *Fortescue* v. *Cooke* (Godb.

193); *Fricker* v. *Moore* (Bunb. 289); *Selwyn's* case (2 Dick. 563); *Newton* v. *Foot* (2 Rep. in Cha. 393; 2 Dick, 793); *Chameau* v. *Riley* (Rolls, 9 Dec. 1840).

JUDGMENT.

The LORD CHANCELLOR.—It appears that Cymric Lloyd, one of the commissioners for the examination of witnesses on behalf of the plaintiff, was the nephew of the plaintiff, and was also engaged in some way for him as his agent. This is sworn to on the part of the defendant, by Groom, and is not in any way contradicted by the plaintiff, nor is any explanation given of the nature of the agency. It is clearly shewn that the father of Cymric Lloyd was the agent of the plaintiff, and it must upon the evidence, be taken as proved that Cymric Lloyd was himself also an agent. Such an appointment of a commissioner was highly irregular and most improper, and it is most important to enforce strict regularity in the appointment of commissioners, not merely to insure impartiality, but secrecy as well; and it was the more important in this case, as the proceeding was *ex parte*, the defendant not having joined in the commission. Unless, therefore, there is some objection as to the time when the defendant took the objection, the depositions must be suppressed. On the 15th of Dec. 1841, there was an appointment before the Master to settle his report; and the depositions were then first read in the presence of the solicitors of the parties. The defendant's solicitor had that morning met Cymric Lloyd with respect to a bill transaction with the Hon. Mr. Mostyn, and on hearing the name of Cymric Lloyd read as a commissioner, it attracted his attention. He immediately inquired, and found that he was the nephew and agent of the plaintiff. There was no delay on his part. At that meeting, on the 15th December, he stated that the deposition was irregular, and he served notice of the motion to suppress the depositions on the 24th of December. Here there is no ground for imputing delay. Some reliance was placed by the plaintiff's counsel on the fact that in December 1839, Cymric Lloyd had been introduced to Mr. Burdekin, one of the defendants, as the near relation of Lord Mostyn. But there is no reason to suppose that Mr. Burdekin recollected the circumstance, or identified Cymric Lloyd, the commissioner, as the person who had been introduced to him as the plaintiff's relation more than a year previously. The plaintiff also contends that the objection came too late after the depositions had been used. I conclude, from what fell from Lord Eldon in *Boughton* v. *Pierrepoint* (3 Swanst. 550), that that circumstance will not prevent the suppression of depositions irregularly taken. I am of opinion this objection cannot be sustained. I agree in the regret expressed by the Master of the Rolls that, by the death of Pugh, the plaintiff has lost evidence which may have been most important to his case; but the fault rests with his own agents, and it is most important that the evidence taken in this court should be free from such irregularities. I agree with the Master of the Rolls that the depositions must be suppressed. *Appeal motion refused with costs.*

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, Nov. 5.

GARCIAS v. RICARDO.

Practice—Plea of foreign judgment.

A plea of foreign judgment may operate as a bar to a suit in this court. But where the representations made by the plea are of that general nature as to leave the Court in doubt as to what were the matters in issue in the foreign court between the parties, equity will not refuse the plaintiff his right to file his bill in this court for an account of the transactions between him and the defendant.

This case, upon which a preliminary question arose some time in Trinity Term last respecting a point of practice before filing the bill (*vide ante*, vol. iii. p. 338), now came before the Court for argument upon a plea of foreign judgment. It appears, from the statements in the bill, that in the year 1834 the London firm of Ricardo and Co. through the agency of M. Aguado, the bankers in Paris, contracted for a loan of 4,000,000*l.* to the Spanish Government. The first advance was made to the amount of 500,000*l.* by certain bills accepted by Messrs. Ricardo and Co. After this the plaintiff Lorenzo Garcias, at the instance of the defendant, joined him in the undertaking, and became a participator therein to the amount of 25,000*l.*; but having, after a time, entertained a suspicion that he had not received from Ricardo and Co. what his share in the enterprise entitled him to, instituted a suit for an account of the transactions between them in the Cour du Commerce, whereupon the defendant Ricardo demurred to the jurisdiction of that Court. Upon an appeal, however, to the Cour Royale, he was ordered to put in his answer to the plaintiff's suit. The cause being heard on the merits, the decision of both Courts was in favour of the defendant Ricardo. This adjudication took place in 1837, and Garcias now instituted proceedings in this court for an account of what was due to him from Ricardo, alleging that he had only received 7,000*l.* from Garcias, that sum being about one-third of the amount to which he alleged he was entitled.

Stewart and *Heathfield*, in support of the plea, contended that the matter might already be considered as *res judicata*, the suit having been instituted by a domiciled Frenchman, in a court of competent jurisdiction, in the kingdom of France, where a definitive sentence had been pronounced upon the same subject of dispute, and between the same parties. That the principal points to be considered were—1. Whether a foreign judgment was a good defence. 2. If a good defence, whether advantage of it might be taken by way of plea. 3. Whether the matters in the suit were the same as those that were comprised in the foreign judgment. That all the authorities and text-books, both domestic and foreign, went to shew that such a judgment was a decided cause of objection to any suit in this country like the present, and ought to be considered as a fit subject of a plea.

Works and cases cited: Story's Conf. of Laws, c. 15; 3 Burge Tre. on Col. Law, 1050—1058; Lord Redesdale's Plead.; *Burroughs* v. *Jamineau* (Mose. Re. 1); *Martin* v. *Nichols* (3 Sim. 458).

Bethel and *Lewis*, in support of the bill.—The question is whether a party, be he a foreigner or not, is entitled to justice. We do not dispute that the judgment of a foreign court may be a good plea, but the fault of the plea is that it is void both in form and in substance. The questions are so indistinctly raised by the plea, that it is impossible to understand whether the relief sought by the present bill had been afforded or not by the French tribunal. The bill charges that the defendant pretends that the plaintiff instituted proceedings in a foreign court. The plaintiff admits certain proceedings in that court, but in respect of different matters. If, therefore, the facts stated in the bill be true, it obviates the effect of the foreign judgment. Lord Redesdale says, that when facts are stated to get rid of a judgment, and not denied, the plaintiff prevails. The plea does not state whether the matters are the same, or whether the issue joined between the parties be the same; but it is essential, according to the rules of equity, for the purpose of supporting a plea to the jurisdiction of this court, that not only should the subject-matter of the suit, and the parties to the suit, be identical, but that the issue should also be the same. In our case, there are several allegations of new matters introduced in the bill, which are amply sufficient to sustain the plaintiff's complaint in this court.

Case cited: *Child* v. *Gibson* (2 Atk. 602).

The VICE-CHANCELLOR.—I cannot say that I am quite satisfied with the plea. The representations are so general that I am prevented from forming an accurate notion of the matters upon which the parties are taking issue in the French courts. These ought to have been distinctly stated in the plea, since it is quite possible that there might have been all these decrees and orders made by the courts in France, as represented by the plea to have issued, without the question now raised by the plea having been once decided, namely whether there existed a valid contract between the parties which ought to have been performed. It appears to me, as the affair is represented, that the judgments of the foreign courts might be quite in accordance with the laws of that country, and capable of being sustained by jurisdiction of its courts, without in the least degree affecting the question raised by the bill. I am of opinion that this Court will be incurring great danger of denying the plaintiff's right to justice if I were to terminate this suit by allowing the plea, and therefore it strikes me that the most advisable course will be to give the defendant leave to amend his plea, and at the same time allow the plaintiff to amend his bill; but the consideration of costs must be reserved.

PHILLIPS v. BARLOW.

Nov. 4 and 9.

The right of a tenant for life without impeachment of waste in respect to his claim to the money raised by the sale of timber felled on the estate as against the remainder-man in fee.

Where timber had been felled by order of the Court for the improvement of the growth of the younger trees during the lifetime of a tenant for life impeachable for waste: Held, that the produce of timber so cut down belonged to the next tenant for life without impeachment of waste.

Sir William Owen, being tenant for life without impeachment of waste of certain estates situate at Laurenny, in the county of Pembroke, under the will of Hugh Barlow, claimed to be entitled to a sum of money amounting to about 7,000*l.* the produce of the sale of certain timber which had been cut down upon the estate many years since. This had been done by an order of the Court during the life of the late tenant for life, Mrs. Barlow, who was a tenant impeachable for waste. The object of felling the timber had been to improve the growth of the younger trees upon the estate. The life estate of Sir W. Owen having now fallen into possession, he claimed the 7,000*l.* in question, as being tenant of the first estate of freehold unimpeachable for waste, and presented his petition to the Court, praying that he might be declared entitled to the fund accordingly.

Wilson appeared in support of the petition, and relied upon the case of *Waldo* v. *Waldo* (12 Sim. 107.(a))

Bethel and *Glass*, for those entitled to the inheritance in remainder, contended that the money for which the timber had been sold must be regarded as the *corpus* of the estate, and therefore that the case of *Waldo* v. *Waldo* was not applicable, but that the fund belonged to the inheritance.

Stuart, *Stinton*, and *Tillotson* appeared for the other parties claiming an interest.

His honour the VICE-CHANCELLOR was of opinion that the present case was in no respect distinguishable from the case of *Waldo* v. *Waldo*, and therefore held that Sir W. Owen was entitled to the fund in question.

ROLLS COURT.

Friday, Nov 8.

Re THOMAS.

Under an agreement by lessee to pay the expense of lease and counterpart of a house and fixtures thereby demised, a schedule of fixtures, &c. made out by the desire of the lessee, and referred to in the lease, but not inserted therein, nor paid for to the Stamp-office, is an item of which the expense is to be allowed on taxation.

This was a petition praying for a reference to the taxing-master to review his report.

It appeared that George Mew agreed to let the house and premises No. 301, High Holborn, to William Ablett, who agreed also to purchase the fixtures, &c. at 100*l.* The agreement also contained a clause stipulating that Ablett, the lessee, should pay for the agreement, and for the lease, and counterpart thereof. A lease was, by the lessor's solicitor, Mr. Thomas, prepared accordingly, but neither a schedule of the fixtures nor a counterpart of the lease, in order to save expense to the lessee. The lease was sent to the lessee's solicitor, Mr. Naylor, who insisted upon a schedule being prepared, and, after the description of the premises in the lease, inserted the words "herein more particularly referred to in, &c." The schedule was not added to the lease, nor was stamp-duty paid for it, nor was it even signed till a month after the execution of the lease. After the business was concluded, Mr. Thomas sent in his bill of costs to Mr. Naylor, amounting to 13*l.* 9s. 8d. One of the items was a charge of less than 3*l.* for the schedule. This the taxing-master disallowed; and the costs of taxation being 10*l.* 13s. 6d. exceeded the amount of the bill so taxed. The question was whether the schedule was part of the agreement or not.

Turner, for the petitioner.

Kindersley and *Sandys*, for the respondent.

The MASTER OF THE ROLLS.—I regret that a petition should be presented for a thing of so small value, the expense of which will exceed over and over again the amount of the bill of costs. The simple question is, whether on the agreement the schedule is to be taken to be included. It does not appear whether Mr. Naylor thought the schedule necessary, but he was not satisfied that it was not prepared, and had a clause inserted in the lease referring to it; and it was made out at his instance. Considering that there is an express reference to the agreement, I think it cannot be expounded without importing the schedule into it. I therefore disagree with the Master, and think the expense of it must be allowed. There must be a reference to the Master to tax the proper sum to be allowed, if the parties cannot agree. There can no costs be given.

Saturday, Nov. 9.

Re WHITCOMBE.

The solicitor of a person who compromises his claims for a given sum, receives that sum, and pays a part of it to him, and gives him a receipt in full for all demands, for costs, &c., and a memorandum thereof is signed by the person: this constitutes a sufficient agree-

(a) The case above alluded to was briefly this: a testatrix devised to S. N. Meredith and his heirs certain estates upon trust to settle them upon Jane Waldo for life, with remainder to the use of E. W. M. Waldo, the plaintiff, for life, without impeachment of waste, remainder to his first and other sons in tail. Shortly after the testatrix's death, the trustee, Meredith, with the consent of Jane Waldo and the plaintiff, cut and sold some timber on the estate, which was going to decay, and invested the proceeds in the Three per Cent. Consols. A suit having been instituted by E. W. M. Waldo against the trustee, Meredith, Jane Waldo, and the infant eldest son of the plaintiff, the stock in question was ordered to be brought into court, and the Court being satisfied of the circumstances under which the timber had been cut, ordered the dividends of the stock to be paid to Jane Waldo for life, and upon her decease the capital to be transferred to the plaintiff; his honour the Vice-Chancellor laying it down, that "where the estate of the tenant for life has ceased, the Court has only to consider the estate of the person next in succession; and if he is unimpeachable of waste, and asks for the *corpus* of the fund, he asks only for that which he would have been entitled to if he had exercised that power which the law gives him a right to exercise when he comes into possession."

ment between the parties, so long as it is not set aside by bill, to preclude taxation under the 6 & 7 Vict. c. 73.

This was a petition by five of the six co-heirs (viz. Elizabeth, the wife of William Thomson, and four others) of the late James Wood, of Gloucester, and it prayed that the bills of costs of their solicitors, Messrs. Whitcombe, Helps, and Wemyss, incurred in supporting their claims, should be delivered and taxed. Proposals for a compromise with the petitioners were made and rejected, but afterwards, and before the trial of ejectment came on, at Gloucester, it was arranged that the petitioners should receive from the devisees of Mr. Wood's real estate the sum of 10,000*l.* and should execute to them a release of all demands. It was understood also that they were each to have 1,000*l.*, and the remaining 4,000*l.* Mr. Helps consented to accept in full for all demands for law charges, &c. The devisees accordingly paid the money, and got the release from all; but Greig, the husband of one of the co-heirs, though he had suggested the arrangement, refused to be bound by the arrangement as between them and the solicitors, and insisted on having his share in full. Accordingly he received 1,666*l.* 13*s.* 4*d.* and gave back 300*l.* The other five, knowing this, received each 1,000*l.* only, and a receipt in full for all demands as to law charges, &c. from Mr. Helps, and a memorandum of the particulars was also delivered. No bill of costs was made out to any of them, but the 666*l.* 13*s.* 4*d.* was in lieu of all demands. The petitioners, being dissatisfied, now sought to have the bills delivered and taxed. The question was, whether this was not an agreement that there should be no bill of costs delivered, and whether, therefore, taxation was not precluded.

Kindersley and *Glasse*, for the petitioners.

Turner, for the respondents.

The MASTER of the ROLLS.—The question is, whether there is such evidence here of an agreement as precludes taxation. I say nothing of the contract itself, whether it is proper or otherwise, or whether by bill it ought to be set aside or not; but sitting here adjudicating on the petition before me, the question is, whether it is supported by the evidence. [His lordship stated the facts.] The devisees agreed to pay, and did pay, the 10,000*l.* So far that part of the arrangement was carried out, and Helps supposed he had sufficient influence with his clients to make them agree to the whole arrangement; but they were not bound. Accordingly, Greig refuses, and is paid in full. The other parties, however, accepted each 1,000*l.*; and gave a receipt in full of all demands for law charges, &c. and a memorandum was also delivered. This, I think, is binding upon them. The petition must be dismissed, but without costs; the parties have mistaken their course. The agreement, though suspicious, because one party had full knowledge, and the other not, is not open in a jurisdiction not enabling the Court to set it aside.

Monday, Nov. 11.

Re BUSH.

A signed letter sent by a solicitor, along with unsigned bills of costs, and expressly referring to them, is a sufficient signing of the bills to satisfy the 6 & 7 Vict. c.73, s. 37; and delivering them to the solicitor of the party to be charged by them at the request of the party is a sufficient delivery.

Quære, whether the delivery of them to the town-agent of the solicitor of the party would be sufficient?

Robert Sayer, of Sibton-park, Suffolk, employed as his solicitors, Bush and Master, and after the dissolution of their partnership, Bush alone, and subsequently Bush and Mullins. General business, both in and out of court, was done for him by the two firms of Bush and Master and Bush and Mullins, but no court business was done by Bush while acting alone. Bush having received rents, &c. application was made by Sayer for cash accounts and for bills. A cash account was accordingly made out and delivered, which contained an item on the debit side: "Bill of costs, 17*l.* 10*s.* 8*d*;" but no bill was then delivered. On the 11th Oct. 1842, the petitioner wrote a letter to Bush requesting him to send his bill, accounts, and bill of costs to Mr. William Hugh Dennett, of Worthing, as he (the petitioner) was unable, from the state of his health, to attend to business. Subsequently, and before May, 1843, several letters passed between Dennett and Bush, the former desiring Bush to send to his (Dennett's) agents in town, Messrs. Hodgson and Concannon. Accordingly, on the 24th May, 1843, Bush did send four bills, unsigned; three for the sums respectively of 13*l.* 16*s.* 8*d.*, 24*l.* 5*s.* 10*d.*, and 2*l.* 6*s.* 8*d.*, and a fourth for the sum of 17*l.* 10*s.* 8*d.* to Messrs. Hodgson and Concannon, and along with them a signed letter referring to them, and also to the delivery of the fourth in 1841. In May 1844, the petitioner sent them back to be signed and delivered, for the purpose of having them taxed under the 6 & 7 Vict. c. 73, which Mr. Bush refused to do; and on the 21st of June, 1844, this petition was presented for delivery and taxation. After the bills had come into the hands of the petitioner, application was made to Coleridge, J. to tax them, and he refused, because they did not contain any taxable items in a court of law.

Roupell and *Cole*, for the petitioner, insisted that the requirements of the Act had not been complied with.

Kindersley and *Prior*, contrà, cited *Vincent* v. *Slaymaker* (12 East, 372); *Warren* v. *Cunningham* (Gow, 71); 2 Geo. 2, c. 23, as to what constituted a delivery.

Roupell, in reply, cited *Hill* v. *Humphreys* (3 Esp. 254); *Brooks* v. *Mason* (1 H. Bl. 209).

The MASTER of the ROLLS.—I am of opinion that these bills have been delivered within the true intent and meaning of the statute. Mr. Sayer expressly desired Mr. Bush to send them to Mr. Dennett, of Worthing, and he had no doubt a right to appoint a person to receive them. Dennett desires Hodgson and Concannon to receive them. It is not necessary to consider the question of the delegation of the power, for the bills did come to Dennett. It is clear, on the petitioner's own shewing, that the bills sent on the 24th May, and distinctly referred to in the letter signed by Bush, were received by Messrs. H. and C., and through them by Dennett. When they came to the petitioner's hands does not appear, but that they did come is quite clear. Long after the delivery the application was made to the Court of common law. Was there any question then about it? No; the ground for refusing the application was merely that there were non-taxable items. The petitioner afterwards, indeed, demanded the delivery; but how could he then repudiate what was assumed before Coleridge, J. No part of the prayer can be granted, neither delivery nor taxation. No special circumstances have been shewn; I therefore dismiss the petition with costs.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Monday, Nov. 18.

NEALE *v.* DELL.

Practice—Costs—Appearance on petition.

This suit was instituted for the purpose of ascertaining the rights of certain infants and other persons to a fund left by will. After a reference to the Master, it was decreed that two infants were entitled to a certain sum equally, and the sum was accordingly directed to be carried over to a separate account in their names, and their mother was empowered to receive the dividends until they attained the age of 21 years. One of these infants, having attained his majority, now petitioned for the payment of his proportion of the sum out of Court.

Gruble, for the petition.

Wood appeared for the mother, and *Hall* for the defendants in the suit, and they asked for their costs of appearing, to be paid out of the petitioner's share.

The VICE-CHANCELLOR said, that as there appeared to be no other fund upon which these costs could be fixed, he feared that he must order them to be paid out of the petitioner's share.

Re BENJAMIN ESTON.

Practice—1 Wm. 4, c. 60—Infant trustee.

Upon one petition, a reference to the Master was made to inquire, whether an infant was a trustee within the meaning of the Act, and if so, to approve of a proper person to be appointed a trustee in his place.

Metcalfe appeared upon this petition, which was presented under the 1st Wm. 4, c. 60, and prayed a reference to the Master to inquire whether Eston, the infant, was a trustee within the meaning of the Act; and also that if the Master should find that he was such trustee, then that he might approve of a fit and proper person to be appointed as a trustee in Eston's place. These two references were sought by the same petition, in order to save expense.

The VICE-CHANCELLOR said that he did not know of any case where this had been done, but he thought it was advisable, and would, therefore, make the order.

TREDWELL *v.* HARVEY.

Injunction—Action in Canada.

By an award made under an order of this Court, a defendant was ordered to pay a sum of money, and, he being in Canada, on his way to England, the person to whom the money was to be paid commenced an action against him in Canada for the amount, and arrested him there. The Court directed the proceedings in the action to be stayed until the costs directed by the award to be taxed had been taxed, and that the defendant's motion for an injunction should in other respects stand over.

Russell and *Billon*, on behalf of the defendant in this suit, applied for an injunction under the following circumstances:—

This suit was instituted for the recovery of a sum of 1,200*l.* and upwards against Mr. Harvey, who is the commander of a trading vessel. A reference was made to the Master as to some points in dispute in the cause, but, subsequently, by an order made with the consent of both parties, the name of Mr. Courtney was substituted for that of the Master, and he was empowered to make an award upon the matters in dispute, and liberty was given to either of the parties to make the award an order of court. In April 1844 the award was made, whereby the defendant was directed to pay a sum of 522*l.* The defendant was then out of the country, but, upon his touching at Quebec on his way to England, he was arrested at the suit of the plaintiff for this sum. No costs had yet been taxed according to the order of reference. An injunction was now sought to restrain the plaintiff from proceeding in his action against the defendant in Canada.

Rogers, for the plaintiff, opposed the application, and

The VICE-CHANCELLOR made the following order: Stay all proceedings in the action in Canada on each side until the final hearing of this motion or further order; the parties not to take any advantage of such suspension of proceedings, and to cause the action, with all proceedings therein, to remain in the same state as they now are until further order—this order to be without prejudice to any question. Stay all proceedings in this cause until further hearing, except as to this order. Refer it to the Master to tax the defendant's costs of this suit, as if the bill had been dismissed with costs on this day, and tax the costs for the taxation of which a direction is contained in the award, including the costs of this motion. Reserve the costs of this motion, and let the motion, in all respects, stand over, with liberty to apply.

Tuesday, Nov. 19.

CHILLINGWORTH *v.* CHILLINGWORTH.

Exception in grant—Repugnancy.

Where a grant was made of certain shares in real property, which was described, and after the general words "all the estate," &c. an exception of part of the property already described was inserted, but the exception was not mentioned in any other part of the deed—Quære, whether the exception was repugnant, and therefore void?

In the course of hearing this case, *Simpkinson* and *Messiter* raised the following question upon a deed. By the deed, an appointment in pursuance of a power was made of certain shares in property which was fully described. The same shares in the property were then granted and released, and after the general words, "all the estate," &c. was inserted an exception of the "King's Head Tavern," and two houses in Water-lane, Fleet-street. As these formed parts of the property before described, and were, in the former part of the deed, mentioned by name as included in the appointment and grant and release, it was argued that the exception was repugnant to the grant, and therefore void. The exception was not repeated in the habendum, and the recital of the agreement for the conveyance contained no notice of the exception. (Shepp. Touchstone, 78; Co. Lit. 47 a; *Horneby* v. *Clyton*, Dyer, 264 b; *Acton's* case, Dyer, 288 b; *Dorrell* v. *Collins*, 4 Scott, 444; and Jarman's Conveyancing, last ed. vol. 4, p. 316, were cited.)

Wigram and *Malins* contended that this Court would put a construction upon the deed not in the strict legal sense, but according to the intention of the parties.

Simpkinson, in reply, urged that the intention of the parties was in favour of his construction, as from the recital it appeared that the agreement had been for the whole to be conveyed.

The VICE-CHANCELLOR thought it not necessary to give any opinion upon the mere point of law, for, assuming the mere point of law to be in Mr. Simpkinson's favour, it was quite enough, in this case, to shew reasonable probability that there had been a mistake as to the expression of the intention of the parties. Reserving the legal question, then, his Honour said, that he should send it to the Master to inquire whether it was the intention of the parties that the "King's Head" and the two houses in Water-lane should be affected by the exception in the deed, and whether, if it should appear that the property was affected by the exception, it had been by mistake, or by any other means contrary to the intention of the parties.

ERRATUM.—In p. 91, col. 3, line 23, *for* "without" *read* "with."

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, Nov. 16.

BRACEGIRDLE *v.* PEACOCK.

Abatement of nuisance by parish officer—New assignment—Plea true in part only.

Platt, Q.C. obtained a rule *nisi* on Nov. 7, to enter verdict for defendant on the last issue in this action for a new trial. The Court now gave judgment.

This was an action of trespass for cutting down pales. The defendant was a parish officer, in virtue of whose office the trespass had been committed, and he pleaded—1st, Not guilty; 2nd, That the act had

been done in virtue of an Act of Parliament; 3rd, That the pales were standing on a public highway across a footpath; and, 4th, That as parish officer, the defendant had power to abate nuisances, and that the plaintiff had notice. These pleas were traversed by the plaintiff. The jury found that *part* only of the rails were upon the highway. The learned judge at the trial thought this sufficient under the terms of the plea—" Nor were the said rails and pales standing upon the said highway." It was also contended at the trial that, under the circumstances, there should have been a new assignment; and the learned judge so held. *Platt* contended that " new assignment was not necessary."

Cases cited: *Rogers* v. *Custance* (1 Q. B. 77); *Freeman* v. *Cratts* (4 M. & W. 4); *James* v. *Lingham* (5 Bing. N. C. 553). *Rule nisi.*

DOE *dem.* JACOBS *v.* PHILLIPS.

Custody of deeds.

Wordsworth moved for a new trial.

This was an action to recover gavelkind lands on which, a certain mortgage being made, one Pitcher had assigned a term to attend the inheritance. It being necessary that the possession should be recovered, ejectment was brought on the title of the administrator of the trustee of the term, who was the lessor of the plaintiff in this action. Letters reciting these deeds were put in evidence, and the deeds themselves were tendered. It was then contended that evidence ought to have been given to shew the custody whence the deeds were produced. It was shewn that an attorney, who had them in his possession, desired his clerk to take them out of his strong box. He acted for Mrs. Brand, in whom the beneficial interest vested. (*Bishop of Meath* v. *Marquis of Westminster*, 3 Bing. N. C. 183.)

COLERIDGE, J.—But in that case there was no public residence of the bishop in that diocese, and the deeds here might have been in proper custody.

Platt contended that it was not necessary that they should be in the next custody, as long as they were in custody which might reasonably be accounted for. (*Doe dem. Neale* v. *Samples*, 8 Ad. & Ell. 154; *Bertie* v. *Beaumont*, 2 Price, 307.) *Rule nisi.*

REG. *v.* BLOXHAM.

It is a fatal defect in the jurat of an affidavit to omit the words " sworn before me," and cannot be amended.

On appeal against an order of removal, the order was quashed, and a writ of *certiorari* had been obtained to bring up the order of sessions. On Tuesday last, *Pigott* obtained a rule to shew cause why the *certiorari* should not be set aside, on the ground that the affidavit of service of notice of *certiorari*, under 13 Geo. 2, c. 18, s. 5, was defective and informal, inasmuch as the jurat did not contain the words " *sworn before me.*"

Keating now shewed cause. The omission in the jurat is cured by the words in the notice, which notice is referred to in the affidavit: " This is the notice referred to in the annexed affidavit sworn before me." It is not essential that the jurat should expressly state the swearing to have been before the exact person who took it; so long as, by taking all the documents together, it appears to have been so made. (*Reg.* v. *Silkstone*, 2 Gale & Dav. 396; *Symmers* v. *Wason*, 1 Bos. & Pul. 105.) Here the same commissioner signed, and the dates of both notice and jurat were the same, the one referring to the other.

Pashley, on the same side, argued that the application was too late. The order of sessions was made in October 1848; and only on the eve of the case being heard on the merits this rule is moved for to set the writ aside. They should either have come to the Court with this application earlier, or have accounted for the delay. (*Davies* v. *Watkins*, 2 Dowl. N.S. 930.) They have done neither; they relied for their rule on *Reg.* v. *Cartworth* (: . & Dav. 162), which was decided only on the ground that the notices were not served. Here they were served. Another ground was perjury could not be assigned on this jurat. *Rex* v. *Emden* (9 East, 436) is an authority to shew that the jurat is not conclusive evidence of the place where sworn.

The COURT called on

G. Pigott in support of the rule.—It is quite consistent with this jurat that it was sworn before me (Pigott) or any one else. It does not appear that it was sworn before the same person who is named in the notice; all that is stated is, that it was " sworn at Banbury." Perjury could not be assigned upon this affidavit at all. The case of *Reg.* v. *Silkstone* was merely one of ambiguity, this is one of fatal defectiveness. It is not to be allowed that laxity should creep into the execution of jurats. (*Rex* v. *West Riding*, 3 M. & Scl. 493.) The defect in the jurat cannot be helped by another document. It must be perfect in itself, or at last it would suffice to pin one document on another. It must of itself shew the jurisdiction of the justice or person taking it. (*Reg.* v. *Shipston-upon-Stour*, 1 Bit. & Sym. M. C. 41; *Osborn* v. *Tatum*, 1 Bos. & Pul. 271; *Wood* v. *Stevens*, 3 Moore; *Howard* v. *Brown*, 4 Bing. 393.)

Pashley, in reply.—There is no stringent rule calling on the Court to quash this *certiorari*. The presumption is *omnia esse ritè acta*, and the commissioner who took the affidavit must be presumed to have taken it properly. (*R.* v. *Whiston*, 4 Ad. & Ell. 607; *Doe dem. Nanney* v. *Gore*, 2 M. & W. 320.) The Court may amend, and insert the words " sworn before me" in the affidavit. (*Ex parte Hall*, L. J. 1839; *Ex parte Smith*, 2 Dowl. 607.)

DENMAN, C.J.—Our first impression was to get over the formal objection, and enter upon the merits of the question; but we must adhere to the established rules which govern jurats. It is a wholesome and proper provision that jurats should, in express terms, shew the jurisdiction and authority by which they are taken. There is no difficulty or hardship in requiring this to be done. Not a single case on the other side applies here. We must not strain points of form, neither must we encourage irregularity. In *Ex parte Hall* I took part, and gave an indulgence which ought not to have been given. We cannot amend serious defects in jurats; we should thereby encourage and invite a pernicious laxity. By quashing this writ we shall induce more care and caution in the wording of these instruments.

WILLIAMS, J.—We wish to sustain the strictness of the rule as to jurats. It would be a most unsafe and unsound mode of proceeding to countenance these defects. The words here are open to doubt and uncertainty, and we require that jurats should be perfect.

COLERIDGE, J.—If this is a mere irregularity, it is one which can neither be waived nor amended. If we encouraged these defects, we should probably never see jurats with the words " sworn before me" in them again. I wish that this irregularity had not barred the merits of the case. But we must stop where we are.

WIGHTMAN, J. concurred. *Rule absolute.*

REG. *v.* WOOLDALE.

A misnomer does not constitute a fatal error or ambiguity in an indenture of apprenticeship.

Pickering shewed cause why an order of sessions should not be quashed, on the ground of invalidity in the terms of an indenture of apprenticeship.

It appeared, that in the premises of the deed the right name of Joseph Beaumont, one of the parties to it, was mentioned; in the body a wrong Christian name, " John"; it was executed in the right name. The question was, whether the deed was a nullity or not. Even where the signature was in the wrong name, it has been held that the deed was good. Evidence of some facts may be given to support a deed, and the evidence given here was, that no such person as John Beaumont ever was bound, for that his son Joseph was bound, executed the deed, and served under it. (2 Phil. on Evidence; Wigram's Extrin. Evi. 54; *Doe* v. *Leeds*, 2 M. & W. 129; *Lord Saye and Sele*, 10 Mod. 46; *Dorset* v. *Sweet*, 1 Amb. 174; *Miller* v. *Francis*, 8 Bing. 244, Co. Lit. 230 (b); *Lady Howley's* case, 3 Cro. 19 (b); *R.* v. *Wooscouton*, 1 Bott. 707, Bac. Ab. tit. " Grant," H. 2; *Evans* v. *King*, Willes, 524; *Mailstone* v. *Lord Palmerston*, 1 M. & Mal. 6, and 2 C. & P. 474; *Williams* v. *Brian*, 5 M. & W. 447; *R.* v. *Exminster*, 6 A. & E.; *Maby* v. *Shepperd*, Cro. Col. 644; *Miller* v. *Travers*, 8 Bing. 244; *R.* v. *Wickam*, 2 A. & E. 517; *R.* v. *Cheadle*, 3 B. & Ad. 832; *Colfoys* v. *Colfoys* 1 Jacob, 163; *R.* v. *Wright*, 1 A. & E. 445, 3 Lev. 21; *Monkhouse* v. *Huchison*, Benbury, 101.)

Hel and *Pashley*, contrà.—There is a patent ambiguity on the face of the deed, both as to the name of the party bound and the term for which he was to serve. This cannot be helped by averment.

Cases cited: *Clark* v. *Highstead* (1 Lutw. 894); Phil. Cri. 311; Pres. Shep. Touch. 233, Dyer, 279; Com. Dig. tit. " Grant" A, 2; and " Foil" E, 3, 2 Roll. Ab. tit. " Foil," D; *Cook* v. *Goodman* (2 Q. B. 584); *Vest* v. *Wilshow* (Owen, 48); *R.* v. *Morris* (1 Leach, 109); *R.* v. *Hood* (Moo. C. C. 231); *Hay* v. *Bark* (1 M. & G. 775).

By the COURT.—The sessions have done right. As to the first point, we think there is no ambiguity, as the description of the apprentice in the deed shews that it could only be Joseph who was bound. The difficulty, if any, seems to be rather one of construction than ambiguity. The parol evidence only shews that something was done in pursuance of the deed, and that it was executed by Joseph, and that he served under it. Doubtless, if bad English would spoil a deed, this could not stand. Then as to the point as to the term for which the apprentice was to serve, it is clear it was for more than forty days, as there is a covenant to pay wages to the apprentice yearly and every year during the term of his apprenticeship, and we think it was to be until he attained the age of twenty-one years. *Rule discharged.*

Tuesday, Nov. 19.

WALKER *v.* DE RICHEMONT.

In order to complete a final judgment within the meaning of the Rule 1 Hilary Term, 2 Wm. 4, s. 85, it is not necessary that the costs should be taxed.

In this case *Hindmarsh* had obtained a rule calling on the plaintiff to shew cause why the defendant should not be discharged from being charged in execution on a judgment obtained by the plaintiff in this cause.

The action was in debt, and judgment was signed in March last for want of a plea. The defendant was in custody under a writ of *capias*, and as the plaintiff did not proceed to tax his costs and charge the defendant in execution within two terms after the judgment was signed, as prescribed by Rule 2 Hil. Term, 2 Wm. 4, s. 85, the above rule was moved for.

Lush now shewed cause, and contended that the judgment was not complete until the costs were taxed, and that as the rule of Hilary gave the plaintiff three terms, within which he must proceed to *final* judgment, he contended that in this case the plaintiff had still all the present term in which to complete his judgment, and two terms more within which he might charge the defendant in execution.

Cases cited: *Colborn* v. *Hall* (5 Dowl. 534); *Butler* v. *Bulkeley* (1 Bing. 233); *Salter* v. *Slade* (3 Nev. & Man. 717); *Pearse* v. *Diney* (3 G. & D. 477); *Brown* v. *M'Millan* (8 Dowl. 852); *Ireland* v. *Berry* (1 Dowl. & Lowndes, 866); *Reg.* v. *The Sheriff of Montgomeryshire* (1 Dowl. N. S. 388).

Hindmarsh, contrà, was stopped by the Court.

By the COURT.—We think this is a final judgment within the meaning of the rule. It is such a judgment as prevents the defendant from pleading; and as to the cases cited, we do not think they apply. *Rule absolute.*

HOPKINS *v.* RICHARDSON.

New trial—Special contract, recision of.

In this case the action was brought by the plaintiff for work and labour done to the defendant's house. At the trial, the plaintiff proved a *primâ facie* case, by shewing that the work was done, and that the defendant was frequently present giving orders during the progress of the work. For the defendant, it was proposed to give in evidence that the work was done under a special contract, by parol, and that the plaintiff was to do the work in consideration of a lease of the premises, which was to be granted to him. This was objected to on behalf of the plaintiff. The evidence, however, was received; and it appeared that the plaintiff had asked for the lease, which had been refused him unless he finished the work; this he refused to do, unless the lease was given him. The jury found a verdict for the plaintiff, for the amount claimed; and at the same time found that the work had been done under a special parol contract, which had been broken by the defendant. A rule *nisi* for a new trial having been obtained,

Humfrey and *Gunning* now shewed cause, and contended, that as the work had been done under a void contract, the law would presume a good consideration, and remit the parties to that. Further, that the evidence of the parol contract was not admissible, as it could not be enforced by either party.

Cases cited: *Phillips* v. *Jones* (1 A. & E. 333); *Maror* v. *Pine* (3 Bing. 285).

Platt, Q. C. contrà, contended that there had been no recision of the special contract; it was not sufficiently shewn that the defendant had refused to grant the lease, but only that he had refused to grant it until the work was done; further, that the plaintiff had had possession of and enjoyed the premises, therefore the parties could not be placed *in statu quo*; that it was clear that the work was done under a special contract which was not the one declared on.

By the COURT.—We think there has been no recision of the contract, in fact, and that the plaintiff was in a great hurry to bring his action. *Rule absolute.*

Wednesday, Nov. 20.

CROWN PAPER.

REG. *v.* HONLEY.

Order of removal—Sufficiency of examination—Derivative settlement—Occupancy.

This was an appeal against an order of removal. The sessions confirmed the order subject to a case for the opinion of this Court. The settlement relied on by the appellant was a derivative one from the pauper's father, whose examination was in these words: —" When I was about thirty years of age, I went to live in the township of Honley. In the year 1821, and whilst I still resided in the same place, I rented and occupied between three and four acres of land, at Scoll Gate Head, in Honley aforesaid, of John Todd, of Honley-moor, clothier, of the annual value of 7*l.* and for which I paid 7*l.* rent for many years. In the year 1821, and at the same time that I so occupied the land of John Todd, I also rented and occupied three acres of land at Scoll Gate Head aforesaid, of one John Bottomley, of Midthorn, sizer-boiler, of the annual value of 7*l.*, at 7*l.* rent, which I occupied for one year, and then gave it up in the year 1822." The grounds of appeal stated, amongst other things, " that the said examination shewed no occupation or holding by the said Martin Wimpony (the pauper's father), of any tenement of the yearly value of 10*l.* for forty days during 1821, or any such occupation or

holding of any such tenement of the yearly value of 10*l*. for forty days during any other year or years."

Hall now shewed cause, and contended that the examination of the pauper's father sufficiently shewed a joint occupation by him for a year of the two tenements at the same time, which together were of the value of 10*l*.; and that if it did not, the objection was not taken in the grounds of appeal, which only raised a question as to the value of the tenement.

Pickering, same side.

Pashley and *Ostrend* appeared to support the case, but were not called on by the Court.

By the COURT.—We think the grounds of appeal sufficiently raise the question, and that the examination is insufficient. *Rule absolute.*

REG. *v.* LATCHWORTH.

Order of removal—Examinations—Effect of as admissions—Derivative settlement—Apprenticeship—Effect of discharging rule simply—Costs.

This was an appeal against an order of removal. The sessions confirmed the order subject to the opinion of this Court.

It appeared that the examination disclosed a birth settlement in the appellant parish, and further, that the pauper had been apprenticed by deed, and had served under his apprenticeship. It further appeared that during such service he had resided for more than forty days both in the appellant and respondent parishes, but it was now admitted that the last day of such residence was in the respondent parish. The examination also set out the indenture of apprenticeship. No notice to produce this deed was given to the respondents. The grounds of appeal merely traversed the settlement in the appellant parish. The respondents relied upon the birth-settlement, and the question for the Court was whether, upon these examinations, it was competent for them to do so. The appellants called no evidence.

Crompton, in support of the order, contended that the sessions had done right in confirming the order. The respondents had relied on their *primâ facie* case, and it was for the appellants to set up the settlement by apprenticeship. The respondents were not bound by the admissions of the pauper in his examination. The Act required that the whole of the examinations should be sent to the appellant parish, but they were not bound to admit all the statements made in them. The justices who made the order probably did not believe the evidence of the pauper as to the apprenticeship, or thought that there was no sufficient legal evidence of any subsequent settlement gained by it.

Cases cited: *R.* v. *Outwell* (9 A. & E.); *Cunliff* v. *Sefton* (2 East, 187); *Cole* v. *Dunning* (4 East, 53), *Slatterie* v. *Pooly* (6 M. & W. 664).

Pashley, contrà, contended that the respondents could not rely on a birth settlement, as the examinations disclosed a settlement by apprenticeship, which acted as a merger of the birth-settlement. He further contended that it was not necessary for the appellants to prove the indenture of apprenticeship, as the respondents were bound by the examinations of the pauper. (*Slatterie* v. *Pooly*, 6 M. & W. 664; *R.* v. *St. John's, Margate*, 1 Q. B. 252; *R.* v. *St. Mary's, Beverley*, 1 B. & Ad. 201.)

By the COURT.—The respondents cannot be bound by the examinations as to all the facts stated in them. The magistrates are bound to send the whole of them to the appellant parish, but they are not admissions in the case. The respondents may rely on any settlement set out therein, and if the appellants mean to rely on any other settlement, they are bound to prove it in the regular way.

Pashley then prayed that in this case the rule might be discharged, and not the order of sessions confirmed. This was a case, he submitted, in which the Court would not award costs against the appellants, as they had been misled, and the effect of confirming the order would be to give costs to the respondents.

DENMAN, C. J.—Our course is simply to discharge the rule, the result of which will be to confirm the order and render the appellants liable for costs. It should be understood that if parties bring up special cases upon orders of removal to this court and fail, they must pay the costs. *Rule discharged.*

REG. *v.* LAURENCE HUNTER.

Appeal against conviction—Practice where case is insufficiently stated.

This was an appeal against a conviction for a nuisance. The defendant had been convicted by the Recorder of Wigan upon an information charging him with a public nuisance in placing his cart empty on the public highway. It appeared that the defendant and others claimed an immemorial right to leave their carts on the place in question on market days. The Recorder convicted the defendant, but granted a case for the opinion of the Court. *Crompton* appeared to support the conviction; *Cowling*, contrà; but it appearing that the case did not sufficiently raise the question of an immemorial custom, the Court suggested that the case be sent back to the Recorder, in order that he might alter the statement of the case in this particular if he thought fit, or else the rule for quashing the conviction to be absolute.

Case sent back accordingly.

REG. *v.* ST. SEPULCHRE, NORTHAMPTON.

Order of removal—Sufficiency of examinations in—Settlement by renting a tenement—Contract—Occupancy.

This was an appeal against an order of removal. The sessions confirmed the order, subject to a special case for the opinion of this Court. The settlement relied upon was the renting a tenement of the value of 10*l*. a year. There were two objections taken to the examinations; first, that it did not sufficiently appear that the hiring was a yearly one; and, secondly, that there was no sufficient evidence on the face of them of an occupation for a year under the hiring. The examination of the landlady was as follows: "I let a house to John Adams at a rent of 10*l*. a year in July 1839. The said John Adams occupied the house, and paid the whole of the rent during that time." The pauper, who was the wife of John Adams, stated that "in July 1839 my husband hired a house of Mrs. Brown (the landlady): we resided in that house until March 1842."

Macauley, in support of the order of sessions, contended that there was sufficient evidence on which the sessions were justified in finding a yearly hiring, and an occupancy for a year under it. That here there was a general taking at a yearly rent, which constituted a yearly tenancy, and that it was not necessary for a witness to state the legal effect of facts, but only the facts themselves; that the occupancy sufficiently appeared by the examination of the landlady, who stated that "the said John Adams occupied the house, and paid the whole of the rent during that time," which could only mean from 1839 to 1842. He further contended, that *R.* v. *Pomfret* (2 Q. B. 548) was distinguishable, and if not, submitted that the Court might reconsider the judgment there given.

Mills, same side.

Cases cited: *Doe dem. Martin* v. *Watson* (7 T. R. 83); *R.* v. *Pilkington* (2 G. & D. 319).

Miller, contrà, contended that the occupancy must be strictly set out on the face of the examinations. *Reg.* v. *Pomfret* was in point. Nothing must be left to surmise. It might be that the pauper occupied and paid rent for a year, but *non constat* that it was under a yearly hiring; for all the facts were consistent with a tenancy at will.

Barlow, same side.

Cases cited: *R.* v. *Leeds* (13 L. J. M. C. 30); *R.* v. *Herstmanceaux* (7 B. & C. 551); *R.* v. *Banbury* (1 A. & E. 136); *R.* v. *Stonehenge* (2 Q. B. 530).

DENMAN, C. J.—I think we are bound to adhere to our former decisions, and hope that it will induce parties to use more care. I think nothing should be left to inference. *Reg.* v. *Pomfret* is in point, and must govern this case, as there are no words that sufficiently shew a holding under a contract for a year, or an occupancy under such hiring.

WILLIAMS, J. was of the same opinion.

COLERIDGE, J.—I am not satisfied with the decision of my learned brothers in this case. I do not think that it is governed by *Reg.* v. *Pomfret*, as it appears to me that every thing is here stated that is necessary. The examinations state a letting by the landlady on the 29th of July, 1839, and that the pauper occupied the house, and paid the whole of the rent, until March, 1842, which I think is sufficient.

WIGHTMAN, J.—I agree with the majority of the Court in thinking that the statement of occupancy is insufficient; but I am not prepared to say that it is insufficient as to the letting and hiring.

Rule absolute.

BUSINESS OF THE WEEK.

Thursday.

DOE *dem.* ANGEL *v.* ANGEL. *Cur. adv. vult.*

Friday.

HOWARD *v.* GOSSETT.—*Kelly*, Q.C. (*J. W. Smith* and *Petersdorf* with him), in support of demurrer. The *Solicitor-General* (*Waddington* with him), contrà. *Further hearing adjourned.*

Saturday.

DOE *dem.* COPELAND *v.* BURRELL.	*Rule nisi.*
ALDIS *v.* GARDNER	*Rule refused.*
GREEN and ANOTHER *v.* BRADFIELD.	*Rule refused.*
DOE *dem.* FOULKES *v.* VERIER.	*Rule refused.*
BATE and ANOTHER *v.* BLUNDEN and ANOTHER.	*Rule nisi.*
PEARSON *v.* COBB.	*Rule refused.*
DOE *dem.* HUGHES *v.* WALL.	*Rule refused.*
DARBY *v.* CAWDREY.	*Rule refused.*
SHATTON *v.* MALINES.	*Rule refused.*
SUTTON *v.* M'GUIRE.	*Rule nisi.*
CRAIG *v.* WOOLLEY.	*Rule refused.*
REG. *v.* MAYOR OF WEYMOUTH.	*Cur. adv. vult.*
GOODAL *v.* LOWNDES.	*Rule refused.*

Monday.

DOE *dem.* ANGELL *v.* ANGELL.—*Peacock* concluded his argument. *Cur. adv. vult.*

TODD *v.* STEWART and ANOTHER.—*Crowder*, Q.C. and *Butt* shewed cause. *Rawlinson* and *Peacock*, contrà. *Cur. adv. vult.*

WILLOUGHBY *v.* WILLOUGHBY.—*Watson*, Q.C. and *H. Hill* shewed cause. The *Solicitor-General*, *Cowling*, and *Montague Smith*, contrà. *Cur. adv. vult.*

Tuesday.

HOWARD *v.* GOSSETT.—The *Solicitor-General* concluded his argument. *Kelly*, Q.C. in reply. *Cur. adv. vult.*

COURT OF COMMON PLEAS.

Friday, Nov. 15.

MARRIAGE *v.* MARRIAGE.

The defendant being indebted to the plaintiff, executed a bond conditioned for the payment of interest on the debt during the life of plaintiff and his wife and the survivor, which the plaintiff agreed to accept in lieu of the original debt, but, in case of default in payment of the interest within twenty-eight days after demand, the original debt was to become due and payable:—Held, on special demurrer, that a plea to an action on the bond, of payment generally was bad for not shewing whether the defendant had paid the original debt or the interest according to the condition. Quære, whether such a bond is within 4 Anne, c. 16, s. 12? Semble—The bond is not a deed requiring enrolment under the Annuity Act, 53 Geo. 3, c. 141.

Debt on bond in the penal sum of 4,000*l*.

The condition (set out by the defendant on oyer) recited that the defendant, being indebted to the plaintiff in 2,000*l*. it had been agreed that the plaintiff should accept the payment of interest on the debt at 5 per cent. per annum, during the life of himself and his wife, and the life of the survivor, instead of payment of the debt of 2,000*l*. The interest was agreed to be paid half-yearly, and on the due payment thereof the bond was to be null and void, but in case of failure of payment of all or any part of the interest in twenty-eight days after demand thereof in writing, the bond was not to be in discharge of the 2,000*l*. debt, but the same was then to become due and payable. The defendant pleaded—1st, *Non est factum*; 2nd, That the bond was made after the passing of the Annuity Act, 53 Geo. 3, c. 141; that the annuity was granted to the plaintiff for a pecuniary consideration, and that no memorial thereof was enrolled within thirty days pursuant to the Act; 3rd, Payment before action of all sums due on the bond. Special demurrer to 2nd and 3rd pleas.

Manning, Serjt. in support of the demurrer.—First, as to the third plea. The statute 4 Anne, c. 16, s. 12, provides only for a plea of payment to an action on a bond conditioned for the payment of a lesser sum, where the *principal* and interest due by the condition have been paid, which shews that the present is not a bond within that statute. The condition besides, being in the alternative, the defendant should have shewn which he had performed. On this point the Court stopped him. As to the third plea, he submitted that this was not a deed which required enrolment under 53 Geo. 3, c. 141, and cited, in support of this, *Frost* v. *Frost* (3 B. & Ad. 612, note *a*); *Cumberland* v. *Kelley* (3 B. & Ad. 602); and *Blake* v. *Attersoll* (2 B. & C. 875).

The COURT said the present seemed very closely to resemble *Frost* v. *Frost*, and called on

Byles, Serjt. in support of the pleas.—The plea of payment, though bad at common law, is good by virtue of the statute 4 Anne, c. 16, s. 12. (*Hodgkinson* v. *Wyatt*, 13 Law J. N. S. Q. B. 73.) There Patteson, J. says, "Any payment which, if made at the very day, would be pleadable as a defence at common law, may if made after the very day, and before action, be pleaded under that statute." That case was where the interest, by way of annuity, was payable for a certain number of years; the question here will be, whether an annuity bond for lives is not equally within that statute.

TINDAL, C. J.—The objection to this plea is, that you have put both the sums together; you do not say whether you have paid the annual sum of 100*l*. or the 2,000*l*. debt. The interest is payable at particular days, but the original debt is only on a contingency; the plea leaves it uncertain which has been paid.

The rest of the COURT concurring,

Byles, Serjt. asked for, and obtained, leave to amend, on payment of costs, and production within a week of an affidavit, that all interest had been paid before action brought;—otherwise,

Judgment for the plaintiff.

RANNIE *v.* IRWIN.

An agreement in the sale of the goodwill of a trade that the vendor shall not supply any of the customers then dealing at the shop without the consent of the purchaser, is not such a restriction of trade as to make the contract void.

The words "term" and "time" in an agreement are convertible terms, and the former will be construed to mean the latter when the manifest intention of the parties is to use it in that sense.

The declaration in this case, after alleging the defendant to have been possessed of a shop and premises, No. 36, Berners-street, for the residue of a term of

years, which expired on 29th September, 1842, stated, that by an agreement made on 1st July, 1842, between the plaintiff of the one part, and the defendant of the other part, the defendant, in consideration of the sum of 250*l.* agreed to assign to the plaintiff the remainder of the then unexpired term in the said shop and premises, and to procure from the landlord a lease of the premises for fourteen years from the expiration of the then term, and to assign to the plaintiff the same, and also the goodwill of the defendant in his business of a baker. And further, the defendant agreed not to set up or carry on, directly or indirectly, during the remainder of the then term, and the whole of the intended term, the business of a baker, within the space of one mile from 35, Berners-street, and also that he, the defendant, would not, during the remainder of the then term, and the whole of the intended term, solicit the custom of, or knowingly supply bread or flour to, any of the customers then dealing at the shop at 35, Berners-street, without first obtaining the consent of the plaintiff in writing:

The declaration having set forth the agreement, averred mutual promises, payment of the consideration-money according to the terms of the agreement, and that the defendant procured from the landlord a lease for the term of fifteen years and one quarter from 24th June, 1842, and assigned such lease to the plaintiff, who then accepted the same in lieu of the assignment of the new lease mentioned in the agreement.

Breach—That after the agreement and after the assignment of the last-mentioned term, and during the continuance thereof, to wit, on, &c. the defendant did, without first obtaining the consent of the plaintiff in writing, knowingly supply bread to R. Thompson and Henry Joseph Brock, customers dealing at 35, Berners-street, at the time of making the agreement, contrary to the agreement.

To this declaration the defendant demurred specially.

Byles, Serjt. in support of the *demurrer*, relied on two objections. 1st. That the latter part of the restraint in the way of trade imposed on the defendant, viz. the not supplying bread to the customers, was unreasonable. 2nd. That the breach assigned was not a breach which occurred during the continuance of the then term, and the whole of the intended term within the meaning of the agreement. In support of the first objection, he contended that no case had gone further than to decide that a restriction limited in point of space was not bad, and submitted that a restriction as to dealing with customers generally was unreasonable, when the customers were not scheduled or otherwise specified by name in the agreement. He referred to *Hunlocke* v. *Blacklowe* (2 Wm.'s Saund. 156), and to note(1) to the same case, where Mr. Serjt. Williams says: "For the same reason it seems that a bond, covenant, or promise not to use a trade with *particular customers*, by name, if founded on a good consideration, is also valid." *Ward* v. *Byrne* (5 M. & W. 557) was also referred to. As to the second objection, he submitted that as the breach was alleged after the assignment of the last-mentioned term, and during the continuance thereof, it was, therefore, during the substituted term, and not the term mentioned in the agreement.

Tindal, C. J.—What was the meaning of the parties as to the word term? It was not used with reference to the premises, but only to the time.

Byles, Serjt.—As here pleaded, the word "term" means estate.

Tindal, C. J.—At all events the words "term" and "time" are convertible terms, and I can't help seeing that the parties meant that the agreement should continue until the substituted term had expired.

Channell, Serjt. contrà, was directed to confine himself to the first objection; as to which he cited *Hitchcock* v. *Coker* (6 A. & E. 438); *Mallan* v. *May* (11 M. & W. 653); *Gale* v. *Reed* (8 East, 80).

Byles, Serjt. replied.

Tindal, C. J.—Upon the best construction which I can put on this argument, it does not appear that there is such a restriction of trade as to make it void. The first part of the agreement, by which the defendant agreed not to carry on the business of a baker within one mile from the premises, was admitted to be valid, but it was submitted that where the defendant contracts that he would not during the remainder of the term supply bread or flour to the customers who dealt at the shop at the time of making the agreement, was unreasonable, and rendered the contract void. Now, the first observation to be made on this is, that it is not a general restriction from dealing with anybody, but only with a limited number well known at the time of the contract, and to none better than the defendant himself. If, therefore, the parties remained as they were, this would not carry it further than the first part of the contract; but it was suggested that if the parties wandered from the premises, the restriction would prevent the defendant from supplying his former customers wherever he might carry on his trade. I do not see why, if the contract is reasonable at the time it is made, we are bound to see any extravagant supposition or contingency which may possibly arise, but must be very rare, in order to render the contract void. The present case seems not to extend further than that of *Hunlocke* v. *Blacklowe*. There, it is true, the point was not actually decided, but probably it was because it was thought that the restriction was not unreasonable. Here, though the customers were not named in the schedule as in *Hunlocke* v. *Blacklowe*, they were in the books of the shop, and were well known to the defendant, and were therefore virtually limited.

Coltman, J.—I agree to the principle that a restriction of trade ought not to extend beyond what is reasonable for the protection of the vendee. The present seems to be only reasonable for this. The case of *Hunlocke* v. *Blacklowe* was nearly the same as this, and the counsel in it did not consider it an objection.

Maule, J.—The general rule that contracts in restraint of trade are void is not so much for the sake of the traders, but for the public at large. The exception to the rule is founded on the principle of the rule itself, and is in effect to impose such restraint as may be convenient in order to effect a sale of the goodwill. The objection here is, that the restraint imposed is beyond that limitation; now the restraint is, that the defendant would not knowingly supply bread to any of the customers, &c. This probably would exclude the case of a vendor and customer residing in a distant land; but if not, I don't think a case of such extraordinary occurrence makes the restriction void.

Erle, J. It appears to me to be reasonable that in every assignment of the goodwill of a trade there should be a restriction against the seller getting back the customers of the trade, and I cannot suppose that by such a restriction the public can be in anywise prejudiced. In *Hunlocke* v. *Blacklowe*, the attention of the Court was not directed to this point, but the judgment given was, that the plaintiff should recover on a covenant such as the present. In *Ward* v. *Byrne* there was restriction as to place. It is remarkable that in that case the judgment of the Court is founded on the covenant being absolutely restricted in place, and not one of the judges adverts to the restraint against dealing with customers.

Byles, Serjt. obtained leave to amend within a week on payment of costs, and undertaking to plead issuably, and not to bring a writ of error, otherwise,

Judgment for the plaintiff.

Beckett v. Bradley.

Declaration in covenant stated that plaintiff was possessed of certain shares in a railway company, and that, by deed between the plaintiff and defendant, the former demised to the latter the dividends on the shares at a certain rent, which the defendant covenanted to pay. Breach—Non-payment. The defendant craved oyer of the deed, and the plaintiff set it out for him. The deed contained a recital that the plaintiff was so possessed of the shares. Held, that the defendant was estopped from traversing the allegation in the declaration that the plaintiff was possessed of the shares.

Also that the plaintiff might take advantage of this estoppel on demurrer, and need not reply it.

The declaration in this action, which was on covenant, commenced with stating that theretofore, and at the time of making the deed thereinafter mentioned, the plaintiff was a member of the North Midland Railway Company, and as such was possessed of or entitled to certain shares therein, (to wit) equivalent to twenty shares of 100*l.* in amount, with the dividends payable thereupon half-yearly or otherwise, when and as the same should be thereafter declared and made by the said company; and the declaration then set out a deed made the 20th November, 1841, between the plaintiff and the defendant, by which the plaintiff demised to the defendant, for the term of ten years from 1st July, 1841, the dividends as should thereafter during such term be made upon or in respect of twenty shares of 100*l* each in amount in the said undertaking of the North Midland Railway Company, at the yearly rent of 100*l.* payable half-yearly, with a covenant on the part of the defendant to pay such yearly rent to the plaintiff at the times appointed for payment. Breaches—for non-payment of several half-years' rent.

The defendant craved *oyer* of the deed mentioned in the declaration, and the plaintiff afterwards set the same out in the pleadings, the defendant omitting to do so. In this deed so set out there appeared the following recital—"Whereas the said Eleanor Beckett is a member of the North Midland Railway Company, and as such is possessed of or entitled to certain shares therein equivalent to twenty shares of 100*l.* each in amount, with the dividends payable thereupon, half-yearly or otherwise, when and as the same shall be hereafter declared and made by the said company."

The defendant pleaded that the plaintiff, at the time of making the deed, was not possessed of or entitled to shares in the North Midland Railway Company equivalent to twenty shares of 100*l.* in amount, with the dividends payable thereupon in manner and form, &c.

To this plea the plaintiff demurred specially; assigning, amongst other causes, that the defendant was estopped by his deed from pleading the plea.

Channell, Serjt. in support of the demurrer.—There was no necessity to allege that the plaintiff was possessed of any shares; it is the same as in the case of an ordinary lease; and there the declaration at once begins with the deed. In Coke Litt. L. 2, c. 7, s. 58, 48 b. it is said, "it is a good plea for the lessee to say that the lessor had nothing in the tenements at the time of the lease, except the lease be made by deed indented, in which case such plea lieth not for the lessee to plead." *Bowma* v. *Taylor* (2 A. & E. 278) shews that there may be an estoppel by matter of recital. Where the matter arises on the pleadings, the estoppel may be taken advantage of on demurrer; as to which, *Lawson* v. *Trimmer* (1 A. & E. 792) and *Ghanter* v. *Leese* (4 M. & W. 295) were referred to. He then argued that the traverse was improper in being confined to the time of making the deed; but this is here omitted, as the opinion of the Court was expressed only on the first point."

Byles, Serjt. contrà, admitted that the defendant would have been estopped if the plaintiff had contented himself in setting out in the declaration the deed and recital; but that having thought proper to allege a substantive allegation by way of inducement, the defendant was entitled to traverse it. "*Palmer* v. *Ekins* (2 Ld Raym. 1551): "If the defendant plead *nil habuit in tenementis*, and the plaintiff replies *habuit*, &c. the jury may find the truth, notwithstanding the indenture."

Tindal, C J.—The plaintiff may, if he thinks proper, waive the estoppel and go to trial. Suppose the plaintiff had replied to the indenture and relied on the estoppel, would not the defendant have been estopped? If so, may he not bring it before the Court by demurrer?

Byles, Serjt.—The defendant is thereby deprived of rejoining fraud. If he had not traversed this allegation, he would have gone to trial with it admitted.

Tindal, C.J.—The action is on the covenant; if defendant entered into it, what does it signify whether such allegation is admitted or not? *Palmer* v. *Ekins* shews that, if the estoppel appears on the record, it need not be replied.

Byles, Serjt.—There is no identity between the shares in the introductory part of the declaration and the shares mentioned in the deed.

Maule, J.—If the shares are different, then no estoppel will arise. *Judgment for the plaintiff.*

Doe dem. Morgan v. Powell and Another.

"I agree to let and grant a lease" are not terms of actual demise, but an agreement merely.

Talfourd, Serjt. shewed cause. The first question was whether the document, which bore date the 2nd February, 1838, was an actual demise of certain coal-mines, or only an agreement for a lease. There was no evidence to raise the implication of a tenancy. The agreement stated that the proprietor of the coal-mines agreed for his executors, &c. "to let and grant a lease" to the plaintiff of all his coal-mines in the parish of Aberdare, at 9d. per ton, customary weight for shipping purposes in the county of Monmouth. This was not a lease giving a present interest, but only an agreement to execute a lease *in futuro*. Something uncertain was to be ascertained. It was a mere incipient note of that which might be enforced in equity, but has no force in law.

Cases cited: *Perring* v. *Brook* (1 M. & Rob. 510); *Morgan* v. *Bissell* (3 Taunt. 65).

Byles, Serjt. in support.—There is no case in which an agreement for a lease has been held applicable to mining property. Here no surface-land was granted, and the agreement could only operate as a license.

Case cited. *Jones* v. *Reynolds* (1 Q. B. 506).

Sir *T. Wilde*, Serjt. contrà.—This is a lease. The term is to commence from the date of the agreement, beginning on the 2nd Feb. and to continue for seventy years. The grantee is to begin to work before the 24th of June, and is also empowered to put an end to the term on giving six months' notice: that shews that he had a present interest. The rent is to commence at a certain time, the period at which the lease is to be granted, which is to be as soon as it can be prepared. It was intended that the parties should take a present interest and occupy under the agreement, which would consequently have the operation of a lease.

Cases cited: *Poole* v. *Bentley* (12 East, 168); *Doe* v. *Groves* (15 East, 245); *Doe* v. *Benjamin* (9 A. & E. 644); *Doe dem. Pearson* v. *Rees* (1 Moo. & Scott, 259; 8 Bingham, 178); *Doe dem. Jackson* v. *Ashburner* (5 T. R. 163); *Doe dem. Boscawen* v. *Bliss* (4 Taunt. 735); *Jones* v. *Reynolds* (1 Q. B. 506); *Goodtitle* v. —— (1 T. R.)

Tindal, C. J. delivering judgment.—On the best construction which I can give to this instrument, I think it amounted to an agreement only. The first question is, are these words of actual demise? and next, was it intended that immediate possession should be taken of the premises? "I agree to let and grant a lease," is an expression which throws at least some doubt upon the point whether there was an intention of present demise. The plaintiff also agreed to accept a formal lease

as soon as it could be prepared. This seems to me to throw as much doubt upon the intention of the party to act upon a mere instrument like the present, that I should rather say, if I had to determine the question upon this point only, that the words of the instrument amounted to granting a future lease. But then comes the next question, whether there was any immediate possession intended to be taken? I think not, and that the nonsuit was right.

The other judges concurred. *Rule discharged.*

Tuesday, Nov. 19.

BUSH and ANOTHER *v.* SAYER.

The mere fact of an attorney of the court bringing an action for the amount of his bill, which bill is for business, the items of which are not taxable by the Court, but which under the 6 & 7 Vict. c. 73, are to be taxed by another court, will not give the Court jurisdiction, on the ground of the attorney being one of its officers, to tax his bill.

Talfourd, Serjt. shewed cause against a rule *nisi* to rescind an order made by Coltman, J. by which certain bills of costs of the plaintiffs had been directed to be taxed. The order had been made under the 6 & 7 Vict. c. 73, s. 37. The bills had been delivered more than twelve months, not signed, but were accompanied by a letter referring to them. The delivery was in March 1843, and in May 1844, Coleridge, J. had refused an application to tax one of the bills, on the ground of not having jurisdiction. The plaintiffs subsequently brought an action in this court, to recover the amount of their bill, which was not taxable before the late Act, and the action being so brought in this court, the learned judge (Coltman) conceived that he had jurisdiction to make the order. A petition had been dismissed by the Master of the Rolls, praying for an order to have the bills re-delivered and signed; but that decision had proceeded upon the principle that the delivery was sufficient, in consequence of the bills being accompanied by the letter referring to them. When the order was made by the learned judge, he was of opinion that there were special circumstances under which, by the authority of the statute, he might make the order. It was a matter of surprise this order should be opposed; as, if the cause went to trial, the Court and the jury would, in effect, tax the items; or, failing that, it would become the subject of reference. The statute is retrospective, and does not take away the common law right and jurisdiction of the court in which an action is brought by one of its officers, over that officer. The object of the statute was to provide for every species of business where the client desired to have the bill taxed. The Master of the Rolls has jurisdiction now over bills for business done in neither court, such as conveyancing. But there is nothing in the statute to take away the antecedent power and jurisdiction of the Common Law courts. It may be said this bill cannot be referred to be taxed, because delivered twelve months before application made. But if so, that would raise the question whether there were, in this case, special circumstances. [ERLE, J.—You contend that this Court has, under the new statute, jurisdiction when an action is brought. Suppose a bill not taxable but by reason of action brought, has the Court from that fact jurisdiction?] No, my lord, I mean to say, the circumstance of an action being brought, that which was not antecedently taxable, but the subject-matter being made taxable by the statute, gives the learned judge jurisdiction. [MAULE, J.—In this bill, the items are not taxable in this court. It would be a curious thing to say, that by bringing an action this Court could tax items not taxable in this court.] The effect of that would be, the action is to be brought in one court, and the costs to be taxed in another. [MAULE, J.—Bringing an action will not give jurisdiction where there is a proper tribunal for trying the question. The jurisdiction is in the equity judges, unless you can shew we have concurrent jurisdiction.]

Rule absolute.

GOODALL *v.* POLHILL.

Bill of exchange—Notice—Agency.

Shee, Serjt. moved for a rule *nisi* why the verdict in this cause, which had been found for the plaintiff, should not be entered for the defendant. The action had been tried by Cresswell, J. during the present Term, and had been brought to recover the amount of a bill of exchange for 120*l.*; the plea being, that no notice of dishonour had been given to the defendant, the drawer. The bill bore several foreign indorsements, and there was a memorandum on the face of the bill to apply to the plaintiff in case of need. The bill was presented on the 2nd Feb. and dishonoured. It was paid by the plaintiff on the 3rd Feb. for the honour of De Koss Rylandt, at Bruges, and on that day was sent by the plaintiff to them by the foreign post; they received the bill in due course, and by the earliest post returned it to the plaintiff, who received it on the 8th Feb. and gave notice on that day. The notice is not sufficient. (*Daly* v. *Slatter*, 4 C. & P. 200.) [MAULE, J.—The objection here is, he took an additional day.] This notice was not in time. If the plaintiff was an agent at all, he was an agent for all purposes, not only to pay, but to give notice. But he is not an agent at all. The person who pays a bill for the honour of another is the indorsee of the bill, and it is only in that character he can sue here. (*Mertens* v. *Winnington*, 1 Esp. 112; Chitty on Bills of Exchange, 509; Code de Commerce, 159.)

Rule nisi.

ABBOTT *v.* DOUGLAS.

Byles, Serjt. moved for a rule *nisi* why the judgment on a warrant of attorney on annuity-deeds should not be set aside, and the annuity-deeds given up, on such terms as should be suggested by the Court. The annuity had been granted on a loan effected in 1828, and for which it was agreed 50*l.* a year should be given; the security to be the assignment of the office and fees of the situation of registrar of the archdeaconry of Norfolk.

The grounds on which the rule was moved for were:—

1st. That the consideration was not properly stated in the memorial.

2nd. The whole transaction was illegal and void, because the payment of the annuity is secured by the illegal assignment of an office and its profits.

3rd. That a portion of the consideration money was illegally retained.

4th. There is a covenant in the deed to allow the grantee to take one shilling in the pound out of the fees of the office.

Cases cited: 2 Brod. & Bing. 19; *Wood* v. *Phelp* (5 Moore). *Rule nisi.*

Ex parte FYNDLATER.

Attorney's bill—Taxation.

Byles, Serjt. moved for a rule *nisi*, why an attorney's bill should not be taxed. The bill had been delivered and paid within two days of the twelve months, under protest. [MAULE, J.—You surely ought to shew yourself, in your affidavit, that you are within the twelve months.] The application was made on the ground of special circumstances, and the special circumstance here was the protest. *Rule refused.*

LANGLEY *v.* FAIRCLOUGH.

Where the plaintiff proceeds to trial, and is nonsuited in consequence of the absence of his attorney and witnesses, the Court will not set the nonsuit aside; the record in such a case should have been withdrawn.

Talfourd, Serjt. shewed cause against the rule for a new trial in this cause, on the ground that the attorney for the plaintiff had been prevented from being present at the trial. The affidavit set forth the facts of the cause of the delay, alleging the misconduct of one of the witnesses.

The question was, whether, under the circumstances, any indulgence ought to be allowed.

Dowling, Serjt. contrà, stopped by the Court.

TINDAL, C.J.—The plaintiff had the power, when the cause was called on, to withdraw the record. He has not chosen to do so, and we do not think it right to take from the defendant that right to the position he has obtained by having a nonsuit.

Rule discharged with costs.

Wednesday, Nov. 20.

BURGESS *v.* BEAUMONT.

Declaration for breach of an agreement to maintain the plaintiff as a governess to the defendant's children. A plea alleging, as a justification, that the plaintiff was dishonest, immoral, and unfit for the situation, is bad for uncertainty, in not particularizing any act of dishonesty or immorality.

The declaration was for the breach of an agreement by which, in consideration that the plaintiff would act as governess to the defendant's children, and, in the meanwhile, provide herself with masters, and fit herself for the situation, the defendant promised to supply her with certain sums of money for her maintenance.

Plea—That the defendant entered into the agreement on the representation of the plaintiff that she was an honest, moral, and fit person for the situation of governess of defendant' children. The plea then alleged that, before breach, the fact was that the plaintiff was dishonest, immoral, and unfit, and had become a person whom it would have been very improper for the defendant to have employed as governess for his children, and therefore the contract had been rescinded. To this plea there was a special demurrer, on the ground that the plea did not specify any acts of immorality or dishonesty.

Talfourd, Serjt. in support of the demurrer, cited *I'Anson* v. *Stuart* (1 T. R. 748); and *Jones* v. *Stevens* (11 Price, 235).

Byles, Serjt. contrà, drew a distinction between cases of contract like the present and libel, where the defendant is a wrongdoer; citing *Young* v. *Murphy* (3 Bing. N. C. 54).

The COURT, however, said that the plea was too general, as under it the plaintiff would have to be prepared with evidence of her conduct during the whole time since the making of the contract, without knowing on what particular act the defendant intended to rely. *Judgment for plaintiff.*

GRIFFITHS *v.* DUNNETT.

Declaration for assault and battery, and forcing and compelling plaintiff, then being weak and sick, to stand on deck for an hour in an upright position.

Plea pleaded to the forcing and compelling, &c. alleging a justification. Held bad, as being pleaded to matter of aggravation only.

Declaration, for assault and battery, and forcing and compelling plaintiff, then being weak and sick, to stand on deck for an hour in an upright position.

Plea pleaded as to the forcing and compelling the plaintiff to stand, &c., that defendant was the master of a vessel in which the plaintiff was a mariner; and then justifying the same on account of mutinous and riotous conduct of the plaintiff. To this plea there was a demurrer.

Channell, Serjt. was called on by the Court to support the plea; he submitted that "forcing and compelling" included an assault.

The COURT said it was only matter of aggravation, and therefore the plea was bad.

Judgment for plaintiff.

EDGELL *v.* CURLING.

A writ of subpœna ad testificandum is void if tested in vacation instead of Term.

The *declaration*, after alleging the pending of a cause between the plaintiff and one Spencer, and that such proceedings were had that the cause came on to be tried on the 19th Dec. 1843, stated, that a writ of *subpœna duces tecum* was sued out before the trial, and served on the defendant, and that the defendant was then paid a reasonable sum for his attendance as a witness. The declaration then alleged that the attendance of the defendant and the production of the documents mentioned in the *subpœna* were material to the trial of the cause, and that the defendant neglected to attend or produce the documents, and that on account of such neglect the plaintiff was obliged to withdraw the record.

The defendant in his plea set out the writ of *subpœna*, the *teste* of which was "at Westminster, the 6th day of December, in the 7th year of our reign;" and then alleged that the writ being tested in vacation instead of term time, was void in law. To this plea the plaintiff demurred.

Channell, Serjt. in support of the demurrer.—Ordinarily writs were only tested in term time, but exceptions had been made as to this, by the 2 Wm. 4, c. 39, s. 12, and the 3 & 4 Wm. 4, c. 67, s. 2, and it would be contended, on the other side, that the present did not come within those exceptions. If not within the letter, it was within the equity of those statutes, and it seemed reasonable that, as the jury process and writs of execution might be tested on the day on which they were issued, the writ of *subpœna* might be tested so also. At all events, the writ was not absolutely void, but the defective teste was only an irregularity. *Shirley* v. *Wright* (2 Salk. 700) will be relied on by the defendant; there Holt, C. J. says, "If a writ of execution bear teste out of Term, the sheriff is justifiable, and yet shall not be liable to an action of escape, for it is a void writ." *Hart* v. *Weston* (5 Burr. 2586), which was the case of a *latitat*, was also referred to.

Sir *Thomas Wilde*, who appeared for the defendant, was not called on—

The COURT saying that a *subpœna* was as much a process as a *latitat*, and must equally be sued out only when the Court is sitting.

Judgment for the defendant.

Monday, Nov. 18.

REGISTRATION APPEALS.

BOROUGH OF WESTMINSTER.

PITTS, Appellant, *v.* SMELEY, Respondent.

By the COURT.—The case seems to state only evidence, and no facts. The case must be sent back to the revising barrister for correction.

BOROUGH OF TEWKESBURY.

WHITHORN, Appellant, *v.* THOMAS, Respondent.

Decisions of Election Committees of the House of Commons are not authorities in appeals heard in this court.

The residence of a claimant to vote in a borough must be bonâ fide; paying a weekly sum for the use of a bed-room, the party's residence being in another town, and the payment being made merely for the purpose of acquiring a vote, is not sufficient, the Court holding such a residence to be merely colourable.

The appellant claimed to have his name inserted in the list of freemen for the borough of Tewkesbury. The claimant and his family resided in Gloucester, which is more than seven miles from Tewkesbury. With the object of obtaining a vote in the latter borough, he paid to a Mr. Sproule, who was the agent for one of the sitting members of the borough, the sum of 9d. a week for the use of a furnished bed-room, with a closet six feet by three feet, of which he kept the key. Between January and July, 1844, he kept some wine samples in it. He had slept, during

that period, in the bed-room, and, during the year 1844, sixteen times, on the occasion of his coming to Tewkesbury on business. He had never taken any meals there, and Mr. Sproule never let lodgings to any other person, and the arrangement was made for the purpose of qualifying the appellant as a voter for the borough. The barrister decided that the vote was bad. If the Court should be of a contrary opinion, the voter's name to be placed on the list of freemen of the borough.

Byles, Serjt. for the appellants.—The purpose of this residence being merely to gain a vote will not disqualify. It is immaterial what the motive of the tenant was, the meaning of the term residence is defined in *Rex* v. *Sargent* (5 T. R. 466); *Col. Chaquers* (1 Peck Elec. Ca. 64 and 389), which is a decision of the House of Commons. [TINDAL, C. J.—As far as the reasoning goes you may use it, but as an authority it will not be received here.] With respect to residence, it would be no objection that a gentleman residing in London should take a house in Brighton, and sleep there occasionally; that would be a residence sufficient to qualify. The nature of the residence in this case was quite sufficient; the party had slept in Tewkesbury twelve times during the half-year in which residence is required by the Act of Parliament. This is within the old cases where inhabitancy is required under the 13 and 14 Car. 1, c. 12, the question turning upon where the parties sleep, *Rex* v. *Castleton* (Burr. Set. Ca. 569); *Rex* v. *The Inhabitants of Brighton* (5 T. R. 188). Here the claimant slept the four nights immediately in the beginning of the half-year. [MAULE, J.—He may have slept the first four nights, but there was nothing to shew the *animus revertendi*.] There was always the intention to occupy when the claimant came to Tewkesbury on business. Fraud is never presumed unless found by the revising barrister. Here a portion of the house is actually hired. The claimant might bring an action of trespass. Here no abuse could follow from allowing this vote, because municipal rights cannot be acquired, except by parties having an immediate connection in the borough.

Cockburn, Q.C. for the respondent.—The argument that no abuse could take place by admitting this vote is unfounded. It was one of the objects of the Reform Act to destroy the votes of non-resident freemen. If the Court hold this to be a sufficient residence, all the evils which the 2 Wm. 4, c. 45, was intended to cure would be renewed. *Rex* v. *Richmond* (6 T. R. 560) was a much stronger case than the present, for here the party was never any thing more than a guest. The definition of the word reside is laid down in *Rex* v. *The Inhabitants of North Curry* (4 B. & C. 959). The fact of Mr. Sproule being an agent of one of the sitting members shews that the claim is not *bonâ fide*. The residence here is not for the purpose of residence, but merely colourable for the purpose of obtaining a vote, and therefore not such a residence as that contemplated by the legislature.

Byles, Serjt. in reply.

TINDAL, C. J. delivered judgment.—This question arose on the 27th section of the 2 Wm. 4, c. 45. By the proviso at the end of the section it was enacted, that in order to qualify the elector to vote, he must have resided six calendar months next previous to the 31st of July within such city, borough, &c. Now the question is, whether upon the facts stated in the case there is enough to say that the revising barrister has done wrong, and I hold it not to be so. In point of law, did this amount to a residence? It appears to me no such conclusion can be drawn from the facts. I do not mean to say that the object and motive of a man's residing in a borough can be supposed for a moment to detract from the legal right to be placed on the register. The question will always be, whether there has been a sufficient *bonâ fide* residence. On the present occasion, certain facts were stated, and from them the revising barrister formed his conclusion. It must be assumed that none more favourable for the appellant existed than were found in the case. What then were the facts on which the Court is called upon to say that in point of law the appellant resided in Tewkesbury. That he had a residence in Gloucester was beyond all doubt. It was there where his wife and family lived. All that is stated as to the borough of Tewkesbury is, that Mr. Sproule, an agent of one of the sitting members of the borough, agreed to let the appellant have the use of a furnished bed-room at the rate of 9d. a week, together with a dark closet, six feet by three. First of all, the mere payment of this equivalent, or satisfaction, that would not make such a residence as that required by the Legislature. Next, the mere occupation of a dark closet, keeping the key, that would not constitute a residence. Residence is something more than that; it must mean an actual occupation by being there some time by himself or by his family. There must be an *animus residendi*. Here the claimant has slept in the bed-room sixteen times during the last twelve months. It is not at all stated when he slept the first four nights, and as to the other twelve, they took place within the last half-year terminating in the month of July. It might have been on the last twelve days. Is there to be no distinction exercised in adjudicating upon facts? I think the revising barrister was a judge upon the occasion, and had a right to have laid before him the various facts, and it was for him to say whether there was an *animus residendi*. I think the revising barrister, finding no other facts but those before him, has drawn the right conclusion, and that his decision must be affirmed.

The other judges delivered similar judgments.

Decision affirmed, with costs.

SOUTH LANCASHIRE.

GADSBY, Appellant; WARBURTON, Respondent.

Stating the name of the place of abode of the objector as such place of abode is described in the list of voters is a sufficient compliance with the requirements of the Act.

In this case the respondent's name was on the list of voters for the southern division of the county. A notice of objection to his vote had been sent by the appellant in the following form: "To Mr. Samuel Warburton, of Newton, near Hyde, Cheshire.—Take notice that I object to your name being retained in the Harpule list of voters for the southern division of the county of Lancaster. Dated, &c. Signed John Gadsby, of Poplar-grove, Didsbury, in the register of voters for the township of Manchester," and his place of abode was there stated to be Poplar-grove, Didsbury. The revising barrister held the notice of objection to be insufficient, conceiving that something more was required to be added to the objector's place of abode, as "Lancashire," or "near Manchester," and he retained the respondent's name on the list without calling upon him to prove his qualification.

Cockburn, Q. C. and *Kinglake*, Serjt. fo. the appellant.—The first question was, was the description of the objector's place of abode sufficient? Secondly, if not sufficient in itself, was it rendered so in consequence of the description being the same as that contained in the notice of claim? Here the objector has strictly followed the directions of the 6 Vict. c. 18, sch. A, No. 5. The object of the statute was to enable the party objected to to identify the objector. Even if the description were incorrect, still, being exactly the same as that described on the list of voters, he is properly described in the notice of objection.

Cardwell, contrà.—The objector was not sufficiently described. There may be many Didsburys in the same county, as there were many Newtons. It was important the objector should be identified, for the purposes of costs, in cases where they might be given. There is nothing in this case to justify the Court in finding that the revising barrister was concluded in law from finding the notice insufficient. Parties objecting should be held strictly to the letter of the Act, otherwise great abuse of the power of objecting would take place. Here, too, the objector might have changed his place of abode, so that his actual residence, and that described on the register, would be different.

Cockburn, in reply.

TINDAL, C. J. delivering judgment.—The test by which to know whether this notice is good in law, is to place it side by side with the notice in schedule No. 5 of the 6 Vict. c. 18. In this case there is an exact compliance with the form. It is quite sufficient to describe the objector as of the township of Didsbury. It has been objected that there might, by possibility, be two townships called Didsbury, and that, therefore, the objector should have added Lancashire to that contained in his notice. But the object of the Legislature was, that the party's name should appear on the list of the county voters, that being the place where the party would naturally look for it. It seems to me sufficient in this case, inasmuch as the appellant's name and place of abode were upon that list.

The other judges gave judgment to the same effect.

Decision reversed.

GADSBY, Appellant, v. BARROW, Respondent.

A party claiming to vote as a yearly tenant of the value of 50l. must hold the whole of the qualifying premises under one landlord. Having premises under different landlords, the aggregate rent of which amounts to more than 50l. is not sufficient.

The respondent's qualification was described on the list of voters for the county as being "land and building at a rental of 50l. and upwards." The holding was under two different landlords, to one of whom he paid 35l. a year and to the other 20l. a year. It was objected that he did not occupy as tenant under one and the same landlord, and that he could not unite the two occupations so as to qualify him to vote as occupying tenant of land or tenements for which he was *bonâ fide* liable to a yearly rent of not less than 50l. The revising barrister decided that the respondent was such occupier within the meaning of the Act, and the objection was disallowed.

Cockburn, Q. C. and *Kinglake*, Serjt. for the appellant.—The question arises on the 2 Wm. 4, c. 45, s. 20, and it is quite clear the Legislature intended that the holding, to qualify, should be under one and the [illegible] "yearly rent" in the [illegible] the importance [illegible] the condition that the [illegible] qualification under one landlord [illegible] Reg. Cases, 27) in [illegible] in favour of this view. The [illegible] are to be read in the [illegible] a combined rent of 35l. and 20l. a year does not constitute a rent of 50l. a year within the meaning of the statute.

Cardwell, contrà.—The words of the 20th section, interpreted by the 27th section, must necessarily mean lands, whether held under the same or different landlords. In this case the party was clearly within the 27th section, and the revising barrister could not have excluded him from the list of voters.

Cockburn, in reply.

TINDAL, C. J. delivering judgment.—The question turns upon the proper construction to be given to the latter part of the 20th section of the 2 Wm. 4, c. 45, that section giving, for the first time, a new right of voting. The words being "who shall occupy, as tenant, &c. for which he shall pay a *bonâ fide* yearly rent of not less than 50l." and looking at these words, I think the sense of them to be, not only in grammar but in legal construction, that the party must be liable to a single rent of not less than 50l. The other rights of voting conferred by the legislature in the same section are in furtherance of that being the construction. The 27th section does, in fact, support this reading of the 20th. If there had been any intention to alter the character of the qualification, it would have appeared in the 6 Vict. c. 18. On these grounds it appears to me that the party is not entitled to be in the list of voters, and that, therefore, the construction of the section by the revising barrister is wrong.

The other judges gave similar judgments.

Decision reversed.

ECKERSLEY, Appellant, BARKER, Respondent.

Cur. adv. vult.

BOROUGH OF TOTNESS.

CUMMING, Appellant, TOMS, Respondent.

The stamped duplicate of the notice of objection required by the 100th section of the 6 Vict. c. 18, may be sufficient for the purposes of evidence before the revising barrister either by the party posting such notices, or any other person.

The question in this case was, whether, under the 6 Vict. c. 18, s. 100, the duplicate notice of objection, which is required to be stamped by the postmaster, must be produced by the party who posted the notice. The revising barrister had decided that the party posting the notice was the only person who could prove the delivery.

Cockburn, Q. C. for the appellant.—In this case it makes no difference whether the stamped duplicate is proved by one person or another. The section states that the production, &c. shall be evidence of the notice of objection having been duly posted. All that is intended is that a stamped notice shall be produced. [TINDAL, C. J.—Credit is given to the stamp.] The alteration in the practice was made with a view to obviate the difficulty of proving service under the old system, and the statute should receive a liberal construction.

Kinglake, Serjt. contrà.

Cockburn, in reply, stopped by the Court.

TINDAL, C. J.—I can see no reason why a general maxim of law, *qui facit per alium facit per se*, should not apply here. If you could shew any mischief that could arise by not calling the party, the case might be different. The whole faith and credit is given to the stamp of the postmaster, and the stamp remains the same whether proved by the clerk or the principal.

The other judges gave similar judgments.

Decision reversed.

Tuesday, Nov. 19.

NETTLETON, Appellant; BURRELL, Respondent.

Revising barrister's signature—Jurisdiction of the Court.

Kinglake, Serjt. renewed his application to the Court to receive a statement of facts in this case, which it was alleged the revising barrister had received as the facts agreed to by the appellant and respondent, but which the revising barrister had been prevented from signing by his sudden decease.

The COURT held that the case, being unsigned by the revising barrister, it must be considered as a matter *in fieri*, and that it had no jurisdiction.

Application refused.

Thursday, Nov. 21.

WEST RIDING OF YORKSHIRE.

BAXTER, Appellant; OVERSEERS OF DONCASTER, Respondents.

R. C. Hildyard, Q. C. for the appellant.

Sir *G. Lewin*, on behalf of the respondent.

Cur. adv. vult.

NORTHERN DIVISION OF NORTHAMPTONSHIRE.

DAVIS, Appellant; WADDINGTON, Respondent.

Where the freehold claimed for arises out of the foundation of an hospital, the charter of incorpo-

ration giving the [illegible] them, the power to [illegible] convenient to them, [illegible] tion have not [illegible] of expulsion, an estate for life.

The appellant claimed to be placed on the list of voters for the county, for a freehold house and garden, as principal of Jesus Hospital and the Burbidge, with twenty-three other persons, claimed for appointments as inmates of the hospital. The estate for founding the hospital had been left to five trustees, who were incorporated by the names of Governors of Jesus College; 85*l.* per annum was paid to the principal, and 6*s.* a week to each of the inmates. The principal has a house and garden within the hospital, and each inmate has a room and a piece of ground of the value of more 40*s.* a year. The charter gave the power to the governors to "elect, nominate, assign, appoint, license, deprive, expel, and amove," the principal and inmates, "so often as it shall seem to be convenient to them, or to the greater number of them." They were also empowered to make by-laws for the order, government, punishment, expulsion, amotion, and direction of the principal and inmates. By-laws to this effect were made, but there was no instance of an expulsion under them. The by-laws are still in operation. The objection taken before the revising barrister was, that the power of amotion by the governors was still in full force, and was not limited by the by-laws; and that the principal and inmates had no freehold estate by virtue of their appointment. The revising barrister decided that the objection was valid.

Maunsell, for the appellant.—In this case the appointment is for life, defeasible only on the infraction of the by-laws. The charter gives the governor and corporation the power to appoint and to remove as it seems convenient to them. The word "convenient" has the same meaning now as then, in the time of Elizabeth, and is not to be construed like the phrase *de bene placito*. The by-laws must receive a contemporaneous exposition (*The Mayor of London* v. *Long*, 1 Camp. 22); and in the *Governors of Lucton School* v. *Scarlett*, it was held that, in ascertaining the meaning and effect of a charter, contemporaneous documents, proceedings in causes relating to it, and parol testimony, may be resorted to in order to explain and give to the charter a construction. (*Rex* v. *Varlo*, Cowp. 248; *Mayor of Hull* v. *Horner*, ib. 102; *Rex* v. *Pasmore*, 3 T. R. 288, per Buller, J.)

Byles, Serjt. contrà.—Here there is clearly no estate for life. The legal fee simple is in the corporation; and, not only the legal but the equitable estate also. This is shewn by the words of the charter: The governors shall "elect, nominate, and assign, appoint, license, deprive, expel, and amove, the said principal and the twenty-four infirm men for the time being so often as it shall seem convenient to them or the majority of them." The words are, "*toties quoties sibi aut eorum numero majori fore conveniens videtur.*" It cannot be said these persons have an estate for life under the operation of these words.

Maunsell, in reply, citing *Wilkinson* v. *Malin and Others* (Tyrw. 544).

TINDAL, C.J. delivering judgment.—It appears to me, that the parties who claimed to be placed upon the register did not take a freehold estate. The charter gives the governors the power, whenever they think proper, of nominating and electing the principal and inmates, and then gives the power of removing them so often as it shall seem convenient to the greater number—"*aut eorum numero majori conveniens videtur.*" I can scarcely conceive words more expressive of the intention of the framers than are contained in this charter. The governors are empowered also to make by-laws for the regulation of the hospital; which by-laws are made, in which there is the power of amoving for any offence or for any lawful or reasonable cause. I can conceive many cases of removal, without the party removed having committed an offence; as in the case of one of the inmates becoming suddenly rich. It seems, too, both by the terms of incorporation and the terms of the by-laws, the party did not take a freehold estate.

The other judges delivered similar judgments.

Decision affirmed.

NORTHERN DIVISION OF NORTHAMPTONSHIRE.

SIMPSON, Appellant; WILKINSON, Respondent.

Persons occupying rooms in an ancient hospital, there being no documents to shew whether by feoffment or charter of incorporation, will be presumed to hold by feoffment, and will have such a freehold interest as will confer a vote for the county.

Henry Allen, the voter objected to by the appellant, was on the register of voters for the northern division of the county; his place of abode was described to be "Lord Burghley's Hospital, St. Martin's, Stamford Baron," and the qualification "freehold tenement or room." Allen was appointed one of the bedesmen of the hospital by the Marquis of Exeter. The hospital is freehold, and each bedesman has a room, of which he keeps the key. No bedesman has ever been known to be removed; no deed or enrolment under the 39th Eliz. c. 5, or any letters patent, are known to exist; but there are rules which contain very minute and stringent regulations on the government of the hospital. It was objected before the revising barrister, that there was no freehold estate; that if there was a freehold estate, the bedesmen could only have it as a corporation aggregate; and, thirdly, that if they had any freehold, it was an estate of joint tenancy in the hospital, and not a separate estate in the rooms. The revising barrister decided that a legal foundation might be presumed, not necessarily investing the claimants with a corporate character; and that the bedesmen had a separate estate in their rooms.

Byles, Serjt. for the appellant.—The bedesmen in this case have no freehold. Whether they have a freehold estate depends upon 8 Hen. 6, c. 7, and 10 Hen. 6, c. 2. [*J. Hildyard*.—I shall not contend they have any legal estate.] Then the question is, have they an equitable estate? They cannot sell, mortgage, nor is it extendable under 1 & 2 Vict. c. 110, s. 11. [ERLE, J.—Suppose they had had twenty years' possession and they were not turned out, could they not maintain ejectment?] No, supposing it turned out the estate was in trustees. [*J. Hildyard*.—The barrister has found that they have such an estate as does not invest them with a corporate character.] They have no equitable estate, inasmuch as whatever estate they have is not subject to execution, and could not be sold or extended to debts. The rules referred to in the case were made before the passing of the 39 Eliz. c. 5, and no hospital could be erected before that statute passed, except by the Queen's license. Here there was no legal right, but a mere act of kindness on the part of the Exeter family. The bedesmen being in fact men in the receipt of alms, are disqualified by the 36 sec. 2 Wm. 4, c. 45.

J. Hildyard, contrà.—The main point raised by the counsel for the appellant is one which the Court cannot entertain. When the monasteries were put down in the time of Elizabeth, there were two modes for providing for hospitals for the poor—by feoffments and by incorporation. The revising barrister has decided that in this case the provision was made by feoffment, and the late Act, 6 Vict. c. 18, provides against this Court entertaining the effect or admissibility of evidence. Stopped by the Court.

TINDAL, C. J. delivering judgment.—The only question for the opinion of the Court is, whether the revising barrister was wrong in point of law when he decided that the bedesmen took by way of feoffment. He was justified not only in point of law, but by the facts of the case. He was only to suppose that the feoffment had been made before the 2nd statute, and a license granted; and he had a right to assume that it had been granted. Quite clear this was prior to the 2nd statute, and the law presumes, after such a lapse of time, a feoffment.

The other judges delivered judgment to the same effect.

Decision affirmed.

BURY ST. EDMUNDS.

NUNN, Appellant; DENTON, Respondent.

A building which contains a room, in which a servant of the owner has slept, and which is afterwards converted into a house during the registration year, may be described as a house.

The respondent claimed in respect of the occupation of a house and land. The lower part of the building consists of a cow-house and stable; in the upper part of a room there was a chamber, with a fire-place and a window. There was a staircase from the stable to the chamber; the only entrance to the building being by folding-doors, opening into the cowhouse. The agent of the respondent put his brother-in-law into the building, when he slept in the chamber above mentioned. In December 1843 part of the stable was made into a room, having a fire-place and a door opening into the pasture. The agent continuing to reside in the building, the revising barrister inserted the name of the respondent in the list for "house and land."

Manning, Serjt. for the appellant.—The question is, 1st, whether this is a "building" or a "house?" but the more important question is, if the Court are of opinion that it was a building within 27th sec. Wm. 4, c. 45, in December 1843, whether it did not cease to be a building and become a house; because, if a house, it must have been occupied twelve months, and the facts shew that has not been the case here. The clause of successive occupation does not apply. There was no occupation, the party not being a domestic servant of the owner. [MAULE, J.—Is it necessary for the occupier to be a domestic servant? Would not a non-domestic servant do?] I submit not. [MAULE, J.—There is no doubt at all in this case.] There is another objection; the place of abode is stated "Rushbrook," and the revising barrister has decided that to be good which is bad on the face of it. Rushbrook may be in Cornwall.

TINDAL, C. J.—I do not think you have a right to make this objection. There might have been evidence at the time to explain this.

Byles, Serjt. contrà, stopped by the Court.

Appeal dismissed with costs.

CITY AND COUNTY OF LICHFIELD.

MOSS, Appellant; OVERSEERS OF ST. MICHAEL, LICHFIELD, Respondents.

Where a party has been omitted from the rates, although he is a joint occupier and partner with another, if it appear that the overseers did not know of his occupancy and did not intend to charge him, it is not a case of omission within the statute, and the 75th sec. of 6 Vict. c. 18, does not apply to such a case.

The appellant occupied a house with his father, jointly, twelve calendar months previously to the 31st of July, 1844. The appellant had been omitted from the last two rates; he had tendered the rates to the overseers, who were not aware the appellant occupied. The revising barrister was of opinion that the omission did not constitute an omission within the meaning of the 75th sec. of the 6 Vict. c. 18, and decided that the claim was not made out.

Byles, Serjt. for the appellant.—The question is, whether the claimant has not been virtually rated on the rates made within the last twelvemonth? The father and the son were joint occupiers. The 75th sec. of the 6 Vict. c. 18, carries the 27th sec. of the Reform Act a little further, by providing for cases of inaccurate and insufficient description. Here the parties were partners, and the name of one of the firm being on the rate, calling on one by the collector would be calling on all. (*Reg.* v. *The Inhabitants of Hulme*, 12 L. Jour. Mag. Ca. 100; 3 Wm. 3, c. 11, s. 6.) In the construction of that statute, the total omission of a name, provided the property was charged, was sufficient. [MAULE, J.—Whoever occupies it is charged; in the present case, they charge somebody else.] [ERLE, J.—They charge somebody else, and do not intend to charge him.]

Kinglake, Serjt. contrà, stopped by the Court.

TINDAL, C. J. delivering judgment.—This case does not fall within the 75th section of the 6 Vict. c. 18, which provides for a mistake or *misnomer*, or insufficient description. Two things must concur to give the right. The party must have been *bonâ fide* called upon to pay the rate, and must have paid it.

The rest of the Court concurred.

Decision affirmed.

CITY AND COUNTY OF LICHFIELD.

MARSHALL, Appellant. BROWN, Respondent.

Cur. adv. vult.

BUSINESS OF THE WEEK.

Friday.

WALKER *v.* PETCHELL.—*Kinglake*, Serjt. for the plaintiff (*Fitzgerald* with him). *Channell*, Serjt. for the defendant (*Willes* with him), argued this special case. *Cur. adv. vult.*

Tuesday.

STEWART *v.* PATCH.—To enlarge a peremptory undertaking. *Rule nisi.*

DOE *dem.* HARTLEY *v.* ROE. *Rule nisi.*

CAMAC *v.* WARRINER. *Cur. adv. vult.*

To be reported with the judgment.

Wednesday.

RICHARDSON *v.* MORSE.—*Byles*, Serjt. moved to set aside verdict and enter a nonsuit. *Rule nisi.*

THOMPSON *v.* SMALL.—*Channell*, Serjt. (with *Byles*, Serjt.) for plaintiff, and *Shee*, Serjt. (*Crowder* with him) for defendant, argued this special case. *Cur. adv. vult.*

COURT OF EXCHEQUER.

Thursday, Nov. 14.

STOKES *v.* SABINE and OTHERS.

Re-hearing.

Motion for re-hearing of a case on which the Court had pronounced a verdict as in the place of a jury.

This case had been heard at the sittings after the last Term. It had been brought before the Court by reference to them for their opinion, the Court to draw the same conclusions as a jury.

Jervis, Q.C. now moved for a rule to shew cause why the judgment, *i. e.* the *quasi* verdict pronounced by the Court, should not be set aside, and a new trial had, on the ground that the verdict of the Court had proceeded upon a document treated by them as material, but which was not in evidence before them. The case was a tithe commutation case, and had been referred to the Court, with a long list of documents which were to be regarded as in evidence.

It so happened that the document in question had been used in argument by counsel, and had been relied on in the judgment of the Court, but was not in evidence before them.

Jervis, Q. C. said he raised the objection at the time.

PARKE, B. said he had a note that the document

had been relied on in the argument, but none of Jervis having objected.

The Court said the case (from the complication of facts) ought, however, to have come before them in the first instance, and intimated that they would not have it referred to them a second time.

The Application was quite novel.

Rule nisi for a re-hearing or new trial.

Norey v. Corbin.

Bill of exchange—Admission of drawing by admission of acceptance.

Gurney moved for a rule to shew cause why a judge's order to admit the drawing of a bill of exchange in this action should not be rescinded, and leave granted to add a plea traversing the indorsement.

The action was indorsee v. acceptor, and an order to admit the acceptance had been served and complied with, but the order was so framed as to admit also that the name of the drawer in the body of the bill was in his handwriting also.

Pollock, C.B., questioned the use of rescinding the order as to this, since the admission of the acceptance would import as much. It seemed that the bill had been accepted in blank; the plaintiff's attorney had refused to let defendant see the indorsement, and the motion as to the handwriting in the body was made with a view to the assistance it would afford to the additional plea. *Rule nisi.*

Ex parte Blundel.

Deodand—Motion to set aside on divers grounds.

Cowling moved, on behalf of Mr. Blundel, for a rule to shew cause why two deodands of 25*l*. each should not be returned and all proceedings quashed.

It appeared that two men were descending a pit in a basket; the basket was suspended by a rope, which was wound up by a steam-engine. The rope broke, the two men were killed, and the coroner's inquest imposed a deodand of two sums of 25*l*. upon the applicant, the owner of the rope, basket, and engine.

Cowling moved on several grounds:—

1. That the inquest had been taken by a wrong jury. The inquisition shewed that the jury had come from the *county*, whilst the inquest was held before the coroner for a *borough*.

2. Deodands are imposed on the rope, basket, and engine, though it does not appear that the engine had any thing at all to do with the deaths. The jury, indeed, find that all three were causes moving to the deaths; but *Cowling* submits that they do not shew facts to warrant this, and so have gone out of their province by delivering a conclusion as of law. (*Reg.* v. *Brownlow*, 11 A. & E. 119.)

3. That deodand is bad, because it is partly on the steam-engine, which is a fixture, whereas the deodand can only be on a chattel.

4. That deodand can only be on that part of a machine which has fallen to pieces, and so done the harm.

6. He submits Mr. Blundel is only liable for one deodand, since it was only one accident. In favour of this point he submitted (see *De Officio Coronatoris*), that as, anciently, the chattel causing the death used to be forfeited, so when, subsequently, the value of the chattel came to be substituted, only one value could be forfeited; but here the jury had imposed two forfeitures of the value, whilst they had found each forfeiture to be the value. (*Reg.* v. *Eastern Counties Railway*, 10 M. & W. 58, contrà.) *Rule nisi.*

Friday, Nov. 15.

Cook v. Stratford.

A jury is at liberty to make and act upon the same inferences from collateral facts as any reasonable man would make in the conduct of his own affairs. A plea that a bill of exchange was given to secure a sum of money, of which more than 100l. was lost at one sitting at vingt-un, and more than 100l. at one sitting at hazard, is not supported by evidence of hazard only, but such a plea may be amended to suit the facts.

Jervis and *J. Henderson* shewed cause against a rule obtained by *Crowder*, Q.C. to enter a verdict for the plaintiff.

The action was upon a bill of exchange for 500*l*. The defendant pleaded, under the statute of Charles, that the bill was given as a security for a sum of money of which more than 100*l*. had been lost at one sitting at vingt-un, and more than 100*l*. at another sitting at hazard. At the trial there was no evidence at all of vingt-un; there was evidence of hazard having been played on several occasions, and also some evidence to connect the bill in question with the sums so lost, but there was no positive evidence of more than 100*l*. having been lost at one sitting, though there were, from the stakes played for, and from the amount lost altogether in a short time, strong probabilities from which that fact might be inferred.

Pollock, C.B. at the trial, told the jury to find for the defendant, and then reserved power for the Court to enter a verdict for the plaintiff upon the plea as it stood, if they should think it wholly unsupported by evidence, and also, if they should think it might properly be amended so as to meet the evidence, to exercise the power of amendment in the same manner as he might have done at the trial.

Jervis, Q.C. and *Henderson*, for the plaintiff, cited 1 Starkie, 436; 1 Taunton, 146.

Crowder and *Udall*, contrà, contended that there was no evidence to support the plea under the statute to which it obviously referred, though there might have been under the statute of Anne; that the Court could not amend a plea pleaded under one statute so as to make it fit another; and that in a case of this sort, where a jury would almost of necessity be prejudiced, it would be highly dangerous to leave any thing to mere inference, of which positive evidence might have been given.

They cited *Davis* v. *Pearce* (8 Jurist, Q.B. 122; 1 Bing. N.C. 140).

Pollock, C.B.—There are two points to be considered: first, Is the plea proved as framed? If so, we ought not to permit the plaintiff to enter a verdict. Secondly, whether, if not proved, we ought to permit defendant to alter the plea? With respect to the first point, whether the plea was proved as framed, or rather, whether there was evidence to sustain it, that again divides itself into two questions. First, whether there was any evidence to sustain the allegation that more than 100*l*. was lost at one sitting. It has been said there was no evidence to warrant the jury in finding that fact. It appears to me that there was abundant evidence. It is hardly necessary to advert to elementary cases on the subject of evidence, for the purpose of establishing the proposition, that whatever collateral fact established by evidence will enable a person to infer with practical certainty, is a matter upon which a jury may exercise their judgment. For instance, I put the case of finding prisoners guilty of larceny on evidence of recent possession. The jury is told, in such a case, to consider whether they will not infer that the party in possession is the thief. It appears to me, that whenever a person reasonably acting in his own concerns would draw a conclusion, the jury are to draw the same conclusion if they think proper. In this case five bills for 500*l*. each are drawn on the same day. It must now be taken as admitted that these amounts were won at hazard. There is some evidence of one sitting at hazard; there is no evidence of any other time or place at which they played. The question is, whether the jury might reasonably draw the conclusion that more than 100*l*. was won at one sitting. It appears to me, that the probability was very great that all the money was won at one sitting; but, at all events, that more than 100*l*. was so. It is then said, that even if so much of the plea is supported by the evidence, yet, that the substance of it, which states the nature of the contract, is not so supported. I am of opinion that this objection is well founded. If the plea had stated a variety of circumstances, each constituting one defence, proof of any one of them would have supported the plea. But that is not so here. The whole of the circumstances together, only shew one defence,—that the contract was originally void. It becomes, therefore, necessary to ask for an amendment. Is this, then, an amendment which I, as judge at the trial, had power to allow? But for the new rules, the pleas would have been framed with every variety of statement. I think, therefore, it would be a great injustice if we did not give effect to the statute which was passed with the intention of alleviating the stringency of those rules, and I am clearly of opinion that this amendment could not have prejudiced or misled the plaintiff in the conduct of his case, or in the evidence which he would have to produce. As the plaintiff has succeeded in the point relating to the plea, as it stands at present, the rule must be discharged, upon the defendant's paying the costs of the amendment and also of this motion.

The rest of the Court concurred.

Rule discharged.

Saturday, Nov. 16.

Clements v. Cullen.

Practice—Non-service of writ of summons is no ground for opposing a rule to compute.

Newton shewed cause against making absolute a rule to compute what was due for principal and interest on the bill of exchange in respect of which this action was brought. He urged that the defendant had not been served with the writ of summons. But the Court said that the irregularity (even admitting its existence) could not be urged in opposition to making the rule absolute. *Rule absolute.*

Joyner v. Collinson.

Practice—Affidavit to support an application that plaintiff gives security for costs on the ground of his being out of the jurisdiction must state the source of the information on which the application is founded.

Pashley shewed cause against *Temple*'s rule, which called on the plaintiff to shew cause why plaintiff should not give security for defendant's costs herein.

The rule had been obtained on affidavit of the defendant, that the plaintiff, as he was "informed and believed," lived at Glasgow, out of the jurisdiction of the Court.

Temple, in support of his rule, contended that though ordinarily the source of the information should be denoted, yet, in this case, as the matter lay necessarily more within the knowledge of the plaintiff than of the defendant, it was not necessary; but

Parke, B. said:—It is not enough; you should have taken out a summons calling on plaintiff's attorney to state his residence.

Temple then asked for a stay of proceedings; but

The Court said he must go to chambers, and apply for further leave to plead.

Rule discharged, with costs.

Monday, Nov. 18.

Smith v. Monteith.

To a declaration on promises, the consideration of which is that plaintiffs shall procure the discharge of A B, then in custody at their suit, it is a bad plea that no debt was ever due from A B to plaintiffs, that his arrest was merely colourable, and that there was no doubtful question of law or fact between him and the plaintiffs.

This was a *demurrer* to a plea. The declaration stated, that, in consideration that the plaintiffs would discharge one Dunlop, then in custody of the sheriff at their suit, the defendants promised to pay a certain sum to the plaintiffs. It then alleged the discharge of Dunlop, and the breach of promise by defendants.

Plea—That there never was any debt due from Dunlop to the plaintiffs; that his arrest was merely colourable, and that there was no doubtful question of law or fact intended to be tried in the action.

Crompton, for plaintiff.

Peacock, for defendant.

Cases cited: *Butcher* v. *Stewart* (11 M. & W.); *Atkinson* v. *Cettree* (Willes, 482); *Herring* v. *Dovan* (8 Dowl. 604); *Alexander* v. *Macaulay* (4 T. R. 64; 2 Saund. 151; Hob. 216). *Judgment for plaintiff.*

Tuesday, Nov. 19.

James v. Jones.

Certificate for costs.

If judge enters in his notes "certificate for costs, if necessary," this, if occasion arises to require that certificate to be granted, is enough to authorize its being given.

This was a case which left room at the trial for the learned judge who tried the case to grant a certificate for costs, and he entered on his notes that certificate was to be granted "if necessary." He had accordingly afterwards granted his certificate, and a rule *nisi* had been obtained to set aside that certificate.

Gurney, B. now delivered the judgment of the Court, that as the entry had been made at the time of the trial it was to be deemed it had been made with the consent of the parties, and was equivalent to a certificate then actually granted. *Rule dischaged.*

Parfitt v. Thompson.

Insurance.

Total loss is sufficiently attributed to perils of the sea if it is stated that by perils of the sea the vessel was obliged to abandon her voyage, make for the nearest port, and was there totally lost.

Pollock, C. B. delivered the judgment of the Court in this case. It was that the declaration sufficiently stated the loss to have occurred by perils insured against, since it stated that the vessel was, by stormy winds, &c., obliged to abandon her voyage, and put into Gambia. That it was not necessary in the declaration to shew further that the antecedent perils were the cause why the vessel, when at Gambia, was unfit to proceed on her voyage. If the vessel, when at Gambia, was unfit to proceed, not from the perils it had undergone, but from other causes, this was matter of evidence. The declaration might have averred, in general terms, that the vessel had been obliged to make for Gambia, and was totally lost. *Rule discharged.*

Ex parte The Great Western Railway Company in the Matter of the Expenses of Mr. Palmer.

The Court of Exchequer has no authority to order taxation of an attorney's bill.

Martin, Q.C. shewed cause against the rule of *Jervis*, Q.C. which called on Palmer, and Rose, his attorney, to shew cause why Rose's bill of costs—the subject of an action by Rose against the Company—should not be referred to the Master for taxation.

The facts were, that the company had negotiated with Mr. Palmer touching the sale of some land to them, and had agreed to pay the costs of Mr. Palmer's attorney, Mr. Rose, by whose means the contracts were to be effected. Mr. Rose had accordingly effected divers contracts in this way and upon these terms, and had sent in his bill to the company.

The bill charged several heavy amounts in a lump, and did not give the items of each particular charge. The company refused to pay this bill. Mr. Rose,

therefore, brought his action against them, and they now sought the taxation of his account.

There were affidavits in the case to shew the fairness of Mr. Rose's charges, but these are not material to the result, for the Court held that they had no authority to make the order. By 5 Vict. c. 5, their equitable jurisdiction was taken away; and under the late Attorneys Act, the application was to be made to the Court of Chancery.

Rule discharged with costs.

BUNN v. LEE.

New trial—Receipt for balance of an account of unspecified amount; should it be stamped?

This case was tried on Wednesday the 13th instant, before Pollock, C. B. Verdict for the defendant.

Knowles, Q. C. now moved, pursuant to leave reserved, to enter verdict for the plaintiff.

The action was for work and labour, the plea payment.

In proof of this plea, the following receipt was offered and received in evidence.

"1843, July 8.

"Received of G. Lee, the sum of 2*l.* 2*s.* 'being the balance of account up to this day for houses in Wellington-road.'"

It was unstamped, *Knowles* had therefore objected to it, and now the question was, whether it ought not to have been stamped as being a receipt for the balance of an account of unspecified amount. See Schedule to General Stamp Act, 55 Geo. 3, c. 182.

Rule nisi.

NORTON v. EDGELY.

Practice — Commission to examine witnesses — Party ought not to be required to shew his cross interrogatories to his opponent.

Martin, Q. C. shewed cause against *Cleasby's* rule, which called on the defendant to shew cause why an order made by Gurney, B. on the 9th of July last, should not be varied or rescinded, in respect that it ordered the plaintiff to deliver copies of cross interrogatories to defendant's attorney.

The defendant had prevented the plaintiff from proceeding to trial, by applying for a commission to examine witnesses, and had obtained the order in question. Since then the defendant had taken no step in the business.

The COURT, after having informed themselves that in the Court of Chancery cross interrogatories are not submitted to the inspection of the opponent, conceded so much of the application as requires the learned Judge's order to be varied, and order further, that it be rescinded, unless defendant bring the money into court within a fortnight, or give security to the satisfaction of the Master.

BROWN v. NELSON.

Arbitration — "Costs in the cause," as divided from "costs of reference," are costs up to the time of the reference.

Fish moved for a rule *nisi*, why the Master should not review his taxation of costs.

The cause had been referred at the trial to an arbitrator, who had power to deal with the costs. The arbitrator had awarded the costs of the *cause* to the plaintiff, and had divided the costs of the *reference*. The Master had treated the costs of the *cause* as including costs *up to the time* of the reference, and not after, and had treated the costs of the reference as being the costs of what took place before the arbitrator, commencing from that period.

Fish applied, in order that the costs of witnesses might be deemed costs in the cause; but

The COURT held with the Master.

Rule refused.

[*Note.*—In the above case, Fish tried to distinguish *Taylor* v. *Lady Gordon* (9 Bing. 570) from the present case, on the ground that there there were other matters in difference between the parties; but the Court did not concede this distinction. He tried to parallel the case to that of *M'Intosh* v. *Bligh* (1 Bing.), but the Court distinguished them on the ground that in that case the arbitrator had merely to grant a *certificate*, not make an *award.*]

RANDAL v. WHITE.

New Trial.

Pleading lesser sum in discharge of greater.

This case was tried before the sheriff.

Addison applied for a rule *nisi* for judgment *non obstante veredicto*, on the second issue.

The action was in debt; and the second plea was pleaded to the further maintenance of the action, and stated payment and receipt of a lesser sum since action brought in discharge of the whole debt.

Addison cited *Cumber* v. *Warne* (Smith's Leading Cases), in support of his motion. *Rule nisi.*

CAMPBELL v. POWNALL.

Particulars of demand—Application for the costs of delivering better particulars.

Cowling moved for a rule *nisi*, why the Master should not tax the plaintiff's costs, for better particulars given to the defendant. The usual order had been made for plaintiff to deliver fuller particulars of demand, on payment by defendant of the costs of so doing. The plaintiff in this case had given the particulars, but had not been paid his costs.

The COURT said the plaintiff should not have delivered the particulars, save on defendant's paying the costs; but as where there is an order to pay there is an authority to tax the costs, they would grant the rule. *Rule nisi.*

ROCKSEDGE v. CHANDLER.

Costs—The costs of obtaining the postea by defendant are costs in the cause.

J. W. Smith shewed cause against *Gray's* rule, which called on plaintiff to shew cause why plaintiff should not deliver the postea to the defendant.

The plaintiff had recovered on one of the issues, but substantially the cause was in favour of the defendant, and he was entitled to the postea.

J. W. Smith did not dispute the defendant's right to the postea, but asked the Court not to make the costs of the application to this rule costs in the cause. He said the defendant might have obtained the postea by asking it of the plaintiff.

POLLOCK, C. B. said the defendant might have obtained the postea perhaps at less expense, but who was to pay him for that expense? The plaintiff should have acquiesced at once on the rule *nisi* being obtained. *Rule absolute.*

Wednesday, Nov. 20.

M'DOWALL v. HUNTER.

A plea in suspension of a cause of action, that a bill of exchange has been given for and on account of it, must shew that the bill was a negotiable instrument.

Action for goods sold and delivered.

Plea That a bill had been given *for and on account* of the debt.

Demurrer—Assigning for special cause that the plea did not shew whether the bill was or was not a negotiable instrument.

Crompton, for plaintiff.

Flood, for defendant. *Judgment for plaintiff.*

DREW and ANOTHER v. AVERY and ANOTHER.

Trespass de bonis asportatis.

Plea—Justifying under a distress for rent due to the landlord.

Demurrer—Assigning for cause that the plea did not shew with certainty either that the term of the tenant was still continuing, or that the time allowed under the statute had not elapsed; and also, that it did not clearly shew the nature of the tenancy in respect of which the rent became due.

Corrie, for plaintiff.

Barstow, for defendant.

POLLOCK, C. B.—We are of opinion that it ought to have been shewn that the tenancy was still existing at the time of the distress. Although some of the allegations in the plea afford ground for inferring that such must have been the fact, the time of the Court is not to be occupied in making out the sense of a plea from all the allegations in it, but the averments ought to be clearly and distinctly made.

PARKE, B.—My present impression is, that you must allege what sort of a term it is; but at all events the allegation in this plea, that the term was still continuing, is only to be made out by inference, and that having been pointed out on special demurrer, I think we ought to hold the plea insufficient.

Cases cited: *Parkinson* v. *Whitehead* (2 M. & G.); *Rogers* v. *Birkmire* (Cases temp. Hardwicke, 245).

Judgment for plaintiff.

Thursday, Nov. 21.

ATTORNEY-GENERAL v. CLAY.

Chambers moved for a rule to shew cause why the Attorney-General or the Solicitor of the Customs should not furnish one of the defendants with particulars of the claim against him. The application was upon the ground that the defendant, who had formerly carried on business in partnership with his brother, had been entirely out of business since 1840, when the partnership was dissolved. The affidavits also stated that he had destroyed the books previous to the last six years. A number of cases were cited in support of the application, and the practice of the Court of Queen's Bench, and of all criminal courts, was stated to have been of late years in analogy with it. Alderson, B. having expressed some doubt as to what would be the remedy in case the Crown, after the Court had made such an order, refused to comply with it, the COURT granted a rule to shew cause.

Cases cited: *Rex* v. *Hamilton* (7 C. & P. 144); *Rex* v. *Hodson* (3 C. & P.); *Attorney-General* v. *Weeks* (Bunbury, 223); *Attorney-General* v. *Lambert* (5 Price, 386). *Rule nisi.*

HATE v. FLOWER.

Corrie moved to set aside proceedings. The writ of summons was addressed to defendants as executors. The declaration was against them in their personal character. This is irregular, although the converse of it is not. *Rule nisi.*

MOLD v. GRIFFITH.

Whitehurst, Q. C. shewed cause against a rule obtained for a new trial by *Francillon*, upon the ground that there was no privity of contract between plaintiff and defendant, and no evidence to go to the jury.

Francillon, in support of the rule, was stopped by the Court. *Rule absolute.*

WELLS v. O'CONNOR.

Petersdorff moved to set aside judgment as irregular. The defendant had pleaded in abatement, and the accompanying affidavit was entitled, "*Wells* v. *Alicia O'Connor*, sued as *Alice O'Connor*," such having been the fact.

The plaintiff required judgment, upon the ground that the former name ought only to have been used.

Case cited: *Borthwick* v. *Ravenscroft* (7 Dowl. 393).

Rule nisi.

HEATH v. UNWIN.

Jerris, Q. C. shewed cause against a rule for a new trial obtained by *Martin*, Q.C. *Cur. adv. vult.*

BUSINESS OF THE WEEK.

Thursday.

BROWN and ANOTHER v. FULLARTON.—*Quære, amendment of writ of summons by inserting another name as co-plaintiff?*—*Hugh Hill* moved for rule absolute in this case, and *Gray* shewed cause. After hearing both sides, the Court postponed their judgment till, by consultation with the other judges, a uniform rule might be laid down as to the point mooted—viz. whether, in order to save the Statute of Limitations, the Court might amend a writ of summons by the addition of a party to be co-plaintiff, upon which there had been contradictory decisions in the Exchequer and the Queen's Bench.

Practice.—Defendant has no right to demand particulars of sums for which credit is given.—*Cole* applied for a rule calling on plaintiff to shew cause why he should not deliver further and better particulars with the dates and items of a sum amounting to 78*l.* already credited. The Court said the application was one that should be made at Chambers, and GURNEY, B. added that he would hardly get any thing by going there. *Rule refused.*

FRANKLIN v. NEATE.—*Pawnbrokers—Right of vendee of pawned chattel to redeem.*—This case was an action of trover, and in it the important question of whether the person to whom sale is made of the property which the vendor has pawned with a pawnbroker can maintain an action in his own name against the pawnbroker was argued by *Petersdorf* for defendant, and *Humfrey* for plaintiff.

Cur. adv. vult.

DAILEY and ANOTHER v. LOVEDAY.—*Bill of exchange—Clerical error in drawing up a rule will be altered according to the fact at the hearing—Indorsees of a bill of exchange are not barred by the release of the indorser, if at the time of the release the indorser was not owner thereof.*—*Bramwell* shewed cause against Humfrey's rule. The rule in terms called on defendant to shew cause why verdict should not be set aside and new trial had, or why there should not be judgment *non obstante veredicto*. But the rule as obtained was further, why verdict should not be *entered for the plaintiff*, and the Court ordered it to be altered into this:—The only point of law in the matter was one which arose out of these facts. The action was on a bill of exchange—indorsee v. acceptor. The bill had been deposited with one A B as security by the drawer, who, whilst it remained in the hands of A B, released the bill by deed, with other matters, to the defendant. Subsequently to this the drawer had indorsed it to the plaintiffs. *Bramwell* urged that, as against a party claiming under the drawer, the release was a good release; but the Court held it was not a release of the bill, except the bill had, at the time of the release, been the property of the drawer, which it was not if any one else had a lien thereon; if any one else, in fact, held it for value. The bill had been deposited as a security, and it was not shewn that the lien had been discharged before the release. The circumstances of the case could not be taken advantage of under a plea of release.

Rule absolute to enter verdict for plaintiff.

Friday.

CHAPPELL v. PURDAY.—*Martin*, Q. C. and *Byles*, Serjt. shewed cause against a rule for a new trial.

Argument adjourned.

Saturday.

CHAPPEL v. PURDAY.—The argument in this case was continued. *Byles*, Serjt. was heard for the plaintiff.

The Court rose at two o'clock to hear Crown cases reserved from the assizes.

Monday.

COULTON v. AMBLER.—This was a special case, and turned upon the construction of clauses in several local Acts.—*Cowling*, for plaintiff. *Willes*, for defendant. *Judgment for defendant.*

MALLAN v. MAY.—This case, which has been argued several times already, came on again upon a case from the Vice-Chancellor. The only question is

whether an agreement by a dentist not to practise in London, restrain him only from practising in the city of London, or in London in its popular and colloquial sense. *Cur. adv. vult.*

MORGAN *v.* WEST.—*Demurrer* to replication.
Judgment for defendant.

Tuesday.

DOE, *dem.* BARNES and ANOTHER *v.* SPANSWICK. *Rule discharged with costs.*

WATTS *v.* TRAFFORD.—*Welsby* shewed cause against *Coles's* rule for judgment as in case of nonsuit. *Rule discharged without costs.*

CHAPPEL *v.* PURDAY.—*Jervis*, Q.C. finished his argument for the defendant. He was followed by *Godson*, Q.C. The Court postponed hearing *Crompton* on the same side till Saturday next.

SLADE *v.* HORLEY.—*Kennedy*, moved for judgment on the issue of *nul teil* record. *Granted.*

MARTIN *v.* DAWES.—*Bramwell* shewed cause against *Hoggins'* rule for judgment *non obstante*. The motion not being made in time,
Rule discharged, without costs.

N.B. In the above case the Court held that the onus of proving that the motion had been made in time lay with the applicant.

MARTIN *v.* DAWES.—In the same case, *Hoggins* shewed cause against *Bramwell's* rule *nisi*, why the Master should not review his taxation of costs.
Rule absolute.

GOODLY *v.* JACKSON.—*Hance* moved for a rule *nisi*, why two sums, one of 10*l.* the other of 20*l.*, which had been paid into court in lieu of bail, should not be paid to plaintiff. The money had been paid in lieu of bail, the defendant being about to quit the kingdom. The plaintiff had since recovered in the action. *Rule nisi.*

NORTH *v.* GAY.—*Pollock* applied for rule *nisi*, for costs of the day for not proceeding to trial.
Rule nisi.

LEWIS *v.* LEARMOUTH and OTHERS.—*Bayley* applied to set aside judgment on warrant of attorney. The warrant was a joint and several warrant by three. Judgment had been entered against two, and moreover the money for which the warrant was security had been paid. *Rule nisi.*

Wednesday.

DENTON *v.* NORTH MIDLAND RAILWAY COMPANY.—This was a long special case, turning principally upon the facts. After hearing *Watson*, Q.C. for the plaintiff, the COURT gave judgment for the defendants.

ARMAIN v. CASTRIQUE.—*Demurrers to pleas.*—*Dowdeswell*, for plaintiff. *Peacock*, for defendant.
Cur. adv. vult.

FAIRTHORNE *v.* DONALD.—*Demurrer.*—*Lush*, for plaintiff. *Cowling*, for defendant. At the suggestion of the COURT, both sides took leave to amend.

Thursday.

KING *v.* HOAR.—*Demurrer to plea.*—*Henderson*, for plaintiff. *Bramwell*, for defendant.
Cur. adv. vult.

BOOSEY *v.* PURDAY.—Rule enlarged, to abide the event of *Chappell* v. *Purday*.

CROWN CASES.

Saturday, Nov. 16.
(Before all the Judges.)
REG. *v.* GRIMWADE.

Threatening letters—Property may be laid in a reversioner—What is a sending within 6 *Geo.* 4, *c.* 54, *s.* 3.

This was a case which had been tried at Ipswich by Alderson, B. at the last Suffolk assizes, and referred to the Court on two points reserved, in relation to the construction of 6 Geo. 4, c. 54, s. 3. 1st. (On the first count.) Whether a reversioner had such a property as would sustain an indictment for sending a letter threatening to burn property laid as *his*. 2nd. (On the second count.) Whether a threatening letter could be said to have been "sent" by the prisoner to the party for whom it was intended, when such letter reached its destination only after it had been seen by third parties, who found it, read it, and then, after intermediate inspections, shewed it to him.

To bring the facts of the case more distinctly to notice, they may be recapitulated here. The facts of the case were, that the letter was addressed to Sir Joshua Bailey; the contents were, that unless his tenant, Mr. Brown, paid higher wages, Mr. Brown might depend on it that he would have a blaze. The letter was left by the prisoner near Brown's farm; it was picked up, opened in the steward's room at Sir Joshua's, and had subsequently been seen both by Sir Joshua and Mr. Brown. There was no evidence that Sir Joshua had shewn the letter to Brown. Under these circumstances, the second count laid the letter as having been "sent" *to Brown*. The learned judge directed the jury to find this, if, in addition to the above facts, they thought that the letter had been *intended* for Brown. The jury found that there had been such a sending; and thus the question arose, whether this intention, coupled with the other facts of the case, was a sending within the statute.

The COURT, after hearing *Gordon* for the prisoner, stopped *O'Malley* for the prosecution, and supported the verdict on the second count.

Note—So the question on the first count is not decided; but the case decides that a threatening letter which reaches its destination is not *functus officio* by being read by third persons, who forward it; nor need the mode in which it reaches its destination be the exact mode contemplated by the guilty party; but that the circumstances under which the letter in this case was dismissed towards, and reached, its destination, is a "sending" within the Act of Parliament.

Whether the Court, in the above case, intimated an opinion that the statute 6 Geo. 4, c. 54, s. 3, does not exact that the property threatened to be burnt should be the property of the person threatened, but may be the property of any subject of the realm; though, at the trial, the 3rd count, which was framed to meet this view of the case, was *held clearly bad*.

REG. *v.* BOWEN.

"*Destroying, defacing, and injuring*" *parish register, are words standing but for one offence.*

This case was tried by Tindal, J. at the last assize. The prisoner was indicted for "destroying, defacing, and injuring" the registry of baptism, in the words of the Act of Parliament against that offence. The proof was, that the prisoner had tore out a leaf from the register.

J. W. Smith, for the prisoner, contended, at the trial:—

1st, That there was no defacing;

2nd, That the indictment was bad for vagueness;

3rd, That the indictment was bad, because it did not charge that the prisoner *knew* it was the parish register.

TINDAL, C. J. ruled against him on all points—the register was at least "injured," if not defaced—and reserved his ruling for the opinion of the judges.

J. W. Smith now argued his second objection. He contended, that an indictment which charged three distinct offences was bad, on account of the perplexity to which it subjected the prisoner: it was so vague that he could not ascertain what he was charged with.

The learned counsel cited divers cases to shew the disposition of the law to enforce singleness in indictments—

But the JUDGES held, that the words of the Act of Parliament had been pursued. No judge would suffer them at the trial to be pointed at more than one offence; and held with the ruling at the trial on all points.

BAIL COURT.

Friday, Nov. 15.
(Before Mr. Justice PATTESON.)
Ex parte RATCLIFFE.

Habeas corpus to bring up two children, in order that they may be delivered into the custody of their father.

Atherton moved for a writ of *habeas corpus* to be directed to Abraham Turner, directing him to bring into this court the bodies of two female children. It appeared that in November 1843, the applicant and his youngest daughter, a girl under two years of age, were on a visit to his father-in-law, Abraham Turner, with whom he remained until March 1844, when he left, leaving his daughter there, at his father-in-law's request. On the 30th of July last the applicant's wife absconded from her husband, taking with her his eldest daughter Fanny, aged four years, and went to the residence of Abraham Turner, her father, and still refuses to return. On the 10th of September, the applicant wrote his wife a letter, desiring to know when she would return with her children. This letter was returned, having been opened, and in the handwriting of Turner. The applicant swore to his having, as he believed, always lived happily with his wife. *Writ granted.*

REG. *v.* RANDALL WILBRAHAM, Esq. *Ex parte* WOOD.

Mandamus to the judge of a local court, commanding him to try a cause.

V. Williams moved for a *mandamus* to be directed to Randall Wilbraham, esq. High-steward of the Court of Pleas at Congleton, commanding him to try a cause of *Wood* v. *Burgess*. It appeared that the Court in question had, by charter, jurisdiction over all causes which arise within the town; and the above cause being ripe for trial, was set down for the 21st of August, and stood No. 2 on that day. On the case being called on, the judge said he understood that the action was brought to recover 7*l.* 10*s.* as a deposit made in respect of a foot-race, and that he should not try any such a frivolous cause, and directed the jury to be discharged; and, on the late case of *Running Rein* being referred to, he said that, "if the *judges* chose to try such cases *he* would not." It was now contended that, notwithstanding certain judges had refused to try certain cases, on account of the immorality involved in them, it had been much doubted whether they possessed that power, and that in the present case there was nothing that was not properly the subject of an action; that the sport of racing was one in which heroes had indulged, which princes had witnessed, and of which poets had sung the praises! *Rule nisi.*

Saturday, Nov. 16.
STULTZ *v.* Sir R. WYATT.

Motion to set aside proceedings in outlawry for defects in the body and return of the writ of proclamations.

Sir *J. Bayley* moved for a rule to set aside the proceedings to outlawry herein with costs, on the ground of defects in the writ of proclamations, and the return thereon. By the 31 Eliz. c. 3, three proclamations were to be made under the writ—one in the County Court, another at the General Quarter Sessions of the Peace, and a third at the door of the church or chapel of the town or parish where the defendant shall be dwelling, &c. and upon Sunday immediately after divine service and sermon, &c. By the 1 Vict. c. 45, so much of the above Act as relates to the third proclamation is repealed, and by the second section it is provided, that the proclamation shall be reduced into writing, and copies thereof shall, previously to the commencement of divine service, be affixed on or near the doors of all the churches and chapels within such parish or place, &c. The writ of proclamations in the present case required the sheriff to proclaim the defendant on the three days according to the 31 Eliz. and the 1 & 2 Vict. It was on this point argued, that the writ was bad, inasmuch as it required the sheriff to proceed under an Act of Parliament which does not exist, there being no Act of 1 & 2 Vict. which applies to proclamations, and that if this could be rejected as surplusage, there would still only be the 31 Eliz. for the sheriff to proceed upon, which is not enough, as that Act requires proclamations to be made, which are now repealed. It was further argued that the return, which stated that proclamation had been made at the church of St. George, Hanover-square, was bad, inasmuch as it should have stated that notice had been affixed to all the churches and chapels within the parish, pursuant to the 1 Vict. c. 45, s. 2, there being an affidavit, upon which the motion was made, that in this parish there is one district church and seven chapels, and, as deponent believed, ten others. *Rule nisi.*

YOUNG *v.* CROMPTON.
Judgment.

V. Lee having yesterday shewn cause against this rule (see 4 Law T. 100), when he contended that defendant had not complied with the rule of Court entitling him to have the costs taxed, and his lordship having deferred his judgment, the learned judge now directed the rule to be discharged, on the ground that as it was not clear, by the affidavits, that the error in the amount of the debt was admitted by both parties, and as it did not, therefore, appear that the real debt claimed in the action had been paid, the defendant had not entitled himself to the benefit of the rule enabling him to tax the costs indorsed on the writ. *Rule discharged.*

REG. *v.* THE JUSTICES OF DERBYSHIRE, *Ex parte* THE OVERSEERS OF THE TOWNSHIP OF CAULDWELL.

Mandamus to justices to enter continuances and hear an appeal.

Wildman moved for a rule *nisi* for a *mandamus* to the above justices commanding them to enter continuances and hear an appeal under the 4 & 5 Vict. c. 59. This application was precisely similar to that of *Reg.* v. *The Justices of Derbyshire* (4 Law T. 119).
Rule nisi.

REG. *v.* THE JUSTICES OF MONTGOMERYSHIRE, IN THE MATTER OF THE APPEAL OF THE PARISH OF CARNO, Respondents; and THE PARISH OF LLINECIL, Appellants.

Mandamus to justices to enter continuances and hear an appeal.

Townsend moved for a rule *nisi* for a *mandamus* to be directed to the above justices commanding them to enter continuances and hear an appeal against an order of removal. The facts were as follows:—On the 18th December, 1843, an order of removal was made which was served on the 20th following. The appellants having given no notice within the twenty-one days, the removal was made on the 13th January, 1844. At the next sessions, in April, the appellants entered and respited their appeal, and on the 19th of June, being fourteen days before the Midsummer Sessions, they gave notice and grounds of appeal. When the appeal came on for trial, the respondents objected that due notice of trial, as required by an order of sessions, had not been given, such order requiring that twenty eight days' notice should be served; upon this the justices refused to hear the appeal. It was now contended that the justices were wrong, and that if due notice had not been given, they should, under the pro-

visions of the 9 Geo. 1, c. 7, s. 8, have adjourned the appeal until the next sessions. It was further argued that such an order of sessions requiring so long a notice was unreasonable, and would not be upheld by this Court, and an affidavit of an attorney who had practised at the Montgomeryshire sessions for ten years had been made, in which the deponent stated, that during that period he had never known such order acted upon, and that the regular notice as given in actual practice was fourteen days. (*Rex* v. *The Justices of Wilts*, 10 East, 404; *Rex* v. *The Justices of Lancashire*, 7 B. & C. 91.)

Rule nisi.

Reg. v. The Justices of Somersetshire.

Ex parte Edward Coles, Clerk of the Peace.

Certiorari to remove an order of sessions into this court with a view to quashing same for illegality.

Crowder, Q. C. moved for a *certiorari* to remove in this court, with a view to quashing the same, an order made by the above justices, at the last Michaelmas sessions, which directed that *no officer of the Court should thereafter take or demand any fee whatever from any defendant in cases of misdemeanor.*

It appeared that the table of fees, by virtue of which, fees were at the time of the making of the above order demanded of misdemeanants, was framed under the provisions of the 57 Geo. 3, c. 91, and sanctioned by Gazelee, J. and Burrough, J. the two judges of assize, pursuant to the statute in 1821, and it was now insisted that the only legal mode of getting rid of these fees is by following the course directed by the above Act, namely, by preparing a fresh table, and by submitting it for approval to the judges of assize.

Patteson, J.—It may be very improper that there should be such fees, but it is still more improper to attempt to abolish them, except under the provisions of the Act of Parliament. If the order is illegal, the clerk of the peace may decline to act upon it.

Crowder.—The difficulty in such a case would be, that he might be charged before the Court of Quarter Sessions with extortion, as the order would still exist.

Patteson, J.—You are entitled to your rule

Rule nisi.

Monday, Nov. 18.

(Before Mr. Justice Patteson.)

Reg. v. The Justices of Warwickshire, in the matter of the Appeal of the Parish of Colsey, Appellants, and the Parish of Kingsborough, Respondents.

Mandamus to justices to hear an appeal.

Spooner moved for a *mandamus* commanding the above justices to enter continuances and hear an appeal.

In this case an order of removal had been made, and notice of appeal given; the appellants, however, did not appear at the sessions, whereupon the respondents applied for their costs, which were allowed them at the sum of 20*l.* Shortly after this the paupers were removed, when the appellants gave a fresh notice of appeal, and at the next sessions, in October last, applied to enter and try the appeal, which was refused by the sessions, on the ground of the appeal in the case having already been disposed of. It was now contended that the appellants had a right to have their appeal tried. (*Reg.* v. *The Justices of Middlesex*, 9 Dowl.)

Rule nisi.

Tuesday, Nov. 19.

Hobbs v. Young.

The rule H. T. 2 Wm. 4, r. 11, requiring the amount of the debt to be indorsed on the writ does not apply to qui tam actions, but to suits only for the recovery of debts subsisting between the parties.

Wordsworth shewed cause against the rule obtained herein, calling upon the plaintiff to shew cause why the copy and service of the writ of summons should not be set aside for irregularity, the amount of the debt and costs not having been indorsed on the writ, pursuant to the R. H. T. 2 Wm. 4, r. 11, which requires that upon every bailable writ and warrant, and upon the copy of any process served for the payment of any debt, the amount of the debt shall be stated and the amount of what the plaintiff's attorney claims for costs, &c.

It appeared this was one of several actions brought against the publishers of newspapers (the present defendant being the publisher of *The Sun* newspaper) to recover certain penalties under 6 & 7 Wm. 4, c. 66, "An Act to Prevent the Advertising of Foreign and other Illegal Lotteries," and the writ of summons described the plaintiff as suing "as well for our Sovereign Lady the Queen as for himself." In opposition to the rule, it was contended that the rule of H. T. 2 Wm. 4, r. 11, does not apply to *qui tam* actions, but merely to the cases of debts between party and party, particularly as it could not be known what penalties would be recovered, or how much would be payable to the Queen. (*Davis* v. *Lloyd*, 6 Dowl. 173.) It was further argued that the form of the rule was incorrect, as it should have been to have set aside the writ itself, and not the service, which was perfectly regular. (*Anonymous*, 1 Dowl. 654.)

Atkinson, contrà, contended that as the penalty was a definite one of 50*l.* it became a debt which ought to have been indorsed; that *Davis* v. *Lloyd* does not apply, as that was an action brought under the Municipal Corporation Act, which, in addition to a penalty, imposes personal disabilities, so that the object of the action was not alone, in that case, the recovery of a sum of money, and that as to the terms of the motion, the defendant knew nothing of the original writ, and therefore was right in not asking to set it aside.

Patteson, J. was clear that R. H. T. 2 Wm. 4, r. 11, applied merely to debts subsisting between the parties, and not to *qui tam* actions which any one might bring. *Rule discharged, with costs.*

Wednesday, Nov. 20.

Steele v. Potter.

The 19 Geo. 3, c. 70, s. 4, enabling parties to remove records from inferior courts into one of the superior courts at Westminster, applies only to courts of record; and a judgment, therefore, of the County Court cannot be brought up under that Act.

Mazzinghi moved for a *certiorari* to remove a judgment from the County Court of York into this court, under the 19 Geo. 3, c. 70, s. 4, in order to have execution pursuant to the Act. There was some doubt as to whether the Act applies to judgments in county courts, which are not courts of record. The preamble of the 4th section speaks of "inferior courts" *generally*, but the enacting part of the clause says, "That in all cases where final judgment shall be obtained in any action or suit in any inferior court of record, it shall and may be lawful," &c.

Patteson, J. I do not think the Act applies to a court *not* of record. How can I strike out the words "of record?" The Act states that we are "to cause the record of the said judgment to be removed." If there be *no* record, there is nothing to remove. I think the case is quite clear. *Rule refused.*

Coombs v. Peace.

Where a party seeks to set aside proceedings for irregularity, he must come promptly to the Court. Where, therefore, execution was levied on the 7th, and the affidavit of the party sworn on the 18th, and the motion to set the execution aside made on the 20th of November: Held, too late.

Hance moved for a rule calling upon the plaintiff to shew cause why the judgment and all subsequent proceedings should not be set aside for irregularity. In this case the defendant had been served with process on the 16th of October last; he did not enter any appearance, and the next thing he heard of the action was an execution being put in to his house on the 7th of November instant. It was sworn by the defendant that he had received no notice of declaration.

Patteson, J.—Are you not too late with your motion?

Hance.—The affidavit was sworn on the 18th inst. (*Fish* v. *Palmer*, 2 Dowl. 460.)

Patteson, J.—The rule is, that a party who complains of an irregularity must come promptly; there is no fixed rule upon the subject; but here eleven days elapse before the affidavit is sworn, and thirteen before the motion is made. I think this is too late, and in a case where a party is served with a writ and does not chose to appear to it, we are not much inclined to serve him. *Rule refused.*

Reg. v. Lewis and Others.

Certiorari to remove an indictment from the Central Criminal Court.

Humfrey moved for a *certiorari* to remove into this court an indictment, found against the defendants for a conspiracy to bring an action against the prosecutor. This application was made on the ground that the attorney of the plaintiff in the action (which action had been referred to arbitration, and is not yet decided), who is made one of the defendants is anxious to avail himself of the services of the Queen's counsel, who was engaged at the trial of the action, and that many points of law will arise, and that it is desirable to have a special jury.

Patteson, J. You must undertake to take no objection to the *venue.*

Humfrey.—The *venue* shall be altered to meet the necessities of the case. (See *Reg.* v. *Stowell*, 12 L. J. M. C. 111.) *Certiorari granted.*

Sharp v. Cummins.

New trial.

Wallinger, on a former day, shewed cause against the rule obtained herein by *Allen* to reduce the damages from 5*l.* 15*s.* to 15*s.*

It appeared that the plaintiff and defendant had jointly taken some land of a third party, at a rent of 10*l.* which amount the plaintiff paid when due, and sought in this action to recover of the defendant a moiety which he alleged to be his share. The declaration contained two counts; one for money paid to the defendant's use, and a second for goods sold and delivered; about the latter demand (15*s.*) there was no dispute. The cause was tried before the Undersheriff of Monmouthshire, and a verdict was returned for the plaintiff for the full amount claimed. In support of the verdict it was contended, that as the plaintiff and defendant, though they jointly took the land, had each his own cattle upon it, and derived no joint profit, they were not partners, and that as each was liable for the whole rent, the plaintiff was justified in paying it, and in bringing this action against the defendant for contribution. (*Helme* v. *Smith*, 7 Bing. 709; *Venning* v. *Leckie*, 13 East, 7; *Pitt* v. ——, 8 M. & W.)

Allen, contrà, argued that the cases cited were distinguishable from this; that in those cases a sum of money had been paid antecedent to the venture, which was not the case here; that if in this case the parties really were partners, the action could not be sustained unless an account had been stated between them; and that, if they were not partners, the plaintiff could not recover for "money paid," without proving a promise, express or implied, of neither of which was there any evidence (*Peacock* v. *Peacock*, 2 Camp. 45); and as the case stood, there was no evidence that the defendant was liable to even a *moiety* of the rent.

His Lordship now pronounced judgment, and said, that inasmuch as there was an undisputed sum of 15*s.* due to the plaintiff, he could not direct a nonsuit, but that as it did not appear whether or not the defendant, by the terms of the taking, was to be liable to a *moiety* of the rent, even supposing the parties were not partners, and as the plaintiff would not consent to reduce the damage to 15*s.* there must be a new trial. *Rule absolute for new trial.*

Scott v. England.

To enable a plaintiff to sue for goods bargained and sold, it is not essential that he should have had possession of the goods at the time of the contract: it is sufficient that the goods are ascertained and the price agreed upon, and that the plaintiff himself could have maintained trover for them at that time.

Lush, on a former day, shewed cause against the rule obtained on the part of the defendant to set aside the verdict, for a nonsuit, or for a new trial.

The action was brought for goods bargained and sold and for money paid, to which the defendant pleaded the general issue. It appeared that the plaintiff, whilst attending a sale, bought a cast-iron plate for 3*l.* 15*s.* and before he had either paid for it or obtained possession, he agreed to sell it for the same price to the defendant. Subsequently, the defendant refused to complete his bargain, when this action was brought, and the jury (at the Secondaries' Court) found a verdict for the plaintiff for 3*l.* 15*s.* the amount claimed. The defence set up was this: that as the plaintiff at the time he sold the plate, was not possessed of it, he had not sufficient property in it to convey it to another. In support of the verdict, it was contended, that the right of property passed by the bargain (*Dixon* v. *Yates*, 5 B. & Ad. 340); that here was the right of property in the plaintiff, though not the right of possession, which was dependent upon the price being paid (*Hinde* v. *Whitehouse*, 7 East, 571); and that the goods would have remained at the plaintiff's risk.

Udall, contrà, contended that unless the vendee acquired a right to maintain trover against the party possessed of the goods, nothing passed by the contract (*Atkinson* v. *Bell*, 8 B. & C. 277; *Simmons* v. *Swift*, 5 B. & C. 857); that the vendor had not perfected his right of property, as he had not himself paid for the goods. (*Tempest* v. *Fitzgerald*, 3 B. & Ald. 680; *Bloxam* v. *Sanders*, 4 B. & C. 941; *Craven* v. *Ryder*, 6 Taunt. 434.)

His Lordship now pronounced judgment.—He was (he said) of opinion that the rule should be discharged, as it appeared to him that all which was necessary to maintain the action was that there should be a contract for the sale of ascertained goods at the fixed price, enabling the defendant to bring trover; that in the cases cited for the defendant, it appeared either that the goods were undefined, or the price was not agreed upon; that no doubt the plaintiff could have been sued on a count for goods bargained and sold; and that as by his sale to the defendant he had passed the property to him, he also could maintain this action. *Rule discharged.*

Thursday, Nov. 21.

(Before Mr. Justice Patteson.)

Ex parte Thomas Flack.

Mandamus to restore a parish clerk.

Gunning moved for a rule *nisi* for a *mandamus* commanding the vicar of the parish of Botsham, in Cambridgeshire, to restore the applicant to the situation of parish clerk, from which he had been removed without any cause assigned. *Rule nisi.*

Ex parte Henry Hughes Allen.

When an attorney, from bodily and mental ailment, becomes incapable of continuing his practice and of instructing his articled clerk, the Court

will make an order that such clerk may be re-articled to another attorney.

Hoggins moved, on behalf of the above gentleman, for a rule discharging him from his present articles of clerkship, and to permit him to be re-articled for the remainder of his term to another attorney.

It appeared that in April 1842, he was articled to his father, and served under him until July last, when his father became so infirm in body and mind as to be unable longer to attend to business, or to hold communication with any person; that since then he has been with Mr. Frederick P. Chappell, an attorney, who is willing to take him for the remainder of the term, but that the applicant's father is too ill to assign him. *Application granted.*

Re CHARLES CARUS WILSON, Gent.

Motion to quash or supersede a writ of habeas corpus for having issued improvidently.

The Solicitor-General moved for a rule *nisi* to quash the writ of *habeas corpus* herein, as having issued improvidently, or for a *supersedeas*. (See 4 Law T. 100.)

The learned gentleman referred to a number of old authorities on the subject of the judicial independence of the island of Jersey, and contended that as it was doubtful, under the terms of the 31 Car. 2, c. 2, whether the writ of *habeas corpus* applied to cases like the present or not, it was, at all events, an exceedingly inconsistent mode of redress for subjects beyond the seas; particularly as they have an equally speedy and certain remedy by an appeal to the Queen in Council. (4 Co. Inst. 286; *Rex* v. *Overton Siderfin*, 20 Car. 386; Note to Coleridge's Blac. Com. 1 vol. 108; 2 Burr. 856, 834, 859; *Rex.* v. *Hobhouse*, 3 B. & Ald. 420.)

Rule nisi, the return to the habeas to be stayed until this motion disposed of.

REG. *v.* WILLIAM RUSHWORTH.

Where under the 17 Geo. 3, c. 56, the party convicted gives notice of appeal, and the Sessions grant a case which is ultimately decided in favour of the conviction, this Court will send back the conviction with a writ of procedendo, to enable the justices to enforce it by the proper means.

Pickering moved for a *ca. sa.* to take into custody the above party, or for a writ of *procedendo*, under the following circumstances. Rushworth had been convicted under the 17 Geo. 3, c. 56, and ordered to pay a sum of 20*l.*, and in case of default to be committed to Wakefield Gaol for one month. Against this conviction he appealed, and at the sessions the conviction was quashed, subject to a case, upon the hearing of which the order of sessions was quashed, and the conviction confirmed. Upon this a writ of *levari facias* had issued, to which there had been a return of *nulla bona*, and it was now sought to enforce the conviction by a writ of *ca. sa.* out of this court. (*Rex* v. *Neville*, 3 B. & Ad. 299.)

PATTESON, J.—Are there any instances of our granting this writ in such cases? It is true, this is a Criminal Court, and on an indictment removed, we can give judgment; but this is a summary proceeding before magistrates.

Pickering.—There is in principle no distinction.

PATTESON, J.—You may have a *procedendo* to send back the conviction.

Rule absolute for a writ of procedendo.

REG. *v.* THE RECORDER OF BOLTON.

Where under the 17 Geo. 3, c. 56, s. 8, a party is summarily convicted and he gives notice of appeal, and enters into recognizances to try, &c. and afterwards abandons his appeal, the Sessions have no authority to permit the respondents to enter the appeal, nor to confirm the conviction or award the respondents their costs. In such a case the proper course is to estreat the recognizances and apply to the justices to issue their warrant to enforce the conviction, which stands as though unappealed against; and should the justices refuse to act, they will be compelled by mandamus to proceed.

Baines, Q.C. on a former day, shewed cause against a rule obtained by *Cowling*, calling upon the Recorder of Bolton to shew cause why a *mandamus* should not issue commanding him to enter, or cause, or allow to be entered, as of the last sessions, an appeal, or the matter of an appeal of William Barlow against the conviction of him, the said William Barlow, by two justices of the peace, and proceed to hear and determine the matter of the said appeal, or to affirm the said conviction, or award such costs to be paid by the said William Barlow as may appear to be reasonable.

It appeared, that on the 15th of July last, one William Barlow was convicted by two justices of the borough of Bolton, under the 17 Geo. 3, c. 56, s. 8, for wilfully neglecting to work up certain cotton goods, the property of his masters, the Messrs. Lomax, whereupon he was adjudged to be imprisoned in the house of correction at Salford, with hard labour, for one month. Upon this decision he gave notice of appeal, and entered into a recognizance, with two sureties, to try his appeal, to abide the judgment of the Court, and pay such costs as should be awarded. Two days before the sessions he gave notice that he abandoned his appeal, and on the first day of the sessions, no appeal having been entered by the appellant, the respondents (the justices) applied to be permitted themselves to enter it. This application was disallowed; upon which the respondents applied to the Court to confirm the original conviction, which the Court refused to do, on the ground of a want of jurisdiction; whereupon the respondents asked for their costs, the rule of Court as to three days' notice of abandonment not having been complied with, which application, for the same reason, was not granted. Subsequently the convicting justices were applied to, to issue their warrant to apprehend and commit the said William Barlow to prison in execution of the original sentence, but they declined to grant the warrant, alleging that their jurisdiction was taken away by the notice of appeal. On behalf of the Recorder, and in opposition to this rule, it was contended that he pursued the proper course, he having no jurisdiction to entertain the case in the absence of an appeal entered by the appellant (7 Ad. & Ell. 588; 7 B. & C. 293); that the Court of Quarter Sessions should have been applied to, to have estreated the recognizances, whereupon the original conviction would have been in full force against the appellant, and may have been enforced as though no notice of appeal had been given, and if the magistrates declined, they could have been compelled to have enforced it by *mandamus*; that the 8 & 9 Wm. 3, c. 30, giving respondents their costs where an appeal is not proceeded with, applies only to orders of removal; that the case of *Reg.* v. *Twyford and Another* (5 Ad. & Ell. 430), relied upon on the other side, in which the Court refused to direct a *mandamus* to justices to enforce a conviction under this Act, under somewhat similar circumstances, was distinguishable in this, that the appellant, in consequence of not having entered into his recognizances, remained in gaol, and it was doubtful, therefore, whether such imprisonment must not have been taken to have been in execution of his sentence on the conviction; that the power to award costs was ancilary to the appeal, and that they could not be given independently of it.

Cowling, contrà, endeavoured to draw a distinction between the words "appeal" and "the matter of an appeal," as used in this Act, and contended that, at least, the Recorder ought to have made an order for the costs of the respondents.

HIS LORDSHIP now delivered judgment, holding that the Recorder was quite correct in the view and course which he had taken, for that this Court had in several cases held, that respondents have no right, on default of the appellant, themselves to enter the appeal—that similar words in the appeal clause of this Act are to be found in other Acts under which it has never been allowed to the respondents to enter an appeal. That it seemed to him to be quite impossible to contend that if the person appealing does not enter his appeal, the respondents had a right to enter it. That the Recorder, therefore, had no alternative but to refuse the respondents' application. That as to the argument of the inconvenience which would result from the inability of the Recorder to enforce the conviction, and the doubt as to the right of the justices to enforce it, he himself had no doubt that the party, on neglecting to prosecute his appeal, was placed in the same situation as though no notice of appeal whatever had been given, and that the justices had a clear right to issue their warrant and enforce their conviction. That this case is distinguishable from the *King* v. *Twyford*, inasmuch as the party was there in custody; and the Court merely said that, under the circumstances, there was sufficient doubt to justify their refusing the *mandamus* to the justices. That as to the giving of costs to the respondents, costs were given by the Act as ancillary to the hearing of the appeal, and are not governed in this case by 8 & 9 Wm. 3, c. 30, which applies only to orders of settlement. That the writ of *mandamus* ought not, therefore, to go, and that the rule should be

Discharged, with costs.

BUSINESS OF THE WEEK.

Friday.

MACTAGGART *v.* WEDDERBURN.—*Crompton* shewed cause in this case; *Pashley*, contrà. (See 3 Law T. 208.)—*Leave to amend sheriff's return, on payment of costs.*

NEWTON *v.* HOLFORD.—*Talfourd*, Serjt. moved for a rule calling upon the plaintiff to shew cause why the defendant should not have execution for his costs. *Rule nisi.*

WEBSTER *v.* CHANDLER.—*Crompton* appeared on behalf of Mr. Gibson, the owner of the Fairy Queen; *Taprell*, on behalf of Mr. Webster, the owner of Hopping Kate, and Sir *J. Bayley*, for the stakeholder. (See 4 Law T. 101.)—*Interpleader rule granted; the plaintiff in the action to be the plaintiff in the issue, and the stakeholder to pay the stake into court, deducting his costs of obtaining this rule.*

Re SMART.—*Warren* moved for a rule calling upon an attorney to deliver up all bills of costs, and to account. *Rule nisi.*

Saturday.

Ex parte JOHN HOWARD.—The prisoner having been brought up, and due notice having been given to the parties, and no cause shewn, he was ordered to be discharged. (See 4 L. T. 120.)—*Discharged accordingly.*

REG. *v.* THE LANCASTER AND PRESTON RAILWAY COMPANY.—*Ex parte* COTTAM.—*Atherton* moved for a *certiorari* to remove an inquisition of damages into this court with the view to quashing same. *Rule nisi.*

DOE *dem.* GREEN *v.* ROE.—*Parry* moved for judgment against the casual ejector, upon an affidavit shewing a peculiar service. *Rule nisi.*

WILLIAMS *v.* PRITCHARD.—*Cook* moved to set aside an award. *Rule nisi.*

PITCHER *v.* MUSGROVE.—*Charnock* moved for a rule for the Master to tax the plaintiff's costs, on an order obtained by the defendant to amend his pleas, the defendant having, in the absence of the plaintiff, obtained the Master's allocatur for 6s. 8d. and the Master afterwards declining to tax on the application of the plaintiff. *Rule nisi.*

WILKS *v.* STAFFORD.—*R. Allen* moved to set aside the nonsuit herein, the plaintiff having been nonsuited by being too late in court (the Sheriff's Court of London), in consequence of an erroneous notice of the time of the sitting of the Court posted up in the office. *Rule nisi.*

AUSTIN *v.* DAVEY.—*C. Edwards* moved for a rule calling upon the plaintiff to shew cause why the judgment signed herein, and all subsequent proceedings, should not be set aside, on the ground that judgment was signed too soon. *Rule nisi.*

PITCHER *v.* VICARS.—*Wordsworth* moved to set aside the issue and notice of trial herein, on the ground of variance between the issue and declaration. *Rule nisi.*

Ex parte JOBSON.—*Ball* moved for a rule *nisi* for a *mandamus* to the lords of the manor of Brinstead, in the county of Cambridge, commanding them to admit the applicant to a copyhold tenement within the manor. *Rule nisi.*

Monday.

WILLIAMSON *v.* LOCK.—*Cowling* moved to set aside the award herein, on the ground that the arbitrator had not decided on all the issues. *Rule nisi.*

Ex parte CUNNINGHAM.—*V. Lee* moved that the enrolment of the assignment of this gentleman's articles should be computed from the time when the assignment actually took place, and not from the time of the enrolment. *Application granted.*

GILL *v.* LEGOTT.—*Greenwood* moved that the defendant might be at liberty to add a plea herein of illegality, the money sought to be recovered being a stake in a Derby club. *Rule nisi.*

SHARP *v.* CUMMINS.—*Wallinger* shewed cause against this rule. *Allen*, contrà. *Cur. adv. vult.*

BURROWS *v.* LENTHALL.—*Ball* shewed cause against the rule obtained by *Lush* herein to enter a suggestion on the roll. *Rule absolute.*

REG. *v.* THE JUSTICES OF MERIONETHSHIRE.—*Welsby* moved for a *certiorari* to remove an indictment from this county for the non-repair of a bridge, on the ground that it would be desirable to have a special jury, and but few of the inhabitants understood the English language. *Rule granted.*

SCOTT *v.* ENGLAND.—*Lush* shewed cause against the rule obtained herein by *Udall*. *Cur. adv. vult.*

REG. *v.* THE RECORDER OF BOLTON.—*Baines*, Q.C. shewed cause against the rule obtained herein by *Cowling*. *Cur. adv. vult.*

Tuesday.

Ex parte GODWIN.—*V. Williams* moved for a *mandamus* to be directed to the Duke of Beaufort, and also to his steward of his Court Baron of Crichhowell, commanding him to try a certain cause depending in his Court, of *Godwin* v. *Davis*. *Rule nisi.*

REG. *v.* THE JUSTICES OF THE WEST RIDING OF YORKSHIRE; *Ex parte* THE CHURCHWARDENS AND OVERSEERS OF ST. PANCRAS, MIDDLESEX.—*Pickering* moved for a rule *nisi* for a *mandamus* commanding the above justices to enter continuances and hear an appeal. The point was precisely that raised in *Reg.* v. *The Justices of the West Riding of Yorkshire*, reported in the LAW TIMES, Bail Court, Saturday, Nov. 2. *Rule nisi.*

Ex parte JOHN CRESSWELL.—*Whitmore* shewed cause in this case (see 4 L. T. 119), and contended that, as the imprisonment of the defendant would expire this day it would be idle to direct the writ of *habeas corpus* to go when the return of the gaoler of necessity would be, that "he has not the party in his custody;" and PATTESON, J. being of this opinion, he directed the rule to be discharged without costs.

REG. *v.* SYDSERFF.—In this case *Rew* had obtained a rule to estreat the recognizances of the defendant's bail into the Exchequer, against which *Ball* shewed cause.

Rule absolute to remain in the office one month, to enable the bail to pay the amount.

LAMBERT v. HOLT.—*Watson*, Q. C. shewed cause against the rule to set aside an order of Maule, J. obtained by *Kennedy*. *Rule discharged.*

Wednesday.

Re THOMAS WOOD, Gent.—*Gray* moved for a rule calling upon this gentleman to shew cause why an attachment should not issue against him for not giving up certain documents belonging to the governors and guardians of St. Mary, Newington. *Rule nisi.*

—— v. ——.—*Browne* moved for a rule to review the Master's taxation herein. It appeared the action was brought against a married woman, who, amongst other pleas, pleaded her coverture. Judgment had been signed against the plaintiff as in case of a nonsuit, for not proceeding to trial, and the Master, on taxing the defendant's costs, refused to allow her (as a married woman, and therefore pleading in person) any other than her costs *out of pocket*. The judge held this to be correct. *Rule refused.*

KEANE v. WHITE.—*D. D. Keane* shewed cause in this case. *Humfrey*, contrà. *Cur. adv. vult.*

TURLEY v. PRAY and ANOTHER.—*Francillon* shewed cause against this rule. *Hoggins*, in support. (See 4 Law T. 101.) *Cur. adv. vult.*

Re HASSELL.—*Jerris*, Q.C. moved for a *certiorari* to remove a coroner's inquisition into this court, with the view to quashing the same, on the ground that it was taken by the deputy coroner, the coroner himself not being incapacitated from attending.

REG. v. THE MAYOR AND CORPORATION OF SUNDERLAND.—*Atherton* moved for a *mandamus* commanding the above corporation to admit a gentleman to the office of alderman. *Rule nisi.*

Thursday.

Ex parte RICHARDSON AND ANOTHER.—*Hawkins* moved for a rule calling upon an attorney to pay over a sum of money. *Rule nisi.*

JOB v. THOMPSON.—*V. Williams* shewed cause against this rule. *Flood*, contrà. See 4 L. T. 121.

Rule absolute on payment of the taxed costs.

Ex parte THOMAS SPENCE.—*R. Hall* moved for a *habeas corpus* and a *certiorari* to bring up the body of the applicant, and the conviction under which he is imprisoned, for certain defects in the proceedings.

Rule granted, returnable at chambers.

REG. v. THE JUSTICES OF THE WEST RIDING OF YORKSHIRE, IN THE MATTER OF THE APPEAL BETWEEN BRETTON-WEST, AND DARTON.—In this case, which had been argued by *Hall* and *Pashley*, on a motion by the latter to quash the *certiorari* removing a case from the sessions, on the ground that the affidavit on which the writ was obtained did not sufficiently shew that the two justices served, were two who were actually present at the hearing of the appeal, his lordship held the objection to be good, and directed the *Certiorari to be quashed.*

HENZELL v. HOCKING.—*V. Williams* moved for a rule to stay all further proceedings in this action until the taxed costs of 57*l*. 18*s*. for not proceeding to trial be paid. *Rule nisi.*

THE QUEEN v. SIR W. M. STANLEY, BART. AND OTHERS.—*Wortley*, Q. C. moved for a *certiorari* to remove into this Court two indictments found at the last assizes for Chester, against the defendants, for working a quarry so as to obstruct a public highway; and also for constructing a railway so as to interfere with public rights. It was alleged that a view will be necessary,—that it will be proper to try the case by a special jury, and that points of law will arise.

Certiorari granted.

LAMBERT v. HOLT.—His lordship directed this rule to be discharged; the costs to be costs in the cause.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Nov. 6 and 13.

Ex parte SIMPSON, *re* HUNT.

Act of bankruptcy—Fraudulent preference—Construction of 6 Geo. 4, c. 16, s. 3.

Where the acting member of a firm, with a knowledge of the insolvency of the firm and after a determination to suspend payment, had given checks to three different persons, private friends of the partners, and there was no evidence to shew that the checks were given under pressure; it was held to amount to a fraudulent preference, which constituted a valid act of bankruptcy.

Money held to be within the meaning of the terms "goods and chattels," in the 3rd section of 6 *Geo.* 4, c. 16.

The principal point which arose upon this petition was, as to the validity of an alleged act of bankruptcy under the 3rd section of 6 Geo. 4, c. 16. The circumstances of the case will sufficiently appear from the Chief Judge's judgment.

Russell, *Mylne*, *Swanston*, *Bacon*, and *W. W. Cooper*, appeared for the several parties.

The cases of *Abbott* v. *Burbage* (2 Scott, 656); *Gibson* v. *Boutts* (3 Scott, 229); and *Bevan* v. *Nunn* (9 Bing. 107; 2 M. & Scott, 132), were cited.

The CHIEF JUDGE said, that during the progress of the argument he had communicated with the Lord Chief Justice of the Common Pleas relative to a case in which his opinion was stated, in terms which left some doubt as to his intention. He would, however, at once, state his impression of the present case. On the 11th of September, 1841, the firm was in difficulties, and it was known to be so by Mr. Smith, the manager and partner, who must also have been aware that the firm was not solvent. The result proved the accuracy of Mr. Smith's impressions, as both fiats issued before the end of the year. Since that time the fiats had been in active operation; but, now, in November 1844, it was admitted that there had been no dividend, and it was not suggested as probable that there would be more than five shillings in the pound. In September 1841, Mr. Smith, aware of the insolvency, consulted with his solicitor upon it, and it was arranged that either stoppage or suspension should take place on the following business day, and notice of this arrangement was given to the Bank of England, where acceptances were expected to be presented. As part of the same transaction, three checks were drawn for debts due to different persons, private friends of the partners. One of these was in favour of Messrs. Vaughan and Co. for an amount about to be due to them on the following Tuesday; but for this payment there was no evidence to shew pressure. Had the check been sent to them before the decision to stop payment, the effect would have been different. Another check was given in favour of a cousin of one of the partners, who had rendered pecuniary assistance to the firm. No jury would say that that was done under pressure. A third check was given to the solicitor of the partners. These were all payments where the amount due was unknown, by a trader who intended to stop on the following day. To hold, then, that such transactions were fair because Mr. Smith supposed that there would be a suspension of payment without failure, would be unreasonable. The suspension of payment would be sure to bring the whole of the creditors upon the firm, when they might be made bankrupts against their will. Looking at all the circumstances of the case, his Honour was of opinion, that the three acts, taken together, amounted to a fraudulent preference in some or one of them. It had been said that fraudulent preference did not necessarily constitute an act of bankruptcy: this depended upon the construction of the 3rd section of the 6 Geo. 4, and he was inclined to be of opinion that it was sufficient. He would, however, reserve his opinion until he heard from the Lord Chief Justice, and reconsider the matter, if requisite.

Nov. 13th.—With regard to this case, the Chief Judge said, that he had considered the whole of the authorities to which his attention had been drawn, and that he still retained the opinion he had before intimated, that on the 11th of Sept. 1841, Mr. Smith, one of the bankrupts, was a party to acts of fraudulent preference sufficient to constitute an act of bankruptcy, if payment of money to creditors by fraudulent preference might be construed to be a "gift, delivery, or transfer of goods and chattels" within the 3rd section of the 6 Geo. 4, c. 16. Money was certainly among the things to which the term "goods" might be applied. Could it be reasonably said that a man's money was not part of his goods and chattels? This case was certainly within the range of the evils intended by the Legislature to be guarded against. If a man who was insolvent gave away 1,000*l*. surely the act was as fraudulent as if he gave bills of exchange, plate, or pictures of a similar value. Bills of exchange were included in a case decided in the Common Pleas. He (the Chief Judge) was required to distinguish between bills and cash, but he could not. After carefully considering the terms of the various sections bearing upon this subject, his Honour had arrived at the conclusion that there was nothing to prevent him from considering money as comprised within the terms "goods and chattels." Such a view was independent of the case of *Bevan* v. *Nunn*, in which the opinion of the Lord Chief Justice of the Common Pleas was at variance with the present construction. He had considered the point anxiously and with much distrust of his own opinion, in consequence of his deference for the high authority of that learned judge. There were cases in which a judge might properly act contrary to his own impressions, but the present was not one in which he considered that he ought to pursue that course. The opinion of the Lord Chief Justice was single, and was not necessary for the decision of the case in which it was given, which turned on the 81st section. He should, therefore, hold with Mr. Commissioner Fane, that the act of bankruptcy by Smith, in September 1841, was in all respects good and sufficient.

Wednesday, Nov. 20.

Ex parte GOULD, *re* GOULD.

Bankrupt's petition to annul a fiat—Acquiescence.

Where a bankrupt has, under the 23rd section of the 5 & 6 *Vict.* c. 122, *given his written consent to the adjudication of his bankruptcy, and to the advertising the same, he is not precluded, on the ground of acquiescence, from presenting a petition to annul the fiat.*

This was a petition by the bankrupt, seeking to annul the fiat, on the ground of there being no act of bankruptcy.

Swanston, for the petitioner.

Russell, for the respondents, raised an objection to the petition being heard, as the bankrupt had, under the 5 & 6 Vict. c. 122, s. 23, surrendered to the fiat, and voluntarily given his consent, in writing, to the adjudication, and that the same might be advertised. He contended, that this was such an acquiescence on the part of the bankrupt, as to preclude the hearing of this petition.

The CHIEF JUDGE, however, overruled the objection.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner Serjt. STEPHEN.)

Tuesday, Nov. 19.

Re SAMUEL HILL.

Practice under 7 & 8 *Vict. c.* 96—*Whether to dismiss petition, or refuse to name day for final order—When costs of opposition allowed out of estate.*

In this case, at the first hearing, *Homes* appeared for two creditors, and elicited from the insolvent that he had contracted debts to a large amount, with but little probability of ever being able to pay them, and that two of these debts were incurred but a few days before the filing of the petition. Under these circumstances,

His HONOUR was about to dismiss the petition, when

Homes prayed that the petition might not be dismissed, as there was property, which an assignee, if appointed, could get at. He contended that the proper course for the Court to pursue was to refuse to name a day for making the final order, but to proceed with the petition as far as respects the appointment of assignees and the distribution of the property.

His HONOUR.—You wish me, then, virtually to dismiss the petition as regards any benefit the insolvent may receive, and go on with it as regards the benefit to the creditors?

Homes.—Not exactly; the insolvent may, after undergoing such a probation as the Court may think just, come up again under sec. 28; and it is questionable whether he runs any risk of arrest from creditors who come in and take a dividend.

His HONOUR.—I shall refuse to name any day for making the final order, but an assignee may be appointed, and the property collected and distributed. I think it right, however, on the occasion of refusing to name a day for a final order, to intimate to the insolvent the time during which he will be unprotected. In this case, which does not present any prominent features, I think three months a reasonable time, during which the insolvent will not be permitted, unless under special circumstances, to apply to the Court under the 28th sec.

Homes then applied for the costs of the opposition to be ordered out of the estate.

His HONOUR.—If your opposition had been confined to the object of punishing the insolvent for misconduct, I should doubt whether I ought to allow your costs out of the estate; but you have elicited many facts for the benefit of the estate; indeed, the main part of the examination has been to obtain information relative to the insolvent's property. I shall order the costs out of the estate.

No day named for the final order; assignees appointed, and costs of opposition ordered out of estate accordingly.

Irish Reports.

QUEEN'S BENCH.

(Before Mr. Justice CRAMPTON.)

Friday, Nov. 15.

REG. v. O'CONNELL and OTHERS.

(See *ante*, 2 & 3 Law T.)

Sir Coleman O'Loghlen moved, on the part of the defendants in this case, that the judgment of reversal obtained in this cause be entered upon the record, and the recognizances of the defendants be delivered up to be cancelled.

The Clerk of the Crown having stated that the necessary formal documents had not been as yet returned to the Crown-office,

CRAMPTON, J. directed the application to be complied with as soon as the proper documents were laid before the officer.

CITY OF LIMERICK SUMMER ASSIZES, 1844.

(Before Mr. Justice BALL.)

REG. v. BROWN and O'REGAN.

Where a prosecution for misdemeanour is instituted at the suit of the Crown, whether the Attorney or Solicitor General conduct the prosecution in person or not, a defendant is entitled,

under the statute 60 *Geo.* 3, *cap.* 4, *to a copy of the indictment before he pleads.*

Bennett, Q.C. (with whom were the Hon. *J. Plunkett*, Q.C. and *Brereton*), for the Crown, objected that the statute only applied to cases where the Attorney or Solicitor General conducted the prosecution in person.

BALL, J.—I think it is just the same thing here as if the Attorney-General appeared in person; you represent the Attorney-General; it has been so held, for instance, in the case of counsel for the Crown claiming the right to reply.

Bennett.—At all events, they are not entitled to copies until after they have pleaded.

O'Hea.—But it is for the very purpose of pleading that we require them.

BALL, J.—My impression is, that the order ought to be granted. I can give no other construction to the statute; perhaps, therefore, you had better, to prevent the necessity of my making any order, allow copies to be taken under a protest.

Bennett.—The Attorney-General does not appear on circuit; he only directs certain counsel to be employed.

BALL, J.—As I said before, I think that it amounts to just the same thing.

The defendants were then furnished with a copy of the indictment, and on the following day pleaded not guilty, and having been held to bail within twenty-one days previous to the opening of the commission, traversed *in prox.*

THE LEGISLATOR.

Summary.

THERE is nothing to communicate under this title.

THE MAGISTRATE.

Summary.

WE have but to refer our readers to the many cases of interest to them which they will find among the reports. The following letter to the *Morning Herald* is worth preserving:—

"THE RECENT JUDICIAL APPOINTMENT.

"TO THE EDITOR OF THE MORNING HERALD.

"SIR,—It may not be generally known to many of your readers that the new judge of the Court of Common Pleas is not the first 'Sir William Erle' who has had a seat in that Court. As I was, in the course of my 'timely and orderly reading,' turning over the pages of 'Coke on Littleton,' the following passage casually met my eye, which I send you *verbatim et literatim*:—' Sir *William Herle*—A famous lawyer, constituted chiefe justice of the Common Pleas by letters patents, dated 2 die Martii, anno 5 E. 3. (1342.) It appeareth by Littleton, and by the records, that he was a knight, against the conceit of those that thinke that the chiefe justices of the Court of Common Pleas were not knighted till long after. Our student shall observe that the knowledge of the law is like a deepe well, out of which each man draweth according to the strength of his understanding. He that reacheth deepest, he seeth the amiable and admirable secrets of the law, wherein, I assure you, the sages of the law in former times (whereof *Sir William Herle was a principal one*) have had the deepest reach.' Co. Lit. 71, a.

"I am, &c.

"Lincoln's-Inn, Nov. 15." "HAL."

TAXATION OF COSTS.

GENERAL CODE OF THE POOR LAW COMMISSIONERS.

To the Clerks of the Peace of the several counties, ridings, divisions, and places in England and Wales;—

To the Guardians of the Poor of the several unions and parishes in England and Wales;—

To the Overseers of the Poor of the several parishes and places in England and Wales;—

And to all whom it may concern.

Whereas it was enacted by the Act passed in the last Session of Parliament, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," that, on application of any overseer, or of any board of guardians, or of any attorney at law, it should be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and that the allowance of any sum on such taxation should be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge; and that the clerk of the peace should be allowed for such taxation after the rate to be fixed from time to time by the Master of the Crown Office, and declared by an order of the said commissioners:

And whereas the Master of the Crown Office has fixed the rate of allowance to the clerk of the peace in respect of such taxation as herein declared:

Now therefore, we, the Poor Law Commissioners, in pursuance of the statute aforesaid, do hereby declare, that the clerk of the peace of every county or place in England and Wales shall be allowed for the taxation of every bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union, after the rate of four-pence per sheet, or folio, of seventy-two words each.

Given under our hands and seal of office this twenty-first day of November, in the year one thousand eight hundred and forty-four.

(Signed) GEO. NICHOLLS,
EDMUND W. HEAD.

The Queen has been pleased to approve of Mr. Joel W. White, as Consul at Liverpool for the United States of America.

The Queen has been pleased to appoint Wm. Henry Moore, esq. stipendiary magistrate for her Majesty's Settlements in the Falkland Islands.

Henry Mannix, esq. barrister-at-law, of Richmond, has been appointed a magistrate for this county, on the recommendation of the Earl of Bandon.—*Cork Examiner.*

PROJECTED RAILWAYS.—STANDING ORDERS OF PARLIAMENT.—The projectors of a great number of lines of railway, and for which companies have been formed and notice given of their intention of applying in the ensuing session of Parliament for an Act to carry out their intentions, have unexpectedly been placed in a difficulty which will be fatal to their application, not having complied with the standing orders. It appears the standing orders require that a notice of the intended application shall be inserted in the *London Gazette* once in three consecutive weeks either in the months of October or November, and that such advertisement should be left at the office of the *London Gazette* two days before the day of publishing the *Gazette*. In a great many instances the parties from some cause or other omitted to send their advertisements until Friday morning last, and owing to the enormous number of advertisements, they were refused insertion, and it is now too late to remedy the omission; in all these cases the parties will not be entitled to ask for their Act of Parliament, the standing orders not having been complied with. Whether Parliament under the circumstances will relieve the applicants is very uncertain; if not, they cannot apply until the following session.

THE ENSUING WINTER ASSIZE.—Magistrates and their clerks will probably have become informed before our present number reaches them, that it is only intended to try at this assize the class of prisoners usually tried at assizes, not those triable at the quarter sessions; in other words, it is not to be a general gaol delivery, but it will be a special one only. It follows from this, that magistrates may before the assize commit prisoners for trial at the next quarter sessions, though the assize intervenes, without fear that the prisoners so committed will be discharged by the judges. Attention to this will obviate the inconvenience which arose last year, from the want of a timely communication, that the gaol delivery was a limited one. The notice, as published by the authorities, is, that the commission is "for holding a special gaol delivery;" and it requires "all prosecutors and persons bound by recognizance to prosecute or give evidence against the prisoners being in the gaol of ——, as shall have been committed for trial at the next assizes, or at the next gaol delivery for —— to be in punctual attendance," &c. This annunciation means, that such prisoners only as are committed for trial at the assizes will be tried, and that the judges will not feel themselves called upon to discharge prisoners in the gaols committed for trial at the sessions; though it must be admitted the wording of the notice is not as explicit and grammatical as it should be. We are enabled also to state, from a source of undoubted authenticity, that at the ensuing assize the judges will try all cases committed to the assizes, but will not interfere with those committed to the sessions. Prisoners therefore triable at the sessions may be safely committed thereto and should be so, notwithstanding the intervention of the assize.—*Justice of the Peace.*

The following buildings are certified as places duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—Jireh Chapel, Bird's Isle, Kent; Joseph E. Fall, superintendent registrar. The Independent Chapel, Ambleside, Westmoreland; Reginal Remington, superintendent registrar. Bridgetown Chapel, Bridgetown, Devonshire. Zion Primitive Methodist Chapel, Blackburn. English Presbyterian Chapel, Bradford.

THE LAWYER.

Summary.

WE must be brief with all other matters to make way for the Reports. Indeed, there has been no event calling for comment, save the resistance of the authorities in Jersey to the writ of *habeas corpus*. The subject of the following letter deserves attention:—

"THE COURT OF CHANCERY.

"TO THE EDITOR OF THE TIMES.

"SIR,—You would do the public a service by calling the attention of the Lord Chancellor to the fact, that while the charge for office copies of bills and answers obtained from what used to be the Six Clerks' Office has been reduced from 10d. to 4d. a folio, the charge for copies of reports, which are generally long, still continues at 10d. per folio of 90 words, and forms a grievous burden to the suitor, who is frequently prevented from having his cause finally heard by reason of his not being prepared to pay the heavy demand which is made at the Report-office as the preliminary step to delivering out a copy of the Master's report. I may add, that the salary of the Master of the Report-office is 2,000*l.* a year, (*a*) though the duties are such as may be performed by any ordinary clerk, and the present Master scarcely ever attends, being very infirm.

"Your obedient servant,

"CIVIS."

THE PROPERTY LAWYER.

AN ACT TO SIMPLIFY THE TRANSFER OF PROPERTY (7 & 8 VICT. c. 76).

No. III.

[We regret that several errors crept into our last article on this Statute, in consequence of the lateness of the hour at which the article was printed. As, however, the more important ones related to the law as it is, we doubt not that our readers at once detected them.]

The 4th clause declares—

That no lease in writing of any freehold, copyhold, or leasehold land, or surrender in writing of any freehold or leasehold land, shall be valid as a lease or surrender, unless the same shall be made *by deed*; but any agreement in writing to let or to surrender any such land shall be valid and take effect as an agreement to execute a lease or surrender; and the person who shall be in the possession of the land in pursuance of any agreement to let may, from payment of rent or other circumstances, be construed to be a tenant from year to year.

Leases and surrenders which may now be made without writing are not affected by this clause; surrenders, therefore, will be implied as at present. One main object of this clause evidently was to prevent the occurrence of the nice questions so frequently arising, whether a particular instrument, intended to operate as an agreement for a lease, does not in fact amount to an actual demise. The enactment is, that a lease in writing must be by deed, but an agreement in writing shall be valid as an agreement to execute a lease; *so it is now.* The question in the cases to which we have alluded always is, "Is the instrument an agreement *or* a demise?" If it be an agreement, effect is given to it as such. But in the altered state of the law, how will an instrument in writing, but not under seal, containing words of actual demise, operate? Not as a *lease*, because it is not under seal; not as an agreement, because it is an actual demise. To illustrate our meaning, let us take the case of *Doe* v. *Groves* (14 East, 244), in which the agreement was as follows:—

Agreement made this 7th day of March, 1798, between T. W. of the one part, and E. G. of the other.—The said T. W. doth hereby agree to let, and also, upon demand, to execute unto the said E. G. a lease of the farm, &c. as the same is now in the occupation of the said T. W., and the said E. G. doth hereby agree to take, and upon demand to execute, a lease of the said farm, to hold the same from the 5th of April, 1798, for the term of fifteen years, under the yearly rent 147*l.* to be paid half-yearly on the 5th of April and 10th of October, which said lease is to contain the usual covenants and an agreement for re-entry, in case of non-payment of the rent or non-performance of covenants, and also the further covenants, &c. That this agreement shall be binding until the said lease is made and executed.

That was held to amount to an actual demise. Now, assume that, after the 31st of December, an agreement in writing, not under seal, is made in precisely the same language; the authority of that case settles that it is not a mere agreement, and the section of the Act before us says, that it is not a lease, because it is not by deed. What will it be? and in what position will a tenant stand who takes

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(*a*) "The salary of the Master of Reports and Entries is one thousand, not *two* thousand a-year. The office was regulated by Lord Brougham's Act ([illegible]), and the salary is stated in a schedule to the Act."

possession under it? The courts, indeed, may say, the law having been altered, the intention of parties must be supposed to vary in like manner, and we will, therefore, out of deference to that intention, and to carry out the object of the Act, construe as mere agreements instruments which we have hitherto held to be actual demises. But until decisions to this effect have been pronounced, the clause in question will create great difficulty and render it unadvisable in the extreme for tenants to rely on any agreement not under seal. Constructive tenancies from year to year are unaffected.

The 5th sec. enacts:—

That any person may convey, assign, or charge by any deed, any such contingent or executory interest, right of entry for condition broken, or other future estate or interest as he shall be entitled to, or presumptively entitled to, in any freehold or copyhold or leasehold land, or personal property, or any part of such interest, right, or estate respectively; and every person to whom any such interest, right or estate shall be conveyed or assigned, his heirs, executors, administrators, or assigns, according to the nature of the interest, right, or estate, shall be entitled to stand in the place of the person by whom the same shall be conveyed or assigned, his heirs, executors, administrators, or assigns, and to have the same interest, right, or estate, or such part thereof, as shall be conveyed or assigned to him, and the same actions, suits, and remedies for the same as the person originally entitled thereto, his heirs, executors, or administrators, would have been entitled to, if no conveyance, assignment, or other disposition thereof had been made.

According to the present law, interests of the nature referred to in this clause cannot be barred at law; they are alienable in equity, and will pass by will; but the only method at law of operating upon any of them is by way of estoppel. This clause, however, enables "every person" to convey such interests wholly or partially,—and absolutely or for a limited purpose,—by a simple deed; and the transferree will stand in the same position and have the same rights and remedies as the transferror. But interests created before the Act comes into operation are not included, the Act not extending to any "estate, right, or interest created before the 1st January, 1845." The question which we touched upon in reference to the 2nd clause, has been mooted with regard to this clause, viz. whether the words "every person" will not extend to parties under disabilities and enable them to convey. It is obvious, however, that this is not so; the language may be unguarded, but it cannot be contended that the protection which the law carefully throws around parties in those situations is cut away from them by a loose expression; that a lunatic, for example, is thereby invested with an unqualified power of disposition over contingencies which is denied to him over vested interests. Such an anomaly could be created only by the most unequivocal language. From the operation of this clause, mere expectancies as heirs, &c. and also *choses in action*, are excepted, and estates tail cannot, under its authority, be barred or enlarged; these exceptions are as follows:—

Provided that no person shall be empowered by this Act to dispose of any expectancy which he may have as heir, or heir of the body inheritable, or as next of kin, under the statutes for the distribution of the estates of intestates of a living person, nor any estate, right, or interest to which he may become entitled under any deed there after to be executed, or under the will of any living person; and no deed shall by force of this Act bar or enlarge any estate tail: provided also, that no chose in action shall by this Act be made assignable at law.

Choses in action will, of course, continue assignable in equity.

The 6th clause declares that the words "grant" and "exchange" shall not create any warranty or right of re-entry, or any covenant by implication, "except in cases where by any Act of Parliament it is or shall be declared that the word "grant" shall have such effect;" and the 7th clause places tortious and innocent assurances on the same footing. These clauses are not of much practical consequence. Usually the word "grant" is either omitted or guarded in conveyances by parties who could not be required to covenant for the title; and even if used without limit in such cases, the danger is more fancied than real. A deed of exchange will still be unadvisable in consequence of the necessity of entry, &c. to perfect it.

The 8th section is of more importance. It enacts:—

That after the time at which this Act shall come into operation no estate in land shall be created by way of contingent remainder; but every estate which before that time would have taken effect as a contingent remainder, shall take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature and having the same properties as an executory devise.

The wording of this clause is peculiarly awkward, and calculated to give rise to serious difficulty. The intention was to do away with contingent remainders as such, and convert them into executory estates. But the clause says, first, that a contingent remainder *shall not be created*, and then that unless it is created, an executory estate shall not arise. The one is a consequence of the other, and the cause is forbidden. The result is, that contingent remainders are abolished, and no substitute is provided. Therefore the ordinary limitation in a marriage settlement, for instance, to the first and other sons, &c. cannot take effect, and the object cannot be attained by any other means. This is the obvious strict construction of the clause.

On the other hand, the Courts may strain the language in order to give effect to the apparent intention of the Legislature, and prevent the serious consequences which the literal interpretation would produce. They may hold the meaning to be, that "no estate shall *take effect* by way of contingent remainder, but that every estate which would have taken effect as a contingent remainder shall take effect as an executory estate, &c." Therefore, a good contingent remainder must be limited (for which purposes, of course, the rules appertaining to remainders must be observed), and it will be governed by the rules which now govern executory devises. Whether the clause extends to copyholds or not is doubtful. "Land" is the only word used, and in every other clause applicable to copyholds they are expressly mentioned.

The ordinary limitation to trustees to preserve, &c. may, of course, be omitted.

The clause proceeds to declare that contingent remainders in existence at the time the Act comes into operation shall not fail by the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine.

The 9th clause enacts:—

That when any person entitled to any freehold or copyhold land by way of mortgage has or shall have departed this life, and his executor or administrator is or shall be entitled to the money secured by the mortgage, and the legal estate in such land is or shall be vested in the heir or devisee of such mortgagee, or the heir, devisee, or other assign of such heir or devisee, and possession of the land shall not have been taken by virtue of the mortgage, nor any action or suit be depending, such executor or administrator shall have power, upon payment of the principal money and interest due to him on the said mortgage, to convey by deed or surrender (as the case may require) the legal estate which became vested in such heir or devisee, and such conveyance shall be as effectual as if the same had been made by any such heir or devisee, his heirs or assigns.

The inconvenience and expense caused by the legal estate vested in a mortgagee descending to his heir, or passing to a devisee, incompetent to convey, or who is not at hand, or cannot be found, are a serious evil, which this clause was intended to remedy, by enabling the personal representatives who are entitled to the money to convey the estate. We fear, however, in practice the clause will be useless. In the first place, the power of the representatives to convey is limited to cases in which possession of the land had not been taken by virtue of the mortgage, and no action or suit is depending. The difficulty of proving these negatives is obvious; and, supposing a party to be himself satisfied, how will he be able to satisfy a future purchaser? Moreover, in consequence of the careless construction of the clause, a variety of doubts and questions have been already suggested, and must necessarily arise; e. g. whether, as one executor may give a receipt for the money, he also can convey the estate, or must all the executors join? Again, can the representatives convey to a transferree, or sell the mortgaged property and convey to a purchaser? (a) We think it clear that, in its present shape, and until it has received judicial interpretation, this clause will not work.

The 10th clause declares—

That the *bonâ fide* payment to, and the receipt of, any person to whom any money shall be payable upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

This clause will render it unnecessary to insert the common provisions enabling trustees and surviving mortgagees to give good discharges.

The 11th sec. dispenses with the necessity of having a deed indented, and enables any person not a party to a deed to take a benefit under it in the same manner as he might under a deed-poll.

The 12th clause enacts—

That where the reversion of any land expectant on a lease shall be merged in any remainder, or other reversion or estate, the person entitled to the estate into which such reversion shall have merged, his heirs, executors, administrators, successors, and assigns, shall have and enjoy the like advantage, remedy, and benefit against the lessee, his heirs, successors, executors, administrators, and assigns, for non-payment of the rent, or for doing of waste or other forfeiture, or for not performing conditions, covenants, or agreements contained and expressed in his lease, demise, or grant against the lessee, farmer, or grantee, his heirs, successors, administrators, and assigns, as the person who would for the time being have been entitled to the mesne reversion which shall have merged, would or might have had or enjoyed if such reversion had not been merged.

At present, if an estate, out of which a lease for years has been carved, become merged in the reversion, the remedies against the lessee under the lease are extinguished, the relation of landlord and tenant no longer existing. The effect of this clause is in such a case to give to the person entitled to the remainder or reversion in which the lessor's estate has merged, the same remedies which such lessor would have continued to have but for the merger.

The 13th section fixes the 31st December as the time when the Act shall come into operation, and declares that it shall not "extend to any deed, act, or thing executed or done, or (except so far as regards the provisions hereinbefore contained as to existing contingent remainders) to any estate, right, or interest created before the 1st January, 1845."

By the 14th and last section, the Act is not to extend to Scotland.

We have thus gone through the several provisions of this Act, and pointed out the alterations which, according to our views, it will make. The changes which will be occasioned in the common forms of deeds are evidently few and comparatively trifling, consisting only of the omission of the common receipt clauses, the limitation to trustees to preserve, and the reference to the Act dispensing with a lease for a year. Even these alterations it will not be incumbent to make. Undoubtedly some improvements of consequence are effected by this Act; but there is evil mingled with the good, and we much fear that in the end the former will be found to predominate. We shall probably return to the subject in future articles.

LEGAL INTELLIGENCE.

EXCHEQUER OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, Knt. Lord Chief Baron of her Majesty's Court of Exchequer, after Michaelmas Term, 1844.

MIDDLESEX.		LONDON.	
Tuesday, Nov. 26	Com. Jur.	Wednes, Nov. 27	To adjourn only.
Wednesday.... 27	Customs and Com. Juries.	Wednes. Dec. 11	Adj.-day. Com. Jur.
Thursday...... 28		Thursday 12	Com. Jur.
Friday 29		Friday.... .. 13	
Saturday 30		Saturday...... 14	
Monday, Dec. 2	Excise, Stamps, & Com. Jur.	Monday 16	
Tuesday 3	Common Juries.	Tuesday 17	Spec. Jur.
Wednesday.... 4		Wednesday .. 18	
Thursday 5		Thursday 19	
Friday........ 6	Special Juries.	Friday...... 20	
Saturday....... 7		Saturday...... 21	
Monday 9		Monday 23	
Tuesday 10			

The Court will sit at 10 o'clock.

WINTER CIRCUITS.

We republish the list as it appears officially in the *Gazette* of Tuesday. It will be seen that [illegible] has been made in the days for holding the Assizes [illegible] the Western Circuit.

(a) This Pamphlet on this Act by Geo. Sweet, esq.

CROWN OFFICE, Nov. 19.—Days and places appointed for holding the Special Commissions of Oyer and Terminer and Gaol Delivery for the under-mentioned Places :—

OXFORD CIRCUIT.

Gloucestershire, Tuesday, Nov. 26, at Gloucester.
City of Gloucester, the same day, at the City of Gloucester.
Worcestershire, Monday, Dec. 2, at Worcester.
City of Worcester, the same day, at the City of Worcester.
Shropshire, Friday, Dec. 6, at Shrewsbury.
Staffordshire, Tuesday, Dec. 10, at Stafford.

MIDLAND CIRCUIT.

Warwickshire, { Warwick division, Tuesday, Nov. 26, at Warwick. Coventry division, Saturday, Nov. 30, at Coventry.
Leicestershire, Thursday, Dec. 5, at the Castle of Leicester.
Borough of Leicester, the same day, at the Borough of Leicester.
Derbyshire, Monday, Dec. 9, at Derby.
Nottinghamshire, Saturday, Dec. 14, at Nottingham.
Town of Nottingham, the same day, at the Town of Nottingham.
Lincolnshire, Wednesday, Dec. 18, at the Castle of Lincoln.
City of Lincoln, the same day, at the City of Lincoln.

HOME CIRCUIT.

Kent, Tuesday, Nov. 26, at Maidstone.
Essex, Tuesday, Dec. 3, at Chelmsford.

NORFOLK CIRCUIT.

Suffolk, Tuesday, Dec. 10, at Bury St. Edmunds.
Norfolk, Tuesday, Dec. 17, at the Castle of Norwich.
City of Norwich, the same day, at the Guildhall of the said city.

NORTHERN CIRCUIT.

Yorkshire, Thursday, Nov. 28, at the Castle of York.
City of York, the same day, at the Guildhall of the said city.
Durham, Saturday, Dec. 14, at Durham.

WESTERN CIRCUIT.

Southampton, Monday, Dec. 2, at the Castle of Winchester.
Somerset, Monday, Dec. 9, at the Castle of Taunton.
Devon, Monday, Dec. 16, at the Castle of Exeter.
City of Exeter, the same day, at the Guildhall of the City of Exeter.

CHESTER CIRCUIT.

Cheshire, Monday, Dec. 2, at the Castle of Chester.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

The following announcement has been issued by the Lords constituting the Judicial Committee of the Privy Council :—

"The Judicial Committee of the Privy Council will resume its sittings on the following days :—Thursday, 28th of November, Friday, 29th, and Saturday, 30th, Wednesday, 4th December, Thursday and Friday, the 5th and 6th, Monday, 9th, Wednesday, 11th, Friday, 13th, and Saturday, the 14th."

The following is a list of the appeals :—

Colonial and Judicial [illegible].—Juveer Bhaee v. V. Bhaee—Hosanna Kera [illegible] v. Serle—Hosanna Kera Koose v. Mose Hera Koose—Perry v. Zuzy—Chowdry Deby Persad v. Chowdry Dowlut Sing—Nam Coorz Setapaty v. Kanoo Colanoo Pullia.

Ecclesiastical Cases.—Cooper v. Bockett (to be re-heard)—Jones v. Goodrich—Mudway v. Croft.

It is rumoured that the Master of the Rolls will preside at the Council Board on the above dates.

ENTERTAINMENT TO Mr. JUSTICE ERLE.

On Thursday evening a banquet was given at the Albion, Aldersgate-street, by the Western Circuit, to Mr. Justice Erle, on his elevation to the bench. A most sumptuous entertainment was provided on the occasion by Messrs. Staples. Mr. Rogers, the leader of the circuit, was in the chair, and was supported not only by the present members of the circuit, but in addition the body were rejoined by Sir Thomas Wilde, Mr. Serjeant Merewether, Sir John Audrey, W. Hayter, Esq., M. P., and others, who having some time left the circuit, were anxious to express their concurrence in the unanimous feeling which had prompted this token of respect to their distinguished guest. The party were also joined by Sir Frederick Thesiger, as representing the Attorney-General, Sir W. Follett, who was al[so] a member of the Western Circuit.

After due justice had been done to every delicacy which the accustomed efforts of the proprietors of the Albion could provide, and the usual loyal toasts had been duly honoured,

The Chairman proposed "The Health of Mr. Justice Erle."

The company by their long-continued acclamations indicated how much they concurred in the sentiments expressed by the chairman.

Mr. Justice Erle, in returning thanks for the hearty reception and princely entertainment he had received, begged to add that he accepted the kindness of his friends around him not more for the hearty goodwill which their applause indicated, than for the satisfaction which their applause expressed of his conduct during the years which he had spent in intimate connexion with the members of the Western Circuit. The maintenance of the high character of the bar was essential to its position, and the expression of kind feeling which he had received, he hoped might be taken as an approval on the part of those with whom he had so long associated that his efforts had been directed to that end.

"The health of the Attorney and Solicitor-Generals" followed, for which

Sir F. Thesiger returned thanks; and the evening was concluded with the most perfect concurrence of a large body of the bar in a sentiment expressed by the Solicitor-General, that "the only credit due to the government was, that they had selected the best man."

ADMISSION OF ATTORNEYS.

The following is extracted from the regulations for the admission of attorneys.

"In the first six days, commencing on November 20th, certificates will be delivered only to such London agents as shall, in due time previously, have sent in the declarations of *themselves* and their *country clients*, accompanied by a *list thereof, arranged in alphabetical order, and written on foolscap paper, book-wise.*

"These six days will be appropriated among the London agents, according to the letter with which their surnames, or those of the senior partner in the firm, commence in the following order :—

"Those commencing with—
A or B, on Wednesday, Nov. 20.
C, D, E, or F, on Thursday 21.
G, H, I, or J. on Friday, 22.
K, L, M, N, O, or P, on Saturday, 23.
Q, R, or S, on Monday, 25.
T, U, V, W, X, Y, or Z, on Tuesday, 26.

"On every day subsequent to November 26, the certificates will be delivered to the rest of the Profession."

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto William Westbrooke Burton, esq. Puisne Judge of the Supreme Court of Judicature at Madras.

ILLNESS OF THE CHIEF JUSTICE.—DUBLIN, NOV. 16.—The Chief Justice of the Queen's Bench is still suffering from indisposition, but it is not of a dangerous character.

The Lord Chancellor has appointed William Turton, of Tunstall, in the county of Stafford, gent, to be a Master Extraordinary in the High Court of Chancery.

MIDDLE TEMPLE, NOV. 15.—Mr. C. H. Whitehurst, recently appointed one of Her Majesty's Counsel, took his seat this day as a Bencher of the Hon. Society of the Middle Temple.

MICHAELMAS TERM EXAMINATION.—The newspapers, following the printed list placed up at Westminster, have noticed the very large number of applicants for admission on the roll of attorneys in the present term, as being nearly 200. We learn, however, that the number for examination is about 130; and of these it is probable that a considerable proportion will content themselves with passing the examination, and defer their admission. Many after they are admitted do not take out their certificates to practise for a considerable time, and others are admitted in order to go to some of the colonies, where an admission in the courts at Westminster entitles them to be admitted and practise in the colonial courts. The remainder added to the Profession in England and Wales will not be fearfully large, though, we admit, it is large enough.—*Legal Observer.*

CALLS TO THE BAR.—LINCOLN'S-INN, NOV. 19.—The undermentioned members of this honourable society having kept the full number of terms, they were, in the customary manner, called to the degree of barrister-at-law :—Mr. John Sayres, of Wadham College, Oxford, the second son of John Sayres, of North Stokes, in the county of Sussex, Esq.; Mr. Edward Stirling Dickson, of the Old-buildings, Lincoln's-inn, the eldest son of Admiral Edward Stirling Dickson, of Paris; Mr. Hugh Ross, of Edinburgh, and of Chancery-lane, in the county of Middlesex, the eldest son of Colonel Hugh Ross, of Edinburgh aforesaid; Mr. William Benson, of Queen's College, Cambridge, the second son of Robert Benson, of Liverpool, in the county of Lancaster, Esq.; Mr. George Charles Appleby, of Magdalen College, Oxford, the only son of the Rev. George Appleby, of Barton-upon-Humber; Mr. Nicholas Darnell, of New College, Oxford, the second son of the Rev. William Nicholas Darnell, of Stanhope, in the county of Durham; and Mr. Samuel Edward Maberley, of Christ Church, Oxford, the youngest son of Joseph Maberley, of King's-road, Bedford-row, attorney-at-law.

GRAY'S-INN, NOV. 20.—The undernamed gentlemen were this day called to the degree of barrister-at-law, by the Hon. Society of Gray's-inn—viz. John Fitzpatrick Villiers, Esq., and Charles Skinner Troughton, Esq.

PAYMENT OF EXPENSES TO ASSIGNEES.—An application was made in the Court of Bankruptcy to Sir Charles Williams, to allow 2*l.* 2*s.* a day to a solicitor, who was an assignee to a bankrupt's estate, and had been examined as a witness, Mr. Richardson, the taxing master, having refused to allow it. Sir Charles Williams said it was very unusual for a solicitor to be appointed a trade assignee; but if they could obtain 2*l.* 2*s.* a day for their attendance, they would be enabled to get up a very good business; and he should expect to see the appointment of trade assignees contested for by the profession with as much zeal as a borough. (Laughter.) There was no instance on record of an assignee being paid; they were in the same situation as trustees, and generally solicited the appointment. If he was to allow the sum charged, it would be a precedent for all professional men to come forward and ask for compensation for doing their duty. The item was then struck out of the bill.

RUMOURED JUDICIAL CHANGES.—Amongst the gentlemen of the bar spoken of as likely to succeed to the next vacant mastership in Chancery are Mr. George Bennet, Q.C., Mr. Serjeant Howley (assistant barrister for the county of Tipperary), and Mr. Brewster, Q.C. Should the last-named gentleman be the successful candidate, it is highly probable that Mr. Butt, Q. C. would succeed to the office of advising counsel to the government.

PRICE'S PATENT CANDLES.

We have been requested to state, in reprinting the following from the Manchester papers, that Messrs. Richardson and Roebuck are one of the largest and oldest retail firms in the midland and northern counties, having a connection among families of the upper classes such as is possessed by few other traders in England; their opinion, therefore, on the matter in question is entitled to very great weight. The extent of their candle trade may be judged of by the fact of their purchases of the patent candles being to the amount of five thousand pounds sterling at a time.

"Richardson and Roebuck beg to state, for the information of the public, that the chief cause why the Composite (Price's Patent) Candles burn better than any other is, that they contain a very large proportion of the hard substance obtained by pressure from cocoa-nut oil by a patent process. It is a fact known to chemists for some thirty years past that cocoa-nut oil contains more hydrogen in proportion to its carbon than any other oily or fatty substance, and that it therefore gives a bluer flame, and one more absolutely without smoke, and less injurious to the eyes (in consequence of its greater similarity to the beautiful bluish-white light of day), than the flame of any other substance used in candle-making. Believing 'Price's Patent Candles' to be incomparably superior to any of the many imitations, at whatever difference of price, Richardson and Roebuck continue to recommend them to their friends; and they are happy to announce that they have made such arrangements with the patentees as will enable them to reduce the price.—Market-place, Manchester, Nov. 15, 1844." Price's Patent Candles burn without snuffing, like the finest wax, and are cheaper, in proportion to the light given, than the commonest tallow ones. They are sold by respectable dealers throughout the country, at, or under, one shilling per lb.; and wholesale, to the trade, by Edward Price and Co. Belmont, Vauxhall; and Palmer and Co. Sutton-street, Clerkenwell. Purchasers must insist upon being supplied in the shops with "Price's Patent Candles," or they are very likely to get some of the imitations, on account of the greater profit afforded to the dealer on these latter.

TO SUBSCRIBERS.

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THE PUBLISHER *respectfully intimates that Subscribers who desire to avail themselves of the advantages of prepayment, should transmit their subscriptions for the current half-year in the course of the next week.*

It is necessary again to state that the Numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcels by which they may be identified, and of which the Publisher should be advised by letter.

In reply to repeated applications, the PUBLISHER *begs to state that he will readily procure, and inclose in the parcels he may have occasion to forward to Subscribers, any books or forms published in London.*

To Readers and Correspondents.

M. L.—*We have not inserted the list of persons applying for admission as Attorneys, many subscribers having objected that it was a great waste of space to reprint the same names again after admission.*

C. and F. F.—*Crabbe's work is considered by practical men all that our correspondents desire.*

W. S. J.—*As soon as the business of the term permits.*

A SUBSCRIBER.—SEWELL'S *Law of Sheriff is the best, we believe.*

A CIVILIAN'S *Comments upon County Courts are good; we quite agree with them.*

T. T. DALBY.—*When we have more space for him.*

THE LAW TIMES.

SATURDAY, NOVEMBER 23, 1844.

TO READERS.

THAT we may keep pace with the Reports, which are, we presume, by far the most interesting information we can present to our readers during Term, we have devoted to them the greater portion of to-day's number, postponing all other matter not of immediate moment. The improvements adopted in our system of Reports are working as well as their novelty will permit; we have received but two or three complaints of cases omitted, and none of errors. Considering the magnitude of the plan, and the unavoidable difficulties to be encountered in its execution, the progress of it is, we trust, satisfactory to the Profession, as supplying to them an invaluable mass of information, placed in their hands with more completeness and greater speed than has been before attempted.

THE LEGAL ASSOCIATION.

A PAINFUL duty has been imposed upon us; but it *is* a duty, and it must be performed.

Early in the week we received from many quarters a complaint that the Secretary to the Metropolitan and Provincial Legal Association had inclosed, with the rules of the Society, addressed to the country members, a circular soliciting their agencies.

Inquiry proved that such was the fact, and we cannot hesitate to express the most unqualified disapprobation of the proceeding.

We should have added an indignant censure, but that the charge has been met by Mr. CLARKE in a manner which forbids severity. He expresses himself fully conscious of his error, deeply lamenting that a thoughtless act of his should have compromised a prosperous and promising Society; he acknowledges that the anger which his inconsiderate proceeding has produced is not undeserved; he declares his resolution to remove all suspicion from the Society by instant resignation of his office. He states, and we have no doubt that such was the fact, that it was done in a hasty moment, at the suggestion of a friend, without consideration of its effect in apparently associating the Society with his private interests. He assures us that it was not a fault committed of malice aforethought, but the inconsiderate adoption of a suggestion made to him by another, and acted upon in haste.

In the meanwhile the chairman and council of the Society have adopted the most prompt and proper measures to repudiate an act with which, upon the face of it, they appear to be connected. A meeting was immediately summoned, the results of which appear in our advertising columns. Mr. CLARKE tendered his resignation, which was accepted; and to prevent the possibility of a recurrence of such an event, it was resolved that for the future no officer of the Society should hold country agencies. Perhaps it is scarcely necessary to state that the council was entirely ignorant of the proceeding of the secretary, and we have no doubt that the Society will resolutely pursue the purposes for which it was established; and though the first case upon which it has been called upon to act was unhappily one of its own officers, it has discharged its duty, and, while it acquits him of wrong *intentions*, it justly censures the act itself, and proves by its promptitude that it still deserves the undiminished confidence of the Profession. We subjoin a letter we have received from Mr. CLARKE, in explanation of this occurrence, which, we believe, no person more laments than he does.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

SIR,—From the result of the special meeting of the council last evening, I have no doubt the publication of my resignation as a member of the Association, and of the resolution of the council thereon, will appear in the LAW TIMES of to-day, and respecting which you will perhaps have the kindness to insert a few words from me.

A few days since I forwarded a private circular soliciting agency business from certain members of the Profession, and in doing which I did not at the moment consider that as a London attorney I was committing any breach of professional etiquette in informing a country attorney that I was open for business of that description—my circular being very general, and my terms those that were usual; and the very fact of my having sent those circulars openly with the rules, &c. will, I think, clearly prove that my own impressions at the time was that I was doing nothing crooked that might savour of malpractice.

Sir George Stephen, the President of the Metropolitan and Provincial Legal Association, and the council, called a special meeting last evening, and expressed themselves highly displeased at, and strongly reprobated, my having issued the circular in question; and I must confess I now much regret having done so, although my notion at the time was that I was merely announcing a matter connected with my private business, and I fancied I had not so worded my circulars as to disgrace either myself or my Profession; nor did I look at it in the light of an undue advertisement for business. It was, however, last evening, unanimously decided by the council that I had taken a highly improper step, and that I had irretrievably committed myself, and that, painful as it was to express this opinion in regard to one of their own officers, they yet had a duty to perform to the Profession which nothing must excuse. After such an intimation, I of course felt bound, and at once expressed a wish, to resign my situation as secretary to the Association, and which resignation was accepted.

I deeply regret the circumstance, it being an offence arising more from want of thought on my part than any thing else; nor was I aware at the time that professional etiquette was carried to so nice a point as respects agency business between professional men.

I cannot, however, nor do I at all find fault with the decision of the council, as I am aware they profess and are determined to carry out the principles of the Association upon high ground, irrespective of parties, and I am sorry that the first act of that determination should have been exercised upon one who has toiled from the commencement without fee or reward in assisting to bring the Association to its present high and powerful position.

I am, Sir, your obedient servant,

E. CLARKE.

5, Bedford-row, 22nd November, 1844.

MR. GEORGE FARREN.

THE Barristers of Lincoln's-Inn have instituted an inquiry into this case.

We cannot state the details now, but it is enough to observe that Mr. FARREN disclaimed the advertisement and disowned the letter that accompanied it, asserting that, though the handwriting was exactly like his, it was a forgery.

The matter cannot rest here. Either Mr. FARREN has been most foully wronged by some villain who has dared to print and circulate an infamous advertisement with his name attached, and to forge his handwriting and signature to a letter so well, that of a thousand persons who saw it by the side of his acknowledged letters, not one would hesitate to swear to his belief that Mr. FARREN was the writer,—or he has been guilty of adding to professional misconduct the vilest falsehood. It is necessary, for his own sake, that the affair should be probed to the very quick; and therefore we beg to prefer two requests: First, to the gentleman who transmitted the documents, that he will immediately inform us how and where he procured them, and that he will send the envelope inclosing them, with any other information he may possess; and, secondly, to our readers generally, that if any of them have received any similar advertisements or letters, they will send them to us; and if they have even seen such, they will inform us when and where.

By so doing they will be but performing a duty both to Mr. FARREN and the Profession. Let us add to all, that, if desired, communications will be received in confidence; but we should be glad if permitted to make such use of them as we may deem desirable.

As this subject must yet again claim attention, we reserve comment for another occasion.

MORE SHAM ATTORNEYS.

Let the Law Societies look to the following:—

Cheltenham, 11th Nov. 1844.

Mr. Charles Prinden.

SIR,—I am requested to apply to you for the sum of 2s. 8d., standing due to Mr. Haming, tea dealer, together with 3s. 4d. costs for this application, which, if not paid immediately, a Law process will be issued against your body and goods, by

Sir, yours, &c.,

16, Pitville-street. WILLIAM GILLISON.

In case of neglect, no further notice will be given.

HUNDRED AND COUNTY COURT OFFICE,
FOR RECOVERY OF
DEBTS AND RENTS,
No. 7, Lower Priory, near to Dale End, Birmingham.

John Dolbysun, 23rd day of April, 1844.

By virtue of a retainer, I hereby inform you that instructions have been given by Mr. William Lord, Islington Broad-street, to apply to you for payment of the sum of 16s. 10½d. due to him, and unless the amount be paid at this office, together with the costs already incurred, within four days from the date hereof, that on your refusal or neglect of attending hereto, legal proceedings at law by action, will be commenced against you for recovery thereof, without any further notice or delay whatever; and if you wish to stop the action or further law costs and proceedings, apply at the above office as soon as you get this.

	£	s.	d.	
Debt	0	16	10½	From J. RUDGE, Attorney.
Costs	0	3	6	

BRING THIS WITH YOU,
AND AVOID FURTHER EXPENCE AND TROUBLE HEREAFTER.

Office hours from ten in the morning until six in the evening.

All letters and parcels addressed to this office must be post-paid or not taken in.

VERULAM SOCIETY.

ON Monday will be issued to the subscribers Number 5 of Real Property and Conveyancing Cases, and Number 2 of the Criminal Law Cases. The following members have been enrolled since last week's report:—

Sparks, Arndell Fras. Bridgnorth.
Heane, Henry, Newport Pagnell.
Sabben, W. T. Portsea.
Owen, William, Wem.
Corser, G. S. Shrewsbury.
Jessopp, John, Whitchurch.
Wood, J. Woodbridge.
Morell, Frederick J. Oxford.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Darcy and Co. alkali manufacturers, second, 2½d. Cazenove, Liverpool.—Dixon and Co. carpet manufacturers, first joint, 13s. 4d. first sep. H. J. D. 20s. Valpy, Birmingham.—Harbottle, J. grocer and draper, first, 6s. 6d. Baker, Newcastle.—Hagnid and Co. merchants, second 4d. and 3s. 4d. to new proofs. Young, Leeds.—Loraine, J. J. wine merchant, first and final, 1s Baker, Newcastle.—Millar, T. hosier and draper, second, 3s. 5d. Pott, Manchester.—

[illegible], T. cattle dealer, first, 7d. Valpy, Birmingham.—Pearson, H. attorney, second and final, 3s. 3½d. to new proofs, and second and final. 2½d. to old proofs. Young, Leeds.—Petrie, J. C. miller, second, 7d. Baker, Newcastle, Rawlings T. auctioneer, first, 3s. 6d. Kynaston, Bristol.—Sadler, G. linen draper, first, [illegible]d. Hutton, Bristol.—Turton, W. coal master, second, 6½d. Whitmore Birmingham.—Weatherby and Co. bankers, sep. H. 20s. Pott, Manchester.—Walford, W. second, 1s. 0½d.—Christie, Birmingham.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Nov. 15.

Baynes, T. bookseller, Bedford-st. Strand, Nov. 12. Trusts. H. G. Bohn, bookseller, York-st. Covent-garden, and D. Nutt, bookseller, Fleet-st. Sols. Nicholson and Parker, Throgmorton-st.—*Combyn*, [illegible]mercer and tailor, Devonport, Sept. 28. Trust. W. Martin, wholesale draper, Devonport. Sols. Little and Co. Devonport.—*Kay*, D. bookseller, Kingston-upon-Hull, Nov. 9. Trust. G. Bowlby, commission agent, Kingston-upon-Hull. Sols. Dryden and Co. Hull.—*Matthews*, T. painter, Birmingham, Oct. 8. Trust. H. Taylor, merchant's clerk. Sols. Haywood and Webb, Birmingham.—*Simpson*, G. bookbinder, Bread-st.-hill and Hampstead-road, Oct. 25. Trusts. T. Healey, wholesale stationer, Maidstone-wharf, Upper Thames-st. and J. Norris, wholesale stationer, Upper Thames-st. Sols. Messrs. Lawrance, Old Fish-st.

Gazette, Nov. 19.

Fletcher, J. manufacturer of barytes, Maryport, Cumberland, Oct. 31. Trust. J. W. R. M. Watson, gent. Wigton. Sol. Tyson, Maryport.—*Kleine*, M. smallware dealer, Liverpool, Oct. 30. Trust. J. H. Waters, manufacturer, Manchester. Sol. Thompson, Liverpool.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Nov. 15.

ARGENT, ISAAC, victualler, [illegible]5, Fleet-st. Nov. 22, at half-past two, Dec. 17, at half-past eleven, Basinghall-st. Com. Evans; Johnson, off. as.; Cooke, King-st. Cheapside, sol. Date of fiat, Nov. 14. On his own petition.

[illegible], ROBERT, lodging-house keeper, Royal Baths, Worthing, Sussex, Nov. 20, at half-past ten, Dec. 17, at one, Basinghall-st. Johnson, off. ass.; Hillier and Co. Gray's-inn, and Tribe and Son, Worthing, sols. Date of fiat, Nov. 8. G. H. Smith, shopkeeper, Worthing, pet. cr.

[illegible]RWICK, JAMES FREDERICK, wheelwright, Old-st. St. Luke's, Nov. 22, at one, Jan. 7, at twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Messrs. Lawrance, Old Fish-st. sols. Date of fiat, Nov. 12. I. Loader, timber merchant, Crown and Horseshoe-wharf, Upper Thames-st. pet. cr.

BOULTER, THOMAS, innkeeper, Tucker's Hotel, Cromer, Norfolk, Dec. 2 and 24, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Brokbank and Farn, Gray's-inn, and Staff, Norwich, sols. Date of fiat, Nov. 1. R. Coaks, timber merchant, Norwich, pet. cr.

BOURNE, JOHN GEORGE, builder, Battersea, Surrey, Nov. 22 and Dec. 18, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Paine and Hatherley, Great Marlborough-st. sols. Date of fiat, Oct. 23. E. Paine, gent. Battersea, pet. cr.

COLLINSON, WILLIAM, shipwright and carpenter, East Butterwick, Lincolnshire, Nov. 28 and Dec. 17, at eleven, Leeds, Com. West; Freeman, off. ass.; Howlett, Kirton-in-Lindsey, and Paine and Co. Leeds, sols. Date of fiat, Nov. 9. J. Benson, yeoman, Gainsborough, pet. cr.

COLVILLE, JOHN, and COLVILLE, HUGH, merchants, Liverpool, Nov. 28 and Dec. 27, at twelve, Liverpool, Com. Phillips; Morgan, off. ass.; Vincent and Sherwood, Temple, and Littledale and Bardswell, Liverpool, sols. Date of fiat, Nov. 8. On his own petition.

COTTERILL, EDWIN, linen draper, Redditth, Worcestershire, Nov. 30, at twelve, Dec. 24, at one, Birmingham, Valpy, off. ass.; Jones, Size-lane, and Motteram, Birmingham, sols. Date of fiat, Nov. 1. W. Leaf, J. Coles, W. Smith, M. Brankston, and W. S. Leaf, warehousemen, Old Change, pet. crs.

DAVIDSON, GORDON FORBES, merchant, John-st. Adelphi, Nov. 29, at twelve, Jan. 7, at one, Basinghall-st. Com. Williams; Graham, off. ass.; Oliverson and Co. Old Jewry, sols. Date of fiat, Nov. 13. Bankrupt's own petition.

DOBB, WILLIAM LUKE, innkeeper, King's Head Inn, Egham, Nov. 22, at one, Jan. 4, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Oliverson and Co. Frederick's-place, Old Jewry, sols. Date of fiat, Nov. 14. Bankrupt's own petition.

DOWDING, THOMAS, brewer, Chippenham, Wiltshire, Nov. 30 and Dec. 27, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Leman, Bristol, sol. Date of fiat, Nov. 7. J. and E. C[illegible], provision merchants, Bristol, pet. crs.

[illegible]S, WILLIAM and THOMAS, hosiers and glovers, Old Bond-st. Nov. 27, at half-past one, Dec. 24, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Thomas and Co. Cloak-lane, sols. Date of fiat, Nov. 9. I., J., and J. Wilson, hosiers, Milk-st. pet. crs.

JONES, WILLIAM, linen draper, Usk, Monmouthshire, Nov. [illegible] at twelve, Dec. 27, at one, Bristol, Com. Stephen; Hutton, off. ass.; Messrs. Sole, Aldermanbury, and Haberfield, Bristol, sols. Date of fiat, Nov. 9. R. Lewellin, C. Truman, and W. Hitchcock, warehousemen, Wood-st. pet. crs.

NORWOOD, WILLIAM, grocer and wine merchant, Kettering, Northampton, Nov. 22, at one, Jan. 10, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass. Date of fiat, Nov. 13. C. Goodman, auctioneer and tobacconist, Northampton, pet. cr.

RABEY, CHARLES, furniture broker, appraiser, and valuer, Cleaver-st. Kennington-road, Lambeth, Nov. 29, at half-past two, Dec. 24, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Rosser, Dyer's-buildings, sol. Date of fiat, Nov. 12. Bankrupt's own petition.

[illegible] CALEB, grocer, cheesemonger, and butterman, 120, [illegible]-alley, Moorfields, Middlesex, Dec. 2, at one, Dec. [illegible] one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Taylor, Worth-buildings, Finsbury-circus, sol. Date of fiat, Nov. 13. Bankrupt's own petition.

WATSON, JAMES, grocer, city of Carlisle, Nov. 28, at eleven, Dec. 19, at two, Newcastle, Com. Ellison; Wakley, off. ass.; Mounsey, Carlisle, and Gray, Staple-inn, sols. Date of fiat, Oct. 31. T. Mounsey, on behalf of the Carlisle City and District Banking Company, Carlisle, pet. cr.

Gazette, Nov. 19.

BONNS, CHRISTOPHER, shoemaker and cordwainer, Bath, Dec. 3, at one, Dec. 31, at half-past eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Messrs. Mogg, Cholwell, near Bristol, sols. Date of fiat, Nov. 5. S. S. P. Sambome, esq. Finsbury-house, Somersetshire, H. H. Mogg, M. Parish, T. Savage, and B. Smith, copartners, pet. crs.

BROADBENT, JOSEPH, wheelwright and carpenter, Kexby, Lincoln, Dec. 3 and 21, at eleven, Leeds, Com. West; Hope, off. ass.; Rogerson, Lincoln's-inn-fields; Howlett, Kirton in Lindsay; and Payne and Co. Leeds, sols. Date of fiat, Nov. 6. T. Capes, groom, Blyborough, Lincolnshire, pet. cr.

CASH, CHARLES, ironmonger, Whitechapel-rd. Whitechapel, Dec. 2, at half-past one, Dec. 31, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Capes and Stuart, Field-ct. Gray's-inn, and Clark, Wolverhampton, sols. Date of fiat, Nov. 9. C. and T. Clark, ironfounders, Wolverhampton, pet. crs.

COOPER, THOMAS, coffee and eatinghouse keeper, and clerk, 33, Aldgate High-st. and 33, Leadenhall-st. Nov. 26, at eleven, Dec. 18, at one, Basinghall-st. Com. Goulburn; Follett, off. ass.; Sprigge, Upper North-place, Gray's-inn-rd. sol. Date of fiat, Nov. 15. Bankrupt's own petition.

CRAVEN, JOSEPH, dyer, Holme Dye Works, Wakefield, HARDMAN, JOHN, solicitor, Rochdale, and CRAVEN, GEORGE, the younger, maltster, Rochdale, firm of Craven and Co. Holme Dye Works, Wakefield, Nov. 29, and Dec. 19, at eleven, Leeds, Com. West; Young, off. ass.; Gregory and Co. Bedford-row, and Taylor and Westmorland, Wakefield, sols. Date of fiat, Nov. 9. J. Hardcastle, esq. Wakefield, on behalf of the Wakefield and Barnsley Union Bank, pet. cr.

CRAVEN, JOSEPH, dyer, Thorne, Wakefield, and HARDMAN, JOHN, solicitor, firm of Craven and Co. dyers, Thornes, Dec. 3 and 21, at eleven, Leeds, Com. West; Hope, off. ass.; Sudlow and Co. Chancery-lane, and Bakewell, Wakefield, sols. Date of fiat, Nov. 6. T. Wilson, brewer, Birkby, Huddersfield, on behalf of the West Riding Union Banking Company, pet. cr.

HARVEY, CATHERINE SARAH, dress maker, 5, George-st. Hanover-sq. Dec. 3, at half-past twelve, Dec. 24, at two, Basinghall-st. Com. Evans; Bell, off. ass.; Clipperton and Impey, Bedford-row, sols. Date of fiat, Nov. 16. W. Sedgwick, J. Howell, H. Gillott, T. Stroud, and C. Lee, warehousemen, Regent-st. pet. crs.

HARVEY, SAMUEL, cattle and sheep dealer, jobber, and farmer, East Mersea, Essex, Nov. 27, at two, Jan. 14, at one, Basinghall-street, Com. Goulburn; Green, off. ass.; Marriott, New-inn and Colchester, sol. Date of fiat, Nov. 12. J. Osborne, corn dealer, Colchester, pet. cr.

LAWRENCE, JOSEPH, tobacconist, Northampton, Dec. 3, at two, Dec. [illegible] at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Dods and Linklaters, Leadenhall-st. sols. Date of fiat, Nov. 9. T. Huxley, snuff manufacturer, Whitechapel-rd. pet. cr.

MANN, THOMAS, paper hanger, Leicester, Nov. 27 and Dec. 23, at eleven, Birmingham, Com. Daniel; Bittleston, off. ass.; Hodgson, Birmingham, and Vincent and Sherwood, Temple, sols. Date of fiat, Nov. 2. C. Fisher and J. Evans, paper manufacturers, Tamworth, pet. crs.

OSBORNE, BENJAMIN, table knife manufacturer, Sheffield, Nov. 29 and Dec. 21, at eleven, Leeds, Com. West; Fearne, off. ass.; Ryalls, Sheffield; Blackburn, Leeds; and Moss, Cloak-lane, London, sols. Date of fiat, Nov. 16. J. Ryalls, Sheffield, gent. pet. cr.

PALMER, ROBERT BALL, watchmaker, Bath, Dec. 3, at one, Dec. 31, at twelve, Bristol, Com. Stevenson; Miller, off. ass.; Silverthornes, Bath, and Kirk, Symond's-inn, sols. Date of fiat, Nov. 12. E. Solomon, jeweller, Bath, pet. cr.

ROCHESTER, ROBERT, butcher, Hartlepool, Durham, Nov. 28, at eleven, Dec. 23, at two, Newcastle, Com. Ellison; Baker, off. ass.; Wilson and Turnbull, Hartlepool, and Meggison and Co. London, sols. Date of fiat, Nov. 7. R. Smith, widow, Hartlepool, pet. cr.

SEDMAN, JOHN, colour merchant, 18, Queen-st. Cheapside, Dec. 2, at eleven, Dec. 24, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Loughborough, Austin-friars, sol. Date of fiat, Nov. 12. Bankrupt's own petition.

SHARPLES, JOHN, cotton manufacturer, Blackburn, Dec. 2 and 30, at twelve, Manchester, Stanway, off. ass.; M. Bentley, Temple, and Robinson and Halton, Blackburn, sols. Date of fiat, Nov. 11. J. Cooper, cotton spinner, Preston, pet. cr.

SUGDEN, JOHN, machine maker, Leeds, Nov. 29 and Dec. 20, at eleven, Leeds, Com. West, Hope, off. ass.; Mitton and Nealor, Southampton-buildings, and Dunning and Stawman, Leeds, sols. Date of fiat, Nov. 14. G. Beecroft, T. Butler, J. O. Butler, and E. A. Butler, Leeds, pet. crs.

WATSON, SARAH TAYLOR, and BYERS, WILLIAM, woollen and Manchester warehousemen, Skinner-st. City, Nov. 29, at one, Jan. 9, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Dods and Linklaters, Leadenhall-st. sols. Date of fiat, Nov. 13. J. Linklater, gent. Leadenhall-st. pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, Nov. 12.

Aspdin, J. and J. cement manufacturers, Wakefield, Nov. 6. Debts paid by Aspdin.—*Bignold*, T. and *Field*, E. attorneys and solicitors.—*Bradbury*, A. *Clifton*, J. *Bradley*, J. stone dealers, Mottram in Longdendale, Nov. 2.—*Cox*, J., J., and W., coal and iron masters, Kingswinford, Nov. 7, so far as regards W. Cox. Debts paid by J. and J. Cox.—*Fugler*, W. and *Fry*, R. T. Manchester warehousemen, Lawrence-lane, Nov. 11. Debts paid by Fugler.—*Hipkins*, J. *Round*, S. and *Caddick*, E. soap makers, Tipton, Sept. 11, so far as regards Round. Debts paid by the remaining partners.—*Jones*, M. and J. cabinet makers and upholsterers, Aberystwith, Nov. 7. Debts paid by J. Jones.—*Parker*, T. *Scrutton*, A. and *Andrews*, C. stock and share brokers, Old Broad-st. Nov. 9, so far as regards Andrews. Debts paid by the remaining partners.—*Southworth*, T. and *Simpson*, D. tailors and drapers, Rochdale, Nov. 6. Debts paid by Simpson.—*Taylor*, W. and *Bannister*, W. cotton dyers, Rann's Bank, Northowram, Nov. 6. Debts paid by Taylor.—*Thwaites*, T., D., and J., brewers, Blackburn, Nov. 8, so far as regards T. Thwaites. Debts paid by the remaining partners.—*Ward*, F. and *Ross*, A. commission agents and general smiths, Hull, Nov. 1. Debts paid by Ross.

Gazette, Nov. 15.

Blake, W. R. and *Guiness*, J. R. jun. maltsters, Nov. 9.—*Bray*, J. and *Hobson*, R. cloth manufacturers, Almondbury, Nov. 12.—*Dewey*, J. and *Gawen*, C. cabinet makers, Brighton, Sept. 29, 1843.—*Grey*, W. S. *Russell*, J. A. and *Donald*, T. C. merchants, Bombay, as far as regards Donald.—*Hemingsley*, T. *Walker*, J. and *Thurstans*, J. cut nail manufacturers, Wolverhampton, Nov. 7. Debts paid by Walker.—*Humfrey*, C. and *Des Maurel*, F. M. A. oil and candle merchants, Cross-lane, St. Mary-at-Hill, Hatcham, and Whitechapel, Nov. 13.—*Loft*, J. and *Scoular*, W. sculptors, Dean-street, Soho, Nov. 13.—*Moore*, F. G. and *Hardwicke*, J. surgeons and apothecaries, Rotherham, Nov. 1. Debts paid by Hardwicke.—*Palmer*, J. and *Tassell*, W. farmers, Penshurst, Oct. 11.—*Peel*, J. *Stead*, J. and *Peel*, A. cloth dressers, Leeds, Nov. 11. Debts paid by Peel.—*Plant*, J. and *Gould*, P. cotton merchants, Manchester, Nov. 14. Debts paid by Plant.—*Platt*, M. and H. chemists, Chester, Nov. 12. Debts paid by H. Platt.—*Scott*, W. and *Kearns*, J. manufacturers of firearms, Leman-st. Goodman's-fields, Aug. 1. Debts paid by Scott.—*Tickle*, W. and *Clarke*, B. R. brick makers, Appleton, Cheshire, Nov. 12. Debts paid by Tickle.—*Watson*, R. B. and *Watson*, J. share brokers, Leeds, Nov. 1. Debts paid by R. B. Watson.—*Webster*, J. and *Morton*, W. coopers, Liverpool, Oct. 3. Debts paid by Webster.—*Wild*, G. and J. grocers, Oxford-st. and King-st. Holborn, Nov. 14. Debts paid by G. Wild, Oxford-st.—*Winder*, J. and *Latham*, J. attorneys, Chorley, Feb. 19.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Nov. 12.

Badcock, J. W. coffee-house keeper, Blackman-st. Nov. 23, at eleven.—*Bouch*, E. beer retailer, Gray's-inn-lane, Nov. 28, at half-past eleven.—*Bragg*, H. carpenter, Nelson-st. and Christian-st. Poplar, Nov. 28, at half-past two.—*Cannon*, J. grocer, Solling, Hertfordshire, Nov. 23, at eleven.—*Carr*, H. J. lieutenant in the navy, Bradwell-near-the-Sea, Dec. 5, at half-past eleven.—*Checkley*, E. tailor, Bushey-green, Lewisham, Nov. 23, at twelve.—*Cohen*, E. dealer in marine stores, Cow-cross, Nov. 28, at one.—*Downi[illegible]*, G. furnishing ironmonger, Walnut-tree-walk, Nov. 28, at one.—*Gingell*, F. earthenwareman, Clapham, Sheerness, and Ironmonger-lane, Nov. 29, at twelve.—*Hester*, G. farmer, Battersea-fields, Nov. 15, at two.—*Jelks*, J. baker, Widegate-st. Bishopsgate, Nov. 23, at eleven.—*M'Aleavey*, J. hawker, Sevenoaks, Nov. 27, at two.—*Puttock*, M. baker, Hope-st. Holloway, Nov. 28, at two.—*Raggett*, W. assistant to an hotel keeper, Dover-st. Piccadilly, Nov. 29, at eleven.—*Simmonds*, J. E. gas fitter and brass manufacturer, Nelson-st. Bermondsey, Nov. 27, at twelve.—*Skinner*, S. sen. out of business, Church-road, Battersea, Nov. 27, at half-past twelve.—*Toby*, A. baker, William-st. Commercial road, Nov. 27, at one.—*Woodyatt*, W. boot and shoemaker, Tooley-st. and York-buildings, Millpond-st. Bermondsey, Nov. 23, at half-past twelve.

Gazette, Nov. 15.

Bush, F. plumber, Castleacre, Dec. 5, at two.—*Gillham*, C. hatter, Greenwich, Dec. 4, at half-past two.—*Groom*, T. plumber, Stratford, Suffolk, Dec. 4, at half-past eleven.—*Kenny*, A. H. rector, Maze-pond, Dec. 4, at three.—*Magnus*, S. hardwareman, Great Winchester-st. Dec. 4, at half-past two.—*Rands*, E. ropemaker, Ipswich, Dec. 3, at eleven.—*Royal*, J. japanner, York-st. Blackfriars-road, Dec. 4, at half-past one.—*Savage*, J. D. cab proprietor, Park-lane, Dorset-sq. Dec. 3, at eleven.—*Sims*, J. bailiff, Ringwood, Dec. 19, at twelve.—*Smith*, A. harness maker, Scole, Dec. 3, at half-past twelve.—*Wise*, W. farmer, Catherington, Hants. Dec. 3, at twelve.—*Wray*, J. printer, Portsmouth, Dec. 4, at half-past twelve.

Country, Gazette, Nov. 12.

Cope, W. attorney's clerk, Bradford, Nov. 28, at eleven, Leeds.—*Heatley*, G. out of business, Preston, Nov. 27, at twelve, Manchester.—*Jackson*, W. fishmonger, Worcester, Dec. 4, at eleven, Birmingham.—*Jefferies*, R. whipfinger, Wootton Basset, Nov. 29, at one, Bristol.—*Parry*, T. beer retailer, Manchester, Nov. 22, at twelve, Manchester.—*Podmore*, J. A. warehouseman, shoe dealer, and ale seller, Stoke-upon-Trent, Nov. 29, at twelve, Birmingham.—*Purcell*, W. clerk, Shrewsbury, Nov. 14, at twelve, Birmingham.—*Rogers*, J. rope maker and general shopkeeper, Leek, Dec. 2, at half-past ten, Birmingham.—*Stanley*, J. brewery man, Blackburn, Nov. 23, at eleven, Manchester.—*Whitworth*, B. retail beer seller, Manchester, Nov. 21, at twelve, Manchester.—*Wilford*, H. bailiff, Leicester, Nov. 28, at half-past ten, Birmingham.

Country—Gazette, Nov. 15.

Bellwood, R. grocer, Birkenhead, Nov. 26, at eleven, Liverpool.—*Collins*, R. card maker, Halifax, Nov. 29, at eleven, Leeds.—*Jepson*, G. victualler, Sheffield, Nov. 29, at eleven, Leeds.—*Kimp*, W. builder, Hatherleigh, Nov. 29, at one, Exeter.—*M'Cartney*, J. grocer, Manchester, Dec. 4, at twelve, Manchester.—*Ralph*, G. whitesmith, Liverpool, Nov. 27, at eleven, Liverpool.—*Revell*, Rev. S. clerk, Wingerworth, Nov. 29, at one, Manchester.—*Taylor*, J. P. painter, Bath, Dec. 5, at eleven, Bristol.—*Trotman*, R. butcher, Cheltenham, Dec. 3, at eleven, Bristol.—*Webster*, F. W. tobacconist, Nov. 25, at eleven, Liverpool.

From the Gazette of Friday, November 22.

Bankrupts.

Burgess, J. farmer, Cransfield, Suffolk.—*Sherwood*, T. brickmaker, Tilehurst, Berkshire.—*Vardy*, J. E. draper, Portsmouth.—*Utting*, J. H. upholsterer, Newman-st. Oxford-st.—*Jackson*, W. paper hanger, Charlotte-st. Fitzroy-sq.—*Blundell*, F. grocer, New Sarum.—*Staples*, J. painter, Cottenham, Cambridgeshire.—*Eccles*, S. and *Riding*, C. linen manufacturers, Manchester.—*Rochester*, R. butcher, Hartlepool.—*Newton*, W. coal merchant, Bath.—*Tomkinson*, M. linen draper, Kidderminster.

THE REPORTS.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

The Privy Council resumed its sittings for the hearing of appeals on Thursday, at ten o'clock, present Lord Langdale, Master of the Rolls, who presided, Dr. Lushington, the Right Hon. T. Pemberton Lee, Sir E. H. East, Sir Edward Ryan, Sir Alexander Johnstone, Mr. Baron Parke, and Lord Campbell.

BARNETT v. STEDMAN and Another.

Under the 7 & 8 Vict. c. 69, ss. 1 & 9, amending the 3 & 4 Wm. 4, c. 41, intituled "An Act for the better Administration of Justice in his Majesty's Privy Council," and extending its jurisdiction and powers, the Privy Council will hear and dispose of a bill of exceptions tendered against the judgment of a Colonial Court of Assize, without an intermediate appeal to a court of error in the colony, on security being given for debt and costs.

The facts of this case are briefly these:—George Barnett, lately of the island of Jamaica, but now residing in London, in 1837 was a co partner in the firm of Lynch, Barnett, and Girod, attorneys-at law, solicitors and proctors. In October, 1842, James Stedman and John Henry Koch, the respondents, administrators to the estate of a Mrs. Patrick Newland, late of Glasgow, merchant, deceased, brought an action of assumpsit against the appellant and William Girod, the surviving co-partners of the firm of Lynch, Barnett, and Girod, for the recovery of moneys alleged to have been received by the firm in January 1837. The declaration in this action contained counts for money had and received *by the defendants and the said John Lynch in his lifetime to the use of the plaintiffs as such administrators*, and an account stated between the plaintiffs as administrators; and the defendants, after the decease of the said John Lynch, in respect of moneys owing from the defendants and the said John Lynch in his lifetime to the plaintiffs as administrators. To this action the appellant and Girod severed in their pleas, each pleading the general issue, on which issue was joined. The cause came on for trial at the Kingston Assizes in Jamaica, before Sir Joshua Rowe, C. J. when Girod did not appear.

It was proved at the trial that administration had not been granted to the plaintiffs until many years after the death of Lynch, and there was no evidence of an account stated or acknowledging so, made to the plaintiffs after his death. It also appeared that the money sued for had been received by Girod in his character of procuration attorney, whilst Lynch and the appellant were in England, and had never been accounted for by him to his partners. It was contended at the trial, on the part of the appellant, that there was no privity of contract between him and the plaintiffs, the plaintiffs' title having accrued after the death of Lynch, that there was no evidence to sustain the account stated, and that Girod had no authority from his copartners to receive the money on account of the copartnership, and that, from the evidence, he must be taken to have received it, not as one of the firm, but as the procuration attorney of Newland's representatives, in which character alone he was entitled to receive it, and that the Chief Justice ought to have directed the jury accordingly. The Chief Justice refused to nonsuit the plaintiffs, and left it to the jury, whether Girod received the money as one of the firm or as such procuration attorney, directing them to find for the plaintiffs, if they should be of opinion that he received it in the former character; and the jury gave their verdict for the plaintiffs, with 1,619*l.* 12s. damages, and costs. On these grounds the defendants' counsel tendered to the judge a bill of exceptions, but which, owing to some difference of opinion between the council, was not yet sealed. In order to avoid the expense and heavy security required by the rules of the Court of Error in Jamaica, which amount almost to a prohibition against an appeal, the appellant now prayed in the form of a petition, that her Majesty in Council, under the authority of the 7 & 8 Vict. c. 69, ss. 1, 9, would order the bill of exceptions, when sealed, to be referred to the Judicial Committee of the Privy Council, to be by them heard and disposed of without any intermediate appeal to the Court of Appeal in Jamaica, and to make such order thereupon as to her Majesty with the advice of her Council might seem meet. Previously to the 7 & 8 Vict. c. 69, no appeal from the judgment of any Court of law of Jamaica could be made but through the medium of the Court of Error of that island. The first section of this Act enacts "that it shall be competent to her Majesty, by any order or orders to be from time to time for that purpose made with the advice of her Privy Council, to provide for the admission of any appeal or appeals to her Majesty in Council from any judgments, sentences, decrees, or orders of any Court of justice within any British colony or possession abroad, *although such courts shall not be a court of errors, or a court of appeal within such colony or possession*; and it shall also be competent to her Majesty, by any such order or orders as aforesaid, to make all such provisions as to her Majesty in Council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as her Majesty in Council shall pronounce thereon." Sec. 9 makes any general rule or order of the Judicial Committee binding upon all courts in the colonies.

There were other points in the cause which it is not material to notice.

Millar, on behalf of the appellant, supported the prayer of the petition, and submitted that he was entitled to the benefit of this Act.

Wills, on behalf of the respondents, contended that special grounds must be brought before their lordships to warrant the application.(a) The general rule also was, that the appellant should not be allowed to appeal, unless he shewed the sincerity of his application and his own competency in the case by giving security for the amount of judgment and costs, provided he should be unsuccessful.

Millar, in reply, urged that a sufficient case had been made out to warrant their lordships in receiving this appeal.

Lord LANGDALE delivered the judgment of the Court.—We are of opinion that, on terms, this petition ought to be granted. The terms are that the appellant shall give security for the debt, and for 300*l.* as costs.

Part of the judgment related to a point in the case not material to this question, and not reported.

(a) McQueen's Practice in the House of Lords and Privy Council.

Equity Courts.

LORD CHANCELLOR'S COURT.

Thursday, Nov. 7.

Re WOODCOCK, a Lunatic.

Practice—Examination of an alleged lunatic.

Kinglake, for the patient, applied for leave of the Chancellor that his examination by Dr. Southey should take place in the presence of some friend of the alleged lunatic.

The LORD CHANCELLOR.—That is not the practice. I can make no order, but must leave that to the discretion of the physician.

Nov. 9 and 26, 1843; Nov. 12, 1844.

VERNON *v.* THELLUSSON.

Administration of assets—Creditor's suit—Injunction to stay trial—Notice—Delay—Practice on appeal motion—New affidavits.

Where a judgment creditor receives notice of the decree in a creditor's suit before he has obtained judgment against the executors, he will be restrained by injunction from proceeding to trial, and a false plea by the executors merely for the purpose of staying the proceedings at law, by an application to this Court, does not deprive them of their right to protection.

The principle of the cases on which the Court restrains proceedings at law after a decree in a creditor's suit considered.

New evidence may be put in on a rehearing.

This was an application to discharge an order of the Vice-Chancellor of England granting an injunction. Chinnock, a creditor of Sir Christopher Bethell Codrington, deceased, for 4,000*l.* upon bond, had, in his lifetime, commenced an action and obtained a judgment. On the death of Sir C. B. Codrington, the action was revived by *scire facias*, against his executors upon the judgment. They pleaded *plenè administravit*. The testator died the 15th December, 1842; on the 5th of February, 1843, judgment was received, and the action was commenced against the executors on the 19th of April; on the 2nd of May, the declaration in the action was filed, and on the 10th of May, the plaintiffs obtained leave to amend the declaration. The defendants had two days' time to plead given to them. The executors pleaded *plenè administravit*, on the 17th issue was joined, and notice of trial given for the first sitting after Trinity Term. The cause was heard on the 26th of May. The bill in equity in the creditor's suit was filed on the 3rd of May, before the time given to the executors for pleading had expired, and on the 13th the common decree was obtained. Notice of that decree was given to Chinnock's attorneys on the 13th of May. On the 23rd of May notice of motion for an injunction to stay the trial was given, and the motion was made on the 26th, the morning of the day of trial. The Vice-Chancellor had granted the injunction, and it was sought to discharge that order on the ground of delay on the part of the plaintiff in applying for the injunction.

Bethel and *Campbell*, for the motion.—One ground on which the Vice-Chancellor should have refused the injunction was that the executors had not given a faithful account of the assets in their hands. The pictures and effects of the deceased had been sold by Messrs. Christie, the auctioneers, on the 12th and 13th of May, who paid 1,000*l.* to the bankers of the executors, but they alleged that they had not been able, at the time of the motion, to make up the account of the sale. The total produce of the sale was about 11,000*l.* There was no other personal estate which could have been converted, and the deceased was indebted in two sums of 30,000*l.* and 60,000*l.* secured by mortgages. There was a leasehold house in Park-lane. The executors had notice of specialty debts amounting to 53,000*l.* The executors leaving the balance of the produce of the sale by auction in the hands of Messrs. Christie, without explanation, was a reason against the injunction. The injunction should have been applied for as soon as the action on the judgment was commenced. The plea of *plenè administravit* always includes an admission of assets. (*Lee* v. *Park*, 1 Keen, 420; *Price* v. *Evans*, 4 Simons, 514; *Terrewest* v. *Featherby*, 2 Merivale, 480; *Drewry* v. *Thacker*, 3 Swanston, 546; *Largare* v. *Bowen*, 1 Scholes & Lefroy, 299; *Morris* v. *Bank of England*, Cas. temp. Talbot, 217; *Holt* v. *Wyer*, 2 Cox, 202; *Brook* v. *Skinner*, 2 Merivale, 281, n.; *Beechs* v. *Harrison* 3 Term Rep.; *Kent* v. *Pickering*, 5 Simons, 569.) The plea of the executors, "that they have fully administered all the goods in the possession of the said testator, and have not in their hands any goods which were in the possession of the testator at the time of his death, nor had on the day of issuing the *scire facias*," is not the ordinary plea of *plenè administravit*. Should the executors die, the creditor will lose the benefit of their personal liability.

Stuart and *Dean*, contrà, cited *Paxton* v. *Douglas* (8 Ves. 520); Williams on Executors, 1181; *Fielden* v. *Fielden* (1 Sim. & Stu. 255). On its being proposed to read new affidavits as to the state of the assets, which had not been used upon the original motion,

Bethel objected.

The LORD CHANCELLOR.—In all ordinary cases, on a rehearing the party is entitled to put in additional evidence; is there any authority to shew that there is any difference in the case of an injunction?

Stuart proceeded.—The affidavit states that there are judgments to the extent of 53,000*l.* against the deceased.

The LORD CHANCELLOR.—It has been held, in a case decided in this court, that where a plea at law is merely put in to prevent a judgment, it is of no consequence that it is a false plea. And where a judgment is suffered by default, with a view of bringing the case into this court, that is enough.

Bethel, in reply.

JUDGMENT.

Nov. 12, 1844.—The LORD CHANCELLOR.—In this case it appeared that a judgment for 4,000*l.* had been entered up in the Court of Exchequer against Sir Christopher Bethell Codrington, who died on the 15th of December, 1842. In February 1843 a writ of *scire facias* upon the judgment was sued out, and served on the 19th of April upon his executors. They appeared to that action, and a declaration was filed on the 2nd of May. The next day a bill was filed by the plaintiff on behalf of himself and all other creditors, and notice of that suit was given to the attorney of the plaintiff in the *scire facias*. There being some informality in the declaration, the plaintiff obtained leave to amend, and the defendants had two days given them to plead after the amendment. The executors, accordingly, on the 13th of May, pleaded *plenè administravit*. On the 11th of May the decree was made in the creditor's suit, and notice of that decree was served at the same time the plea was delivered. On the 17th, issue was joined, and notice of trial given for first sittings after Trinity Term 1843, and on the 26th of May the injunction issued. On considering the dates, if that is material in this case, it appears that there was no want of due diligence on the part of the plaintiffs in equity. The declaration was filed on the 2nd, and notice of the suit was given and the decree obtained before the time for pleading was out. A few days' interval occurred between the date of the decree and the motion for the injunction, but that happened from the courts not sitting. It was said that, as the executors had put in a plea of *plenè administravit*, the plaintiff ought to have been permitted to go to trial in order to falsify that plea, as it was clear, from the affidavits, that the plea of the executors was false in fact, and the plaintiff would then have obtained judgment against the executors personally. (*Terrewest* v. *Featherby*, *suprà*, and *Brooks* v. *Skinner*, *suprà*.) But these cases do not sustain the principle they were cited to support. (*Lord* v. *Wormleighton*, *suprà*.) It is clear that, on a plea of *plenè administravit*, if the verdict went for the plaintiff, the judgment must be *de bonis testatoris* only, and for a sum not exceeding the value of the goods found to have been in the hands of the executors. The principle on which those decisions proceed fails, because it was assumed very incorrectly that the judgment must be *de bonis testatoris, et si non de bonis propriis*. If there be goods of the testator, the plaintiff might bring an action on the judgment against his executors, on the suggestion of a *devastavit*. The executors cannot then plead *plenè administravit*, but can only deny the *devastavit*; and in such case judgment would be against the executors out of the assets. If they could prove there were no assets, that would

be a discharge. (1 Institutes, 283.) If they proceed to trial, and the jury find assets, they will be withdrawn from the general administration. I concur in the doctrine of the case of *Lord* v. *Wormleighton*. Here, independently of the general question, the plea was not filed until after the decree, and it was obviously filed for the purpose of enabling the executors to gain time to make a motion to stay proceedings at law by an injunction; and it has been expressly decided, that pleading a false plea, merely for the purpose of staying proceedings at law, does not deprive the executor of his right to protection. (*Fielden* v. *Fielden*, *Dyer* v. *Kearsley*, *suprà*.) If the executors had suffered judgment by default, as they might have done, execution would have issued before the motion for an injunction could have been made. The Court, in cases of this sort, requires to be informed of the state of the assets, and here the account given by the executors is satisfactory. The motion must be refused with costs.

Stuart.—The creditor in the action desires to have it inserted in the order that he may be allowed to go in before the Master to prove his debt; and as otherwise he must present a petition, the executors would make no objection.

The LORD CHANCELLOR.—This is a motion to discharge an order, therefore I may make any such addition as that required.

Wednesday, Nov. 13.

ST. JOHN'S COLLEGE *v.* CARTER.

Breach of injunction—Warrant remaining long unexecuted.

Thomas Pratt, who had been enjoined from committing trespass by cutting timber in Bagley-wood, was, in 1839, ordered to be committed to the *Fleet* for a breach of the injunction. The warrant founded upon that order had not been executed.

Bellamy moved that a new warrant might now be granted upon that order, as Pratt had lately recommenced to trespass. The present warrant directed the party to be committed to the custody of the keeper of the *Fleet Prison*; but that place of confinement having been abolished by the late Act (5 & 6 Vict. c. 22), and persons guilty of contempts in this Court being now committed to the Queen's Prison, there was no gaoler who would receive Pratt if he should be apprehended on the old warrant.

The LORD CHANCELLOR.—Suppose the party has something to allege against his commitment; I will not permit the plaintiff to come for a new warrant after six years, without hearing what the party against whom the application is made has to say. Many circumstances may have occurred. The plaintiffs must get a new order on a motion to commit for breach of the injunction, or move, on notice, that Pratt may shew cause why a new warrant should not issue. If the plaintiffs like to take the responsibility of executing the old warrant they can do so; but I shall give no directions on the subject, neither do I feel called upon to make any interpretation of the Act. I will not make an order for a new warrant without giving the party an opportunity of being heard.

Re LANCHESTER, a Lunatic.

Practice—Costs.

Elderton asked that the order confirming the commissioner's report in this matter might be amended by directing that the costs of the commission and subsequent proceedings might be paid.

The only property of the lunatic consisted of a sum of 900*l.* which was in the hands of a person who had refused to pay it until a commission had been issued. The lunatic was maintained by his brother.

The LORD CHANCELLOR.—On the brother undertaking that the lunatic's maintenance shall not be diminished, the order may be altered.

Office Copies of Depositions.

During the argument in the cause of *Parsons* v. *Bignold*, an office copy of the deposition of a witness was handed to his lordship, in which several errors occurred, and the whole was written in a very slovenly manner.

The LORD CHANCELLOR (having complained of the "disgraceful" state of the copies, and having been informed that the persons actually employed to make the copies were paid only three farthings a folio).—The charge for office copies has already been reduced 8d. a folio, and I have it in contemplation to reduce still further the copy money in the examiner's office. This is not a question between the officers of the Court and the public, but between the Court itself and the public, as the sums received for office copies go to the Fee Fund. The low price paid for the work is scandalous, and I will take care that it shall be rectified. Enough shall be allowed to pay properly the people who do the work.

Dec. 5, 1843, and Nov. 14, 1844.

STEEL *v.* STEWART.

Production of papers—Privileged communications—Extent of professional privilege.

The master of a ship having been employed to go to India to collect evidence with respect to the seaworthiness of a vessel which had been condemned and sold, his communications to his employers and their solicitor held to be privileged communications; and that this is not an extension of, but, on the contrary, strictly within the principles which govern the Court in holding communications between solicitor and client privileged.

A vessel had been lost at the mouth of Hoogly on her voyage to Calcutta, and a question arose between the owner and the underwriters whether the loss was purely accidental, or whether the ship was in fact unseaworthy. The defendant in equity was the owner of the vessel, and he was plaintiff at law in a suit against one of the underwriters. Warren, the master of the ship, had been employed by the defendant to go out to India, and collect evidence there on his behalf, and he was so engaged for two years. During that time various letters were written by Warren upon the subject of the loss of the ship, some of which were addressed to the defendant himself, and some to his solicitors. The defendant, by his first answer, stated that Warren had been sent out *by the defendant*, by the advice of his solicitor, for the express purpose of collecting evidence. To this answer exceptions were taken, and by his second answer the defendant stated that Warren was sent out by, and as the agent of, the defendant's solicitor, for the purpose of collecting evidence. The dates of the several letters were mentioned in a schedule to the answer, and the right to withhold them was expressly claimed on the ground that they were privileged communications. On a motion before the Vice-Chancellor of England, for the production of all papers admitted by the answer to be in the defendant's possession, an order was made which expressly excepted all the letters written by Warren when in India, both those to the plaintiff himself and to his solicitor. The plaintiff appealed from that order, and asked that it should be varied so far as it excepted the letters from Warren.

Bethell and *Hetherington* cited *Du Barry's* case, mentioned in *Bunbury* v. *Bunbury*; *Willis* v. *Rastock* (4 Term Rep. 753); *Sawyer* v. *Birchmore* (3 Myl. & K. 572); *Desborough* v. *Rawlins* (3 Myl. & C. 515); *Hughes* v. *Biddulph* (4 Russ. 190); *Vaillant* v. *Dodemede* (2 Atk. 523); *Combe* v. *Corporation of London* (1 Y. & C. Ch. C. 651); *Storey* v. *Lennox* (1 Keen. 551; and 1 Myl. & C. 536); *Bunbury* v. *Bunbury* (2 Beav. 176).

Romilly and *Lewis*, for the defendant, contended that the master was appointed the solicitor's clerk *pro hac vice*, and in that character all his communications were privileged; and they cited *Taylor* v. *Forster* (Carrington & Payne's Reports), *Desborough* v. *Rawlins*, and *Sawyer* v. *Birchmore*; *Bunbury* v. *Bunbury*, *suprà*; *Cholmley* v. *Perrin* (2 Mylne & Keen's Reports, 380); *Llewellyn* v. *Baddeley* (1 Hare's Reports, 527); *Preston* v. *Carr* (1 Younge & Jervis's Reports); *Herring* v. *Clobery* (1 Phillips's Reports, 91); Phillips on Evidence, 131; *Perkins* v. *Hemnshaw* (Starkie's Nisi Prius Cases); *Walker* v. *Wildman* (6 Maddock's Report's, 47).

Bethell in reply.

The LORD CHANCELLOR.—I recollect a clerk having been sent to the south of France to collect evidence; but I never heard of one having been sent to India.

Thursday, Nov. 14, 1844.

JUDGMENT.

The LORD CHANCELLOR.—In this case an action had been commenced in the Court of Common Pleas by the defendant in Equity, against the plaintiff, to recover the amount of a policy of insurance on the ship *Sherbourn*, which had been insured at and from Calcutta for a period of twelve months. The defence to this action was, that the ship was unseaworthy at the time the insurance was effected. A bill had been filed for a discovery in aid of the defence to the action, and for an injunction to stay proceedings at law. The plaintiff had moved for the production of letters and papers, admitted by the answer to be in the defendant's possession or power, and which were set forth in the schedule to his answer. The question at issue between the parties upon this motion was, whether these letters and papers so admitted to be in the custody or power of the defendant or his solicitor, did or did not come within the description of privileged communications, which he was not bound to produce for the plaintiff's inspection. The answer admits that Warren, the master of the ship, had been sent out to India by the defendant to collect evidence in support of the action on the policy, and that he had been engaged in that service for nearly two years, in consequence of its being necessary to examine a great number of natives and other persons in Calcutta who had been engaged in the repairs of the ship. It is distinctly stated that Warren's presence in India was necessary for the investigation. The answer likewise stated that Warren had been authorized by the solicitor of the defendant to pursue the inquiries, and that he had been maintained in India at his expense. In a subsequent part of the answer, the defendant admits, that while so employed, Warren wrote and sent home various letters and communications, some of which were addressed to the defendant, and others were addressed to his solicitor; but the defendant submitted that such letters and communications being confidential communications between the defendant and his advisers, in respect of the matters in difference between the parties to the suit and in the action, he was not bound to answer whether the same did relate or in some or any and what manner refer to the questions at issue in the cause. In a further answer, the defendant stated that these letters were written while Warren was so employed in Calcutta, as the agent of the defendant's solicitor, and that the letters sent home by him did refer to the matters at issue between the parties to the suit. It does not appear to me that there is any inconsistency in these two statements. Warren may have been sent out by the defendant by the advice of the defendant's solicitor, and may have also acted as the agent of such solicitor in the collection of evidence. The single question to be determined was, whether these letters and communications are to be deemed privileged. First, then, as to the letters written by Warren, as the agent of the solicitor, to the defendant; when a solicitor is employed to collect evidence for a client in reference to a pending suit, it is quite clear that all communications between such solicitor and client respecting the collection of evidence, are privileged. But a solicitor cannot always act in his own person; distance, and various other circumstances, must occasionally render it impossible for him to do so. Such was the case in the present instance. Many of the persons whose evidence was required, were natives of India, and others resident in and near to Calcutta; some one must have taken a voyage to India. It was necessary, therefore, that the solicitor should have employed an agent, and whether that agent be his own clerk, or any other person, appears to be wholly immaterial. In the performance of the duties thus required, from the agent employed by the solicitor, communications were made to the client on the subject of the evidence to be collected, which were in effect communications made by the solicitor himself, and as such were entitled to protection. Secondly, as to the letters from the agent to the solicitor himself, I consider them as falling within the same principle, and entitled to the same protection. They are equally privileged communications, having been written in furtherance of inquiries instituted by and under the directions of the solicitor, on the subject of the evidence required in support of the action at law. I therefore concur with the Vice-Chancellor in thinking these documents ought not to be produced; but I do not agree with that learned judge in the opinion that this is any extension of the principle on which cases of this class proceed. On the contrary, I think that it comes strictly within the principles which have always governed this court in declaring that communications between a solicitor and client are to be privileged. The decision of the Vice-Chancellor must be affirmed, with costs.

Friday, Nov. 22.

Re FOWLER, a Lunatic.

Waiving of accounts—Superseded commission—Practice in lunacy.

Stinton asked that an order made in this matter might be amended, by directing that the accounts of the committees might not be taken, and their recognizances vacated.

The commission had been superseded, and the late lunatic now wished to waive the taking the accounts of his brother and sister, who had been the committees of his estate. *Ordered.*

Re DYCE SOMBRE, a Lunatic.

Confirmation of report—Allowance to lunatic—Delivery of documents—Practice.

Wakefield having applied to have the original petition of Mr. Dyce Sombre placed in the paper to be disposed of—

Lloyd, for the committee of the estate, referred to the box of papers in the hands of the commissioner. It was necessary that those papers should be handed over to the committee of the estate, that he might take measures to get in certain debts, and keep up the payments of annuities in India, to which Mr. Sombre's property was liable. The commissioner required his lordship's order before he would place the papers in the committee's hands.

The LORD CHANCELLOR.—The committee can examine the papers, and such of them as the commissioners may think are requisite for the management of the property may be delivered out to the committee in person, but not to his solicitor. I understand the commissioner has made some report as to maintenance, and that, although that report has never been confirmed, the committee has made some advances in accordance with the commissioner's recommendation. But I wish it to be well understood that, in making advances without the confirmation of the report, the committee will do so at his own risk. Though Mr. Dyce Sombre is out of the jurisdiction of the Court, I feel it my duty to protect his property to the utmost extent of my power. The committee of the estate is a most respectable man; but I take this opportunity of stating that, as the report had not been brought before me for confirmation, the committee incurs very serious personal responsibility by making payments to or on account of the lunatic. I have not given my assent to those payments, and I make the observation be-

cause there has been great tardiness in all the proceedings in this matter, a tardiness which has been visible from the commencement; and of which I very much disapprove.

Lloyd.—The committee has been advised not to make, and he will not make, any further advances without your lordship's sanction.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, Nov. 12.

FARNSHAW *v.* WALTER.

Practice—Demurrer—Multifariousness.

F. the inventor of certain improvements, induces A. to take out patents, both English and foreign, in his, A.'s own name. F. procures W. to pay off what is due to A. for certain advances made by him for experiments, &c. and then F. withdraws from the business, but executes a deed, whereby he grants W. a license to use the patents in all parts of England, with certain restrictions. W. having worked the patent invention for some time, entered into partnership with B. and H. under which they continued to work the patent jointly, the legal interest remaining all the while in A. from the moment they were originally obtained. Upon some question arising between F. and W. relating to their former partnership in the patents, F. filed his bill against W., A., B., and H., praying for an assignment of the patents by A. and for an account, not only against W. but also B. and H.

Held, upon a demurrer, that the bill was properly instituted; for though there might be many things which B. could not answer, yet he was rightly made a party to the suit, for that the Court could not deal justly between the parties, in respect of the patents, unless an account was taken against him also.

In the month of September 1840, certain patents from England, Belgium, Holland, and France, were granted to the plaintiff, as the inventor of certain improvements in paving and covering streets by the application of caoutchouc in combination with earthy materials. The English patent, and some of the foreign ones, were taken out by one Freeman in his own name, and the others in the name of the plaintiff, under the direction of the plaintiff, who was then abroad. Freeman had incurred some expenses in experiments; and in the year 1843, the plaintiff, having only the beneficial interest, entered into a negotiation with the defendant Walter, which terminated in his paying off Freeman his claim in respect of the advances he had made, and carrying on the working of the patent in partnership with Walter until the month of June 1843. About that time the plaintiff withdrew from the business, and executed an indenture of assignment, whereby he granted Walter a license to use the four patents in all parts of England, excepting the counties of York and Lancaster. The defendant Walter continued to work the patent invention for some time, and eventually entered into a partnership with two other parties, Brathwaite and Hull (who were made defendants to the bill by amendment), under which they continued to work the patent jointly. The English letters patent were stated to be in the possession of these two last-named defendants, whilst the foreign ones remained with Farnshaw or Walter. The legal interest in the patents had never passed out of Freeman since they were originally obtained. The bill alleged several breaches by Walter of the covenants contained in the indenture of June 1843, such as his not furnishing the plaintiff with proper accounts, his not having the articles properly stamped, and several other particulars. The bill prayed for an assignment and delivery of the patents by Freeman, and for an account of all the articles manufactured by all the defendants respectively, and of the partnership dues.

To this bill the defendant Brathwaite demurred for multifariousness, on the ground that he had no interest in the assignment, nor the plaintiff's recovery of his patents from the defendant, Freeman, or in the accounts between the plaintiff and Walter, and therefore submitted he ought not to have been made a party to the suit.

Bethel and *Twells*, in support of the demurrer. contended that there was a jumble of three distinct causes of suit; that the defendants, Hull and Brathwaite, had been brought into the arena of the Court whilst the other parties settled their accounts, which was a grievous infliction upon an individual who happens to be interested in one little corner only of the suit. That with respect to the claim which the plaintiff might have had with Freeman, it was totally irrelevant, for even as to the foreign patents there was a difference in several respects, some having been taken out by the plaintiff and others by Freeman. Moreover, that all the breaches of the conditions contained in the indenture of 1843 were confined exclusively to Walter.

Stuart and *Cole*, who appeared for the plaintiffs, were not heard.

The VICE-CHANCELLOR.—It seems to be quite clear that an account must be taken between the plaintiff and the defendant Walter The plaintiff being the inventor of the improvements in question, did not take out a patent for them himself, but they were taken out by Freeman, who therefore at law became the patentee. There were then certain dealings between the plaintiff and Freeman, whereby the latter claimed to be entitled to certain sums of money. Then it appears that there were certain agreements whereby certain sums of money were due from Walter to plaintiff, but before the accounts could be taken, or any satisfaction had in respect of those accounts, Walter granted over the license, so as to make Brathwaite a party. It was represented on the bill, that Freeman had been satisfied for what was due to him, and that he was in reality only a trustee of the legal interest in the patent, for the purpose of granting a proper legal license to Walter and all those deriving any interest from him in the patents, including Brathwaite and Hull, and also for the purpose of clothing the plaintiff with the legal interest, subject of course to the license. Now, it is quite clear, before the Court allows a legal license to be granted according to the terms contained in the agreement between the plaintiff and Walter, it will see that what is due from one party to another shall be paid. Now, the grant of a patent is one thing, possession is another; therefore it was quite impossible for the Court to give proper directions as to the assignment of the patent and the license, and the possession of such patent, before an account was taken in the manner suggested by the bill. It is true there may be a number of matters in the bill which the defendant Brathwaite cannot answer; yet, as he has chosen to fish in troubled waters, he must bear the consequences of so doing. My opinion is, that the bill is properly exhibited, and that the demurrer must be overruled with costs.

Wednesday, July 24.

RUFFELL *v.* NORMAN.

Will—Distribution—Time of vesting.

J. C. by his will devised and gave his freehold, copyhold, and personal estates to trustees, upon the trusts (among others) following:—"And when my youngest child for the time being shall have attained the age of twenty-one years, then, upon trust to pay, assign and transfer the said residue of my personal estate, and the funds and securities for the same, unto all my children who shall be then living, and the issue of such of them (if any) as shall then be dead leaving issue, to be equally divided between them, if more than one, share and share alike, and if but one, then the whole to such one." In two previous passages in his will, the testator, in reference to the interests of his children, directed, in case "his wife shall marry again, or depart this life." Held, that in the subsequent part of his will, the testator meant, in the event of his widow having married again, or having died before the youngest child attained twenty-one: and that, therefore, L. the youngest child for the time being, having attained the age of twenty-one, and having died before the widow married again, did not take a vested interest, but that, having left two children, they took as tenants in common.

John Cooper, by his will in 1818, having directed his trustees to complete an agreement into which he had entered for the sale of certain freehold and copyhold estates, and to stand possessed of the money arising from the sale thereof, upon the same trusts as he declared of his personal estate, gave and devised all the rest and residue of his real estates to his trustees in fee, upon trust for his wife Sarah, for and during the term of her natural life, if she should so long continue his widow, in order to enable her to support and maintain herself and such of his children as were unmarried and should choose to reside with her, and to educate and bring them up, until the youngest of them for the time being should have attained the age of twenty-one years; and in case his said wife should marry again or depart this life before his youngest child for the time being should have attained the age of twenty-one years, then and in either of these cases which should first happen he directed that the trust thereinbefore contained for the benefit of his said wife should from thenceforth wholly cease and be void, and that his said trustees should stand and be seised of the said hereditaments and premises, upon trust, to pay and apply the clear rents, issues, and profits thereof for and towards the support, maintenance, education, and bringing up of his said children till the youngest of them for the time being should attain the age of twenty-one years; and when his youngest child for the time being should have attained that age, in case his said wife should have married again or departed this life, then upon trust, that they, his trustees, should, as soon as conveniently might be afterwards, absolutely sell and dispose of all his said last-mentioned real estates; and the testator further directed that the moneys to be raised by the sale and disposition thereof should also be considered as part of the residue of his personal estate; and be held upon the same or the like trusts, and in the same or the like manner, as were thereinafter declared and directed concerning the same estate, from and after the decease or next marriage of his said wife, which should first happen, and from and after his youngest child for the time being should have attained the age of twenty-one years. The testator then appointed his said wife, during her widowhood, and his said trustees, executrix and executors of his will; and appointed them guardians of such of the persons and estate of his children as should be minors at his death; as to his son Daniel, until he should attain the age of twenty-one years; and as to his unmarried daughters, until they should severally attain that age or be married, which as to each of them should first happen; but if his said wife should marry again, then the testator directed that her power as one of the guardians of his children should immediately cease. After providing that his debts, funeral and testamentary debts should be paid, the testator gave certain legacies to his children, to be paid to them respectively as and when they should severally attain the age of twenty-one years, but without any interest in the meantime. And as to the proceeds to arise from the sale of his said real estates, and all the rest and residue of his personal estate and effects, he gave and bequeathed the same unto his said executrix and executors, their heirs, executors, administrators, and assigns, according to the several natures thereof respectively, nevertheless, upon such and the like trusts, and for such and the like intents and purposes, for the benefit of his said wife during her widowhood, and of his said unmarried children until the youngest of them for the time being should have attained the age of twenty-one years, as were thereinbefore declared concerning his said real estate during such widowhood, and until such time respectively as last thereinbefore mentioned. *And when his youngest child for the time being should have attained the age of twenty one years, then upon trust to pay, assign, and transfer the said residue of his personal estate and the funds and securities for the same unto all his children* (excepting two of them therein named), who should be then living, and the issue of such of them (if any) as should be then dead, leaving issue, to be equally divided between them, if more than one, share and share alike, and if but one, then the whole to such one; but the issue of any deceased child should be entitled to only such part or share as such child would have been entitled to if living. And he directed that the interest of the share of any such issue who should be then under the age of twenty-one years, should be applied by his executors for and towards the maintenance, support, and education of such issue respectively during their respective minorities.

The testator died in 1819, leaving ten children surviving him. Joanna, the youngest of them, died in 1829, whereupon her next sister, Louisa, became the youngest child of the testator, having at that time attained the age of twenty-one years. Louisa married the petitioner, E. B. Ward, and died in the year 1832, leaving the defendants, Jane Ward and Daniel Ward, her surviving. E. B. Ward took out letters of administration to the estate and effects of his deceased wife. In the year 1839, Sarah, the widow of the testator, J. Cooper, intermarried with one William Norman, and died some time afterwards. A suit was then instituted for the purpose of administering the estate of the testator, to which the children of Louisa were not parties, it being then supposed that their deceased mother's share was a vested interest in her. One-ninth part of the testator's residuary estate (the supposed interest of Louisa) was therefore transferred to the separate account of "Louisa or her issue;" and an inquiry was then made before the Master as to what issue of the said Louisa were living at her decease. It was then found expedient to make Louisa's children parties to the suit by amended and supplemental bill. The present petition was presented by their father, E. B. Ward, for the purpose of having it declared whether he, as the administrator of his deceased wife Louisa, or her children, were entitled to the share so transferred.

K. S. Parker appeared for the petitioner.

Jenkins, on behalf of the children.

The VICE-CHANCELLOR.—It appears to be quite evident that the testator intended to make a provision for his widow during her lifetime, or until she should think fit to marry again; and one of his reasons obviously was, to enable her to support and educate his children until the youngest of them should attain the age of twenty-one years. His words are, "in order to enable her to support and maintain herself and such of my children as are unmarried, and shall choose to reside with her, and to educate and bring them up until the youngest of them for the time being shall have attained the age of twenty-one years; and in case my said wife shall marry again, or depart this life before my youngest child shall have attained the age of twenty-one years, then I declare that the trust hereinbefore contained for the benefit of my said wife shall thenceforth wholly cease and be void." The testator thus provides for two events; either his widow's second marriage, or her decease before his youngest child for the time being should have attained the age of twenty-one years. The latter event did not take place. He then goes on to declare that in either event the trustees shall stand seized of the hereditaments, upon trust to apply the rents and profits of his estates for the maintenance and education of his children until the youngest should attain

the age of twenty-one years, and then they are directed to sell the hereditaments. Then he declares that the proceeds arising from such sale should go and be considered as part of the residue of his personal estate, "and be held and applied upon the same or the like trusts, and in the same or the like manner, as are hereinbefore declared or directed concerning the same estate from and after the decease or next marriage of my said wife, which shall first happen." Afterwards, when the testator proceeds to deal with his personal estate, he directs the same to be held "upon such and the like trusts, and for such and the like intents and purposes, for the benefit of my said wife during her widowhood, and of my said unmarried children, until the youngest of them for the time being shall have attained the age of twenty-one years, as are hereinbefore declared concerning my said real estate during such widowhood, and until such time respectively as last hereinbefore mentioned." Had it rested thus, no doubt could have arisen upon the construction. Then we have the following sentence: "And when my youngest child for the time being shall have attained the age of twenty-one years, then upon trust, to pay, assign, and transfer the said residue of my personal estate, and the funds and securities for the same unto my children," which must be construed to mean in the event of his widow having married again, or having died before the youngest child attained twenty-one. No other sensible construction can be put upon the words of the will but this: this consequence necessarily follows, that although Louisa answered the description of the "youngest child for the time being," in the year 1829, and had then attained her age of twenty-one years; yet, as she died before the second marriage of the widow, she cannot be said to have taken a vested interest. It was not until 1839, upon the widow's second marriage, that the gift over to the children of the testator took effect. Louisa's children take as tenants in common.

ROLLS COURT.

Monday, Nov. 11.

Re CATTLIN.

The signing by solicitor and client of a debtor and creditor account, in which a bill of costs is one item, is sufficient to constitute a payment so as to preclude taxation, on a petition presented twelve months after.

An agreement as to payment, if sufficiently made out in evidence, cannot be set aside on petition under the Act 5 & 6 Vict. c. 73; a bill must be filed for that purpose.

This was a petition for the taxation of two bills of costs, and the question was, whether the first was paid twelve months before, and if not, whether, it having been delivered, there were any special circumstances to get it taxed twelve months after the delivery. Mr. Cattlin having in his hands moneys of the petitioners, made out a debtor and creditor account on the 15th April, 1843, in which one item was the amount of the first bill of costs; and the account was signed by the petitioner and Cattlin. The other bill was delivered in March 1844, and as to it, therefore, there was no dispute. The petition was presented on the 17th July, 1844.

Kindersley and *Elderton*, for petitioner.

Turner and *Shebbeare*, contrà.

The MASTER of the ROLLS.—As the case now stands, payment was made of the first bill in April 1843, that is, by appropriation of part of the moneys in Cattlin's hands to that purpose. Whilst this account stands, how can I do any thing upon this petition? I might, perhaps, by bill, but cannot here. It seems to be supposed that this Court can, upon petition under the stat. 5 & 6 Vict. c. 73, set aside agreements; but that is not so. This mode of settling accounts, however, I do not like. This petition had two objects, one of which fails, and the other it was not necessary to come here for. I feel reluctant to do so, but I must give costs. Take the common order and costs of this application.

Re DRAKE.

A bill of costs was sought to be taxed on the ground, chiefly, that it was paid under protest: but this being denied by the other party, and the petitioner having been struck off the roll as a solicitor for swearing falsely, the petition was dismissed without costs.

Parrott, the petitioner, it was said, directed one Grove, on the 28th of June, 1844, to pay the bill of costs of Mr. Drake, amounting to about 11*l*. under protest, which it was also stated Grove did. On the [illegible] July, 1844, Parrott presented his petition for taxation, alleging as a ground, the payment under protest, and also erroneous charges. Drake denied the payment under protest; and there was no affidavit of it from Grove or any one present. It was also stated, that Parrott had falsely sworn that he paid certain sums to witnesses on a trial at law, which it appeared he never paid, and his name was in consequence struck off the roll of attorneys.

Wright, for the petitioner.

Prior, contrà.

The MASTER of the ROLLS.—This petition prays for the taxation of a bill of costs after payment thereof; and it must therefore rest on special circumstances. The chief one of these is denied. Let it be dismissed with costs.

Re HOBLER.

A petition will not be restored to the paper again after it has been dismissed by consent of counsel on both sides. The parties are bound by the consent of counsel, who are relied upon by the Court as acting upon sufficient authority.

A petition for taxation of a bill of costs in this case had been presented before vacation by *Watson*, the then counsel of the petitioner, and before it was heard, petitioner's counsel applied to *Bilton*, who was for the respondent, to allow it to be dismissed without costs. To this respondent's counsel consented, on the undertaking by petitioners that no further application should be made for a similar purpose. The terms of the arrangement were indorsed on counsel's briefs and in the registrar's book.

Pike now presented a second petition, insisting that the petitioner had given no authority to his counsel to consent, and praying that the original petition might be restored to his lordship's paper, and heard in due course.

Bilton insisted that the extent of authority could not be measured by the Court, and said that all the parties originally concerned understood the terms as he did. The petitioner's case, however, had passed into the hands of another gentleman, who had instructed Mr. Pike to appear.

The MASTER of the ROLLS thought the business of the court could not be conducted without relying on the statements of counsel, who, of course, are to satisfy themselves as to the extent of their authority. The petition could not be granted; he would dismiss it with costs.

Friday and Saturday, Nov. 15 *and* 16.

GIBSON *v.* CHAYTOR.

SAME *v.* SAME.

A demurrer to a bill for specific performance of an agreement for a lease, and to restrain an action of ejectment is not sustainable, if in the bill it is alleged that the action is brought by a third person for his own purposes, who is permitted to use, and uses, the names of the persons purporting to bring the ejectment, but is not himself a party, though the bill prays that they may be restrained from that and all other actions of ejectment.

Sir William Chaytor being tenant in common of one-fourth of a fee-simple estate, called Newfield Estate, with other persons, purchased the shares of the others at 4,000*l*. and afterwards agreed to sell the estate to the Byers-green Company for 6,500*l*. Accordingly, a deed of conveyance, in May 1840, was prepared, which the vendors to Sir William, upon having the 4,000*l*. paid to them, agreed to execute (no conveyance having been made to Sir William), and did execute and deliver it to Sir William, but he did not execute nor deliver, only 3,500*l*. of the purchase-money having been paid. The conveyance was to George Alison, a partner, in trust for the Byers Green Company, who was also a partner in a company called the Hunwick Coal Company, and a trustee of the lease of the Hunwick Colliery, in trust for himself and two other partners, John Botcherley and Thomas Brown. After the contract with Sir William Chaytor, Alison, Botcherley, and Brown agree with the Byers-green Company, in which they were also partners, for the purchase of 20 acres of the surface of the Newfield estate, on which to sink pits for the Hunwick Coal Company; and a conveyance was accordingly made to Buckton, a partner in the Hunwick Coal Company, in trust for Alison, Botcherley, and Brown, for the purposes of the colliery, or, as the plaintiff alleged, in trust for them for their own benefit; and that they afterwards leased the same to the company for 42 years from 1837, the same term as that for which they held the Hunwick colliery. In March 1842, the property of the Hunwick Coal Company was sold by the sheriff for debt, and Gibson, the plaintiff, became the purchaser, and entered into possession of the whole, including the 20 acres. The plaintiff also purchased Brown's reversionary interest in his one-third share of the same, and Botcherley having conveyed his one-third share to Alison, the latter conveyed, as the plaintiff alleged, fraudulently, the two-thirds to the defendant Gill, and afterwards became bankrupt. The Byers-green Company's property being sold under a decree of the Court, Gill also purchased on the 9th June, 1843, the unsold part of the Newfield estate. Alison then, as the plaintiff alleged, commenced an action of ejectment, in the names of Sir William Chaytor and Gill, against the plaintiff, for his own purposes, and the present bill was filed for the specific performance of the agreement to grant the lease of the 20 acres, and to restrain the action of ejectment, and all other actions, &c. &c.

Kindersley and *Bates*, for Sir William Chaytor, and *Cooper* and *Hubbard*, for Gill, insisted that the bill was demurrable, because Sir William Chaytor was an unpaid vendor, and the plaintiff did not offer to pay him off. Besides, it [illegible] passed by the sheriff's sale.

Turner, for the plaintiff, took a preliminary objection that the demurrer was not sustainable, because the bill alleged, and the demurrer therefore admitted, that the defendants' names were used by Alison, as plaintiffs in the action of ejectment, for his own purposes, he himself not being a party.

Kindersley and *Cooper* were called upon by the Court to reply on this point; upon which

The MASTER of the ROLLS said he was not satisfied with the explanation, and would overrule the demurrer, but without costs. It was only a question of costs, for if allowed he must give leave to amend. Two months' time must be allowed to amend and answer.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Nov. 12, 13, *and* 22.

CRAIK *v.* LAMB.

Will—Construction—"Lineal descent."

Where a testator by his will gave the residue of his real and personal estate to "his relations who might claim and prove their relationship to him by lineal descent," and died a widower, and without issue, the devise was held, under the circumstances, to extend to those relations who proved their relationship by a descent from a common progenitor with the testator.

The question which arose in this case was upon the construction of the will of James Grice. The will was dated the 18th of Feb. 1837; and, after bequeathing several pecuniary legacies, was in the following words: "I give and bequeath all the remainder of my real and personal estate and effects, of whatsoever the same may consist, unto and equally between and amongst all my relations *who may claim and prove their relationship to me by lineal descent*, share and share alike, and do hereby empower my executors hereinafter named to make sale and absolute disposal of such estate and effects, and to distribute the same as aforesaid." The testator died on the 22nd of February, 1837, a widower, and without issue. His nearest relations by blood were first cousins, who now claimed the residue under the above bequest.

Spence and *J. Adams*, for the plaintiffs, who were the executors of the will.

Wigram and *Busk*, for the heir-at law, who contended that the devise of the real estate had lapsed.

Swanston, for the relations of the testator, *ex parte maternâ*, and *Temple* for the relations, *ex parte paternâ*, argued that the word "lineal" did not apply only to the persons who claimed to be in the direct line from the testator, but might be extended to those who claimed from a common progenitor. They cited Coke Litt. 23 (b); 2 Blackstone, 203 (b); and Litt. 703.

Wigram, in reply.

Nov. 22.—The VICE-CHANCELLOR said, that the question to be decided in this case was as to the meaning of three words in the testator's will, and that it was a question not without difficulty. The testator was born in 1772. He was married once only, and by that marriage he had one child, who died under three years of age. The wife and child died many years before the date of the will, and the testator did not appear to have contemplated a second marriage. His nearest relations in blood were first cousins. The dispute in effect was whether the words "by lineal descent," ought, as the heirs-at-law contended, to be read as meaning "by lineal descent from me." Considering the circumstances, it was impossible to suppose that the testator could have meant his descendants, and his Honour would be very unwilling to come to such a conclusion unless he were compelled by some irresistible rule of law to do so. Any person reading the will with a knowledge of the facts, must believe that the words were used by the testator ignorantly. Still the question was whether the words used were too strong to be surmounted. His first impression was that they were so, but he had now, though not without difficulty, come to a different conclusion. Unless the words were understood as the heir-at-law contended they ought to be, they were mere surplusage, but still they must be understood as subject to the question of the meaning of the word "lineal." The testator, perhaps meant, that these parties were to prove themselves relations by lineal descent, meaning, by lineal descent, that they were descended from the same progenitor as the testator, and this in distinction from those who might claim by affinity. This construction was borne out by a reference to Johnson's and Richardson's Dictionaries, and by Bailey's edition of Facciolati. Considering then the circumstances in which the testator was placed, and the form and nature of the will, any argument derived from the surplusage of the words "by lineal descent," if they were surplusage, failed, for the words "from me" were not added. The words used meant that the relations were to be descended from a common progenitor with the testator, and, therefore, his Honour was of opinion that he was not bound by any

rule of law to say that they must be construed as if they had been "by lineal descent from me." His Honour, however, would not give any opinion whether "relations" meant persons connected by marriage though not by blood, in other words, whether relationship included affinity. In this case he should declare that the next of kin were entitled.

Monday, Nov. 25.

FELDER *v.* BELLINGHAM.

Practice—Costs—Opening biddings.

A purchaser, at whose application the biddings had been opened and the price considerably advanced, though he himself was outbid, was, under the circumstances, allowed his costs and charges, and interest on the deposit made by him on his purchase.

A sale of property having been ordered in this cause, the Rev. Thomas Wheeler Gillham became the purchaser; and on the 21st of December, 1843, pursuant to an order of the Court dated the 5th of Dec. 1843, paid into the Bank of England, to the credit of the cause, 200*l.* as a deposit. Subsequently Mr. Gillham, on behalf of some members of the family interested in the subject-matter of the suit, applied to the Court to have the biddings opened, which was accordingly done; and on the re-sale, Mr. Gillham was outbid, and the biddings were advanced from 1,600*l.* to 2,100*l.* at which price the property was disposed of. Mr. Gillham now applied to the Court for the repayment to him of the deposit of 200*l.* with interest thereon at 4*l.* per cent. from the 21st of Dec. 1843; and that the costs, charges, and expenses incurred by him in and about the said order and the resale, and of this application, might be allowed and paid to him out of the funds in court in the cause. The circumstances were verified by affidavit.

Waley, for the motion.

J. Baily and *Collyer* appeared for different parties, and neither opposed nor consented to the motion.

The VICE-CHANCELLOR said that, under the special circumstances of the case disclosed by the affidavit, he should allow the costs asked, and interest at four per cent. on the deposit.

COLE *v.* FROST.

Practice—Assignment of an annuity made by a defendant to his solicitor in the cause, between the order for payment of costs by the defendant, and the issuing a sequestration for non-payment of them—Scandal—Costs.

This suit was instituted by creditors of an intestate, for the purpose of setting aside a sale of a leasehold interest in lands made by Ann Frost, the administratrix. By a decree made on the 23rd of February, 1844, the sale was set aside with costs, and the costs were ordered to be paid by Mrs. Frost, two months after the date of the order. The costs were taxed at the sum of 105*l.* for which Mrs. Frost was liable. There were also costs of her London agent to the amount of 168*l.* for which Mrs. Frost and her solicitor, Mr. H. Dunsford, were jointly liable to the agent. Mrs. Frost, under her marriage settlement, was entitled to an annuity of 40*l.* charged upon property, part of her deceased husband (the intestate's) estate. This annuity, it was stated, was the only property Mrs. Frost possessed, which could be subject to the process of the Court. On the 8th of April, an assignment was made by Mrs. Frost to her solicitor of this annuity. On the 23rd of April, the costs payable under the order of the Court became due, and on their nonpayment, in June, an attachment was issued against Mrs. Frost, which was followed by a sequestration of the property. The sequestrators being in possession of the property, a claim was made by Mr. Dunsford for 20*l.* the half-yearly amount of the annuity due. The plaintiff in the suit now moved that the sequestrator might pay the amount of the rent into court, and that Frost and Dunsford might be restrained from receiving the 40*l.* annuity out of the rent, it being urged that the assignment of the annuity was a fraud to defeat the process of the Court.

A motion by Dunsford was also at the same time made, for liberty for him to be examined *pro interesse suo*. The assignment, it was alleged by Dunsford, had been made *bonâ fide*, and in consideration of his costs.

Among the affidavits filed in support of the original motion was one reflecting upon the character of Mrs. Frost in a matter irrelevant to the subject in dispute.

Simpkinson and *Follett*, for the original motion.

Russell and *Wood*, for the cross-motion, contended that the Court had no jurisdiction to interfere with a person not a party in the cause, brought here by a sequestrator.

Simpkinson, in reply.

The following cases were cited in the course of the argument: *Franklin* v. *Colquhoun* (3 Swanst. 310). and the cases cited in Mr. Swanston's note to that case); *Kaye* v. *Cunningham* (5 Madd. 406); *Jones* v. *Claughton* (Jac. 524); and 1 Daniell's Chancery Practice, 645.

The VICE-CHANCELLOR.—The grounds taken in the argument by Mr. Russell and Mr. Wood are entitled to considerable attention; but they have not satisfied my mind that there may not be reason to act to some extent on the notice of motion given by the plaintiffs. Mr. Dunsford asks himself, by his notice of motion, to come in, and the right course appears to be to treat these two motions as having come on together. Let Mr. Bascombe (the sequestrator) be ordered to pay into court 30*l.* and the rent to become due from time to time, to be verified by affidavit. Refer it to the Master to inquire what, if any thing, is due to Mr. Bascombe for rent, after allowing the 30*l.* Let no proceedings be taken to recover the annuity of 40*l.* until further order. The above directions to be without prejudice to any question. Then, in the language of Mr. Russell's notice of motion, let Mr. Dunsford be at liberty to go in to be examined *pro interesse suo*. The Master to be at liberty to state any circumstances specially with regard to the consideration and intent of the deed of assignment. The residue of the notice of motion to stand over. Considering the statements in some of the plaintiff's affidavits, I direct the plaintiffs to pay 4*l.* on account of costs. Reserve other costs.

KENT *v.* WATERHOUSE.

Practice—10th Order of April 1828.

Quære, whether, under the 10th Order of April 1828, the motion that the defendant should be examined upon interrogatories, and stand committed until he should have perfectly answered such interrogatories, should be made ex parte?

Cockrill, in this case, upon the defendant's third answer being reported insufficient, moved *ex parte*, under the 10th order of April 3, 1828, that the defendant should be examined upon interrogatories to the points reported insufficient, and should stand committed until he should have perfectly answered such interrogatories. The old practice was that the motion should be made without notice. (*Farquharson* v. *Balfour*, 1 Turn. & Russ. 184.)

The VICE-CHANCELLOR, however, thought that it had better be mentioned to the Lord Chancellor, as he did not like to take such an extreme measure as to make an order to commit a man without notice.

Friday, Nov. 22.

INGLIS *v.* BROMLEY.

Practice—Application for liberty to conduct the suit, in consequence of want of due diligence in the prosecution by the plaintiffs—Costs.

Wright in this case moved on behalf of two legatees that they might have the conduct of the suit, on the ground of the want of due diligence in prosecuting it on the part of the plaintiffs. The suit was instituted by the residuary legatees under a will, for the purpose of administering the estate of the testator. The present applicants were made parties to the suit, but were afterwards, at their own request, dismissed. A decree was made on the 4th of June, 1843, directing certain preliminary inquiries to be made by the Master, but nothing effectual had been done in the case since. The present applicants had not established their claim before the Master, and therefore were unable to apply under the 56th order of April, 1828.

Swanston, in opposition to the motion, stated that the plaintiffs had, on the 17th of January last, carried in a state of facts before the Master, and that they had been engaged in a correspondence with parties in Ireland, to ascertain whether James Thompson, one of the defendants, was within the jurisdiction or not. Bromley, another of the defendants, and one of the executors, had, in the early part of the year, become bankrupt. There was a prospect that the plaintiffs would immediately be in a position to place evidence before the Master which would enable them to proceed with their accounts.

The VICE-CHANCELLOR (without hearing a reply) said that it was a clear case, and that the order must be made in the usual form.

Wright then applied for the costs.

Swanston contended that the costs did not necessarily follow the result. There was merely delay on the part of the plaintiffs, but there was no hint of there having been any abuse in consequence of the delay.

The VICE-CHANCELLOR.—The last letter in the plaintiff's correspondence is dated the 23rd of April last. Without saying whether the time up to that date has been properly employed or not, there does not appear to have been any thing done since. The plaintiffs must pay the costs of the motion.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Friday, Nov. 22.

REG. *v.* GREGORY.

Application to postpone trial and judgment.

Platt, Q. C. moved to postpone judgment and the trial of a criminal information, fixed for the 29th inst. till next term. It appeared that the former sentences of imprisonment expired on the 26th inst. and this application was founded on an affidavit by the defendant, that, owing to the rupture of a vessel in the lungs, he believed that his life would be in jeopardy if obliged to appear. [By the COURT.—Is there an affidavit of a physician to that effect?] There is not; but the Court granted a similar application on the same affidavit before.

Talfourd, Serjt.—If there were a medical certificate I should not oppose the postponement, as to coming to receive judgment at least.

DENMAN, C. J.—It is certainly rather hard that because we gave an indulgence before, that that is to be pressed upon us as a reason for doing the same now.

Rule refused; with leave to give fresh notice of another application.

REG. *v.* TOWN COUNCIL OF STAMFORD.

Mandamus.

Whitehurst, Q. C. shewed cause against a rule obtained by *Talfourd*, Serjt. for a *mandamus* to the Treasurer of the Town Council of Stamford to render an account of the sum of 197*l.* 19s. 2d. received by the council under the 60th section of the Municipal Act. No request had been made, and no refusal to give the account. *Rule refused.*

LONG BENNINGTON *v.* DALBY.

Writ of prohibition.

Kelly, Q. C. moved for a writ of prohibition to stay proceedings instituted against the defendant, who had been libelled in the Consistorial Court of the Diocese of Lincoln as chapel-warden of the township of Postan, which, having been jointly rated together with Bennington to the church-rate, had refused to pay its share, alleging that Postan was a separate parish not amenable to the parochial jurisdiction of Bennington.

Martin, Q. C.—The ground for refusing was, that the people of Postan were never summoned to pay rates at all, and that if there was a power to levy at all, it was one by custom alone, and then to levy three-eighths only on Postan.

Martin, Q. C. contrà—There is no ground for prohibition in this case, which is unnecessary and expensive. (*Beauchamp, Earl of*, v. *Turner*, 10 Ad. & Ell. 218. This question has been previously before the Court. *Reg.* v. *Dalby*, 3 Q. B. 602.) It ought to be tried by mandamus. The Ecclesiastical Court has no jurisdiction in this case; it is a matter affecting the parish officers. (*Stead* v. *Heaton*, 4 T. R. 669.) The mode of proceeding is to make a rate in proper form, and then enforce it by mandamus. (*Reg.* v. *Thomas*, 3 Q. B. 589; 5 Com. Dig. I. tit. Prohibition.)

Kelly, in reply—The proper mode is to order parties to declare in prohibition. (*Burder* v. *Veley*, 12 Ad. & Ell. 233; *Fuller* v. *Clemans*, 6 Coke's Rep.)

Martin.—The applicant need not be put to declare in prohibition. (*Re Chancellor of Oxford and Taylor*, 1 Q. B. 952.) *Rule refused.*

REG. *v.* WILSON.

Courts of Quarter Sessions have power to quash indictments before plea pleaded.

Keating now shewed cause against a rule obtained last term for quashing an order made by the justices of Gloucestershire, whereby they quashed an indictment preferred by Mr. Augustus Newton at the Quarter Sessions. The order had been brought up by *certiorari*. This was a judgment, and as such could not be dealt with by motion and *certiorari*, but can alone be reversed by writ of error after judgment. (*R.* v. *[illegible]*, 7 T. R. 373; *R.* v. *Jackson*, 6 T. R. 145; *R.* v. *Potter*, 2 Ld. Raym. 938; 1 Chit. Crim. Pleading, 747.) No authority, after diligent search made by Mr. Greaves, can be found on the other side. The ancient procedure was to bring the record up by *certiorari*, and assign error on it, but this is disused. The next point is, that the Court of Quarter Sessions have full authority to quash indictments. Courts of Assize have a jurisdiction inherent in the common law to exercise this power, and it is impossible to assign any valid reason why the Courts of Quarter Sessions should be excluded from it, the power being equally committed to them to do all that may be requisite for the ends of justice. It is often requisite to quash an indictment when, for instance, it charges several felonies in one count; the terms of the commission are to try offences and "inspect all indictments." The power was given to the sessions to try murders; why not the far lesser power of quashing indictments? All the incidents of common law proceedings attach to courts practising by common law. (*Rex* v. *Wadley*, 4 M. & Sel. 508; *Hartley* v. *Hooker*, Cowp. 523.) [WILLIAMS, J.—You are assuming that they did right to quash this indictment because it contained several counts.] No; I am contending only for the right of the sessions to quash, not for the discretion with which they exercised that right. [WIGHTMAN, J.—The record does not shew on whose application the indictment was quashed.] No; but it is drawn up by the clerk of the peace, and is in itself a judgment. [DENMAN, C. J.—We do not think at present we can go into the grounds of the order to quash.] Authorities against the power to quash should be adduced on the other side. There is nothing at present but a doubtful dictum in Jervis's Archbold.

Newton, contrà, referred to the proceedings at Gloucester. [DENMAN, C. J.—What we said was, that at present we would not enter into the

question whether the discretion of the Court below was well exercised or not.] It is laid down in a book of universal use and some authority as a distinct rule that indictments must be removed to the Court of Queen's Bench from all inferior courts to be quashed. (Jerv. Archbold, Crim. Plead. 66.) This Court is called upon to establish a power which, if granted, will be exercised throughout the kingdom, by courts, of which it has been the tendency rather to restrain than to increase the jurisdiction of late. In this case the indictment had been found at a preceding court of quarter sessions. The defendants had a copy of the indictment furnished to them with the consent of the prosecutor, they then gave the prosecutor notice "that they intended to appear at the sessions, then and there to try their traverse." They did not plead, but moved to quash the indictment. The prosecutor was not allowed to be heard, on the ground that he was counsel in his own case. One party was heard and the other party was not heard; and the decision was come to on the one-sided view the Court took of the matter. In the first place it is required by 60 Geo. 3 & 1 Wm. 4, c. 4, s. 5, that in all cases where defendants are committed or held to bail to appear to answer for misdemeanours at a subsequent session, "he or she shall plead to such indictment at such subsequent session and trial shall proceed thereupon at such same session of the peace." This express enactment was not complied with. To give the Court of Quarter Sessions jurisdiction, there ought to have been a demurrer or plea of abatement. There was neither, and the Court had no sort of authority to do as it did. On demurrer the indictment would have been good, and the defendants must have admitted the charge. There may be cases in which the Court of Quarter Sessions may quash an indictment, but not in this case, where neither the statute nor the course of common law proceedings has been pursued. Where the Court has manifestly exceeded its jurisdiction, it is competent to remove the proceedings by writ of *certiorari* without writ of error. (*Rex* v. *Justices of West Riding*, 5 T. R. 629.) The Court of Quarter Sessions will possess a large and dangerous power, if in them the choice rests to quash indictments at their pleasure without plea or demurrer, and after refusing to hear the other side. There are difficulties sufficiently great already to discourage prosecutions.

Denman, C.J.—Mr. Keating has put this question in its right light as regards the right to quash indictments. There is no doubt that the courts of quarter sessions do possess power to quash indictments before plea pleaded. Courts of superior jurisdiction possess this power, and there is clearly no reason why inferior courts should not equally exercise it. They are to exercise their discretion upon the whole bearing of the matter brought before them. This Court may institute any inquiry as to the mode in which their jurisdiction is exercised; but here we have to look only as to whether they had the power or not. Mr. Newton has argued as if improper motives were imputable to the Court of Quarter Sessions in this case: if so, the rule should have been drawn up for a criminal information. There might have been very strong grounds for considering that the jurisdiction was improperly exercised in this case, but of that we can say nothing now, the writ of *certiorari* being clearly not the proper mode of bringing the circumstances before us.

Williams, J.—I was much pleased with Mr. Keating's remark, that it was for the other side to cite authorities to shew that a power did not exist, which there was every reason to suppose did exist, inasmuch as it is exercised by all courts of assize. Both courts are intrusted with the trial of felonies: why not with the same power to try them, and with the subordinate power to quash indictments? But no authority is cited; therefore I conclude that none such exists. On the return to the writ no question is open to us but the competency of the sessions to quash indictments. I think they have that power.

Coleridge, J.—I am of the same opinion. This is a question of jurisdiction. Mr. Newton, as well as Mr. Keating, seemed to say that in some cases the Quarter Sessions have power to quash indictments. They sit and try with all the incidents of common law proceedings, and clearly have power to quash indictments. This indictment was found it appears at a previous sessions. Mr. Newton thereupon cites a statute which he thinks compels defendants to plead under the circumstances of this case. This is a mistaken view of the case; that statute was merely intended to prevent delay. It could not be said to a judge that he could not try an indictment because it was found at a prior assize. The Sessions may have come to a wrong conclusion, but this does not affect their jurisdiction. Indictments have been quashed merely because the style of the sessions was wrongly laid. (*Rex* v. *Roysted*, 1 Lord Kenyon's Rep. 255.) It may be that the Court of Quarter Sessions have decided wrongly; if so, let the proceedings be brought here by writ of error, and we can then determine if the Justices were wrong.

Wightman, J.—I am of the same opinion. The Court of Quarter Sessions seems merely to have done that without demurrer which they might have done undoubtedly upon demurrer. The whole argument is, that they have not acted judiciously; this may be a proper matter for our inquiry, if the proceedings are brought here by writ of error. *Rule discharged.*

Keating applied for costs.

Denman, C. J.—The rule must be discharged, without costs. This is a question upon which we entertained very considerable doubt; and it was for the purpose of considering the question that we granted the rule.

Young v. Hickens.

After general verdict, and the discharge of a rule for a new trial, the Court will not grant a discontinuance to enable a plaintiff to set aside verdict for himself with nominal damages, so as to try the defendant again.

A rule for a new trial had been discharged two terms ago. Another rule was obtained by the plaintiff setting aside the verdict in this action, and entering a nonsuit, or for a discontinuance on payment of costs. There was a verdict found for the plaintiff with nominal damages of twenty shillings on the 1st count at the trial, and for the defendant on the 2nd and 3rd issues. This was an action of trespass, which arose out of a dispute as to the right to certain Pilchard fish, the defendant having thrown his net within that of the plaintiff. The plaintiff contended at the trial that some part of the defendant's net was open, so that the fish in question were not caught by him; on which ground Atcherley, Serjt. so directed the jury that they only gave nominal damages to the plaintiff for the disturbance to his net, finding for the defendant on the issues which went to the right to the fish, inasmuch as they were not "quite caught."

Crowder, Q. C. now shewed cause against this extraordinary rule, which had been applied for, in effect, to try the defendant over again, and re-open the question. There cannot be a discontinuance of the general verdict, but only after especial verdict, and then only by great favour. (*Price* v. *Parker*, 1 Salkeld, 178; *Row dem. Gray* v. *Gray*, 2 Wm. Bl. 815.) Neither can discontinuance be allowed after verdict by a side bar rule. (*Goodenough* v. *Beetles*, 2 C. M. R. 240.)

Montague Chambers, in support of his rule.—There will be a failure of justice if this rule is not granted. The record is in so complicated a state, that it is the only remedy. The Court has full discretion to order discontinuance. (*Sweeting* v. *Halse*, 9 B. & C. 369, n.) [Coleridge, J.—There has been no special verdict found here. You come after we have exercised a jurisdiction.] The officer did not deliver out judgment. [Williams, J.—Is there an affidavit of that?] I wish to trust to the recollection of the Court. We are willing to resign our judgment for 20s. I apply for leave to discontinue, and not for a side bar rule.

Denman, C. J.—The circumstances of the case must be very peculiar under which we grant an application such as this. We might do so under very peculiar circumstances, but certainly not under these. There is a marked distinction between the cases where a special, and only a general verdict has been found. The plaintiff should have applied for a cross rule last Term, and should then have stated the views he held, and we might have found some remedy. The delay is not properly accounted for. We cannot encourage reliance on this sort of indulgence, and cannot go so far out of the way as to grant this rule.

Doe dem. Selwyn v. Walters.

Order to set aside writ of possession too late.

Butt, at the desire of Patteson, J. applied to the full court for a rule to set aside an order of the Lord Chief Baron, which order set aside a writ of possession granted to the lessor of the plaintiff, on the ground that no notice of declaration was given to the landlord. The application to set the writ of possession aside was too late, judgment having been given in July 31, 1844, and the application to set it aside on the 15th of October. *Rule nisi.*

Ex parte John Long.

A mandamus does not lie to compel a gaoler to give a statutory allowance to a prisoner who acts under rules prescribed by the Secretary of State.

Pashley moved for a peremptory *mandamus* to command the gaoler of the Fleet Prison to allow John Long, a poor prisoner, committed for contempt of the Court of Chancery, 3s. 6d. per week and fuel, under 53 Geo. 3, s. 113, and 5 Vict. sess. 2, c. 22; from a fund thereby appropriated to the relief of prisoners who were not worth 10*l*. The gaoler justified his refusal by an order and rule of Sir James Graham. These rules only extend to the classification of the prisoners, and to putting those who, like the prisoner, belong to the one class, into another, where, at the end of twelve months, the allowance ceases; but this is only where the prisoners can then be discharged. But it can be no answer that the gaoler is acting under an order of the Secretary of State, if by compliance with it starvation may ensue, and murder be done. This may has no other means of sustenance. [Coleridge, J.—If the rules are laid before Parliament, I apprehend they must be enforced.] Suppose they are manifestly absurd and cruel. Suppose they order all red-haired prisoners to be knocked on the head, are they to be obeyed? [Coleridge, J.—That which the Secretary of State orders, with the sanction of Parliament, is at least binding on the gaoler.] If the rule is that men are to be locked up without food and it is no answer to an order to that effect, that it is both illegal and cruel, such a state of things is very much worse than the ancient law, *debitores in partes dissecandi*, which allowed creditors to cut debtors in pieces after a certain time; for they were at least kept till the time came. There is here a statutory right to certain relief out of a county fund, set apart for this express purpose, and I ask for a peremptory *mandamus* to compel the gaoler to give it. It is no reason against it, that this is an interference with an officer of the Crown. It is money paid into his hands. (*Reg.* v. *The Lords Commissioners of the Treasury* (4 Ad. & Ell. 286); *Rex* v. *Payn* (6 Ad. & Ell. 392); and is therefore distinguishable from *Re Baron de Bode* (7 Dowl. 776); and I ask for a *peremptory mandamus* for this most pressing and urgent necessity, on the authority of *Reg.* v. *Fox* (2 Q. B. 246) and *Reg.* v. *Scott* (2 Q. B. 248). [Coleridge, J.—Was Sir James Graham applied to to interfere?] He must have been requested; for the affidavit states there was a refusal.

Denman, C. J.—We cannot grant a *mandamus* in this case. The superintendence of the prison rests entirely with the Secretary of State, and the affidavits ought distinctly to state that he has been applied to, and that he has refused to interfere. They do not do so, and this application cannot be granted.

Saturday, Nov. 23.

Apstead v. Tickener.

Where goods had been sold and the proceeds paid into court under an interpleader rule, and the claimant who had succeeded in the issue under such rule brought an action to recover the difference between the value of the goods so sold and the sum paid into court, the Court granted a rule to set aside the proceedings in the first action.

In this case, *Platt*, Q. C. had obtained a rule calling on the plaintiff to shew cause why the proceedings in this action should not be set aside, and why the plaintiff should not pay the costs of the action and of this application.

It appeared that the defendant Tickener had obtained judgment against one John Apstead, the father of the present plaintiff, Mary Apstead; that he had issued execution, and that the sheriff had seized certain goods, which it was alleged belonged to Mary Apstead; an action having been brought by her against the sheriff to recover the goods, he interpleaded, and Tickener was made defendant in the action; but Mary Apstead not being able to give security for the goods, the judge directed them to be sold and the money paid into court to abide the event. The plaintiff having obtained a verdict, now brought the present action for the difference between the value of the goods in question and the sum they fetched at the sale.

Knowles, Q. C. now shewed cause, and contended that the plaintiff had a right to bring the present action; and if not, the present application to the Court was not the proper way to raise the question, which might be done by pleading judgment recovered in the usual way, which would put the defence on the record, instead of trying the question by affidavits, as was the case now. He further contended, that if the Court now held that the recovery in the former action under the Interpleader Act was a bar to the present one, and made this rule absolute, the plaintiffs would have no means of reviewing their lordships' decision in a court of error.

Platt, Q. C. was not called on by the Court.

By the Court.—We do not think we are called on to decide whether a recovery under the Interpleader Act is a bar in all cases, and are not prepared to say that it is; but this is an application to the discretion of the Court; and it appears to us that the whole matter in dispute has been decided. It is sworn that the whole matter has been decided by the former action, and you have not negatived that affidavit. The plaintiff might have given security, and then the goods would not have been sold; and if she could not have done so, she should have so objected before the judge, and then he would not have interfered.

Rule absolute, but without the costs of the action.

Reg. v. The Commissioners of Stamps and Taxes for the Borough of Stamford.

Mandamus—Probate duty, return of, under 36 Geo. 3, c. 52, s. 24—When made.

This was a rule calling on the Commissioners of Stamps and Taxes to shew cause why a *mandamus* should not issue against them for the payment back of certain duties.

It appeared that one Stacy had died, leaving a will, by which he devised his property, real and personal, to three persons, of the names of Jackson, Falkener, and Tridget. The real property amounted to 3,000*l*. and the personal to 18,000*l*. The will was duly proved by Jackson and the others, and about 1,200*l*. probate duty paid at the rate of 10 per cent. the devisees being

strangers in blood to the testator. Soon after this a claim was set up to the property by the next of kin, and the executors were cited in the Ecclesiastical Court to prove the will in solemn form. Eventually, however, a compromise was entered into between the parties. The executors did not appear to support the will, and administration was granted to the next of kin, who, on receiving 8,000*l.* from Jackson and the others, gave up his claim to the rest of the property.

The question for the Court now was, on this state of facts, whether Jackson and the others were entitled to receive back the probate duty they had paid under the 23rd and 24th sections of 36 Geo. 3, c. 52, on the 8,000*l.* so paid over to the administrator.

The *Solicitor-General* and *Crompton* now shewed cause, and contended that the parties had not brought themselves within the 24th section, as they were bound to do.

Kelly, Q. C. contrà.—We are clearly within the Act. The duty was paid on a probate. There is now no will existing, therefore we are entitled to the return of the difference of the duty payable by a stranger and that payable by the next of kin; we do not seek the return of the duty payable by the administrator, but only the difference.

Denman, C. J.—We think you are within the Act, and suppose that this intimation of our opinion will be sufficient without making the rule absolute.

The *Solicitor-General*.—Certainly, my lord.

Rule discharged.

DOBSON and OTHERS *v.* GROVES and OTHERS.

Where an arbitrator examines a witness in the absence of one of the parties to the award, this is a good ground for setting aside the award, although no improper motive is imputed to the arbitrator.

This was a rule calling on the defendants to shew cause why the award made in this case should not be set aside, on the ground of irregularity on the part of the arbitrator. It appeared that certain disputes had arisen between two rival pier companies at Greenwich, and that an action had been brought by Sir Richard Dobson and others, who were shareholders in one company, while, on the other hand, an indictment had been preferred by the other party against Sir R. Dobson and others for an alleged public nuisance, by injuring the navigation of part of the river Thames by an embankment, and preventing persons from landing at the other pier, or from navigating their boats on that part of the river. At the trial of the indictment it was agreed to refer both the indictment and the suit to arbitration. The arbitrator made his award in favour of Groves and the other defendants in the action, on all the material issues, and also awarded that the embankment in question was a nuisance, and directed it to be abated.

It was now sought to set this award aside, on the ground that the arbitrator had examined a witness for the defendants in the absence of the other party; there being present a gentleman, a special pleader, who had acted as counsel for the defendants; and that he had refused to allow their attorney to be present, although he had requested to be allowed to remain. There were other objections to the award on which nothing turned.

Platt, Q. C., *C. Jones*, Serjt., *M. Chambers*, and *Hugh Hill* now shewed cause, and contended that as no corrupt or improper motives were imputed to the arbitrator, the only question for the Court was whether the simple fact of his having examined a witness in the absence of one of the parties to the award was such an irregularity as would vitiate the award. Here it was submitted it would not; it was shewn by the affidavits that the party who had been examined had been mentioned by one of the witnesses as a person who could give important evidence on the subject of the award, but that neither party would call him as a witness, although requested so to do by the arbitrator. Under these circumstances, it was contended that the arbitrator had a right to call him, not as the witness of either party, but to assist him in making his award. *Emery* v. *Ware* (5 Vesey, 848), and *Anderson* v. *Wallace* (5 Clark & Finn. 26), were in point, and shewed he might do so. Further, that it was not at all shewn that the defendants had done any thing to bring about the meeting; and that as to the special pleader being present, that was sworn to be accidental, and that he had not interfered in any way at the meeting in question.

Cases cited: *Achison* v. *Cargey* (2 Bing. 199); *Warner* v. *Heaver* (3 B. & Ad. 295); *Atkinson* v. *Abrahams* (1 B. & P. 175); *Bignol* v. *Gale* (2 M. & G. 830).

M. D. Hill, Q.C. contrà (*Watson*, Q.C. *Bodkin*, and *Baddeley*, with him).—There is a clear irregularity of the arbitrator here, sufficient to vitiate the award. *Walker* v. *Frobisher* (6 Ves. 70), and *Featherston* v. *Cooper*, establish the principle and are in point; and the judgment of Lord Eldon in the latter case decides the question. (Stopped by the Court.)

By the Court.—The principle here is clear; nothing is imputed to the arbitrator but an irregularity; it is clear that the meeting was held for the purpose of enabling the arbitrator to make up his mind, which ought not to have been done unless there had been a power expressly given him so to do in the submission. We think the principle held by Lord Eldon is the correct one, and that we ought not to be bound by the cases cited on the other side. We throw out of mind the minute circumstances of this case and decide it on the broad principle.

Rule absolute.

PLEWS *v.* MIDDLETON.

Award—Irregularity of arbitrator.

Godson, Q.C. moved for a rule to set aside the award made in this case, on the ground of irregularity on the part of the arbitrator in holding meetings without giving notice to the plaintiff, and also that he would not allow him to be present at the first meeting.

Rule nisi.

HUNTER *v.* CALDWELL.

(Argued Nov. 4.)

SEMBLE, *An attorney is not liable for negligence for omitting to file within five months after their date writs issued for the purpose of avoiding the effect of the Statute of Limitations.*

This was an action brought by Hunter against the defendant, who was an attorney, for negligence. The facts of the case were, that some time in 1841 Mr. Hunter directed the defendant to commence an action against one John Hicks, and at the same time, as Hicks could not be found to be served with process, directed the defendant to take all such steps as are required by 2 Wm. 4, c. 39, s. 10, to prevent the debt for which the action was brought being barred by the Statute of Limitations. It appeared that the defendant Caldwell had issued certain *alias* and *pluries* writs in accordance with that section of the Act, but that the two last writs had not been duly returned and filed with the proper officer, in consequence of which Hunter had been nonsuited at the trial. He then brought the present action, and obtained a verdict against Caldwell. Some time since the now Solicitor-General obtained a rule to set aside the verdict, and for a new trial, or to arrest the judgment.

Crowder, Q.C., and *Ball* now shewed cause, and contended that the verdict was right. The 10th sec. of the Act had not been complied with, owing to the negligence of the defendant, whereby the plaintiff had lost his right to recover. The defendant should have filed each writ within five months of its having been issued, after having had it returned *non est inventus* by the sheriff. Filing a writ means entering of record, the neglect of which he is charged in the declaration. Witnesses were called at the trial, who shewed this to be the practice, and this practice not having been complied with, was such negligence in the defendant as rendered him liable to an action.

The *Solicitor-General* and *Rawlinson*, contrà, contended that there had not been such gross negligence on the part of the defendant as rendered him liable to an action. Much difficulty is felt in the profession as to the meaning of the words "entered of record," and there is no decision to shew that it is necessary to file the writs within five months, as contended for on the other side. The defendant is not bound to know what construction the Court may put on a doubtful Act of Parliament; and even if the Court now decide that it is necessary, still that will not justify the jury in finding the defendant guilty of gross negligence where the point is so doubtful that even the witnesses called at the trial differed in opinion as to the practice; further, the judge should have decided the point as to the gross negligence, and not have left it to the jury, who were not competent to decide a point of practice of this court.

Cases cited: *Dunmore* v. *Jenkins* (2 A. & E. 260); *Bulmer* v. *Gilmore* (4 M. & G. 108); *Kemp* v. *Burt* (4 B. & Ad. 432); *Brocker* v. *Chandles* (3 Camp. 17), *Elkington* v. *Holland* (9 M. & W. 655); *Williams* v. *Williams* (10 M. & W.); *Godfrey* v. *Dalton* (3 B. & A.)

Cur. adv. vult.

Denman, C. J. now delivered the judgment of the Court.—This was argued early in Term. A motion was made for a new trial, on the ground of misdirection, or against the evidence, or to arrest the judgment. The negligence charged in the declaration was, for not filing a record, and the question was, whether there was proof of not entering the record in a particular way. We are of opinion there ought to be a new trial, at all events, because we are of opinion the jury were not justified in calling by the name of gross negligence an error in a matter so very doubtful as this. Ultimately, if there should be another verdict, it may possibly be fit to inquire if the judgment should not be arrested, but at present we think it not to be so; because the evidence ought to go before a jury, and then it is impossible to put the question whether the party acted wrong without putting the other, whether it was gross negligence.

Subsequently *Crowder* came into court and mentioned the case.

Crowder.—In a case of *Hunter* v. *Cardwell*, in which your lordships granted a new trial, as I understand, upon the ground of the verdict being against the evidence, that would be upon payment of costs, I apprehend?

Denman, C. J.—Yes.

Monday, Nov. 25.

Last day of Term.

REG. *v.* GREGORY.

Wordsworth moved for judgment against Barnard Gregory.

Platt, Q.C. moved that the indictment be quashed, or to arrest judgment, on the ground that it was wrongly found, inasmuch as the 13th section of 4 & 5 Wm. 4, c. 36, which enacts, that no bill of indictment, other than for perjury, or subornation of perjury, shall be presented to the grand jury, unless the prosecutor shall have entered into recognizance to prosecute. The indictment had been found against this defendant eighteen days before the recognizance was entered into to prosecute. Therefore the Central Criminal Court had no jurisdiction; and this recognizance was only to prosecute a libel, whereas the defendant was indicted for eleven. (*Rex* v. *Carlton*, 6 C. & P.)

Talfourd, Serjt. (with whom was *Wordsworth*), prayed for time to consider and shew cause against the motion.

Ordered to stand over.

REG. *v.* COMMISSIONERS OF EXCISE.

Entry of Channel Island spirits—Mandamus.

M. D. Hill, Q. C. moved for a rule to shew cause why a *mandamus* should not issue to compel the Commissioners of Excise to issue permits for the introduction of some casks of spirits from the Channel Islands into the port of London, on which the duty had been paid under 3 & 4 Wm. 4, c. 42, s. 40, the excise officers pretending that they were not allowed to permit importation by an order of the Board, made under the belief that the system of excise in the Channel Islands did not sufficiently guard against fraud. (*Rex* v. *The Commissioners of Excise*, 2 T.R. 231.)

Rule nisi.

REG. *v.* THE DUKE OF WHARTON.

Assignment of errors against a judgment of outlawry.

Kelly, Q.C. assigned errors in behalf of Colonel Tynte, upon a judgment of outlawry against the deceased defendant in the time of Geo. I. in whom the Barony of Wharton then vested, which Colonel Tynte now claims. The assignment of errors was handed in to the Court by the claimant in person.

REG. *v.* WALLER.

Assault by parish officer—Service of notice that rates are due.

Whateley, Q.C. moved for a new trial of this indictment for an assault alleged to have been committed by a parish officer of Shoreditch at a vestry holden in the church there. The parish officers had, acting within their authority, erected barriers to keep all people out who had no right to be present. All persons who were not rate-payers were excluded, and the defendant forcibly excluded the prosecutor, a Mr. Hopkins, which was the assault complained of. It appeared that the prosecutor was in arrear in the payment of his rates, but that he had had a written notice thereof. The whole question turned on whether this notice, not having been served personally upon him, but only left at his house, was sufficient so as to justify the parish officers in excluding him for nonpayment; otherwise it was admitted there was a clear assault. (*Reg.* v. *Ford*, 2 Ad. & Ell. 589.) The 5 Geo. 3, c. 85, was also cited, to shew that there was no necessity of personal service.

Rule nisi.

GILL *v.* PIGOTT.

Amendment of plea—Plea of illegality.

Sir *J. Bayley* moved for a rule to allow the defendant in this action to add a plea of illegality, or to plead again on withdrawal of plea.

It appeared that, owing to the decision in the Court of Exchequer respecting the race in which Running Rein came in first, the plaintiff became legally entitled to the second prize in a lottery upon that race, in which the plaintiff had drawn the horse which came in third. The defendant was the stakeholder, and had paid the money over, by the direction of the club, to another party. Illegality is not an issuable plea, or the defendant would have applied to amend. (*Humphreys* v. *Earl of Waldegrave*, 6 M. & W. 622; *Staples* v. *Houldsworth*, 4 B. & C. 144.)

Greenwood, contrà.

By the Court.—This is a case in which we cannot interfere. Had not the money been paid over by the defendant, it would have been asking the Court to abet fraud.

Rule discharged without costs.

Re THOMAS WOOD, One, &c.

Attachment refused to compel solicitor of board of guardians to sort and deliver up its papers promptly.

The *Solicitor-General* shewed cause against a rule for an attachment against Mr. Wood for refusing or neglecting to give up to the board of guardians of the poor of St. Mary, Newington, a host of documents belonging to them. These documents extended several years back, and came into Mr. Wood's hands as solicitor to the guardians. He was now pressed to deliver them to his successor, and had already done so as regarded papers belonging to the last seven years; but as they occupied two rooms, he was excused in the delay that had occurred in sorting and scheduling them.

The search extended over thirty years. Mr. Wood believed he had no more than those delivered.

Gray, contrà.—The delay has been great, the excuses frivolous, and the papers are not all delivered up. *Rule discharged without costs.*

REG. *v.* NORTH OF ENGLAND RAILWAY.

Addison moved for a *certiorari* to remove an indictment found against the defendants, which would otherwise be tried at the winter assizes, which were not attended by the leading members of the circuit.

Rule absolute.

NICHALLS *v.* WARREN.

An arbitrator to whom an award is referred back in general terms to be amended, is bound to receive fresh evidence if offered to him.

This was an award respecting the height of water to which the parties were respectively entitled. A rule had been obtained to refer the award back to the arbitrator, Serjt. Shee, "a complaint having been made that certain matters were omitted from the award, it was referred back to the arbitrator to be amended." Subsequently to the first award, new evidence had been discovered which he was required to go into, but which he refused to receive. A rule *nisi* having been obtained for referring the award back again for the purpose,

Platt, Q.C. (with whom were *Chambers* and *Lush*), shewed cause against the rule. The arbitrator examined fifty or sixty witnesses, and felt he could not have more information than he had already got. He would have gone beyond the terms of the rule had he received more evidence; its spirit was to reconsider the materials of his award, but not to re-open the arbitration. He awarded that the head of water was to be fifteen inches, and it was not necessary for him to demarcate the height by ordering a stone on the bank which might sink. Besides, he had a right to exercise his discretion.

DENMAN, C. J.—I do not see how he could without fresh evidence.

Kelly, Q.C. contrà, was stopped by the Court.

DENMAN, C. J.—The terms of the reference are general. This put it in the power of the arbitrator to go over the matter again; and thus, if he was asked to hear fresh evidence, he was bound to have done so. The award must be referred back again.

Kelly, Q. C. asked the Court not to refer it back to the same arbitrator, who seemed, of all the gentlemen at the Bar, the only one who had come to a strong conviction against them.

DENMAN, C. J.—Certainly there are strong considerations against referring to the same arbitrator. We have great respect for him, but there certainly are some incorrect proceedings on his part.

Kelly, Q. C.—We are willing to refer to any other arbitrator.

Platt, Q. C.—We will never consent to it. We will go to a jury. *Rule absolute.*

DOE *dem.* LEQUEUX *v.* HARRISON.

Evidence of the constitution of a society must be given to enable them to recover in ejectment copyhold property under a devise—A mandamus will lie to a lord of the manor who is seized quousque to admit the heir, there being no adverse possession.

A rule for a *mandamus* having been applied for, an action of ejectment had been directed to inform the conscience of the Court as to the heirship of certain copyhold property in the manor of Botsham, of which a portion had been devised to the company. The lessor of the plaintiff was the heir of the surrenderor. The lord of the manor had made proclamation for an heir, and was seized *quousque*. Neither the heir nor the society had been admitted. The heir is entitled to bring an action against a stranger, but *quære* whether he can sue the lord before admittance. To get rid of this technical difficulty, it was agreed before the action was brought, that the objection on the score of the non-admittance of the heir should be waived. At the trial, the will having been put in, the objection was taken that the devisee was not admitted; and that the waiver did not extend to him. It was also objected that there was no evidence to shew who the society was. The will contained a bequest of 10*l.* for the support of some "dumb animals."

Platt, Q. C. (with whom was *Peacock*) now shewed cause against a rule for a nonsuit. There is not a tittle of evidence as to the existence of this society; or of the dumb animals either, whose grandchildren may be in their graves. The 10*l.* was bequeathed only so long as they should live. The Statute of Mortmain would bar the claim of the society. The legal estate remained in the surrenderor. The Court has full power to grant a *mandamus* to admit a copyholder, who claims by descent. (*Rex* v. *Brewers' Company*, 3 B. & Cr. 172; *Rex* v. *Wilson*, 10 B. & Cr. 80.) The lord was the defendant in this action, and could not be prejudiced by the verdict for the plaintiff. The heir has a right to *mandamus* without any admittance at all, which may be dispensed with in this case. (*Doe dem. Burrell* v. *Bellamy*, 2 M. & Sel. 87.)

The *Solicitor-General* (with whom was *Gurney*), contrà.—The agreement was to waive *all* technical objections to ascertain the heir; it was not intended that they were to be free and that we were to be fettered. It is not necessary that devisees should be admitted.

COLERIDGE, J.—Is there enough to shew who the London Annuity was? Whether they were a corporation or a voluntary society, and whether they were competent to take land or not, you have no evidence. The date of the will, moreover, is 1837, devising lands in Surrey. Why were steps not taken sooner?

The *Solicitor-General*.—Perhaps they might not know of it.

COLERIDGE, J.—Yes; it is stated they had notice.

The *Solicitor-General*.—It is only stated that it is believed they had notice.

WIGHTMAN, J.—Are they capable of admission?

The *Solicitor-General*.—If not as a corporation, perhaps they are competent to take as individuals.

COLERIDGE, J.—You did not go far enough with your evidence; even admitting the technical point.

The *Solicitor-General*.—The Statute of Mortmain applies only to "charitable uses." There were none such here, unless it be contended that the care of the dumb animals was one. The lessor of the plaintiff is a stranger to the estate, and can have no right to recover as against the devisee of the copyholder, who has the legal estate. (*Doe dem. Borough* v. *Reade*, 8 East, 353.) The defendant might defend himself upon his title, there being no adverse possession. The 7 Wm. 4 & 1 Vict. c. 26, s. 3, gives a testator the power of devising copyhold property without surrender to the uses of his will, and without having been himself admitted to the estate.

COLERIDGE, J.—That statute takes effect from January 1, 1838, and does not apply to a will made before it was passed.

DENMAN, C.J.—This rule must be discharged, and the rule for the *mandamus* ought to be made absolute.

COLERIDGE, J.—The lord being seised only till the tenant comes, does not hold adversely.

Rule discharged.

Ex parte THE MAYOR OF GREAT YARMOUTH.

A criminal information will be granted for calling a mayor a puppy and a fool with reference to his magisterial capacity, and threatening to wring his nose.

This was a rule for a criminal information against Charles Corry Aldered for abusing and assaulting Mr. Samuel Charles Marsh, the Mayor of Great Yarmouth.

It appeared that a man named Palmer had been brought before the mayor and another magistrate (Captain Pearson) for ringing at the door of Mr. Aldered, who sent a note of the charge to the mayor, who sent it back, as the mayor's affidavit stated, with a message that Mr. Aldered must come himself, but, according to Mr. Aldered's affidavit, with an addition to the message, that "if he sent any more impertinent messages, he (the mayor) would pull his nose." Three days after Aldered and the mayor met in the street, when the former accosted the latter, and, laying his hand on the mayor's arm, according to the mayor's statement, said, "What do you mean by sending this note to me?" and, on the mayor's declining to answer him, added, "You are a puppy, and a pretty d——d fool for a mayor, and I have a good mind to pull your nose," at the same time raising his hand to the mayor's face in a threatening manner, and followed him down the street. These facts were deposed to in the affidavits of several witnesses. Mr. Aldered and other deponents denied the assault, and averred that he had accosted the mayor in a civil and courteous manner, who replied, in a foolish, absurd, ludicrous, affected, and pompous tone, "Sir, I shall give no answer to you." That Mr. Aldered then merely rejoined, "I will give you a useful piece of advice; *if* you conduct yourself in an impertinent manner, I will wring your nose." He denied following him down the street.

Platt, Q.C. against the rule.—The sum total of the offence is, I have a mind to wring your nose, *if* you do so and so. This is no ground for a criminal information. It was so held in *Rex* v. *Darby* Carthew, where a magistrate was called "a cockle-headed justice." The mayor was the aggressor. Why was not an action brought or an indictment preferred? The offence took place on the 12th June, and on the 4th of November the aggrieved party comes to this court for a criminal information. There was no assault.

Martin, Q.C.—From the first to the last it is impossible that the mayor could have done otherwise than as he has done. He was bound to reject the written charge in the first instance, and when assailed in the street, he said he refrained from resenting the insult as it became him to do, in consideration of his magisterial function. He looked to that Court, as he had a right to do, for protection. The gravamen of the insult was in alluding at all to pulling his nose.

DENMAN, C. J.—The words having been spoken of the mayor in his magisterial capacity, are not sufficiently excused, and there must be a criminal information. *Rule absolute.*

DOE *dem.* WARWICK *v.* COOMBS.

The non-observance of a manorial custom that a surrenderee be admitted within three years, does not necessarily involve a forfeiture. The lord may waive or enforce the custom at his pleasure.

This special case was argued on Nov. 12. An action of ejectment had been brought to recover certain copyhold lands in the manor of Hackney. There was a surrender by Mary Pigott to pay Warwick on trust to secure an annuity, through whom the lessor of the plaintiff claimed in 1815; but there was no admittance within three years by the surrenderee. By statute anno 21 Jac. 1, for the confirmation of certain copyholds in the manors of Hackney and Stepney it is enacted, that all customs set forth in a certain deed shall be of "as full force and effect as if they were specially enacted by the authority of this Parliament." The surrender in question was to the use of Gray Warwick according to the customs of the said manor: among these customs was one that the surrenderee "ought to come to be admitted within three years."

Watson, Q.C., for the plaintiff. The words "ought to be admitted" are not imperative. They do not say the land shall be forfeited on non-admittance. The only course would be, that the lord might make proclamation, and seize *quousque* until the surrenderee purge himself of the contempt. (*Gladstone* v. *Long*, Cro. Eliz. 879.) In this case the surrender was conditional, to which the custom does not apply. It was a surrender only to secure an annuity for lives, and as soon as the lives dropped, so would the estate, for the surrender was of the entire estate in fee for the lives. The custom alone binds the landlord and his tenant. The lord here waived the rigour of the custom, and admitted the surrenderee, which he had full power to do after the three years had elapsed.

Kelly, Q. C.—Here is a complete defect of title in admittance, according to the custom of the manor. The surrender was in 1815, and the admittance not till five years after. Admittance is of the very essence of the customs of a manor, and if these are not rendered imperative by the statute, none are in force, and the Act is null. The defendant is in possession, clothed with the legal title, and has a right to call upon the disturbing party to prove his title. The Legislature must have had conditional surrenders in its eye, and yet says, "every person who shall surrender shall come," &c.

COLERIDGE, J.—Where there is an absolute surrender, the servant must be upon the Court Roll, but need this be in the case of a conditional surrender?

Kelly, Q. C.—There is no conditional surrender named in the Act.

COLERIDGE, J.—The Act does not exclude general rules, but only regulates particular cases.

Watson, in reply. The statute had reference to particular disputes. This does not apply generally. (Coke's Copyholder, 128.) The lord has a right to exercise his privilege, and may waive admittance. (Cowp. 741.) It is not said that he may not admit after the three years if he chooses. *Cur. adv. vult.*

The Court now gave judgment.

DENMAN, C. J.—*Doe* d. *Warwick* v. *Coombs* was argued in the special paper. The land sought to be recovered was copyhold of the manor of Hackney; and the title of the lessors was not disputed, except in the point of admittance, which, it was contended for the defendant, was void, because it was made more than three years after the surrender, and so contrary to the custom of the manor. The customs are settled in a statute passed in the reign of King James I., and by the 34th item it is provided "that every person to whose use the said land or tenements shall be surrendered, ought to come within three years to take up the same if he be of age, and be admitted, or pay his fine, or else by his guardian." This was a case of conditional surrender in 1816, and the lessee was admitted in 1820. It was contended on the part of the surrenderors that every binding custom was binding only between the lord and tenant; and that, at all events, in respect of the conditional surrender, it could not so apply where, by the intention of the parties, no admittance might take place at all, and none would be contemplated until there was a breach of conditions. It is unnecessary to consider the latter point because we agree with the plaintiff on the former. The obvious intent of the custom is, that the lord should have his tenant on the rolls, and know who he is, and receive the fine. If the custom be not observed, the lord may insist upon it, and enforce it by such remedies as the custom may give him; but he may also waive it, and he does so by admittance. *Judgment for the lessor of the plaintiff.*

REG. *v.* FEOFFEES OF OTTERY CHARITIES.

A *mandamus* had been obtained, ordering a Dr. Coleridge to deliver up certain trust deeds to the trustees of a charity. A rule had been obtained to shew cause why the prosecutor in this case should not be allowed to demur. The return to the *mandamus* had been made, and what amounted to a *stet processus* had been ordered.

Willis, in support of the rule.

Rogers, Q. C, contrà.—This has been argued in *concilium*. There is a writ which has not been decided to have issued improvidently. The writ and the re-

turn are still outstanding. The Court will not interfere.

By the COURT.—We have no authority in this matter. *Rule discharged without costs.*

STULTZ *v.* WYATT.

Proclamation in outlawry.

Watson, Q. C. shewed cause why the proceedings in outlawry should not be set aside, with costs, for irregularity.

Sir *J. Bayley*, contrà.—The proclamation is defective. The 1 Vict. c. 45, requires the notices to be upon all the church doors. There are affidavits shewing that it was only on one, there being many chapels, and one other church. This is not a mere irregularity, but the whole proceedings are void.

By the COURT.—This application cannot be granted; the objection should be taken in error.

Rule discharged.

BUSINESS OF THE WEEK.

Saturday.

REG. *v.* JONES.—The *Solicitor-General* (*M. D. Hill*, Q.C. and *Waddington* with him) moved for judgment. *Jerris*, Q.C. in mitigation.

Sentence—To be imprisoned in the Queen's prison for one year.

REG. *v.* GREGORY.—*Talfourd*, Serjt. (*Wordsworth* with him) moved that the defendant be brought up for judgment. *Platt*, Q.C. contrà.

To be brought up on Monday.

Re PARTINGTON.—*Peacock* was heard in support of his rule. *Lush*, contrà. *Cur. adv. vult.*

Monday.

PARTRIDGE *v.* BANK OF ENGLAND. *Rule refused.*

DOE *dem.* ROBERTSON *v.* BOUSFIELD. *Rule refused.*

DOE *dem.* SELDEN *v.* ROE.—*Ogle*, with whom was *Wise*, moved for writ of restitution, and shewed cause against cross rule obtained by *Bull*, to set aside judge's order. *Both rules enlarged.*

ABRAHAMS *v.* LEVI. *Cur. adv. vult.*

MEREDITH *v.* JENKINS. *Rule nisi.*

NEEDHAM *v.* RAWBONE. *Rule absolute.*

DALLY *v.* POOLY. *Rule discharged.*

COCKER *v.* CONDETTE. *Rule discharged with peremptory undertaking.*

Doe dem. PAUL *v.* SCOTT. *Rule absolute for Mr. Hartley to appear in three days.*

CHANDLER *v.* ——— *Rule absolute.*

COLE *v.* BARKER. *Rule nisi.*

SKELTON *v.* POTTER. *Rule discharged with costs.*

CONNELLY *v.* HOLT. *Rule refused.*

NEWTON *v.* HOLFORD.—To set aside an order of Patteson, J. and enable plaintiff to take in the Roll in error. *Rule nisi.*

SOUCKER *v.* CROCKETT. *Rule to shew cause at chambers.*

GOLDMER *v.* BEVAN. *Rule refused.*

Doe dem. ATTWOOD *v.* ROSE. *Rule nisi.*

PYCROSS *v.* KING. *Rule refused.*

LAKE *v.* THE DUKE OF ARGYL, and some other cases in which judgment has been given, will be reported next week.

COURT OF COMMON PLEAS.

Saturday, Nov. 23.

HEMSWORTH *v.* BRYANT.

Where, in a case of arbitration, the plaintiff is told he will have notice of a day to reply before the award is made, and notice of award made is afterwards given, the not having had the opportunity of replying on the whole case will not be an answer to laches, and neglect on the part of the plaintiff in not coming in time to the court will be a good answer to the objection.

Channell, Serjt. moved for a rule *nisi* why an award should not be set aside. The order of reference was dated May 23, 1843, directing that the costs of the cause and the reference should abide the event of the award. The award was made on March 23, 1844, and was therefore not within the time limited by the statute. Several meetings took plac between May 23, 1843, and March 23, 1844, at the last of which the defendant closed his case, and it was arranged before the arbitrator, with the defendant's consent, that an appointment should be made for the plaintiff to address the arbitrator, the arbitrator then to make a reply on the whole case. Before the 23rd of March, namely, on the 16th, a docket was struck against the plaintiff, who subsequently became a bankrupt. No notice of appointment had ever been given to the plaintiff. Notice of the award had been given on the 8th of May, but a copy of the award was not delivered until the 8th November. An award without notice is a non-existing award. (*Re Smith and Another*, 8 Dowl. 133; *Perring* v. *Keymer*, 3 Dowl. 98; *Rogers* v. *Dallimore*, 6 Taunt. 111.)

TINDAL, C. J.—Your ground of motion is that, 1st, the plaintiff expected, and he had reason to believe, that there would be a day given for his reply, which was not given; 2nd, that the commission of bankruptcy, with the consent of the defendant, took the merits of the case into consideration, and found the other way. Although, certainly, the cases shew that a rule is not laid down in these causes which is to be observed strictly, the Courts, to a certain extent, govern themselves by analogy to the statute. Here, on the 8th of May the plaintiff has notice of the award in time to make his objection: but, instead of coming to the court in Trinity Term, he delays, and allows expenses to be incurred in the meantime, and he now comes to move to set aside an award which, in the interval, he treated as a valid and a good award. *Rule refused.*

ELRIDGE *v.* CULLING.

Where under a peremptory undertaking the plaintiff was to try at the sittings after Term, and the cause was entered on the evening of the last day, this is too late, and the Court will not interfere to set aside the judgment as in case of nonsuit.

Byles, Serjt. shewed cause against the rule *nisi* in this cause why the judgment of nonsuit should not be set aside on payment of costs. The ground upon which judgment was signed was, that the party had not proceeded to trial pursuant to a peremptory undertaking. It was sought to set aside this judgment for irregularity. The action, which was for debt, was commenced on the 29th December, 1842. The day after the commencement of the action the plaintiff arrested the defendant, and kept him in gaol until October, 1843, when he was discharged by *supersedeas*. The plaintiff declared in the action on the 9th January, 1843, and the defendant at once pleaded never indebted. The plaintiff having taken no further steps, the defendant, in November, 1843, ruled him to reply. The plaintiff did not proceed to try, and in Easter Term last the defendant obtained a rule *nisi* for judgment as in case of nonsuit. The rule was discharged on a peremptory undertaking to proceed to trial at the sittings after Trinity Term. The plaintiff entered the cause for trial on the evening of the last day for entering the causes for trial, just before the closing of the office. On the 13th June the sittings commenced, and the cause was made a *remanet*. Under these circumstances it was the plaintiff's duty to apply to enlarge the peremptory undertaking. The first four days of term passed, and it was not until the seventh day the rule was obtained. The Court should have been informed of these circumstances. (*Ward* v. *Turner*, 5 Dowl. 22, citing *Gilbert* v. *Kirkland*, 2 Dowl. 153.) Had the plaintiff proceeded to trial, the verdict would then have been regular. (*Wegnete* v. *Marlord*, 1 D. & Lo. 735.) The plaintiff having purposely neglected to bring the cause on for trial, the judgment is regular.

Channell, contrà.—The cause was properly entered for trial, and the plaintiff has performed the conditions of the peremptory undertaking. The briefs to counsel were not delivered, because the plaintiff saw the cause could not be taken.

ERLE, J.—The books of practice lay down that a party who propounds an excuse must take care to come in time.

COLTMAN, J.—There is a case cited in the last edition of Arch. Prac. 366.

TINDAL, C. J. (delivering judgment).—The 14 Geo. 2, c. 17, begins by stating that where any issue is or shall be joined in any action or suit at law in any of his Majesty's Courts of Record, and the plaintiff has neglected to bring such issue on to be tried according to the course and practice of the said court, it shall be lawful for the judge, at any time after such neglect, upon motion, to give judgment for the defendant as in cases of nonsuit, unless the judge shall, upon just cause and reasonable terms, allow further time for the trial of such issue; and if plaintiff shall neglect to try such issue within the time so allowed, then judgment shall be given. I am disposed to hold that the word "neglect," where it applies to default in observing the peremptory undertaking, ought to have the same construction as the word "neglect" in the earlier part of the statute; that is, if he neglect to bring the cause on to trial according to the "course and practice of the Court." It cannot be said, that because the cause had been made a *remanet*, therefore the plaintiff had neglected to bring on the trial according to the "course and practice of the Court." But has he used due diligence? The affidavit states that the peremptory undertaking was given on the 8th of May. On the 11th of June, the last day for entering causes for trial, the plaintiff enters the trial so late in the evening that it cannot be tried, while the affidavit goes on to state that if the cause had been entered during the morning, the cause would have been tried. This, when coupled with no briefs having been delivered to counsel, and the repeated delays in every step of the cause, the defendant having to urge him on at every stage of the proceedings, it must be said that the plaintiff has neglected to bring the cause on within the rule, and that he has been guilty of default, and we think we ought not to interfere.

The rest of the COURT gave judgment to the same effect. *Rule discharged with costs.*

Monday, Nov. 25.

GIBB *v.* KING.

Quære, if a defendant in custody of the keeper of the Queen's Prison for a criminal matter can, since the 5 & 6 Vict. c. 22, be brought up to this Court to be charged in execution on a civil action?

The defendant was brought up by a *habeas corpus* directed to the keeper of the Queen's Prison, in order to be charged in execution with a judgment debt of 60*l.* 1s. recovered against him by the plaintiff. The return to the writ by the keeper of the prison was that the defendant was in custody under a warrant of commitment for a misdemeanor.

Byles, Serjt. in behalf of the defendant, moved that the defendant might not be so charged in execution. The ground of objection was, that this Court had no power to have a defendant brought up to be charged with a civil action when the defendant is in custody on a criminal account. (*Walsh* v. *Davies*, 2 N. R. 245; *Jones* v. *Davers*, 5 M. & W. 234; and *Freeman* v. *Weston*, 1 Bing. 221.) The only question was whether the 5 & 6 Vict. c. 22 (by which the Fleet prison had been abolished, and the Queen's Bench prison constituted, under the name of the Queen's Prison, the only prison for debtors, &c.) had made any alteration in the practice in this respect.

No counsel appeared for the plaintiff.

The COURT adjourned the matter until next Term, on the understanding that there should not, in the meantime, be a *supersedeas*, and that notice should be given to the plaintiff to shew cause.

COVINGTON *v.* HOGARTH.

Where the plaintiff has proceeded, as well by action as by summoning defendant, under 5 & 6 Vict. c. 122, s. 11, before the Court of Bankruptcy, for the purpose of having the debt admitted, and the defendant has, in consequence of such proceedings in bankruptcy, paid the debt, the defendant cannot stay the proceedings in the action without paying the costs also.

Talfourd, Serjt. shewed cause against a rule obtained by *Channell*, Serjt. in this Term, calling on the plaintiff to shew cause why all further proceedings in this action should not be stayed, the plaintiff having received the amount of the debt under proceedings taken in the Court of Bankruptcy.

The facts of the case were as follows: On the 31st of August last the plaintiff filed an affidavit of debt for 60*l.* 17s. 6d. against the defendant in the Court of Bankruptcy. On the 2nd September notice was served on the defendant requiring payment of such debt, and, at the same time, the defendant was served with the writ of summons in this action. On the 6th Sept. notice was given that the former proceedings in bankruptcy were abandoned, and defendant was then summoned under 5 & 6 Vict. c. 122, s. 11, before the Court of Bankruptcy, for the purpose of admitting or denying the debt. The defendant thereupon appeared and filed an admission of the debt in the Bankruptcy Court, and afterwards paid the amount of such debt to a person on behalf of the plaintiff; but the costs of the action not being paid, the plaintiff delivered a declaration. The defendant then took out a summons before Cresswell, J. to stay the proceedings in the action, without the payment of costs, but the learned judge refused to make any order, and referred the matter to the Court. A further summons was, however, afterwards taken out by the defendant for particulars of the plaintiff's demand, under which particulars were accordingly delivered. The question was, whether where a party has proceeded for his debt as well by action as by notice and summons under the late Bankruptcy Act, he is to have the proceedings in the action stayed without payment of the costs.

It was contended on behalf of the plaintiff, that the statute 5 & 6 Vict. c. 122, ss. 11 & 12, gave remedies to the creditor for the enforcement of his debt, which were only collateral to his right of action.

Channell, Serjt. in support of the rule submitted that the defendant having paid the debt, was within the equity of the statute, 6 Geo. 4, c. 16, s. 59, and entitled to have the cause stayed without paying the costs.

The COURT said, the 5 & 6 Vict. c. 122, contemplated the action subsisting, notwithstanding proceedings in bankruptcy under that Act; as, where the defendant denied the debt, he was required to give security for costs as well as for the debt. There was no provision to deprive him of his costs, but he had in fact a double remedy for obtaining his debt. The action was still in existence, and could be stopped only in the ordinary way after action, which was by payment of costs. If the defendant wanted to protect himself from costs, he might do so by giving the required security under the Act; but if he had no defence to the action, he must pay the costs.

Rule discharged.

POOLE *v.* GRANTHAM.

Where, in an action of trespass, there is a demurrer, as well as issues of fact, and judgment is given for the plaintiff on the demurrer, and the plaintiff goes to trial on the issues of fact without entering the demurrer on the record, with a tam quam venire, and obtains a verdict for only twenty shillings damages;

although, notwithstanding the statute 3 & 4 Vict. c. 24, s. 2, the plaintiff is entitled to the costs of the demurrer without a certificate, yet he is not entitled to any of the costs of the cause.

Sir *Thomas Wilde*, Serjt. shewed cause against a rule obtained by *Byles*, Serjt. this Term, calling on the defendant to shew cause why the Master should not be at liberty to review his taxation of costs in this cause.

The action, it appeared, was trespass *quare clausum fregit*, and for taking goods. There was a plea of the general issue, and other pleas on which issue was joined, and a demurrer to a plea which went to the whole cause of action. Judgment was given in favour of the plaintiff on the demurrer; and on the trial of the issues of fact, the plaintiff obtained a verdict, damages 20s. The learned judge not having certified at the trial, the Master refused to tax the plaintiff his costs. The trial had taken place more than a year ago, and the record had subsequently been lost. *Byles*, Serjt. therefore agreed to admit that the record must be considered to have been a common *nisi prius* record, without the demurrer entered together with a *tam quam venire*. On the part of the defendant it was denied that the plaintiff was entitled to any other costs than of the demurrer, and *Brewer* v. *Dew* (3 Law T. 60) was cited.

Byles, Serjt. relied on *Taylor* v. *Rolfe and Others* (13 Law J. N. S. Q. B. 39), as shewing that the plaintiff was entitled to the costs of the demurrer, notwithstanding 3 & 4 Vict. c. 24, s. 2; and contended that as the plaintiff would have been entitled therefore to a proportionate part of the costs of the trial had there been a *tam quam venire*, he ought not to be in a worse situation because he had not set out on the record matter which was superfluous and only tending to lengthen the proceedings.

MAULE, J.—You are asking for costs of what has not taken place, on the ground that, if it had, it would have been unnecessary.

TINDAL, C. J.—You are entitled to the costs of the demurrer, but that is all. The rest of the rule must be *Discharged with costs.*

COLSON *v.* BISHOP OF CARLISLE.

Rule H. T. 4 Wm. 4—Several counts—Quare impedit.

Talfourd, Serjt. applied for a rule calling on the plaintiff to elect on which of the counts in this action of *quare impedit* he would proceed, and that the other counts be struck out.

The question was whether the rule of Hil. T. 4 Wm. 4, which confines the plaintiff to one count does not apply to real actions.

Cases cited: *Shepherd* v. *Bishop of Chester* (6 Bing. 437); and *Doe dem. Williams* v. *Williams* (2 A. & E. 381). *Rule nisi.*

WATT & WIFE and OTHERS *v.* SMITH.

The certificate of an acknowledgment under the Fines and Recoveries Act (3 & 4 Wm. 4, c. 74, s. 84), taken under a special commission, is not the less the certificate of such of the commissioners by whom it purports to be made because it is signed by more.

An affidavit verifying the certificate may be made before one of the commissioners executing the commission, if such person is qualified to take oaths.

Shee, Serjt. moved that the certificate of acknowledgment by three married women might be enrolled pursuant to the Fine and Recoveries Act (3 & 4 Wm. 4, c. 74, s. 85).

The commission for taking the acknowledgment was directed to three commissioners; namely, Jesse Dicker, Jones Berridge, and Alexander McKan, and authorized them, or any two of them, to take the acknowledgment.

One of the objections raised by the officer of the Court was, that the certificate purported to be the certificate of Jesse Dicker and Alexander McKan only, but was in fact signed by the three commissioners.

TINDAL, C. J.—The signature of the third commissioner was only superfluous.

Another objection made was, that the affidavit verifying the acknowledgment was made by Jesse Dicker before Berridge, one of the commissioners, who had executed the commission.

TINDAL, C. J.—I am not aware of any rule that the affidavit may not be taken before another of the commissioners, who is qualified to take oaths.

Rule granted.

BUSINESS OF THE WEEK.

Friday.

HARRISON *v.* HARRISON.—*Byles*, Serjt. and *Channell*, Serjt. were heard in the second argument of this case, which had been sent by the Master of the Rolls. *Cur. adv. vult.*

KNOWLES *v.* WHATELY.—Issue on plea of record. Plea proved. Sir *Thomas Wilde* for the defendant; *Manning*, Serjt. for the plaintiff

CLARKY *v.* SMYTHE.—*Byles*, Serjt. moved for leave to sign judgment on a *sci. fa.* (to revive a judgment) pursuant to rule of H. T. 2 Wm. 4, R. 81, the affidavit of service not being sufficient.

Application refused.

Saturday.

COLSON *v.* BISHOP OF CARLISLE. *Rule nisi.*

WILLIAMS *v.* TREGARTHAN.—*Channell*, Serjt. shewed cause against a rule *nisi* for a new trial, on the ground of the verdict being against evidence. *Byles*, Serjt. contrà. *Rule discharged.*

LEWIS *v.* MARSHALL.—*Shee*, Serjt. shewed cause. Sir *T. Wilde*, Serjt. contrà.

Rule absolute for 123l. without the costs of the former trial, as to the first count.

LEWIS *v.* HOLFORD. *Rule absolute.*

GORDON *v.* ELLIS. *Rule nisi.*

HOWITT *v.* CLEMENTS.

Rule refused: to come again.

LLOYD *v.* SANDELL. *Rule nisi.*

NEWTON *v.* ROWE.

Rule absolute in the alternative, the defendant accepting the alternative, and a verdict entered for nominal damages.

Monday.

THOMAS *v.* DUNN.—The COURT said that they would grant a rule *nisi* in this case for a new trial, the application for which had been made by the plaintiff in person on the 9th instant.

STEVENS *v.* SWAINE.—*Dowling*, Serjt. moved to set aside the award made in this cause, on the following grounds: 1st. That no notice of meeting had been given by the arbitrator. 2nd. Refusal to receive evidence. 3rd. That the umpire only used the evidence taken by the arbitrators as obtained from their notes. *Rule nisi.*

HINTON *v.* ACRAMAN.—*Talfourd*, Serjt. (*Byles*, Serjt. with him) shewed cause against a rule obtained by the plaintiff for liberty to amend declaration. Sir *T. Wilde* and *Manning*, Serjts. for the plaintiff.

Rule absolute on payment of costs.

DOE *v.* POWELL. Sir *T. Wilde* applied for leave to turn this cause into a special verdict. *Refused.*

STEWART *v.* PATCH.—*Dowling*, Serjt. shewed cause against a rule obtained by *Channell*, Serjt. for setting aside the judgment, which had been signed as in case of a nonsuit.

Rule absolute on payment of costs, and a peremptory undertaking to try at the sittings after next term.

KAVANNAGH *v.* GUDGE and ANOTHER.—*Byles*, Serjt. applied for a rule to shew cause why the Master should not tax the costs of the demurrer on which the plaintiff had obtained a judgment. *Rule nisi.*

COURT OF EXCHEQUER.

Friday, Nov. 22.

WALTON *v.* MASKALL.

Demurrer—Meaning of "honoured" as applied to a promissory note—Reception of a promissory note for and on account of a debt, and to give time, does give time.

In this case the plaintiff had declared in *assumpsit* against the defendant on a guarantee to pay a certain promissory note of 17l. in case it should not be "duly honoured and paid" by the makers.

The declaration set out that, in consideration that the plaintiff would receive of Messrs. Johnson and Elkins their promissory note for 17l. *for and on account of* a certain debt (therein specified), and *thereby give them time for the payment thereof*," he defendant promised to pay the said sum of 17l. in case the promissory note should not be "duly honoured and paid" by the said Johnson and Elkins when it became due. It averred that the plaintiff did receive the said promissory note for and on account of the said debt, and did thereby give time for the payment thereof; but that Elkins and Johnson had not honoured or paid the said promissory note when it became due, although they had been duly requested.

The plea traversed the allegation of request to Johnson and Elkins to pay the note.

To this there was a demurrer.

Knowles, for the demurrer, submitted that the allegation of a request to Messrs. Johnson and Elkins was not a immaterial averment.

Martin, in support of the plea, contended that it was, and urged that "honoured" meant paid on request when due. He cited *Lewis* v. *Gompertz* (6 M. & W. 403). He contended also that the declaration was bad, on the ground that it did not appear therefrom but that the promissory note had been taken for and on account of the debt, *as a collateral security*, in which case the plaintiff by receiving it would not have given time.

PARKE, B. said "honoured" meant "paid at maturity."

POLLOCK, C. B. said that the reception of a note in pursuance of an agreement, by reception thereof to give time for the payment of the debt, was, in law and fact, a giving time for so doing; and in illustration he cited *Kearslake* v. *Morgan* (5 T. R. 513).

The COURT delivered their opinion *seriatim*, that the declaration was good and the plea bad.

Judgment for plaintiff.

[It should not be inferred from the above case that though "honoured" means simply "paid at maturity," that "dishonoured" means *not* "paid at maturity;" "for," said Pollock, C. B. "it is possible a bill may be neither honoured nor dishonoured." And again, it may be observed, dishonoured has been held to import not paid on presentment at maturity. So that presentment at maturity was imported into the meaning of the word as an essential part. (See *King* v. *Bickley*, cited Byles on Bills, 4th ed. 205, n. d.)

In a word, a bill may be honoured or it may be dishonoured; but between these two there is a third term—viz. *not honoured*.]

SMITH *v.* PARKER.

Libel—Pleading—Defendant, in pleading to a libel, must not sever an allegation which is entire.

This was a declaration for libel. The libel consisted of a paper which alleged that the plaintiff was the master of the Grammar-school at Lichfield, and, the more the pity, a clergyman; that he had been brought up before the magistrates for beating the boys; that for seven years no boys had received instruction at this school, owing to the violent conduct of the plaintiff as master.

The defendant pleaded, with other pleas, that the plaintiff had been brought up before the magistrates for beating the boys; that, for seven years, no boys had received instruction at the school.

To these pleas the plaintiff demurred.

Martin, in support of the demurrer, urged that the simple fact that plaintiff had been brought up before the magistrate for beating boys was not enough to justify the publication of this.

But POLLOCK, C.B. said, it might be laid down as a universally true proposition that in an action of libel truth was a sufficient defence.

Secondly, *Martin* urged that the other plea above noticed was no answer to the charge in the declaration, which was not simply that no boys had received instruction at the school, but that this had happened through the violent conduct of the plaintiff as master.

Warrington, in support of the last-noticed plea, contended that the simple assertion that no boys had received instruction at the school was libellous, and, therefore, presented matter for confession and avoidance, to which the plea might address itself.

But the COURT held it was not, and it was not what the defendant was charged with.

Judgment for the plaintiff.

WORTH *v.* TERRINGTON and Others.

Trespass—Pleading—There may be new assignment of imprisonment ultra in trespass for assault and imprisonment, and plea pleaded justifying imprisonment for "reasonable time."

In this case the declaration was for assaulting and imprisoning the plaintiff.

One plea justified the assault, on the ground that the defendant was improperly forcing himself into the clerk's desk in a certain church, so the defendants removed him.

Another plea, in answer to the imprisonment, justified imprisoning the plaintiff for a "reasonable time," on the ground that, after he had been removed he attempted to return, and would have returned but for such restraint.

The replication was *de injuriâ*, and the plaintiff newly assigned that he complained of imprisonment for more than the reasonable time.

To this new assignment the defendant demurred.

Bramwell, in support of the demurrer, contended that the new assignment was bad for duplicity. This, he said, might be tested thus—viz. that the plaintiff, if he succeeded either on the issue *de injuriâ*, or on the new assignment, might recover damages which would cover his whole cause of action.

But, said PARKE, B. so he would in the ordinary case of declaration in trespass *quare clausum fregit*, with right of way pleaded, replication, traversing the right, and new assignment of *extra viam*.

The COURT stopped *Cowling*, who was for the plaintiff, and said they had already held, in *Cohen* v. *Smith* (see Leg. Chron.), that time was as divisible as space; so the replication and new assignment in this case stood on the same footing as in the ordinary case of trespass *quare clausum fregit*, and were good. *Judgment for plaintiff.*

[*Note.*—See 1 Chitty on Pleading, 6th ed. 632, n. k.]

WHEATLEY *v.* JAY.

Bill of exchange—Pleading in abatement.

Non-joinder of co-acceptor is not sufficient—The plea must disclose he was co-drawee.

In this case the defendant had pleaded in abatement to a declaration in *assumpsit* against him as acceptor of a bill of exchange.

The plea was demurred to, on the ground that mere statement of the non-joinder of a co-acceptor was not enough; it should have shewn that the bill had also been *drawn* on him—in other words, that he was a co-drawee.

Peacock, in support of the plea.

Judgment for plaintiff.

Saturday, Nov. 23.

THE MAYOR OF MACCLESFIELD *v.* GEE.

Practice—The discontinuance of an action upon which there were issues of fact outstanding after judgment on demurrer, does not preclude the parties from bringing a writ of error.

Williams shewed cause against a rule obtained by *Henderson*, calling on the plaintiff to shew cause, amongst other things, why a rule to discontinue obtained in this action should not be set aside.

The Mayor of Macclesfield had commenced six actions against as many butchers, to try the right of the butchers to sell in their shops on market-day. In each of these actions several pleas had been pleaded, and there had been demurrer to the four pleas in each case. One case was selected for trial. The demurrer had been decided in favour of the plaintiff, but the defendant succeeded on the issues in fact. Under these circumstances the plaintiff had taken out a rule to discontinue on payment of costs. Assuming that the plaintiff was entitled to receive them, the plaintiff's costs on demurrer, it was said, were greater than those which the defendant would be entitled to receive on the issues in fact; and on taxation the Master would not allow the defendants their costs, except by deduction thereof out of the costs to be paid to the plaintiff. It was on account of this taxation that the present application was made.

Henderson, in support of his rule, submitted that no writ of error lay after a rule to discontinue; 2nd, that the plaintiff had no remedy for his costs; 3rd, that by the rule to discontinue he was bound to pay the defendant's costs. Thus, it will be seen, his case depended on the hypothesis that compliance with a rule to discontinue dictated in its very process payment of all costs to defendant, and was a positive bar to all further proceedings in that action.

But the COURT held, that the rule to discontinue did not oblige the plaintiff to pay any other than the costs which the defendant was entitled to receive, in other words, that it did not interfere with the plaintiff's right to receive costs which had already been adjudged to him. 2nd, That a writ of error might be brought to try the validity of a judgment on demurrer, though action had, as in this case, been discontinued. 3rd, That the proper course, under these circumstances, was to tax the plaintiff's costs, and to tax the defendant's, and not to set them off; but to leave each to his remedy to gain them. The defendant, by writ of error, to dispute those on demurrer by disputing the judgment.

PARKE, B. said there should be an entry of the discontinuance on the record; and then a judgment, that plaintiff take nothing by his writ; and he referred to Tidd's Practice, p. 230, for the form.

Rule discharged without costs, the point being new, although it was on appeal from the Master's decision.

Re SMITH.

Costs.

The Master, in taxation of costs in a suit for less than 20l. may, as between attorney and client, allow for counsel's fees, when the client was, previously to the retainer, informed that he would, in any event of the suit, be obliged to pay the fees.

Pashley shewed cause against a rule obtained by *Martin*, Q. C. calling on the Master to review his taxation of the applicant's bill of costs, in the case of *Taylor* v. *Walton*. Mr. Smith had been engaged as attorney for the defendant in an action of *Taylor* v. *Walton*, which was tried before a country sheriff. Mr. Smith had, at the special request of the defendant, retained counsel for him. He had, at the same time, informed the defendant that these costs could not be recovered from the plaintiff, even though defendant should obtain a verdict; and that counsel of eminence would not attend for less than a fee of 3l. 3s. On taxation, the Master refused to allow any fee for counsel, no item of that sort being set down in the list of charges to be allowed on taxation of costs in cases of action before the sheriff.

Pashley urged that the Master had done rightly; that he was bound to allow no item for which there was not an example in the list of charges, and contended that if an agreement could give the Master that power, not only might he be called upon to allow them in cases of fees of three guineas, but of three hundred; and he would in fact become the trier of such agreements. He cited *Re Woollet* (1 Dowl. & Lowndes, 593); *Levy* v. *Magnay* (10 M. & W. 664).

But the COURT held, that the directions to the taxing officers, which the Master had relied upon as imperative, were not; and that their object was to prevent extravagant charges, but did not circumscribe what might be charged for. *Rule absolute.*

STALWART *v.* INGS.

Award.

Application to set aside an award, on the ground that the arbitrators had not both signed at the same time.

Alexander, Q. C. shewed cause against a rule obtained by *Whateley*, Q. C. to set aside the award in this case, on the ground that the award had not been signed by the arbitrators at the same time.

Whately contended that the award had been made in conformity with the intentions of the arbitrators. He cited *Little* v. *Newton* (2 M. & Gr. 35); *Battye* v. *Gresley* (8 East, 318); applying them to his view of the case, that signatures need not be cotemporaneous.

The COURT stopped *Whately*, and gave it as their opinion that the making of the award, being a judicial act, the arbitrators must do it at the same time, otherwise a change of opinion might intervene. They, however, refused to set aside the award; since their decision would in that case be final; whereas, if an action was brought to enforce the award, the question might be carried up to a court of error.

The COURT discharged the rule; the parties to try the right by action, and the Court to grant no attachment to enforce the award. *Rule discharged.*

DAVIS *v.* ANKLE.

Attorney—Application to recover from an attorney the costs charged for entering up judgment where none had been entered up.

Jervis, Q.C. moved for a rule calling on the plaintiff's attorney in this case to shew cause why he should not refund the sum of 5l. to the defendant, and pay the costs of this application. It had been agreed between the plaintiff and defendant, by their respective attorneys, that the action in this case should be stayed on payment of 8l. Defendant wishing for further time, applied to plaintiff's attorney for that purpose, when he was informed by him, that, not to trifle with him, he must pay the further costs of entering up judgment "now due" in the action and proceeding to execution. The defendant understanding by this that judgment had been entered up and execution issued, paid, in addition to the 8l. the sum of 5l. the subject of this motion. On examination it was found that no judgment had been entered up. *Rule nisi.*

GUTHRIE and ANOTHER *v.* BEAUMONT.

Award—Application to set aside an award, on the ground that the arbitrator had received evidence not communicated to the defendant.

Whately, Q. C. applied to set aside the award in this case. The cause had been referred to two lay arbitrators, and had been decided by them in favour of the defendant. From the bill of costs sent in by the defendant's attorney, it was discovered that he had charged for business in the procurement and submission of evidence to the arbitrators which had never been made known to the plaintiff. *Rule nisi.*

Monday, Nov. 25.

WHICHER *v.* THOMAS.

Taxation of bill after verdict—Special circumstances under 6 & 7 Vict. c. 73.

Crowder, Q. C. shewed cause against a rule obtained by *Jervis* to refer the bill of the plaintiff Whicher to the Master for taxation. It appeared that in an action brought to recover the amount, the defendant had allowed judgment to go by default, and the amount found to be due had been levied under a *fi. fa.* on November, 3, 1843. The rule had been obtained on Nov. 4, 1844. *Crowder* now opposed it on three grounds:—

1. That the application was more than a year after execution.

2. That the bill contained no taxable item, and, therefore, the application should have been to the Lord Chancellor or Master of the Rolls. The business done was superintending the taxation of a Mr. Sherwood's bill for certain prosecutions.

3. That there were no special circumstances, for that all the matters had been known to Thomas before the action brought.

POLLOCK, C. B.—Does the 41st section apply to all prior sections?

Crowder.—Yes.

Jervis, Q. C. in support of the rule, contended that it must be made absolute, on the ground that the facts shewed fraud, and that Whicher had made no affidavit; but he admitted that the facts were known to Thomas before the action brought, but said that judgment had been allowed to go by default, through a belief that the defendant was protected by a certain undertaking of Mr. Whicher.

POLLOCK, C. B.—You had a good defence then, and why should you now come here?

Jervis.—There need not be *new* circumstances, but only special circumstances. It appeared clearly that 5l. had been overpaid, and that Whicher, after being retained upon the terms of his undertaking, procured the employment of a Mr. Bojon, by Mr. Thomas, under false representations, and that Thomas had been obliged already to pay him; so that now Whicher was compelling payment a second time.

PARKE, B.—Can you be relieved from a verdict?

POLLOCK, C. B.—You should at least have come quickly. Your motion should have been calling upon the plaintiff to refund the excess.

PARKE, B.—The old rule was not to disturb a verdict for taxation (*a*).

Jervis.—There are special circumstances, and the application is within twelve months; the *fi. fa.* was executed on the 3rd, but the money not paid until Nov. 4.

Cases cited: *Doe* v. *Roe* (4. Dowl. P. C. 95); 6 & 7 Vict. c. 73.

POLLOCK, C. B.—The rule must be discharged. It is consistent with the facts that there was no fraud as suggested. Thomas may have retained the second attorney, and was therefore bound to pay him; and one mode of accounting for the delay is, that Thomas did acquiesce in what was done. No sufficient explanation is given why the verdict should be set aside. It is in the discretion of the Court to grant these applications, and we think that where there are no new circumstances or fresh matter coming to the knowledge of the party, we cannot listen to an application on the ground that he was improperly sued, and that the verdict was wrong, where he has lain by for a twelvemonth. But as Mr. Whicher does not deny the facts alleged, and cannot set up his own strict propriety of conduct in this matter, we shall not give him the costs. *Discharged without costs.*

(*a*) See, however, instances cited in Chitty's Archb. p. 77.

HAMILTON *v.* BENTINCK.

If a defendant apply for a commission to examine witnesses long after issue has been joined, the Court will only issue it upon terms, of his finding security.

Martin, Q. C. and *Dasent*, shewed cause against a rule obtained by *Watson*, Q. C. for a commission to examine witnesses in Demerara.

The action was brought upon a contract set out in the declaration, the substance of which was, that plaintiff should honour bills drawn by one G. in Demerara, for the cultivation of the estate of defendant. The defendant pleaded in June last, denying G.'s agency or authority to enter into the contract.

The issue was made up, and notice of trial given, in July, for the first sittings in London this Term. On the 17th September, defendant got leave to plead additional pleas, which do not affect the question of G.'s authority. Notice of trial on the amended issue was given on the 19th of October. The cause was made a special jury case, which threw it over to the sittings in London after this Term.

On the 15th of November this rule was obtained for a commission.

For the plaintiff, it was now contended that it was too late. The commission ought to have been applied for immediately after the first issue was joined. The evidence sought to be obtained only affects the pleas originally pleaded.

POLLOCK, C. B.—This is in effect an application to postpone the trial, in order that defendant may get fresh evidence; and as he did not choose to apply in proper time, the question is, upon what terms he shall be allowed to do so. We think, upon his finding security for 3,000l. half the amount claimed, the commission may issue upon those terms.

Rule absolute.

MORRIS *v.* ROBERTS, Executrix.

In an action brought against an executrix de son tort, upon a bond given by the testator, and where the plaintiff holds a policy on the testator's life as a collateral security, which has been paid, the Court will not compel the plaintiff to enter satisfaction upon the roll upon receiving the amount of the bond less by the whole amount of the policy, unless it appear that he has actually received the whole of it, although it appear that he has improperly permitted the administrator to deduct from the policy the expenses of administration, there being general assets enough for that purpose.

Williams shewed cause against a rule obtained by *Gray*, calling upon the plaintiff to shew cause why, upon payment of 53l. satisfaction should not be entered upon the roll. The action was upon a bond; the defendant was sued as executrix *de son tort*.

It appeared that the plaintiff had had deposited with him, as collateral security, a policy of insurance upon the life of defendant's testator, for a smaller sum than the amount of the bond. A person of the name of Rogers had taken out administration to the testator's effects, and an action had been brought by the attorney of Rogers, in the name of Rogers, but upon behalf of the plaintiff, to recover the amount of the policy. It had been recovered, and received by the plaintiff on account of his debt, with the exception of an amount which he had allowed Rogers to deduct for the expenses of obtaining administration. It appeared that there were other funds in Rogers' hands, and it was now contended that the administration should have been paid for out of them, and the whole amount of the policy should be deducted from the plaintiff's debt.

POLLOCK, C. B.—If, as we understood when the rule was obtained, it had appeared that either the plaintiff or his own attorney had received the money, and had afterwards paid it wrongfully to Rogers, the Court might have interfered; but at present it is not clear that either he or his attorney did actually receive all the money. All that we can be sure of is, that either the plaintiff or his attorney has made a bad bargain with Rogers. Are we now upon a motion of this sort to enter into disputed facts? It may be that there are assets, and that this expense ought to have been defrayed out of the general estate. But can we now, for the purpose of such an application as this, enter into the question whether the plaintiff ought to have received this money or not? Giving the defendant the fullest benefit of his statement, we cannot make the rule absolute. Very likely the plaintiff ought not to have made the bargain, but that does not put him for all purposes in the same position as if he had received the money. This rule must be discharged. *Rule discharged.*

ATTORNEY-GENERAL *v.* CLAY and ANOTHER.

The *Solicitor-General* appeared to shew cause

against a rule, obtained by *Chambers* on behalf of one of the defendants, calling upon the Crown to furnish him with particulars of the charges against him. The Solicitor-General stated, that though the Crown was willing to consent in this case to the principal matters sought by the rule, he did not admit the right of the defendants to have the rule made absolute.

To prevent the case being made a precedent, the rule was discharged, subject to an understanding that the Crown would furnish what was asked for.

Rule discharged.

BUSINESS OF THE WEEK.

Monday.

RANDALL v. WHITE.—*Charnock* appeared to shew cause against a rule obtained by *Addison*, for judgment *non obstante veredicto*.—As it was a matter of law, the rule was enlarged. *Rule enlarged.*

HEWETT v. NOWELL.—*Watson*, Q.C. shewed cause against a rule obtained by *Greaves*, to refer the case back to the arbitrator. *Rule discharged.*

CURRY v. DE RETZEN and UXOR.—*Whately*, for a rule to shew cause why money should not be paid out of court to plaintiff, pursuant to an award. *Rule nisi.*

MALLAN v. MAY. *Judgment for defendant.*

DOE *dem.* WILLIAM IV. and OTHERS v. ROBERTS. *Rule refused.*

MARQUIS OF BUTE v. THOMPSON.—In this case, in which judgment was last Term given for the plaintiff, the Court now delivered its reasons for coming to that conclusion.

KING v. HOAR. *Judgment for defendant.*

The above four cases, in which written judgments were delivered, will be fully reported next week.

During a part of the day, Alderson, B. sat, rather unexpectedly, in a second court, in which motions were taken, of which our reporter was unable to get a note.

Crown Case.

Friday, Nov. 22.

(Before the fifteen JUDGES.)

REG. v. O'BRIAN and OTHERS.

Indictment.

Mode of charging accessories in murder where the death does not on the same day follow the blow.

The prisoner had been indicted and tried before Cresswell, J. at the last assizes for York, who had reserved the case for the opinion of the judges as to whether any judgment could be pronounced, and, if so, against which of the prisoners.

The facts of the case were, that the prisoners (Irishmen) had set upon one Benjamin Goff, one of a band of musicians who were playing tunes politically offensive to them, and in the riot Goff was killed. Medical evidence attributed his death to one or the other of two blows: one given with a stick by one of the prisoners, the other by a stone that had been flung by another of the prisoners. The riot took place on the 27th of May. Goff died on the 29th of the same month.

There were four counts in the indictment:—

The 1st charged the prisoners as principals in the first degree with the murder of Benjamin Goff, by kicking and beating.

The 2nd charged O'Brian as principal, and the rest as accessories; and laid the death as having happened by blow of a stick.

The 3rd charged another of the prisoners as principal and the rest as accessories, and laid the death as having happened by a blow from a stone.

The 4th varied from the rest in laying the death as having happened by kicking and beating with sticks and stones.

The first count was abandoned at the trial, and the jury found a general verdict of guilty of manslaughter on the three others.

Two principal questions arose on the indictment—1st. Could a general verdict be sustained on the indictment, when the counts laid the death so variously? 2nd. Was the mode of charging the accessories sufficient? The indictment mentioned the day on which the blow had been struck—viz. the 27th May, and that Goff had languished till the 29th, when he died; then it charged the accessories as having, on the day and year *first* aforesaid, been present aiding and abetting (the principal) the said felony and murder to do and commit.

Heaton appeared for some of the prisoners, and *Wilkins* for others.

Bliss was for the prosecution.

The Court did not deliver any opinion.

BAIL COURT.

Friday, Nov. 22.

(Before Mr. Justice PATTESON.)

Ex parte THE DEAN AND CHAPTER OF CANTERBURY.

Prohibition to restrain Tithe Commissioners from proceeding.

Bowler Q.C. (with whom were *Deeds* and *Peacock*) moved for a prohibition, forbidding the Tithe Commissioners for England and Wales to enforce an apportionment of tithes in the parish of Appledore, in the county of Kent, the objection being that the award had directed a larger rate-charge than the modus to which a portion of the land was subject, contrary to the 6 & 7 Wm. 4, c. 71, s. 33. It was stated that all parties were willing to abide the decision of the Court. *Rule nisi.*

REG. v. THE GUARDIANS OF THE TOTNES UNION.

Mandamus to Guardians of a Union to administer outdoor relief to an infirm pauper, pursuant to an order of justices.

Greenwood moved for a *mandamus* to be directed to the above parties, commanding them to administer out-door relief to an infirm pauper of the name of Perry, pursuant to an order of justices. An order in this behalf had been made pursuant to the 27th section of the Poor-Law Amendment Act, 4 & 5 Wm. 4, c. 76, with which the Guardians of the Union refused to comply.

Rule absolute in the first instance.

BUSINESS OF THE WEEK.

FLINN v. BERESFORD. Sir *J. Bayley*, moved to set aside the warrant of attorney herein, on the ground that the defendant had not been informed that he might employ any attorney whom he pleased.

Rule nisi, returnable in a week at chambers.

MORDEN v. THOMAS.—*V. Lee* moved to set aside an award, on the grounds 1st, That the arbitrator did not find that the amount awarded was due at the time of the action brought; 2nd, That he did not award upon all the issues. (*Burt* v. *Lloyd*, 10 M. & W. 550; *England* v. *Davison*, 9 Dowl. 1052.)

REG. v. KING.—*F. Robinson* moved, on behalf of the Incorporated Law Society, to strike the above party, who is an attorney, and has been convicted of a conspiracy, off the roll. *Rule nisi.*

SMITH v. LORD FERRERS.—*Butt* moved to discharge the rule which had been obtained for changing the *venue* herein from London to Warwickshire, on the ground of the great influence possessed by the defendant in the latter county. *Rule nisi.*

REG. v. THE PARISHIONERS OF ST. STEPHEN, COLEMAN-STREET.—*Pashley* moved for a *mandamus* requiring the defendants to assemble and elect an organist. *Cur. adv. vult.*

Ex parte PARTINGTON.—*Peacock* moved for a *habeas corpus* to be directed to the keeper of the Queen's Prison, directing him to bring up the applicant, with the view to his being discharged. The question involved the powers of the Bankruptcy Commissioners under the 7 & 8 Vict. c. 96.

Writ granted.

Saturday, Nov. 23.

(Before Mr. Justice WIGHTMAN.)

REG. v. THE JUSTICES OF GLOUCESTERSHIRE, *Ex parte* RICHARD FARLEY.

Mandamus to compel justices to hear an application under the 1 & 2 Vict. c. 74.

Newton moved for a rule *nisi* for a *mandamus* commanding two justices acting for the division of Botloe, Gloucestershire, to hear and decide upon an application under the 1 & 2 Vict. c. 74. (The Small Tenement's Recovery Act.)

It appeared that the tenancy of a tenant having duly expired, and he having neglected to give up the tenement, notice was served of the intended application to the justices to obtain possession. On the day named, application was accordingly made to two justices, and whilst the landlord's agent was stating the particulars of the case, an attorney's clerk came into the room, and informed the magistrates that his employer's client had a mortgage upon the property, which was a good reason for their not entertaining the application. Upon this the justices declined to proceed, and refused to take any evidence whatever, saying, that it was optionable for them to proceed or not, and that the landlord might bring his action of ejectment.

PATTESON, J.—The question is, whether it is *imperative* on them to proceed.

Newton.—The words are "it shall and may be lawful," &c. which means that they *shall* proceed.

Rule nisi.

REG. v. THE JUSTICES OF THE WEST RIDING OF YORKSHIRE, IN THE MATTER OF THE APPEAL BETWEEN STANLEY-CUM-WRENTHORPE, Appellants, and ALVERTHORPE-CUM-THORNS, Respondents.

Where a parish on whom an order of removal is made, do not give notice of appeal within the twenty-one days, and the pauper is not removed, they may, nevertheless, appeal, the grievance under the 79th sec. of the 4 & 5 Wm. 4, c. 76, being the order: against which they have a right at any time to appeal whilst it is in existence.

R. Hall and *Overend*, shewed cause against the rule herein (see 4 LAW T. 100), and contended that inasmuch as the appellants had not, during the currency of the twenty-one days, given any notice of appeal, and as the pauper had not been actually removed, the respondents were not entitled to appeal.

In support of the argument the following cases were cited:—*Rex* v. *Norton* (2 Str. 831); *Rex* v. *The Justices of Herefordshire* (3 T. R. 504); *Rex* v. *The Justices of Salop* (6 Dowl. 28); *Rex* v. *Hanson* (4 B. & Ald. 519); *Rex* v. *The Justices of Surrey* 2 T. R. 504); *Rex* v. *Schole* (6 East, 514); *Reg.* v. *Stock* (8 Ad. & Ell. 405); *Rex* v. *The Justices of Suffolk* (4 Ad. & Ell. 319); *Rex* v. *The Justices of Lincolnshire* (3 B. & C. 548); *Rex* v. *The Justices of Leicestershire* (4 Dowl. 634); *Rex* v. *The Justices of Cornwall* (6 Dowl. 28); *Rex* v. *The Justices of Herefordshire* (6 Dowl. 638); *Rex* v. *The Justices of Middlesex* (9 Dowl. 163); *Rex* v. *The Justices of Cheshire* (1 Dowl. 570); *Reg.* v. *The Justices of Lancashire* (12 L. J. M. C. 110).

Pashley and *Pickering*, contrà, argued that the only effect of not giving notice of appeal within the twenty-one days is, that the pauper might still be removed; that the grievance against which, by the Poor Law Amendment, the appellants are entitled to appeal is, the order of removal, and whilst that remains in force the appellants have at any time a right to appeal. (*Rex* v. *The Justices of Leicestershire*, 4 Dowl. 633; *Reg* v. *The Justices of Middlesex*, 9 Dowl. 634; *Rex* v. *The Justices of Suffolk*, 4 Ad. & Ell. 319.)

WIGHTMAN, J. was of opinion that the appellants were justified in appealing as they did, as the grievance consisted in the order of removal, which was still subsisting, and which the appellants had a right to ask the Sessions to quash.

Rule absolute for a mandamus.

Monday, Nov. 25.

(Before Mr. Justice PATTESON.)

REG. v. THE JUSTICES OF THE WEST RIDING OF YORKSHIRE.

Quære, whether a philosophical society is rateable to the relief of the poor?

Pashley moved for a *mandamus* commanding the above justices to issue their warrant of distress to compel payment of a poor-rate from the Huddersfield Philosophical Society. This society had been assessed, and, on being summoned to shew cause why a distress warrant should not issue, they appeared and contended that they were exempt from assessment by the provisions of the 6 & 7 Vict. c. 36. s. 1, and the justices being of this opinion, refused to issue their warrant. It was now insisted that this society is not within the provisions of the Act. *Rule nisi.*

AUSTIN v. DAVEY.

A party must come to the Court to set aside irregular proceedings within a reasonable time; where, therefore, execution was levied on an irregular judgment in vacation, and the motion to set it aside was not made until the 15th day of the next term:—Held, too late.

Barcham shewed cause against this rule, which called upon the plaintiff to shew cause why the judgment and all the subsequent proceedings should not be set aside for irregularity. In this case the declaration was filed, and notice given on the 2nd of August to plead in eight days, and on the 10th judgment was signed for want of a plea. Subsequently execution issued, and the amount of debt and costs levied. A summons was then taken out to set aside the proceedings before Mr. Baron Gurney, who declined to interfere. It was now contended, in answer to the rule, that, notwithstanding, according to the case of *Morris* v. *Hancock* (1 Dowl. N. S. 320), the judgment was signed too soon, the defendant having all the 10th of August on which to plead—the defendant had come to the Court too late to seek relief; that a party should come within a reasonable time, which is generally understood to be within eight days; that here the execution was levied on the 21st August, and the application to the Court not made until the 16th of November, being the 15th day of term.

C. Edwards.—There is no express rule limiting the time of application in such a case—it is dependent chiefly upon whether or not any fresh step has been taken; here, no inconvenience has been sustained by the delay, as no further step could have been taken by the plaintiff. (*Brooks* v. *Hodgson*, 8 Scott, N. R.)

PATTESON, J. thought the application too late, and that the defendant should have come to the Court within the first eight days of the term.

Rule discharged with costs.

STANDERWICK v. WATKINS.

Where, in moving for a new trial, affidavits are used imputing personal misconduct to the jury, affidavits of the jury may be used in answer.

W. J. Smith shewed cause against the rule obtained herein by *Prideaux* (see 4 LAW T. 101), and was about to read affidavits from three of the jury in answer to certain imputations of misconduct contained in the affidavits on which the rule was obtained, when

Prideaux objected, that as no new affidavit was used on moving the rule, no fresh ones could be read on the other side; and that under any circumstances, an affidavit from a juryman could not be received. (*Atkins* v. *Meredith*, 4 Dowl. 658; *Straker* v. *Graham*, 7 Dowl. 223.) He did not object to the affidavits made in answer to the summons being read.

(It appeared that after this cause had been tried before the Undersheriff, an application had been made to a judge in vacation; and on that occasion affidavits impugning the conduct of the jury were made use of by the defendant, and counter affidavits of some of the jury by the plaintiff. This rule was obtained on reading the affidavits made on the part of the defendant on the summons.)

PATTESON, J. thought that in all cases where personal misconduct is charged against a jury they are entitled to rebut it; and the defendant's old affidavits being brought before the Court, it was the same thing as though they were entirely new.

The case was argued on its merits.

Rule absolute for a new trial, the costs of the first to abide the event.

DOE *dem.* ROBERTS *v.* ROE.

Removing for judgment against the casual ejector, the rule will be absolute, notwithstanding the declaration is headed as of a term not yet arrived, and there is no date to the notice to appear.

T. W. Saunders moved (in three cases) for judgment against the casual ejector. The declaration, which was served in October last, was entitled "Trinity Term, in the eighth year of Queen Victoria," last Trinity Term being in the seventh year of the Queen's reign. The notice contained no date, but directed the defendant to appear "next Michaelmas Term." He submitted whether this should be a rule absolute or *nisi* only.

PATTESON, J.—You may have a rule absolute.

(See *Doe dem. Woodruffe* v. *Roe*, 5 Scott, N. R. 800). *Rules absolute.*

DENNETT *v.* HARDY.

Quære as to the proper course to be pursued, in order to obtain a writ of trial—Whether the writ should be applied for before or after the delivery of the issue, and as to the inserting of the test and return of the writ in the issue delivered.

Boriff shewed cause against a rule obtained by *Horn*, calling upon the plaintiff to shew cause why the issue and notice of trial indorsed thereon, delivered herein, should not be set aside for irregularity. The objections were twofold; 1st, That the issue contained no teste of the writ of trial, and had no date for its return; 2nd, That notwithstanding there were two issues joined, the writ of trial appeared to be awarded to try only one issue, the word "issue" being inserted instead of "issues." It was now contended, in opposition to the rule, that inasmuch as, by the practice, the issue is always made up and delivered before the writ of trial is applied for, it is impossible to insert these dates; and that the Masters, on taxation, will not allow the costs of the writ if applied for before the issue is delivered. That as to the mistake of the singular for the plural in the word "issue," it was a mere oversight, which the Court would allow to be amended.

Horn argued that the practice of delivering the issue before the writ of trial is obtained is erroneous; that the R. G. H. T. 4 Wm. 4, r. 2, sch. 5, points out the form which should be followed.

PATTESON, J.—The form certainly appears to be inconsistent, and I have constantly at chambers, when parties have applied to me for a writ of trial, and it has appeared that the issue has not been delivered, rejected the application.

Horne.—The issues might be joined without delivering the issue as made up. The plaintiff should abstain from delivering it until he has obtained his writ. (*Ward* v. *Pell*, 1 M. & W.)

PATTESON, J.—There is certainly a defect in this issue, in stating the word *issue* in the singular instead of the plural, and that must be amended. I have always thought the proper time for applying for the writ of trial was after the delivery of the issue; and of course, in such a case, the dates could not be inserted. I think, however, that there is some doubt as to the proper course to be pursued. The plaintiff had better amend the issue in this particular also.

Rule absolute, to amend on payment of costs.

BUSINESS OF THE WEEK.

Saturday.

Ex parte JOHN MILES.—*Whately*, Q. C. moved for a rule *nisi* for a *mandamus* to the Mayor of Dover, commanding him to insert in the burgess-roll the name of the applicant. There were twenty-four other motions by other parties. *Peacock* also moved for similar rules on behalf of fifteen other persons.

Rules nisi.

REG. *v.* ——.—*Cowling* moved for a *certiorari* to remove into this court an indictment found at the last sessions for Manchester against the applicant for having violated one of the clauses of the Manchester Improvement Act, 11 Geo. 4, s. 39 (local Act), on the grounds that several nice questions will arise as to the construction of the Act; that he is not likely to have an impartial trial at the sessions, as all the inhabitants are interested; and that he is anxious to have the assistance of Queen's counsel.

Certiorari granted.

REG. *v.* THE JUSTICES OF SOMERSETSHIRE.—*Ex parte* COLES.—*Crowder*, Q. C. moved to make the rule for a *certiorari* herein absolute. (See 4 Law T. 141). *Rule absolute.*

TOCKER *v.* BARONS.—*Gunning* shewed cause against the rule obtained herein by *Rose* for judgment as in case of a nonsuit. *Stet processus.*

REG. *v.* THE TRUSTEES OF THE NAVIGATION OF THE RIVER WELLAND, LINCOLNSHIRE.—*Kelly*, Q. C. moved for a *mandamus* directing the above trustees to complete and perfect the embankments of the above-named river. *Rule nisi.*

REG. *v.* COOPER.—*Wortley*, Q. C. moved for a *certiorari* to remove into this court an indictment for libel found at the last assizes at Liverpool, it being desirable to have it tried by a special jury.

Certiorari granted.

REG. *v.* THE GUARDIANS OF THE ROCHDALE UNION.—*The Solicitor-General* (*Tomlinson* with him) moved for a *mandamus* commanding the above parties to take upon themselves the administration of the laws for the relief of the poor in the union.

Rule absolute.

REG. *v.* THE JUSTICES OF THE WEST RIDING OF YORKSHIRE.—*Bliss* moved for a *mandamus* commanding the above justices to enter continuances, and hear an appeal, under the 5 & 6 Wm. 4, c. 50, s. 105 (the Highway Act), they having refused to hear it, on the ground that the notice of appeal was not served *personally* on the justices. *Rule nisi.*

WILKS *v.* STAFFORD.—*Wordsworth* shewed cause herein. *R. Allen*, contrà. (See 4 Law T. 142.)

Rule absolute on payment of costs of the day; costs of motion to be costs in the cause.

Monday.

GOLDBERT *v.* ——.—*Crompton* moved to set aside the warrant of attorney herein, on the ground of fraud. *Rule nisi.*

WELD *v.* HUNTER.—*V. Lee* moved for a rule *nisi* to cancel two indentures, and to set aside the warrant of attorney herein. *Rule nisi.*

BALDOCK *v.* MORRIS.—*Ball* moved in this case, which was a writ of inquiry before the Secondary, for a new trial, on the ground that the Secondary had disallowed a great number of items for liquors supplied under 20s. at a time, such an objection being only to be taken on a plea of illegality. (*Fenwick* v. *Laycock*, 1 Q. B. 414.) *Rule nisi.*

WOOD *v.* ELLIOTSON.—*Ogle* moved for a rule to set aside the interlocutory judgment and notice of inquiry herein. *Rule nisi, to shew cause at chambers.*

PAGDON *v.* PAGDON.—*Creasy* moved to enlarge this rule to shew cause at chambers. *Rule enlarged.*

Re SMART.—*Ogle* moved to enlarge this rule to shew cause at chambers. *Rule enlarged.*

REG. *v.* THE JUSTICES OF DERBYSHIRE.—*Willmore* moved to make this rule absolute. (See 4 Law T. 120.) *Rule absolute.*

REG. *v.* THE PARISHIONERS OF ST. STEPHEN'S, COLEMAN-STREET.—*Pashley*, on a former day, applied for a *mandamus* commanding the above parishioners to assemble and elect an organist. His lordship now refused the rule, as the parish were not bound to have an organist at all. *Rule refused.*

PITCHER *v.* MUSGROVE.—*Kennedy* shewed cause against this rule. *Charnock* in support. (See 4 Law T. 142.)

Rule absolute, costs in the discretion of the Master.

Ex parte WILLIAMSON and OTHERS.—*Addison* moved, on behalf of the above persons, who are the directors of the Brandon Junction Railway, for a *certiorari* to remove a coroner's inquisition taken on the body of a person killed by an accident on a railway, a deodand of 300*l*. having been assessed on the engine. The rule was moved on the ground, 1st, That it does not sufficiently state how the death was occasioned; 2nd, That it is not stated that the party died of the wound; 3rd, That the engine is not the property of the above company. *Rule granted.*

REG. *v.* TALLEMACH.—*Bramwell* shewed cause against this rule. *Chasby* in support. (See 4 Law T. 101.) *Rule absolute.*

HENZELL *v.* HOCKING.—*Platt* shewed cause herein. *V. Williams* contrà. (See 4 Law T. 143.)

Rule discharged.

BIRCHAM *v.* NAPIER.—*Lush* and *Gunning* appeared herein. *To be heard at chambers.*

REG. *v.* THOS. WILLIAMS and THOS. PRATLEY.—*Whateley*, Q.C. and *Aspinall*, shewed cause against a rule obtained herein by *Clarkson*, to admit the defendants, who are committed to the Buckingham assizes on a charge of felony, to bail. *Otter*, contrà.

Admitted to bail.

HUMMELL *v.* GREVILLE.—*V. Lee* moved to set aside the writ of error herein, for defects apparent on its face. *Rule nisi.*

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Wednesday, Nov. 20.

Ex parte SIMPSON, *Re* HUNT.

Practice—Costs—Separate appearance of official assignee.

Upon a dispute arising between parties representing respectively the joint estate of a bankrupt firm and the separate estate of one of the partners, as to a fund in the hands of the official assignee, the official assignee was held entitled to his costs of appearing by separate counsel.

In this case, which, upon one point was reported in our last number, the principal discussion was as to the respective rights of the joint creditors of the bankrupt firm and the separate creditors of some of the partners to a portion of the estate. The official assignee was in possession of the estate of the bankrupts, and on this petition, which was discussed by the creditors' assignees, on the one side, and inspectors appointed over the separate estate of one of the partners, on the other, the official assignee appeared by separate counsel. The Court having decided that the two parties were proportionably entitled to the fund in dispute, and that each should bear their own costs,—

W. W. Cooper, on behalf of the official assignee, applied for his costs, which

The CHIEF JUDGE directed to be paid to him, one-half out of the joint estate, and the other half out of the separate estate.

Wednesday, Nov. 27.

Ex parte APPLETON, *Re* APPLETON.

Bankrupt's certificate—Loss of proceedings.

Where the proceedings under a bankruptcy, which occurred in 1819, had been lost, the Court, upon the application of the bankrupt, directed that, notwithstanding the loss of the proceedings, the Commissioner should be at liberty to appoint a public sitting, &c. according to sec. 39 of 5 & 6 Vict. c. 122.

This was a petition of the bankrupt praying that the Commissioner might appoint a public sitting for the allowance of his certificate, and that notice of the same might be duly advertised in the *London Gazette*. The bankruptcy in this case occurred in 1819, and the proceedings under it were duly carried on up to the final examination of the bankrupt, which he passed. The certificate was signed by a large number of the creditors, but a relative of the bankrupt, who was a creditor to a large amount, having refused to sign it, the requisite number of signatures was not obtained. In May last the bankrupt applied to Mr. Commissioner Evans to appoint a public sitting for the allowance of his certificate, under the 39th section of the 5 & 6 Vict. c. 122. As none of the proceedings in the bankruptcy had been returned to his court, the Commissioner declined to call the meeting. It appeared that all the proceedings had been lost, and satisfactory affidavits of their loss having been obtained, the present application was made to the Court.

J. D. Chambers, for the petition, cited *Ex parte Baldwin, re Baldwin* (7 Jurist, 636).

Toller, for the surviving assignee, offered no opposition to the petition.

The CHIEF JUDGE said that he thought that such an order as he was reported to have made in the case cited should be made now, viz. that, notwithstanding the loss of the proceedings, the Commissioner should be at liberty to proceed, &c.

COURT OF BANKRUPTCY.

Thursday, Nov. 21.

(Before Mr. Commissioner FONBLANQUE and Mr. Commissioner GOULBURN.)

Re BRACKWELL.

Persons petitioning the Court for protection from process under 7 & 8 Vict. c. 96, s. 6, are not to be entitled to their immediate discharge; but time will be allowed for the detaining creditor to appear and oppose the petition.

Sturgeon moved for the interim protection and discharge from custody of the insolvent in this case, he having complied with the requisitions of the 5 & 6 Vict. c. 110, s. 1, and 7 & 8 Vict. c. 96, s. 6. He knew he was labouring under some disadvantage and difficulty in this case, as it appeared that certain rules were about to be prepared, upon the ground of "expediency," regulating the interpretation of the new statutes relating to bankrupts and insolvents.

Mr. Commissioner FONBLANQUE.—You are assuming this position.

Mr. Commissioner GOULBURN.—No such rules have yet been made.

Sturgeon was glad of it, as he hoped, with all deference to the Court, to shew that the present practice was authorized by the statutes, and however expedient the intended rules might be for the protection of trade and commerce, that expediency should not be suffered to over-ride the positive terms of deliberate Acts of Parliament, passed for the relief of insolvent and unfortunate debtors. Lord Mansfield, in a case reported in the Term Reports, p. 313, held, with respect to the "expediency" of a law being carried into execution, that as long as it was the law, so long was he compelled to give it effect; and Lord Tenterden has since, in a case which would be found in Barnewell and Cresswell's Reports, declared a similar opinion. Moreover, in all cases where a statute was made in favour of the subject, the most liberal construction should be given to it.

Mr. Commissioner FONBLANQUE.—Where do you

say we are obliged to grant the discharge of a debtor in custody?

Sturgeon begged to submit, that upon a debtor filing his petition, pursuant to the 6th sec. of the 7 & 8 Vict. c. 96, he was entitled to his release from custody, and that was the practice pursued in every other court in the building. If the Act passed in the 5 & 6 Vict. did not exist, he might almost defy the Court to discharge a prisoner under the last Act at all; the two Acts must be taken in conjunction, and he need not remind the Court that its protection was at once extended to insolvents who were not in cutody, and petitioned in the usual way.

After a lengthened argument the motion was refused.

THE LEGISLATOR.

Summary.

The week is barren of all intelligence, save the announcement that Parliament will meet for the despatch of business on the 4th of February.

Meeting of Parliament for the Despatch of Business.—We understand that at the Privy Council held by her Majesty at Windsor Castle yesterday, a proclamation was agreed upon for the proroguing Parliament from Thursday, the 12th of December, to Tuesday, the 4th of February, then to meet for the despatch of business.—*Standard.*

THE MAGISTRATE.

Summary.

Some cases of great interest to magistrates will be found among the reports.

CENTRAL CRIMINAL COURT CALENDAR.

[The 133rd Session, and 1st of the present mayoralty.]

A summary statement, descriptive of the various offences with which the prisoners for trial at the present session of oyer and terminer, and gaol delivery of Newgate, and the other prisons in the jurisdiction, severally stand charged :—

Stealing goods and moneys in dwelling-houses, 9; ditto from the person, 17; ditto by domestic and other servants, 25; feloniously uttering counterfeit coin, 5; unlawfully having the like in possession, with intent, &c. 2; ditto, having a mould in possession to coin the same, 2; forgery and uttering forged instruments, 1; housebreaking and larceny therein, 2; unnatural offence, 1; bigamy, 1; burglary, 6; cutting and wounding, with intent to murder or do grievous bodily harm, 18; embezzlement by clerks and servants, 7; horse stealing, 1; manslaughter, 2, murder, 1; misdemeanor, 2; rape, 1; receiving stolen property with a guilty knowledge, 4; robbery on the public way, 2; ditto with violence, 2; sheep stealing, 2; shopbreaking and larceny, 1; obtaining goods and money by false pretences, 1; ass stealing, 3; child stealing, 1, administering poison, 1; conspiracy, 5; assault with intent, 2; ditto upon children, 2; larceny, 60.

Committals.—London, 43; Middlesex, 99; Surrey, 26 Kent, 12; Essex, 1.—Total, 181.

State of her Majesty's Gaol of Newgate, Saturday, November 23.—Prisoners for trial at these sessions, 144 males, 37 females; ditto under sentence of imprisonment, 14 males; ditto whose judgments are respited, 3 males, 1 female. Total, 199—161 males, 38 females.

BUCKS NEW COUNTY ASSESSMENT.

TO THE EDITOR OF THE TIMES.

Sir,—As at this time there is a great question as to what proportion each description of property contributes to poor and county rates, I send you an analysis of a valuation just concluded by me of all the property in the county of Bucks, which was made by me under the direction of the county magistrates, and confirmed by them at an adjourned quarter sessions held at Aylesbury on the 22nd inst.

If you consider this communication worth a place in your paper, you are at liberty to insert it.

I am, Sir, your obedient servant,

HENRY COATES.

22, Assembly-row, Mile-end road, London, November 24.

	£
Land, farm-houses, agricultural buildings, tithes, tithe-rent charges, and saleable underwoods	571,698
Houses and appurtenances	130,043
Railways	44,247
Canals, wharfs, mills, factories, breweries, and maltings	10,446
Total..	£756,434

Beech-woods, timber, and trees not included, being exempted from poor-rates.

This shews the Land to contribute more than 3-4ths.

Houses, about ..	..	1-6th.
Railways, about	..	1-17th.
Canals, wharfs, mills, &c.		1-72nd.

Downing-street, Nov. 22.—The Queen has been pleased to appoint William Henry Moore, esq. to be stipendiary magistrate for her Majesty's settlements in the Falkland Islands.

Kent Winter Assizes.—The number of prisoners for trial at this assizes is at present 42, a considerable number of whom are charged with very serious offences. There are no fewer than seven indicted for wilful murder; of these one is the unfortunate Richard Dadd, who is under confinement in a lunatic asylum; five others are the Clarks, charged with the murder of a policeman at Dover; and the seventh, George Cobus, aged 19, charged with the murder of his father at Ash Besides these, a man named Stephen Wood is charged with killing and slaying Giuseppe Bianchi at Sittingbourne There is one indictment for arson, one for cutting and wounding, four for forgery, one for housebreaking, &c. *Maidstone Journal.*

The New Police Courts.—The removal of the business from Union-hall Police Court to the new building lately erected at Stone's-end, will take place on Monday, the 23rd December. The new court at Kennington, for Lambeth, Clapham, and the south-western districts, will not be completed before Lady-day.

The Lord Warden of the Cinque Ports has appointed Mr. Francis Sinley Sell, to be body Serjeant-at Arms and Marshal of Dovor Castle.

The following building is certified as a place duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm 4, cap. 85 :—The Wesleyan Chapel, Holywell, Flintshire; J. Oldfield, superintendent registrar.

THE LAWYER.

Summary.

We are again compelled to curtail all matters not of immediate moment, to admit the reports, which will be found peculiarly interesting and instructive. The *Morning Chronicle* has angrily denounced what it has been pleased to term "a job," in the Ecclesiastical Courts, and if the facts be as stated the affair certainly assumes that complexion. As it is really a professional question, we quote the comments of our contemporary, which, however, must be received with an allowance :—

It would seem that even the signal failure of the great job of last session (we mean the Ecclesiastical Courts Bill) has not deterred the author of that measure, the Right Honourable John Nicholl, M.P. from again mixing himself up with a new job in Doctor's Commons. Great complaints have been made that the principal offices in these courts are held by members of the same family; and, though it is universally admitted that Sir H. Jenner Fust, a relative of the Right Honourable John Nicholl, is an excellent judge, the public do not consider it to be altogether seemly, that among the advocates, and proctors, and registrars, should be found the near relatives of a judge, however eminent he may be. At any rate promises were made during the debates on the Ecclesiastical Courts Bill that this system of treating a court of justice as if it were a family estate should be put an end to.

The appetite, however, of the Nicholl and Jenner families does not yet appear to be satiated. The death of Mr. Iltid Nicholl has created a vacancy in the office of Queen's Proctor. The interests of the public require that this office should be filled by a proctor of the greatest experience and ability. It is, however, stated now, that the Right Hon. John Nicholl has recommended to the government a list of proctors, all of whom are members of the family out of whom the fortunate one is to be chosen, but not one of whom, we venture to say, however respectable in private life, would have occurred to him, if experience in the profession were the only test. The following are the names.

Mr. Nicholl, cousin to the Right Honourable John Nicholl.

Mr. Dyke, son-in-law to Sir H. Jenner Fust.

Mr. Fox, ditto ditto.

Mr. Jenner, son to ditto.

Mr. Dyneley, cousin to ditto.

We hope it is not too late to prevent the perpetration of this rank job. There is no want of experienced and able proctors, either Tory or Whig, from whom the Premier can make a selection. We trust that Sir R. Peel will disregard the advice of the Nicholl and Jenner families, and ask any experienced professional man what proctor he would employ to conduct a suit in Doctors' Commons, and let the appointment be given to the proctor of the greatest experience, though he may not happen to be one of *the* family.

The following letter is interesting, and deserves to be placed among the archives of the Lawyer :—

MALPRACTICES OF THE BAR.

TO THE EDITOR OF THE MORNING CHRONICLE.

Sir,—The public and the Profession are indebted to you for your fearless exposure of some recent cases of malpractice at the Bar. You suggested, upon one occasion, that the inns of court should "disbar" any person who might be proved to have been guilty of misconduct. At the time you made this suggestion I heard a doubt expressed as to whether the inns of court had this power. Upon this point permit me to trouble you with a few observations.

In the first place let me refer you to Booreman's case, which is thus shortly reported in March, who has given to the profession the cases taken from the 15th to the 18th years of the reign of Charles I.

"Booreman was a barrister of one of the Temples, and *was expelled the house*, and his chamber seized, for non-payment of his commons; whereupon he, by Newdigate, his counsel, prayed his writ of restitution, and brought the writ in court ready framed, which was directed to the benchers of the said society; but it was denied by the Court, because there is none in the inns of court to whom the writ can be directed, because it is no body corporate, but only a voluntary society, and submissive to Government; and they were angry with him for it, that he had waived the ancient and usual way of redress for any grievance in the inns of court, which was by appealing to the judges, and would have him do so now."

That a wholesome supervision was exercised by the benchers over the members of the different inns of court appears from the earliest legal antiquaries. Dugdale, in his Origines Judiciales (141), calls them "nurseries or seminaries;" and further states (324), that exercises were regularly performed. Now all this implies control and supervision; but to put the matter beyond doubt, we have but to quote the Mirror of Justices, written in French long before the Conquest, in which, in the chapter entitled Abuses of the Common Law, are the following words :—

"It is abuse to *suspend a pleader* if he be not attaint of a trespass, for which he is condemnable to corporal punishment."

So that thus early the power of suspension appears to have been exercised. This view is also borne out be Fortescue, Chief Justice, in the time of Henry 6, in his work "De Laudibus Legum Angliæ," wherein he says, p. 114, that the members of the inns of court have a special regard to the preservation of their honour and fame. These institutions are, says he, "an university or school of all commendable qualities." And in another passage he broadly states :—

"Offenders are punished with none other pain but onely to be amoved from the company of their fellowship. Which punishment they do more fear than other criminal offenders do fear imprisonments and irons. For he that is once expelled from any of those fellowships in the innes of court, is never received be a fellow in any of the other fellowships."

This view is also borne out by another passage to the Mirror, in which it is said—

"A pleader is suspendable when he shall do wrong or falsity, or move or offer false corruptions, deceits, leasings, or falsities, or if he is attainted to have received fees of two adversaries, and if he say or do anything in despite or contempt of the court."

Lord Coke, in his Commentary (2d Inst.) on the 29th chapter of the Statute of Westminster says :—

"Before this statute, in the irregular reign of Henry 3, serjeants, apprentices, attorneys' clerks of of the King's courts, and others, did practise and put in use unlawful shifts and devices, so cunningly contrived (and especially in the cases of great men), in deceit of the king's courts, as oftentimes the judges of the same were, by such crafty and sinister shifts and practices, inveigled and beguiled, which was against the common law, and therefore this Act was made in affirmance of the common law."

The reader will not fail to observe, on reference to the statute itself, that after the word "serjeant" there is a comma, and then comes the word "counter," though both words are joined together without any comma by Lord Coke in his Commentary. But in order to shew that there can be no mistake as to the word "counters," Dugdale and the Mirror may be cited to prove that counters were pleaders, and that apprentices, counters, pleaders, and utter or outer barristers, were all indifferently used as signifying one and the same thing.

"The ancientest mention of an apprentice in this sense," says John Selden, "which our published books have, is in 1 Edw. 3, fol. 17. The name was used for practisers, and *apprenticii ad barros* are barristers in the ridiculous verses used by Andrew Horne before his Mirrour aux Justices."

In another passage Selden says—"

"Indeed, the study of the common law hath not place in our Universities of Oxford or Cambridge, because another university (the innes of court) is appointed."

Thus implying a governing body, and regular discipline, supervision, and control over the members. All doubt, if any could exist on the subject, is dispelled by the observation of Lord Coke, that serjeant is a general word, and therefore counter is added to it. And counter he defines as narrator of the count or declaration, which duty, it may be added, is always performed by an outer or utter barrister not of the dignity of the coif, or of one of her Majesty's counsel. The words of the statute, "*ou autre*," however, greatly extend its operation, and Coke, in commenting on these words, says:—

"This extendeth to apprentices, attorneys, clerks of courts, or any other. And if an attorney ought not wittingly to plead a false plea, *a fortiori* a serjeant, or an apprentice, ought not to doe the same. And this artificial deceit is of all other the worst, for hereby the matter is so tricked, shadowed, and heightened by colour of painted art, as thereby the judges themselves are abused and beguiled, and the punishment extends as well to the apprentice as to the serjeant."

That this was the enlarged reading given to the statute 103 years ago, appears from the case of one Mitchell, an utter or outer barrister and justice of the peace, who was considered by Lord Hardwicke to be a serjeant counter, who had been guilty of malpractices by the Statute of Westminster, and who in consequence was not allowed to be heard any more in the profession. The report is thus given in 2 Atkins, 173:—

"Mr. Justice Mitchell [he was a justice of the peace as well as barrister] this day, by petition, prayed to be discharged out of the custody of the Fleet, as a close prisoner within the walls thereof. He was committed for being a principal contriver in marrying Miss Hughes, a ward of this Court, a fortune of 30,000*l.* to a schoolmaster at Islington, one Science, by trade a watchmaker.

"As to Mr. Mitchell's submission to be restrained as acting as a barrister, I shall at present, said Lord Chancellor Hardwicke, give no other directions but that, according to his own submission, he shall be restrained from acting as such till further orders. Because, from any inquiries that I have hitherto made, I am not satisfied what is the proper course to remove him from practising as a barrister.

"If Mr. Mitchell had continued a solicitor there had been no difficulty, for the ready and proper way would have been to have struck him out of the roll of solicitors; and surely it would be very hard when he has advanced himself to a degree of greater rank and honour in the law, that there should not be some precedents for degrading a person who, by his malpractices and misbehaviour, has rendered himself highly unworthy of the character he has taken upon him of barrister-at-law.

"But whether this ought to be done by disbarring him, or whether the Court, by its own power and authority will silence him for the future, I shall not at present determine, but have already mentioned it to Lord Chief Justice Lee, who will assist me in finding out precedents in such cases.

"The Statute of Westminster, 1, c. 29, says that attorneys and serjeant counters who have been guilty of any malpractices, and have acted unbecoming their Profession, may be silenced, and not be allowed to be heard any more in the way of the Profession.

"My Lord Coke, in his second Institute and Exposition upon Westminster, 1, c. 29, p. 214, is clearly of opinion that apprentices at law, which is another name for barristers, are included under the head of serjeant counters."

Mitchell was afterwards, as appears from a judgment of Lord Hardwicke in Ambler's Reports, struck out of the commission as justice of the peace, and prohibited from practising at the bar.

I am, Sir,

Temple, Nov. 8. ONE OF THE PROFESSION.

LEGAL INTELLIGENCE.

QUESTIONS AT THE EXAMINATIONS.

Michaelmas Term, 1844.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. One Anderson owes Baldwin and Crompton 100*l.* Baldwin and Crompton bring an action against him to recover it. Baldwin alone owes Anderson 100*l.*—Can Anderson set off the 100*l.* due to him from Baldwin as an answer to Baldwin and Crompton's action against him? And if not, why not?

6. Whilst A is riding in his carriage, his coachman in driving knocks a man down, and injures him. Upon another occasion, when A is not in the carriage, his coachman does the same thing.—Can the party injured bring an action of trespass against A in both, or either, and which of these cases?

7. A servant's wages are payable quarterly, and have been paid to Lady Day 1844. Between Lady Day and Midsummer 1844, namely, on 1st of May, the servant misconducts himself, and for such misconduct is turned away by his master without warning.—Is the servant entitled *pro ratâ* to wages from Lady Day to May?

8. A traveller on his journey stops at an inn and desires to put up for the night; the landlord, although he has room in the house, refuses to receive him.—Is, or not, the landlord warranted in so doing?—and if not, has the traveller any and what remedy against the landlord in respect of such refusal?

9. Is there any separate jurisdiction belonging to each of the superior courts of common law not possessed by all the courts in common?—If so, state what is the separate jurisdiction possessed by each court.

10. John Wilson sues Amelia Henderson for 20*l.* due to him for goods sold and delivered. Amelia appears and pleads coverture as an answer to the action.—Can she appear and plead by an attorney, or must she appear and plead in person?—and if the latter, state the reason why.

11. A warrant of attorney, dated 21st of July, 1841, authorized judgment to be entered up "as of Trinity Term last, Michaelmas Term next, or of any subsequent Term." Judgment was signed in August 1841.—Was this judgment regular?

12. A enters into a bond in the penal sum of 1,000*l.* conditioned for payment of 500*l.* and interest; B assigns the bond by deed in writing to C; A does not pay his bond, and it becomes necessary to sue him. In whose name should the action against A be brought? and state the reason for the answer.

13. Is there any difference in the extent of the liability of an acceptor of a bill of exchange as between himself and third parties, and as between himself and the drawer?

14. A brings an action against B for recovery of a disputed debt; after action brought the cause is referred to an arbitrator by a judge's order; before award made A wishes to revoke the arbitrator's authority. Is he at liberty to do so of his own will, or must he have any and what leave?

15. A commits an assault upon B, and before action brought B dies. Can B's executors or administrators sue A for the recovery of damages in respect of the assault committed upon B?

16. Assuming it to be necessary in an action brought to give evidence in letters patent under the great seal and the probate of a will, in what mode is the proof to be established?

17. Can a person interested in the result of a cause be examined as a witness on the hearing of the cause? and does it make any difference that the person to be examined is a party to the record?

18. A is indebted to B 15*l.* B sues A and recovers final judgment for 15*l.* debt, and 27*l.* costs. Has B his election to issue execution against the goods and effects, or against the body of A, or is he limited to one only of such remedies, and to which?

19. Assuming an attorney for a plaintiff or defendant, by negligence or unskilfulness, so to misconduct his client's cause as that the client loses his cause. Has the client any remedy by action against the attorney? and if so, in what form of action must he sue him? and has he an election of more than one form of action?

III.—CONVEYANCING.

20. Of what estate is a widow entitled to dower? and how is a purchaser (married before or after 1st of January, 1834) to prevent his widow from being so entitled?

21. What is the difference between a jointure and a dower? and how does each arise?

22. Who is the person entitled to any and what estate by the courtesy of England?

23. State the different species of property, and how are such properties legally classed?

24. How are such properties respectively alienated or transferred?

25. A B purchases freehold land of C D, and such land is duly conveyed to A B in fee, and afterwards mines are discovered thereunder, in whom are such mines legally vested?

26. Suppose A grants a piece of water to B, what is the extent of B's estate therein?

27. A grants a lease to B of certain hereditaments for lives. B grants underleases of those hereditaments, and afterwards is desirous to have a further or renewed lease from A of the premises, how is that to be effected?

28. A testator appoints C and D executors of his will. C renounces probate, and D proves the will alone, and dies in the lifetime of C. Who is the testator's personal representative?

29. State the general outline of the form of a conveyance of a fee-simple estate.

30. Also the outline of the usual form of a lease by the freeholder of a house for a term of years.

31. If A has a decree in equity against B for the payment to him of a sum of money, how is that to be made a charge upon B's estate?

32. D is a rector, and has sown part of the glebe with wheat, and dies before harvest-time, to whom will this crop belong, and what is such crop denominated?

33. State in what case a lessee under a lease by a tenant for life would, and would not, be entitled to such a wheat crop, where such tenant for life died before the cutting of such crop, or where such lease expired by effluxion of time before that period.

34. State how an estate tail is to be converted into a fee-simple estate, and by what parties.

IV.—EQUITY, AND PRACTICE OF THE COURTS.

35. Can the prochein Amy of an infant sue *in formâ pauperis*, or can any objection be sustained to such prochein Amy on the ground of his poverty?

36. Can a married woman in any and what case institute a suit as a *feme sole*?

37. Is the wife a necessary party to a suit in equity for recovery of property accruing to her after marriage, and is there any difference in the rules of law and equity in this respect?

38. Upon what principle is it decided whether a defence shall be made by plea or demurrer?

39. What is multifariousness? and what is the mode of defence to a bill objectionable on that ground?

40. Will a court of equity make any difference in its decision on an objection taken to a next friend of a married woman, or an infant, on the ground of the next friend being in indigent circumstances; and if so, why?

41. If a sole plaintiff becomes bankrupt, what proceedings is it necessary a defendant should take to free himself from the suit?

42. Can an alien in respect of any, and what interests, institute a suit in the English courts?

43. State the different disabilities by which a person may be hindered from suing in courts of equity, and the two distinguishing characters of these disabilities.

44. Is a bankrupt a necessary party to a bill filed against the assignees?

45. What is the effect of a plaintiff amending the original bill before answering a cross-bill?

46. State what matters arising after filing a bill can be introduced on the record by means of an amended bill.

47. Is the Attorney-General a necessary party to a suit, the subject-matter of which is a legacy given to a charity already established?

48. In what case is the signature of counsel to an answer unnecessary?

49. State the different parts of a bill.

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. When was the last statute for amending the laws relating to bankrupts passed?

51. What description of persons are liable to be made bankrupts?

52. What is the amount of debt in respect of which a single creditor can petition to make his debtor a bankrupt?

53. What is the amount of debt in respect of which two or more creditors can petition to make the debtor a bankrupt?

54. What is the mode of proceeding to obtain a fiat?

55. What is done at the first and second meetings respectively under a fiat?

56. How are the creditors' assignees and the official assignees respectively appointed?

57. What are the respective duties of the creditors' assignee and the official assignee?

58. Can contingent debts not actually due at the time of the bankruptcy, in any, and if any, in what cases be proved under the fiat?

59. In whom is the power of granting or withholding a bankrupt's certificate of conformity vested?

60. What advantage does the bankrupt derive from obtaining his certificate?

61. What courts have jurisdiction in bankruptcy, and to what court is the ultimate appeal?

62. Is a bankrupt entitled by law to any, and if any, what allowance out of his estate?

63. In whom is the right of appointing the solicitor to carry on the proceedings under a bankruptcy vested?

64. Have the assignees of a bankrupt any power to surrender leasehold premises held by the bankrupt without the consent of the lessor?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. What is an indictment, and for what offence does it lie?

66. What is the distinction between simple and *compound* larceny?

67. Explain the nature of the proof required to maintain an indictment for robbery.

68. Is there any, and if any, what rule, as to the admissibility to bail in cases of felony?

69. What proof is requisite in order to excuse a person from punishment on the ground of insanity?

70. How, as respects evidence, and by what number of jurors is an indictment found in the first instance?

71. Is any, and if so, what protection afforded to a married woman who has committed a crime?

72. What is the distinction between an accessory *before*, and an accessory *after* the fact?

73. Is there any plea besides that of "not guilty" which a prisoner may plead to an indictment; and if so, what is such plea?

74. In what case are the dying declarations of a party deceased receivable in evidence?

75. What is piracy?

76. What is burglary, and how is it punishable when accompanied with and without violence?

77. What is homicide, and in what does it differ from murder?

78. What is the rule of law as to inferring a guilty intention in parties accused?

79. What is the law respecting the support and maintenance of bastard children, and how and by whom is the law administered?

HABEAS CORPUS IN JERSEY.

The following is the judgment of the Royal Court of Jersey on the subject of the writ of habeas corpus lately issued in the case of Mr. C. C. Wilson. The question, as will be seen on a perusal of the judgment, is, whether an Act of Parliament can rescind an ancient charter; the Act of Parliament is, of course, against the assumptions of the Court, the old charters of Jersey are in their favour:—

"At the Royal Court of Jersey, in the year 1844, on the 13th day of November. The Queen's Attorney-General having read to the Superior Court a report of the Deputé Viscomte, shewing that on Monday last he received from Mr. J. Kandich, the gaoler, a report informing him that on the said day he was served with a writ named habeas corpus, running as follows:—

"'Habeas Corpus cum causa.

"'Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith. To John Kandich, Keeper of our Prison of Jersey, in the Island of Jersey. Greeting,—We command you that you have the body of Charles Carus Wilson, detained in our prison, under your custody, as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, in our Court before us at Westminster immediately after the receipt of this writ, to do and receive all and singular such matters and things which our said Court shall then and there consider of him in this behalf, and have there and then this writ. Witness, Thomas Lord Denman, at Westminster, the 6th day of November, in the 8th year of our reign.

"'By the Court, "'ROBINSON.'"

and endorsed thus:—

"'By Rule of Court.

"'The amount of the expenses to be tendered to the gaoler for the bringing over of the within-named prisoner to be *5l.*, by the direction of Mr. Justice Patteson.

"'WILLIAM STEPHENS, 30, Bedford-row,
"'Nov. 6, 1844.' "'London.'

which had been served on him by Col. Davidson, who had, at the same time, given in his hands a paper commencing with—

"'Wednesday, the 6th day of November, in the 8th year of the reign of Queen Victoria,'

and terminating

"By the Court,"

as well as a Bank of England note, bearing the number 84,030, and the value of *5l.* sterling, all which documents the gaoler gave him at the same time; the whole, as contained more at length in said report, lodged *au greffe*.

"Seeing: That the constitutions issued by King John after the separation of the Duchy of Normandy (of which the Channel Islands are the only remaining parcel) from the Crown of England, declare in positive terms that the 12 jurats *(coronatores juratos)*, in the absence of the itinerant justices, and concurrently with said justices, when in the country, must judge all causes in this island, of what nature soever they may be: that this exclusive and independent jurisdiction has been recognized and confirmed (with our other privileges) by the greater number of our Kings, and more particularly by Edward I. Henry III. Edward II. Edward III. Richard II. Henry IV. Henry V. Henry VI. Edward IV. Henry VII. Henry VIII. Edward VI. Mary, Elizabeth, James I. Charles I. Charles II. and James II.—

"That the King Charles II. to whom, in the days of his adversity, the island was happy to give shelter, saith the charter, bearing date from Westminster, the 10th October, in the 14th year of his reign—

"'We give and grant unto the said Bailli and Jurats, and to all and every other magistrates, ministers, and other persons whatsoever, constituted into any charge and office in said isle, authority, full, entire, and absolute, with power and faculty to take cognizance and of themselves to give justice in all sorts of pleas, suits, differences, actions, quarrels, and causes whatever, mooted in said isle and aforementioned places, whether personal, real and mixed, or criminal and capital, there and not elsewhere to plead, perfect, pursue, and defend all and every such, and to proceed with or abandon them, to examine, hear, terminate, absolve, condemn, decide them, and cause them to be executed according to the laws and customs of the aforesaid isle and maritime places as heretofore practised and approved, without evocation or appellation whatever, except in cases reserved for our Royal cognizance, according to the ancient custom of the island and places above named, or which, of our right and Royal prerogative, must be reserved unto us. Which authority except in the reserved case, we give for us and our aforesaid heirs and successors, commit, concede, and confirm, by these presents, unto the said Bailli and Jurats, and others so amply, freely, and entirely as the Bailli, Jurats, and others aforesaid, or any of them have ever heretofore formally and legitimately exercised, performed, or possessed, or must have exercised, performed, or possessed, or should or could legally, or could and did. We further will, and by these presents, for us, our heirs and successors, concede unto the said Bailli and Jurats and other manens and inhabitants of the said isle and maritime places aforementioned, that none of them in future, by any brief or process issuing from our courts in our kingdom of England, or any of them, be summoned, apprehended, called in judgment, drawn, or in any other manner compelled to appear or answer out of the isle and places aforementioned, before any of our judges, justices, magistrates, or officers, or others for or because of any thing, difference, matter or cause whatsoever, emanating from said island, so that each and every of the said insulars may have faculty and power to reside, dwell, and live in peace, legally and with impunity in the said isle, and await justice therein, all such writs, warrants of apprehension, briefs, and processes, notwithstanding; and that without penalty, corporeal or pecuniary, fine, ransom, or mulct, which for this cause they might incur or forfeit. And similarly that no offence, cause of contempt, or contumacy may therefore unto them be inflicted, imposed, or otherwise, adjudged by us, our heirs, or successors.'

"Seeing: that the code of laws issued by the States of this country, and confirmed by an order in council of his late Majesty King George III., of the 28th of March, 1771, saith, that—

"'The laws and privileges of the island are confirmed as of old, and no acts, warrants, or letters, of what nature soever they be, shall be executed in the island until they have been presented to the Royal Court, in order that they be registered and published; and in the event that such orders, warrants, or letters be found contrary to the charters and privileges, and hurtful to the said island, the registration, execution, and publication thereof may be suspended until the case shall have been represented to his Majesty, and his gracious will thereon be signified. As to the acts of parliament wherein the island is mentioned and interested, they must be exemplified in form under the great seal of England, sent to said isle, and there registered and published in order that the inhabitants may have knowledge thereof to conform and avoid the penalties for transgressions.'

"Seeing further, that in the year 1832 two acts of parliament touching the writ of habeas corpus—namely, that of the 31st year of the reign of Charles II., and that of the 56th year of the reign of George III., were transmitted to the Royal Courts of Jersey and Guernsey, with orders from Council ordering the registration thereof;

"That the said Royal Courts, viewing the provisions of these acts as aiming at the privileges of these islands, suspended the registration thereof, and referred the subject to the States of said islands, by whom deputies were appointed to go to London, with instructions to present to the King's Government humble remonstrances against the registration of those acts;

"That the said deputies, having addressed energetic representations to Lord Melbourne, then Home Secretary, as well as to other members of the administration, succeeded in convincing these Ministers that force of law could not be given to these acts without producing results for these islands of a disastrous nature, and that, in consequence, the Government, acceding to the just claim of the deputies, did not press for their registration;

"That since that period no attempt has been made to extend the provisions of these acts as to these islands, wherein they have remained powerless;

"That the execution of the writ of habeas corpus, or of any orders, summonses, or sentences of her Majesty's courts in England, would be a serious infraction of the charters and privileges granted to the inhabitants by their grateful princes as rewards for their unbounded devotedness and of their ancient and unalterable loyalty;

"That it would deal a fatal blow to the jurisdiction and prerogatives of the Royal Court, the power of which has been recognized as supreme by those same charters, in all matters civil, mixed, and criminal, which originate therein, whatever be their nature (save some cases specially reserved for the cognizance of royalty), the Sovereign in his council alone having the right to confirm, modify, or annul their decisions;

"Seeing that there is every reason to believe the judge who granted the said order was deceived by a dissimulation and concealment of this country's privileges, and of the jurisdiction and attributes of this Royal Court;

"That if the said Wilson was displeased with the judgment of the 23rd of September last, he might have caused a re-examination and cancelling thereof by means of a remonstrance before the full Court, or, as a last resource, by *doleance* (complaint) to her Majesty in Council:—

"The Court unanimously, and conformably with the conclusions of the Queen's Attorney-General, empowers the Viscomte to order the gaoler not to obey the said writ of habeas corpus.

(From the *Jersey Gazette* of Nov. 25.)

We have the pleasure of announcing that an offer from the Royal Court to Mr. Wilson, made through Advocate Hammond, to liberate him on his own bail, has been this afternoon unhesitatingly spurned. By no trick or device can Mr. Wilson be induced to damage the cause of which he is the representative.

TO THE BRITISH RESIDENTS IN JERSEY.

Gentlemen and Friends—Let not the *apparently* unfavourable news which arrived from London by this day's mail occasion you any anxiety. It has had no effect upon my spirits, nor upon my hopes, nor upon my conviction, that at the end of, perhaps, a long vista, more or less varied, we shall safely arrive at last at the Temple of Victory and of Peace. Before the week is closed I hope to offer to you for your perusal the affidavit of the Procureur de la Reine, on which his application to the Bail Court was based. In the meantime let us not prejudge its contents or its effects. "Sufficient unto the day is the evil thereof."

Remember how our foes chuckled day after day because the habeas corpus did not arrive. Remember their looks when it had arrived. Did I prophesy falsely that it would come? Judge me, then, for the future by the past. I prophesy again. I shall be discharged from this vile custody sooner than you expect. And I add to this prophecy, that I shall be discharged by habeas corpus, and by habeas corpus only—or in a coffin.

Fancy not that I hold my life so cheap that I would commit suicide. Fancy not that I hold law to be so despicable that I would accept my liberty upon any terms but lawful terms; or that I would for a weeks of disgraceful freedom enter into a recognisance at the instance of the corrupt Royal Court in Jersey, or at the command of *any* court in London.

It shall only be by a coffin or by habeas corpus that I will be *removed* from this custody.

I have the honour to be, gentlemen and friends, your faithful servant,

CHARLES CARUS WILSON,
A prisoner by lawless violence.

Jersey Gaol, Nov. 24, 1844.

CENTRAL CRIMINAL COURT.

The following incident occurred on Thursday.

Reg. *v.* Henry Miller and others for conspiracy.

On the prisoners being put to the bar, Henry Miller applied that the trial might be postponed until counsel was employed for him.

The COMMON SERJEANT.—Indeed I shall do no such thing.

Miller.—I have employed an attorney to protect me, and now I have no one here. I hope I shall have my money returned.

The COMMON SERJEANT.—How is this, Mr. Jonas?

Mr. *Clarkson* (who appeared for one of the prisoners).—The prisoner says that he has given money to Mr. Games, and Mr. Games says that he has never received any.

Mr. *Jonas.*—There is a sum of money entered to the account of the prisoner in the governor's book.

The COMMON SERJEANT.—Then you will have your money back; let it be returned to him.

The trial then proceeded, and eventually Miller and another were convicted. When the former was called up for judgment he exclaimed very emphatically, "This all comes of my being without any one to defend me! I am brought up like a sheep to be slaughtered without being able to help myself. And yet money has been left at the gate to defend me, and I have nobody."

The COMMON SERJEANT remarked that he thought the verdict was both legally and morally correct, and pronounced a sentence of transportation for seven years.

[Such was the sum and substance of what took place in this case, in regard to the employment of counsel and solicitor. No further explanation was given nor investigation made than what appears in the above obscure details. We should like to know what is the meaning of "leaving money at the gate," of which we have already heard a good deal. If a prisoner has means to employ a solicitor, why should he "leave them at the gate?" Why not hand them directly and personally to his legal adviser? The statement of the prisoner will certainly corroborate the suspicions already afloat as to the means taken to secure a monopoly of prisoners' defences. Will Mr. Games look to this?]

COURT OF QUEEN'S BENCH.

MICHAELMAS TERM—EIGHTH VICTORIA, NOV. 25.

This Court will sit at a quarter-past nine o'clock in the morning, on Wednesday, the 4th day of December next, and will give judgment in cases then pending in the new trial, special, and Crown papers.

By the COURT.

IN THE EXCHEQUER OF PLEAS.

MICHAELMAS TERM.—EIGHTH VICTORIA, NOV. 25.

The Court will, on Tuesday, the 10th day of December next, at ten in the morning, hold a sitting, for the purpose of giving judgment in cases pending in the new trial and special papers; and also to give judgment in all motions for rules *nisi* for new trials, or otherwise, in which judgment has not yet been given.

By the COURT.

Read in open Court the 25th November.

Samuel Dare, Master.

FOREIGN-OFFICE, Nov. 25.—The Queen has been pleased to approve of Mr. John Ross as Consul at Malta for the Grand Duke of Mecklenburgh-Schwerin.

SIR W. FOLLETT.—The Attorney-General, Sir W. W. Follett, is expected in England shortly from the Mediterranean. A Government steamer will be placed at the disposal of the learned gentleman, to convey him to England or Marseilles. Sir William is decidedly better.—*Sun.*

The Prize for the English Essay, "On the Abuse of Political Theories," given by Trinity College, Cambridge, has been adjudged to the Honourable William Frederick Campbell, eldest son of Lord Campbell and Lady Stratheden.

MIDDLE TEMPLE, Nov. 23.—The number of "proposals for the bar, of those qualified to be called in point of having kept their terms," was twenty-two; of that number, however, one was not called. The undermentioned gentlemen took the usual oaths of allegiance, &c. before several benchers of this honourable society, and were admitted; namely, Mr. Algernon Sidney Aspland, Mr. William Sanders, Mr. Cornelius William Moffatt, Mr. Henry Wilfrid Ellis, Mr. William Disney Oliver, Mr. James Brooksbank, Mr. Walker Edwards, Mr. Henry Dalton, Mr. Alfred James Horwood, Mr. Frederick Woodthorpe, Mr. Edward Wire, Mr. William Morgan, Mr. William Richard North, Mr. Matthew J. Bickdale, Mr. Charles Richard Weld, Mr. Henry Riddall, Mr. Henry Dawson, Mr. Edward Fector Matson, Mr. George Harding, Mr. Philip Morris, and Mr. John Woollett.

INNER TEMPLE, Nov. 22.—The call to the Bar of the undermentioned gentlemen took place this evening (Friday), when they were in the accustomed manner sworn in before several of the Benchers of this Honourable Society and admitted to the degree of Barrister-at-law:—Mr. Henry King, Mr. Alexander Bain, Mr. Henry Holt, Mr. Chas. Lemprière, Mr. William Hamilton Yatman, Mr. James Newton Goren, Mr. Richard William Fitzpatrick, and Mr. Oliver William Farrer.

LINCOLN'S INN, Nov. 22.—A further call to the bar was made this evening of the undermentioned members of this honourable society, who were in the usual manner sworn in before several of the benchers, and admitted to the degree of barrister-at-law:—Mr. Thomas Henry Farrer, Mr. Thomas Blanshard, Mr. Unwin Heathcote, Mr. Francis Barrow, Mr. Matthew Baillie Begbie, and Mr. John Frederic Standford.

IMPORTANT POINT IN CHANCERY PRACTICE.—It is not perhaps generally known by many equity members of the legal profession, that a short time back an important point was settled by the Lord Chancellor in respect of the future practice as to "motions of course." It appears that much doubt and uncertainty existed whether motions of course could be made during the sittings after Term as well as in Term, on any day, whether a "seal" day or not; but on the question coming before Lord Lyndhurst, he, after consulting the Vice-Chancellor of England, the Master of the Rolls, and Vice-Chancellor Knight Bruce, said—"The question argued before me yesterday was, whether the motion for a four order, which is a motion of course, could be made out of Term, except on a seal day, although in Term it might be made on any day. The rule was so laid down by Lord Eldon, and, indeed, it was carried so far, that even when the seal was continued for three or four days, it was not competent to make such a motion, unless the counsel was instructed on the first day of the seal. The question is, whether the practice has since been departed from." His lordship then discussed the authorities, and observed, that "in *Lord Chesterfield* v. *Bond*, the Master of the Rolls allowed a common injunction to go on a day not a seal day. I think (said Lord Lyndhurst) that analogy may with propriety be extended further, and that the same principle of public convenience which guides the decision of the Master of the Rolls in that case, applies equally to the present, and warrants me in laying it down as a general rule of practice for the future, that motions of course may be made out of Term, as well as in Term, on any day, whether a seal day or not. I have communicated on the subject with the Vice-Chancellor of England, Vice-Chancellor Knight Bruce, and the Master of the Rolls, and they all agree with me in thinking the analogy to which I have referred ought to be extended to all cases."

PETITION TO PLEAD "IN FORMA PAUPERIS."—The Lord Chancellor has had a petition presented to his lordship to sanction the issuing of that "writ," "which unto poor people," as the Act (21st Edward III.) states, shall be given for God's sake, and upheld by the aid of counsel learned in the law," in favour of the Widow Ackerlay, now or about 80 years of age, the lineal descendant of the Lord Chief Baron Sir Robert Atkyns, Knight of the Bath, whose race is now in default (since her right accrued 14 years) of heirs male from the Chief Justice Sir Edward Atkyns, the Norfolk branch. The lady in question (represented by Mr. Charles Ackerlay, her younger son, being the right "entail" issue in the female line from Robert (son of the Right Hon. Sir Edward Atkyns, brother to Sir Robert) and Elizabeth Edgecumbe, sister of George, first Lord Mount Edgecumbe, from which marriage emanate the present Chamberlaynes of Maugersbury, the Leighs of High Lee and Jodarel Hall, in Cheshire; the distinguished admirals Sir Charles and Sir Edward Hamilton, and Sir Graham Hamond, Baronets, and also the present families of the Lord Viscount Hood and Baron Bridport. The Lord Chancellor condescended to send a satisfactory intimation, on the breaking up of his court, through his secretary, H. J. Perry, esq.

THE CHANNEL ISLANDS SQUABBLE.—On Saturday morning last Mr. Le Breton, the Attorney-General, was despatched on a secret mission to London, for the purpose of using the best means he may be advised to adopt, to prevent the serious troubles which threaten to arise out of the obstruction which the Court has caused to the writ of *habeas corpus*. By a letter received from him on Thursday, it appears that his mission has not yet been attended with any favourable result. He has been acting on the defensive, and had retained a barrister with a watching brief to act on behalf of the gaoler when the motion shall be made in the Queen's Bench for an attachment against him. Mr. Le Breton was on Tuesday looking forward with great anxiety for an interview with the Home Secretary, which he had not been able to obtain, owing to Sir James Graham being with the Queen at Windsor. He was expected to be at his post on Wednesday, when, in all probability Mr. Le Breton would see him. We may, therefore, expect news on Sunday, not only respecting Mr. Le Breton's mission, but also as to what steps have been taken regarding the attachment. We have no doubt that the writ will be here on Wednesday or Thursday next. It will be seen that the States yesterday empowered Mr. Le Breton to act as their deputy, and that Mr. Godfray suggested that, as it might be some time before the question would be decided, the Court ought to liberate Mr. Wilson on bail, or discharge him entirely from custody.—*Jersey and Guernsey News.*

EVENING SITTINGS AT THE CENTRAL CRIMINAL COURT.—At a committee of the Court of Aldermen held on Saturday, the proposition of Alderman Wood to abolish the evening sittings of the Central Criminal Court for the trial of prisoners at the Old Bailey was taken into consideration; and it was unanimously resolved, that the experiment should be tried, commencing with the sittings in the month of December next. The consideration of the second part of Alderman Wood's proposition, as to having a third court for the greater despatch of business and the accommodation of the public, was reserved until the result of the experiment of abolishing the evening sittings should be ascertained.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.—At a full meeting of this Society, Sir George Stephen in the chair, it was determined that one of the many cases of professional misconduct brought under the consideration of the Society, should be selected for prosecution. Mr. G. Fitch, of Field-court, Gray's-inn, was formally appointed Secretary, and it was resolved that the offices of the Association be forthwith removed to some central and convenient situation. As full particulars will, we conclude, be formally announced next week, we forbear giving further particulars at present.

CORRESPONDENCE.

VEXATIOUS DEFENCES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am very glad to observe, by your last number, that the respectable body composing "the Metropolitan and Provincial Legal Association" have expressed their disapprobation of the practice of pleading, where *the attorney knows* there is not any defence. Time is the chief object of most defendants, without which they are probably unable to pay. A defendant may be punished, and frequently is, for pleading where he has no defence, when his object is only to gain time; and I beg to suggest the propriety of a rule that where the defendant offers to give the plaintiff, without risk of costs (which frequently fall upon himself), every advantage he could obtain by incurring that risk, the plaintiff should not be entitled to costs of further proceedings, after tender of defendant's consent to judge's order for payment of debt and costs, at or before the time judgment could be obtained if plea filed, unless default made.

Yours, faithfully,

Rugeley, Nov. 26, 1844. JNO. SMITH.

SELECTIONS FROM CORRESPONDENCE.

"QUID PRO QUO," directs attention to the growing evil of "CHEAP LAW-STATIONERS."

The judicious course you have pursued in exposing the tricks of sham attorneys, whose doings tend, not only to bring the Profession itself into disrepute, but also to infringe upon the legitimate emoluments of the respectable practitioner, induces me to hope that you will not fail to turn your attention to another class of men, not so dangerous indeed, but equally obnoxious,—I allude to cheap law-stationers. These fellows (and they are every day growing more numerous) are striving to do all the injury in their power to the respectable clerk, by offering to work for solicitors at about 50 per cent. under the ordinary and fair charges. The consequence is that the services of the hard-working underling in an office (already too badly remunerated) are still further undervalued, and his poor stipend reduced accordingly.

The Profession will stand convicted of gross selfishness if, after having endeavoured to root out the pestilent race of sham attorneys, it encourages, at the same time, cheap law-stationers. Solicitors' clerks are as much entitled to protection as solicitors themselves; and if principals desire their clerks to act honourably in their proper sphere, they should first set the example. These cheap stationers would not, I apprehend, be very nice about using the contents of any papers that a foolish lawyer might intrust to them, to his and his client's prejudice, if any thing could be gained by it. Let solicitors, as a body, set their faces against all encroachments upon fair and just remuneration, whether such encroachments are levelled against their own pockets, or the pockets of their dependants, and whilst they are *really* promoting their own interest by thus acting, cheap law-stationers will be compelled to resort to some *honest* mode of gaining a livelihood.

"A SUBSCRIBER" at Cheltenham thus comments on the *vexata quæstio* of "LETTER BEFORE ACTION:"—

In my letter to you, of the 18th ult. I expressed an opinion, that in cases where an actual demand of payment of the debt had been made of the defendant previously to the attorney's letter being written, defendant could not avail himself of a tender *afterwards made*, although before action commenced, because his plea must contain an averment, that he *was always ready* to pay, and plaintiff might reply a prior demand and shew that defendant was *not always ready*.

Your correspondent, Mr. Thorne, is of a different opinion; he states, "The plaintiff to a plea of tender *could not reply a prior demand*; but if a defendant *were ready to pay*, and tendered the debt, *upon the last demand* being made, *or at any time subsequently* before the issuing of the writ, the action might clearly be defeated by a plea of tender." Mr. Thorne has not quoted any authorities in favour of his opinion, but, with your permission, I will just quote one or two in favour of mine.

Chitty, in his General Practice, vol. 1, p. 508, says, "A tender cannot be effectually pleaded if *at any instant after* the debt became due the party was not ready to pay (and especially if, in the case of a bill or note, the debtor did not pay on presentment;) for if a tender be pleaded, the plaintiff *may reply a prior* or subsequent *demand*."

Holt, Chief Justice, in *Giles* v. *Harlis* (Ld. Raymond, 254), and Lord Ellenborough, in *Hume* v. *Peploe* (8 East, fully quoted in Chitty on Bills, 732) lays down the same law; and in *Rivers* v. *Griffiths* (5 B. & Ald. 630), also quoted fully in Chitty on Bills, 1134, plaintiff's replication to a plea of tender was, that defendant was not always ready and willing to pay, &c. which he endeavoured to support by proof of a prior demand; but proving that his prior demand was of a different sum to that tendered, he failed. No objection, however, was raised to his replication, and no doubt he would have supported it, if he had proved a demand of the right sum. Unless, therefore, these authorities are overruled, I must still adhere to my former opinion, that if a party tenders the debt, without the costs of the attorney's letter, where a previous demand has been made, the plaintiff may refuse to accept it, and proceed with his action. I am aware that where a tender has been *properly made*, and *is capable of proof*, it will effectually prevent the plaintiff from commencing or proceeding in any action; but the question is whether the defendant *can ever properly make* a tender, when he has not been at all times ready to pay.

TO SUBSCRIBERS.

The Publisher begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the Law Times *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* Law Times *for binding, to inclose any other books for the binder.*

The Publisher *respectfully intimates that Subscribers who desire to avail themselves of the advantages of prepayment, should transmit their subscriptions for the current half-year in the course of the next week.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

In reply to repeated applications, the Publisher *begs to state that he will readily procure, and inclose in the parcels he may have occasion to forward to Subscribers, any books or forms published in London.*

An Alphabetical Index to the Cases in the current Volume of the Law Times *always lies at the Office for the purpose of reference.*

The Volumes of the Law Times, *handsomely and uniformly bound, at 5s. 6d. each, if forwarded to the Office.*

THE LAW TIMES.

SATURDAY, NOVEMBER 30, 1844.

TO READERS.

This number contains the first trial of the new system adopted from the commencement of the last Term, for reporting all written judgments *verbatim*, by the aid of short-hand writers. Many of the cases in the Reports of this week will be found thus to be rendered of permanent value and authenticity, as containing the very words of the Judges. We hope that their length will not be found too great for the space we can devote to them.

As we presume that this information will more interest our readers than aught beside, we have again curtailed the usual miscellaneous matters that we may give it place. Hence the omission of much correspondence, of many articles and notices of new legal publications that are in type, and for which we pray the patience of contributors, authors, and publishers.

ADVERTISING ATTORNEYS.

From *Hill's and Playford's Almanac* published at Soham, we extract the following advertisement, which, however creditable to the ingenuity and literary powers of a tailor, are infinitely discreditable to a member of a profession.

[A Card.]
MR. CLAXTON'S
LAW AND GENERAL CONVEYANCING OFFICE,
REMOVED TO HIGH STREET, ELY,
(Next door to Mr. Catling's, Druggist.)

Freehold, Copyhold and Leasehold Conveyances, Mortgages, Deeds, Wills, Leases, Agreements, Purchase Contracts, Indentures of Apprenticeship, Notices to Quit, and all Legal Documents prepared on the shortest notice.

Estates disposed of by Public Auction and Private Contract; Debts recovered; Rents collected; Possession of premises obtained under the new Tenements Act.

And the general business of a Solicitor and Attorney attended to with punctuality and dispatch.

J. C. begs to return his thanks to his Clients, and the public generally for the numerous favours conferred upon him for the last fifteen years, and hopes by strict attention to his Clients' Interests, to merit the continuance of a share of the public patronage so long extended to his late Father and himself.

Attendance from Nine in the morning until Nine at night.

High-street, Ely, November, 1844.

"Punctuality and despatch," "begs to return his thanks to his clients and the public generally," "for favours received," "merit the continuance of a share of the public patronage," are expressions for which Mr. Claxton is evidently indebted to some cheap linen-draper in Ely.

Advertising almanacs seem to be quite the fashion.

In *Alderton's Commercial Almanac for* 1845 appears the following. Although the anonymous is preserved, some of our readers may perhaps enable us to trace the identity, and he shall find no mercy. The first part is not so bad, but the latter is altogether unprofessional.

LEGAL INFORMATION.

A gentleman who has been many years engaged in the practice of the Law and Testamentary business in particular, avails himself, through the medium of an Advertisement, to acquaint Executors and persons resident in the country, who have reason to believe they are entitled to property or legacies from parties deceased, or desiring information respecting the same, that he, having daily occasion to attend at the Will Office, Doctors' Commons, offers to peruse any Will, and forward an extract with an explanatory letter, furnishing every necessary information for the *moderate fee of seven shillings and sixpence.*

Instances are of frequent occurrence where landed property and pecuniary legacies have been irretrievably lost, in consequence of the inability or disinclination of persons to incur the risk of heavy law expenses.

The above charge of *seven shillings and sixpence* is not required to be paid until after the information has been forwarded, if a London reference be previous furnished.

Country Executors and Administrators may also consult the Advertiser upon all matters relating to their duties, and arrangements may be made for proving Wills, or obtaining Letters of Administration, and also for the satisfactory settlement of Executorship. Accounts without risk of litigation, on equally moderate terms.

Address (*pre-paid*), L. L. D., 2, Down-street, Piccadilly.

Our attention having been directed to an advertisement in the Law Times, from Mr. Buchanan, we find, on inspection, that it is certainly within the class which we have been denouncing. Accordingly we have directed the Publisher to return to Mr. Buchanan his money, and to decline for the future any advertisement that might bear upon the face of it any unprofessional aspect. We thank our correspondents for directing our attention to it. The advertising columns are under the sole jurisdiction of the Publisher; hence it had escaped our notice.

VERULAM SOCIETY.

We are sorry that we cannot even now announce the publication of the first number of the *Practice Cases*, which appear to be so greatly in request.

The truth is, that the reporter of the Bail Court alone appears to have preserved his notes of Trinity Term; *his* cases have been in type for some months, but they do not fill a number. The cases of the Term just concluded are not yet prepared for the press, although they are in rapid progress. We trust that next week we shall be able positively to announce the day of publication for the first number of a series for which the inquiries have been more numerous than for either of the others.

The members will be pleased to learn that the Verulam Reports have been frequently cited at Westminster during the last Term, and warm expressions of approval have been bestowed upon them.

The following suggestion has been made to us, and we request the members to give it their attention.

It is proposed to publish a series of works containing all the cases upon particular subjects decided during the last ten or twelve years, arranged under the various branches of the subject, and accompanied with explanatory notes, &c., so that in the compass of a small volume the practitioner may find in a moment all the actual law on that topic, in the very words of the Judges. It is supposed that this would be found extremely useful for reference and in courts, and still more so for the purposes of study, the actual cases, with the facts, being more readily remembered than the barren abstracts of them, to which voluminous text-books are compelled to confine themselves. The subjects suggested are such as these: "Cases on Bills of Exchange and Promissory Notes," "Cases in Mercantile Law," "Poor Law Cases," "Sessions Cases," "Cases on Evidence," "Cases on Pleading and Practice," "Real Property Cases," and so forth.

Should the design meet the approbation of the members, we should be inclined to make trial of one or two of these.

We hope it is understood that the prices of the publications of the Society are regulated according to the number of members who order them. The Reports would be reduced very nearly one-half if the number of subscribers were trebled. As yet the sale of each number does not repay the cost, and for this reason, that some members take some, and others take others; so that the total sale of each series is little more than half the number of members of the Society. Those who are able to do so, should take all the Reports for the first year or so, if only to aid the infancy of the Society. The cost to them individually will be very trifling, but the effect upon the prosperity of the undertaking of many such trifling aids would be enormous.

The following new members have been enrolled during the week:—

Sutton, W. S. Birmingham.
Pope, John, 2, New Milman Street, London.
Waters, R. Tredegar, Monmouthshire.
Forman, R. H. Greenwich.
Parker, P. S. Weobley.
Field, Edward, Norwich.
Burmester, John, 23, Old-sq. Lincoln's Inn.
Lucas and Powell, Newport Pagnell.

THE CRITIC.

New Books.

An Outline of the Practice in Lunacy under Commissions in the nature of Writs de Lunatico Inquirendo. With an Appendix, containing Forms and Costs of Proceedings. By Joseph Elmer, of the Office of the Commissioners in Lunacy. London, 1844. Stevens and Norton.

The subject of this volume is of sufficient importance, and the practice peculiar enough to demand a distinct treatise, and the call of the Profession could not have been better answered than by Mr. Elmer, who possesses opportunities for procuring practical information, which he has turned to good account and by judicious arrangement and industry produced a volume which will be the text-book and authority upon the law-practice of Lunacy.

The arrangement of the treatise is thus. Having shewn how the commission is to be applied for and obtained, he describes succinctly the proceedings under it, the verdict and inquisition, the reference of the subsequent proceedings to the commissioners, the inquiries as to heir-at-law, &c.; the petition for confirmation of the commissioner's report, and the order thereon. The author next proceeds to consider the security given by committees, their approval, then the grant of custody and the vacating of the same, the costs, the proceedings for provisional care and maintenance, as to the managing the estate or otherwise respecting the person or property of any lunatic; the passing of the committees and receivers' accounts, and the proceedings for determining which of the next of kin shall attend on the process before the commissioners. Thence he passes to the consideration of the discharge of a committee and appointment of a new one, to special orders of reference, the appointment of a receiver of the lunatic's estate, taking an account of the debts due from the lunatic, the deposit of and delivery of deeds. Lastly, he treats of a supersedeas of the commission, of commissions to examine witnesses, of proceedings on the death of a lunatic, of lunatic trustees, and the duties of committees.

An Appendix supplies an elaborate List of Forms,

and Tables of Fees and Costs, the General Orders and Statutes, and the Lunatic Visitors' Instructions to Solicitors and Committees.

The best recommendation of such a work is this outline of its contents. No extract can convey a fair idea of its value; but, because the information may be useful to our readers, we will take the instructions as to the duties of solicitors up to the finding of the verdict, when the subsequent proceedings are referred to the commissioners.

1. *The Application for the Commission.*

To obtain a Commission *de Lunatico Inquirendo*, a petition is presented to the Lord Chancellor. The petition, which is usually by a member of the family of the supposed lunatic (though a person not related may present it), must be signed by the petitioner, and attested by a solicitor duly admitted in the Court of Chancery. The petition is left with the Secretary of Lunatics, with affidavits in support of it. These affidavits are generally made by two or three medical men (physicians or surgeons) and by members of the family, or by other persons to whom the alleged lunatic is known, stating the particulars of the unsoundness of mind, and of the conduct and conversation by which it is shewn. They should also shew in general terms what is the nature and the amount of the alleged lunatic's property, and who are his nearest relations. If the alleged lunatic be married, and the application for the commission is not made by the husband or wife, it must be shewn that he or she (as the case may be) either assents to the proceedings or is acquainted with them. This assent may be given by letter, but the signature thereto must be verified by affidavit.

These affidavits, which must not be sworn before the petitioner's solicitor, are filed at the office of the Secretary of Lunatics and office copies taken. If the Lord Chancellor is satisfied with the evidence, and there is no opposition, an order is indorsed on the petition and the commission issues as of course. But if a caveat has been lodged, or the petition is by a stranger, or by one of the kindred without the concurrence of the husband or wife (if the alleged lunatic be married), the petition is set down by the secretary for hearing before the Lord Chancellor. The petition if by a stranger must be served on the nearest relations, or if it be by one of the kindred without the consent of husband or wife, must be served on husband or wife. When the petition has been duly served (and the service verified by affidavit if necessary), the matter is heard in court by the Lord Chancellor and an order pronounced thereon.

2. *Obtaining the Commission.*

The Lord Chancellor being satisfied, and the commission directed to issue, it is prepared by the Secretary of Lunatics and passed under the Great Seal, and is delivered to the solicitor who made the original application. The commission is engrossed on parchment with a 5s. stamp.

3. *Proceedings under the Commission.*

The solicitor having obtained the commission should take it, and the office copies of the affidavits, on which it issued to the office of the Commissioners in Lunacy, who will make an appointment for opening it. The following instructions are given by the commissioners for the guidance of the solicitor in preparing to execute the commission (viz.):—

"The solicitor should be able from previous inquiry to inform the commissioners what it is considered will be the most convenient place for holding the inquiry. It may be at the present residence of the supposed lunatic, if there be a room large enough for the accommodation of the jury, and also rooms for witnesses; or at some neighbouring court, or inn, where the necessary accommodations can be obtained; but it must be so arranged that the supposed lunatic can attend if desirous of so doing, and at all events that the jury may have easy access to see him. In a town the commissioners prefer a court, if there be one, to an inn, as leading to less expense.

"On the solicitor attending them with the above information, the commissioners will appoint a convenient day and place for opening the commission.

"When the commissioners have made such appointment, one of them will sign the precept and such number of subpœnas for witnesses as the solicitor may deem requisite. The solicitor should then take the precept to the undersheriff of the county to which the commission is addressed.

"It is desirable that the solicitor should, some days before the inquisition is held, deliver and read to the alleged lunatic a notice in writing of the intended inquiry, stating the time and place of its being held, and also explain to such person the nature of inquiry, and be able, on the execution of the commission, to prove that he has so done. The object of this notice and explanation is to prevent an adjournment, in case the alleged lunatic should, on appearing before the jury, express a wish to be represented before them by solicitor or counsel.

"The solicitor should also, before the time of opening the commission, have informed himself who are the heir and next of kin, what is the property to which the alleged lunatic is entitled; and who ought to be appointed committees, and what ought to be allowed for the maintenance; for, in the event of the party being found a lunatic, or of unsound mind, the commissioners are always desirous, whilst the family are at hand, of going into the necessary subsequent inquiries on the spot, and by means of *vivâ voce* evidence.

When the time for executing the commission has been fixed, the precept to the sheriff is signed and sealed by the commissioner, and is left by the solicitor with the undersheriff.

A jury consisting usually of persons residing in the immediate neighbourhood of the supposed lunatic's residence is then summoned by the sheriff, and the persons who are so summoned are most commonly taken from the special jury list; but they may, and as the expense is less should, when the case is free from difficulty, and the property is small, be taken from the common jury list.

The jury, if special, usually receive for their attendance one guinea each per day, and if common, half-a-guinea each.

The attendance of a witness on the execution of the commission is obtained by a summons signed by the commissioner. Blank forms of summonses are furnished at the Commissioners' Office. The solicitor should procure from the Commissioners' Office as many of these summonses as he thinks he shall want, and the commissioner will sign them on their being filled up addressed to the several witnesses whom it is proposed to call in support of the commission.

A copy of the summons is served upon the witness, the original being produced and shewn to him at the time of service.

The allowances to witnesses vary according to their profession, rank in life, and the nature of the case. It is often important to have the first medical evidence, and the fees to the eminent physicians and surgeons in London are high; but the allowances to the witnesses are generally regulated by the same scale as at common law.

If there be any doubt of the alleged lunatic's not being forthcoming at the inquiry, the commissioner's summons to produce him must be obtained and served upon the party having him in charge.

Although the alleged lunatic is not entitled to notice of the proceedings, yet to prevent the possibility of having to adjourn the inquiry to enable him to instruct a solicitor or counsel on his behalf, the commissioners usually (as before mentioned) suggest to the solicitor having the carriage of the commission the propriety of serving the alleged lunatic personally with a notice in writing, of the nature and object of the inquiry, and the time and place of entering upon it.

On opening the commission the under sheriff calls over the panel of the jury. The commission is then read by the solicitor having the carriage of it, or by the under sheriff, and the jury are sworn. The commissioner then proceeds to explain the nature and object of the commission, the principles of law respecting it, and the several points to which the attention of the jury is to be directed. If counsel attend in support of the commission, he opens the case by stating what particulars he intends to prove, and calls his witnesses. If no counsel appear in support of the commission, the commissioner states, as far as he is able from the affidavits on which the commission issued, the kind of case which he presumes is likely to be proved, and himself examines the witnesses tendered by the solicitor to the commission, and having also personally examined the alleged lunatic, sums up the case, and directs the jury to consider their verdict.

No person but the alleged lunatic or some one on his behalf can, unless by special leave of the Lord Chancellor, be heard on the inquiries under the commission. If the commission be opposed, the party opposing cross-examines the witnesses produced in chief, and when the counsel for the inquiry has examined all his witnesses, the alleged lunatic is examined by the commissioner. The counsel sums up the case for the commission, and the counsel in opposition then stated to the jury his observations upon it, and, if he thinks fit, produces evidence to meet it, and to shew the sanity of the party. The counsel for the commission then replies, and the evidence is summed up by the commissioner.

Except in cases where the alleged lunatic is abroad, or it is utterly impracticable to get a view, the jury never come to a decision without a personal inspection. In these excepted cases the jury are of course very particular as to the existence of the party, and the application of the evidence. The jury see the alleged lunatic at such times as they and the commissioner think fit, generally at the end of the case for the commission.

The alleged lunatic is entitled to be present at the inquiry if he desire it, and the commissioner generally inquires of him personally, before evidence is given, whether he wishes to be present.

4. *Verdict and Inquisition.*

The jury (or twelve of them at least) having agreed upon their verdict, the inquisition, which must be previously prepared and written in duplicate, on paper and parchment, leaving the necessary blanks to be filled up at the time of the inquiry, is then completed by filling up such blanks. These documents are then read over by the solicitor, and if consistent with the verdict of the jury, the *paper* form is signed (but not sealed) by the jurymen *agreeing* to the verdict. The dissentient jurors do not sign it. The parchment form (to which the seals only of the jurors and seal of the commissioner are attached) with the signed paper are then handed by the foreman of the jury to the commissioner, who thereupon signs each form. The commissioner annexes the inquisition on parchment to the commission, and the following words, viz.: "The execution of this commission appears by the inquisition hereunto annexed," are indorsed on the commission and signed by him. The commission and inquisition being so annexed and indorsed are then filed by the commissioners' clerk in the Petty Bag Office, where an office copy of the inquisition is obtained.

The fee for filing the inquisition and for the office copy (including 2s. 6d. for a certificate of filing) is 22s. 6d. Of this amount 5s. is paid to the commissioners' clerk who pays it over to the Petty Bag Office on filing the inquisition, and receives a certificate of filing. The solicitor has, therefore, only 17s. 6d. to pay at the Petty Bag Office on taking the office copy inquisition.

There are no fees payable to the commissioners, or their clerks, upon the execution of the commission.

The Law of Joint-Stock Companies. Fourth edition. By CHARLES WORDSWORTH, Esq. of the Inner Temple, Barrister-at-Law. London, 1845. Benning and Co.

WE have already reviewed, at great length, this very valuable work, on the occasion of the appearance of the third edition. But so numerous have been the additions and improvements introduced into this new edition, that we should yet have been tempted to have culled some further specimens from its pages did not the heavy claims of the Term demand the curtailment of all other information *not* of immediate urgency. As it is, we must refer to the former notice for a full account of the various topics discussed in this treatise. This fourth edition has been required by the changes which the recent statutes have made in the law regulating joint-stock companies, and Mr. WORDSWORTH has availed himself of the opportunity thus afforded to add to his work all the cases decided since the publication of the 1st edition. Some entirely new chapters have been introduced, and a somewhat different arrangement of the subject has been adopted. The new statutes and the forms prescribed by the Board of Trade are of course to be found here, and the index has been enlarged.

To all to whom the previous editions are known, this new one will need no recommendation. To strangers it will be enough to say that it is the best formal treatise upon the entire Law of Joint-Stock Companies which the Profession possesses.

The Justices' Pocket Manual; or, Guide to the ordinary Duties of Justice of the Peace. With an Appendix of Forms. Third Edition, corrected and enlarged. By SAMUEL STONE, Solicitor, Clerk to the Justices for the Borough of Leicester. London, 1845. Shaw and Sons.

THE previous edition of this very excellent work was reviewed at great length in the LAW TIMES. The call for a new edition in so few months is the best proof that the opinion we then expressed of its merits was a correct one, and that the volume has been found as useful in practice as it appeared to be upon perusal. It has, indeed, entirely answered the purpose for which, as Mr. STONE informs us, it was intended, namely,—"the furnishing, in a portable form, such information on statutory offences, points of practice, and magisterial duties, as may, in cases of ordinary occurrence, render it unnecessary to have recourse to more voluminous and comprehensive, but, on that account, less convenient publications."

In this edition many new titles have been introduced, and others are much enlarged. The statutes and the cases are brought down to the present time. In treating of an offence it is uniformly stated whether it is affected by the recent statute for regulating the jurisdiction of quarter sessions.

In our former notice, we had occasion to commend the division of the work devoted to the subject of *Practice*. This has been considerably enlarged, and the author has pointed out the effect of the late decision in *Jones* v. *Gurdon*, and the statutes to which it applies.

Another very useful feature of this volume is

the table of "Periodical Business for Justices," and the like for town-clerks.

It will be unnecessary to add to this description a word of recommendation. A work which has attained the honour of a third edition needs only to be announced to insure attention.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Banister, C. J. draper, first, 5s. Green, London.—*Banister*, R. draper, first, 8s. Green, London.—*Barker*, R. druggist, first, 4s. 6d. Stanway, Manchester.—*Broomhead*, W. mercht. none made. Whit. Birmingham.—*Broughton and Co.* bankers, 17s. 9d. Turner, Liverpool.—*Carpenter*, W. innkeeper, first, 3s. Kynaston, Bristol.—*Dickinson and Co.* ironfounders, fifth, 7s. 2¾d. Stan. Manchester.—*Hilton*, H. bleacher, H. and E. Hilton, 5d. and 19-32nds of 1d.; first sep. H. Hilton, 4½d. Fraser, Manchester.—*Hilton and Walsh*, paper makers, joint, 1s. 6d.; sep. Walsh, 1s. 6½d. Fraser, Manchester.—*Hocknell*, G. innkeeper, final, 5¾d. Whit. Birmingham.—*Lamb*, R. iron merchant, third and final, 0¾d. Baker, Newcastle.—*Llewelly*, M. timber merchant, second, 2s. 1d. Acraman, Bristol.—*Robinson*, E. B. printer, first, 9s. Christie, Birmingham.—*Walters*, P. timber merchant, first, 9s. 6d. to new proofs. Acraman, Bristol.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Nov. 22.

Goater, W. H. brewer, Winchester, Nov. 12. Trusts. T. Godwin, auctioneer, and H. Watkins, butcher, both of Winchester. Sols. Todd and Waters, Winchester.—*Hunt*, W. N. stationer and account-book manufacturer, Watling-st. Nov. 14. Trusts. B. Tipper, Maiden-lane, Queen-st. and G. C. Green, Barge-yard, Bucklersbury, wholesale stationers. Sol. Wollen, Bucklersbury.—*Moses*, J. W. draper, Abergavenny, Nov. 6. Sols. Messrs. Bennett, Manchester.—*Peakome*, W. saddler, Princes-st. Cavendish-square, Sept. 22. Trusts. S. Curtis, currier, Finsbury-st. and I. Green, saddler's ironmonger, Lisle-st. Sol. Saugster, Queen-st.-place.—*Pilgrim*, P. draper, Holloway-road, Nov. 6. Trusts. R. Clement, farmer, Nutfield-marsh, Surrey, and J. Howell, warehouseman, St. Paul's Church-yard. Sol. Parker, St. Paul's Church-yard.

Gazette, Nov. 26.

Ede, G. maltster and brewer, Ewell, Surrey, Nov. 20. Trusts. J. Bowyer, gent. Banstead, W. Smith, gent Wandsworth, and W. Forty, gent. Tothill-st. Westminster. Sols. Watson and Co. Falcon-sq.—*George*, H. printer and bookseller, Westerham, Sept. 28. Trusts. R. Marshall, bookseller, Stationers'-ct. and R. M. Wood, type founder, Aldersgate-st. Sol. Boulton, Northampton-sq.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Nov. 22.

BLUNDELL, FRANCIS, grocer and tea dealer, city of New Sarum, county of Wilts, Dec. 4, at twelve, Jan. 8, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Sanger, Temple, sol. Date of fiat, Nov. 19. Bankrupt's own petition.

ECCLES, SAMUEL, and RIDINGS, CHARLES, cotton, worsted, and linen manufacturers, Manchester, firm of Eccles, Ridings, and Company, Dec. 6, at eleven, Jan. 2, at twelve, Manchester; Pott, off. ass.; Barlow and Aston, Manchester, sols. Date of fiat, Nov. 14. M. Curtis, machine maker, Manchester, pet. cr.

JACKSON, WILLIAM, paper hanger, house painter, and decorator, No. 24, Charlotte-st. Fitzroy-sq. county Middlesex Dec. 2, at two, Dec. 31, at twelve, Basinghall-st. Com. Holroyd · Edwards, off. ass.; May, Queen's-sq. sol. Date of fiat, Nov. 19. J. Adnam, colourman, Holborn, pet. cr.

NEWTON, WILLIAM, coal merchant, city of Bath, Dec. 6, at one, Jan. 3, at eleven, Bristol. Com. Stephen; Hutton, off. ass.; Messrs. Mogg, Cholwell, sols. Date of fiat, Nov. 5. S. S. P. Samborne, esq Timsbury, Somersetshire, Rev. H. H. Mogg, Mary Parish, T. Savage, and B. Smith, co-partners in trade, pet. crs.

ROCHESTER, ROBERT, butch Hartlepool, Durham, Nov. 28, at eleven, Jan. 10, at two, Newcastle, Com. Elison; Baker, off. ass.; Wilson and Turnbull, Hartlepool, and Meggison and Co. London, sols. Date of fiat, Nov. 7. R. Smith, widow, Hartlepool, pet. cr.

SHERWOOD, THOMAS, brickmaker, lime burner, and farmer, Tilehurst, near Reading, Berks. Nov. 29, at half-past eleven, Jan. 3, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Holmes and Son, Great James-st. sols. Date of fiat, Nov. 19. E. May, Reading, pet. cr.

STAPLES, JONAS, plumber, painter, glazier, and paper hanger, Cottenham, Cambridge, Dec. 10 and Jan. 8, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Johnson, Walcot-sq. Lambeth, sol. Date of fiat, Oct. 31. Bankrupt's own petition.

TOMKINSON, MICHAEL, linen draper, Kidderminster, Worcester, Dec. 2 and 31, at one, Birmingham, Com. Daniell; Whitmore, off. ass.; Messrs. Robinson, Queen-st.-pl. and Hardwick and Davidson, Weavers' hall, sols. Date of fiat, Nov. 12. J. Bradbury and J. Greatorex, warehousemen, Aldermanbury, pet. crs.

UTTING, JAMES HENRY, upholsterer and cabinet maker, Newman-st, Oxford-st. Nov. 29 and Jan. 14, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Hudson, Bucklersbury, sol. Date of fiat, Nov. 19. Bankrupt's own petition.

VARDY, JOHN EYRE, draper, 108, High-st. Portsmouth, Hants, Dec. 3 and Jan. 9, at twelve, Basinghall-st. Com. Williams; Turquand, off. ass.; Moger, Paternoster-row, and Devereux, Portsmouth. sols. Date of fiat, Nov. 12. Bankrupt's own petition.

Gazette, Nov. 26.

BROWN, JOHN, painter and gilder, Newcastle-under-Lyme, Stafford, Dec. 11 and 31, at eleven, Birmingham, Com. Daniell; Bittleston, off. ass.; Harrison and Smith, Birmingham, and Jackson, Field-court, Gray's-inn, sols. Date of fiat, Nov. 21. Bankrupt's own petition.

BURGESS, JOHN, farmer and cattle dealer, Cratfield, Suffolk, Nov. 29, at half-past one, Jan. 3, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Wilde and Co. College-hill, sols. Date of fiat, Nov. 19. R. Bell, 109, Bishopsgate-st. pet. cr.

CLARKE, WILLIAM, builder, Sheffield, York, Dec. 10 and Jan. 16, at eleven, Leeds, Com. West; Young, off. ass.; Moss, Cloak-lane, and Blackburn, Leeds, sols. Date of fiat, Nov. 19. J. Ryalls, gent. Sheffield, pet. cr.

COX, WILLIAM, general dealer, Crown-st. Soho, Dec. 5, and Jan. 7, at eleven, Basinghall-st. Com. Fonblanque; Belcher, off ass.; Pain and Hatherly, Great Marlborough st. and Basinghall-st, sols. Date of fiat, Nov. 25. E. Smith, cheesemonger, Oxford-st. pet. cr.

FIGGE, JOHN FREDERICK, merchant, 3, Dunсing-ct. Mincing-lane, Dec. 5, at one, Jan. 9, at twelve, Basinghall st. Com. Williams; Turquand, off. ass.; Nicholson and Co. Throgmorton-st. sols. Date of fiat, Nov. 25. Bankrupt's own petition.

HALL, JOHN, cowkeeper, Willington West-farm, Wallsend, Northumberland, Dec. 5, at twelve, Jan, 7, at two, Newcastle, Com. Ellison; Wakley, off. ass; Wilson, Sunderland, and Bell and Co. Bow Church-yard, sols. Date of fiat, Nov. 5. W. Peverley, jun. master mariner, Sunderland, pet. cr.

HAMBLETON, CHARLES HENRY, licensed victualler, Northampton-st. Bethnal-green, Dec. 11 and Jan. 7, at eleven, Basinghall-st. Com. Holroyd; Edwards, off ass.; Malton and Co. Carey-st. sols. Date of fiat, Nov. 18. P. Worsley, W. H. Whitbread, J. Martineau, J. Goodman, the Right Hon. Sir J. C. Hobhouse, Bart., S. C. Whitbread, the Right Hon. C. S. Lefevre, R. Martineau, and J. M. Needham, brewers, Chiswell-st. pet. crs.

HARRIS, JOHN QUINCEY, hat manufacturer, Winchester-place, Southwark, Surrey, Dec. 6, at eleven, Jan. 8 at half-past twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Parker, Lincoln's-Inn-fields, sol. Date of fiat, Nov. 18. D. Quincey, Prospect place, pet. cr.

HASELDEN, JAMES, cotton spinner and manufacturer, Bolton-le-Moors, Lancashire, Dec. 10, at eleven, Dec. 30, at twelve, Manchester; Fraser, off. ass.; Milne and Co. Temple, and Winder and Broadbent, Bolton, sols. Date of fiat, Nov. 20. J. Harwood, corn dealer, Bolton-le-Moors, pet. cr.

HUMBLE, JOHN, manufacturing chemist, Osset, Yorkshire, Dec. 10 and Jan. 6, at eleven, Leeds, Com West; Fearne, off. ass.; Gregory and Co. Bedford-row, Water, Halifax, and Courtenay, Leeds, sols. Date of fiat, Nov. 11. J. Carr, Bath, pet. cr.

JOHNSON, JAMES, apothecary, No. 6, North place, Gray's-Inn-lane, Middlesex, Dec. 10, at half-past twelve, Jan 8, at half-past one Basinghall-st. Com. Evans; Johnson, off. ass.; Lindsay and Mason, Cateaton-st. sols. Date of fiat, Nov. 23. Bankrupt's own petition.

MEUGENS, PETER JOSEPH, broker, No. 43, Dunster-ct. Mincing-lane, city, Dec. 11 and Jan. 7, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Nicholson and Parker, Throgmorton-st. sols. Date of fiat, Nov. 25. Bankrupt's own petition

ROBINSON, ELEANOR and WILLIAM, bakers, Swinford, Leicestershire, Dec. 6, at twelve, Jan. 10, at half-past twelve, Birmingham; Valpy, off ass.; Mash, Lutterworth, Smith, Bedford-row, and Motterham, Birmingham, sols. Date of fiat, Nov. 20. Bankrupts' own petition.

STEPHEN, GEORGE, scrivener and bill broker, Skinners'-pl. Size-lane, London, and 7, William-st. Knightsbridge, Middlesex, Dec. 5 and Jan. 7, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Cox, Size-lane, sol. Date of fiat, Nov. 22. Bankrupt's own petition.

TOMLIN JAMES, ship broker, St. Michael's-alley, Cornhill, Dec. 4, at two, and Jan. 10, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Desborough and Young, Size lane, sols. Date of fiat, Nov. 17. Bankrupt's own petition.

VANDERPLANK, BARTHOLOMEW, woollen warehouseman, Love-lane, London, Dec. 5 and Jan. 13, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; James, Basinghall-st. sol. Date of fiat, Nov. 7. J. Lupton, woollen warehouseman, and W. Pennell and J. W. Applegate, assignees of J. Bradshaw, pet. crs.

WATT, ROBERT, merchant and commission agent, 43, Lime-st. City, Dec. 10, at half-past twelve, and Jan. 21, at eleven, Basinghall-st. Com. Williams, Graham, off. ass; Sharpe, Verulam-buildings, sol. Date of fiat, Nov. 22. Bankrupt's own petition.

WHITE, JOHN COOPER, draper, Canterbury, Dec. 11 and Jan. 7, at half-past eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Messrs. Sole, Aldermanbury, sols. Date of fiat, Nov. 15. R. and C. Milburn, Newgate-st. warehousemen, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Nov. 19.

Banks, J. and G. plumbers, Bath, Nov. 16.—*Botsford*, A. and *Samuel*, M. dealers in fancy goods, Oxford-st. Sept. 9.—*Clarke*, H. and *Trevor*, T. T. attorneys, Guisborough, Nov. 1.—*Cheesebrough*, J., E. and J. woolstaplers, Bradford, Nov. 11.—*Evans*, W. and *Booth*, G. dealers in articles called the Piqua plant, Savoy-st. Strand, Nov. 11.—*Grant*, D. and *Alston*, S. merchants, Great St. Helens, Bishopsgate-st. Sept. 28.—*Hall*, J. and *Vincent*, S. wholesale tea and coffee dealers, St. Mary Axe, Sept. 21, 1841. Debts paid by Hall.—*Holland*, J. and *Price*, R. stone masons, Winsford, March 15.—*Isaac*, H. F. and *L.* and *Benjamin*, J. proprietors of a clothes mart, Phil's-buildings, and Still-alley, Houndsditch, so far as regards Benjamin, Nov. 6. Debts paid by the remaining partners.—*Litherland*, N. and *Scroeder*, H. ship brokers, Liverpool, Nov. 18.—*Matthews*, R. and *Smith*, W. H. hot pressers, Basinghall-st. Nov. 16.—*Moore*, J. F., T. F. and J. ironmongers, Wigan, Oct. 14. Debts paid by J. F. Moore.—*Ready*, S. W. and *Maugham*, J. P. engravers to calico printers, Ollersett, Derbyshire, Nov. 14. Debts paid by Ready.—*Vandeau*, L. J. B. and L. O. B. and *Osun*, M. foreign importers, King William-st. Strand, July 15.—*Walker*, A. *Middleton*, J. *Binns*, R. and *Law*, J. machine makers, Cleckheaton, July 24.

Gazette, Nov. 22.

Ashton, S. and *Crooke*, J. calenderers, Manchester, Nov. 20. Debts paid by Ashton.—*Briscoe*, J. W. and *Aykroyd*, W. cotton warp dyers, Bradford, Nov. 20. Debts paid by Aykroyd.—*Carlile*, J. and *Pearson*, W. O. commission agents, Mitre-ct. Milk-st. Nov. 14.—*Chorlton*, S. and *Boothboyd*, J. attorneys, Stockport, Runcorn, and Birkenhead. Nov. 12.—*Christian*, W. and *Kennard*, J. hatters, Liverpool, Nov. 21.—*Davidson*, H. and W. and *Barkly*, H. merchants, Lime-st.-sq. May 31, 1843.—*Drinkwater*, W. and *Smith*, H. W. auctioneers, Pershore, Evesham, and Great and Little Hampton, Nov. 16. Debts paid by Smith.—*Forbes*, C. and *Richards*, C. E. carpenters, Kennington and Peckham, Nov. 18. Debts paid by Forbes.—*Gullond*, J. and *Dodgson*, C. cigar manufacturers, Liverpool, Nov. 19. Debts paid by Gallond.—*Grafton*, E. and J. watch manufacturers, Fleet-st. Nov. 19.—*Gregory*, W. and J. C. bottle ale merchants, St. Mary-at-Hill, Sept. 4.—*Harding*, J. *Smith*, E. and *Stansfield*, M. bankers, Bridlington and Driffield, Dec. 31.—*Harris*, C. and *Tremlett*, E. N. paper manufacturers, Topsham and St. Edmund, Nov. 7.—*Hoodless*, J. and *Prickett*, A. millers, Misterton, Nottinghamshire, Nov. 11.—*Ingram*, J. and *Garrow*, W. merchants, Liverpool, Nov. 29. Debts paid by Ingram.—*Keen*, W. and *Blackband*, J. grocers and ironmongers, Eccleshall, Nov. 19. Debts paid by Blackband.—*Mudin*, H. and *Hargreaves*, J. cotton manufacturers, Rochdale, June 15, 1843.—*Rosrow*, T. *Lord*, J. and *Ridyard*, T. coal proprietors, Rochdale and Bury, so far as regards Ridyard, Nov. 15. Debts paid by the remaining partners.—*Spensley*, W. and *Barrett*, J. silk waste dealers, Little Winchester-st. Nov. 18.—*Symes*, J. W. and *Giles*, S. brewers, Bath, Nov. 18. Debts paid by Symes.—*Wallace*, R. and *Unthank*, A. surgeons, John's-terrace, Hackney-road, Nov. 21.—*Watson*, J. and *Morley*, W. jun. Oct. 17.—*Whitlaw*, C. and *Laurie*, W. L. medical botanists, Argyle-st. or elsewhere, Nov. 22.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Nov. 19.

Alexander, W. G. wheelwright, Lanham, Dec. 2, at half-past one.—*Barker*, E. W. cooper, King-st. Southwark, Dec. 3, at eleven.—*Benfield*, W. H. publican, Bedfordbury, King-st. Covent-garden, Dec. 5, at eleven.—*Birley*, J. P. plumber, Brompton-row, Dec. 3, at half-past eleven.—*Blackwell*, G. general shopkeeper, Harvey's Cottages, Brixton-hill, Dec. 2, at one.—*Buckley*, E. tailor, Newman-st. Dec. 2, at two. *Clapperton*, T. millwright, Fleet-st. Dec. 2, at half-past twelve.—*Dunham*, J. sen. dealer in china, Portsea, Dec. 2, at half-past eleven.—*Knight*, G. beershop keeper, Wandsworth, Dec. 2, at half-past two.—*McGrath*, F. gent. Charlotte-st. Portland-pl. Dec. 5, at one.—*Mallpass*, J. shopman, Phil's-bldgs. Houndsditch, Dec. 2, at eleven.—*Pritchett*, J. sen. brush maker, Kent st. Southwark, Dec. 2, at two.—*Roberts*, G. clerk, Trinidad-place Liverpool-rd. Islington, Dec. 3, at half-past eleven.—*Sadd*, J. clerk, Trinity-st. Southwark, Dec. 2, at one.—*Sidders*, T. A. fruiterer, Brighton, Dec. 2, at twelve.—*Thornton*, H. baker, Union-st. Southwark, Dec. 5, at one.—*Tyrrell*, J. esq. Dowgate-hill, Dec. 5, at eleven.—*Wallack*, H. J. actor, Great Titchfield st. Dec. 5, at half-past one.

Gazette, Nov. 19.

Elliott, J. butcher, Hemel Hempstead, Dec. 12, at half-past one.—*Gutteridge*, W. out of business, Montague-st. Dec. 4, at eleven.—*Simmonds*, T. S. builder, Croydon, Nov. 26, at twelve.—*Stepney*, S. carver and gilder, Dec. 12, at two.—*Wilton*, J. plumber, Rotherhithe-st. Dec. 4, at twelve.

Country—Gazette, Nov. 22.

Coombe, W. B. shoemaker, Bedminster, Dec. 9, at eleven, Bristol.—*Ellis*, S. joiner, Bradford, Dec. 5. at eleven, Leeds.—*Evans*, J. L. draper, Mellidan, Nov. 27, at eleven, Liverpool.—*Godfrey*, G. labourer, Garnston, Nov. 29, at eleven, Leeds.—*Heywood*, C. S. maker up and packer, Dec. 2, at twelve, Manchester.—*Hitchen*, T. coal dealer, Manchester, Nov. 30, at twelve, Manchester.—*Oakley*, R. blacksmith, Nottingham, Dec. 6, at twelve, Birmingham.—*Stokes*, J. painter, Cheadle, Dec. 2, at twelve, Manchester.—*Trimingham*, W. tailor, Fishlake, near Thorne, Nov. 29, at eleven, Leeds.—*Tuggie*, C. stage coachman, Yeovil, Dec. 5, at eleven, Exeter.

Country, Gazette, Nov. 25.

Bern, F. butcher, Toxteth-park, Nov. 25, at twelve, Liverpool.—*Bowdler*, H. huckster, Tong, Dec. 10, at one, Birmingham.—*Dalton*, C. labourer, Bassingham, Dec. 10, at half-past ten, Birmingham.—*Dandy*, T. retail dealer in ale, Manchester, Dec. 5, at twelve, Manchester.—*Heaword*, J. heald yarn and harness maker, Manchester, Dec. 5, at twelve, Manchester.—*Jenkins*, D. Cefen Llwyndafydd Llandysiliogogo, Dec. 9, Bristol.—*Johnson*, J. confectioner, Birmingham, Dec. 17, at half-past eleven, Birmingham.—*Lewis*, W. pilot, Liverpool, Nov. 27, at eleven, Liverpool.—*M'Keand*, P. joiner, Liverpool, Nov. 29, at eleven, Liverpool.—*Morgan*, W. farmer, Loppington, Dec. 10, at one, Birmingham.—*Rutherford*, G. junr. clerk, Berwick-upon-Tweed, Dec. 5, at half-past one, Newcastle.—*Rutherford*, G. sen., superannuated shipwright, Berwick-upon-Tweed, Dec. 5, at one, Newcastle.—*Walker*, W. commission agent, Nottingham, Dec. 10, at half-past ten, Birmingham.—*Wood*, H. tailor, Bristol, Dec. 12, at eleven, Bristol.

From the Gazette of Friday, November 29.

Bankrupts.

Walker, C. S. T. artificial florist, Oxford-st.—*North*, J. licensed victualler, Map's-row, Stepney-green.—*Tucker*, R. farrier, Dean-street, Westminster.—*Williams*, L. woollen draper, Oxford.—*Harwar*, J. pianoforte manufacturer, Charlotte-street, Bloomsbury.—*Marshall*, R. stone mason, Deptford.—*Henderson*, W. draper, Sunderland.—*Oliver*, W. printer, Darlington, Durham.—*Worth*, E. P. victualler, Henley in Arden, Warwickshire.—*Cross*, W. lead merchant, Chester.—*Rees*, W. and *Edwards*, G. gardeners, Wells, Somersetshire.—*Storey*, J. and *Gibbs*, J. corn chandlers, Liverpool.—*Ibbotson*, M. and J. paper manufacturers, Ecclesfield, Yorkshire.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Monday, Dec. 2.

Re NEACHELL.

Specific performance—Infant trustee—Statute of 1 Wm. 4, c. 60—Partition.

Where an action of ejectment had been compromised by an agreement between the parties to divide the estate, and one of such parties being an infant, the Master reported that it would be for his benefit to carry such compromise into effect, and that such infant was a trustee as to one moiety within the Act of 1 Wm. 4, c. 60, it was nevertheless held that such infant was not a trustee within the Act, and that the compromise could not be carried out in any other way than by filing a bill.

Whately appeared in support of a petition in this matter, praying that the report of the Master, finding an infant a trustee within the meaning of the Act 1 Wm. 4, c, 60, might be confirmed, and that a proper person might be appointed to convey.

The circumstances were these:—Real estate had descended upon one of two brothers, who were twins, but it was uncertain which of the two had been first born. One of them had entered into possession of the estate, and had died leaving an infant heir. The heir of the other, who was a lunatic, had commenced an action of ejectment to recover the estate, upon the ground that his ancestor was the eldest son. There were a great many witnesses on both sides, and the sole point being which of the twin sons had been the eldest, much doubt existed as to the result of the ejectment; and before the trial it was agreed, on the behalf of the lessor of the plaintiff and of the tenant in possession, that the estate, which was of considerable value, should be equally divided between them. An Act of Parliament had been obtained to authorize the committee of the estate of the lunatic lessor of the plaintiff to carry out the arrangement; and upon a reference to the Master he had reported that it would be beneficial for the infant tenant in possession that the proposed compromise should be effected; and the Master also reported that the infant was a trustee of one moiety within the meaning of the Act. This report had been confirmed.

The petition had come on before Vice-Chancellor Knight Bruce, but his honour having some doubt upon the question, and feeling that there was a difficulty in respect of the lunatic's interest being bound, except by an order of the Lord Chancellor, directed the petition to be mentioned to his lordship.

The LORD CHANCELLOR.—This is in substance only an agreement for a partition, and that does not make the party a trustee within the Act. The report consisted of several circumstances, such as that the compromise was for the benefit of the infant, and so forth. Even in the case of a specific performance the infant heir of the vendor is only a trustee after decree. The Act, sec. 16, enacts, "that where any land shall have been contracted to be sold, and the vendor shall have departed this life, either having received the purchase-money, or not having received any part thereof, and a specific performance of such contract, as far as the same by reason of the infancy can be executed, shall have been decreed by the Court of Chancery in the lifetime of such vendor, or after his decease, then the heir of such vendor shall be deemed to be a trustee for the purchaser within the meaning of this Act." And by the 18th section it is enacted, "that the several provisions hereinbefore contained shall extend to every other case of a constructive trust, or trust arising or resulting by implication of law; but in every such case, where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee, until after it has been declared by the Court of Chancery, in a suit regularly instituted in such court, that such person is a trustee for the person so seeking a conveyance or transfer; but this Act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case hereinbefore expressly provided for." Thus it seems that cases of partition and election in equity are excepted out of the Act. I am sorry for it, but the parties must file a bill to obtain a decree for carrying out the compromise. *Leave given to file a bill.*

Wednesday, Dec. 4.

SAYER *v.* WAGSTAFFE.

Taxation of solicitor's bill under 5 & 6 Vict. c. 73—Delivery of bill of costs pending a suit—Pressure—Application to tax—Practice—Security for payment.

The allowance of a petition to tax a bill of costs within the year, although the petition be not heard until after the expiration of a year from the settlement, is the time of application within the meaning of 5 & 6 Vict. c. 73.

Where a client gives a security payable at a future day for a bill of costs, that is not a payment within the terms of that statute, but is a mere suspension of the remedy.

In order to obtain a reference of a settled bill of costs for taxation, not merely items which would have been taxed off must be shewn, but such as amount to imposition or fraud.

If payment of a bill of costs is made under undue pressure, the account will be opened: and though the continuance of the relation of solicitor and client is a circumstance to be considered when pressure is complained of, it will not alone justify a reference.

It is usual to allow two guineas a day for a clerk's attendance on a commission to examine witnesses.

This appeal was heard on the 3rd and 5th of last June, and his lordship having expressed his opinion upon most of the points raised by the petition, the facts, with the argument and his lordship's expressions of opinion, appeared in 3 LAW TIMES, pp. 121, 197, 238. The matter now stood for judgment.

JUDGMENT.

The LORD CHANCELLOR.—This was a petition by the defendant for a reference to the Master to tax his solicitor's bill after it had been settled and paid, and which comes before me by appeal from the Master of the Rolls. The facts are these:—Mr. Saunders was the solicitor employed by Wagstaffe in the cause of *Sayer* v. *Wagstaffe*. The retainer took place in the earlier part of the year 1841; and in October 1842 Mr. Saunders delivered his bill, amounting to 135*l.* and asked for payment. Upon that a promissory note, dated the 3rd of November, was given by the petitioner to the solicitor. This note was payable fourteen days after date, and would therefore have arrived at maturity, allowing for the days of grace, on the 20th of November. But, in fact, it was paid on the 17th of November. The petition for a reference to tax the bill was lodged with the secretary of the Master of the Rolls on the 15th November, 1843, and was allowed and answered on the 16th; but it was not heard for several days afterwards. One objection to the petition insisted upon by the counsel for the appellant was, that a year had elapsed since the bill had been paid, and that by the late Act of Parliament, which provides that applications to refer a solicitor's bill for taxation must be made within a year from the time of payment of the bill, it is enacted, "that no bill shall be taxed unless application for that purpose be made within a year after the bill shall have been settled or paid." The question is, whether the time had expired before the presentment of the petition. It was contended that the delivery of the promissory note constituted payment of the bill of costs; and if that was a payment, the time had expired, and the objection would be sustained. I expressed an opinion during the argument, that where the debtor delivers a promissory note to his creditor, that is not payment. The effect of giving a note is merely to suspend the remedy; but if the note is not paid when at maturity, the receiving it does not prevent the creditor proceeding to enforce his original debt. The party is not bound until the money is actually paid. There is a case in the Exchequer, *Ex parte Herrus*, reported in the Jurist for 1844, which has occurred since the decision on this petition by the Master of the Rolls, where that opinion was adopted and acted on. I think there is nothing in that objection. The next point made was, that the time of petitioning must be taken to be the hearing of the petition, and that occurred after the 17th of November, 1843; but there is no foundation for that idea. The petition is presented to the Master of the Rolls, and when allowed and answered by him, must be deemed to be a petition. The time for hearing depends upon the discretion of the Court, and the state of business. Here the petition was presented on the 15th, and allowed on the 16th of November; there is not, therefore, the slightest doubt as to the petition having been in time. The next question is as to the items of the bill of costs. The rule is, that a party who seeks to refer a bill for taxation after it has been paid, must state some objectionable charges; not merely charges which would not be allowed on an ordinary taxation (probably few solicitors' bills could be found which do not contain such items); but the objections must be such as amount to something like fraud or imposition. In this case, when heard before me, the various items objected to were examined and sifted; I had no doubt as to any except one set of items. The only items I thought might be objectionable were these:—there had been a commission to examine witnesses in the country, which had been attended by the clerk of the defendant's solicitor, and the bill contained charges of two guineas a day for such clerk's attendance, and it had been urged that the solicitor is only entitled to charge one guinea a day when the examination of witnesses is attended by his clerk; and it was contended that, as the solicitor must have known this rule, it was something like imposition to make the higher charge for the clerk's attendance. I thought it proper to refer to the taxing officers of the Court upon this point, and I have received a certificate signed by the whole of those officers, in which they unanimously certify that when a clerk is employed to attend a commission for the examination of witnesses, the uniform practice is to allow two guineas a day. As to the merits, upon the items there do not appear to be any which render it incumbent on the Court to refer the bill for taxation after payment. There are objectionable items certainly, that is, items which would probably be struck out upon taxation, but they are not objectionable to an extent amounting to imposition or fraud. There is a remaining point; when the promissory note was given, the cause was depending, and the relation of solicitor and client still existed between the petitioner and Mr. Saunders, and it was said that the note had been given, and subsequently paid under pressure; and Mr. Russell argued that where the relation of solicitor and client exists, that is equivalent to actual pressure. Sir John Leach, in *Howell* v. *Edmunds* (4 Russell, 67), said, "The bill must certainly be taxed, not only because the suit in which it was incurred was pending when the bill was paid, from which circumstance influence and pressure upon the client will be assumed; but because there was, in fact, actual pressure by the threat of an arrest." So in *Crossley* v. *Parker* (1 Jac. & Walk. 460), Sir Thomas Plumer, Master of the Rolls, said, "The client was under pressure arising from fear of being deserted, and, therefore, preferred to submit to what he thought improper charges. Besides, I do not see that any vouchers were delivered up; how could that happen if it was meant as a complete settlement? In fact, he afterwards proceeds with the account, shewing that he had only received so much on account. For these reasons I think the settlement ought not to operate to prevent the bill from being taxed. This I say independently of the particular items in the bill; but it is impossible not to say that, for the credit of this gentleman, it is fit they should be examined into, at the same time that they ought to be looked at with attention to the circumstances of the case." Now it appears that in *Howell* v. *Edmunds* there was actual pressure, and therefore it was unnecessary to have expressed the opinion that the existence of the relation of solicitor and client did amount to pressure; and Sir Thos. Plumer, in *Crossley* v. *Parker*, said that the items were of such a nature that it was fit that they should be subjected to taxation. Undoubtedly, the existence of the relation of solicitor and client is a circumstance to be taken into consideration when a case of pressure is insisted on: but if there is no item to which such objection can be taken as would amount to imposition, I do not think the mere continuance of the relation is a sufficient ground for directing a taxation. Lord Eldon, in *Cook* v. *Setree* (1 Ves. & Bea. 126), observed, "I cannot go the length of holding that a bond given in 1810 is to be complained of in 1812, upon the mere ground that there was not at the time an end of all business depending between the client and the attorney, or of a particular suit in which they were engaged. It may be very fair as between them to say that the situation of the attorney was such that he could not go on, and therefore presented his bill, desiring either payment, or security in part." And he seems to have considered that, unless there were some other circumstances of fraud, imposition, or evidence of undue pressure or influence, there was no ground for inquiry. And in *Penderleath* v. *Fraser* (3 Ves. & Bea. 174), Lord Eldon again refused a reference to tax a solicitor's bill, where payment had been made, and long acquiesced in, unless very gross charges were distinctly pointed out. The whole subject came before my immediate predecessor, Lord Cottenham, in *Horlock* v. *Smith* (2 Myl. & Craig, 495); and that learned judge reviewed all the cases in detail; he referred to the opinion of Sir John Leach, in *Howell* v. *Edmunds*: it was not, however, necessary for him to decide that point; but he did express himself in a manner which, considering his habitual caution, plainly indicated that he did not coincide in that opinion. Afterwards, in *Waters* v. *Taylor* (2 Myl. & Cr. 526, 556), Lord Cottenham expressed himself in terms which satisfy me that he did not consider the mere continuance of the relation of solicitor and client in itself sufficient to open the account. He said, "No doubt, the settlement or payment of a solicitor's bills pending a suit, and whilst the relation continues, affords grounds upon which the account will be much more easily opened, and the bills referred for taxation, than in other cases; but if these circumstances alone were in all cases to be held sufficient ground for a taxation, no solicitor who continues to act for a client would be secure of any settlement during the life of his client; and the continuance of one of those suits which not unfrequently occur in this court would prevent the possibility of any settlement between the solicitor and the client." That shews what the opinion of that learned judge was, after long consideration, and great attention to the question. I concur in that opinion. After the law has been altered by the late Act, 5 & 6 Vict. c. 73, and a year made the limit for opening the account, some of the reasoning on which Lord Cottenham proceeded has been displaced. I am therefore of opinion, that in this case there is no ground for opening the account and referring this bill for taxation. So much of the decree of the Master of the Rolls as directs a taxation of the bill of 135*l.* must be discharged.

Dec. 5.—The Lord Chancellor again mentioned this case, and said—The Master of the Rolls refused to make a reference to tax generally, but directed particular items to be taxed. I have read the short-hand writer's notes of the argument at the Rolls, and they plainly shew that the parties consented that those items should be taxed. The Master of the Rolls acted upon the general principle that the bill ought not to be taxed; and then he, by the consent of the parties, directed that particular items should be taxed. If that be so, it would not be right to vary the Master of the Rolls' order as to the taxation of that bill. Some understanding must be come to by the parties upon this. The order must not be drawn up at present.

ROLLS COURT.

Saturday, Nov. 16th, Monday, 18th, Tuesday, 19th, and Wednesday, 20th.

Cruikshank v. M'Vickar.

Three separate firms, A, B, and C, enter into a trading speculation in a commercial article of a definite description; A to buy the article with funds furnished by B, and transmit the same to C to sell. A accordingly draws two bills on B, and makes a consignment to C, which on its arrival is found not to answer the stipulated description, and is repudiated by C, and afterwards by B. It is, however, sold by C on account of A only, and the proceeds transmitted to B, who bring their bill against A, to have it declared that the consignment was not duly made in conformity with the agreement, and asking relief on that footing: but there was an alternative prayer that if the consignment was in conformity with the agreement, then that accounts should be taken, &c. A general demurrer to the bill for want of equity was overruled.

An alternative prayer must be founded directly or indirectly on, or be consistent with, some allegation or pretence in the bill.

In 1840 communications passed between Cruikshank and Co. of London, Ramsay and Co. of Sydney, Australia, and M'Vickar and Co. of Canton, as to a trading partnership in tea to be bought at Canton and shipped to Sydney, for that market. It was proposed that the tea should be of a particular description (chiefly hyson skin), that each firm should charge its own commission, and that the Canton firm should draw on the London firm, and should ship the tea to Sydney, there to be sold on the joint account. The proceeds, after paying expenses, were to be transmitted to London, to be applied first in payment of the advances there made, and then the surplus to be divided among the three firms equally. M'Vickar and Co. did not at first freely accede to the proposal; but in May 1841 they wrote to the London firm to say they had made a purchase on the joint account, and inclosing a bill, which, with one subsequently drawn, amounted to nearly 12,000*l.* These were accepted by Cruikshank and Co. and paid. The tea, however, was not sent at that time (the ship *George the Fourth*, which was to have carried it, being sent by M'Vickar and Co. on another voyage), nor till the November following. When the assignment arrived at Sydney, it was found to be not hyson skin, but Woping bohea, an article not only inferior, but scarcely tea at all. The Sydney firm immediately repudiated the consignment, and refused to accept it on the joint account, for themselves absolutely, and for the London firm conditionally. They, however, accepted it for M'Vickar and Co.'s account alone, and sold a large portion of it, and transmitted the proceeds thereof (7,000*l.*) to London, which the London firm received, and, after some delay, confirmed the repudiation of the Sydney firm. In this state of things, Cruikshank and Co. file their bill against M'Vickar and Co. to have a declaration that the consignment was not in conformity with the agreement, for an account of the bills and moneys advanced thereon, and of the sales of teas already made, and that they should have a lien on the teas remaining unsold for the balance of their bills over 7,000*l.* and also for damages for the amount of profit that would have accrued if the cargo had been duly sent, and issues to try that point, if necessary. There was an alternative prayer for an account, &c. if it should appear that the consignment was in conformity with the agreement, &c. One of the firm of M'Vickar and Co. resident in this country, but not acquainted with the transactions, put in his answer to the bill; and another, who had a thorough knowledge of them, put in a general demurrer, for want of equity, which now came on for argument.

Kindersley, *Turner*, *Roupell*, and *Collins*, for the defendants, and in support of the demurrer.—The grounds of demurrer are, first, that it is a case for relief in full at law; and secondly, that, it being stated in the bill that the plaintiffs repudiate the consignment, and deny it to be in accordance with the contract, they pray, in the alternative, that if the consignment should be held to be in conformity with the agreement, then that an account, &c. should be taken on that footing—a quite different thing, and inconsistent with the allegations in the bill. The first part of the prayer, viz. that framed on the notion of the repudiation, asks four things; 1st, that the Court shall declare the consignment not to be in accordance with the contract; 2nd, that an account be taken of the bills of exchange, and of the proceeds of the sales of the teas; 3rd, a lien on the unsold teas; and 4th, damages in respect of the profits that might have accrued from the contract, if properly carried out, and issues at law to try what may be proper damages, if necessary. As to the first, they have themselves declared that the consignment is not in pursuance of the contract, and the defendants, of course, on the demurrer, say nothing to the contrary. Why, then, ask the Court to make an election for them, which they have already made themselves? The court can only so ask in case the right to do so is disputed, or is doubtful. Here it is not so; they assume, and nobody denies their legal right to reject or accept the consignment. The next part of the prayer is for an account of moneys paid by Cruikshank and Co. on account of bills drawn upon them, and of the proceeds of the sales of teas shipped by M'Vickar and Co. to Sydney. This is, however, altogether unnecessary, for it is expressly stated on the bill that the former amount to 11,920*l.* and the latter to 7,000*l.* There is no uncertainty, therefore, nor any complication of accounts requiring equitable interposition: and in an action at law there would be merely a set-off. The third branch of the first alternative is, that it may be declared that the plaintiffs are entitled to a lien on the unsold part of the consignment, for the balance of the moneys advanced on the bills. Equitable lien is the result of contract; but in this case the goods are in the hands of their agents, Ramsay and Co. and they have therefore a legal lien, and it is unnecessary to come into a court of equity. The last branch of this head is damages. It is rather a novel course to ask a court of equity to declare damages for a breach of contract, and to send out issues to be tried at law, if necessary. They say the reason is, that the transaction is joint, but this is curious. We are here not on a joint contract, which they repudiate, because the purchase was not made within the scope of the authority, how then can damages arise? Damages suppose the existence of a contract, and the allegations of the bill deny it. It is an attempt to cloak a bill of discovery under a bill for relief. The second alternative of the prayer is for relief on the footing of the consignment being upheld. But what authority has the Court to form an opinion, and say whether the consignment was, or not, duly made? It has none; the plaintiffs have taken the case entirely out of the Court's hands, and decided it for themselves. The whole of this part, therefore, drops to the ground; but even if it were not so, no case is stated on this bill authorizing the plaintiffs to demand an account on the footing supposed, for they cannot come here, stating a transaction void, and pray relief on that supposition, and then pray relief in case of its being held good. They cited the following cases:—*Sainsbury* v. *Jones* (2 Beav. 462; 5 Myl. & Cr. 1); *Kendall* v. *Beckett* (2 Russ. & Myln. 88); *Lindsay* v. *Lynch* (2 Sch. & Lefr. 1); *Frietas* v. *Dos Santos* (1 Y. & Jer. 574); *Hoare* v. *Contencin* (1 B. & Cr. 27); *Dinwiddie* v. *Bailey* (6 Ves. 136); *Moses* v. *Lewis* (12 Price, 502); *King* v. *Rossett* (2 Y. & Jer. 33); *Foley* v. *Hill* (Phillips, 399); *Darthez* v. *Clemens* (6 Beav. 165).

Tinney and *Rolt*, for the plaintiffs, contended that they were entitled to relief on three grounds: fraud, account, and lien. It was in the option of the Canton firm whether the agreement for a partnership ever came to any thing; but by their letter of the 12th May, 1841, they intimated that in pursuance of the discretion reposed in them they had purchased on account of the partnership, and thereby fraudulently induced us to advance our money on the faith of the partnership we had a right to think was constituted. They were not our agents—they were our partners—and by their breach of faith they give us a right to be indemnified by them, not merely in respect of the money advanced on the bills, but for the profits that might have accrued from the adventure. Again, they say we have no lien on the goods, it is merely a question of set-off at law; but the goods are not in our hands, nor in those of our agents, and being bought with our money we have an equitable lien on them. There are technical objections to the form of the action at law, so that we cannot enforce our rights legally, because, the contract being joint, the jury cannot sever the damages. Besides, the account being between three firms, it would be difficult, nay, almost impossible, to adjust it at law. They cited *Chesterfield* v. *Janssen* (2 Ves. s. 129); *M'Kenzie* v. *Johnson* (4 Mad. 373); *Bovill* v. *Hammond* (6 B. & Cr. 149); *Hill* v. *Tucker* (1 Taunt. 7).

Kindersley, in reply, cited Coll. on Part.; *Walker* v. *Harris* (1 Anstr. 245); *Nockells* v. *Crosby* (3 B. & Cr. 814).

The Master of the Rolls.—This case has taken a long time to discuss. The transactions are simple enough as to the facts, but there may be some difficult questions of law arising out of them. [His lordship stated the facts fully.] Let us see, then, what was done. There was an agreement for a speculation which, if completed as intended, would be a trading partnership. On the faith of this bills are drawn, accepted, paid; on whose risk and for whose benefit? Did Cruikshank and Co. so act either at their sole risk or on the credit due to M'Vickar and Co.? No; on the credit of the partnership, not for the benefit of themselves. Many circumstances of fraud have been introduced as to the delay of the shipment, the charging the full value of a good consignment, &c.; but the trading in question was a trading on the joint account. Whether it was the most prudent course to repudiate the consignment it is unnecessary to say; but there is nothing in the letter of Ramsay and Co. to shew that the joint trading was thereby put an end to, but only that that particular consignment was rejected, or only received on account of M'Vickar and Co. alone. But it is said that each adventure was separate, and by rejecting the one in question you break up the partnership. That is not so. There are transactions preparatory to and in contemplation of partnership, which cannot be excluded from consideration in winding it up. There is, therefore, here a state of things in which joint obligations and joint liabilities are incurred, and there cannot be an account in the absence of any of the parties. There is, therefore, a case for relief, and if so to any, however small an extent, a general demurrer cannot be supported. This is so without referring to the alternative prayer which is said to be inconsistent with the bill; but it is only an omission in the statement, if at all, which makes it so. As it is unnecessary, however, I need not consider it. I overrule the demurrer.

Tuesday, Nov. 19.

West v. Currie.

The costs of a petition for the transfer of a part of an undivided fund to which the petitioners are entitled, are payable out of the general fund, and not the part to which they are entitled.

This was a petition for the transfer of 1,000*l.* part of a sum of stock in the cause to which the petitioners were entitled on their coming of age, &c. The Master reported them of age, &c. and the petition asked the confirmation of the Master's report. The only question was one of costs.

Giffard, for the petitioners, asked the costs of the application out of the general estate of the testator, and cited *Shuttleworth* v. *Howarth* (4 Myl. & Cr. 492).

Bailey, contrà, insisted that if the stock had been transferred to their names, they would have had to bear their own costs, and no further costs were incurred now than if the fund had been separate. [The Master of the Rolls.—Yes, in serving you.] Well, we shall allow them that part of the costs.

The Master of the Rolls.—The funds ought to have been severed; not having been so, the costs must be borne by the general estate.

Thellusson v. Woodford.

The fact that notice has not been served on an outlaw, who is a party interested, is no objection to a petition's being heard for laying proposals before the Master for the purchase of an estate on the trusts of a will.

This was the petition of Lord Rendlesham for leave to lay before the Master proposals for the purchase of an estate called Aldringham, in Suffolk, belonging to Francis Hale, agreeably to the trusts of Mr. Thellusson's will.

Kindersley was about to open the petition, when

Twells took a preliminary objection, on the ground that Charles Thellusson had not been served, to which

Kindersley replied that Mr. Thellusson had been outlawed, and therefore could not appear. Besides, the Act did not make it imperative to serve him.

Beavan and others, for other parties.

The Master of the Rolls.—The business of the Court cannot be put a stop to because Mr. Thellusson, being an outlaw, cannot appear. The petition must, therefore, be granted.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, Dec. 3.

Barker v. Ford.

Practice—Amendments—Bill for discovery.

A bill for discovery cannot, before an answer is put in, be converted by amendment into a bill for relief without special leave.

An irregular order cannot be supported upon merits subsequently brought forward.

The defendant in this case had filed a bill for relief against the plaintiff, Barker, and upon that this bill, which was one for discovery, was filed. The defendant, Ford, subsequently dismissed his bill with costs, and notice was duly given to the opposite side that no answer would be required, and on the 26th of July an order of reference was made to the Master to tax the defendant's costs of suit. On the 28th of July, upon application to the Court by the plaintiff in this suit, the order of the 26th of July was rescinded, and it was ordered that the defendant, Ford, should have a certain time to plead, answer, or demur to this bill of discovery. At the date of this order Ford's answer was

prepared, and awaited only his perusal. His absence from town at the time prevented the immediate filing of the answer; but before the answer was filed the bill of discovery was, by amendment, without special leave, converted into a bill for relief.

Swanston and *Montague* now moved that the amendments in the bill might be expunged.

Russell and *Winstanley*, for the plaintiff, cited *Severn* v. *Fletcher* (5 Sim. 457); *Butterworth* v. *Bailey* (15 Ves. 358); —— v. *Smith* (Coop. 141), and *Hildyard* v. *Cressy* (3 Atk. 303), and argued upon the merits of the case.

The VICE-CHANCELLOR.—I considered the point so settled that I am surprised to hear it discussed. If this is arguable, as it seems to me every thing is. I consider the proceeding to have been irregular. The modern practice has been not to support an irregular order upon merits subsequently brought forward.

WALTERS v. COLLIER.
MILLBANK v. STEVENS.

Practice—Examination of documents in another suit.

On motion by plaintiffs in a supplemental suit for liberty to examine documents deposited in the original suit, the plaintiffs in the original suit should be served with notice.

Miller, on behalf of the plaintiffs in the first-mentioned suit, which was supplemental to the other, moved for liberty to examine documents deposited in the original suit. The notice of motion was headed in the two causes, but the plaintiffs in the original suit were not served with notice. Both causes were set down before Bruce, V. C. and in the original suit, which was for administration of a testator's estate, a decree had been made.

Bagshawe opposed the hearing of the motion, as all the parties interested had not been served, and

The VICE-CHANCELLOR directed the motion to stand over, with liberty to serve them.

BLAIR v. ORMOND.

Practice—Affidavits.

Upon an application for a commission to examine a witness to perpetuate his testimony, quære whether an affidavit that the deponent was informed and believed that the witness was above eighty years of age is sufficient?

In this case *Heathfield* moved for a commission to examine a witness in order to perpetuate his testimony. The motion was made upon an affidavit which stated that the deponent *was informed and believed* that the witness was above eighty years of age.

The VICE-CHANCELLOR said that he had a doubt whether the affidavit was sufficient. The Registrar would inquire, and if it was sufficient the order might be made.

HAWKES v. HOWELL.

Practice—Payment of money into court—Executor.

In an administration suit where wilful default is charged against an executor, and he admits that a sum of money has been allowed by him to remain upon personal security, without any excuse being given, the defendant will be ordered to pay the money into court, and the Court will only consider the time within which the money should be paid.

Selwyn moved for the payment into court by the defendant, an executor, of a sum of 2,000*l*. and also for payment of a balance admitted by the defendant to be in his hands. The suit was an administration suit commenced against the executor, and charged him with wilful default. The sum of 2,000*l*. was due upon two bills payable four and five years respectively after date by Richard Howell. These bills became due in the testator's lifetime, and long before his decease. The money had been allowed by the defendant to remain upon the bills, he receiving five per cent. per annum upon the sums. The defendant admitted these facts by his answer, and that a balance of 300*l*. part of the testator's estate, was in his hands. By an affidavit subsequently filed, the defendant stated that, by reason of various payments, this balance in his hands was reduced to 24*l*.

Randall opposed the motion, and cited *Richardson* v. *The Bank of England* (4 Myl. & Craig, 165).

The VICE-CHANCELLOR said that he considered it quite settled that where wilful default was charged against an executor, and he admitted, without excuse or apology, that he had allowed a debt due to the testator to remain upon personal security alone, the only question upon a motion for payment of the money into court was as to the time to be allowed for payment. He should direct the 2,000*l*. to be paid into court within three months. As to the payment of the balance, the motion should stand over for an explanation as to the reduction stated by the defendant in his affidavit, it not being sufficient to say that the balance was reduced without further explanation.

Friday, Dec. 6.
MUTLOW v. MUTLOW, *Re* STUBBS.

Solicitor and client—6 & 7 *Vict*. c. 73, s. 37.

Special circumstances under which the Court directed the taxation of a bill of costs when more than twelve months had elapsed since the delivery of the bill.

This was a petition presented in the above suit for the taxation of a solicitor's bill of costs under the recent Act. The suit was an administration suit of the estate of a testator, who died on the 21st of September, 1842. At the request of the executors, the solicitor's bills, for the payment of which the solicitor had a lien upon some deeds in his possession, were sent in in Nov. 1842. A decree was made in the suit on the 26th of April, 1843. The executors had no personal estate in possession, except a sum of 56*l*., and the debts proved against the estate amounted to 3,000*l*.

Pigott, for the petition.

Craig, for the respondent, contended that the 6 & 7 Vict. c. 73, s. 37, precluded the taxation of bills of costs after twelve months from the delivery, unless special circumstances were shewn, which in this case were not. Nothing was alleged in the petition as to the bills themselves; but

The VICE-CHANCELLOR said that he should direct the bills to be taxed.

VICE-CHANCELLOR WIGRAM'S COURT.

Nov. 20th, and Dec, 4.
DOBSON v. HOOPER.
Will, construction of.

This cause came on before his Honour on further directions and costs as to the construction of the will of Mary Dobson, the wife of Henry Dobson, formerly Mary Ragsdale, spinster. John Ragsdale, by his will dated 3rd April, 1789, gave and bequeathed to his trustees therein named, 1000*l*. 3 per cent. reduced Bank Annuities, upon trust to pay and apply the dividends and produce thereof towards the maintenance and education of Mary Ragsdale (his niece, who afterwards intermarried with Mr. Henry Dobson) until she should attain the age of twenty-five years, and after her attaining that age, then in trust to transfer and assign the said 1000*l*. unto the said Mary Ragsdale, to the intent that she might receive the dividends and produce thereof during her natural life, and to pay over to her any accumulation that might have arisen in respect thereof; and immediately after her decease the said testator gave and bequeathed the same unto such person and persons and in such parts, shares and proportions, manner and form as she the said Mary Ragsdale, whether covert or sole, should, by her last will and testament to be by her signed and published in the presence of and attested by two or more credible witnesses, give or bequeath the same. The said Mary Ragsdale intermarried with the said Henry Dobson, and died in 1837, leaving two children her surviving; Mary, married to Andrew Forrester, and George Joshua Dobson. Mary Forrester died in the life time of her father, the said Henry Dobson.

The said Mary Dobson made her will dated 27th June, 1815, duly signed and attested in the words following. "This paper writing contains the last will and testament of me, Mary Dobson, wife of Henry Dobson, taylor, Walham-green in the parish of Fulham, in the county of Middlesex; first, I do hereby revoke all former wills, codicils and other testamentary dispositions made by me at any time heretofore, and do publish and declare this to be my last will and testament in form and manner following: I direct that after my funeral expenses the charge of proving and establishing this my will and other debts be paid, I do hereby give and bequeath to my dear and lawful husband, Henry Dobson, all the annuity left to me by my uncle John Ragsdale, and whatsoever legacy or legacies, money or other property may be due to me at any future period of time, whatsoever and by whomsoever, I do hereby give to my husband, Henry Dobson, to enjoy during his natural life, and at his decease I direct that all such property shall be equally divided between my two children, George Joshua and Mary Dobson; but in case I should have any more offspring, then I direct that they may be made equal share and share alike; and in case that either of them should die before their father, then the share or shares of such deceased shall be equally divided between the survivors; and furthermore that each child shall not diminish their respective principal or shares from their children or next of kin after them; I furthermore direct that my daughter, Mary Dobson, may have all my wearing apparel, with watch, rings, &c. I nominate, constitute, and appoint my husband, Henry Dobson, to be my sole executor to this my last will and testament."

The bill was filed by the plaintiff, Harriett Dobson, as the widow, sole executrix and legatee of Henry Dobson, deceased and she prayed that she might be declared to be entitled to the said sum of one thousand pounds Three per Cent. Reduced Bank Annuities.

Welch (in the absence of *Teed*, Q. C.), for plaintiff, contended that that portion of the will commencing, "And I do hereby give and bequeath to my dear and lawful husband, Henry Dobson, all the annuity left to me by my uncle, John Ragsdale, and whatsoever legacy or legacies, money, or other property may be due to me at any future period of time whatsoever, and by whomsoever, I do hereby give to my husband, Henry Dobson, to enjoy during his natural life," &c. formed two distinct sentences, and that the first, down to the words "John Ragsdale," was complete in itself, and gave the 1,000*l*. absolutely to the plaintiff; that the will must be read as a deed, and stops not regarded; and he cited *Doe dem. Ellam* v. *Westley* (4 Barn. & Cress. 667).

Romilly and *Hallett*, for Andrew Forrester, as administrator of his late wife.

James, for George Joshua Dobson.

Piggott and *White*, for executors and other parties.

His HONOUR took time to consider, and on Dec. 4, 1844, gave judgment to the effect that the will must be read as one sentence from the commencement down to the words "next of kin after them;" and that therefore George Joshua Dobson was alone entitled to the 1,000*l*. the restriction at the latter part of the will, in favour of the children while their parents were alive, being too remote. Costs, charges, and expenses of all parties between solicitor and client out of fund.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Monday, Nov. 25.
LAKE v. THE DUKE OF ARGYLE.

When persons meet to prepare measures for calling a society into existence, attendance upon such meeting, and concurrence in such measures, may be strong evidence that any individual there present held himself out as paymaster to all who executed their orders. The acts of a nobleman, in declaring his intention to become president, and reading a resolution when presiding, afford material evidence that he authorized contracts for services required by the constituent body, although the general object was a public one.

Each case must depend on its own circumstances.

Kelly, Q.C. moved on the 5th inst. for a rule to shew cause why the verdict should not be set aside, and a nonsuit entered, or for a new trial.

The facts are fully stated in the judgment.

Kelly argued that the defendant had acted in the capacity of a nobleman in promotion of a public and philanthropic purpose, and was not, and ought not to be held, responsible for the debts incurred in the mechanism of the society, simply because he presided at some of its meetings. The duke in this case had written to the Lord Mayor expressly informing him that he was induced to aid the society because he had poor persons on his own estates to whom he wished to give the means of emigrating. It was quite clear that the plaintiff never received any order from the defendant, but the chief ground was, that this was not a mercantile speculation at all, but purely a benevolent enterprise. *Cur. adv. vult.*

JUDGMENT

Lord DENMAN, C.J. now gave the judgment of the Court.—In this case the question was, whether the defendant had made himself liable for certain printer's work. I was desired to direct a nonsuit, because there was said to be no evidence to shew the defendant's liability. I thought I could not nonsuit, as there was some proof of acts done by the defendant, on the effect of which the plaintiff had a right to take the jury's opinion. There was a case of *Wood* v. *The Duke of Argyle*, in the Common Pleas, where the Lord Chief Justice laid down the law, and summed up for the defendant. I adopted the same course, and laid down the law in the very words there employed; observing, there appeared strong reasons for supposing the credit was given to other persons, previously the plaintiff's customers, and not to the defendant. The jury, in the Common Pleas, in the case I have referred to, found their verdict for the defendant. In this case, the jury found for the plaintiff; and a motion has now been made for a rule to shew cause why there should not be a nonsuit or a new trial. We expressed our opinion there was no ground for a nonsuit. It appears certain persons were determined to form an emigration society, with the idea of settlement. They held some meetings, and afterwards obtained the defendant's consent to be named president of the society, involving a consent that the fact should be made public. Some meetings were held afterwards, at one of which the defendant acted as president, by that name, and signed a resolution there agreed upon, that the papers should be printed; and he had been held out as the president, and had also informed the Lord Mayor, in a correspondence respecting some sailors, that he had at one time been a proprietor, but had withdrawn from the company. On these facts, I asked the jury whether the defendant had held himself out as entitled to pay for the work? and they thought he had, and fixed him with the debt. It does not appear that the company had ever been formed according to its intended constitution; but it is proper to distinguish acts done on the execution of that object from those preliminary acts which were necessary to carry that intention into effect. It was argued, he might have no right to support the statement in a prospectus or any similar publication; that the defendant meant to be a member, or that no company was to exist until a certain capital was raised, or any other condition. But when persons meet

to prepare measures for calling a society into existence, attendance upon such meeting and concurrence in such measures, may be strong evidence that any individual there present held himself out as the paymaster to all who executed their orders; and although not liable as a member or shareholder, yet his declared intention to become president, or to take shares, may be material to shew he authorized contracts with those whose services were required by what may be called the constituent body. In this case the work done by the plaintiff was obviously necessary for the objects of the society. Part of it was ordered by a resolution read by the Duke from the chair. The proof was certainly not conclusive, as the plaintiff might have been informed, or he might believe, that others were to pay, and that the duke was merely giving his name to promote the general objects of the society. The circumstances which might have led to this inference were commented upon by the summing up, and we cannot say the jury have done wrong in thinking they did not outweigh the defendant's conduct. In *Wood's* action against the same defendant, the claim was not precisely of the same nature; for the maps were used in the execution of the company's scheme of emigration; hence the question was properly confined to proof that it was formed, and that the defendant became a member of it. There is no difference between the two summings up, nor is it certain the same jury might not have found both verdicts. Possibly this might lead to the opinion the verdict was for too large a sum; part of the work may have been properly charged, because due on preliminary purposes, and part improperly, because it was presumed it was for the company. But this division it is not easy to make, and it ought to have been pointed out on the trial, nor is it a ground of motion; we only advert to it to prevent the supposition that the jury have found their verdict so as to infer the defendant's liability to every contract by the supposed company; the anticipation of which consequence is stated to be the main reason for his resistance to this very demand. Each case must depend upon its own circumstances, and by reference to the defendant's language and conduct. The rule, therefore, must be discharged.

REG. v. THE INHABITANTS OF CASTERTON.

Where in an order of removal the jurisdiction of the justices to make it, appears by reference to the margin alone, it suffices, for the margin is part of the order.

Baines, Q. C. (with whom was *Ramsay*) shewed cause against a rule for quashing an order of sessions confirming the order for the removal of a pauper from Kirkby Lonsdale to Casterton, brought up by *certiorari*. There were several grounds, but that on which the judgment was given, related to the statement of the jurisdiction of the justices on the face of the order.

The facts are sufficiently stated in the judgment.

Baines argued, that the adjudication was sufficient, inasmuch as no exact form need be adopted, and the *venue* in the margin may be referred to to explain the order. *R.* v. *St. Mary's, Leicester* (1 B. & Ald. 327) shews that where the words, "in the county aforesaid," can alone have reference to the county in the margin, that suffices. (*R.* v. *Morgan*, 8 Barn. & Cr. 68; *R.* v. *Holbeck* (*Leeds*), Burr. S. C. 197.)

Pashley, contrà, cited *R.* v. *Toke* (8 Ad. & Ell. 227); — v. *Christie* (11 Ad. & Ell. 373); *Re Clark*. (2 Q. B. 619); —— v. *Wilson* (1 Rol. 435); *Walker* v. *Treby* (Salk. 1410); *Reg.* v. *O'Connor* (1843); *Baker* v. *Baker* (7 Moor. 455).

Cur. adv. vult.

The COURT now gave

JUDGMENT.

Lord DENMAN, C. J. The principal question was, whether the justices making the original order of removal appear upon the face of it to have jurisdiction; or, in other words, whether they are stated with sufficient certainty to be justices of and for the county in which the removing township is situated. The order, so far as this point is concerned, is in the following form:—"Westmoreland to wit.—To the overseers of the poor in the township of Kirby Lonsdale and the overseers of the poor in the township of Casterton." It then proceeds, "unto us whose names are hereunto set, signed, and affixed, being justices in and for the said county." The rest of the order being in the usual form is not objected to. It was contended that inasmuch as the justices failed to describe themselves as being justices in and for the county of Westmoreland, they had no jurisdiction, and therefore the order cannot be supported. Various cases were cited. It was admitted, however, by the learned counsel who argued against the validity of the order, that one case was not law. We are of opinion neither of the cases is applicable. In one, the county of Wilts was in the margin, but in the body the county of Dorset was mentioned, and the justices described themselves as justices in and for the said county; and the Court held it ought to appear the justices had jurisdiction to make the order, and two counties having been mentioned, they ought to have stated of what county they were justices. It is obvious, the order in the present case is free from that uncertainty which in both instances referred to, was fatal. The question was, whether the margin is a part of the order or not, because if it be, it was contended the townships are described as being in the county of Westmoreland. Now this point seems to have been long settled. (*King* v. *Holbeck*, (*Leeds*,) Burr. S. C.) is thus reported: "It was objected to the order of removal that the borough of Leeds is not mentioned in the body of the order, and, therefore, does not aver the two justices had jurisdiction." Leigh, J. said, "I take it to be settled that the margin is a part of the order, and therefore a plain reference to it is sufficient," and the Court decided accordingly. We are of opinion we must so construe the present order, and therefore this rule must be discharged.

Rule discharged confirming the order of Sessions.

Wednesday, Dec. 4.

Re PARTINGTON.

(Argued Nov. 23.)

Where a party, who was in custody under certain executions, petitioned the Court of Bankruptcy under 7 & 8 Vict. c. 96, obtained his interim order, but whose petition before the Court was dismissed by the Commissioner: Held, that the Commissioner has power to remand the party to his former custody. Semble, that the Court would not reverse the decision of the Commissioner as to whether the party was entitled to the benefits of the Act.

This case arose on a question of the sufficiency of a return to a *habeas corpus*. The facts of the case were as follow:—In 1841, Mr. Partington was taken in execution under a *ca. sa.* on a judgment, and while in custody, two detainers on other judgments were lodged against him. The debts altogether amounted to about 600*l*. He was not a trader. In 1822 he petitioned the Court for the Relief of Insolvent Debtors under 1 & 2 Vict. c. 110, and his property vested in his assignees for the benefit of his creditors. He, however, was remanded to custody under the executions. Some time since he petitioned the Court of Bankruptcy under 7 & 8 Vict. c. 96, was discharged out of custody, and obtained his *interim* order of protection. It however appearing to the Commissioner that Partington was not entitled to the benefits of the Act, he refused him his final order, and directed him to be remanded to his former custody. A writ of *habeas corpus* having been obtained, a return was made to it that Mr. Partington was in custody under certain executions.

Peacock now appeared on the part of Mr. Partington, and contended that the return was insufficient, and that Partington was entitled to be discharged from custody. The grounds on which he moved were, first, that Partington was entitled to his discharge, having been more than twelve months in custody under the execution. Second, that the commissioner had no power to remand the insolvent, for that his power merely extended to the refusal of the first order, and if the debtor could be retaken it must be by the execution creditors, which could not be done in this case. Thirdly, that as the debtor had brought himself within the jurisdiction of the Court, there was nothing in the case to justify the commissioner in refusing the first order. The ground of that refusal had been that the debtor had no goods to assign, everything having vested in the provisional assignee under the former petition to the Insolvent Court; for this, he contended, was no ground to deprive the debtor of the benefits of 7 & 8 Vict.

Lush, contra. *Cur. adv. vult.*

JUDGMENT.

DENMAN C. J. now delivered the judgment of the Court. The prisoner was brought before us on a *habeas corpus*, on an affidavit made by himself on moving for a writ and for a return. The facts appear to be, that in 1841 he was committed to the Fleet in execution for non-payment of between 500*l*. and 600*l*. pursuant to a writ of this court, and also detained in execution on two other writs of *ca. sa.* one of which, at least, certainly issued in an action for the recovery of the debt; the first endorsed to levy 50*l*. damages, with interest, on 36*l*. 11s.; the other 80*l*. 14s. with interest, on 37*l*. 17s. In August last he petitioned the Court of Bankruptcy under the 7 & 8 Vict. c. 96, and on that day obtained his discharge from custody, with an interim order of protection from arrest, to expire on the 27th of September. On that day he appeared for examination before the Court, and Mr. Commissioner Evans made an order, whereby, after reciting that on the examination it appeared that he had recently petitioned the Insolvent Debtors' Court, and that all his effects were thereby vested in the provisional assignee of the court, under a vesting order, and that proceedings were then pending, he refused the final order that had been given in pursuance of the statute and directed that he should be remanded to his former custody as to such of his several executions as would have remained in force, as if that said interim order had not been made. The legality of this order of removal is now the matter in question. On the part of the prisoner it is first contended, that under any circumstances his present detention is illegal; for it appears he has, on each writ, been detained more than twelve months, but that by the proviso of the 28th section of the 7 & 8 Vict. it is thereby and in general terms enacted, that no debtor shall be imprisoned on any process for more than twelve calendar months for any debt contracted before filing the petition in case the final order should be refused; and in this case the final order has been refused; but we are of opinion that this case does not fall within this proviso, which cannot be construed with reference to the preceding parts of the clause to which it is appended. Three cases are put in the commencement. First, the naming of no day for making the final order under the terms specified in the 24th section. Secondly, the adjournment of the consideration of the final order *sine die;* and thirdly, the refusal of the final order. This case does not fall within the two first; but as to the third the section goes on to give the commissioner a power analogous to that of the insolvent commissioner, of making an order to protect the prisoner from arrest or detention, to take effect from a time to be named in such order. The proviso is a restraint of that power, limiting the period during which the petitioner shall be liable to imprisonment during the period of twelve months. This liability is in the nature of a punishment, and is clearly prospective, and if the commissioner had found, upon consideration, any circumstances to justify him in so doing, he might have made such order, and the petitioner not have obtained his discharge within that day twelve months from the date of the order. No such order having been made, the commissioner has proceeded evidently on that ground, and on examination the prisoner's case does not bring him within the benefit of the Act, and the first order for discharge and protection issued on it; and that, therefore, by a power incidental to the jurisdiction, though not in terms given by the Act the petitioner both might and ought to be remanded to his original custody. This raises the petitioner's two remaining points. He contends first, at all events, that there was no power to remand; that he was a prisoner in execution on a judgment for a debt; that he was not a trader; that he had, therefore, a *primâ facie* right to petition, and that such right brought him within the jurisdiction of the Court, not generally, but as limited by the Act; that the discharge from custody under the Act was absolute under it; that there is no power to imprison by the Court except under the 27th section of the Act, in all other cases generally, saving the right of creditors to retake in execution on a judgment, when the interim order has not expired and shall not be renewed. To them, he says, his case should have been left by a court which had ceased to have any power over him as soon as the interim order had expired, and he declined to proceed any further with his case. Secondly, he contends that having brought himself, in the first instance, within the jurisdiction of the Court under the sixth section, nothing but some one of the cases specified in the 24th section would justify the commissioner from proceeding in due course for naming a day for making the final order. We are clearly of opinion against the prisoner on the first point. The discharge and interim order are founded entirely on the petition, which suffices to bring the petitioner within the jurisdiction of the Court in the first instance; but being *ex parte*, when the day of examination comes, he must be liable to contradiction by the commissioners, if it turns out that the allegations in it, essential to the proceedings, are untrue; as, for example, it may turn out that he is a trader, and that his debts exceed 300*l*. and in this case the petitioner would be refused his order. It is incidental to the power of deciding on this, that the Court shall have the power of remanding the petitioner; otherwise it may be made an engine of great fraud on creditors, without the means of remedying the evil. It seems the power of remand is involved in the power of discharge, as soon as it appears that the order for the discharge has improperly issued. The answer to the petitioner's first point equally applies to the second. There still remains the question whether the commissioner has rightly decided. The commissioner has decided that the case is not within the Act,—that this is a case in which he has jurisdiction to decide. He has done so, and we are not authorized to review that decision. We by no means indicate a doubt of the propriety of it—we simply express no opinion on it. It may be, there is no court competent to review, or it may be that it may be reviewed by the Chief Judge, or that by the Lord Chancellor the merits may be reviewed. It is clear we have not that power, and the petitioner therefore must be remanded.

COURT OF COMMON PLEAS.

Monday, Nov. 25.

DOE *dem.* CALDECOTT *v.* JOHNSON.

A, having a power by will to appoint certain real estate to the use of such child or children in such shares, manner, and form, and for such estates and interests therein, and subject to such payments, conditions, and limitations as he should direct, &c. by his will, without any reference to the power, devised all his real and personal estate whatsoever and wheresoever, and of what nature or kind soever, to

certain trustees upon trust, to apply the profits, as follows: one-third part to his wife during her life or widowhood, and the other two third parts unto and for the benefit of his three children equally. There was no evidence whether A had or not any other real property upon which the devise could operate, except that which was the subject of the power:—Held, that the will of A was not, under the circumstances, an execution of the power.

Where a party seeks, by extrinsic circumstances, to give an effect to an instrument, which, upon the face of it, it would not have, it is incumbent on him to prove the circumstances though involving the proof of a negative, or, in the absence of such proof, the deed must have its natural effect and operation given to it, and no other.

At the trial of this action of ejectment before Williams, J. at the last Lent Cheshire Assizes, it appeared that one Michael Mason, of Bickley, by his will, dated 13th of June, 1778, after directing a sum of 170*l.* to be raised by mortgage of a certain messuage and premises in Nantwich, in the county of Chester (being the premises in dispute), and after devising a rent-charge of 40s. on the same premises, devised the premises in question in the following manner: —"And subject and charged as aforesaid, I give and devise my said messuage or dwelling-house, hereditaments, and premises in Nantwich aforesaid unto my son Michael Mason and his assigns for and during his natural life, and from and after his decease, to the use and behoof of all or such one or more of the child or children of my said son Michael Mason lawfully to be begotten, to commence and take effect at such times and in such shares, manner, and form, and for such estates and interests therein, and subject to such payments, conditions, and limitations as my said son Michael, by any deed or deeds, writing or writings, or by his last will and testament in writing, to be by him duly signed, executed, and published in the presence of and attested by three or more credible witnesses, shall direct, limit, appoint, will, devise, settle, or charge the same, and for want of such settlement, will, or appointment to the use of all and every the son and sons, daughter and daughters, of my said son Michael lawfully to be begotten, equally to be divided between them (if more than one) as tenants in common, and to the heirs of the body and bodies of all and every such son and sons, daughter and daughters respectively lawfully issuing."

Then followed cross remainders among the children in tail, with remainders over.

Michael Mason, of Nantwich, the son of the above testator, made his will dated March 28, 1796, and duly executed and attested by three witnesses: in which will was the following devise: "I give, devise, and bequeath all my real and personal estate, whatsoever and wheresoever, and of what nature or kind soever, unto my brother, John Mason of Nantwich aforesaid, and my nephew, Thomas Caldecott, and to the survivor of them, his heirs, executors, administrators, and assigns upon the several trusts, and to and for the several ends, intents, and purposes hereinafter mentioned, that is to say, in trust to pay and apply the clear yearly rents and profits of my real estate in manner following, that is to say, one third part thereof unto my wife, Sarah Mason, and her assigns, for and during the term of her natural life, if she shall so long continue my widow, and the other two third parts thereof unto and for the benefit of my three children, Thomas, John, and Michael Mason, in equal shares and proportions, and to be paid and applied to and for their benefit and advantage, or the benefit and advantage of the survivors and survivor of them, and the issue of such of them as shall happen to die leaving issue lawfully begotten in such manner as my said trustees, or the survivor of them, shall think proper; and in case two of my said sons shall happen to die without leaving any issue lawfully begotten, then I do hereby give and devise my said real estate unto the survivor of my said three sons, his heirs, and assigns for ever."

The question was whether this last will was a good execution of the power, the lessor of the plaintiff claiming the premises in default of the power being executed.

There was no evidence at the trial whether Michael Mason, the son, had or not any other real estate on which the will could operate, except what was the subject of the action. The defendant contended that the *onus* of such proof rested with the party who asserted the affirmation, and that in the absence of such proof the presumption was that the testator had no other property.

A verdict was found for the defendant, with leave for the lessor of the plaintiff to move to set it aside, and enter instead a verdict for the plaintiff. A rule *nisi* having been obtained to that effect—

Wilde, Sir T. and *Channell*, Serjt. on behalf of the defendant, this term, shewed cause, citing the following authorities: *Campbell* v. *Leach* (Ambler 740); *Hamilton* v. *Royse* (2 Scho. & Lef. 332); Fitzg. 157; 2 Sug. Powers, 82, 6th ed.

Talfourd, Serjt. (E. V. *Williams* with him) for the lessor of the plaintiff, cases cited: *Bradby* v. *Westcott* (13 Ves. 453); *Jones* v. *Currie* (1 Swanst. 66); *Doe dem. Nowell* v. *Roake* (2 Bing. 497); same case in error (5 B. & C. 720); and in the House of Lords *Denn dem. Nowell* v. *Roake* (6 Bing. 475).

Cur. adv. vult.

The judgment of the Court was now delivered by Tindal, C. J.—This was a motion to set aside the verdict for the defendant, and to enter a verdict for the plaintiff, pursuant to leave given for that purpose, or for a new trial. The matter of law, in reference to which, the leave given to enter the verdict had been granted, turns upon the question whether a power given by the will of Michael Mason, of Bickley, had been duly executed by the will of Michael Mason of Nantwich. In determining whether the latter of these wills, that of Michael Mason of Nantwich, is to be considered as an execution of the power created by the will of Michael Mason of Bickley, the rule which ought to guide our decision, is that laid down by the judges in the House of Lords, in the case of *Denn*, on the demise of *Nowell* v. *Roake*. It is there said by the Lord Chief Baron Alexander, "There are many cases upon this subject, and there is hardly any subject upon which the principles appear to have been stated with more uniformity, or acted upon with more constancy. They begin with *Sir Edward Clere's* case, in the reign of Queen Elizabeth, to be found in the 6th Report, and are continued down to the present time; and I may venture to say, that in no instance has a power or authority been considered as executed, unless by some reference to the power or authority, or to the property which was the subject of it, or unless the provision made by the person intrusted with the power would have been ineffectual—would have had nothing to operate upon, except it were considered as an execution of such power or authority." Now, applying this principle to the present case, there is certainly no express reference in the will of Michael Mason, of Nantwich, to the power; nor if we look into the nature of the devise, does it necessarily or even naturally imply that he had the power in his contemplation in framing this will; but the contrary is rather to be inferred, the power being to appoint to his children, and the devise being to trustees for the benefit as to one third part of the property to his wife; a mode of disposition, it appears to us, quite at variance with the power—intending to shew that his intention in that devise was to deal with property of which he was the absolute owner. Neither is there any express reference to the property which is the subject of the power, or any thing upon the face of the will that would raise any necessary implication that in penning the devise he had that property in contemplation; and the devise is perfectly general, and the disposition is such as he had no right to make of the property in question. Whether the testator had any other real property upon which the devise in question could operate is a matter upon which it is admitted there was no evidence given on either side. It was contended on behalf of the defendant that if Michael Mason, of Nantwich, had no other real property than that of a house in Nantwich, so that the devise as to the real property would be wholly inoperative, unless it could operate as an execution of the power, it must be held so to operate, and that the defendant ought not to be called on to prove negatively that Michael Mason had no other property, and that it lay upon the plaintiff to prove affirmatively that he had other property upon which the devise could operate, the existence of which, in the absence of any proof, was not to be presumed; but it appears to us that where a party seeks by extrinsic circumstances to give an effect to an instrument which upon the face of it, it would not have, it is incumbent on him to prove these circumstances, though involving the proof of a negative, or that in the absence of such extrinsic proof, the deed must have its natural effect, and operation given to it, and no other. In the present case the devise purports only to operate to convey the property of the devisor to devise the property of the devisor—not that over which he has a power of appointment. In the absence of the proof of any extrinsic circumstances it cannot be construed to operate in any other way than what its terms naturally import. Upon these grounds we are of opinion that under the circumstances disclosed in this case the will of Michael Mason, of Nantwich, cannot be considered as being an execution of the power, and the consequence will be that the verdict must be entered for the plaintiff.

Rule absolute for entering a verdict for the plaintiff.

Monday, Nov. 25.

GRINNELL *v.* WELLS.

In an action for seducing the plaintiff's daughter, the omission of the allegation per quod servitium amisit is not cured by stating that the plaintiff's daughter is a poor person maintaining herself by her own labour, and not sufficient to maintain herself otherwise; and that the defendant debauched her, and that she was delivered of a child; stating further, as the grievance of the charge, that the plaintiff, being her father, was forced and obliged to expend certain sums of money in the maintenance of his daughter.

Sir T. *Wilde*, Serjt. shewed cause against a rule *nisi* obtained by *Channell*, Serjt. in Michaelmas Term last.—The declaration alleges that the daughter of the plaintiff is a poor person who maintained herself by her own labour, having no other means of support, and being under the age of twenty-one years; that the defendant debauched her, that she became pregnant, and was afterwards delivered of a child; and, being wholly unable to pay the expenses of her delivery or to maintain herself, the plaintiff, being her father, did maintain her at his house. The motion was made in arrest of judgment, on the ground that the declaration does not disclose a good cause of action. The plea on the record was—Not guilty. Before the new rules, that would have put the plaintiff upon proof of all that was requisite to support the action; but by the new rules, only the wrongful act is put in issue. All averments of a declaration not traversed must be taken to be admitted in the sense in which these allegations would be required to be proved to maintain the action. The 43 Eliz. gives power to the justices to make an order to compel the father to support his poor children. In this case, the damage resulting to the plaintiff from the wilful act of the defendant is the cause of action. The injury is not direct, so as to be the subject of an action of trespass. The declaration alleges, after setting forth the wrongful act of the defendant, that, by means of the premises, the plaintiff was forced, obliged, and at his own charge did expend a certain sum of money in the maintenance of his daughter. Here the father was clearly liable under the statute. Where, as in this case, there is a moral obligation, it is not necessary for the party on whom a legal obligation is cast to wait until it is enforced by the forms of the law. Here the father is compelled to support his sick child, owing to the wrongful act of another, and the order of the justices is not necessary in order to support this action for expenses actually incurred. The defendant should have demurred. The cause of action arises from the words in the declaration, that the plaintiff was forced and obliged and necessarily did at his own charge, maintain his daughter, and by means of the premises did expend a certain sum of money in nursing, taking care, &c. Here the declaration sets forth every fact necessary to create a legal liability under the statute.

The learned Serjeant here cited and distinguished at great length, *Hall* v. *Hollander* (4 B. & C. 660); *Satterthwaite* v. *Dewhurst* (5 East, 47, n.); *Russell* v. *Corne* (2 Lord Raym.); *Rex* v. *Cornish* (2 B. & Ad. 498); *Speares* v. *Parker* (1 T. R. 141); *Rippon* v. *Gorton* (Croke Eliz. 849); *Hunt* v. *Wotton* (Sir T. Raymond, 259).

Channell, Serjt. on the same side.

Talfourd, Serjt. contrà.—This declaration discloses no legal ground of action. There are no precedents in the books to be found corresponding with the present form of declaration. The act complained of was not a wrongful act, in a strict legal sense; it was an immoral act, and an act which subjected the parties to the censure and punishment of the ecclesiastical courts; but it was not such a wrongful act as in contemplation of law would form the foundation of an action. The action can only arise where the relation of master and servant subsists at the time of the wrongful act, and the servant is under the master's roof; or, if absent, there was an *animus revertendi*. *Harris* v. *Butler* (2 M. & W. 39), and *Blamire* v. *Hayley* (6 M. & W. 55) shew that the mere relation of parent and child does not give the remedy. The relation of master and servant must be laid in the declaration. The case cited from Sir T. Raymond does not affect the main principle; the wrongful act there was an act of trespass to the person of the child. Here the act is done by assenting parties. (*Mortimore* v. *Wright*, 6 M. & W.)

Tindal, C. J. delivered the judgment of the Court. The question in this case arises on a motion in arrest of judgment, and is this—whether a father can maintain an action upon the case for the seduction of his daughter when he is unable to allege in the declaration the loss of his daughter's service by reason of the defendant's wrongful act. The declaration in this case contains no allegation of the loss of the service of the daughter, but instead of which it alleges that the daughter was a poor person, maintaining herself by her own personal services, and not of sufficient ability to maintain herself otherwise; and after stating that the defendant debauched her, and that she was delivered of a child, and her thereby becoming unable to work or maintain herself, alleges, as the *gravamen* of the charge, that the plaintiff, he being her father, and being of sufficient ability to maintain his said daughter, was, by means of the premises, forced and obliged to, and necessarily did, at his own charge, maintain his said daughter, and in that maintenance necessarily paid large sums of money in and about the nursing of his said daughter during the time she was unable to maintain herself. And the question becomes this, whether the want of an allegation of the loss of service is supplied by the substitution of the above-recited allegation. The foundation of an action by a father to recover damages against the wrong-doer for the seduction of his daughter has been uniformly based, from the earliest times hitherto, not upon the seduction itself—not upon the wrongful act of the defendant—but on the loss of service of the daughter, in which service he is

supposed to have a legal right and interest. Such is the language of Lord Holt (2 Ld. Raymond, 1032), and such is the opinion of the Court in the case of *Grey* v. *Jeffreys* (Cro. Eliz. 55), which refers to an action by a father for the personal injury to the child, and stands precisely upon the same footing as the case in Doug. 1497. It has, therefore, always been held that the loss of service must be alleged in the declaration, and loss of service must be proved at the trial, or the plaintiff must fail. It is the invasion of the legal right of the master to the services of the servant that gives him a right of action for the beating of the servant, and it is the invasion of the same legal right, and no other, that gives the father a right of action against the seducer of his daughter; so that the original act is not the cause of the action; but the consequence upon it, namely, the loss of the service, is the cause of the action. No precedent for any action for seduction has been brought before us, except those of *Harris* v. *Butler* (2 M. & W.), and *Blaymire* v. *Haley* (6 M. & W.) (in both which cases the declarations were held bad), in which there has not been an allegation of the loss of service to the father; and the struggle has been always at the trial to give some proof of actual service, or the implied relationship of master and servant. In the case of *Dean* v. *Peel* (5 East, 45), where the loss of service was alleged in the declaration, but where the proof at the trial was only this, that the daughter was in the service of another person at the time of the seduction, without any intention of returning to her father's house, but that on her seduction, she came home, and was maintained by her father. It was there held that an action was, notwithstanding, maintainable. But as that case is in evidence precisely what the present case is in pleading on the record, it appears a direct authority for the position that if there is an absence of any allegation of the loss of service to the father, although there may be an allegation of his being compelled to pay the expenses arising from the wrongful act, an action is nevertheless not maintainable. Upon the ground, therefore, set forth on this record, we do not feel ourselves warranted in giving judgment for the plaintiff, as we think the declaration discloses no real wrong to the plaintiff—no invasion or violation of his legal rights. Indeed, many observations suggest themselves against the soundness of the arguments on which the plaintiff relies. In the first place, if the liability to support the daughter under the statute of Elizabeth would form a ground of action *per se*, independent of any service, it would seem scarcely credible, as the statute of Elizabeth was framed long before any of the cases above referred to, that the difficulty of any proof of service, actual or implied, might not have been answered by proving, on a declaration like the present one, the legal liability of the father to maintain his daughter under the statute. In the next place, if this ground of action is allowable in a case of seduction of a daughter, it is equally so in the case of every beating of a servant, whether his services were lost or not; and upon this supposition the beating of a son, of whatever advanced age, and although altogether emancipated from his father's family, would form a ground of action at the suit of the father, if called upon under the statute to maintain his son. And still further the anomaly would follow, as the father is only liable under the statute to maintain his daughter, if he has sufficient ability so to do; and as the damages recoverable by the father when he brings an action cannot simply be limited to the actual expenditure of his money, but he may recover damages according to the aggravation of the particular case, the right of action to recover compensation would be confined to persons of ability to maintain their daughters, and would be denied to the inferior orders of the community; a result that would be most unreasonable. We therefore think, for the reasons above given, the cause of action as stated in this record is insufficient, and the rule for arresting the judgment must therefore be absolute.

COURT OF EXCHEQUER.

Monday, Nov. 25.

MALLAN *v.* MAY.

In an agreement by which a party binds himself "not to carry on the business of a surgeon-dentist in London, or in any of the towns or places in England or Scotland, where another party might have been practising during a certain term, the word "London" is to be understood strictly as the city of London only, and does not include Great Russell-street, Middlesex, or any of the suburban districts not within the city.

This was a special case sent from Chancery for the opinion of this Court. The question to be decided was whether the defendant, who had entered into an agreement with Messrs. Mallan and Co. dentists, in consideration of being taken into their service, not to practice as a dentist in London, or in any of the towns or places in England or Scotland where the plaintiffs might have been practising before the expiration of the servitude, was liable to an action at law for having practised in Great Russell-st. Bloomsbury under that part of the agreement which restrained him from practising in London. The case found that the word "London," strictly speaking, meant only the city of London, but that it had also "a popular and colloquial sense," under which it applied to a much larger district, in which Great Russell-st. was included.

The case had been mentioned once or twice before, but had been sent back by the Court, as they did not conceive the question to be one upon which they were called upon to give an opinion. It was, however, again sent from Chancery.

Whateley, Q. C. for the plaintiffs, contended that the intention of the parties to the agreement was obvious, and that the word "London" ought to be construed in the sense in which it was always popularly and generally understood, and that the fact, which was found by the case, that the establishment of the plaintiffs themselves shewed distinctly that the agreement was to be so construed.

Martin, Q.C. contra, contended that the only cases in which the Courts would construe a word to mean something other than its strict legal purport were either where there was something on the face of the agreement which necessarily pointed to such an intention, or where there was evidence that in the trade or business to which the contract referred the word had some peculiar acceptations.

JUDGMENT.

POLLOCK, C.B.—In the case of *Mallan* v. *May*, which was argued a few days ago before Barons Parke, Gurney, Rolfe, and myself, we shall certify our opinion to the Vice-Chancellor that the defendant, May, is not liable to an action for damages for having carried on his profession of surgeon-dentist in Great Russell-street, under the circumstances stated in the special case. The question turns upon the construction of the articles of agreement of December 1835, by which the defendant stipulated that he would not carry on the business of a surgeon-dentist in London, or in any of the towns or places in England or Scotland, where the plaintiff might have been practising before the expiration of the term of servitude; and the point to be decided is, whether "Great Russell-street, in the county of Middlesex," be within "London?" whether it is to be understood in that sense, and whether it was intended to be so understood in that indenture? We must apply the ordinary rule of construction to this instrument, and though by so doing we may, in some instances, be misled, and defeat the real intentions of the parties, yet the adoption of such a course has established a greater degree of certainty in the administration of the law; and one of the rules of construction is, that words are to be construed according to their strict and primary acceptation, unless from the context of the instrument, and the intention of the parties to be collected from it, they appear to be of a different sense, or unless in their strict sense they are incapable of being carried into effect; and subject always to the observation, that the meaning of a particular word may be shewn by parol evidence to be different in some particular place or trade from its proper and ordinary acceptation. In applying this rule to the present case, we find nothing in the context to prevent us construing the word "London" in its proper sense—that is, the city of London. The description, "Great Russell-street, Middlesex," rather justifies the argument that London is to be understood in its proper sense, by shewing that Middlesex and London were meant to be distinguished; and although it is probable, from the nature of the contract, the instrument may have meant to exclude the defendant from practising in Middlesex, that object might just as well be accomplished by the provision "that the defendant was not to practise in any place where the plaintiff might have practised during the term," as by the Court holding that the word "London" meant to include the larger district, and, therefore, that that word included Great Russell-street.

There is no difficulty in carrying this agreement into effect by understanding the word "London" in its strict sense. There is no parol evidence of any understanding of the word in a different sense in the trade or business to which this contract relates; the statement in the case, "that London has a popular or colloquial sense, in which 'Great Russell-street' would be understood to be within it," is by no means sufficient for the purpose of leading us to a different conclusion, and to the construction that the word "London," in this instrument, is to be taken to include the larger term.

We are, therefore, of opinion that the proper sense of the word "London" is that in which it is to be construed in this instrument, and that the plaintiff is not entitled to its adoption in any other sense.

Judgment for defendant.

THE MARQUIS OF BUTE *v.* THOMPSON.

In this case, which was argued several terms ago, and in which judgment was delivered at the close of last term, at the request of some other party who was interested in a cause in which proceedings had been stayed to abide the event of this judgment, the Court now delivered judgment as follows:—

JUDGMENT.

POLLOCK, C. B.—In the case of the *Marquis of Bute* v. *Thompson*, which was decided some time ago, we have been asked for the reasons upon which our judgment was founded, viz. that the plaintiff was entitled to recover. The foundation of the opinion of the Court is extremely short. This is an action of covenant. The defendants have expressly covenanted that "they, their executors, administrators, and assigns, or some or one of them, should and would raise and work 13,000 tons of coal in each and every year during the said term, and pay at the rate of 8d. per ton royalty for the same, or pay that amount of money, viz. 433*l*. 6s. 8d. each year, as fixed rent, whether the coals should be wrought or not; and also 9d. for each ton over and above that quantity, to whatever extent the same might be wrought." We are of opinion that this stipulation for a fixed rent, coupled with a covenant that coals should be wrought to that extent, and, if beyond it, that there should be a payment of 9d. for each ton over and above that quantity, does not carry with it, by any implication, a condition that there shall be coals to that extent capable of being wrought. It appears to us to be a stipulation on the part of the defendants, that they would work and get that, and if they did not get it, that they would pay a fixed rent for the land; and we cannot import into that covenant a condition that there should be coals to be obtained to that extent. If that was the intention of the parties, they should so have expressed it. This is the short ground upon which we are of opinion that the plaintiff, the Marquis of Bute, is entitled to the judgment of the Court.

DOE *dem.* WM. 4, JNO. JONES and OTHERS *v.* THOS. ROBERTS.

In this case, which was tried before Coleridge, J. at the last Assizes at Chester, and a verdict found for the plaintiff, *Evans*, Q.C. moved, at the commencement of this term, for a new trial, upon the ground of misdirection. As there appeared, at the time of the motion, to be some doubt as to how the learned judge did direct the jury, the Court deferred their judgment until he should have been consulted. He appears to have differed from the counsel as to what did pass at the trial.

JUDGMENT.

POLLOCK, C. B.—In the case of *Doe*, on the demise of *Wm.* 4, *John Jones* v. *Thomas Roberts*, which was a case of a motion for a new trial, which ultimately came to a point of misdirection—all the other points were disposed of at the time the case was moved for at the bar—there was one point reserved as to which we were to communicate to the learned judge who tried the case, and that was as to acts on the part of the defendant Roberts—as to how far those acts amounted to acts of ownership, which would be evidence of title, so as to give to the defendant the right to exclude the Crown on account of an ownership or possession for a term of sixty years.

The learned judge reports to us that he put the questions to the jury whether the Crown had the right; and if it had, was there an adverse possession for more than sixty years? He reports to us, that he left all those facts and circumstances, which were mentioned at the bar as the foundation for a new trial, as having been by the judge deemed to be immaterial—that he left to the jury to consider whether they were acts of ownership asserting a right, or whether they were acts of trespass from time to time not acquiesced in by the Crown. He so left the case to the jury, and the jury decided that they were mere acts of trespass from time to time, and not acts of ownership; and he reports also to us, that he was perfectly satisfied with that verdict; therefore, in that case, there will be no rule.

Rule refused.

KING *v.* HOAR.

It is a good plea to an action ex contractu against one of several joint contractors, that a judgment has been already recovered against another of them.

Assumpsit.

Plea.—That the promises were made by the defendant jointly with others, and that judgment had been already recovered against one of the others by the plaintiff for the same identical cause of action. Verification.

Demurrer.

J. Henderson, for plaintiff.—The rule is laid down broadly, and without any qualifications in Com. Dig. tit. Action, that a recovery against one obligor of a bond will not bar an action against another. In support of that conclusion the case of *Hooton* v. *Brown* is cited from the *Reports* and from Yelverton, and the learned commentator seems to have come to the conclusion that the same rule was applicable to all contracts, whether under seal or not. Considering the question rather with reference to the rules of pleading than to decided cases, I will point your lordship's attention to the fact that for every purpose, except for one of form, that is for pleading in abatement, the joint debt is due from either or all of the joint debtors. (5 Coke, 118; *Price* v. *Shute*, 5 Burr. 2611.) So strictly have the Court held that a debt due from one jointly with another is due from each of them, that

they have discouraged pleas in abatement in every way.

Parke, B.—Your argument would go to shew that it is for every purpose a several as well as a joint debt, and that every joint debt is so.

Henderson.—Except for purposes of form, which must be taken advantage of by plea in abatement, I apprehend it is so. Not only has the objection been reduced to one in abatement, but every restraint has been put upon its being taken in that form. A plaintiff is almost tempted by the Court to commence his action against one only. The law says to the debtors, You both owe the money. If one of you is sued alone, he may assert his right to have the other sued with him; but he must do so in a particular manner, otherwise each may be sued severally.

Alderson, B.—How could the defendant plead in abatement here? It is quite clear that he could not give a better writ. Before the judgment the present defendant might have given a better writ, but he cannot do so now.

Henderson.—My argument is, that whether there would have been a good answer to a plea in abatement or not does not matter now. What might have happened had such a course been taken is immaterial now.

Parke, B.—I think it very material. If it would be no answer to the plea in abatement you might go on against both—that is, against the one against whom you already have a judgment. If, on the other hand, it is an answer, you, by the course you have pursued, have taken away the power of pleading in abatement from the present defendant.

Henderson.—There is an American case decided by Marshall, C. J. which is precisely in point, and in my favour, *Shaw* v. *Mandeville* (1 Cranch (American) Reports, 253).

Parke, B.—We have a very great respect for any decision of Marshall, C. J. who was a very learned person, but the only authority cited there, and upon which the decision is founded, appears to be the one from Yelverton which you have cited, and in which there seems to be some doubt whether the obligation was not several as well as joint.

Alderson, B.—You may either have one suit against one, or one against both; but why should you have two actions? That is against the principle of the obligation.

Henderson.—At all events, this objection ought to have been taken by plea in abatement. Upon this point *Mainwaring* v. *Newman* (2 B. & P. 120) will be probably cited against me.

Parke, B.—How could the defendant have given a better writ?

Henderson.—A better writ does not mean an action which will lie. The plea ought also, as it contains matter of record to have concluded with *hoc paratus est verificare per recordum*. Upon all these grounds, I submit that the plea is bad.

Bramwell, contra.—The plea is good, both in substance and in form. My friend has made two admissions, which put him out of Court. He says the judgment would not have been an answer to a plea in abatement. He also admits that this plea would have been good if the action had been against both. Therefore there was a time when there was a complete answer to this action. But the other party may now be out of the country or dead, so that we cannot plead in abatement, 3 & 4 Wm. 4, c. 42, s. 10. (*Drake* v. *Mitchell*, 3 East, 251.) With respect to Com. Dig. it is very true that it is there laid down that judgment without execution is no bar, but the contrary appears upon the very next page, and it is quite clear that it is a joint and several obligation which is there pointed to, (Com. Dig. tit. Action, K. 4 & L. 4, Croke, Charles, 551; *Scaton* v. *Henson*, Levinz, 220; 8 Coke Rep. 136, a.) As to the last objection, there are several other averments in the plea, which are not matter of record, and it would have been necessary to have tendered a verification of them by record.

JUDGMENT.

Parke, B.—The plea, in this case, which was an action of debt, states "that the contract in the declaration mentioned, was made by the plaintiff with Smith and the defendant jointly, and not with the defendant alone; and that in the year 1843 the plaintiff recovered judgment against Smith for the same debt, and costs, as appears by the record made in the Queen's Bench, which judgment still remains in force." The case was argued a few days ago before myself and my brothers Gurney and Rolfe. To this plea there is a demurrer assigning several special causes. First, that it was a plea in abatement, and was not properly pleaded; to which the answer is, that the plea is not, and we think that is right, and that it is clearly a plea in bar. Secondly, that it amounts to the general issue—it admits a debt to have been originally due. Third, that it does not aver the debt was due from the defendant and Smith severally as well as jointly; to which it was properly answered that the plea sufficiently shews the identical contract, and it cannot be by the same contract joint and separate. And, lastly, they say that the plea ought to have concluded with a verification to the record. The Court have intimated their opinion that where a plea contains matter of record only, it is sufficient, but it is not proper where there is an averment of matters of record mixed with averments of matters of fact on which an issue on matters of fact can be taken; but the matter of record is the only matter put in issue by the plea; that the judgment was recovered for another cause that ought to be duly assigned. The matters of form being disposed of, the question is one of substance—whether a judgment recovered in an action against one of two joint contractors is a bar against another? It is remarkable that this question should never have been actually decided in the courts of this country; there have been apparently conflicting dicta upon it. Lord Tenterden, in *Walters* v. *Smith* (2 Barn. & Ad. 889), is reported to have said, "The mere recovery against one will not do." In a case in 1 Cromp. & Mees. Mr. Justice Bayley strongly intimates the opinion of the Court of Exchequer, "that a judgment against one was a bar against both of two joint debtors." In the absence of any positive authority upon the precise question before us, we must decide it upon principle, and by analogy to other authorities; and we feel no difficulty in coming to the conclusion that the plea is good. If a breach of a contract or any wrong is done by another, and judgment recovered in a Court of Record, that judgment is a bar to an original cause of action, because it is thereby reduced to a certainty, and the object of the suit obtained, so far as it can be in that state; and it is useless and vexatious to subject the defendant to another suit to obtain the same result. And this appears to be equally true where there is but one cause of action, whether it be against one single person or many; the nature of the Court of Record changes the cause of action; it cannot afterwards be divided into two. Thus it has been held that where two commit a joint tort, the judgment against one is of itself, without execution, a sufficient bar.—See Calvert 67, and the same case in Croke, James, and in Moore's Reports, 62; and though in *Yelverton*, dubious expressions are used, yet, from a comparison of all the Reports, it seems clear that the judgment there was not that of damages. Chief Justice Popham says this, "that damages are certain (that is, converted into certainty by the judgment), although if he be not satisfied he shall not have a new action for the trespass," &c. Those are the words of Chief Justice Popham; and it is clear that the Chief Justice was referring to debt and occupation, both by the arguments of the counsel in that case, in which he refers to the two *præcipes*, and also by the same case in Young. We do not think the case of a joint contract can in this respect be distinguished from a joint tort; the party injured may sue all the parties to the tort, or the contractors. I sue you, subject to a right of plea in abatement in the one case, and not in the other. But for the purpose of this decision they stand on the same footing, whether the judgment be against one or two; it is for the same cause of action. The distinction between the case of a joint contract and a joint and several contract is quite clear. It is argued that each party to a joint contract is severally liable, and so he is in one sense; if he be sued severally, and do not plead in abatement, he is liable, but he is not severally liable in the way in which he is upon a joint and several bond—in that case the several bonds of each of the obligors give several different remedies to the obligee. Another mode of considering this case is, with reference to the case of *Lechmere* v. *Fletcher*, which was much discussed during the argument, and it leads us to the same conclusion. If there be a judgment against one of two joint contractors, and the other be sued afterwards, can he plead in abatement or not? If he cannot, he would be deprived of the right of one plaintiff to obtain judgment from the other: if he can, then he may plead in bar a judgment against himself; and if that is not in bar, the plaintiff might go on to obtain judgment against the co-contractors, or the plaintiff might obtain another judgment against the co-contractors, and so have two separate judgments for the same fact; for then the case would conform to the general rule that an action for a joint debt brought against one operates as a bar altogether. The only exception to that in the cases is where you plead a general discharge; it is quite clear, indeed, and hardly disputed, that if there were a plea in abatement both must be joined, and if they were joined, judgment pleaded by one would be a bar to both; and it is impossible to hold that the legal effect of a judgment against one should be that the one against whom the judgment is not obtained can be sued jointly, and not pleaded in abatement. During the argument, the decision of Chief Justice Merivale, of the United States, was cited. The case is that of *Shaw* v. *Manderille* (6 Hutchard's Reports, 263). We need not state that we have every respect for the decisions of that learned judge, but we are not satisfied with the reasoning attributed to him in the report of that case. For these reasons we are of opinion our judgment must be for the defendant.

EXCHEQUER CHAMBER.

Tuesday, Nov. 26.

On error from the Court of Queen's Bench.

(Before Tindal, C. J.; Parke, Alderson, and Rolfe, Barons; and Maule and Erle, Justices,)

Reg. on the prosecution of George Wray, clerk. v. The Governors of the Darlington Free Grammar School.

Construction of charter—Office of schoolmaster—Validity of bye-law—Judgment on mandamus.

To a mandamus by the upper master of a grammar school to the governors to restore him to his office, the return set forth the charter of foundation, by which the governors were empowered to appoint and remove the master, "according to their sound discretion," and of appointing other in his stead. The return then alleged specific instances of misconduct in the prosecutor, who being called on to answer, and having a reasonable opportunity, and failing to do so, was, in the exercise of their best discretion, and they deeming him an unfit person, removed him from his office. The pleas severally traversed the alleged instances of misconduct, and set forth a power given by the charter to the governors, with the assent of the Earl of Westmoreland and the Bishop of Durham for the time being to make bye-laws for the government of the master, &c. and that by a bye-law of 1748, made by the governors, with the assent of the Bishop of Durham (the title of Earl of Westmoreland being then extinct), no master should be removed, unless a sufficient cause of complaint was made in writing against him, and allowed to be sufficient. The plea then averred that no such sufficient cause was made in writing against the prosecutor before his removal, and allowed as sufficient. On this allegation, as on the traverses of misconduct, issues were joined, and all the findings were in favour of the prosecutor. Held, that the defendants were entitled to judgment non obstante veredicto,

1. *That the office of upper master at the school was not a freehold, but held ad libitum only, and as such that he was removeable without summons or hearing.*
2. *That as the return contained an express allegation that the governors, in the exercise of their best discretion, and deeming him unfit, did remove the prosecutor, which was not traversed; the issues raised were immaterial, and the return was substantially good.*
3. *That the bye-law was invalid, as restraining and limiting the powers originally conferred on the governors.*
4. *That the defendants were entitled to judgment under the statute of Anne, as the prosecutor had taken immaterial issues, and there was a substantially good return.*

Whether judgment can be given for a defendant, non obstante veredicto in ordinary actions, quære? Whether the bye-law was valid, having been made after the extinction of the title of the Earl of Westmoreland, quære?

In this case a *mandamus* had been issued at the instance of the prosecutor to the governors of the Free Grammar School of Queen Elizabeth, within the town or village of Durham-Darlington, in the county palatine of Durham, which recited that George Wray, clerk, was duly qualified for, and duly elected, nominated, &c. and admitted to be upper master, or pedagogue of the said grammar school, established under letters patent of Queen Elizabeth, for the education of youth, in which said office the said George Wray had always behaved himself well, and according to the statutes made for the government of the upper master of such school; and that the governors of the said school, without any reasonable cause and contrary to the said letters patent and statutes, unjustly removed the said George Wray from the said office. The writ, therefore, commanded the said governors to restore him to the said office, with all the privileges, &c. thereunto belonging.

The *return* set forth the letters patent by which the four wardens of Darlington for the time being were constituted governors of the school, and were incorporated accordingly, and were to have full power of appointing a master, and of removing him *according to their sound discretion*, and of appointing other more fit in his stead.

The return then stated that Wray was appointed upper master, and did not behave himself well; but, 1, neglected to attend at the school during school-hours; 2, under colour of his office did inflict unreasonable severe corporal punishment on one Thomas Smith; 3, that on various occasions he exacted sums of money from William and Thomas Smith; and, 4, on various other occasions he attempted to exact other sums from Mary Smith, their parent, whereupon the governors having given notice of the same complaints to Wray, and having called upon him to answer the same, and he having had reasonable opportunity, but having, notwithstanding, failed so to do, and they being satisfied of the truth of the complaints, and that Wray was guilty of the misconduct so charged, in the exercise of their best discretion, and deeming him an improper person to fill the said office, did remove him from the said office, as it was lawful and right to do *for the cause aforesaid.*

The four first pleas severally traversed the alleged instances of misconduct, and the fifth plea stated that prior to his removal he was not allowed reasonable time or opportunity to answer. The sixth plea stated, that by the letters patent, Queen Elizabeth appointed that the governors and their successors, with the assent of the Earl of Westmoreland and Bishop of Durham for the time being, from time to time should make good statutes concerning the government of the master, &c. of the said school, which should be inviolably observed, and that in 1748 a by-law was made reciting that no statutes had been made by the governors, whereby frequent divisions had arisen about the placing and displacing of masters; therefore the governors, with the assent of the Bishop of Durham (*the title of the Earl of Westmoreland being at that time extinct*) did ordain several salutary statutes for the governing of the upper master, &c. viz. that he should be of the age of twenty-four, of sound learning, of sober and exemplary life, &c.; and for the further encouragement of persons of known abilities and sound learning, &c. to accept of the duty of upper master, they did declare that no such master, in the actual exercise of the said office, should at any time thereafter be removed from the said office, unless some sufficient cause of complaint should be exhibited in writing against him, and signed by them or their successors, and the same cause be first allowed to be a sufficient cause to remove such master, and not otherwise; and although the statutes at the time of the removal of Wray were in full force, and although he had been duly appointed, &c. and at the time of his removal was in actual exercise of the office, yet no sufficient cause of complaint being the same cause exhibited in writing against him, and signed by the governors for the time being, was before his removal, declared to be a sufficient cause to remove Wray from his office according to the said statutes.

The *replication*, after protesting against the sufficiency of the plea in law, restated the instances of Wray's misconduct before his removal, and proceeded that they, the governors, having had notice of the complaints, and before the removal of Wray, exhibited a complaint in writing signed by them, setting forth the said causes of complaint, and caused the same to be delivered to Wray, each of which was sufficient cause for removing him, and that he having failed to answer the said charges, although he had reasonable time and opportunity so to do, afterwards and before his removal, did declare the said causes of complaint sufficient causes to remove him, and did remove him from his said office as in the return alleged, and as it was lawful and right to do.

Rejoinder—That no complaint in writing, signed by the governors, and setting forth sufficient causes of complaint was delivered to Wray, and that the governors did not, before the removal, declare the same causes of complaint sufficient to remove him as in the replication mentioned. The record then set out the findings of the jury, which were in favour of the prosecutor on all the issues, and the judgment, which was as follows:—"Because it appears to the said Court here that the plea of the said George Wray, by him lastly pleaded to the aforesaid return of the Governors of the Free Grammar School aforesaid to the said writ of *mandamus*, are bad and insufficient in law to entitle the said George Wray to a peremptory writ of *mandamus* in this behalf; therefore it is considered and adjudged that notwithstanding the verdict found for the said George Wray on the several issues above joined as aforesaid: yet that no peremptory writ of *mandamus* do issue in this behalf, and that the governors, &c. do recover against the said George Wray 138*l.* 10s. 9d. for their costs and charges," &c.

Upon this judgment error was assigned that the judgment ought to have been given for Wray.

The causes of error stated by the plaintiff were—

1. That Mr. Wray was entitled to judgment on the single finding of the jury that he was not prior to his removal allowed reasonable time and opportunity to answer the complaint and charges.

2. That the defendants having stated the actual grounds of the removal, and those grounds having been negatived by the jury, the removal is shewn not to have been according to *sound discretion*.

3. That even if the issues on the traversed allegations of the return are all immaterial, still the bye-law is valid, and not having been complied with, Mr. Wray is entitled to judgment.

4. That judgment *non obstante veredicto* could not be given for the defendants.

5. That if all the issues joined were immaterial, the Court was bound to award a repleader.

Pashley (*Hugh Hill* with him) appeared for the plaintiff in error.

Wortley and *Addison*, contrà.

This case had been part heard previously, but as the Court was differently constituted on the former occasion, Tindal, C. J. called on *Pashley* to restate his argument.

Pashley referred to the Law Journal, vol. 21, p. 124, as containing the report of the case in the Court below, and proceeded to state the substance of the return and pleadings. 1. The jury have negatived the causes assigned by the governors in their return for the removal of the prosecutor, and therefore he is entitled to the judgment of the Court. The governors do not justify the amotion by the exercise of their discretion, but they assign specific reasons for their conduct, which now appear not to have been justifiable. After stating the various causes of complaint against Mr. Wray, they say that they "thereupon having given notice of the same to him, and having called upon him to answer the same, and he having had reasonable time and opportunity in that behalf, but having nevertheless failed so to do, and they being satisfied of the truth of the complaints, *and that* Wray was guilty of the said several offences and misconduct, in the exercise of their best *discretion*, *and deeming* him to be an unfit person to fill the said office did remove him *for the cause aforesaid*." The governors, therefore, have stated to the Court, as the ground of their amotion, that the prosecutor did not answer after notice of the charges. Such conduct might amount to a disrespect sufficient to justify the governors in removing him; but the allegation has been negatived by the jury *in fact*. [Tindal, C. J.—Suppose they had said they had exercised a *sound discretion?* Parke, B.—They have returned that and other matters.] They have not stated the exercise of their discretion to have been made on his fitness or unfitness for office; but on *certain facts*, on which it appears to the Court, by the judgments on the findings, that they were mistaken. [Tindal, C. J.—They have said that he is guilty of the offences, "*and deeming him an unfit person*" they removed him. The latter part is sufficient: utile per inutile non vitiatur.] Then, 2ndly, the bye-law is valid, and the prosecutor entitled to judgment, as its requisites have not been complied with. It would be a good bye-law under the charter, notwithstanding the extinction of the title of the Earldom of Westmoreland, (*a*) and, 2ndly, if it be gone under the charter, it is *incident* to any corporation *by the common law*. As the decision of the Court on the second point in favour of the bye-law will render the first unnecessary, that point may at present be left. It is good, as being a mere *regulation* of the mode of exercising an admitted power, and this is a reasonable regulation. It was justly stated by Lord Denman, when trying this case at Nisi Prius, to be a "bye-law of a very judicious character," to require the reasons of complaint and amotion to be in writing. In *Wagoner's* case (8 Co. 1), the qualities of a bye law are enumerated, which quite comprehend the present. It should be "bonæ fidei consonum, rationi consonum pro utilitate civium et aliorum, utile Regi et populo." It is a reasonable regulation to require a minute in writing, which gives due information to all parties interested, and avoids mistake. It tends to prevent fraud. This bye-law does not require any Act to be done by any other power; the corporation may do all it renders necessary. Many things may be done by a corporation without their corporate seal—such as hiring a servant, &c.—yet it would be very reasonable to have a minute in such cases. Surely such an important matter as the appointment or the removal of the upper master of this school, should not be transacted without at least a *minute in writing*. The bye-law does not profess to *limit* the amount of the discretion of the governors; it only requires certain reasonable accompaniments in its exercise. The judgment below is founded on an error in this respect, in supposing the discretion to be limited and controlled, when it is in truth only regulated. Suppose a minute-book had been ordered to be kept of acts done at each meeting, surely such regulation would be good; and this, in effect, is nothing more. In the *Mayor of Ludlow* v. *Charlton* (6 M. & W. 815), Rolfe, B. giving the judgment of the Court, vindicated the utility of the principle at common law of requiring contracts by corporations to be under their seal; and in *Arnold* v. *Mayor of Poole* (4 Mann. & Grang.; 5 Scott's New Rep. 741), the Court of Common Pleas adopted the views of the Court of Exchequer, Tindal, C.J. saying—"Several instances were pointed out, in which it has been held, that corporations aggregate, having a head, may by parol appoint servants for the performance of certain acts in their behalf. But the acts which may be so done have been always considered as exceptions out of the general rule of law, and relate either to trivial matters of frequent occurrence, or such as from their nature do not admit of delay." So sensible have the Legislature been of the advantages of minutes in writing, that they have frequently required them, as in the well known instances of the Statute of Frauds, and Lord Tenterden's Act, 9 Geo. 4, c. 14. A corporation, indeed, constituted as this is, ought not to act by parol. In *Bonham's* case (8 Co. 120, at 5th resol.) it is laid down, that "Forasmuch as the censors had their authority by the letters patent and Act of Parliament, which are high matters of record, their proceedings ought not to be *by parol*." The bye-law, therefore, only pursues the common law, and demands what is reasonable. It was clearly within the scope of the authority of the governors, as being merely a *regulation* of the power conferred on them by the charter. In *Green* v. *Mayor of Durham* (1 Burr. 127), a bye-law by the corporation of Durham, requiring all persons before their admission to freedom to appear at three corporation meetings at the Guildhall, was held good, as not being a restraint of trade, but a reasonable *regulation* to prevent persons being unduly made free. In *Pearce* v. *Bartram* (Cowp. 269), a bye-law of the corporation of Exeter was held good, forbidding the slaughter of any beast within the walls of the city; such a law merely being a *regulation* of trade. So in *Wannall* v. *The City of London* (1 Stra. 675), a bye-law requiring all joiners to be free of the Joiners' Company was held good; the Court saying, "It was only a regulation of trade, and did not take away his right to his freedom, but only his election of what company he should be free; it was only to direct him to go to the proper company." So here the bye-law does not take away the power to remove; it only regulates it, and makes it a deliberate act of the governing body. In *Harrison* v. *Goodman* (1 Burr. 12), a similar bye-law was held good. *Pashley* also referred to *Player* v. *Vere* (Sir T. Ray. 290, 328); *Rex* v. *Company of Surgeons* (2 Burr. 892), where a bye-law was held good, which required the students in the art of surgery (before being apprenticed to a surgeon) to understand Latin Com. Dig. Bye-law, B. 2, and *Rex* v. *Westwood* (7 Bing. 1), within the principle of which latter great case the present bye-law was quite included. Then, secondly, according to the general principle of law, the prosecutor was entitled to reasonable notice. (*Rex* v. *Gaskin* (8 T. R. 209.) [*Wortley.*—Notice is admitted on the record: the only issues taken are on opportunity and time.] The finding of the jury is, that he had *not*, before his removal, reasonable opportunity to answer the charges, and that a complaint in writing was *not* delivered to him. On that issue the prosecutor is entitled to judgment, according to *Bagg's* case (11 Co. 99 b.), when it was resolved that "it appears by the return that the corporation have proceeded against him without hearing him answer to what was objected, or that he was not reasonably warned, and such removal is void, and shall not bind the party, as it is against justice and right." The answer suggested is, that this is not a freehold office. [Parke, B.—My servant has no freehold. To be turned away "at the discretion" of another is not a freehold. Alderson, B.—What is the difference between "discretion" and "sound discretion?"] Lord Coke thus defines discretion:—"Discretio est discernere per legem quid sit justum" (4 Inst. 41); and in *Rooke's* case (5 Co. 100 a), it was resolved, that although the commissions of sewers give authority to the commissioners to do according to their discretion, yet their proceedings ought to be bound within the rule of reason and law. For discretion is a science to discern between wrong and right, &c. and not to do according to their private wills and affections. [Maule, J.—Surrendering *at discretion* gives the captive no rights. Parke, B.—The question is, whether, if they think proper to remove, they may not do so? Tindal, C.J.—*Bagg's* case applies only to a freehold office, or an inheritance in lands.] The record merely states that Wray was appointed to the office. The governors cannot act without any reason—only at their will and pleasure. Bracton thus defines a *freehold* (207 a, b. 4, c. 28):—"Item, ut liberum tenementum, sicut ad vitam tantum, vel eodem modo ad tempus indeterminatum, absque aliquâ certi temporis præfinitione; donec quid fiat vel non fiat, ut si dicatur, de tali *donec ei providæo*. Liberum non potest dici tenementum alicujus, quod quis tenet ad voluntatem dominorum precario, quod tempestive *et intempestive* poterit revocari, sicut de anno in annum et de die in diem." [Parke, B.—What estate have I in an office so long as I merely hold it at the *sound discretion* of another?] It is within Bracton's definition of a freehold. [Tindal, C. J.—Those were cases of *land*. Parke, B.—Could the words used have been stronger, if it had been intended to give the power to remove when they like? Tindal, C.J.—What difference is there between *will* and *discretion*?] They can only exercise it when extrinsic circumstances call for and justify it. In *Capel* v. *Child* (2 C. & J. 558), a requisition by the bishop to a vicar was held void, from which it did not appear that the party charged with misconduct had had an opportunity of being heard, and it was also decided that the requisition ought to state particular instances of negligence, and shew how the incumbent was negligent. *Pashley* referred especially to the elaborate judgment of Lord Lyndhurst (571 to 577): *R.* v. *Wilson* (3 Ad. & Ell. 817), is to the same effect. [Alderson, B.—Suppose the governors had returned that they removed the prosecutor because they had found *a more fit man*, whom they had appointed; would it be reasonable to send such a case to the jury?] The return here suggests no such case; it does not even profess to ground itself on the exercise of *sound discretion* by the governors, but states that they removed Wray *for the cause aforesaid*, viz. that he did not answer the complaint within a time which the jury have found not to have been a reasonable one. According, therefore, to the rules of natural justice, to the principles of law, and the authorities

(*a*) It had been contended, in the Court below, that this extinction, being of an integral part of the body to make the law, had caused a cesser of the power. Both the judgment below and in this Court made it unnecessary to determine this point. See L. J. v. 21, p. 126.

before cited, the prosecutor is entitled to judgment on this finding. Nor was he bound to traverse the general allegation that he had not conducted himself properly. (*Newman* v. *Bailey*, 2 Chitty Rep.; *Jansen* v. *Stuart*, 1 T. R. 748; *Hickinbotham* v. *Leach*, 10 M. & W. 361; and the recent case of *Burgess* v. *Beaumont*, in the Common Pleas.) Specific instances of misconduct must be stated; and he was equally free from any obligation to traverse the exercise of sound discretion. Several cases had been cited on the other side(a) which were distinguishable; *Rex* v. *Mayor and Corporation of Andover* (1 Lord Ray. 710), where a return was made, that by the charter they might remove *per discretiones suas toties et quoties quandocunque illis placuerit*, and that they removed by their discretion. It was objected that they ought to have shewn some reason why they removed; but it was held a good return. There, however, an express distinction was drawn in the charter itself between "discretion" and "will,"—*discretiones suas et quandocunque placuerit*. In *Rex* v. *Bishop of Gloucester* (2 B. & Ad.) a *mandamus* was refused, calling on the Bishop to admit a person to the office of deputy-registrar of that diocese. The bishop had refused to appoint him, saying he "had good and sufficient reasons," but would not assign them. In that case, however, there could be no *mandamus*—as it was only granted *in ordine ad*, never to command a particular thing, *e. g.* to confirm an order. In 4 Comyn Dig. Franchise, f. 32, it was distinctly laid down that "generally an officer cannot be removed *without cause*." But that position, it was said on the other side, was grounded avowedly on a case in Dyer, 332, b. *Middleton's* case, which by no means warranted it. [*Wortley* said, that there the officer was under the Crown, the marginal note of C. J. Treby saying, that, "being an officer *of the King*, as the bailiff is, he cannot be removed without cause."] This is an office under the Crown, as Wray is appointed by virtue of the charter emanating from the Crown. In *Rex* v. *Mersham* (7 East 171), it is expressly laid down that an office must be derived either immediately or mediately from the Crown. (*Ridgway* v. *Hungerford Market Company* (3 Ad. & El. 171); *Baillie* v. *Kell* (4 N. C. 638); and *Cassons* v. *Skinner* (11 M. & W. 161), only shewed that a master in justification of his discharge of a servant may assign one cause at the time, and afterwards rely on another cause which really existed at that time. *Wilkinson* v. *Malin* (2 C. & J. 636), shews that Wray was not a mere servant. Lord Lyndhurst describes the appointment of a schoolmaster by trustees of funds for building a schoolhouse and educating poor children, as a trust of a public nature. The return throughout treats him as an *officer*, and as such he was, by justice and law, entitled to notice, whether his office was freehold or not. 3. But then judgment *non obstante veredicto* cannot be given for a defendant. No such instance can be found, says Tindal, C. J. in delivering the judgment of the Court in *Rand* v. *Vaughan* (1 Bing. N. C. 769). As the judgment of the Court rendered it unnecessary to decide this point, as well as the effect of the extinction of the Earl of Westmoreland's title, we shall merely state that *Pashley* referred to Tidd, 1141, 2 Roll, 99 D., Coke's En. 42, 152, 677; 8 Co. Rep. 120 b; *Blackamoors'* Case (8 Co. 156 a, 163 a); *Gwynne* v. *Burrell* (4 Bing. N. C.); *Jenkins'* Case (99 Yelv. 169); and

Wortley, contrà, to 1 Plowden, 56 (b).

The COURT said they would consider till the next day whether they should think it necessary to hear *Wortley*, and on the following morning the judgment was delivered.

Wednesday, Nov. 27.

JUDGMENT.

TINDAL, C. J.—In the case of the Queen against the Governors of Darlington School, the first and principal ground of objection taken by the plaintiff in error against the validity of the judgment given by the court below is this, that the return to the writ of *mandamus*, when taken in connection with the findings of the jury set out upon the record, furnishes no legal ground for the removal of the plaintiff from his office of schoolmaster, and, consequently, that the judgment of the court below ought to have been given for the Crown. The plaintiff in error contends that, upon the proper construction of the letters patent of Elizabeth the schoolmaster was appointed during good behaviour at least, so that he had in contemplation of law a freehold in his office; and that upon the authority of *Bagg's* case, *Dr. Gascoyne's* case, and others which were cited by him, the plaintiff could not be legally amoved without being summoned to answer the charge, nor without having a reasonable time to answer, nor, lastly, without proof of the truth of the charges brought against him,—all which necessary steps are found by the jury not to have existed in this case. And if this is the true construction of the charter of foundation, if the office of schoolmaster resembled that of a freeman of a borough, which was *Bagg's* case (who according to the report in Lord Coke, had a freehold for his life in his freehold, and in others, in their political capacity, an inheritance in the lands of the corporation), or if the office of schoolmaster resembled that of a parish clerk, which was the subject of discussion in *Dr. Gascoyne's* case, the inference drawn from those cases would be correct; but, looking at the terms of the letters patent of Queen Elizabeth, we think the office in question is, in its original creation, determinable at the sound discretion of the governors, whenever such sound discretion is expressed, and that it is in all its legal requirements and consequences not a freehold but an office *ad libitum* only. The governors would be guilty of misconduct, and might, perhaps, render themselves liable to a criminal prosecution, if they exercised their discretion of removal in an oppressive manner, or from any corrupt or interested motives; but we see nothing that is to restrain them from exercising such discretionary power whenever they honestly think it proper so to do. The letters patent, after incorporating the governors, expressly give them the power of nominating from time to time a master of the said school so often as to them or their successors, or the major part of them, occasion moving them thereto, should appear, and of removing the same master from the said school according to their sound discretion, and of placing or appointing another more fitting in his stead. The founder had an undoubted right to repose this large confidence in the governors, if the Crown thought proper to sanction it, and he appears to have intended so to do without subjecting the exercise of this discretion either to the judgment of any vestry or of any jury, and if the master was appointed *ad libitum*, as we think he was, it is clear he was removeable without any summons or hearing. See Levintz. 291, and *Rex* v. *Mayor of Stratford-on Avon*. There seems nothing unreasonable in the founder giving such authority to the governors, for there may be many cases which render a man altogether unfit to continue to be a schoolmaster, which cannot be made the subject of a charge before a jury or otherwise, or one of actual proof. A general want of reputation in the neighbourhood, the very suspicion that he has been guilty of the offence stated against him in the return, the common belief of the truth of the charges among the neighbours, would ruin the well-being of the school, if the master was continued in it, although the charge itself might be untrue, and, at all events, the proof of the facts themselves insufficient before the jury. There are many other grounds of amoval fully sufficient which, in the exercise of a sound discretion, might be suggested. Such therefore appearing to us to be the meaning of the letters patent, and there being an express allegation in the return that the governors did, in the exercise of their best discretion, and deeming the plaintiff to be an unfit and improper person to fill the said office of master, displace and amove him therefrom, which allegation is not traversed or denied in the plea, we think the several issues raised were altogether upon immaterial points, and that, notwithstanding the finding of the jury upon those issues, the return is virtually and substantially a good return. It was, in the second place, argued by the plaintiff in error, that, however the case might have stood upon the original letters patent, yet, that as the governors had, in fact, passed a bye-law regulating the mode of appointment to the office of master of the grammar school, and of displacing him from that office—as the jury have found that the requisites prescribed by such bye-law to be observed before the master could be displaced, have not been complied with in this instance—therefore at all events, the plaintiff was entitled to his peremptory mandamus; but we think the governors for the time being had no authority under the letters patent to make such a bye-law, so as to bind their successors in the execution of their duty. Nothing can be better established than that a bye-law by a corporation which alters the constitution of the corporation is void; and, upon the same principle, a bye-law which restrains and limits the powers originally given to the governors by the founder himself we think must be bad. Here the governors had the power given them by the founder of removing the master from the said school, according to their sound discretion, and of placing and appointing another more fit in his place; and we think this power is manifestly impaired and diminished in a degree that may be materially detrimental to its exercise for the interest of the school, by introducing, two centuries afterwards, the necessity of exhibiting a complaint in writing against the master signed by the governors, and the further necessity that the same cause of complaint should be first allowed, and declared by the governors a sufficient cause for displacing the said master; and we therefore think the second ground of objection taken, namely, that by reason of the requisites of the bye-law having not been complied with, the return to the mandamus must be held a bad return, altogether fails. The last ground of objection is, that the judgment of the Court below is bad in law, inasmuch as it is a judgment for the defendant *non obstante veredicto*, which it is contended is not good in law in favour of a defendant. In order to ascertain the validity of that objection, we must look at the statute of Anne, which is made to apply to the present case by the statute of 1 Wm. 4, c. 21, s. 3; for the proceedings upon a mandamus are first gi[illegible] letter cannot be read Anne, and are the creatures of th[illegible] each of the counts section of that statute provides, first[illegible] G. B. Coutts person suing for such a writ, and the ne[illegible] and style of J. a person making the return. It autho[illegible] in fact, suing the writ to plead to or traverse all or [illegible] and material facts contained within the return[illegible] provides that, in case a verdict shall be found [illegible] person suing such writ, or judgment given for him [illegible] a demurrer, or by *nil dicit*, or for want of a replication or other pleading, he shall recover his damages and costs in such manner as he might have done in an action on the case for a false return; and that a peremptory writ of mandamus shall be granted without delay for him for whom judgment might have been given, which might have been done if such return had been adjudged insufficient. The clause next provides for the person making the return; and it adds, that in case judgment shall be given for him, he shall recover his costs of the suit. The statute, therefore, evidently contemplates that judgment must be given for one or the other. In the present case, we have already expressed our opinion that the plaintiff has taken his issues, not upon the material facts contained within the return, but on facts that are altogether immaterial, and by reason thereof we think he is not entitled to a judgment upon a verdict found for him upon such issues, nor to a peremptory writ of mandamus, which is the consequence of such judgment; and the person suing the writ not being entitled to the judgment, and the return to the writ being sufficient by reason of its containing the material allegation before adverted to, which is not denied, we think the latter part of the second section of the Act applies to this case, and that the persons making such return are entitled to judgment, and to recover their costs of the suit; and for this reason it becomes unnecessary to consider the question whether, in ordinary actions, a defendant is entitled to judgment in his favour *non obstante veredicto*. We agree, therefore, with the Court of Queen's Bench, that the defendants are entitled to the judgment, and the costs, under the circumstances disclosed on this record, and that the judgment given by the Court below must be affirmed.

ROWLEY *v.* THE QUEEN,(a) *at the relation of* SMITH.

Quære, whether, under the Municipal Corporations Act, ordinary and extraordinary vacancies in the office of councillors can be supplied at the same election?

But held, at all events, that where one election took place for three ordinary vacancies of councillors, and also for an extraordinary vacancy, and the voting-papers did not distinguish the candidate whom the voter intended to supply the extraordinary vacancy, such election, for want of such distinction, was void.

This was a bill of exceptions tendered by the direction of Tindal, C. J. at the trial at Stafford of a *quo warranto* information, in July, 1842.

The information was filed at the relation of William Smith, of the borough and city of Lichfield, wine merchant, and charged the defendant, Thomas Rowley, with usurping the office of a councillor of the said borough and city, and the liberties, privileges, and franchises thereto appertaining; and it set forth, *inter alia*, that within the said borough, according to the Municipal Corporations Act, there ought to be one mayor, six aldermen, and eighteen councillors.

The *plea* stated, that before the first election under the Municipal Corporations Act, viz. on the 7th of November, the borough was duly divided into two wards, one the north and the other the south, and that of the 18 councillors of the borough, 9 were duly assigned to each ward; and that on the 1st of November, 1838, one-third part of the councillors assigned to the south ward went out of office, and a fresh election was duly held; and the presiding alderman and the assessors did duly examine the voting-papers, and declare the said Thomas Rowley duly elected according to the said Act, and Rowley took on himself the said office, and so continued till the 1st November, 1841, when he went out of office, and was re-elected as after mentioned; and on the 2nd November, 1840, three of the councillors of the south ward went out of office, and William Taylor was duly elected, and took on himself the office, but afterwards, viz. on the 30th March, 1841, he left the borough, and continued absent for more than six months at one time; whereupon, on the 30th Oct. his office was declared void; and that an extraordinary vacancy having so occurred, the presiding alderman fixed a day for an election to supply it, viz. the same day on which the ordinary vacancies were to be supplied; and that on the 1st November, 1841, one-third part of the councillors, &c. went out, Rowley being one, and an election was held of three to supply those vacancies, and of one to supply the extraordinary vacancy. The plea then averred that Rowley was duly qualified, and was a candidate to be re-elected to supply the office of councillor; and that at such election the burgesses, well knowing Rowley to be a candidate, did re-elect him to be a councillor; and a majority of the burgesses entitled to vote did then deliver to the presiding alderman

(a) Wortley had been partly heard in the former argument in June last.

(a) See 3 Q. B. 113, and Law J. vol. 20, p. 198, for the judgment on the motion for the information.

and assessor their respective voting-papers, containing the names and places of abode of the persons for whom they voted, and signed with the name of the burgess voting, &c.; and the said voting-papers were duly examined, and Rowley declared duly elected, who accordingly took on himself the office, as it was lawful to do; wherefore, &c.

The *Replication*, in answer, averred, 1st, that the burgesses of the south ward did not duly re-elect Rowley a councillor, as in the plea alleged; 2nd, that a majority entitled to vote did not deliver their voting-papers according to the Act; 3rd, that the presiding officers did not declare Rowley one having the greatest number of votes, and duly elected. The record then stated the evidence adduced at the trial of these issues; that a public meeting of the burgesses was held some days before the election to ascertain the candidates, when three were proposed to fill the ordinary vacancies, and in half an hour after a fourth was named to fill the extraordinary vacancy left by Taylor; that the elections for the four vacancies were held, and voting-papers delivered as in the plea mentioned; and that each paper contained the names of four candidates as the persons voted for—viz. in the form following:—

1841 South ward.

I vote for {
Frederic Bond, Butcher-row, attorney-at-law.
Thomas Rowley, Tamworth-road, physician.
William Edward Vale, Bow-street, clock-manufacturer.
William Gorton, Lombard-street, builder.

The record then stated that the Lord Chief Justice Tindal told the jury that the presiding officers ought to have obtained the information which enabled them to declare that the defendant was re-elected to his own place, and not to supply the place of Taylor, from the voting-papers alone, and thereupon the counsel for the defendant excepted to the direction of the Chief Justice, insisting that if they had informed themselves *by any other means* that the defendant was a candidate for re-election to the office vacated by himself, and not to supply the place of Taylor, and that the burgesses knew that fact, and delivered their voting-papers with that knowledge, the papers were sufficient. The record concluded by stating the findings of the jury, which were all in favour of the Crown, under the aforesaid direction of the Lord Chief Justice.

Gray now appeared in support of the bill of exceptions.

J. W. Smith, contrà.—He contended that the ruling of the Lord Chief Justice was wrong, as it was not necessary to distinguish in the voting-papers which candidate was to fill the office of Taylor. It was sufficiently certain to the returning officers by the proposal of the candidate; and according to *Reg.* v. *Brightwell* (10 Ad. & Ell. 171) that would be sufficient at the common law. The 32nd section of the Municipal Corporations Act, 5 & 6 Wm. 4, c. 76, prescribed particularly the mode in which the voting-papers should be made out and delivered, and all those requisites had been complied with. Unless the law would imperatively require the distinction now contended for as essential, it could not be added to the express language of the Act. But no such imperious necessity existed. It was competent to the voters to prepare a list of candidates; and then the voting-papers would be rendered sufficiently certain by reference to the list. The 1 Vict. c. 78, s. 11, repealed the previous provisions of the Municipal Act, s. 47, by which no extraordinary vacancy was to be filled up when there are two-thirds of the councillors remaining at the time; and the 11th section proceeded to enact that "every election to any extraordinary vacancy, either alone or together with other councillors, which shall have been had on the 1st of November last, shall be valid, although the number of councillors did then exceed two-thirds of the whole council, and although such vacancy may have happened more than ten days previously to such day, if in other respects such election had been duly had." This branch of the clause was, of course, retrospective, but what immediately followed must be taken as *prospective*, and giving a rule for all future elections in municipal corporations under the circumstances therein mentioned. "And the councillor elected by the smallest number of votes at such election, if elected with other councillors, shall be the councillor elected to supply such extraordinary vacancy; and in every case in which more than one such extraordinary vacancy shall be so supplied, the councillor elected by the smallest number of votes shall be taken to be elected in the room of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be taken to be elected in the room of him who would regularly have next gone out of office, and so with respect to the other." This provision gets rid of all difficulty; it assigns the place of the candidate who is to fill the extraordinary vacancy, and makes the necessary result of his position at the bottom of the poll; therefore there was no occasion to distinguish the names of the candidates for each office, as the votes would only have to be counted.

But the COURT, without calling on *J. W. Smith*, on the other side, immediately affirmed the judgment below, holding, that the 11th section of the 1 Vict. c. 78, was clearly retrospective altogether; and that the voting-papers must distinguish, as in verbal voting, which office each candidate is intended by the voter to fill; and a strong doubt was expressed by some of the judges, in the course of the argument, whether such extraordinary and ordinary vacancies could legally be supplied by an election.

Judgment affirmed.

Bankrupt and Insolvent Courts.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner Serjt. STEPHEN.)

Tuesday, Dec. 3.

Re ARCHIBALD.

Whether the Court has power to allow names of creditors to be added to the schedule—Practice where creditors do not desire to dismiss petition.

At a former hearing (reported *ante*, p. 101), the Court had given permission to the insolvent to amend his schedule, by adding the names of omitted creditors, on an affidavit that the omission arose from forgetfulness and without any evil intention. It now appeared that the insolvent had added the names of *forty-seven* creditors, whose united debts amounted to 3,990*l.*

His HONOUR doubted whether, under these circumstances, he was not bound to dismiss the petition, and *whether he had the power* to allow such a wholesale alteration of the schedule. He referred to 7 & 8 Vict. c. 96, s. 30. From that section, the Court has power only to permit the insertion of the actual amount of a debt or claim, where such debt or claim is specified in the schedule at an amount which is *not exactly* the actual amount thereof. In the present case, the insolvent has not merely incorrectly entered debts, but he has added debts to a large amount, and due to forty-seven different creditors. It is impossible that those debts could have been omitted without culpable negligence.

Homes, for the assignees, did not desire a dismissal of the petition, because that course would revest the property in the insolvent without visiting him with any punishment; the assignees wished to divide the property amongst the creditors, and had no objection to allow of the proposed amendment. He then referred to the 3rd section of the Act, permitting amendments *generally* to be made *at the discretion* of the Commissioner; and to the 31st section, which permits a dividend to be made to creditors named in the schedule, "and to such *other* creditors" proving under a commissioner's order, and authorizes proceedings for correcting and ascertaining the list of creditors.

Packwood, the insolvent's attorney, stated that 3,900*l.* of the amount omitted was for mortgages that were mentioned in the former schedule, although the mortgagees' names did not appear in the list of creditors; the other omitted debts were all for very small sums, and did not amount altogether to 100*l.*

His HONOUR.—If any creditor objected to the proposed amendment, I would most certainly dismiss the petition. The power given in sec. 3 of amending the schedule must, I think, be read with sec. 30, and is therefore only a power to amend in the manner pointed out in sec. 30. But where the creditor's assignees consent, it cannot be doubted but that the Court may allow the amendment, and as it seems desirable, and for the interest of the creditors, that the petition should be proceeded with, the names may be added.

After a long examination, in which it appeared that some plate of the insolvent had been deposited with a friend, and that the insolvent still withheld much information concerning his property,

Homes asked his Honour to adjourn the case *sine die*, with the understanding that the insolvent should not be permitted to come up again until he could produce a certificate from the assignees that he had furnished them with all necessary information.

Packwood said that he would prefer having the petition dismissed.

Homes.—Then the insolvent, who has obtained a curacy at Shrewsbury, out of this district, will petition another Court, and the creditors will incur all the expense of a fresh opposition.

His HONOUR.—I shall not dismiss a petition on the application of an insolvent, where the creditors desire to proceed with it; but I cannot adjourn the first examination *sine die*: that power, under sec. 27, is confined to the final order. I order the plate to be sent to the official assignees within two days, copies of the deeds required to be filed within a fortnight, and the other information as to the parties in whose names the Long Annuities, in which insolvent has a reversionary interest, are invested, to be given to the assignees; and I adjourn the case to the 23rd inst. when, if the insolvent has not obeyed my order as to the other matters, I shall refuse to name any day for the final order. *Adjournment accordingly.*

Packwood, for insolvent.

Poole, for creditors.

Re DALLYMORE.

The omission of dates, if unaccounted for, is a fatal objection to an insolvent's petition.

This insolvent came up for his first hearing, when it appeared that he had omitted in his schedule the dates of the month of a great many debts, and merely inserted the year.

Homes, in support of the insolvent, elicited from him that he was unable to read or write, and kept no books, that his schedule was made up entirely from memory, that all lately contracted debts were properly entered with full dates, and that all the debts where the dates were omitted were old debts contracted at times of which insolvent could not recollect the precise day.

His HONOUR.—Our rule requires the dates of the month as well as the year to be given, and we are determined to enforce that rule strictly. I should certainly have dismissed this petition, if the omission had not been satisfactorily accounted for.

Day, for insolvent.

Circuit Reports.

WESTERN CIRCUIT.

WINCHESTER WINTER ASSIZES, 1844.

(Before Mr. Baron ALDERSON.)

REG. v. HAMMOND and SCOVELL.

Robbery with violence.

The stat. 7 Wm. 4 & 1 Vict. c. 87, s. 2, enacts "that whoever shall rob any person, and at the time of, or immediately before, or immediately after, such robbery, shall stab," &c.

An indictment laying the wounding "at the time" is not sustained by evidence of wounding "immediately before."

Future indictments should have three counts, laying the offence in each way.

Prisoners were indicted for together feloniously assaulting William Littlecott, robbing him of money, and "at the time" of the robbery wounding him, &c.

It appeared that the prosecutor, who was a labouring man, and a person of the name of Moore, were at Romsey market on the 31st of October. In the course of the afternoon they sold a pig to a small shopkeeper in Romsey, and Littlecott received the money for it in a half-sovereign, 2*l.* in half-crowns, and 19s. Hammond, and two men who had absconded, were near the spot when Littlecott received the money. Littlecott and Moore remained at that house for some time drinking, until they became intoxicated. Their cart was brought to the door, and Hammond and the two absent men were seen close to it. Hammond said, "The man is drunk, and I'll crack his b—— old head." They looked in at the window where Littlecott and Moore were, and said, "It's all right." Littlecott and Moore then got into the cart and drove away. When they had got about a mile on the road home they were attacked by three or four men, one of whom struck Littlecott a blow on the head with a stick, and several other blows on the head and body, one of which broke a rib. He became insensible, and when he came to himself he found he was on the ground, and felt some one tearing his pocket. He bled very much. All his money was taken, with the exception of sixpence. Some one lifted him into the cart again. He had been confined ever since. Moore was also knocked out of the cart. In the course of the afternoon Scovell had been seen near Hammond. Information of the circumstance having been given to the police, Hammond was apprehended in Romsey; there was a good deal of blood on his trousers. Scovell was also taken into custody. Hammond, when apprehended, stated that he had held the horse's head while the other men drew the men out of the cart and robbed them. He had four half-crowns, one of which he paid away the same night at the very house where Littlecott had been drinking, which happened to be marked, so that the landlady was able to swear to it.

His LORDSHIP called the attention of the counsel for the prosecution to the following point. The words of the stat. 7 Wm. 4, and 1 Vict. c. 87, s. 2, are, "That whoever shall rob any person, and at the time of, or immediately before, or immediately after, such robbery, shall stab, cut, or wound," &c. The first count in this indictment charges that the prisoner wounded "*at the time*" he committed the robbery. The evidence was, that the wound was inflicted *before* the robbery. The legislature having made the distinction between "at," "before," and "after," if it be necessary to lay it correctly, the evidence in this case failed.

Edwards, for the prosecution, submitted that the point was new, but that the word "at" must be construed to mean the whole period from the commencement to the close of the transaction, from the moment of the assault to the end of the robbery,

and included the immediately before and after mentioned in the statute.

ALDERSON, B.—That would have been the construction I should have put upon the word "at," but for the express words used by the Legislature; but as in the statute those different words were used, it is necessary to prove the act in the precise way in which it had been laid, but in all future cases I would advise that there should be three counts, laying the offence in each way.

CENTRAL CRIMINAL COURT.

Friday, Oct. 25.

OCTOBER SESSIONS.

REG. v. CARRUTHERS.

Indictment for sending a threatening letter with intent to extort money.

Where there is no person in existence of the precise name which the letter bears as its address, it is a question for the jury whether the party into whose hands it falls was really the one for whom it was intended. It is for the jury, and not for the Court, to determine whether or not the letter is a threatening one, within the Act, and the judge will not withdraw it from their consideration, unless by no possible construction can it be held to involve a threat. Where a party has pleaded, and not demurred, to an indictment, an alleged defect upon the face of it cannot be taken advantage of before verdict, even where the objection is such that a verdict would cure it.

The prisoner was indicted for sending a threatening letter to Messrs. Coutts and Co. with intent to extort money. The indictment charged, That before and at the time of the committing of the felony and offence hereinafter next mentioned, certain persons, that is to say, Angela Georgiana Burdett Coutts and others, were copartners in the trade or business of bankers, and carried on the said trade and business under the name, style, and firm of Coutts and Company, in a house and premises in a certain street called the Strand, in the parish of St. Mary-le-Strand, in the county of Middlesex, and within the jurisdiction of the Central Criminal Court:

That James Carruthers, late of the same parish, labourer, heretofore, to wit, on the 28th day of August, in the 8th year of the reign of our Sovereign Lady the Queen Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Court, knowingly and feloniously did send to the said A. G. B. Coutts and others, her copartners, a certain letter directed to the said A. G. B. Coutts and others, by the name and description of J. Coutts, esq. banker, Strand, demanding money from the said A. G. B. Coutts and others, with menaces, and without any reasonable or probable cause, and which said letter is as follows, that is to say (as *infra*), against the form of the statute, &c.

The 2nd count recited that the said A. G. B. Coutts and others, being copartners in the trade of bankers, were joint proprietors of, and did carry on their business in, a certain house, &c.

The 3rd count recited, that said A. G. B. Coutts did use, exercise, and carry on trade and business of a banker, in a certain house called and known as Coutts' banking-house, &c.

The 4th, 5th, and 6th counts each recited that a certain other partner carried on trade and business as in the 3rd count.

7th count.—That the prisoner feloniously did send to A. G. B. Coutts a letter demanding money, with menaces, then and yet being one of the members of the copartnership and firm aforesaid.

8th, 9th, and 10th counts, the same as the 7th, except that the name of another partner was substituted for that of A. G. B. Coutts.

The letter, of which the following is a copy, was set out in each count:—

"SIR,—The most desperate gang in the metropolis have resolved to obtain possession, by whatever means, of a certain portion of your property; it is composed of starving men, and no efforts will be spared in effecting their firm resolves; if any of their numbers fail in the requirement of sustenance from those they have marked out for prey, the remainder have sworn full revenge. Desperation is in their hearts. Not from design, but from accident, I was led into their society—curiosity—being desirous of contemplating human nature in all degrees of life, caused me to seek initiation into all their secrets. I now rue my act. I had previously to take a solemn oath, which nothing, however, will induce me to break, that I would preserve eternal secrecy concerning their names and places of abode. Learning their design upon you, as one of the proscribed number, and having further a strong consideration for you, I made every effort to dissuade them, at the risk of personal suspicion and consequent danger, to abolish their intentions as respects yourself; further than this I dared not go, but intense suffering closes the ear of mercy. To remove that suffering is the only way to give success into its natural dictates; they, however, mutually agree that if I will give them one hundred pounds in solid gold, they will relinquish their design upon you; nothing less will satisfy. I communicate to you their demand; and personal safety will, I hope, induce compliance. It is hard that you should thus suffer, but I have done my utmost in vain to ward off the inevitable catastrophe. Had this been an ordinary conspiracy, it would have been sufficient for me merely to give you warning, to cause you to be on your guard. But so resolute and determined are these men, that no vigilance however acute, no defences however strong, will shield from their hands. Fearing the inevitable results of their decisions in this case, that I have been providentially made aware of, I have almost promised compliance with their demand, satisfied that could I but communicate with you, you would for obvious reasons consent. If they receive the sum in question, I am firmly convinced you will never have any cause of fear from them; but if not, non-compliance will hereafter be repented of too late. My oath prevents me from detailing their plans, which also, if revealed, would subject me to the most imminent danger. I have already stated that I am in no way an accomplice; though poor, I am honest. If you comply with my recommendation, you are safe. If you preserve secrecy, I am safe. But too often the innocent suffer for the guilty. Circumstantial evidence is too much honoured: purity of motive, however generous the deed enacted, uniformly denied. Therefore as I have consented, through the hope of securing good and averting wrong, to be a mediator, I require, to avoid treachery, that inviolable secrecy be preserved; that you take a solemn oath that you will make no attempt, through yourself or by others, directly or indirectly, to discover who I am, or cause me in any way to be molested. That on Friday night next, at half-past nine o'clock, you will cause a little boy to be stationed at the base of the fire Monument near lower Thames-street, who shall have in his possession the sum of one hundred pounds in solid gold, encased by boards, so that he shall not be aware of the contents, and deliver the same to the individual who asks for a parcel. That this boy be alone, and in no communication by sign or word, with any other individual whatsoever. That on Friday morning next you cause the following advertisement to appear in the *Times* newspaper:—

"'C. C. desires to inform T. T. that his request has been fully complied with.'

"If, notwithstanding this information and offer, you should fail to comply with my recommendation, the consequences will be fearful. My oath prevents me from saying more.

"Private. Adieu, yours, T. T.

"J. Coutts, Esq. Banker, Strand. (Important.)"

Bodkin (with whom was *Doane*), for the prosecution, having stated the case,

Clarkson, for the prisoner, said, that as it was impossible for him to struggle against the facts of the case, he would submit to the Court his objections, in point of law, to the indictment. The letter was not a threatening letter within the Act. For the purpose of making out the offence, it was necessary to shew that there was a threat and demand of money from the writer to the parties to whom it was addressed. By the common law this was no offence, but made one by statute, the very terms of which must be complied with. The 7 & 8 Geo. 4, c. 29, s. 8, that on which this indictment was framed, enacted "that if any person should knowingly send or deliver any letter or writing, demanding of any person, with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security, &c." It would be clearly proved here that J. Coutts, esq. was a non-existing person, and, therefore, the offence could not be brought within the Act. It speaks of a *person*, which evidently means an existing person. Moreover the prosecutors must be bound by the terms of the letter, and could not draw inferences beyond its literal interpretation. The letter, on the face of it, was no more than a suggestion to a non-existing being that the writer had become acquainted, either casually or from curiosity, with an enterprise which other parties had undertaken, and it went on to recommend that certain demands *of these parties*, and not of the writer himself, should be complied with.

MAULE, J.—I do not quite understand the course you are pursuing. You seem to be insisting that the indictment, on the face of it, is insufficient, but you can surely only raise that question by moving in arrest of judgment, or by writ of error. It would have been otherwise if you had demurred, but here you have pleaded.

Clarkson.—I put this as something more than an objection appearing on the face of the record,—viz. that there is nothing in the letter which makes it a matter for the jury's consideration. In the case of *R.* v. *Pickford* (4 C. & P. 227), the Court held, that a letter, charged as a threatening letter, was not within the Act.

MAULE, J.—I must decline to entertain this question now. I should hesitate to decide it even on a motion to arrest the judgment, and should probably leave you to your writ of error.

The case then proceeded, and the letter was about to be read.

Clarkson.—I submit that the letter cannot be read in evidence for the prosecution. In each of the counts it is set out as being addressed to A. G. B. Coutts and others, respectively, by the name and style of J. Coutts, esq. banker, Strand. The letter is, in fact, addressed to J. Coutts, esq. banker, Strand, and there is no proof of its being intended by the prisoner to fall into the hands of A. G. B. Coutts, or others.

MAULE, J.—It is a question for the jury, whether it was addressed to them by the name the superscription bears.

The case being closed,—

Clarkson renewed his objection, that the letter was not a threatening one within the Act, and that it was a matter for the decision of the Court rather than of the jury. He cited *R.* v. *Tyler* (Mood. Cr. Ca. 428), in which Denman, C.J. stated he had some doubts whether the question ought to have been left to the jury. And all that the Court subsequently decided was, that the objection could not be sustained after verdict. In the case first cited, the point was raised before verdict, although there was no demurrer. The difficulty in which the prisoner is placed is this, that unless the matter is determined now, it cannot be rendered available hereafter.

MAULE, J.—That is no ground for my acting contrary to the law. There can be no possible doubt that an objection which is not taken by demurrer, if it be on the record, cannot be taken before verdict. If the party has pleaded, he must abide the consequences. [His lordship then proceeded to sum up the case to the jury.] In the first place the prosecutor must make out to your satisfaction that this is a letter addressed to A. G. B. Coutts or others, individually or collectively, by the name of J. Coutts, Esq. banker, Strand. The question is, is it in substance directed to them? I do not think it necessary that the direction should contain the actual name of the partners in the firm, because nothing could then be more easy than to send a threatening letter with perfect impunity. Such a direction might be used as would insure the paper reaching the parties for whom it was intended, whilst at the same time such a variation might be adopted as would insure to the writer an acquittal, or the ground of such a variance as is here urged. Evidence has been given by the partners in this banking-house, that the firm was once T. Coutts and Co. and that none but themselves carry on such a business in the Strand, or in London, by such a style now. It is for you, then, to say whether the parties stated in the indictment are not those for whom the letter was intended. Secondly, is this a letter demanding money with menaces, without any reasonable or probable cause? To ascertain this, you must of course look to the letter itself, and to the situation of the parties. It may be, that under certain circumstances, an apparently innocent letter may convey a threat. It may be, that no letter could be written which it might not be possible to prove, by extraneous matter, did not contain a threat. Now, I can conceive a case where such a letter as this might be written: "Sir, I trust you are well, and I shall be happy to meet you to-morrow." There, I should consider myself called upon to withdraw such a letter from the jury, because it would be absurd to say it involved a threat. But as it is impossible, I can tell you that this letter may not contain a threat, I cannot decide that it is not a question for the jury. Two cases have been cited. In *R.* v. *Pickford* the jury were told that the letter was not a threatening one. They found, therefore, nothing more than that it had been sent by the prisoner, and the Court held that they ought to have decided the whole question. This principle is still further illustrated by *R.* v. *Tyler*, where a different course was, in the first instance, pursued. The jury were not there told that the letter did or did not contain threats, but its interpretation was left to them. They came to a certain conclusion, and it was upheld by the Court. These two cases, then, shew what is the proper course in trials of this kind. Evidence is to be given of the letter sent, and it is for the jury to say whether or not it contains a sufficient threat. At any rate, if that is not the proper mode of proceeding, and the Court are competent to decide that this letter cannot, on any construction, be held to contain menaces, the objection will be on the face of the record, and will be open to the prisoner in arrest of judgment, or by writ of error.

THE LEGISLATOR.

Summary.

THERE is no news of legislation projected.

SMUGGLING RETURNS.—On Saturday a Parliamentary return was issued, affording a good deal of information on smuggling. Mr. Hume moved for a return of the several establishments maintained for the prevention of smuggling in the United Kingdom in each of the years 1842 and 1843, the expenses of prosecutions by the Customs and Excise, the produce

of seizures, the rewards paid to officers, &c. Among the expenses in the first portion of the return appears the sum of 344,136*l*. 13s. 11d. for wages and salaries of persons employed for the prevention of smuggling in 1842, and 347,809*l*. 1s. 4d. in 1843. The expense of the equipment of the persons so employed, and for repairs, was, in 1842, 168,608*l*. 4s. 10d.; and in 1843, 164,358*l*. 14s. 1d. The amount of the produce of goods seized and sold was, in 1842, by the Customs, 2,201*l*. 19s. 7d.; and by the Excise, 785*l*. 1s. 6d.: and in 1843 the produce was, by the Customs, 7,636*l*. 11s. 1d.; and by the Excise, 520*l*. 12s. 3d. The rewards paid to persons employed for the prevention of smuggling were, in 1842, 6,817*l*. 3s. 10d.; and in the following year, 11,281*l*. 45s. 9d. There are other expenses detailed of a trifling character. The spirits seized afloat are delivered over to the Excise for re-distillation and public disposal. Tobacco is the next principal article; but realizes a small sum, as frequently it will not fetch the duty, and is destroyed. In 1842, 11,048 gallons of spirits, and 19,667lb. of tobacco, were seized; and in 1843, 10,676 gallons of spirits, and 62,888lb. of tobacco. The proceeds not being sufficient to pay the rewards, the difference was taken from the consolidated customs. The expenses of prosecutions by the Excise in 1842 were 5,687*l*. 14s. 3d.; and in 1843, 8,760*l*. 9s. 2d. The produce of fines and seizures by the same department was, in 1842, 27,003*l*. 6s. 11d.; and in 1843, 36,839*l*. 19s. The share paid to excise officers in 1842 was 11,256*l*. 10s. 10d.; and in 1843, 15,034*l*. 7s. 4d.; the amount remaining to the Crown was, in 1842, 11,031*l*. 4s. 4d.; and in 1843, 15,157*l*. 10s. 6d. The other expenses of establishments belonging to the Excise amounted, in 1842, to 5,760*l*. 12s. 3d.; and in 1843, to 8,757*l*. 16s. 8d.; and with respect to the border service, cruisers, and revenue police, the expenses are considerable. The revenue police of the Excise, in 1842, cost, in wages and victualling, 33,216*l*. 18s. 1d.; for salaries and allowances, 1,640*l*.; in vessels, 989*l*. 7s. 7d.; and in horses and barracks, 1,029*l*. 18s. 2d.; and in 1843, the police cost in the various departments mentioned 35,422*l*., 1,640*l*., 1,760*l*. 19s., and 1,233*l*. 0s. 10d. The first branch of the return relates to the Customs, and the three others to the Excise.

THE MAGISTRATE.

Summary.

We direct the attention of the magistracy throughout the country to the following occurrence at Winchester, and Mr. Baron Alderson's commentary thereon. The rule is equally applicable to the sessions as to the assizes. If judges should not be put to prosecute in the one, much less should they be so in the other:—

Very great delay and inconvenience have been occasioned at this assize from the following circumstance:—The magistrates in this county have refused to allow the expenses of briefs for the prosecution and the fees to counsel in all cases where the bills are ignored; the consequence is, that counsel are not instructed till the bill is brought into court, and are unprepared to proceed with the case when it is called on, and much time is lost. Alderson, B. said this was a most improper thing; the Government had thought it right to put the people of England to the expense of sending a judge down to try the prisoners, and the magistrates refused to put the county to the expense of employing counsel to prosecute them. He thought the magistrates would find such paltry economy a disadvantage, as the assize would probably last a day longer than it otherwise would, to say nothing of decency in the administration of justice. In addition to this, it was almost expressing an expectation that bills would be ignored, which was a libel on the committing magistrates, for prisoners ought not to be committed except upon a reasonable expectation that true bills would be found.

Military Officers exempt from Turnpike Toll.—A case was recently brought before the Leeds magistrates, by Captain John St. Alban, of the 83rd, who claimed exemption from the payment of toll at one of the toll-bars. The exemption of officers of infantry regiments from the payment of toll for passing through turnpike-bars on horseback being a question of some doubt, a communication was made to the War Office on the subject, and the following answer has been received:—

"War Office, Nov. 28, 1844.

"Sir,—I am directed to acknowledge the receipt of your letter of the 23rd instant, and to acquaint you, for the information of the magistrates of Leeds, that the law officers of the Crown have given their opinion that the words of the Mutiny Act do exempt, as they were intended to exempt, all military officers in uniform, dress or undress, and their horses, from the payment of toll when passing through turnpike-gates or bridges erected by the authority of Parliament. This exemption extends to military officers, whether required by her Majesty's regulations to keep horses for the public service or not, and when riding for exercise or recreation, as well as when travelling in the actual performance of an act of public duty, the only condition being, that the officers must be in uniform, dress or undress.

"I am, &c. "L. Sulivan."

"To Robt. Barr, esq. Leeds."

THE LAWYER.

Summary.

Many of the cases in this number present the promised *verbatim* reports of the written Judgments of the Term. Their value will be appreciated by the Profession. Many of them will be found extremely interesting and instructive. Another paper deserving attention is the very interesting communication from our French correspondent, describing the regulations of the Bar of France, which, at this moment, when the subject is under discussion in England, will be welcomed by the Profession. Our able correspondent promises more papers descriptive of French procedure. May we add here that we should be glad to find a similar correspondent in each of the continental countries and in our various colonies?

LEGAL INTELLIGENCE.

CENTRAL CRIMINAL NEW COURT.

Tuesday, Dec. 3.

(Before the Common Serjeant and Aldermen Challis and Hooper.)

Fraud by a Sham Attorney and Agent.—Thomas Field, otherwise John Easterfield, otherwise Wm. West, described as an agent, aged sixty-five, was charged on an indictment including three charges, and consisting of as many counts; first, with obtaining two half-crowns and a sixpence from William Wall; secondly, the same sum from E. Hammond; and also a half-crown from J. Harding, with intent *to cheat and defraud them thereof.*

The prisoner applied to have his trial put off to the next sessions, but as he had been given in charge to the jury, his application could not be complied with.

O'Brien stated the case, which was one of great importance to the public. The prisoner had gone about describing himself as an attorney or agent employed to recover money lodged in the Court of Chancery, and obtained money from different persons for that purpose. Among others, he went to the three persons who appeared as prosecutors, who were all poor men, and shoemakers by trade.

William Wall deposed as follows:—In July last the prisoner came to my house, and said he wanted a Mr. Wall. I said "My name is Wall." He said "I want an elderly man who used to live in Union-street, Lambeth, as I have some good news for him." I said, "I am his son," and invited him in. He told me that a great deal of property was in the Court of Chancery which belonged to my father or his heir. I asked him what was to be done, and he said, a petition must be sent to the Court of Chancery, and a will must be searched in Doctors'-commons. He said the charge of the petition would be 5s. 6d. for which an order would be granted. I made an appointment to see him the next day, when he produced several printed forms in blank, similar to that now in court. I paid the 5s. 6d. and he afterwards brought what I considered the order from the Court of Chancery (put in). I then asked him of what the property consisted. He said, "Strictly speaking, I ought not to say in this stage of the business, but it is part freehold and part funded." I said, "What do you think it will realise?" He said about 900*l*.

Prisoner.—Did I not tell you that I was employed by Mr. West to discover these matters?

Witness.—You said you came from an office belonging to the High Court of Chancery, and a great deal more.

Did I not give you a card with the name of West on it?—Yes, and here it is, and your writing at the back.

It being known to the Court that the prisoner was convicted here last year in the name of West, desired the card to be put in and read, which caused some merriment. The following is a copy:—

"West and Co. General Commission Agents, for purchasing and disposing of every description of property.—Leases executed, wills copied, unclaimed property restored, the bankrupt and insolvent laws clearly explained, and every other advice and assistance required by the embarrassed tradesman as well as the man of business. Money advanced on approved securities, policies on life insurances bought and sold; rents and debts collected and legally recovered; advice given without a fee, and the most honourable conduct may be depended on. It is most respectfully requested that all communications may be forwarded by letter (post paid), addressed to Mr. West or his agent, No. 55, New-cut, Lambeth, which will be punctually attended to. Charges very moderate."

The prisoner now entered upon a plausible statement which was irrelevant to the charge, until interrupted by the Common-Serjeant, who said, "You may go on in that strain as long as you like, but the case against you lies in the closest possible compass."

James Harding, shoemaker, Stangate, and Edward Hammond, shoemaker, Emmerton's-row, proved two other cases of the same kind as the preceding against the prisoner.

O'Brien.—My lord, I will now call the attorney who instructs me to prove that the papers called "orders" are pure fictions.

Stoddart deposed that he is a solicitor and conducts this prosecution for a friend. The papers given to the three prosecutors, called orders from the Court of Chancery, have nothing to do with that court—they are mere "notices of appearance" connected with the courts of common law.

This was the case for the prosecution, and

The prisoner commenced a long defence, and detailed matters foreign to that which most concerned him. He said that he had been in respectable circumstances, but dropped into poverty in forty-eight hours. He was placed in an awkward position through his trial not being put off to the 16th, as he could then have availed himself of the evidence of Mr. West, his employer.

The Common-Serjeant.—You profess to know the law, and you must have known that you ought to have made your application to traverse when you first came into court. You talk about being employed by Mr. West. Your *ipse dixit* is not enough; we must have the fact stated by that person on oath.

The prisoner proceeded in his rambling statement, when the judge told him that he did not desire to interrupt him, but all he had said was beside the mark.

To a question by the Court, the prisoner said he had no one to speak to his character. He was sixty-five years of age.

The jury, without consultation, found him guilty.

O'Brien.—My lord, I feel it my duty to the Court and the public to state that the prisoner was convicted of a similar offence in June last year, when points were argued which were overruled by Mr. Justice Patteson, who sentenced him to imprisonment for one year.

The Common-Serjeant.—I am aware of the fact. I have the arguments here (holding up a volume of reports recently published). He then called himself "Mr. West," of whom he has talked so much to-day. And Mr. Field or West, or whatever your name is, there is this remarkable fact in your case. Last year you stated your age as fifty-four, and to-day you have said you are sixty-five. How is it that you have advanced eleven years in twelve months?

The prisoner made no reply.

His Lordship then called him up to receive the judgment of the Court.

The Common-Serjeant said the Court could hardly conceive a worse character, for he had plundered very poor persons who could not even pay his demand, and he moved among a class who were ignorant of the law, and were easily beguiled by his holding out specious expectations. "You (said his lordship) have been convicted upon an indictment which contains three counts, and I shall mark your case in a particular manner, as it is quite clear that you are a very improper person to remain in this country. The sentence of the Court is, that upon the first count you be transported beyond the seas for seven years; for the term of seven years on the second count; and for a further term of seven years upon the third count, making, in the whole, twenty-one years; but mind, the terms upon each sentence commence on the same day, and not by sequence, so that you will only be transported in fact for seven years."

This appeared to be a new point of law to the prisoner. It was said that fifty similar cases of fraud could have been established against him, committed since June last.

Central Criminal Court.—A meeting of the members of the Bar practising at the Central Criminal Court and Middlesex Sessions has been recently held, to consider the state of the practice in these courts. After a discussion of some duration, a committee of inquiry was appointed. We understand that several gentlemen are favourable to the establishment of a mess, as on the circuits, but that some difference of opinion exists on this subject. We highly approve of the design, as eminently calculated to improve the practice, not only of the Bar, but of the attorneys also.

Whitehall, Dec. 5.—The Lord Chancellor has appointed Charles Pemberton, of Liverpool, in the county of Lancaster, gent. to be a Master Extraordinary in the High Court of Chancery.

COURT OF EXCHEQUER.

BUSINESS OF THE COURT.

On an application being made by a learned counsel to his lordship that a common jury cause might be taken on Friday next,

His Lordship said, that that and the two following days, Saturday and Monday, were the last of the present sittings, and that each of them being appropriated to special juries, the Court could not comply with the application unless the parties were both ready to take the chances of coming on. It was his (the Lord Chief Baron's) determination not to allow any common jury cause to be put down in the same list with special juries for the future. In his own experience at the Bar, the opposite practice had been felt and admitted to be a grievous tax on suitors, and even so far back as Lord Ellenborough's time it had been complained of. Feeling the justice of these complaints, he had resolved to adopt the course now intimated in all cases, except undefended actions, or causes wherein verdicts might be taken by consent, or where parties, for special reasons, might agree to take their chance, and he was sure that great benefit would result from the general introduction of such a course of business.

Mr. Jervis and Mr. Humfrey begged to express, on behalf of their clients and of the Bar, the great and general satisfaction which this announcement could not but cause. The costs entailed on suitors by the old system were quite incalculable.

Mr. Martin also thanked his lordship for the arrangement in question. He had just been informed of one common jury cause, the witnesses in which came from the country at great expense, and which had stood at the top of the special jury paper for eleven consecutive days.

The Lord Chief Baron.—Oh yes; that frequently takes place. I think it much better to run the risk of occasionally losing a portion of a day devoted to special juries for want of common juries to fill it up with, than to entail on the suitors in the latter the certainty of unavailing and heavy expenses.

Illegal Marriages.—In consequence of a number of illegal marriages (on account of the respective parties not having resided in the parish) having been solemnized in the diocese of Gloucester and Bristol, the Lord Bishop has given notice to the respective clergy of his extensive diocese, that no marriage can be legally solemnized in any church or chapel but that of the parish or district in which one of the parties reside; and when both the parties do not reside in the same parish, his Lordship will require the banns of marriage to be published in the churches belonging to the parishes in which each party may reside, a certificate of which must be sent to the officiating minister. The Lord Bishop calls the attention of his clergy to the Act of Parliament against clandestine marriages, which enacts that, in order to protect the minister from fraudulent assertions, he is not bound to publish even banns unless the persons shall have resided in the parish at least seven days from the first publication of the banns, and the clergyman shall cause to be delivered to him a notice in writing of their true Christian and surnames, and also the places of their respective abodes, and the time they have occupied the same, in order to afford the officiating minister sufficient time to inquire if any imposition has been attempted. His Lordship expects that the above enactments will be carried out to the strict letter of the law in every part of his diocese.—*Glocester Chronicle.*

Liverpool.—On Tuesday evening last, a party of seventy gentlemen, practising attorneys in Liverpool, and (with few exceptions) members of the Liverpool Law Society, dined together at the Adelphi Hotel. This convivial meeting was arranged by the Committee of the Society, with the object of promoting cordiality and good feeling among the members of the profession. Mr. Ambrose Lace was chairman, and Mr. E. Guy Deane, vice. After the toasts, "the Queen," "the Royal Family," "the Judges," &c. &c. had been given, others of a local nature were proposed and responded to by gentlemen present. The health of "the Chairman" was proposed by Mr. Harvey, in a very appropriate speech, and received with general and enthusiastic applause. Due honours were also paid to "the Vice President," "the Town Clerk," "the Vestry Clerk," "the Coroner," and "the Clerk of the Peace," to which Mr. Deane, Mr. Shuttleworth, Mr. Lowndes, Mr. Curry, and Mr. Wright responded. Among the speakers were, also, Mr. Parr, Mr. Littledale, and Mr. Caton Thompson. Reference was made by the Chairman to the injustice done to the Profession as a body, by the sort of systematic general abuse which persons in other classes of the community are found to indulge in; and he made various remarks tending to prove how unfounded such aspersions were; though he ascribed the fault in some measure to the attorneys themselves, as arising from their want of unanimity and association together on the same terms as those on which barristers and members of other professions are accustomed to meet. Several excellent glees were sung, and the evening passed off, in a most agreeable manner, and the company parted, with a general wish that an annual meeting may take place.—*From a Correspondent.*

Six Clerks' Compensation.—Lord Langdale, the present Master of the Rolls, in a speech delivered by his Lordship in the House of Lords on the 13th of June, 1836, on the occasion of the second reading of a Bill entitled "A Bill for the better Administration of Justice in the Court of Chancery," and which speech was subsequently published by his Lordship, made the following observations:—"Of all the grievances which afflict a country, none are so pernicious, none tend so certainly to unfasten all the bands which hold society in peace and harmony together, as those which are found to prevail in courts of justice; but there are none which excite so little clamour and alarm—none, perhaps, which attract so little of public attention." Consider for a moment under what circumstances and by means of what gross misrepresentations the Act (under which these compensations were awarded) was obtained; and that the fees imposed under it, upon the helpless and unhappy suitors of the Court of Chancery, to pay the compensation, are so enormous in amount, and so onerous in their nature, as to tend to a denial of justice to all who can possibly escape the fangs of the court; that the compensated gentleman to whom, *par excellence*, was intrusted the delicate task of drawing the Act, has (fearful less the fees imposed might fail) made these compensations, and the no less enormous salaries, a charge upon all the funds of the suitors; that out of those funds the salaries of most of the judges of the court, and of all its other officers are paid, and you will readily admit the justice of the above observations of Lord Langdale, and not express much surprise on being told that during the last two Terms several of the judges of the Court of Chancery did not sit, for lack of business, and yet you will scarcely fail to express some surprise, that in the face of all this Parliament, and more particularly the House of Commons, upon the re-assertion of the misrepresentations under which the Act was obtained, refused in the present session all inquiry on the subject; but those misrepresentations having been now refuted and exposed, we may surely hope some inquiry will, in the next session, be conceded to the public.—*Morning Chronicle.*

IRELAND.

COURT OF CHANCERY—December 3.

REMOVAL OF A SOLICITOR FROM THE ROLL FOR FRAUD.

Shortly after the Court sat this morning, Mr. Pigott, Q.C. on behalf of Andrew Christopher Pallas, solicitor, opened the affidavit filed in obedience to the order of the Lord Chancellor, explaining the part taken by Mr. Pallas in the execution and preparation of certain deeds referred to in the cause of *Foster* v. *Goolde and others*, and which deeds were declared in the course of the proceedings in Chancery to have been fabricated for the purposes of imposition and dishonesty, and with the intent of fraudulently conveying to Mr Pallas and to James J. Hardy, barrister-at-law, certain lands and tenements forming part of the Goolde estate in the county of Tipperary. The Chancellor was of opinion that the deeds in question were impeached by counsel for the defendant in the cause, and ordered them to be collected and impounded, and that Mr. Pallas should answer to the Court for his apparently dishonest and improper conduct. The affidavit now relied on by Pallas's counsel stated that the deeds referred to were prepared in the office of Mr. Hardy, and that Pallas knew nothing of the fraudulent alterations, nor by whom they were made. He also positively denied all knowledge of the object or intention to prepare the deeds for a fraudulent purpose, and stated he was quite ready to submit to any party interested the whole of the documents relating to the cause. He further denied that he even was a party to or was cognisant of any plan to raise money by means of those deeds, although he was aware they made himself and Mr. Hardy trustees for certain purposes.

The Lord Chancellor in delivering judgment said, that the explanations stated at the bar to have been given by Mr. Pallas did not relieve that person from the serious charges appearing against him; and that therefore, for the sake of the respectability of the profession to which he belonged—for the safety of the suitors of that Court, as well as for the benefit of the public generally, it was his lordship's painful duty to direct that Mr. Pallas's name should be removed from the roll of solicitors. As regarded the part which Mr. Hardy had taken in the transaction, explanation should be offered for it before the benchers of the Queen's inns, before whom the matter was pending.

The chambers of the grand duchy of Baden have adopted a project of law relative to the reform of the criminal courts' proceedings. This project enacts that henceforth there shall be a public accuser—that the defence of the accused shall be oral—that the accused or defendants shall be present at the proceedings—and that the sittings of the criminal courts shall be open to the public.

COURT OF CHANCERY.—Dec. 4.

Re Rickard O'Connell, a Barrister.—An application was made on a former day by *Fitzgibbon*, Q. C. on behalf of a Dr. Twohy, to prevent Mr. Rickard O'Connell, barrister-at-law, from practising or signing his name for the future to any pleadings in that court, on the ground that his personal answer to a bill filed in the cause in Chancery of *O'Connell* v. *O'Connell* was scandalous and libellous, and unwarrantably reflected upon the character of the petitioner, Doctor Twohy.

Martley, Q. C. represented the defendant, Mr. Rickard O'Connell.

At the sitting of the Court this morning, *Fitzgibbon* having renewed his application,

The Lord Chancellor decided that the defendant should be compelled to take his answer off the file, for the causes stated; that he should file a new answer immediately, and pay all the costs incurred. His lordship severely reprimanded the defendant, and reprobated the conduct of any gentleman of the bar putting upon the records of the court such an answer as that in question. In such cases, however (and he was happy to observe they were by no means of frequent occurrence), he would always leave barristers to be dealt with by the benchers of their inn. In the present case, however, if the suggestions he had thrown out were acceded to by the parties concerned, he should not interfere otherwise than as he had already stated.

These terms were approved of, and the matter was accordingly disposed of.

PROCEEDINGS OF LAW SOCIETIES.

THE INCORPORATED LAW SOCIETY.

(*From the Annual Report recently printed.*)

"*Bills in Parliament.*—The numerous measures which have been proposed in Parliament during the last session, for the alteration of the law, have called for the attentive consideration of the committee.

"To the County Courts Bill they framed a series of objections, both in principle and detail, which they submitted to the Secretary of State, with a request that a deputation might attend him on the subject. This, however, was rendered unnecessary by the withdrawal of the Bill. The same fate attended the Bills introduced for the Improvement of the Proceedings in the Superior Courts of Common Law, and for the Recovery of Small Debts; to which, and also to the Debtors and Creditors and the Bankruptcy and Insolvency Bills, the Ecclesiastical Courts Bill, the Arches Court Bill, and the Marriage and Divorce Bill, the attention of the committee was also particularly directed.

"The committee have likewise had under their consideration the Bill for effecting the Service abroad of Common Law Process, of that relating to the Judicial Committee of the Privy Council, and also the Bills introduced by the Lord Chancellor concerning the Transfer of Real Property, and the Jurisdiction in small Charitable Trusts: and they have not failed to notice the following Bills, which in a greater or less degree were interesting to the Profession, viz. the Joint Stock Companies Bill, the Metropolis Buildings Bill, the Inclosure of Commons Bill, the Landlord and Tenants Bill, the Letters Patent Bill, the Masters and Servants Bill, and the County Coroners Bill.

"The committee have directed their attention to the 60th clause of the Poor Law Bill, with reference to the interference of clerks of boards of guardians in business appertaining to members of the Profession; and they have the satisfaction to state, that by the clause as it now stands, the power given to those officers by the 5 & 6 Victoria, c. 57, to take proceedings at the quarter and general sessions no longer exists, and they are enabled to act at petty and special sessions only; so that the operation of the Attorneys Act remains undisturbed.

"*Business at Judges' Chambers.*—In consequence of the continued delays and great inconvenience in transacting the business at the judges' chambers, the committee deemed it advisable to prepare a petition to Parliament, recommending that one of the Masters of the Court should be authorized, under their Lordships' regulation, to hear ordinary summonses and matters of a practical kind, and also to administer oaths,—so that the time of the judges might be saved, and the business transacted more conveniently and expeditiously.

"*Master's clerk.*—The committee received a memorial from several of the members practising in the Court of Chancery, complaining of the appointment of an unqualified person as chief clerk to one of the Masters; and in consequence of representations made

by them, they have been assured that the earliest opportunity of the introduction into Parliament of any Bill relating to the court should be taken, to place the qualification for this important office on a satisfactory footing.

"*Probate Duty Office.*—With a view to remedy the delays and inconvenience at the Probate Duty Office, of which complaints were frequently made, the committee, through their chairman, had a communication with the Commissioners of Stamps, the result of which has been an increase of the establishment in that office, sufficient to remove the evil complained of.

"*Courts' removal.*—The committee has kept in view the object which the society has for several years been endeavouring to attain—the removal of the courts from Westminster into this vicinity. They have made several attempts to obtain a further hearing before the House of Commons in the present session, but they cannot pretend to say that they have received much encouragement. With reference to this subject, it may be mentioned, that in a recent report of the state of the buildings for the new Houses of Parliament, provision has been made for the accommodation of practitioners attending them, according to a former recommendation made by this society, the expense of which is estimated at 5,000*l.*

"*Bankruptcy costs.*—The practice which had for some time prevailed of having the costs in bankruptcy in the London district taxed by the same registrar, having been found beneficial in producing a uniformity of charge, and in occasioning great convenience in the despatch of business, the committee, in order to render the practice permanent, deemed it advisable to promote an application to the Lord Chancellor to effect this object, and they have the gratification of stating that their application has been successful.

"*Criminal law.*—The Criminal Law Commissioners having forwarded to the committee various questions with reference to projected alterations in that branch of the law, the same have been laid on the hall table, with an invitation to the members to make such suggestions as appeared to them advisable.

"*Proposed new orders of court.*—The committee also, in addition to various other professional subjects which have come under their consideration, have devoted their best attention to various orders of court, which the judges have done them the honour to submit to them; and they have to express their pride and gratification at the continued kindness with which this body is treated by the Bench, and the confidence which is reposed in its recommendations.

"*Usages.*—The various points of professional usage in conveyancing practice which have been submitted to the committee they have endeavoured to determine to the satisfaction of the parties interested.

"The right claimed by the Scriveners' Company to refuse to qualify attorneys to act as notaries in the city of London has been considered, with a view to the alteration of the law at a fit opportunity.

"*New rules and orders.*—For the information of the members, the committee during the past year have printed and circulated among them the following papers:—

"The Act for the Regulation of Attorneys and Solicitors.

"The regulations thereunder of the office of Registrar.

"The Table of Costs in Bankruptcy.

"The Examination Orders in Chancery.

"The Orders in Chancery reducing the fees for Office Copies.

"The Orders in Lunacy.

"The Rules and Orders relating to Common Law Judgment, and Writs of Execution in Bankruptcy, and

"The new Scale of Costs in Actions under 20*l.*

"Independently, however, of these various subjects, which have occupied the attention of the committee during the past year, the most laborious and important duty in which they have been engaged has been that which devolved upon them under the Attorneys and Solicitors Act, which received the royal assent soon after the last annual general meeting.

"*Registrar of attorneys.*—By that Act the new and responsible office of Registrar of Attorneys and Solicitors was established, and the performance of its duties was confided to this society,—a trust which secured to the body not only a legislative recognition, but a continuance during the whole of his professional career of that superintendence over every practitioner which by his examination previous to admission had already been reposed at his entrance into it. The members will at once see how material a benefit was conferred upon the Profession by this appointment, by which the annual certificates were subjected to a stricter regulation, and the possibility of their being issued, as was formerly too frequently the case, to parties who were unentitled by previous admission, was entirely prevented.

"The extent of the introductory labour imposed on the committee by this appointment will be apparent to the members, when they are reminded that a roll was to be prepared of all the attorneys and solicitors in the kingdom who were entitled to take out certificates—that the dates of their admissions into the several courts were to be discovered and inserted in the appropriate columns—that regulations were to be prepared for carrying the office into full effect—that the forms of the declarations which would be required were to be sent to every practitioner—that a book was to be formed for the insertion of the facts contained in those declarations—that the truth of those facts had to be verified in every instance—that no less than 10,000 certificates had to be framed in pursuance of those facts: a plan had to be formed of distributing those certificates within a very few days, without inconvenience to the Profession from pressure or delay—and that all these arrangements had to be completed and carried into effect in the short space of two months after the passing of the Act.

"By great exertion, however, the whole was accomplished, and the committee were repaid for the labour they had undergone by the success which in all its details attended the system they had planned, and by the satisfaction which they are rejoiced to find the Profession have expressed in reference to the arrangements adopted.

"*Advantages of Attorneys and Solicitors Act.*—Besides the palpable benefits which the Profession thus derive from unqualified persons being prevented from practising, the new Act secures many other important advantages both to the Profession and the public.

"Among these the following may be enumerated:—

"It renders permanent the appointment of examiners of persons applying to be admitted on the roll:

"It enables a graduate to serve one year of his articles with the agent in London:

"It simplifies the proceedings against attorneys who lend their names to unqualified persons, and against persons assuming to act as attorneys who are not duly qualified:

"It removes several technical difficulties in delivering bills of costs, and enables a solicitor to obtain the taxation of his own bill, and secure a judgment without the expense and delay of an action:

"It makes the Master's certificate final, and prevents a taxation from taking place after a verdict or writ of inquiry, or after twelve months from the delivery of the bill, except under special circumstances, and under any circumstances after twelve months' payment.

"And particularly it repeals enactments scattered over no less than sixty statutes, and consolidates into one Act the whole of the law relating to attorneys.

"Not the Profession only, but the public also, are benefited by this extensive consolidation; and the latter have a further advantage conferred upon them by the subjection of conveyancing costs to taxation—in reference to which the committee have taken every means in their power to secure to the Profession such allowances as have been long sanctioned in that branch of practice; and it will be satisfactory to the members to be informed that the Taxing Masters have adopted the rules which have long prevailed amongst solicitors upon that subject.

"In reference to the subject of costs, it will be convenient in this place to mention that the Taxing Masters in Chancery have determined to disallow on taxation, whether between party and party, or between solicitor and client, any fee to counsel's clerks, beyond the amount mentioned in the scale sanctioned by the Lord Chancellor and the other judges, which should exceed the rate of 25s. in every 50 guineas paid on the brief.

"*Malpractice.*—By the duties which the Attorneys Act imposes on the committee, their labours are increased in a variety of ways. The complaints relating to malpractice by attorneys, and of persons presuming to practise who are not duly qualified, have naturally become more numerous.

"Persons who had discontinued their certificates to practise in the superior courts, but who were in the habit of practising in the inferior courts and at the sessions and assizes, to the injury of the public and to the disgrace of the Profession, are now obliged to take out certificates; and their misconduct is more easily controlled, and better means of punishment are afforded.

"*Renewal of Certificates.*—Under the new Act, persons who omit or neglect to take out their certificates in due course are obliged to apply to the Court for permission to renew them—a proceeding which has been substituted for the former practice of re-admission: a regulation which requires a continual watchfulness on the part of the committee, and the necessity, in many instances, of opposing such renewals, the trouble and responsibility of which the committee cheerfully undertake, as it is manifest that the Profession must ultimately be thereby much improved, and its respectability increased in public estimation.

"With reference to this subject, it is important to mention that the Master of the Rolls, at the suggestion of the committee, has assimilated the practice of his Court, regarding notices of admission and renewals of certificates, to that of the Common Law Courts; thus introducing a uniformity of practice which will be found very convenient and advantageous."

After some other details relating to the affairs of the society, its lectures, library, and accounts, the report stated that

"The committee could not conclude this statement of the labours of the past year without adverting to the great and valuable services rendered by their chairman, Mr. Foss, who was elected a second time to that office, on account of the several important matters then in progress, to which, as to all other subjects calculated to promote the interests of the Profession, he had devoted great ability and unwearied attention."

BIRMINGHAM LAW SOCIETY.

At the annual meeting of the Birmingham Law Society held on the 19th October, the following resolution was passed:—

"It having been notified that certain solicitors in this town have sent in written tenders competing for employment by a building club, and on a scale of charges greatly below those legally authorized, this meeting feels it necessary to express its severe condemnation of such conduct, as derogatory to the character of the legal profession, and calculated to endanger the interests of the public and the security of property; and to direct that this resolution be printed and sent to all the solicitors in Birmingham."

CORRESPONDENCE.

THE PRIVILEGES OF THE ATTORNEY.

TO THE EDITOR OF THE LAW TIMES.

Sir,—A client of mine being in the custody of the police at Wolverhampton on a charge of concealing the birth of her child, I applied to the superintendent of police in that town for an interview with her prior to appearing before the magistrates in her behalf, but he refused to allow the interview, alleging as his excuse that the magistrates had made an order to the effect that no person should be permitted to see her. I then applied to the magistrates, who were sitting in court, in the presence of the superintendent, and they stated they had made no such order.

Still, however, the police officer openly refused the interview, partly as he said because the order had been made by the magistrates, and partly on his own responsibility. Shortly afterwards the accused was produced in court, and as a matter of course I advanced, with the intention of speaking to her, but in my progress I was interrupted by the police, who again repeated that I should not hold communion with her. I then moved the Court to afford me the facility of conferring with my client, and was about to speak of the irregularity of the interruption, but before I could advance many words, the senior magistrate, who, by the bye, is the deputy chairman of the Staffordshire Quarter Sessions, hastily and impetuously said, "You have already interrupted the Court; you are unnecessarily interfering with the time of the Court;—call the next case." And the next case was called; that case was the charge against my client, who, too weak to stand, was permitted to sit and hear all that police craft could urge against her, without possessing the advantage allowed in all the criminal courts in this country, save only the police court at Wolverhampton, viz. the assistance of her attorney, instructed by herself. And, Sir, the charge was investigated, but will you believe that the whole of it, or at least that alone which justified a committal, was based solely and exclusively upon answers wrung from the prisoner by questions put by the superintendent of police? The police were allowed to interrogate the accused, to invite her to make statements criminatory of herself, and these statements were made the means of committing her, but her attorney was prohibited, and the prohibition was sanctioned by the magistrates, speaking with his client. Here, however, the hardship of the case did not rest. The prisoner was committed for trial at the next assizes, and the amount of bail was stated by the magistrates' clerk; but even then I was not permitted to speak to her, nor allowed to ask her if bail could be procured; and the following morning she was conveyed to the county gaol, a distance of sixteen miles. There, of course, I have access to her.

The responsibility of the obstruction made to me throughout this matter rests as much with the magistrates as with the police.

The police, in the first instance, refused the interview under the impression that the magistrates had made the order. It is true the magistrates denied they had made such order, but the superintendent repeated in their presence that such an order had been made by them, and partly upon that order he still persisted in refusing me access.

If the magistrates had made no such order, why did not they correct the police for misrepresenting them? and when the police obstructed me in court, why did they not interfere? Sir, I conceive that access to his client, whether she be in the custody of the police power or at the bar of criminal justice, is the undoubted privilege of the attorney.

If I am wrong in this opinion, I shall be happy to have my mind disabused of the error, an error joined in by many of our brotherhood, of vast experience and extensive practice.

I am yours, &c

Bilston, Nov. 27, 1844. Chas. G. Brown.

FORMS OF CONVEYANCE AND MORTGAGE.

(*Vide Law Times of August* 31.)

TO THE EDITOR OF THE LAW TIMES.

Sir,—I quite agree with your correspondent Mr. Austin, that the words "in pursuance of the Act of 4 & 5 Vict. c. 21," or perhaps even "in pursuance of the statute for dispensing with a lease for a year," might be sufficient; but I totally differ from him in the opinion he expresses, that there can be *no objection* to, *or doubt upon*, the forms in question, owing to the substitution of the word "valid" for that of "effectual." For, 1stly, I consider it *most objectionable*, as a general principle, to misdescribe the title, no less than the body, of a statute, and more particularly so when the title as misrecited is marked (as in the forms referred to) with inverted commas; and, 2ndly, I must think that *considerable doubts might fairly arise* as to the validity of the release in the form proposed, without the accompaniment of a lease for a year, the same not being stated to have been made in pursuance of the Act for dispensing with the necessity of a lease for a year, of the Act of 4 & 5 Vict. c. 21, or of the statute in question, by its *true and correct title*; and there being, in fact, no such statute as that recited or described in the forms alluded to. But whatever might be the decision of a Court upon the point, it cannot, I think, be disputed that it is at any rate desirable to call the attention of the Profession to the mistake, in order to the prevention of errors and the avoidance of all possible dispute or litigation.

I am, &c.

Edgar Church.

Colchester, Nov. 27, 1844.

SELECTIONS FROM CORRESPONDENCE.

These statements and suggestions of a correspondent signing himself "D." deserve attention :—

I do not agree with your numerous correspondents who advocate the use of a gown by attorneys when attending the public courts, for many reasons, but especially for the following, namely, the great inconvenience an attorney would be put to by wearing it in the passages of a crowded court, by his being obliged at sessions and assizes to be continually passing in and out of court to his witnesses or inn, and also in calling upon other attorneys and private persons in the county towns, for it must be well known that attorneys at a distance generally make many other appointments to transact business at the times when assizes and sessions are held. I consider the much better plan to prevent "sham attorneys," and to uphold the respectability of the Profession, would be the formation of a mess similar to that of the Bar, and that the Court should require all attorneys engaged in appeals or prosecutions on either side to enter their names in a list, copies of which should not be given to any party except an attorney, and the production whereof to the court-keepers should admit the bearer to that part of the court appropriated to the Profession. But a very great evil is the small portion of room allotted for attorneys. At Hereford there is room for eight or ten only, which is in general filled before the court is opened; the same applies to Shrewsbury; but as regards the Monmouthshire Sessions Court, which is held at Usk, where I have heard of sixteen and seventeen parish appeals being entered at a sessions, and where the calendar is invariably very heavy, there is not any place at all appropriated for the Profession, who are obliged to stand in a narrow passage (thronged to excess by witnesses, friends of prisoners, &c.) behind their counsel, with whom they can only communicate over the back of their seats, which are at least four feet high, and there is not any place upon which the attorneys can arrange or open their papers. I have attended these latter sessions twice upon appeals: and the pressure of the crowd, the annoyance suffered by the attorneys, and the great inconvenience to which they are put, are a disgrace to the parties having the control of the funds of the county.

Until attorneys are better accommodated in the courts, it would be useless to wear gowns, which, in such courts as Usk, would be torn from their backs before they arrived near the bench.

At Worcester a much better arrangement exists, there being several seats allotted to attorneys, on which the word "attorneys" is painted, and I have never experienced any inconvenience in these courts.

I do hope that, for the respectability of the Profession, and for the interest of their clients, a much better arrangement will soon be introduced for the accommodation of the attorneys in the several courts of assizes and sessions.

December 4, 1844.

THE LAW TIMES.

SATURDAY, DECEMBER 7, 1844.

THE WINTER CIRCUIT.

The excessive inconvenience of this arrangement is beginning to be seriously felt. To the Profession it is an unmitigated annoyance; to Grand and Petty Juries a vexation which they express in the most emphatic manner by seizing every excuse to keep at home. The consequences to the administration of the law are still more pernicious. Just as the legal year has commenced, after the long vacation has accumulated business which cannot by any contrivance be got through in the Term, the judges are hurried out of town, there can be no sittings to lighten the arrears, judgments are deferred, and the entire legal business of the country is suspended, to the infinite inconvenience and serious loss of suitors.

On the other hand, it is impossible to deny that justice and humanity demand a Winter Assize, or *a substitute for it*, to prevent the manifest cruelty of incarcerating persons charged with crimes for many months before their trials.

In this state of affairs, the query presents itself to everybody whether, the evil admitted, it might not be remedied by some less clumsy and inconvenient contrivance than a Winter Assize.

The Judges, among others, appear to have turned their attention to the subject, and we find Mr. Baron Alderson putting forth a proposition in his charge to the Grand Jury at Winchester, in the following terms :—

Mr. Baron Alderson, in his charge to the grand jury, said, it could hardly be expected that they should have so good an attendance even as they had to-day at an assize at so unusual and inclement a period of the year; but he feared it was one of the consequences which arose from the increase of crime, that it had become necessary to have a larger measure of delivering the gaols by a more frequent assize. He sincerely regretted it on their accounts, and most certainly on his own, that they were brought together. But they must submit, as he presumed it was for the public good. He did not think, however, that the calendar of this county presented any particular reason for their being there that day; it did not contain a large number of prisoners who might not have been tried at the sessions. No doubt they must consider this as a temporary measure, otherwise it should exist throughout the kingdom, for he could not see any good reason why a prisoner in the gaol of Hampshire should be discharged, while a prisoner in the gaol of Wiltshire should be detained; if it was good for one, it must be so for all; therefore it must be a general arrangement, or cease to exist. Let them, then, see what was the real evil to be remedied. The real evil was the long interval between the summer and spring assizes, and the short interval between the spring and summer assizes. The real remedy one would necessarily expect would be making these intervals equal. The question was, whether that could be done? There was an interval of time which began on the 11th of January (the first day of Hilary Term) and the 15th of April (which was the first day of Easter Term). That was an interval of time occupied by three things: first, by Hilary Term, which lasted three weeks, then by the sitting after, which took four weeks, and the residue of the spring circuit. Now, if the spring circuit should be put first, Hilary Term second, and the sitting third, that would make the intervals between the different assizes equal. That appeared to him to be a very simple remedy.

This suggestion would meet the mischief partially, but not entirely, and undoubtedly it would have inconveniences of its own. Its effect would be to throw three Terms together; in fact, to make one long term from March to July, and another short one in November. Still we should have the evil of protracted assizes; still there would be the necessity for local courts.

The perplexity of Government and Judges upon this matter really surprises us. The remedy seems to us so obvious, so easy, that we are astonished how any person could meditate for a moment upon the mischief without lighting upon the cure, which lies close at hand, and may be adopted without changing one existing arrangement, without the slightest inconvenience in any quarter, but with many actual advantages added to the removal of the mischiefs at present complained of.

This obvious remedy is the reform of the Quarter Sessions Courts, by extending their jurisdiction in criminal cases to all offences but murder, and in civil cases to all actions where the damages sought to be recovered do not exceed 20*l*. To permit this extension to be made satisfactorily, it will be necessary, of course, to place a lawyer in the chair, and to give the courts precisely the same powers as are enjoyed by the superior courts, subject only to an appeal.

This arrangement, so easy, so obvious, yet so effective, is subject to no one objection that we have heard. All to whom it is named admit its excellence, and no other reason has yet been alleged for not adopting it than that it would meet the active hostility of the magistracy, who would consider it a curtailment of their dignity.

We do not believe that any such feeling would actuate that useful body to oppose a measure so manifestly for the public advantage, even if their importance at Sessions were to be somewhat diminished. But we deny that it would so affect them. We do not propose to dispense with them entirely. They would still attend as now, still sit upon the judgment-seat, still take part in the proceedings, the only change being, that instead of electing a member of their own body for chairman, their choice should be limited to the body of lawyers of a certain standing. We will not believe that the Parliament would reject so reasonable a proposition, and one so fraught with advantage to the whole country, merely because it might possibly derogate a trifle from the self-importance of two gentlemen in each county, for we repeat that the chairmen only would be affected by the substitution of lawyers for laymen as judges, while the whole body of the magistracy and their courts would gain vastly in dignity and importance by their extended jurisdiction, and the increased respect that would attend their proceedings.

Again we entreat the Law Societies throughout the kingdom to direct attention to the subject, and urge it upon the Government and the Parliament before the Local Courts Bill shall have produced irremediable mischief.

And certainly the Law Amendment Society could not employ itself more usefully than in the preparation of a complete measure for effecting the object we have described, to be placed in the hands of the Government as a substitute for their County Courts and Winter Assize.

IMPRISONMENT FOR DEBT.

The law of last session is producing the most disastrous effects throughout the country. Its practical result has been to rob creditors of all their debts not amounting to 20*l*. The loss has fallen with especial severity upon the class of small tradesmen who could least afford it, and who now find themselves suddenly deprived of their little properties by a law which came upon them without reasonable time being afforded them to consider its effects and express to Parliament their practical opinions of its probable working. Every attorney finds that if a debt be less than 20*l*. he must advise his client to abandon it rather than incur expenses in a vain attempt to recover it. Debtors everywhere thrust out their tongues at their creditors, and fling in their faces the bungling measure of Lord Brougham. Cheating has received the sanction of law, and flourishes accordingly.

We are in favour of the entire abolition of imprisonment for debt; but to the partial abolition of it, as effected by Lord Brougham, we

have two objections. First, that it has taken away the creditor's remedy against the person, without substituting a sufficient remedy against the property and a due punishment for fraud; and secondly, that it was done without proper notice given to those whose interests were to be affected by it. It was quite forgotten by Lord Brougham, in his eagerness to defeat the matured measure of his rival Lord Cottenham, that throughout the country credit had been given upon the faith of an existing law, that extended to the creditor a powerful remedy in the hold he had upon the debtor's person. Creditors were entitled to such a notice of the change before it was finally effected, as might have enabled them to recover the debts they had permitted to grow on the faith of the law. If after that notice they had given credit, it would have been with a knowledge of the consequences, and they would have had nobody but themselves to blame for it. But how could they have anticipated that their security would have been taken from them without warning, or substitute given?

Lord COTTENHAM'S measure, which abolished imprisonment for debt, provided efficient remedies against the property, and severe punishment for fraud. With such substitutes as he had given, the change would have been beneficial to the creditor as well as to the honest debtor. Our readers will remember how Lord BROUGHAM pounced upon this admirable bill, and prevailed upon the Lords to aid him in so mangling it that it was disowned by its parent, deforming it by some crotchets of its own, and thus sending it forth to perplex the lawyers, trouble the judges, rob creditors, reflect disgrace upon the Legislature, and please none but fraudulent debtors, to whom it is in fact a bill of indemnity.

We trust that the Legislature will be deluged with petitions praying for an entire reconstruction of this mischief-making law, and the restoration of the original provisions framed by the lawyer-like and experienced mind of Lord COTTENHAM.

REPEAL OF THE CERTIFICATE DUTY.

WE trust that the Attorneys will be alive to their own interest, and urge upon Parliament, during the coming session, their claims to relief from a most unjust and grievous burden—the annual certificate duty. No good reason can be assigned why they should be singled out for special taxation. Wherefore are they to contribute more to the national funds than the barrister, the surgeon, or the clergyman? This impost was cruel enough before the Income Tax, but added to the latter, which falls so hardly upon industry, it becomes intolerable. It is, in fact, a double income tax laid upon the lawyers, with this added injustice, that it falls the most heavily on those who can least afford it; that it is not proportioned to means, but that the same sum is exacted from him who earns a hundred pounds as upon him whose gains are one thousand pounds per annum.

It used to be alleged, in support of this tax, that the profits of the lawyers were greater than those of other professions. Since our law reformers have curtailed costs, this cannot be urged with truth.

We will not believe that, with a surplus revenue, the Government or the Parliament would refuse to listen to a claim so manifestly just. But we are aware also that justice alone will not command a hearing with statesmen. It must be backed by the power to enforce attention. That power the lawyers possess. The representation is virtually in their hands. United, they might command the Parliament and the Government. On this occasion let them be united, and resolve to support no member who will not vote for a redress of their great grievance. With this resolution let them first go to the Ministry as a body, and then individually to the representatives of their several localities, with respectful but *firm* remonstrances, and we would wager large odds upon a successful issue.

Let the Law Societies straightway apply themselves to the work.

ADVERTISING ATTORNEYS.

OUR readers will remember how last week we stated that, in consequence of our attention having been directed to an advertisement that was appearing in our columns from Mr. BUCHANAN, soliciting agencies in bankruptcy, and conceiving such advertisement to be somewhat unprofessional, we had directed the Publisher to discontinue it, and to return to Mr. BUCHANAN the money he had paid for its future insertions.

We have received from Mr. BUCHANAN the following letter, to which, of course, we readily give a place. It is his defence.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am not a little surprised at my name being so prominently displayed in the leading article of your paper on the 30th ult. In reply, I beg to object, first, that the advertisement complained of is *not* within the class denounced by you, inasmuch as it is directed solely to the *Profession*, and not to the *public*, and the advantages and convenience of bankruptcy and insolvency business being transacted by solicitors who have devoted much time and attention to the points of practice have been often felt and personally acknowledged to me by many of the leading members of the Profession! The advertisement is not one seeking for *general* agency, but is expressly limited to a particular branch of business.

Secondly, I submit that a communication from the editor or publisher ought to have been conveyed to me, stating that such an advertisement was considered objectionable, before parading my name in so unfair a manner, and, by implication, classing me with non-professional quacks.

In conclusion, I beg to observe that no person is more ready than myself to bow to the opinion of the Profession at large, and if any correspondent considers the advertisement objectionable, that alone is a sufficient inducement with me to withdraw it from any publication for the future.

I am yours, &c.

Dec. 2, 1844. W. R. BUCHANAN.

Although we can by no means assent to Mr. BUCHANAN'S assertion, that the advertisment was allowable because it was addressed to the Profession and not to the public (Mr. CLARKE'S, for which he paid so severe a penalty, was no other), we cannot but express sincere gratification at the very becoming manner in which Mr. BUCHANAN has met the complaint. He declares his anxiety to acquiesce in any rules of professional etiquette that may be established, and to bow to the opinion of any correspondent that such an advertisement is contrary to its code, and instantly to withdraw it. *This* is the way to maintain the dignity of the Profession. Where the rules are unwritten it cannot be but that sometimes they will be violated in sheer ignorance, forgetfulness, or doubts as to their limits.

In such an error there is no shame, provided it be retracted as soon as it is pointed out. It was well said by the moralist, that "true greatness consists not in never falling, but in knowing how to rise again." The maxim is applicable in all the affairs of life. There is no man who does not sometimes err; the utmost we can expect is, that error shall be acknowledged and retrieved. This, Mr. BUCHANAN has done with a readiness that proves him to have acted with no wrong intent, but really questioning whether his advertisement was not permissible. Rather than a doubt should be entertained about it, he withdraws it.

This case, and that of Mr. CLARKE, in both of which there was a candour of admission and a readiness of retractation infinitely creditable to them, are full of promise for the Profession. They prove that the necessity for greater strictness of professional bearing is becoming a fixed opinion; the example which they have set in instant withdrawal of that which was deemed obnoxious, must have a most beneficial effect upon others who might have meditated proceeding some steps further than they had done.

It was for this reason that we did not privately withdraw the advertisement; the offence, if such it was, had been public; it was already known to the whole Profession, and had incurred their censure. To remove it in silence would have been to have hazarded a charge of partiality in the treatment of a document that had appeared in our own columns, and it would have left upon Mr. BUCHANAN all the censure which he has entirely removed by his subsequent conduct.

CONVICTION OF A SHAM LAWYER.

WE have only time to direct the attention of our readers to the report of a trial at the Central Criminal Court, which resulted in the conviction of one of the Sham Lawyers, whose doings we had brought under the notice of the Profession, and his sentence to transportation for twenty-one years.

Let the rest of the Tribe beware. The eyes of the Profession are upon them.

VERULAM SOCIETY.

AT length the first number of the *Practice Cases* is ready. It will be published on Wednesday, together with the sixth number of the *Real Property and Conveyancing Cases.*

The second number of *Practice Cases*, the fifth number of *Magistrates' Cases*, and the second number of the *Registration Appeals*, all containing the cases of the last Term, will be ready in a few days.

Of the text-books, the following are in preparation:—*The Practice of Conveyancing, the Practice of the Law of Vendors and Purchasers, and the Practice of Wills, Administrations, &c.*

It is proposed to publish the Annual Digest of the Reports and Statutes upon a new plan, so as to preserve a sort of Index to all the Laws made by Parliament and the Judges during the year, under the old familiar title of *The Year Book*, which every true Lawyer will be glad to see revived in so appropriate a shape.

Arrangements are in progress for bringing out the *Legal Cyclopædia* in parts, upon the plan originally proposed.

The following new members have been enrolled during the past week:—

Phillips, Andrew, Shiffnal, Salop.
Campion, W. J., York.
Sykes, M. & W. Milns-bridge, near Huddersfield.
Thorn, Simeon, 17, Berners-street, Oxford-street.
Dalley, William, 1, Church-row, Newington Butts.
Lawford, T. W. Tyrydail, near Llandilo.

THE FRENCH BAR.

The Councils of Discipline.

TO THE EDITOR OF THE LAW TIMES.

I cannot enter upon the subject of the Councils of Discipline without saying a few words on the Bar itself. I shall not go as far back as the ancient bench, which before the Revolution shone so conspicuously by its virtues and its eloquence; its annals are intimately connected with the history of the parliaments which formed sovereign courts in the different provinces, lending their assistance in turn to kings against the encroachments of the nobility, and to the people against the invasion of royalty, particularly during the reign of Louis XV. The Bench of olden times disappeared with the ancient parliaments, and was wrecked, like so many other institutions, at the Revolution. New courts—the establishment and organization of which I shall shortly send you an account of, in a series of articles I am preparing—new courts supplied the place of the ancient tribunals of justice. At first there were no jurisconsults to plead before them. The barristers who had escaped the revolutionary storm exercised their profession as simple citizens, their only recommendations being their integrity and their talents. There was no Bar, properly so called; there were only individuals exercising the profession of Barristers; no legal tie united them, and, insulated as they were, they were devoid of power and strength. This state of things was dangerous both for judges and litigants, for these men had it in their power to deceive justice and their clients; yet it was most unwillingly that the First Consul ap-

pointed official defendants at the courts, and these were only a species of lawyers. Barristers, whose very studies make them enemies to all despotism, Napoleon detested most cordially; for it is well known that he occasionally loved to set the laws at defiance.

Such was the condition of things in 1810, when, upon the representations of Cambacères, High Chancellor of the Empire, and formerly a barrister, Buonaparte consented to reorganize the Bar in France, and issued a decree to that effect.

The ordinance of the 14th of December, 1810, bears the stamp of the suspicious character of its author. The first rolls of the barristers appointed to the Cours Royales and to the Tribunaux de Première Instance, were drawn up by the Presidents and Procureurs du Roi at these different courts of justice, and were composed of all those who had formerly obtained degrees in the universities, or who had exercised for a length of time the profession of jurisconsults. The nomination of the *bâtonnier* belonged to the Attorney-General. The Order could only meet with the consent of the Attorney-General, and for the purpose of the election of the members of the Council of Discipline, without, however, the power of deliberating on any subject whatever without incurring the penalty attached to illegal meetings by the Penal Code. Barristers could not plead before other Courts than the one to which they were appointed, without permission from the Minister of Justice. In short, the restrictions placed on the liberty of the Bar in 1810 were too numerous to enumerate here, and were inconsistent with its dignity. In 1822, the 20th of November, a new decree issued from the throne, modified with improving the state of affairs existing since 1810. The most important article suppressed the Councils of Discipline in Bars composed of less than twenty members, investing the tribunals themselves with the attributes of the Councils of Discipline. But without further details, the following is the decree of the 27th of August, 1830, which is the barristers' share in the conquest of the Revolution of July:—

"Louis Philippe, &c. &c.

"Upon the report of our Keeper of the seals, Minister and Secretary of the State in the department of Justice.

"According to the law of the 22nd Ventose, year twelve, to the decree of the 14th December, 1810, and to the ordinance of the 20th November, 1822.

"Considering that just and numerous reclamations have been made for some time against the rules which govern the exercise of the profession of barrister.

"That a final organization necessarily requires some delays.

"That nevertheless, it is of consequence to put an end at once, by temporary arrangements, to the abuses which are most important and the most generally felt.

"Taking into consideration, upon this subject, the wishes expressed by a great number of the Bars in France, I have ordained, and do ordain, as follows:—

"Art. 1. Dating from the publication of this present ordinance, the Councils of Discipline shall be elected by the assembly of the order composed of all the barristers inscribed on the roll. The election will take place by ballot, and upon the majority of the members present.

"Art. 2. The Councils of Discipline shall be temporarily composed of five members in courts where the number of barristers inscribed is under twenty, including those where the functions of the said councils have been hitherto exercised by the tribunals; of seven members, if the number of barristers inscribed is from thirty to fifty; of nine, if the number is from fifty to a hundred; of fifteen, if it is above a hundred; and of twenty-one in Paris.

"Art. 3. The bâtonnier of the order shall be elected by the same assembly, and by a separate ballot upon a complete majority of before the election of the Council of Discipline.

"Art. 4. Dating from the same period, any barrister inscribed on the roll can plead before all the Cours Royales, and before all the cours of the kingdom requiring no other authorization whatever than the fulfilment of the dispositions of Art. 295 of the Code of Criminal Institution."

"Art. 5. Upon the shortest possible delay, there shall be a final revisal of the laws and rules which regulate the exercise of the profession of barrister."

Hitherto Art. 5 has not been acted upon, and the necessity of it has not been generally felt, as the Bar is satisfied with the security of the power of electing its judges and its chief.

With the exception of the above ordinance, the Bar continues to be regulated by the decrees of 1810 and 1822, and they contain the clauses which concern the Council of Discipline.

"The attributes of the Council of Discipline consist:—1st. In pronouncing on difficulties relating to the inscription on the roll of the order. 2nd. In exercising the watchfulness which the honour and the interests of the order require. 3rd. In applying when it is necessary the measures of discipline authorized by the rules.

"The Council of Discipline decides upon the admission into the noviciate the licentiates in law, who have taken the oath of barrister at the Cours Royales; upon the inscription on the rolls of barristers who remain novices after the expiration of their noviciate (*des avocats stagiaires après l'expiration de leur stage*), and upon the rank of those who, after having been inscribed on the roll, and having relinquished the exercise of their profession, present themselves to resume it again.

"The Councils of Discipline are bound to maintain sentiments of loyalty and fidelity to the constitutional monarchy and institutions and principles of moderation, of disinterestedness, and of integrity, upon which rest the honour of the order of advocates.

"They watch over the morals and conduct of the novice barristers.

"The Councils of Discipline, upon the complaints that are addressed to them, are officially to repress all infractions and faults committed by the barristers inscribed on the roll.

"These said regulations do not abrogate the tribunals from repressing those offences committed at their courts by the barristers.

"The exercise of the right of discipline does not prevent proceedings which the public ministry or individuals might consider themselves called upon to take for the suppression of deeds which constitute offences or crimes.

"The penalties of discipline are:—

"The warning,

"The reprimand,

"The temporary suspension,

"The striking off the roll.

"No temporary suspension can exceed the term of one year.

"No penalty of discipline can be inflicted, unless the accused barrister has been heard or called with a week's notice.

"Any decision of the Council of Discipline pronouncing temporary suspension, or striking off the roll, shall be submitted, under three days, to the Attorney-General, who will insure and inspect the execution of it.

"The Attorney-General can, if he thinks proper, require a copy of the decisions pronouncing a warning or reprimand.

"The Attorney-General can likewise require a copy of any decision by which the Council of Discipline shall have absolved the accused barrister.

"In cases of temporary suspension or striking off the rolls, the condemned barrister can appeal to the Cour du Ressort.

"The right of appealing against decisions given by the Court of Discipline, in cases above-mentioned, belongs also to the Attorney-Generals.

"The appeal, either of the Attorney-General or of the condemned barrister, will only be lawful, provided it is made within ten days after the decision of the Court of Discipline has been communicated to them by the *bâtonnier*.

"The Courts will judge the appeal in a general assembly, and in the Chamber of Council, as it is prescribed in Art. 52 of the law of the 20th April, 1810, concerning the measures of discipline to be taken with regard to the members of courts and tribunals.

"When the appeal has been lodged by the condemned barrister, the Courts can pronounce a heavier penalty if they think proper, although the Attorney-General has not himself appealed."

To be admitted to the exercise of the profession of barrister, or to enter the magistracy, the degree of licentiate in law is necessary, and can only be obtained after three years' studies, and after passing several examinations before one of the nine "*Facultés de Droit*," which exist in France. Moreover, the licentiates undergo a period of probation, called noviciate (*stage*), during which they must frequently attend the courts.

"The noviciate is to last three years.

"The noviciate can be made before divers Courts, without, however, being interrupted for more than three months.

"The Councils of Discipline can prolong the duration of the noviciate, according to circumstances.

"The '*avocats stagiaires*' are not to form a part of the roll.

"The licentiates in law are to be received barristers by the Cours Royales; they take the oath in the following terms:—

"'I swear to be faithful to the King, and to obey the constitutional charter; never to say or publish any thing, either as defender or counsel, contrary to the laws, rules, good morals, the safety of the state, and public peace; and never to fail in the respect due to the Courts, and to the public authorities.'"

As there is no bar of justice without a counsel (*defense*), and as in criminal matters every thing is void where the accused has no defender, barristers can be officially appointed by the Court of Assizes; and

"The barrister officially appointed as counsel for the accused cannot refuse his assistance without assigning his reasons to the Court of Assizes, who can pronounce one of the aforesaid penalties if the case requires it.

"The profession of advocate is incompatible with the avocations of the judicial order, except to fulfil the office of temporary judge; with the offices of *préfet*, *sous-préfet*, secretary-general of the *préfecture*, sheriff, notary, and attorney; with all employments to which a salary is attached; with all financial occupations, and with all kinds of negociations. All persons exercising the calling of agents are excluded from the profession.

"Any attack a barrister might allow himself to make, either in his pleadings or in his writings, upon religion, the monarchical principles of the charter, the laws of the kingdom, or the established authorities, shall be repressed immediately upon the demand of the public ministry, by the tribunal before which the case appears, and which shall pronounce one of the penalties above-mentioned, without detriment to extraordinary proceedings, if there be occasion for them."

Such are the principal rules which govern the Bars in France; there are, besides, customs which are generally respected; even the ordinance of 1822 states that—

"The customs observed in the Bar, relating to the rights of advocates in the exercise of their profession, are to be retained."

These customs are mostly suggested by deferential and suitable sentiments, and a proper sense of right and dignity. Such is the right of pleading with the head covered before all the Courts, even the highest. The office of a barrister is considered as an asylum where bailiffs cannot enter to make any notification to clients; and, finally, a barrister is not compelled, even when subpœnaed as witness, to reveal what may have been confided to him as advocate; and this jurisprudence has been consecrated by the Court of Cassation.

N. TREITT,
Avocat à la Cour Royale.

THE CRITIC.

New Books.

A Complete Series of Precedents in Conveyancing, and of Common and Commercial Forms, in alphabetical order, adapted to the present state of the Law and the Practice of Conveyancing; with copious Prefaces, Observations, and Notes on the several Deeds. To which are added, the latest Real Property Acts, with Notes, and the Decisions thereon. By GEORGE CRABB, Esq. Barrister-at-Law. *Third edition, revised and greatly enlarged.* In 2 vols. London, 1845. Butterworth.

Concise Precedents in Conveyancing; applied to the Act for simplifying the Transfer of Property, 7 & 8 Vict. cap. 76; with practical Notes and Observations on the Act. By CHARLES DAVIDSON, of the Inner Temple, Esq. Barrister-at-Law, &c. London, 1845. Maxwell and Co.

WE receive repeated inquiries as to the utility of both the works named above, and whether reliance might be placed upon them. Short forms of conveyancing are in such continual request in the attorney's office—when good, they are so very useful—that the interest excited by the announcement of a volume professing to supply them will readily be understood by those who have experienced the want of them. The recent statute, too, has destroyed confidence in existing precedents, and practitioners are anxiously looking for authorities to guide them under its dubious provisions.

Crabb's Precedents are already well known to the Profession. Two editions have been exhausted in a very short period, a decisive proof of the high estimation in which they are held, and how useful and satisfactory they have been found in practice. Precedents, beyond any other portion of the lawyer's library, are enhanced in value by the sanction of time. Their defects are seldom patent; if faulty, the error is rarely discovered until long afterwards, when some change of property calls for a close investigation of a title. Hence it is that the Profession naturally clings to old, and is suspicious of new,

forms; it requires the *precedents* to be really such, in the strictest sense of the word; they must be tried and proved; and then they are entitled to confidence and obtain it.

This sanction of time—this test of experience—recommend Mr. Crabb's Precedents, and that recommendation is of more worth than the testimony of a reviewer. It is sufficient of itself.

We believe that there are few, if any, of our readers to whom this work is not already familiar either from personal acquaintance or by repute. It will, therefore, be unnecessary to describe it at any length. Enough to say of it generally that its contents are arranged alphabetically, so that easy reference can be had to any subject, and to each class of precedent are prefixed some introductory remarks, setting forth succinctly the existing law, and the cautions to be observed by the conveyancer. There is moreover a table of cases and of abbreviations, an appendix of statutes, and an elaborate index.

The third edition, just published, presents a multitude of improvements, giving to it almost the value of a new work. The original design has been largely extended, both in number of precedents and prefatory matter. All the recent decisions and statutes have been noted, and four entirely new titles have been added, to wit, Auctions, Bills of Exchange, Coveyances, and Deeds. The Transfer of Property Act has received due attention, and it has been enriched with ample and learned notes. The work, thus improved, is indeed something more than a collection of precedents. It is an able treatise on the Law of Real Property, illustrated by examples, and as such may be read with advantage by the student as well as consulted by the practitioner.

We might extract from these learned volumes much that would instruct our readers, but with so many other claims upon our columns at this moment we resist the temptation, more especially as we are noticing a third edition. Perhaps hereafter we may include in "the Property Lawyer" two or three passages we had marked. It will be enough to add to this account of it a hearty recommendation of *Crabb's Precedents* to those who have not yet made acquaintance with them, and to those who are already familiar with the former, we offer assurance that they will find this third edition is a vast improvement upon its predecessors.

As for Mr. Davidson's concise Precedents, we must candidly confess that we are very loath to express an opinion. They are untried and unproved. To the experienced they will be useful, but we would not place new forms in the hands of the inexperienced. The precedents in this volume read well; they are seemingly sound, but to pronounce them safe it would be necessary to sit down and weigh every word, a labour we are by no means inclined to perform. Our duty is done when we announce its publication and describe its plan; we will not incur the responsibility upon such imperfect xamination as we can give to it of recommending bad forms or condemning good ones. The reader should form his own judgment, and the volume is small, and of such trifling cost, that if it be not found satisfactory in practice, the loss will not be a consideration. *Some* of the forms at least will be useful. They will supply hints which a skilful practitioner will wor' upon.

Mr. Davidson commences with an Introduction, in which he states, that,

> It is to be clearly understood that the present work contains no experimental or fanciful precedents, and that it is confined wholly to the object of simplifying the forms in common use, and retrenching their redundant expressions. It is believed that nearly every precedent in the book will (when the parcels are of moderate length) be contained in a single skin, and that hardly any will exceed two; but except in those cases in which the new Act has authorized an alteration, the precedents differ in no material respect from those which have been long and constantly used by the Profession.

He adds, that the principal points in which they differ from the old forms are that all unnecessary recitals have been dispensed with; the statement of a nominal consideration has been omitted, the operative words are used in the present tense only; the parcels are described by reference to a schedule and map, the general words have been abridged; in limiting powers no restriction has been imposed in their exercise, except that it shall be by deed; in framing covenants, the word "covenant" only is used, and the others shortened, and so have been the power to appoint new trustees, and the other powers.

The Introduction is followed by some observations upon the Transfer of Property Act, and then the Precedents are given with notes illustrative of the text. An Index completes the work, the utility of whose design none will dispute, however they may differ as to the merits of its execution. *

The Law Review and Quarterly Journal of British and Foreign Jurisprudence. No. I. November, 1844. London. O. Richards.

From the title, the introductory essay, and the subjects of the greater portion of the articles in this first number, we presume that *The Law Review* is intended to be that which is implied by its name, a "*Journal of Jurisprudence;*" in which we contemplate a periodical that shall treat of the making and administration, rather than the practice of the law; of that which is the peculiar business of statesmen and legislators, instead of that which relates to the business of lawyers. If we have rightly comprehended the design of *The Law Review*, it is to be cordially welcomed as a valuable addition to our legal periodicals, because it occupies a field entirely new, and in which, as we believe, there is abundant room for talent to exert itself, and where an audience will be found sufficiently enlightened to appreciate, and numerous enough to reward, the enterprise.

Being thus, *The Law Review* is ot, as some have supposed, a rival, but a coadjutor, of *The Law Magazine*, the latter addressing itself mainly to the interpretation of the law as it is, the former to the investigation of the law as it ought to be. Each has its own distinct department sufficiently large to engross its attention without trespassing upon the domain of the other; and if we might take the liberty of whispering a word of advice to the editors of both, it would be that each should confine himself to his own province; for we are satisfied that thus he would consult not only the convenience of the profession, but the true welfare of his publication.

We have no authentic knowledge on the matter, but rumour reports that *The Law Review* owes its parentage to the Society for the Amendment of the Law, and that Lord Brougham is, if not its editor, its chief patron and contributor. And inspection seems to confirm the report. The first advertisement is a prospectus of the Society. The essay on "Resistance to the Gradual Improvement of the Law" reads very like the writing of Lord Brougham, and we feel almost assured that the "Memoir of Lord Abinger" proceeds from his pen. Indeed we understand that he did contribute no less than five articles to the present number.

The subjects discussed in this number are various and well chosen. The first treats of the "Science and Study of Jurisprudence," and presents an outline of the science, its divisions and subdivisions, intended to be the foundation of future essays, in which the details will be fully considered. It should be read by all who desire to be *lawyers* in the enlarged meaning of the term.

The second article is written with considerable power. It is entitled, "Resistance to the gradual Improvement of the Law." Many of the modern irrational demands for sweeping changes in the law are attributed to Lord Eldon's resistance to needful improvements. The purport of the paper is to persuade law-makers to "join knowledge and caution with zeal for amending our legal system." This is obviously from the pen of Lord Brougham. Would that he would practice as well as preach!

The third article treats "Of the Distinction between Law and Fact," Harrison's Digest being the text. It is stated that this Digest contains about 44,000 cases, reported from 1756 to 1843, including a space of eighty-seven years only. This is an annual average of 500. But of late the increase has been much more rapid, and the present progress is estimated at no less than 1,500 per annum. An inquiry into the causes of so vast an increase of authorities cannot but be interesting and useful. As the commencement of such an investigation, the present inquiry is limited to the distinction between matter of law and matter of fact.

"The Law of Fees and Costs" is the theme of the fourth article; but it is not proposed to treat it as a question for the office, but as one "of *comparative jurisprudence*, that is, to shew the diversities of practice on this point, which have existed, not only in different countries, and at different periods, but between different tribunals of the same country, at the same time; to trace these historically, and thence to deduce principles by which the fitness of any proposed measure for regulating law expenses, under a given state of circumstances, may safely be tested." An imposing array of legal and historical lore has been adduced by the writer, but the essay yields no materials for extract.

A Memoir of Lord Abinger next engages attention. From this we take a few passages, which will amuse our readers. They cannot fail to recognize the authorship:—

LORD ABINGER AS A LAWYER.

Few men have ever appeared in the profession of the law endowed with a greater store of the qualities required to form an accomplished advocate than James Scarlett, afterwards raised to the Bench as Lord Chief Baron, and to the Peerage as Lord Abinger. His understanding was piercing and subtle; no man had more sagacity in seeing through obscure matters, or finding his way through conflicting difficulties, or reconciling contradictions, or dispelling doubts, or, if need were, of raising them; no man could bring more ingenuity to devise explanations, or overcome obstacles, or provide defence, or secure escape. Then he was, though naturally irritable, yet by habit completely master of his temper, always entirely self-possessed, hardly ever to be thrown off his guard by anger or vexation: and, habit becoming a second nature, he had all the external aspect and much of the reality of a placid good-humour, though this was drawn over a somewhat sensitive interior. He had thus in the largest measure these two great qualifications of the Nisi Prius leader—perfect quickness of perception and decision, and imperturbable self-possession.

THE ADVOCATES AT COMMON LAW AND AT EQUITY CONTRASTED.

There is the greatest difference between the two sides of Westminster Hall in the qualities which form the leading Advocate. In truth, Courts of Equity hardly know what the lead of a cause is; for each of three, or it may be four or five, counsel, go in much the same way over nearly the same ground; and it does not even follow that the junior takes the same view of the case with those who have gone before him. All the materials on which they have to work are fully known before they enter the court; their adversary's case is as much before them as their own; nothing can possibly arise for which they were not thoroughly prepared; and even were it possible to make any slip, as in meeting or proving unable to meet some new view of the case unexpectedly taken by the opposite advocate, or thrown out by the Court (a thing of very rare occurrence), abundant opportunities remain for supplying all defects and setting all oversights right. The words quick, ready, decisive, sudden, have therefore no application to equity practice, and are hardly intelligible in the courts where bills, answers, affidavits, and interrogatories reign.

It is far otherwise at Nisi Prius. What was all argument, all talk in Equity, is here all work, all action. What was all preparation and previous plan there, here is all the perception of the moment, the decision at a glance, the plan of the instant, the execution on the spot. The office of the leader here well deserves its name; he is every thing; his coadjutors are useful, but they are helps only: they are important, but as tools rather than fellow-workmen; they are often indispensable, but they are altogether subordinate. He is often wholly—in some degree he is always—uncertain beforehand what his own case is to be; he is still more uncertain of his adversary's. He comes into court with an account in his hand of what his witnesses are expected to swear, because his client has seen and examined them, which he himself has not; but he is necessarily uncertain that they will so swear, both because his client may have ill examined them, and because they may give a different account upon oath before the Court and jury. Then he is still more uncertain how far they may stand firm, how far they may be shaken upon cross-examination, and upon the examination by the judge. He is even uncertain of the effect his case and his witnesses may produce upon the judge and upon the jury. So far is the advocate at Nisi Prius in the dark as to his own case and witnesses. But of his adversary's he knows little or nothing; he may have to meet a story of which he had no kind of warning whatever; and he may have to protect his witnesses against evidence called to discredit them by proving that they have told a different story to others from that which they have told in court. Documents, letters, receipts, acquittances, releases, title-deeds, judgments, fines, recoveries—all may meet him, as well as unexpected witnesses; and on the spot he may have to devise and execute his measures of protection or of defence. It is needless to observe that this gives the greatest advantage to an advocate of quickness, sagacity, and decision; and that it is a just remark which likens the *tact*, and generally the practical skill and firmness, of the leader in jury trials, to the *coup-d'œil* of the leader in war.

Nor is this all. Far different from the effects of slip or blunder or oversight in equity are the conse-

quences of the like mistakes or neglects at law; they are almost always irremediable, not seldom fatal. No relief is given against a verdict obtained by the miscarriage of counsel. Against a surprise in the adversary's case, or in the testimony of the witnesses of either side, there may be relief; but if the mishap was owing to the error of counsel, never. Thoughtless men have found fault with this rule; but were a contrary course pursued, the most careless transaction of all business would be one consequence, and another would be the giving business by favour or connection to the most incapable men. It is quite necessary that the client should, to some such extent and under some such qualification as has been mentioned, be bound by the conduct of his professional representative.

From what has been said it will at once appear, first, how difficult and how anxious is the position of a Nisi Prius leader; next, how small a portion of his needful qualification consists of mere eloquence. That which to the vulgar, the spectators at large, may seem the most important part of the whole, is in truth the leader's least important qualification. The object is to gain the cause; mere talk, if he spoke "with the tongues of men and of angels," would never get the verdict. By a great speech he may atone for minor erros in the management of the cause; for great slips, or great imperfections in the conduct of it, the eloquence of Demosthenes and Cicero combined could afford no compensation, nor any substitute. The importance of eloquence is admitted; with equal, or nearly equal conduct, the great speaker will have the advantage; but conduct without eloquence is safer by much to trust for the victory than eloquence without conduct. Mr. Wallace was a successful Nisi Prius advocate, with hardly any powers of speech; Mr. Wedderburn, afterwards Lord Loughborough, had but little success, though a very fine speaker; but Wallace was an excellent lawyer and a good leader of a cause; Wedderburn had so little law, that J. Lee said what he took in on the circuit at York had run through him before he got to Newcastle; and he was moreover an indifferent conductor of a cause.

SCARLETT AT NISI PRIUS.

What has just been said has prepared the reader for an admission that Mr. Scarlett was a more consummate leader in the conduct of a cause than in the eloquence wherewith he addressed the jury. Not that he was deficient in some of the greater qualities of the orator. He had a most easy and fluent style; a delivery free from all defects; an extremely sweet and pleasing voice—insomuch that a lady of good sense and of wit once said that as some people are asked to sing, Mr. Scarlett should be asked to speak, so agreeable and harmonious were his tones, though of little compass or variety. But he had far higher qualities than these, the mere external or ornamental parts of oratory. He had the most skilful arrangement of his topics, the quickest perception of their effect either upon the jury, the enemy, or the judge. Indeed he used to choose his seat while he ruled the Great Circuit (the Northern) second to that of which he had a rightful possession by his rank; he preferred the seat on the judge's left, because standing there he had the judge always in his eye as he spoke, and could shape his course with the jury by the effect he found he produced on My Lord. Then his reasoning powers were of a high order; they would have been of a higher, if he had not been too subtle and too fond of refining; so that his shot occasionally went over the head both of court and jury, to the no little comfort of his adversaries But when he had a great case in hand, or an uphill battle to fight, his argumentation was exceedingly powerful. Nor did he ever lessen its force either by diffusiveness or by repetition, or by the introduction of vulgar or puerile matter; his classical habits and correct taste preserved him from the one, his love of the verdict from the other. His language was choice; it was elegant, it was simple, it was not ambitious. Illustration he was a master of, unless when the love of refining was his own master, and then his illustration rather clouded than enlightened. He had considerable powers of wit and humour, without too much indulging in their display; and no man had a more quick sense and more keen relish of both. Hence he ever avoided the risks of any ridicule, and when treated with it himself shewed plainly how much he felt and how little he approved its application. The greater feats of oratory he hardly ever tried. He had no deep declamation, no impassioned effusion. He indulged in no stirring appeals either to pity or terror; he used no tropes or figures; he never soared so high as to lose sight of the ground, and so never feared to fall. But he was an admirable speaker, and for all cases except such as occur once in the course of several years, he was quite as great a speaker as could be desired. No man who understood what was going on in a trial ever saw the least defect in his oratory; and none could qualify the praise all gave his skill and his knowledge by a reflection on his rhetoric.

That skill and that knowledge were truly admirable. It really was impossible to figure any thing more consummate than this great advocate's address in the conduct of a cause. All the qualities which we set out with describing as going to form the Nisi Prius leader he possessed in unmeasured profusion. His sagacity, his sure tact, his circumspection, his provident care, his sudden sense of danger to his own case, his instantaneous perception of a weak point in his adversary's, all made him the most difficult person to contend against that perhaps ever appeared in Westminster Hall, when the object was to get or to prevent a verdict; and that is the only object of the advocate who faithfully represents his client, and sinks himself in that representative character. It is needless to add that no man ever was more renowned as a *verdict-getter*—to use the phrase of the Nisi Prius courts.

The columns of the LAW TIMES have already presented to its readers a memoir of Lord Abinger; it will, therefore, be unnecessary to do more than take from this amusing article some novelties which it contains.

ANECDOTES OF LORD ABINGER.

A country attorney perhaps paid him the highest compliment once when he was undervaluing his qualifications, and said—"Really there is nothing in a man getting so many verdicts who always has the luck to be on the right side of the cause." This reminds one of Partridge in *Tom Jones*, who thought Garrick was a poor actor, for any one could do all he did—"he was nothing of an actor at all."(*a*) His weight with the Court and jury was not unhappily expressed by another person when asked at what he rated Mr. Scarlett's value,—"A thirteenth juryman," was the answer. A remarkable instance is remembered in Westminster Hall of his acting in the face of the jury, at the critical moment of their beginning to consider their verdict. He had defended a gentleman of rank and fortune against a charge of an atrocious description. He had performed his part with even more than his accustomed zeal and skill. As soon as the judge had summed up, he tied up his papers deliberately, and with a face smiling and easy, but carefully turned towards the jury, he rose and said, loud enough to be generally heard, that he was engaged to dinner, and in so clear a case there was no occasion for him to wait what must be the certain event. He then retired deliberately, bowing to the Court. The prosecuting counsel were astonished at the excess of confidence or of effrontery,—nor was it lost upon the jury, who began their deliberation. But one of the juniors having occasion to leave the court, found that all this confidence and fearlessness had never crossed its threshold—for behind the door stood Sir James Scarlett trembling with anxiety, his face the colour of his brief, and awaiting the result of "the clearest case in the world" in breathless suspense.

Internal evidence of the authorship of this article may be found in the abuse of the Whigs. The defence set up for Mr. Scarlett's apostasy was this, that the Whigs did not sufficiently reward his services, *therefore* he was justified in abandoning his principles, and joining those whom he had previously asserted to be wrong. But *that* is Brougham morality; *that* is the spirit of our great law reformer. Here is an anecdote of

SCARLETT'S VANITY.

One instance is recorded on the Northern Circuit of his overweening confidence betraying him, when matched against a party who was conducting his own cause. It was a case of libel, and no justification had been pleaded. He was for the plaintiff, and the defendant was throwing out assertions of the truth of the matter, which the judge interfered to check as wholly inadmissible in the state of the record. Mr. Scarlett, with his wonted smile of perfect, entire, and complacent confidence, said, "Oh, my lord, he is quite welcome to shew—what I know he cannot—that his slander was well founded." The man went on, and called a witness or two—nay, he was making much way in his proof, when Mr. Scarlett appealed to the judge for protection. "No (or rather *Na*)," said Mr. Baron Wood; "I won't—it's your own fault—why did you let him in?" The man proved his case and got a verdict, to the extreme annoyance of Mr. Scarlett. But this was a trifling matter compared with other consequences of the same foible. He made himself extremely unpopular, both in the Profession and in society, by the same course; for his was not, like Lord Erskine's weakness—a kindly, forbearing, recommending kind of vanity, which, if it sometimes made us smile, never gave pain, not even offence, because it never sought to rise by the depression of others. On the contrary, Lord Erskine, with hardly any exception, was the patron and foster-father of other men's merits, lauded their exertions, and enjoyed their success. Not so was Mr. Scarlett's self-esteem; he would rise by depressing others; he would allow nothing to be well done that any but one individual did; he would always intimate how it might have been better done, and would leave little doubt as to the artist whose superior excellence he had in his eye.

(*a*) "He the best player!" said Partridge with a contemptuous sneer. "Why I could act as well as he myself. I am sure if I had seen a ghost I should have looked in the very same manner, and done just as he did."—*Tom Jones*, book xvi. c. 5.

We conclude with Lord Brougham's opinion of

LORD ABINGER AS A JUDGE.

The same defect was exceedingly injurious to his judicial qualities and reputation. He came late—too late—upon the Bench, and he was far from diminishing, by painstaking, the unavoidable consequences of this late promotion. He took the judicial office far too easily; he did not sufficiently work and labour, considering that it was a perfectly new duty which he had to perform—a duty less easily performed after a person has grown grey as an advocate. The consequence was, that he who had every one endowment for the constitution of a great judge,—quickness—sagacity—learning—integrity—legal habits—great knowledge of men—practice at the Bar of vast extent and infinite variety—good-nature withal and patience,—really made a very inferior judge to many who, having a more modest estimate of their own faculties, a greater respect for others, and a keener sense of the difficulties of their task, exerted those lesser faculties which they possessed far more strenuously than he did his much superior powers.

(*To be continued.*)

SOLICITORS' ACCOUNTS.—The system of Solicitors' Accounts advertised in our pages, not only precludes the previously existent necessity of resorting to *the double entry*, to avoid errors in the Account Current Ledger, but is far in advance of that system in its principle, as in the mode of its operation, and the number and importance of its results. It exactly and fully meets all the peculiarities of the case, making the most of the little leisure and instrumentality at solicitors' command, and, amidst all their disadvantages, places them in a better position than is enjoyed by any mercantile establishment in the kingdom; for, *by one original entry and its transcript*, it continuously, incidentally, and to himself exclusively, if such be his wish, will present to the principal the balances of his deposit, loan, profit and loss, cash-box, and banker's account; the extent, realizations, and cost of his business, and the value of that portion of his estate recorded and circulating in his books. It is a "Self-proving system" from beginning to end; the Journal and Cash-book contain on their four sides every item which passes into the correspondent sides of the Account Current Ledger, and with the Disbursement Book predicate and test its balances; the sum of the Disbursement Book and Agents' bills, so far as resolving into professional claims, and the totals of the inner column of the rough Bill-book, or "Business Ledger," also correspond; and the Cash-book, itself a system, demonstrates the accuracy of all its results, from folio to folio, and points out the entire Cash Balance, the proportion "available at the banker's," and that which "should be in the cash-box." By thus enabling the principal to ascertain at any time, and with certainty, every important feature of his business, it invests his accounts with an interest and an attractiveness hitherto unknown; and by convincing his clerks that their omissions and mistakes must come to light, it all but secures both their carefulness and integrity.—(*See Advertisement.*)

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Adnum, J. upholsterer, 11d. Bell, London.—*Askham*, R. D. coal merchant, first, 13s. 4d. Young, Leeds.—*Bennett*, J. railroad contractor, 1s. Johnson, London.—*Bentley and Co.* drysalters, W. 4s. 9d. Graham, London.—*Brothers and Co.* curriers, joint, 1s. 10d. sep. Brothers, 5s. 6d. Valpy, Birmingham.—*Cecil and Co.* merchants, second, 9d. Bird, Liverpool.—*Cheesman and Co.* chinamen, joint, 10s. Alsager, London.—*Chilver*, R. upholsterer, 2s. 9d. Johnson, London.—*Dethick*, W. lime merchant, 5½d. Whitmore, London.—*Dencer and Co.* drapers, 6s. 3d. Morgan, Liverpool.—*Emerson*, E. manufacturer, first, 2s. 0½d. Pott, Manchester.—*Fielding*, G. ironmonger, div. *sine die.* Groom, London.—*Foster*, J. L. coachmaker, 3d Bell, London.—*France*, W. grocer, first, 9s. 6d. Hobson, Manchester.—*Garnett*, J. F. hatter, none made. Graham, London.—*Graydon*, C. ship chandler, 6d. Turquand, London.—*Gregory*, T. miller, first and final, 2s. 6d. Kynaston, Bristol.—*Harvey*, T. innkeeper, 6f. Groom, London.—*Harwood*, G. draper, 7s. 6d. Bird, Liverpool.—*Heathorn*, J. L. shipowner, *sine die.* Edwards, London.—*Hill and Brooks*, merchants, 10d. Johnson, London.—*Hipkins*, E. commission agent, first, 4d Bird, Liverpool.—*Jeeves*, S. shoemaker, none made. Groom, London.—*Lancaster*, T. J. merchant, final, 11d. Green, London.—*Laughton*, E. brewer, none made. Whitmore, London.—*Morrison and Co.* wine merchants, 8d. Johnson, London.—*Maniglier*, A. merchant, 1d. Graham, London.—*Monk*, W. jun. currier, first, 9s. 3d. Whitmore, Birmingham.—*Rimmer*, R. tailor, second, 5d. Cazenove, Liverpool.—*Sturtevant*, R. L. soap manufacturer, *sine die.* Alsager, London.—*Sothern*, R. D. ship builder, second, 4½d. Morgan, Liverpool.—*Thorpe*, T. plumber, 2s. 9d. Graham, London.—*Turner*, H. F. bottle manufac-

turer, 2s. Graham, London.—*Walters and Co.* timber merchants, second, 3d. Acraman, Bristol.—*Williams and Co.* drapers, first sep. T. Williams, 20s. Casenove, Liverpool.—*Wright*, T. cheesemonger, 5d. Turquand, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Nov. 29.

Bennett, J. L. druggist and grocer, Shiffnall, Nov. 26. Trust. E. Ridley, miller, Bridgnorth. Sol. Phillips, Shiffnall.—*Meredith*, J. carrier and cider merchant, Hay, Breconshire, Nov. 23. Trusts. R. Howell, gent. Hay, and C. Trokes, carrier, Hereford. Sol. Sowdon, Hereford.

Gazette, Dec. 3.

Cowlyn, F. mercer and tailor, Devonport, Sept. 28. Trust. W. Martin, wholesale draper, Devonport. Sols. Little and Hearle, Devonport.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Nov. 29.

CROSS, WILLIAM, lead merchant and distiller, Chester, Dec. 13 and Jan. 8, at twelve, Liverpool, Com. Phillips; Casenove, off. ass.; Sharpe and Co. Bedford-row, and Carter, Liverpool, sols. Date of fiat, Nov. 22. J. G. Carter, J. Mullineux, and J. W. Mullineux, of Liverpool, distillers, pet. crs.

HARWAR, JOSEPH, pianoforte manufacturer, Charlotte-st. Bloomsbury, Dec. 10 and Jan. 7, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Willis and Co. Tokenhouse-yd, sols. Date of fiat, Nov. 27. T. Harwar, Searl's-pl. Carey-st. law-stationer, pet. cr.

HENDERSON, WILLIAM, mercer and draper, Sunderland, Durham, Dec. 9 and Jan. 20, at two, Newcastle, Com. Ellison; Baker, off. ass.; Brown, Sunderland, and Moss, Cloak-lane, sols. Date of fiat, Nov. 9. T. Bevington, King William-st. furrier, pet. cr.

IBBOTSON, MATTHEW and JOHN, paper manufacturers, Rivellin-mill, Ecclesfield, York, Dec. 10 and Jan 16, at eleven, Leeds, Com. West; Freeman, off. ass.; Tattershall, Great James-st. Marshall, Sheffield, and Blackburn, Leeds, sols. Date of fiat, Nov. 22. R. E. and W. Marshall, Sheffield, iron merchants, pet. crs.

MARSHALL, ROBERT, stone mason, No. 6, Pleasant-row, High-st. Deptford, Dec. 17, at two, Jan. 8, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Tyler and Lane, Gray's-inn, sols. Date of fiat, Nov. 23. E. W. Roberts and J. W. Adlard, slate merchants, Potter's fields Tooley-st. pet. crs.

NORTH, JOHN, licensed victualler, Map's-row, Stepney-green Middlesex, Dec. 6, at two, Jan. 10, at eleven, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Yonge and Hancock, Tokenhouse-yd. sols. Date of fiat, Nov. 25. Bankrupt's own petition.

OLIVER, WILLIAM, printer, bookseller, and stationer, Darlington, Durham, Dec. 9 and Jan. 20, at half-past two, Newcastle, Com. Ellison; Wakley, off. ass.; Allison, Darlington, and Tilson and Squance, Coleman-st. sols. Date of fiat, Nov. 19. W. and J. T. Bainbridge, paper manufacturers, Yarm, Yorkshire, pet. crs.

REES, WILLIAM, and EDWARDS, GEORGE, gardeners, nurserymen, and seedsmen, Wells, Somerset, Dec 17, at one, Jan. 10, at eleven, Bristol, Com. Stevenson; Miller, off. ass., Whitaker, Lincoln's-inn-fields, Fry and Pain, Axbridge, and Robins and Hobbs, Wells, sols. Date of fiat Nov. 25 Bankrupt's own petition.

STOREY, JAMES, and GIBB, JOHN, ship chandlers, Liverpool (firm of Storey and Co.), Dec. 10, and Jan. 8, Liverpool, Com. Phillips; Morgan, off. ass.; Willis and Co. Tokenhouse-yd. and Mason, Liverpool, sols. Date of fiat, Nov 22. D. Bell and W. Horner, hemp merchants, Liverpool pet. crs.

TUCKER, RICHARD, farrier, Dean-st. Westminster, Dec. 10 and Jan. 4, at twelve, Baringhall st. Com. Goulburn, Follett, off. ass.; Blackmore, St. Martin's-pl sol. Date of fiat, Nov. 26. F. Tucker, wax chandler, Kensington, pet. cr.

WALKER, CECIL SOBER TAYLOR, artificial florist, 159, Oxford-st. Middlesex, Dec. 6, at half-past twelve, Jan. 10, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Ward, Essex-st. Strand, sol. Date of fiat, Nov. 28. J. Bowser, timber merchant, Milton-st. Dorset-sq. pet. cr.

WILLIAMS, LUCY, woollen draper, Oxford, Dec. 13, at two, Jan. 7, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Dickson and Overbury, Frederick's-pl. sols. Date of fiat, Nov. 18. W. [illegible]yor and J. Ratcliff, satteen manufacturers, Manchester, pet. crs.

WORTH, EDWARD POTTER, victualler, Henley-in-Arden, Dec. 10, at twelve, Jan. 16, at one, Birmingham; Christie, off. ass.; Noble, Henley-in-Arden, and Harrison and Smith, Birmingham, sols. Date of fiat, Nov. 20. Bankrupt's own petition.

Gazette, Dec. 3.

BARTON, WILLIAM HENRY, boot and shoe maker, 9, Bedford-pl. Commercial-rd. East, Dec. 11, at eleven, Jan. 11, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Heath, Gracechurch-st. sol. Date of fiat, Nov. 30. S. H. Heath, boot and shoe factor, Giltspur-st. pet. cr.

BURCHETT, WILLIAM, chemist and druggist, 94, Whitechapel-rd. Dec. 11, at half-past two, Jan. 15, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Turner, Mount-pl. Whitechapel-road, sol. Date of fiat, Nov. 2. Bankrupt's own petition.

DOTESIO, CHARLES, hotel keeper, Royal Hotel, Slough, Dec. 11 and Jan. 22, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Froggatt, Clifford's-inn, sol. Date of fiat, Nov. 29. T. and H. Morel, wine merchants, Piccadilly, pet. crs.

FINLAYSON, JOHN, grocer and tea dealer, 11, Ranelagh-st. Pimlico, Dec. 10, at half-past one, Jan. 14, at eleven, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Tyas and Tyas, Beaufort-buildings, Strand, sols. Date of fiat, Nov. 23. G. Bennett, tea dealer, Fetter-lane, pet. cr.

KEEVIL, WILLIAM, grocer and general dealer, 4, Cornwall-place, Holloway, Dec. 19 and Jan. 28, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Scargill Hatton-court, Threadneedle-st. sol. Date of fiat, Nov 22. T. W. Wing, grocer, East-cheap, and B. T. Limbert and J. Dawson, executors of J. Limbert, deceased, pet. crs.

KETCHUM, ISAAC, merchant, Liverpool (formerly of St. John's, New Brunswick, late of the city of London), Dec. 19, at twelve, Jan. 17, at eleven, Liverpool, Com. Phillips; Casenove, off. ass.; Sharpe and Co. Bedford-row, and Miller and Peell, Liverpool, sols. Date of fiat Nov. 28. Bankrupt's own pet.

LADSON, JAMES, carver, gilder, picture-frame maker, and smack owner, Ramsgate, Dec. 11 and Jan. 14, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Yates, Bury-st. St. Mary Axe, sol. Date of fiat, Nov. 23. H. Benjamin, fish factor, 41, St. Mary at Hill. pet. cr.

NOTMAN, WILLIAM, pianoforte maker, 20, John-st. Tottenham-court-road, Dec. 19, at two, Jan. 14, at one, Basinghall-st. Com. Williams; Turquand, of ass.; Ward, Essex-st. sol. Date of fiat, Nov. 28. J. Stratton, veneer cutter, Middle-place, Tottenham-court-road, pet. cr.

PEARCE, JAMES, carman and excavator, and proprietor of carts to let to hire, Praed-st. Paddington, Dec. 13, at half-past two, Jan. 14, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Graeff, Furnival's-inn, sol. Date of fiat, Nov. 28. Bankrupt's own petition.

PERKINS, WILLIAM, upholsterer, 2, Common-hard, Portsea, Southampton, Dec. 17, at half-past one, Jan. 8, at half-past two, Basinghall-st. Com. Evans; Bell, off. ass.; Bull and Co. Ely-place, sols. Date of fiat, Nov. 26. Bankrupt's own petition.

ROBERTS, WILLIAM KENT, grocer, Abingdon, Berkshire, Dec. 11 and Jan. 11, at two, Basinghall-st. Com. Goulburn; Green, off. ass.; Wire and Child, St. Swithin's-lane, sols. Date of fiat, Nov. 28. H. Casement and R. D. Red, provision merchants, 75, Upper Thames-st. pet. crs.

ROBINSON, HENRY, brewer, Devonport, Dec. 12 and Jan. 9, at eleven, Exeter, Com. Bere, Hirtzel, off. ass.; Smith, Devonport, Keddle and Co. Lime-st. and Stogdon, Exeter, sols. Date of fiat, Nov. 18. J. Martin, broker, Devonport, pet. cr.

WALKER, JOHN, and WHITE, CHARLES, builders, 3, Jewry-st. Aldgate, Dec. 20, at one, Jan. 14, at half-past eleven, Basinghall st. Com. Holroyd; Groom, off. ass.; Slee, Parish-st. Southwark, sol. Date of fiat, Nov. 25. J. Martin, builder, Back-street, Saint John, Southwark, pet. cr.

WALLINGTON, JACOB, painter and ship chandler, Bristol, Dec. 18 and Jan. 11, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Gillard and Co. Bristol, sols. Date of fiat, Nov. 30. J. Williams, brush maker, Bristol, pet. cr.

WALTER, MICHAEL, wholesale hardwareman, 21, Fleet-lane, Farringdon-st. Dec. 10, at one, Jan. 14, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; King, St. Mary Axe, sol. Date of fiat, Nov. 28. Bankrupt's own petition.

WHITE, GEORGE EDWARD, tailor, Minster-st. Reading, Berkshire, Dec. 19 and Jan. 16, at eleven, Basinghall-st. Com. Williams; Graham, off. ass.; a'Becket and Co. Golden square, sols. Date of fiat, Nov. 28. T. Jones, A. M. Bulgood, and A. Wilson, woollen drapers, Vigo-st. Westminster, pet. crs.

WILLIAMS, THOMAS, sen. ironfounder, Cardiff, Glamorganshire, Dec. 17 and Jan. 16, at eleven, Bristol, Com. Stephen; Kynaston, off. ass.; Dalton, Cardiff, and Perkins, Bristol, sols. Date of fiat, Nov. 22. R. Tredwell, ship builder, Cardiff, S. Ware, tailor, Bristol, H. H. and R. H. Parry, brokers, T. Williams, merchant, J. and W. Brown, brokers, and G. Phillips, druggist, all of Cardiff, W. Jones, farmer, Park, G. Bird, draper, D. Davies, victualler, W. Williams, brewer, W. Prichard, jun. wharfinger, C. Vachell, druggist, and W. Catleugh, ironfounder, all of Cardiff, T. Collingdon, gent. London, D. Lewis, rope maker, H. Hooper, agent, T. Watkins, sen. auctioneer, W. B. Watkins, agent, W. Rosser, pilot, W. Bird, stationer, and J. Lloyd, accountant, all of Cardiff, pet. crs.

WILLER, JOSEPH, licensed victualler, Windsor, Dec. 10, at two, Jan. 15, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Parkes and Co. Bedford-row, sols. Date of fiat, Nov. 28. W. Simmonds, baker and grocer, Windsor, pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, Nov. 26.

Binns, J. and F. millwrights, Halifax, Nov. 21. Debts paid by J. Binns.—*Cardinall*, H. and *Warren*, M. milliners, Hereford, Nov. 9. Debts paid by Warren.—*Cheetham*, J., *Collinge*, J., *Lancashire*, J. and *Wright*, E. A. cotton spinners, Oldham, Nov. 21. Debts paid by Cheetham.—*Clark*, J. and *Toms*, S. R. refined sugar manufacturers, Size-lane, Nov. 25. Debts paid by Clark.—*Gill*, W. L. and *Foss*, L. linen and woollen drapers, Crewkerne, Somersetshire. Debts paid by Foss.—*Haines*, J. and *Thomas*, J. milliners, Wingrove-place, St. John-st.-road, Nov. 25.—*Haines*, S., *Marshall*, J., *Upfill*, T. and *Barns*, B. bank directors, Birmingham, Aug. 31.—*Hanson*, T. and *Purdy*, G. builders, Leeds, Nov. 22. Debts paid by Hanson.—*Hull*, J. and *Sykes*, J. ship builders, Cox-green, near Sunderland, Sept. 1.—*Lamino*, W. G. and J. G. and *Hervey*, J. sizers, Salford, so far as regards Hervey, Dec. 31, 1842.—*Moring*, T. and *Moyse*, W. carmen, Camomile-st. Nov. 23. Debts paid by Moyse.—*Pearson*, T. B. (deceased), and *Anderson*, J. ship brokers, Newcastle, Aug. 22.—*Perrin*, J. and P. slaters, Liverpool, Nov. 9.—*Pritchard*, F. W. and E. drapers and druggists, Hodnet, Salop, or elsewhere, Oct. 7.—*Sharp*, J. and *Ridley*, H. and J. wine merchants, Carlisle, Nov. 8. Debts paid by J. Sharp.—*Simpson*, G. and *Chilton*, H. ship brokers, Liverpool, Nov. 25. Debts paid by Simpson.—*Sisison*, W. *Gould*, R. and *Hebblewhite*, C. curriers, Hull, Nov. 21. Debts paid by Sisison.—*Todd*, T. and C. wine merchants, Dewsbury, June 1.

Gazette, Nov. 29.

Addy, T. and *Holmes*, G. butchers, Sheffield, Nov. 11.—*Buckle*, J. T. and *Bates*, J. china merchants, York, Nov. 25. Debts paid by Buckle.—*Caistor*, W. and *Thompson*, J. corn dealers, Manchester, Nov. 2. Debts paid by Caistor.—*Curron*, W. *Cox*, T. and *Drury*, G. clog manufacturers, Birmingham, Sept. 30.—*Crompton*, R. deceased, *Crompton*, J. deceased, and *Crompton*, R. bleachers, Kearsley and Manchester, so far as regards R. Crompton, Dec. 1[illegible], and so far as regards J. Crompton, April 18, 1844.—*Cooper*, J. and *Warham*, R. merchants, Newcastle, Nov. 20.—*Darby*, W. H. and *Hewett*, W. H. merchants, Liverpool, Nov. 26. Debts paid by Darby.—*Dredge*, R., J., and S. brewers, Devizes, so far as regards J. Dredge, Nov. 25. Debts paid by the remaining partners.—*Garton*, J. H. *Wake*, G. S. and *Trevor*, C. tobacco manufacturers, Hull, Nov. 18.—*Gregson*, E. and *Marsden*, W. sizers of cotton-twist, Over Darwen, Nov. 23. Debts paid by Gregson.—*Harrald*, T. *Hinks*, J. and *Kilby*, S. tea dealers, Coventry, Nov. 26.—*Laing*, A. and *M'Intosh*, C. M. nurserymen, Beverley, Nov. 23. Debts paid by Laing.—*Miller*, A. and *Grabowski*, Count M. merchants, Walbrook, Nov. 26. Debts paid by Miller.—*Perry*, W. jun. and *Bridges*, T. ironfounders, Wolverhampton, Oct. 31. Debts paid by Perry.—*Price*, J. and *Watson*, G. wholesale stationers, Birmingham, Nov. 27.—*Rider*, B., C. F. A. and T. G. hat tip manufacturers, Red Cross-st. Southwark, so far as regards T. G. Rider, Nov. 28.—*Routh*, J. and O. cordwainers, Aisgarth, Yorkshire, Nov. 21.—*Skelton*, H. and *Bainbridge*, A. confectioners, Huddersfield, Nov. 25.—*Woodward*, W. and *Turner*, J. drapers, High-st. Islington, Nov. 28.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, Nov. 26.

Musson, J. out of business, Melton Mowbray.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Alexander, J. R. waiter, Chatham, Dec. 12, at eleven.—*Ansell*, B. clerk, Times-wharf, Grosvenor-basin, Pimlico, Dec. 12, at twelve.—*Baker*, T. tailor, Ipswich, Dec. 4, at one.—*Barker*, I. potato salesman, Dec. 12, at half-past eleven.—*Calfapietra*, L. A. L. B. Kenton-st. Brunswick-square, Dec. 12, at half-past two.—*Cucksey*, J. carpenter, Greenwich, Dec. 7, at twelve.—*Curwood*, J. B. clerk, Clifford's-inn, Dec. 9, at two.—*Draper*, H. watch escapement maker, Brunswick-place, Barnsbury-rd. Dec. 11, at half-past two.—*Good*, D. out of business, Lawshall, Dec. 2, at half-past one.—*Gosling*, G. tea dealer, Bungay St. Mary, Dec. 5, at half-past one.—*Hayden*, W. J. tobacconist, Whitechapel-rd. Dec. 9, at eleven.—*Hooper*, J. out of business, Edmund st. King's-cross, Dec. 9, at half-past two.—*Hulbert*, H. agent, Minto-st. Bermondsey, Dec. 12, at half-past two.—*Kell*, H. general shopkeeper, Edford, Dec. 9, at half-past eleven.—*King*, C. G. gent. Ladbroke-pl. Notting-hill, Dec. 7, at half-past one.—*Larter*, J. F. grocer, Great Yarmouth, Dec. 9, at twelve.—*Lowe*, J. twine maker, Totton-st. Stepney, Dec. 9, at half-past twelve.—*Macilwain*, R. carpenter, Neate-street, Kent-road, Dec. 11, at twelve.—*Nichols*, W. lace dealer, Ryder's-court, St. Martin's-in the-Fields, Dec. 11, at half-past twelve.—*Palmer*, W. butcher, Bermondsey, Dec. 12, at eleven.—*Paterson*, J. furniture dealer, Greenwich, Dec. 11, at half-past eleven.—*Routledge*, A. out of business, Portsea, Dec. 11, at eleven.—*Rowley*, W. baker, Bermondsey New-road, Dec. 12, at half-past twelve.—*Smithers*, J. fishmonger, Mill Pond-st. Bermondsey, and Billingsgate, Dec. 7, at one.—*Smith*, H. C. clerk, Woolwich, Dec. 10, at twelve.—*Tate*, F. hatter, Brudenell-place, Hoxton, Dec. 7, at half-past twelve.—*Tribe*, T. lieutenant, Beresford-ter. Walworth, Dec. 7, at half past twelve.—*Vaughan*, J. W. draper's assistant, Conduit-st. Bond-st. Dec. 12, at one.—*Wilbeam*, F. C. grocer, Fulham, Dec. 9, at one.—*Woodbridge*, J. carpenter, High Wycombe, Dec. 11, at half past eleven.

Gazette, Nov. 29.

Bentley, J. out of business, Church-st. Westminster, Dec. 11, at twelve.—*Brockwell*, G. bootmaker, Stafford-st. Old Bond-st. Dec. 4, at eleven.—*Edwards*, H. cab proprietor, Exeter-st. Lisson-grove, Dec. 12, at two.—*Farmar*, M. B. A. widow, Arundel-st. Strand, Dec. 11, at one.—*Hills*, G. W. out of business, Paradise-pl. Clapham-road, Dec. 9, at twelve.—*Law*, W. beer retailer, Gravesend, Dec. 11, at one.—*Lee*, W. J. S. innkeeper, Milton, Dec. 11, at twelve.—*Morren*, A. milliner, Worthing, Dec. 11, at eleven.—*Newbon*, J. tailor, Commercial-road, Lambeth, Dec. 12, at twelve.—*Overton*, W. O. draper's assistant, Bristol, Dec. 11, at eleven.—*Wade*, J. P. grocer, Brittlewell, Dec. 9, at half-past eleven.—*Worland*, J. livery stablekeeper, Cambridge, Dec. 11, at twelve.

Country, Gazette, Nov. 26.

Boden, G. hair dresser, Derby, Dec. 21, at half-past ten, Birmingham.—*Drury*, G. K. brewer, Farmborough, Dec. 17, at twelve, Bristol.—*Fowler*, J. bootmaker, Cheltenham, Dec. 13, at one, Bristol.—*Hands*, T. painter, Pontypool, Dec. 16, at twelve, Bristol.—*Hardman*, W. hatter, Rochdale, Dec. 10, at twelve, Manchester.—*Robinson*, J. blacksmith, Misterton, Dec. 10, at eleven, Birmingham.—*Swan*, J. carpenter, High Trewhitt, Dec. 9, at twelve, Newcastle.—*White*, W. publican, Durham, Dec. 9, at half-past twelve, Newcastle.—*Wood*, C. attorney, Manchester, Dec. 10, at twelve, Manchester.

Country—Gazette, Nov. 29.

Barras, N. clothier, Holbeck, Dec. 19, at eleven, Leeds.—*Barker*, W. sadler, York, Dec. 18, at eleven, Leeds.—*Bentley*, H. commission agent, West Derby, Dec. 6, at eleven, Liverpool.—*Bingham*, T. labourer, Ordsall, Dec. 16, at eleven, Leeds.—*Brown*, G. clogger, Liverpool, Dec. 12, at twelve, Liverpool.—*Coates*, J. miller, Ripon, Dec. 19, at eleven, Leeds.—*Fairclough*, W. C. gent. Liverpool, Dec. 6, at eleven, Liverpool.—*Fisher*, H. slater, Batheaston, Dec. 19, at half-past twelve, Bristol.—*Haworth*, W. wheelwright, Witton, Dec. 13, at twelve, Manchester.—*Johnson*, A. Liverpool, Dec. 6, at eleven, Liverpool.—*Kilburn*, J. jun. policeman, Dec. 19, at eleven, Leeds.—*Phipps*, D. labourer, Dec. 17, at one, Birmingham.—*Reynolds*, G. wine drawer, King's Norton, Dec. 24, at twelve, Birmingham.—*Scott*, J. surveyor, Leeds, Dec. 19, at eleven, Leeds.—*Shaw*, D. tailor, Hundleby, Dec. 19, at eleven, Leeds.—*Shaw*, W. cordwainer, Almondbury, Dec. 19, at eleven, Leeds.—*Stanley*, J. brewer-yman, Manchester, Dec. 12, at twelve, Manchester.—*Winnpenny*, J. retailer of beer, Huddersfield, Dec. 16, at eleven, Leeds.—*Woods*, J. labourer, Tetford, Dec. 18, at eleven, Leeds.

From the Gazette of Friday, December 6.

Bankrupts.

Robson, J. W. and *Barrow*, J. patent pump manufacturers, St. Ann's-place, Limehouse.—*Bucknall*, S. carman, Hendon.—*Sawyer*, J. butcher, Egham, Surrey.—*Carter*, C. miller, Saddington, Leicestershire.—*Mackay*, J. merchant, Liverpool.

THE REPORTS.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Saturday, Nov. 30.

FRANCES ERMATINGER, widow of the late FRANCIS PERRY, deceased, as Testatrix to her minor Children, heirs of said FRANCIS PERRY, Appellant, v. BARTHOLOMEW CONRAD AUGUSTUS, Curator of the vacant succession of the late Honourable LEWIS GUGY, Respondent.

An action of account will not lie against the representative of a confidential agent, who has never been called on in his lifetime to account by his employer: but if the employer can shew that moneys have been received by such agent and not accounted for, or that such agent has appropriated to his own purposes his employer's money, his remedy must be debt for the ascertained defalcation, or assumpsit on the agent's implied promise, for damages to that amount, on such breach of duty.

The Hon. Lewis Gugy, the respondent in the first instance in this case, for many years previously to 1837 was sheriff of the district of Montreal, in the province of Lower Canada, and as such became the depositary of considerable sums of money, levied under execution. From the year 1827, to August 1836, at which time he died, the duties and business of the sheriff were carried on in an office at Montreal, almost under the entire management and direction of Mr. Francis Perry, the late husband of the appellant, who was the late respondent's "agent, attorney, clerk, book-keeper, and receiver." Considerable sums passed through Mr. Perry's hands in the fulfilment of his duties, which were deposited in the bank at Montreal in the name of the late respondent, and on which he was authorized to draw checks for their repayment and proper application. Shortly after Mr. Perry's death, the late respondent was removed from the office of sheriff, and on vacating such office was found to be a defaulter in a large sum of money, for which it was sought to make the present appellant, as the testatrix to Perry's children and heirs, accountable. Accordingly, on the 1st of February, 1837, the late respondent instituted an action of account against the appellant in her quality of testatrix, in the Court of Queen's Bench, for the district of Montreal, to compel her "to make and render a true and faithful account of all and every the fees, emoluments, sum and sums of money," received by the late F. Perry "as such deputy, agent, attorney, clerk, book-keeper, and receiver," and to pay such balance as, upon rendering such account, should appear to be due to the late respondent. To this declaration the appellant pleaded that all payments and receipts by her late husband were entered and specified in certain books of accounts, all of which ever had been and remained in possession of the plaintiff, and that she could not, nor was she bound by law to do so, render an account in manner and form as demanded. There was a second plea of the general issue.(*a*) Issue being joined, the parties went to trial, and evidence was gone into to shew that both the plaintiff and the late Mr. Perry drew checks on the bank, and that Mr. Perry had paid some private debts by checks; but that all books and transactions in the office were under the superintendence and control of the plaintiff, who was generally attendant, and that all moneys paid into the bank were paid to the account of the plaintiff, and that on Mr. Perry's death, all books and papers were taken possession of by the now respondent. It appeared also that the late respondent exercised only a mere nominal control. The Court of King's Bench dismissed this action, "saving to the plaintiff his recourse as he may be advised." From this judgment the late respondent, in February 1840, appealed to the Provincial Court of Appeals, who reversed the judgment of the Court below, and ordered the appellant to render "a faithful account of all and every the fees, emoluments, sum and sums of money received by the late F. Perry;"(*b*) and, in default of rendering such account, the now appellant was "adjudged and condemned to pay and satisfy the late respondent 5,000*l.* for and instead of the balance, sum, and sums of money which, if such account were rendered, might be coming and due" to him. From this reversal of judgment Mrs. Perry appealed to the Privy Council. In July 1840 the Hon. Lewis Gugy died, and the present respondent, by order of reviver, was intrusted with the duty of defending the appeal.

Renshaw, for the appellant, contended that Perry being only a clerk and servant in the employment of the late respondent, all moneys received by him in the course of his employment in his said office, were subject to the disposition of the said late respondent, and Perry ought not to be answerable for their application. Neither had the appellant the means of knowing what sums were applied or appropriated by the respondent. The late respondent had full knowledge of all that took place, and opportunity of inspecting all books of account, all which documents and books of account were in the possession of the respondent at the time of the decease of Perry, and still so remained. He contended, also, that the judgment of the Provincial Court of Appeals was contrary to law, and most unjust and oppressive.

Buller and *Flemming*, for the respondent, contended that, according to the laws of Lower Canada, the legal representatives of an agent were bound to account with his employer for his receipts and disbursements, and to pay and discharge the balance which might be found to be due to the employer, and as an authority for this position cited an ordinance of Louis the XIV. bearing date 1667, title 29, art. 1:—"De la reddition des Comptes," which it was alleged has still the force of law in Lower Canada. The article is as follows:—"Les tuteurs, procureurs, curateurs, fermiers judiciaires, sequestres, gardiens, et autres qui auront administré le bien d'autruy seront tenus de rendre compte aussi-tôt que leur gestion sera finie; et seront toujours reputés comptables encore que le compte soit clos, et arrête jusqu'à ce qu'ils ayent payé le reliquat, s'il en est dû, et rendu toutes les pièces justificatoires." They also contended that this ordinance obliges all persons, who have the management and administration of the property of others, duly to account; (*c*) and that the evidence in the Court of King's Bench shewed that Perry had applied the respondent's money in payment of his own debts.

Lord CAMPBELL delivered the judgment of the Court.—The question was, whether the appellant was liable to have such an action commenced against her for an account, or whether the proper course was not to go for any balance that might be deficient on an account drawn against her. Whether the late Mr. Perry was liable or not depended on the relation between him and his employer. There was no difficulty in the law of the case; the case resolved itself into a question of fact. But there was a great distinction between liability in a particular case and general liability; and the question was whether Mr. Perry received money with the character of general accountability. It seemed to the Court that he did not, but that he received the money as the confidential agent of Mrs. Gugy, who it appeared never called on him to account. Under these circumstances their lordships were of opinion that this was not a case in which an action for an account could be maintained, and that the judgment of the Court of Queen's Bench in Montreal was correct, especially as it did not prejudice Mrs. Gugy's representatives from claiming any sums of money which they might shew were in the appellant's hands as the representative of her husband. That remedy still remained open; but their lordships were of opinion that the remedy by action of account was misconceived. The decision of the Court was, that the judgment of the Court of King's Bench was right, and ought not to have been reversed; that the judgment of the court of appeal should be reversed, and that the judgment of the Court of King's Bench be affirmed.

(*a*) In 1 Chitty's Pleading, 488, 6th ed. it is laid down that there is no general issue in this form of action.

(*b*) The judgment in this form of action in the first instance is "quod computet," and afterwards, when the account is finished, that the defendant pay to the plaintiff so much as he is found in arrear. Bac. Abr. Accompt. G.

(*c*) Sallé, Esprit des Ordonnances de Louis XIV. vol. 1, pp. 352, 353. Pothier tit. Du contrat de Mandât, chap. 2, Nos. 41, 61.

JUVEER BHAEE and OTHERS, Sons of GULLA BHAEE, Appellants (the defendants below), and YURUJ BHAEE and OTHERS, Respondents (the plaintiffs below).

Where documentary evidence necessary to the right understanding of a cause is improperly rejected by a colonial court, the Privy Council on appeal will refer the cause back again to be re-heard.

The hearing of this appeal occupied the greater part of Thursday and Friday.

The ground of the appeal was, as to the propriety of the rejection of certain documentary evidence by the Supreme Court of Bombay, on which the appellants relied in the Court below as tending to prove in their favour the fact of partition, or no partition of inheritable property under the Hindu law.

The appellants and the respondents are the descendants of a common grandfather, who was possessed of considerable inheritable property. The grandfather had three sons, one of whom was the father of the appellants, another the father of the respondents. By the Hindu law inheritable property is vested in the sons in the life-time of the father, and unless partition of the estate be made by the father, it descends to the sons as tenants in common. The father may make partition *by will* during his *life-time*, or to take effect after his death. By civil death, as by entering a religious order, or by the commission of certain crimes, the father loses the power of partition, and the estate descends in unity among the sons in common as it does should the father make no partition.(*d*) "Partition in its most general sense comprehends as well the division of patrimonial property during the life of the father (which usually takes place amongst co-heirs, as the adjusting by distribution the possession of different parties to a pre-existing right, as the divesting of exclusive rights in specific portions of property."(*d*) This inchoate right renders the sons in some sort co-proprietors with the father of the family property, which it is not in the power of the father to bar. Upon partition taking place by the father, the law regulates the distribution of inheritable property; but the distribution of the acquired property of the father is left more at his discretion. It was contended by the plaintiffs below (the now appellants) that there had been no partition of the estate of the grandfather, and that they succeeded in their own right to an undivided third share of the grandfather's inheritance, and also to an undivided third share of the property of two of his sons deceased, which shares were withheld from them by the respondents (the defendants below). The respondents had obtained possession of a large portion of the grandfather's inheritable and other property which had descended to them by linear succession. On the part of the respondents it was denied that the property of the grandfather, whether of inheritance or acquisition, was undivided; and that even if it were, there had been dealings with the property and adverse possession for thirty-seven years before the commencement of the suit, thirty years being the limitation by the Hindu law to any claim to the possession of lands or other immoveable property.(*e*)

It appeared that Mr. Grant, an officer of the East India Company, had in his possession certain documents relative to the estate of the grandfather, which he refused to produce unless compelled to do so. The defendants below (the respondents) denied the right of the Court to call for their production, relying upon their thirty-seven years' adverse possession, which they contended could not be affected by any documentary evidence. The Court below held the objection good, and the evidence was rejected.

In the absence of positive evidence of partition, the Hindu law presumes joint tenancy among brothers, "it being most natural for them to dwell together in unity."(*f*) On this ground, and on the ground of adverse possession for 37 years being a bar to any claim to a share of the family estate by the plaintiffs below, the Court of Bombay gave judgment for the defendants. The plaintiffs now appealed to the Privy Council, urging that the documentary evidence they wished to produce was improperly rejected.

Counsel for the appellants, *Wigram*, *Jackson*, and *Forsyth*: for the respondents, *Bury*, *Lloyd*, and *Moore*.

Lord LANGDALE, in delivering the judgment of the Court, said, it appearing to the Council that certain documents in the cause had never been properly brought under the consideration of the Court below; that Court had, therefore, not had the means of forming a correct judgment. For this reason the Council were of opinion that the case should be referred back to the Court below, with directions to take into their consideration such allegations as were contained in the petition of the appellants. As these documents had been withheld by Mr. Grant, who was an officer of the East India Company, he thought it was for the consideration of that Company whether they would not bear a part of the costs of the appeal.

(*d*) Strange's Hindu law, p. 177. Ed. 1830.

(*e*) See the 5th regulation of the code of 1827, passed by the Council of Bombay.

(*f*) Strange's Hindu Law, p. 233.

Equity Courts.

LORD CHANCELLOR'S COURT.

Nov. 23, 1844, and Nov. 23, 1844.

SMYTHE *v.* GRIFFIN.

Immoral consideration—Future cohabitation—Annuity—Pleading—Demurrer.

Where a plaintiff comes to be relieved against an annuity-grant, in consideration of future cohabitation, such an instrument is invalid, and its invalidity constitutes a good defence at law; and a general demurrer will be allowed unless the plaintiff can make out special circumstances for the interference of equity. The instruments being in the hands of the person claiming the annuity will not furnish such special circumstances, as production may be compelled by application to a judge of the court at law.

This was an appeal from an order of the Vice-Chancellor of England, allowing a general demurrer to the plaintiff's bill. The plaintiff, Major Smyth, being resident in Ireland in 1832, granted to Griffin, as trustee for Maria Seller, a woman with whom he was cohabiting, an annuity of 100*l.* for her life, to commence upon the death or marriage of Major Smyth, or upon his withdrawing his protection from Maria Seller. There was also an annuity of 50*l.* granted to Maria Smyth, their illegitimate daughter, during her life, to commence on the death or marriage of Maria Seller, the mother (who was a married woman) or upon her returning to the protection of her husband, or upon her going to reside with her father. These annuities were collaterally secured by Smyth's bond and a warrant of attorney to confess judgment in the Court of Exchequer in Ireland. On that warrant of attorney

judgment was entered upon on the 12th Dec. 1832. The deed contained a covenant by Smyth, that if at any time he should become possessed of real estate, that he would effectually charge the annuities upon such estate. Maria Seller lived with Smyth for three or four years, and then left him by his desire, and in 1839 Smyth married. In October 1842 Maria Seller commenced an action in the Queen's Bench upon the Irish judgment in the name of Griffin, the trustee, who was abroad with his regiment, against Smyth, for the recovery of arrears of her annuity. When the declaration was delivered in November 1842, Smyth filed the present bill, whereby he charged that "in consequence of the form of the action, and inasmuch as he could not produce the indenture [the grant of the annuity], he could not safely plead to the said action at law so as to raise the question of the invalidity of the indenture and the collateral securities for the judgment of a court at law."

The bill prayed that the grant of the annuities might be declared wholly void in equity, that all the securities might be delivered up to be cancelled, that Griffin might be directed to enter satisfaction on the judgment in Ireland, and be restrained from proceeding the action pending; or, if the Court should be of opinion that the deeds and judgment were not wholly void, that it might be declared that the same was void so far as they affected to secure the annuity of 10*l.* to Maria Seller, and that the plaintiff might be relieved to that extent. The defendant demurred for want of equity, and the Vice-Chancellor allowed the demurrer, upon the ground that the instrument was void upon the face of it.

Stuart and *Smythe*, for the appellant, the plaintiff, contended that the plaintiff had a right to come into equity to have the deeds delivered up, because a bill might be filed against him to charge his real estate with the annuities. They cited *Simpson* v. *Lord Howden* (3 Myln. & Craig. 97); *Batty* v. *Chester* (5 Beavan, 109); *Fergusson* v. *Mitton* (11 Adolphus & Ellis, 182); *Gray* v. *Mathias* (5 Ves. 284); *Guinness* v. *Carroll* (1 Barnewall & Adolphus, 459).

Bethell and *Tripp*, for the respondents, contended that the bill contained no allegations to impeach the daughter's annuity, nor any averment that the plaintiff had or was likely to have landed property. The object of the bill was to set aside both annuities or one. Nothing else could be done on that record. That the plaintiff had no equity it was a merely legal question. Both the annuities were governed by the immoral consideration, for it was plainly Smyth's purpose and object to continue the cohabitation, by which he avoided payment of both annuities. They cited *Batty* v. *Chester*, suprà (1 Story's Equity Jurisprudence, 241); *Mathew* v. *Hanbury* (2 Vernon 187); *Franco* v. *Bolton* (3 Vesey, 368); *Gray* v. *Mathias*, suprà.

Stuart, in reply.

JUDGMENT.

Nov. 8, 1844.—The LORD CHANCELLOR.—I agree in this case with the Vice-Chancellor that this annuity to Maria Seller is void, on the face of the instrument as represented in the bill. It was evidently granted in contemplation of the future cohabitation, for he was to commence paying the annuity on his withdrawing his protection from her, on his marriage, or death. The plaintiff, therefore, has a sufficient defence at law upon the instrument itself, and he must be left to that defence, unless some special circumstances are stated, requiring the interference of a Court of Equity. This principle does not appear to be controverted, but the plaintiff rests his case for relief on the circumstances stated in the bill. And first he alleges that, in consequence of the form of the action, and not having possession of the indenture, or the precise knowledge of its contents, that he cannot safely plead to the action. The action is brought on a judgment, and if the judgment was entered upon the warrant of attorney, as stated in the bill (and it refers to the indenture) the plaintiff-at-law, on a proper application to the court in which the action is pending, would be ordered to produce the indenture for the purpose of the plea; or a bill of discovery might be filed in this Court for the same object. That special ground, therefore, in requiring the interposition of a court of equity, entirely fails. The next special ground insisted upon is the clause, by which the plaintiff binds himself, in the event of his acquiring any real estate, to make it chargeable with the payment of the annuity; but it is not stated that the plaintiff has any real estate, or is likely to have any in his possession; and if the plaintiff at the law should fail in the action, on the ground of the invalidity of the transaction, there will be an end of the matter. The apprehension of being afterwards harassed in this court on the clause in question, on the possible event of the plaintiff coming into possession of some real estate at a future period, is a mere chimera. It is suggested that the suit may be maintained as to the annuity to the daughter stated in this clause; but that is not the object of the plaintiff's bill; it states one consideration for both annuities, and it prays that both may be declared void, or, if not both, at least one, namely, as to the mother. But that is not the object of the bill, nor consistent with it. The plaintiff states one entire consideration for both annuities; that consideration he alleges to be illegal, and that the annuity is in consequence void. He prays, therefore, a declaration to that effect, and that the several instruments mentioned in the bill may be delivered up to be cancelled; or if the Court should be of opinion that the deed is not wholly void, it may be declared void as far as respects the annuity to the mother. There is no separate case made against the daughter, and no separate declaration prayed against her. The bill states that the action is brought by Maria Sellers the mother; that Griffin's name is used by her without his authority or knowledge; and that he is abroad, and out of the jurisdiction of the court. No interference by the daughter has been alleged or suggested, and it is prayed that the instruments may be declared wholly void as to the mother. What is stated to call for such a declaration as to the daughter? This is contrary to the plaintiff's own view of his case. The bill prays that the instrument may be delivered up to be cancelled; but if the bill cannot be maintained in this respect as to the mother, it must of course fail as to the daughter. There is in the bill no ground for maintaining the bill as to the daughter, if it cannot be supported as to the mother. It seems, on the contrary, from the frame of the bill, as if the plaintiff supposed the grant of the annuity to the daughter might be considered valid, and if so, there can be no reason for this Court to interfere. The demurrer, therefore, must be allowed.

Friday, Nov. 22.

Re WARWICK CHARITIES.

Charity trustees under the Municipal Corporations Act. Circumstances under which vacancies will be filled up.

Blunt supported a petition presented by certain of the inhabitants of Warwick, praying for a reference to the Master, to inquire as to vacancies in the charity trustees of that town, and to approve of proper persons to fill up those vacancies.

The charities were eleven in number, and the aggregate income of the whole amounted to 3,000*l.* a year, besides 13,000*l.* which was required to be lent out in sums of 100*l.* without interest for nine years, to young men resident in Warwick. The original number of trustees was twenty-one, of those three were dead, three more had left the town of Warwick and gone to reside elsewhere, one had become bankrupt, and another wished to retire from the situation of trustee on account of age and infirmity; so that more than one-third of the whole number was vacant.

Hayward, for the continuing trustees, consented.

The LORD CHANCELLOR, after some consideration, and apparently in consequence of the amount and variety of the charities, made the order.

Re BURBIDGE, a LUNATIC.

Sale of lunatic's reversionary interest—Jurisdiction in lunacy.

The only estate of this lunatic consisted of a freehold cottage let at 4*l.* a year, and a reversionary interest in a considerable real estate, the yearly rental of which is 260*l.* The father of the lunatic is his heir-at-law, and he had always maintained him.

Kinlake supported a petition, stating the above circumstances, and that the father had incurred considerable expense in the maintenance of the lunatic since the year 1834, and praying that the reversionary interest might be sold or mortgaged for the purpose of repaying such outlay.

The LORD CHANCELLOR.—I have no power to direct the sale of a lunatic's estate except for the purpose of the payment of debts. You must shew me, if you can, by affidavit, that the sum claimed is due to the father as a debt, and then I shall have power to sell for repayment of that amount.

Re DRUMMOND, a LUNATIC.

Allowance to a lunatic's family—Practice.

This was a petition by Mr. J. H. Drummond and his wife, who was one of the two daughters of the lunatic, praying for an increased allowance out of the lunatic's estate. The lunatic's income amounted to 5,554*l.* yearly. The lunatic is now eighty-six years of age; each of the daughters had an allowance of 1,500*l.* and Mrs. Drummond's had been settled upon her marriage; she is now in a bad state of health, requiring the constant attendance of medical men, and frequent absence from home.

Whitmarsh, for the petition.

Chandless, for the other sister, who is unmarried, asked that the direction for inquiry should be made sufficiently extensive to comprise an equal increase of allowance for the other sister, as otherwise Mrs. Drummond would have an undue share of property. He did not, however, oppose the petition.

The LORD CHANCELLOR.—The increased allowance is asked for on the part of Mrs. Drummond, upon the express ground of the bad state of her health. There is not the same reason in the other case; the property is the lunatic's, and not the daughter's. I cannot make the order extend to an inquiry as to the other daughter.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, Nov. 12.

MANTON *v.* ROE.

Practice—Defect of a suit for want of parties—Demurrer.

A creditor's suit was instituted by the judgment creditor of an intestate, against the heir-at-law of the deceased, a mortgagee and trustee for sale of a portion of the real estate of the intestate, also against a purchaser of that portion of the estate, for the purpose of having the estates administered under the directions of the Court, but without making the personal representative of the intestate a party. To this bill, two separate demurrers were put in, by the purchaser and the heir-at-law, on the ground that no personal representative of the intestate was before the Court. One of the demurrers contained a misnomer and false description, the other a false description only. Held, that on this account the demurrers must be overruled. Secus, had they been correct in such particulars; for that the suit was defective for want of the intestate's personal representative.

The bill was filed by the plaintiff, Manton, who was a judgment creditor of an intestate, Thomas John Roe, for the purpose of having the intestate's real and personal estates administered under the decree of the Court. The defendants were James Roe, the heir-at-law of the intestate; a mortgagee and trustee for sale of a portion of the real estate of the intestate, and Cadby, who was the purchaser of this portion of the estate. The bill alleged collusion between the heir-at-law, the mortgagee and trustee, and the purchaser. No personal representative of the intestate was made a party, nor was any reason given for not making him a party, except that no administration had been taken out. The defendants, James Roe and Cadby, put in separate demurrers to the bill, on the ground that no personal representative of the intestate was a party to the suit; but by some error in the engrossment, the demurrer of James Roe was expressed in this form: "This defendant doth demur and for cause of demurrer saith that no legal personal representative of the said *James* Roe, the *testator*, in the pleadings named, is a party to the suit." In this demurrer there were two mistakes, one as to the name, and the other as to the description of the party intended; the name of the party intended was in fact Thomas John Roe, and he died intestate. In the demurrer put in by Cadby, the name of the party was correctly stated, but his description was wrong, he was called a "testator," instead of an intestate; the demurrer being, that nolegal personal representative of Thomas John Roe, the *testator* in the pleadings named, was a party to the suit.

Sidebottom appeared for one of the demurring defendants, and *Sheffield* for the other.

Bethel and *Torriano*, in support of the bill.

His Honour the VICE-CHANCELLOR considered that the bill was improperly framed in not making the intestate's personal representative a party. He, however, overruled both demurrers as defective in point of form, on account of the mistakes, but *without costs*.

Monday, Nov. 25.

BOHN *v.* BOHN.

Practice—Executor—Injunction.

In a suit for the administration of a deceased trader's estate the Master had approved of a certain scheme for selling off the stock. One of the executors, conceiving that he was entitled to the control of the sale of a portion of the stock, removed it from where it was deposited, for the purpose, it was alleged, of effecting a different mode of sale from that which had been sanctioned by the Court. To restrain these proceedings an ex parte injunction had been obtained; upon coming in of the defendant's answer, in which he submitted that his right as executor justified his conduct, and therefore moved to dissolve the injunction—Held, that as both parties had proceeded upon a mistaken notion of their rights, and it not having appeared from any thing alleged that the original order was wrong, the motion to dissolve the injunction must be refused, but without costs.

This was a motion to dissolve an *ex parte* injunction that had been granted to restrain Mr. H. G. Bohn from removing any portion of the stock of books belonging to Mr. Bohn, the bookseller, of Henrietta-street, Covent-garden, deceased. In a suit for the administration of the estate of the deceased, the Master had approved of a proposal that one portion of the books should be sold by Sotheby, another portion by Evans, of Pall-mall, and the quire stock by Hodgson, of Fleet-street, and Fletcher, of Piccadilly. The conduct of the sale was intrusted to the plaintiffs, who were some of the children of the testator, and the defendant, H. G. Bohn, was alleged to have forcibly entered the house where the stock was contained, and removed some portion of it directed to be sold by Hodgson, for the purpose, it was alleged, of effecting a different mode of selling the stock to that which had received the sanction of the Court. In the answer of the defendant H. G. Bohn, on which the motion to dissolve the injunction proceeded, it ap-

peared that the method of carrying out the direction of the Court respecting the quire stock had been the subject of much correspondence between the parties and their respective agents; the defendant insisting upon his right as executor to a certain control over the books, until proper catalogues and inventories had been taken; and as he now by his answer denied the principal allegation of breaking into the premises with a view of improperly removing the stock, he submitted the injunction ought to be dissolved.

Parker and *Cox*, in support of the motion.

Stuart and *Prior*, on behalf of the plaintiffs, in support of the the injunction.

The VICE-CHANCELLOR.—I am of opinion the whole thing has proceeded in a mutual misapprehension of the parties, both on the one side and on the other, with respect to their rights. (His HONOUR here read several extracts out of the letters.) From these portions of the correspondence it is evident the solicitors for one party demand too much, and those on the other side refuse more than they ought. Hence a dispute arose which in all likelihood had never taken place, if a clear statement had been made in the first instance of the mode in which the preliminaries of the sale should be carried on. Upon the whole, however, nothing has been adduced to bring me to the conclusion that the original order to restrain a different mode of sale to that directed by the Court is wrong, and therefore I refuse to dissolve the injunction, *but without costs.*

Wednesday, Dec. 4.

MAHON *v.* O'GRADY.

Practice—Changing solicitor—New orders 26th Oct. 1841.

The 16th of the new orders 26th Oct. 1842, directs that " a party suing or defending by a solicitor shall not be at liberty to change his solicitor in any cause or matter without an order of the Court for that purpose, which may be obtained by motion or petition, as of course; and that until such order is obtained and served, and notice thereof given to the clerk of records and writs, the former solicitor shall be considered the solicitor of the party." One Richard Thomas, a solicitor, had taken his son into partnership during the progress of the suit; the question arose whether it were necessary under the above order for the party to apply to the Court to change the solicitor from the father to son, as it would be required in case the solicitor had taken a mere stranger into partnership.

Bolton appeared upon the motion.

The VICE-CHANCELLOR thought that the application under the order was necessary alike in one case as the other, notwithstanding the general opinion in practice had been the contrary.

ROLLS COURT.

Wednesday, Nov. 20.

BARKER *v.* WALTERS.

A bill to restrain an action at law on a policy of assurance, and to have the same delivered up to be cancelled or dealt with as the Court may direct, but not expressly offering to refund the premiums paid thereon in case of cancellation, is not demurrable for want of equity.

Neither is it demurrable for want of parties on the ground that it is filed only in the names of three of the directors of the assurance company (who by the authority of the board of directors, accepted and signed the policy), on behalf of themselves and all others interested in the property and profits of the company.

The bill in this case stated that the Alfred Assurance Company was established for the assurance of lives, and consisted of a large number of persons, who could not on that account be made parties, and that the business was conducted by a board of directors. On the 1st April, 1844, Charles Herbert Croft, of Pontypool, applied to the agent of the company there to effect an insurance on the life of Benjamin Walters, aged sixty in May then next. The agent accordingly sent up the usual paper of questions, filled up by Walters (falsely, it was alleged) to the company, and the three plaintiffs, by the authority of the board, accepted and signed a policy of assurance on Walters's life for 500*l.* at the premium of 31*l.* 16*s.* 8*d.* On the 7th of August Walters died intestate, and letters of administration were taken out by Mary Walters, one of the defendants. This, the plaintiffs alleged, was done by her at the instance of Croft, the other defendant, and for a consideration to enable him to obtain the benefit of the policy, which he represented to have been assigned to him by Walters in the June preceding his death. Not being able, however, to make out his title satisfactorily by the assignment, he had recourse to the other plan. The plaintiffs also alleged that they had discovered that the policy, though in the name of Walters, was really effected by Croft for his own benefit, and that Walters was subject to epilepsy, &c. which being concealed from the company, they were thereby discharged from all obligation, and there was a forfeiture of the policy. The bill therefore prayed that Mary Walters should be restrained from bringing an action on the policy; that it should be delivered up to be cancelled, or otherwise dealt with as the Court might direct, and that Croft should be declared to have no interest therein. The bill was filed by the plaintiffs (who alone had signed the policy) on behalf of themselves, and all others interested in the property and profits of the assurance company, and the defendants demurred thereto for want of equity and for want of parties.

Wood, in support of the demurrer.—When a party comes into a court of equity for relief, he must do equity. The plaintiffs, therefore, cannot insist on a clause which involves a forfeiture, and ask relief by cancelling the contract, and thereby depriving us of the policy, without offering to account for and pay back the premiums received. But there is no such allegation in the bill, though they have in their pocket 31*l.* odd of our money. [The MASTER of the ROLLS.—The bill asks for relief as the Court thinks fit.] If the party asks to be relieved on a void contract, he ought to submit himself to account; and there is a great difference between cases of account and those in which it is sought to set aside an instrument. (*Bromley* v. *Holland*, 5 Ves. 610; 7 Ves. 3, G. Coop. 9; *Byne* v. *Vivian*, 5 Ves. 604; *Mason* v. *Gardiner*, 4 B. C. C. 436; *Whitmore* v. *Francis*, 8 Price, 616.) Again, it is vague to say that the members are too numerous to be made parties. The bill states that the affairs are conducted by a board, and yet there are only three of them here. We should have all the board parties, or an allegation that these plaintiffs act under their authority. (*Attwood* v. *Small*, 9 L. J. N. S. 132.) How can these plaintiffs pledge the company? If the bill be dismissed the board can file a new one, and they have only to say to the Court that the plaintiffs had not their authority. If relief be given then at the hearing on the terms of repayment of the premiums, the Court have nobody here to charge. There should, therefore, be proper parties to represent the company

Kindersley, contrà.—I am surprised to hear of a demurrer for want of equity, because no offer has been made of repayment of the premiums. Formerly that might have been successfully contended, but the principle is now that if a party asks, as we do here, to have relief as the Court may think fit, it is unnecessary to make the offer in terms. The mere coming here is a submission,—much more is it so in a case like this. The cases cited are all those in which relief is sought from usurious contracts, and in which both parties are guilty of a breach of an Act of Parliament. As to the parties, *Attwood* v. *Small* was a case in which the relief sought affected the property of the whole company, and all persons appointed by the company to be directors were necessarily parties. It is different here,—it is only said by the bill that the business is managed by a board. Moreover the plaintiffs are trustees for the company, and liable on the policy to the party. [The MASTER of the ROLLS.—Mr. Wood says the directors may file another bill.]

Hetherington, on same side.

Wood, in reply.

The MASTER of the ROLLS, after stating the facts, said that the prayer of the bill was that the policy should be delivered up to be cancelled, or for such relief and on such terms as the Court should think fit. There was quite enough in that language of submission to the Court, and he thought it better to make no observations on the general principle. The demurrer for want of equity must be overruled. As to parties, it is said, something, in case of a decree, must be done on the part of the company, and they are not represented here. Now this argument cannot weigh; for the plaintiffs will be compelled to perform that duty to the defendants personally before obtaining the relief they ask. But it is said, that if the bill be dismissed, the other directors may file a fresh bill. Now, difficulties may occur, but if, because of this, we were to stop short, there would be an end of all proceedings. How this might be, there is no case to guide us; but if the difficulty occur, the Court will be able to deal with it. In my opinion (but I do not decide the point), in a case such as this, the other objectors would not be permitted to file a bill. I overrule the demurrer on this ground also. Let there be six weeks for answering.

Thursday, Nov. 21.

ROWE *v.* WARD.

A general authority given by one of two co-executors to a solicitor (who has acted in an original suit with the consent of both) to do whatever his co-executor may think right, does not justify the solicitor in filing a cross bill, even though it may be considered part of the defence to the original bill, without a retainer. And a motion to take a bill off the file will be granted with costs against the solicitor.

This was a motion in a cross suit, instituted by Mr. Hearne, a solicitor for the plaintiffs, who were parties in an original and supplemental suit against them as executors of Sir Richard Bassett. When they were made parties in the original suit, they had both given their consent to Mr. Hearne acting for them, and J. W. Bassett, one of them, said he would do whatever Charles Bassett Rowe, the other and the acting executor, thought fit. But on being served with the *subpœna* on 23rd May, 1844, to answer the supplemental bill, it appeared that the cross suit had been instituted in the names of both, and without the knowledge of J. W. Bassett. A motion was then made on the 23rd October, 1844, to take the bill off the file, it being stated that the fact of its being filed was first discovered by J. W. Bassett, in the month of August. The motion was endeavoured to be supported on the ground of the general sanction given by the original consent and the acquiescence in the acts of the acting executor, also that the cross suit was virtually a part of the defence in the original suit, and, lastly, that J. W. Bassett was guilty of laches in making the motion so long after the filing of the bill.

Kindersley, *Turner*, *Purvis*, *Giffard*, and *Heathfield*, for the several parties, came to an arrangement that the suit should go on, steps having been taken, the benefit of which would be entirely lost by taking the bill off the file, and that the name of J. W. Bassett should be used with indemnity for future costs.

The MASTER of the ROLLS approved of the arrangement; at the same time intimating that in the event of that not having been come to he would have granted the motion; for no solicitor ought to commence a suit without being armed with an express retainer in writing. Mr. Hearne must pay the costs of this motion.

Wednesday, Nov. 20, and Monday, Nov. 2[illegible].

TAYLOR *v.* WYLD.

The Court will not take cognizance of the regularity or irregularity, validity, or invalidity, of orders of the Judicial Committee of the Privy Council, which they are competent to make.

A bill to set aside a conveyance in fee, and to cancel an assignment of a term (alleged to be fraudulent) in aid of a writ of sequestration issued by the Judicial Committee to enforce an order for the payment of alimony, is not demurrable on the ground of the order being (according to the allegations in the bill) irregular.

Nor is it demurrable for making the assignee of the term a party, on the ground of his being a mere trustee, he being alleged to be a party to the fraud.

Mrs. Taylor, the plaintiff, is the wife of a gentleman of fortune, to whom she was married in 1830, and who separated from her in 1837. In 1835, the plaintiff instituted a suit in the Consistory Court for the restitution of conjugal rights, in which she was successful. Mr. Taylor then appealed to the Arches Court; and, pending the proceedings, the plaintiff claimed alimony, and 800*l.* a year was allowed her with his consent. On the 20th June, 1839, the Arches Court disallowed the appeal, and Mr. Taylor then appealed to her Majesty in Council. On the 10th February, 18[illegible], the Judicial Committee affirmed the judgment of the Courts below, and on the 11th their report was approved, and Mr. Taylor ordered to act in obedience to the decree. The alimony ordered to be paid by the Court below to Mrs. T. was paid under that order up to the 10th Feb. 1842, when Mr. Taylor refused to pay it any longer, on the ground that it was intended as a provision only *pendente lite*, and ceased on the sentence of the Judicial Committee. He accordingly, on the 15th June, 1842, presented a petition praying a revocation of the monition or order as to alimony, but it was refused, and the order directed to be obeyed till he complied with the sentence of the Court. On the 18th Feb. 1843, an application was made to have Mr. Taylor declared in contempt (he having refused to pay the alimony), which being informal, because of the omission of referring the matter to her Majesty in Council, was, on the 24th of the same month, duly confirmed. By this time Mr. Taylor had gone abroad to avoid process, and the surrogate having declared him in contempt, a sequestration was ordered against his goods and estates. When, however, the sequestrators went on the lands, they were told that they had been conveyed in fee to Wyld, one of the defendants, by a deed of conveyance dated 21st Oct. 1843, in trust for Taylor. The plaintiff then filed her bill against Wyld, Taylor, and Lindo, to whom outstanding terms had been assigned, to have the conveyance set aside, and the assignment cancelled, as being a fraudulent contrivance of Taylor with Wyld and Lindo to defeat her of her alimony. The bill charged that Lindo was not merely a dry trustee of the term; but the agent, &c. of Taylor, and an instrument in his fraudulent contrivances, and prayed that he might account for the moneys which he had received. The bill was demurred to by Lindo on two grounds: first, that the proceedings of the Judicial Committee were, some of them, beyond their power, and some irregular, and the sequestration, therefore, not rightly issued; and, secondly, that Lindo was not a necessary party.

Teed and *Faber*, for the demurrer.—Some of the monitions for payment of the alimony were issued by the Court below, and adopted by the Judicial Committee, though there was no appeal on that question. Others were made by the Judicial Committee themselves, but irregular, because not laid before the Queen for her approval; and though these were validated by the 6 & 7 Vict. c. 38, passed subse-

quently, yet there were others issued by the surrogate of the Judicial Committee which he had no power to make. The writs of sequestration, consequently, were improperly issued to enforce the payment of moneys improperly ordered, and are not, therefore, such as this Court will help to enforce. [The MASTER of the ROLLS.—Would a prohibition lie against the Judicial Committee if their order be erroneous?] If the order be in excess of their jurisdiction, I should say yes: an erroneous order is different. Again, if Lindo's assignment-deed be cancelled, how will that assist the plaintiff? The term will be outstanding still. It was quite unnecessary to make him a party.

Kindersley and *Turner*, contrà.—It is useless to state the grounds of jurisdiction on which this Court aids the process of other courts in removing impediments, &c. (Mitf. Eq. Pl. 126.) I contend that if the sentence is by a competent jurisdiction which has issued its process, and is unable to carry it out, this Court will give its aid. It is evident that Taylor wishes to evade the process of the Ecclesiastical Court, and Lindo is charged by the bill as a party to the fraud, and as being the agent, &c. of Taylor; relief is, therefore, clearly to be given against him. But it is said the process is invalid. The plain answer is, that the Judicial Committee is not merely a court of appeal, but an original court, and retains the cause, and goes through with it itself without remitting it back to the Court below. Of course, therefore, the cause carries with it all interlocutory orders, &c. issued by the Court below. Again, as to the surrogate issuing the monitions complained of, they are valid under the 6 & 7 Vict. c. 38; and even if there be any irregularity in the orders, that is for the Judicial Committee to set right; this Court has nothing to do with it. The writs of sequestration were issued after the passing of the 6 & 7 Vict. c. 38.

Faber, in reply.

The MASTER of the ROLLS.—This is a singular case—one of the first impression. It is a demurrer to a bill, in which Lindo, one of the defendants, is charged with concocting a fraud with the principal defendant, and with having for that purpose got a conveyance of the legal estate in a term, in respect of which relief is prayed. [His lordship then stated the facts of the case.] To this bill Taylor does not answer, Wyld does not answer, and Lindo demurs. He says, at first, the orders of the Judicial Committee were illegal, they were not competent to make them—they ought all to be considered nullities; the junior counsel, indeed, stating that some only they were incompetent to make, and the whole should therefore fall to the ground. The Act of Parliament was not at first fully read, but when it is so afterwards, it is found the Judicial Committee has, and has had for a long time, the power of making such orders—certainly when the writs of sequestration were issued. But it is said they have proceeded on a footing, the validity of which is here to be considered, and it is supposed that I can here take upon me to say whether they have done right in a case in which they are fully competent to adjudicate. That is not so. The judicial committee is not merely a court of appeal, but an original court of judicature; and how far an excess of its power may lay it open to be brought into another court by prohibition, I will not say; but here they have full power, and I cannot take upon me to say whether their orders were made after due consideration of the right of the parties or not. I have seldom been more surprised than to hear the orders of this High Court of Judicature questioned; certainly they cannot be so here, in consequence of a mere allegation that they are irregular. As to Lindo's legal estate in the term, it is said to be in trust for Wyld, and that they are both contriving fraud, and that the legal estate in the term may be employed to defeat the sequestration. The consequence is obvious. I overrule the demurrer.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Friday, Dec. 6.

SUTHERLAND v. COOKE.

Will—Construction—Conversion of Residue—Tenant for life.

A B, by will, gave all his money in the Long Annuities and in all or any of the public stocks or funds, ready money, or securities for money, outstanding debts, and all the rent, residue, and remainder to trustees upon trust by [illegible] of, or of so much thereof as should be necessary to pay his debts and legacies, and subject thereto upon trust for C D for life, and, after his decease, upon trust for other persons. It was held that C D was not entitled to take the dividends of the Long Annuities in specie, but that the Long Annuities were to be converted in the ordinary way.

William Cooke, by his will dated July 9, 1832, gave to Robert Cooke, Robert Sutherland, and Samuel Argill certain freehold messuages to hold to them, their executors, administrators, and assigns upon trust for Mary Jones, wife of John Jones, for her life, for her separate use, and after her decease upon trusts as she should appoint, and in default of appointment, the testator directed that the leasehold messuages should sink into his residue. In another part of his will the testator gave to the said Robert Cooke, Robert Sutherland, and Samuel Argill "all his money in the Long Annuities, and in all or any of the public stocks or funds, ready money and securities for money, outstanding debts, and all the rest, residue, and remainder of his estate and effects whatsoever and wheresoever, and of what nature or kind soever the same should or might consist at the time of his decease not thereinbefore specifically disposed of," to hold, &c. upon trust that they, his said trustees, should, in the first place, by sale thereof, or of so much thereof as should be necessary for that purpose, pay thereout all his debts and funeral and testamentary expenses and legacies, and subject thereto "upon trust to pay to or permit and suffer and fully authorize and empower the said Robert Cooke to have, receive, and take the dividends and interest thereof to and for his own use and benefit for and during the term of his natural life," and after his decease, upon trusts for other persons. Mary Jones, the tenant for life of the leaseholds, having died without making an appointment, the leaseholds fell into the residue. The question in this cause then was whether the tenant for life of the residue was entitled to enjoy the Long Annuities mentioned by the testator and the leaseholds *in specie*, or whether the remainder men were entitled to have them converted in the ordinary way.

Whitmarsh and *Whitmarsh*, jun. *K. Parker* and *Giffard*, and *Craig*, for the several parties.

The following cases were cited: *Alcock* v. *Sloper* (2 M. & K. 699); *Vaughan* v. *Buck* (1 Ph. 75); *Bethune* v. *Kennedy* (1 M. & Cr. 114); *Howe* v. *Lord Dartmouth* (7 Ves. 137); and *Caldecott* v. *Caldecott* (1 Y. & C. C. C. 312).

The VICE-CHANCELLOR said that he considered that the words in this will made *primâ facie* a mere gift of the residue, and that the mention of the particular fund did not prevent the bequest from being in effect residuary, and if it were a mere residuary gift, it must be followed by all the consequences of a gift of residue, and the residue must be put into a state permanently beneficial to all who are interested in it. It had been contended that that there was an intention *primâ facie* apparent that the Long Annuities should be excepted out of the residue. There was nothing in the nature of realty in the gift. The words "ready money" occurred between "stocks or funds," and the words "securities for money and outstanding debts," and after all this followed the words "rest, residue, and remainder." There was no trust for investment, but there was a direction for raising money by sale thereof, but nothing was said about calling in or conversion. The word "thereof" applied as well to ready money and outstanding debts as to the other parts of the gift. It was plain that the word "dividends" applied to dividends of the whole property when invested, and not to the dividends of the Long Annuities. His Honour said that he should be breaking down general rules, and introducing narrow and dangerous distinction, if he did not hold the words in the will to be a gift of the residue, subject to the ordinary consequences of such a gift.

Saturday, Dec. 7.

PUTNAM v. POPE.

Administrator—Foreign testator.

The executor of a testator, who was domiciled and died in the United States of America, appointed an agent to collect assets in England. The agent took out letters of administration to the testator, and the Court directed him to pay over the assets he had collected to the executor in America.

The testator in this case was the residuary legatee of a party whose assets were the subject of an administration suit. His rights had been declared in that suit, and he afterwards died at Boston, in the United States of America, which was his domicile, leaving the plaintiff in this suit his executor. The plaintiff appointed the defendant Pope, his attorney and agent, to get in the property of the testator in England, and he took out letters of administration for that purpose. The suit was instituted for the purpose of obtaining the property from the defendant.

Goodere, for the plaintiff, cited *De La Viesca* v. *Lubbock* (10 Sim. 629).

Terrell for the defendant.

The VICE-CHANCELLOR thought that, under the circumstances, the defendant might safely pay the money to the plaintiff. He fully agreed in the principle of the case cited.

CHARLTON v. SADLER.

Practice—Costs.

Special order made as to the costs of the representative of a defaulting executor.

The following question arose in this suit. A suit was instituted for the administration of the estate of Augustus Charlton. Isaac Charlton, the surviving executor, was a defaulter to a large amount, and died, leaving the defendant in this suit his executor. This suit was then instituted for the purpose of administering the estate of Isaac Charlton, and to make out against that estate the claims in respect of his default as to the estate of Augustus Charlton. The question was, whether the defendant Sadler was entitled to have all his costs of the suit, or only such as he could obtain out of his own testator's estate.

Spence, for some of the plaintiffs, cited *Adair* v. *Shaw* (1 Sch. & Lef. 246); *Humphreys* v. *Moore* (2 Atk. 106); *Williams* v. *Nixon* (2 Bea. 472); and Bennies on Costs.

Simpkinson and *Shebbeare*, for parties in the same interest.

Hoffman, for the defendant Sadler, said, that in this bill there was no charge against Isaac Charlton, much less against Sadler. The defendant Sadler was brought before the Court in two characters; one as trustee, the other as the representative of a debtor; and he submitted that he was entitled to his costs.

Spence, in reply.

The VICE-CHANCELLOR directed that all the costs of all the parties, so far as they were occasioned by the default of Isaac Charlton or his insolvency, should be added to the debt due from Isaac Charlton; and as to the other costs of Sadler, they should be deducted from the first-mentioned costs, so that the costs to be added to the debt would be diminished by that amount.

Monday, Dec. 9.

CUDSEY v. PRITCHETT.

Practice—8th Order of August, 1841.

Liberty given upon an ex parte application to enter an appearance for a defendant on the 8th Order of August, 1841, although two lunar months had elapsed since the service of the subpœna.

Hall moved for liberty to enter an appearance for the defendant, James Pritchett, under the 8th Order of August, 1841. The affidavit stated that personal service of the subpœna had been made upon the defendant on the 12th of October last, so that two lunar months had elapsed since the service. It was stated that there would be much difficulty in serving the defendant with notice of this application.

Ordered.

STOOKE and WIFE v. VINCENT and OTHERS.

Practice—Plea—Separate property of wife—Release.

To a bill filed by a husband and wife regarding the separate property of the wife, a plea stating the release by the husband is good.

By a bond dated the 30th June, 1787, John Vincent was bound to John Beviss, the younger, and John Wheadon, in a penal sum to secure the payment by him, his heirs, executors, or administrators, to the said John Beviss, the younger, and John Wheadon, their executors, administrators, or assigns, of the sum of 303*l.* 3*s.* 3¾*d.* with interest. This sum was trust money which belonged to Sarah Vincent, the wife of John Vincent, for her separate use. Sarah Vincent, by her will, dated the 9th of February 1814, gave to her husband the interest of the sum for his life, and she gave the residue of her estate to Sarah Stooke (the plaintiff) for her separate use, and appointed Sarah Stooke her executrix. Sarah Vincent died the 8th December 1814, and John Vincent her husband retained the interest of the sum during his life, and died on the 10th April, 1830, having by his will, dated the 2nd of March, 1830, appointed his three sons (three of the defendants) his executors. John Wheadon, the surviving trustee, died on the 29th of November, 1829, having by his will (dated the 15th of February, 1810) appointed his wife (since deceased) and his two sons (two of the defendants) his executrix and executors. This bill was filed for the purpose of obtaining payment to the plaintiff, or to Wheadon's executors as trustees for her, of the sum due on the bond.

To this bill the three defendants Vincent pleaded that the plaintiff, Edward Stooke, by a deed of release dated the 15th of April, 1818, in consideration of the conveyance and assignment of certain leasehold closes, pieces, or parcels of land and hereditaments or chattels real of the said testator, John Vincent, in the county of Somerset, and which were by the same indenture assigned by the said John Vincent to Samuel Ware, his executors, administrators, and assigns, for the residue of a term of ninety-nine years, upon trusts for the benefit of Sarah Stooke and the issue of Edward Stooke and Sarah his wife, he, the said Edward Stooke, for himself, and Sarah his wife, and their respective heirs, executors, and administrators, remised, released, and for ever discharged the said John Vincent, his heirs, executors, and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, controversies, damages, claims, and demands whatsoever in law and in equity, which against the said John Vincent they, the said Edward Stooke and Sarah his wife, then had, or which they and their respective heirs, executors, or administrators thereafter could, should, or might have, for, upon, or by reason of any matter, cause, or thing whatsoever.

G. M. Crawford, for the plea, argued that the joinder of the husband and wife as plaintiffs made it the husband's suit, and to such a suit the plea of the husband's release was good.

Moore, for the plea, cited [illegible]

The VICE-CHANCELLOR.—This is a [illegible]

the plaintiff says upon the face of his bill that he has no title, and the defendant has filed a plea stating that the plaintiff has released that no right or no title. I am not prepared to say that such a plea will not do—I think the plea will do; I shall, therefore, allow the plea, and, without prejudice to any application to amend the bill, the defendants, the Vincents, consenting and undertaking to allow the plaintiff's solicitor to inspect the deed of release, and to take a copy thereof at the plaintiff's expense at any reasonable time before the 25th instant, let the plaintiff pay the costs of the plea.

Tuesday, Dec. 10.

ADAMS *v.* PAYNTER.

Practice—Foreclosure suit—Judgment creditors—23rd order of August 1841.

In a foreclosure suit it is not sufficient to make judgment-creditors parties by service of a copy of the bill upon them, under the 23rd order of August 1841.

A preliminary question in this case was raised, viz.: whether it was sufficient in a bill of foreclosure to serve a copy of the bill under the 23rd order of August 1841 upon judgment creditors, or whether it was necessary to make them substantial parties.

Simpkinson and *Miller*, for the plaintiff, cited *Neate* v. *Duke of Marlborough* (3 Myl. & Cr. 407); *Bishop of Winchester* v. *Beavor* (3 Ves. 314); *Draper* v. *Earl of Clarendon* (2 Vern. 518); *Burgh* v. *Francis* (cited in 3 Swanst.); *Finch* v. *Earl of Winchelsea* (1 P. Wms. 127); and *Rose* v. *Page* (2 Sim.).

Russell, *Chapman*, and *R. W. Moore*, for different defendants, were not heard.

The VICE-CHANCELLOR.—This is the case of a bill filed by a first mortgagee to foreclose. It appears upon the face of the bill, and it is admitted that there is a puisne mortgagee, or an incumbrancer tantamount to a mortgagee, a party to the bill, and that there are judgment-creditors intervening between the first and second mortgagees. Ever since I have known the practice of the Court, such an incumbrancer is a necessary party to a bill of foreclosure. I conceive that I should be acting against established rules if I were to suggest a doubt upon the subject. There are certainly cases of judgments *pendente lite*, or of fraud, or when the numbers of such creditors may be inconveniently large, but that is not the present case, nor is it suggested that there is any particularity of that kind here. If they had not been made parties, such a case when brought to a hearing must have stood over for want of parties. But these persons are on the record, and therefore it is the case of there being parties on the record who have not answered. Such a bill then comes on to be heard, and it is said that the answers are not necessary, as the parties have been served with a copy of the bill under the 23rd order. The very grounds upon which the judgment-creditors are necessary parties to such a bill, shew that direct relief is asked against them, and therefore it is not a case within the order.

VICE-CHANCELLOR WIGRAM'S COURT.

Monday, Nov. 25.

BADSON *v.* DUNGWORTH.

Practice—24th order of August 1841.

Leave was given, upon motion, to enter the memorandum under this order upon the statement of counsel that no account, or other direct relief, was sought against the defendant, *without producing* an affidavit to that effect. (*Mawhood* v. *Labouchere*, 12 Sim. 36; *Davies* v. *Prout*, 5 Beav. 102.)

Tuesday, Dec. 3.

DICKINS v. BARKER.

Legacy, specific or demonstrative.

A legacy, directed to be paid out of a specific property, cannot, upon failure of that property, be charged upon the general estate.

This was a demurrer to a bill seeking to have a testator's personal estate charged with the payment of a legacy of 1,000*l.* which was directed to be raised by the sale of the timber upon the testator's estate.

Tinney, Q. C. for the demurrer, argued that a specific gift exonerated the personal estate, on the authority of *Bootle* v. *Blundell* (1 Mer. 195); *Ricketts* v. *Ladley* (3 Russ. 418); *Read* v. *Litchfield* (3 Ves. 479).

Romilly, Q.C. for the bill.—The cases which relate to the exoneration of personal estate do not here apply; but the cases do which relate to the question whether this is a specific or demonstrative legacy. A gift of a specific sum is different from a legacy charged upon a specific thing, which, if you take away, the legacy becomes chargeable on other property, unless specially exonerated, and is demonstrative. (*Man* v. *Copland*, 2 Mad. 223; *Colville* v. *Middleton*, 3 Beav. 570; *Fowler* v. *Willoughby*, 2 S. & St. 354; *Campbell* v. *Graham*, 1 Russ. & Myn. 453; *Rook* v. *Worrall*, 11 Sim. 216.)

Vice-Chancellor WIGRAM said that he must construe this legacy as a specific one, and that accordingly the personal estate must be exonerated from its payment.

Demurrer allowed.

Tuesday, Dec. 10.

MALLILIEU *v.* MILLER.

JUDGMENT.

His HONOUR gave judgment upon a motion made in these proceedings by the defendant for a new trial at law, on the grounds of the insufficiency of the plaintiff's evidence, upon which the jury found their verdict, and also of the inadmissibility of that evidence, and the consequent misdirection by the judge to the jury in reference to it. The proceedings at law were directed by this Court for the purpose of trying an issue as to the existence and credibility of an agreement upon which the plaintiff's equity and relief in this suit depended. The circumstances of the case arose out of the bankruptcy of Coupland and Co. of Liverpool, who were agents for Crawford and Co. in London, for the purpose of causing consignments to be made through Crawford's house to India, and the duty of Coupland was to advise Crawford's house as to the amount of advances they might safely come under upon the consignments, and the return consignments were to be made through Crawford's house for their security, and the surplus proceeds forwarded to the owners. Such being the arrangement between the two houses, Coupland was anxious to make consignments on his own account to Crawford's; but, in order to prevent Crawford from suspecting they were his own, an agreement was made between Coupland and Mallilieu, the plaintiff, to the effect that Mallilieu should be ostensibly the owner of the consignments, and that the return consignments should also be made through Crawford to Mallilieu. A large business was accordingly carried on under this agreement, and Mallilieu was considered so much the real owner of the consignments, that upon the bankruptcy of Coupland and Co. when the assignees claimed some property then in the possession of Crawford and Co. arising from Mallilieu's consignments, it was objected by Crawford that the property claimed belonged to Mallilieu, and not to Coupland. It appeared that Mallilieu had been in the habit of accepting bills for Coupland, and a large balance was, at the time of the bankruptcy, due from Coupland to Mallilieu in respect of those transactions between themselves, and, as a security to Mallilieu, he was allowed by Coupland to repay himself out of the return consignments which passed through his hands. A claim, therefore, to this effect was made by Mallilieu upon the bankruptcy of Coupland, and it being resisted by the assignees and Crawford, he filed his bill against them, stating the amount due to him from Coupland, and that Crawford and Co. had in their hands property arising from consignments for which they were accountable to him, and praying relief accordingly; as although it might be said that the transaction as between Coupland and Crawford was on Coupland's part fraudulent, as Coupland thereby placed himself in a position in which his duty and his interest were opposed to each other, yet he, Mallilieu, was ignorant of the fraud, and ought not to be affected by it. On the other hand, Crawford and Co. having discovered that the consignments made to them in Mallilieu's name were the property of the bankrupts, and being creditors, insist upon their right to consider them as the owners of the consignments, and to repay themselves out of that property. The issue, therefore, was directed to try whether in effect Mallilieu had a lien on the consignments for the balance owing to him on his general account.

His HONOUR was of opinion that the jury had found rightly upon the evidence for the plaintiff, and refused the motion.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Monday, Nov. 25.

PHILLIPSON *v.* LORD EGREMONT.

Pleading.

JUDGMENT.

Lord DENMAN, C. J. in delivering judgment, said, this was a writ of *scire facias* against the defendant as a member of the Commercial Steam Packet Company to have execution on a judgment obtained against the company in the name of their officer. This company was formed under letters patent granted under the provisions of the 1 Vict. c. 17. The first objection to the declaration was, that it did not allege to what extent the defendant was liable by the letters patent, and whether his liability was in any respect limited according to the power given by the 4th section, the execution being on such ground limited also by the 24th section. We are clearly of opinion that, whether there be any such limitation as has been stated by way of plea by the defendant, that it was unnecessary for the plaintiff to notice it at all. The next objection to the declaration was, that the declaration does not shew the defendant to have been a member of the company when the cause of action accrued, but only when the promise was made; the answer is, that this being an action of *assumpsit*, the promise is the legal cause of action. But a third plea is here set up, which alleges that the defendant was not, at the commencement of the suit, liable as an existing or future member of the company. This plea is founded likewise on the 14th section, but it is bad, because it concludes to the country. The plea does not deny the allegation in the declaration. The declaration alleges that the defendant, at the time of the promises, and from thence and until after giving judgment, and from that time hitherto, hath been and still is a member of the company: the plea does not deny his being so a member, but states that, at the commencement of the suit, he was not liable as a member, and therefore it is insufficient and bad. The next objection was raised by the fourth plea, founded on the 5th section of the Act. It is sufficient to say that the matter of this plea might have been pleaded to the action itself, which has not been done. That principle, which has been settled long ago, was fully supported in the case of *Bradley* v. *Eyre* (11 M. & W.). The same answer disposes of the objection raised by the fifth plea. The fifth plea alleges that the judgment was recovered in respect of a demand for which the company was not by law liable, and applies to the officer sued; and it appears, that, in consequence of certain fraudulent proceedings, and by connivance, the plaintiff suffered judgment to be recovered, in order to charge the defendant. Now, so far as this plea states that the company had a defence to the action, it is open to the same answer as the fourth and sixth pleas, namely, that the defence should have been pleaded to the original action. It was suggested by the plaintiff that possibly such defence might have been made upon the Statute of Limitations, or the Statute of Frauds, or any other technical defence not touching the merits of the case, which might have been most honestly made, and doubtless it might have been most consistent with the facts; but the gist of the plea is that the company, not being liable by law, fraudulently, and by connivance with the plaintiff, suffered a judgment in order to charge the defendant. Now, if this allegation be true, the defendant certainly ought to have some remedy; and the question is, whether the remedy is by pleading, as he has done, or by a motion of the court. We are far from saying the latter course is not open to the defendant. Fraud vitiates every thing; and no doubt the remedy of the Court will be that which is suggested in *Bradley* v. *Eyre*. Still, such a plea as the present may be good, as in the case of *Fuller* v. *Rickarby* (2 M. & G.), wherein Tindal, C.J. stated that it would be good if the plea had alleged that fraud was practised on the original defendant. That would have been open to the answer made upon the fourth and sixth pleas; but as it alleges fraud and collusion between the plaintiff and the defendant in that action, for the purpose of charging the present defendant, there was no opportunity for him to plead that before. We are of opinion that such fraud and collusion are sufficiently stated by the fifth plea, and a question of fact thereby raised, properly within the province of the jury to determine. We were reminded on the argument that where such a question of fraud had arisen on the motion to set aside the pleading to the *sci. fa.* we then directed an issue to try the fact, rather than determine ourselves on affidavit. The case of *Bosanquet* v. *Graham* furnishes forcibly an argument to shew that such facts may be pleaded, and the defendant is open to do so. On the whole, we think our judgment must be for the defendant on the fifth plea, and for the plaintiff on the others.

DOE *dem.* ROBERTS *v.* BOUSFIELD.

Knowles, Q. C. had moved to enter a nonsuit in this action. The Court now gave judgment.

Lord DENMAN, C. J.—The lessor of the plaintiff claimed under a lease for twelve years granted by Scott. By the custom of the manor, tenants may demise, without license, for three years and no more. The defendant was tenant from year to year to Scott, and held over after notice to quit. It was objected that the lease for twelve years was void, and conferred no title on the lessor of the plaintiff; for which *Jackson* v. *Neal* (Croke Elizabeth, 394) was cited. This case is important in establishing that a lease beyond the custom is not void, but only that it may be waived by the lord, and which the reversioner even cannot avail himself of, but must be considered as a mere stranger. There is no ground, therefore, for the present application, and we do not wish to encourage such applications by granting the rule.

Rule refused.

[illegible], *Dec.* 2.

WHEELER *v.* BRANSCOMB.

In this case there were four actions of *replevin* against the same defendant, and the parties bound themselves to decide the three last by the result of the first. The verdict was for the defendant.

Greenwood now shewed cause against a rule for withdrawing the pleas of *non tenuit* and *riens in arrears*, and entering a discontinuance.

Rule absolute.

REG. *v.* ROYDES and OTHERS.

Mandamus to compel the levy of rates too late after four years—Acquiescence in an agreement with a party to pay a fixed sum.

Baines, Q. C. (with whom was *Butt*), shewed cause

against a rule for a *mandamus* to compel the defendants, who are justices for the county of Lancaster, to enforce the payment of certain poor-rates in the parish of Todmorden, made in pursuance of a certain agreement made by Mr. Stansfield, an assistant overseer, with a rate-payer, in the year 1840, to the effect that certain prospective rates should be greater than the last effective rate. Subsequently the magistrates ordered a new rate, on the footing of the last effective rate, according to 41 Geo. 3, c. 23, s. 2. The question then arose, whether the parish had any right to make this agreement, or the justices to allow the rate. (*Harper* v. *Ker*, 7 T. R. 270.) The application, it was also contended, was made too late, other rates having been since made on the same basis.

It also appeared that notice of the rates was affixed only upon one of the entrances to the principal church, although there was another church, disused for divine service, but used still for burials, upon which church door there was no notice at all, the statute requiring the notice to be affixed on all the doors *of all* the churches. The rates must be properly published. (*Sibbald* v. *Roderick*, 11 Ad. & Ell. 38; *R.* v. *Newcomb*, 4 T. R. 368.) The assistant overseer acted as overseer. (*Slingkey* v. *Savage*, 11 M. & W. 503.)

The *Solicitor-General* (with whom was *Archbold*), *contrà*.—The old church being used for funerals only, it is ridiculous to suppose the Legislature intended the notices to be put up there. The magistrates had no power to make the allowance of the rates founded on this so-called agreement.

By the COURT.—It is perfectly clear that this long delay in coming to the Court for a *mandamus* precludes us from granting it now. Many rates have been made since the agreement in question, and the parish must be taken to have acquiesced in what was then done, and to have tied their hands by their own act. We need not enter into the question of the publication of the rates, which it is not necessary we should decide, though we think that probably any chief door of the principal churches would suffice for affixing the notices, to which, however, it is desirable to give every publicity. The magistrates do not appear to us to have been in fault, though certain imputations appear on the affidavits.

Rule discharged with costs.

EXCHEQUER CHAMBER.

Saturday, Dec. 7.

ROGERS *v.* SPENCE.

The right to bring trespass quare clausum fregit does not pass to the assignees of a bankrupt, although in consequence of the trespass the bankrupt's property may have been diminished.

The arguments in this case in the court below are reported in 11 M. & W. 191, and referred to in 2 Law T. 276.

JUDGMENT.

Lord DENMAN, C.J.—This was an action of trespass in which the plaintiff below complained that the defendant below broke and entered his house and garden, and damaged the doors, &c. of the house, and the trees of the garden, and seized certain goods of the plaintiff, and exposed them for sale on the premises without his leave, whereby the plaintiff and his family were disturbed and annoyed, and the plaintiff prevented carrying on his lawful business. The defendant pleaded to the further maintenance of the action that the plaintiff became a bankrupt after the action was brought, and an assignee had been appointed, whereby the causes of action became vested in the assignee. To this plea there was a general demurrer, in which the Court of Exchequer, relying on the case of *Clarke* v. *Calvert* (8 Taunt. 742), in the Common Pleas, gave judgment for the plaintiff. As the plea avers that the causes of action vested in the assignees, it must be taken to be so in fact, if in law it be possible they should. The question therefore is, whether there be any cause of action materially; that is, substantially; and not merely by way of aggravation stated in the declaration, which could not possibly vest in the assignee; if there be, the plea is bad; if not, it is sufficient. On the bankruptcy of a trader, there are some rights of action to which he may be entitled, which vest in the assignee, and some which would not; and the question is, whether there be any right of action in this case which belongs to that class which does not vest in the assignee. The 6 Geo. 4, c. 16, which does not in this respect substantially vary from the previous statutes, gives to the assignees, by secs. 63, 64, and 68, all the personal and real estate of the bankrupt, and all debts due or to be due to him; and as the object of the law is manifestly to benefit the creditor, by making all the pecuniary means and property of the bankrupt available, it has, in furtherance of this object, been construed largely, so as to pass not only what in strictness may be called the property and debts of the bankrupt, but also all the rights of action in cases of real or personal damage, by which his property had been diminished in value, withheld, or taken away from him. But causes of action not falling within this description, but arising out of violence to the person of the bankrupt, for which he is entitled to damages, whether his property be diminished or impaired, or not, are clearly not within the letter, and have never been held to be within the spirit of the enactment, even in cases where an injury of this kind may have been accompanied or followed by loss of property. And to this class, the action of trespass *quare clausum fregit* must be considered to belong. These rights of action are given in respect of the immediate and present violation of the possession of the bankrupt, independently of his right of property and the protection which the law throws around the person, and substantial damages may be recovered in respect of these rights, where no loss or diminution of property has accrued. And even where such an incident has accompanied or followed a wrong of this description, the primary personal injury to the bankrupt being the principal and essential cause of action, it still remains in him, and does not vest in the assignee. On these grounds the case of *Clarke* v. *Calvert* appears to have proceeded, and on these grounds the present judgment must be affirmed. *Judgment below affirmed.*

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Tuesday, Dec. 10.

(Before Mr. Commissioner FONBLANQUE.)

In the Matter of JAMES TAYLOR, an Insolvent Debtor.

A final order rescinded.

This being the first rescinding of a final order, much interest was excited. The insolvent a coffee-shop keeper, filed his petition for protection under the 5 & 6 Vict. on the 15th June last, and obtained his final order in August following.

Buchanan, on behalf of several creditors, urged that his Honour should rescind the same so far as relates to the protection of the person from process, on the ground that the petition had been filed in fraud, and the insolvent had not made a full disclosure of his estate and effects, in proof of which several respectable witnesses were called, and stated that the insolvent had given a bill of sale of the whole of his property ten days before the filing his petition in this Court for 70*l.* Although no consideration was proved to have been given, a few days after obtaining his final order, he called on a creditor named Hopkinson (a grocer) for the purpose of borrowing money, and offered as security a bill of sale of his property, and when asked how he happened to have money so soon after his insolvency, he answered, "It's all right, the things are mine; Osborne only held them till I got my final order." Other creditors proved the insolvent had offered his business, &c. as being his own. His attorney tried to prove that it was done by his client merely as the agent for Osborne, and on being severely cross-examined by Mr. Buchanan, the insolvent denied all the facts. The Commissioner then adjourned the case until the 20th November, that Osborne might attend and be examined. He attended accordingly, and told the Court he had lent the insolvent 40*l.* for which the bill of sale was given; and when asked where he got the money from, said he had sold and pledged goods to the amount, but did not know where he had pawned them. This statement appeared so improbable that his Honour again adjourned the case till to-day, that Osborne might furnish Mr. Buchanan with better particulars as to how he obtained the money, and on the case being called for hearing, neither Osborne nor the insolvent was present, although notices had been specially sent them.

His HONOUR, after hearing Mr. Buchanan for the creditors, said it was a gross case of fraud, and rescinded the final order as far as relates to the protection of the person from process.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner Serjt. STEPHEN.)

Wednesday, Dec. 4.

Re STEPHEN YEARSLEY.

An insolvent arrested after final order, may obtain an order for his discharge on application to the Commissioner who made the final order.

This insolvent had obtained a final order under 5 & 6 Vict. c. 116, notwithstanding which, a creditor named Heane, who was properly included in the insolvent's schedule, and who had received express notice of the petition, had taken the insolvent in execution, and now detained him for a debt inserted in his schedule.

A. W. Gay, of Cheltenham, on an affidavit of these facts, applied under 7 & 8 Vict. c. 96, s. 29, for an order for the petitioner's immediate discharge.

His HONOUR observed that the grammatical construction of the words, "such order as last aforesaid," occurring in sec. 29, inclined him to doubt whether it was applicable to the petitioner's case, and referred to and commented upon the 25th section in connection therewith, and also sections 6 and 23.

Gay contended that the 23rd section related only to the case of a prisoner "at the time of filing the petition," whereas the 29th section applied to all parties arrested after final order. (*a*)

His HONOUR said, as there was some doubt on the wording of the statute, he would, in this case, only grant a rule calling on the plaintiff to shew cause why the petitioner should not be discharged.

Rule nisi granted accordingly.

On the 2nd inst. *Gay* produced an affidavit of service of the rule *nisi*, and quoted *Ex parte Hewitt* (Birmingham, 9th May, 1844), in which Mr. Commissioner Daniell held that the Court could exercise the power now prayed for. The judgment of that learned commissioner was to the effect, among other things, "That he had no doubt that the arrest of a party who had obtained a final order under the 5 & 6 Vict. c. 116, was a contempt, and was punishable in the same manner as contempts of all other courts of record. If it were otherwise, that statute, so far as related to some of its most important enactments, would be a dead letter; for he knew not by what other means the protection professed to be given by the order could be enforced in cases where a judgment had been entered up before the date of the order." And as to this being the proper Court to apply for the insolvent's discharge, the learned commissioner observed, "He thought he was not unwarranted in drawing the conclusion, that in case of an arrest of an insolvent after a final order upon a judgment entered up before it, the judges of the superior courts would not feel themselves authorized to order the insolvent to be discharged." After referring to the impossibility of the petitioner's pleading the final order in bar, where the judgment was entered up before the granting of the final order, *Gay* concluded his quotations with the following paragraph from the same judgment:—"The insolvent would be wholly destitute of the protection intended to be afforded him if that Court did not possess the means of enforcing it; and that it does possess them he had no doubt. He had no doubt that such arrest, if made by a party duly apprized of the existence of such an order, was a contempt of Court, punishable by fine or imprisonment; and that if an insolvent so arrested should make an application to that Court, he should not have a moment's hesitation in ordering his discharge; and on being satisfied that the contempt was wilful, should visit it with such punishment, either by way of fine or imprisonment, as the circumstances of the case might appear to require. That the production of such order, signed by the commissioner, would be perfectly sufficient, without further proof, to render the party or officers amenable to all consequences of disobedience; and he should have adopted the course pursued by Lord Eldon in *Ex parte Byrne* (1 Ves. & B. 316; 1 Rose, 451), and have ordered the plaintiff in the action and the officers to discharge the insolvent instanter."

His HONOUR said that he was desirous of affording the detaining creditor a further opportunity of explanation; and directed that Heane should be served with notice to the effect, that unless he shewed cause to the contrary, the Court would on Wednesday make a peremptory order for the petitioner's immediate release from custody.

On this day, on production of an affidavit of service, and no cause being shewn to the contrary, his Honour granted the order prayed for.

Monday, Dec. 9.

Re LANE.

Creditors may only oppose in person or by attorneys enrolled in the Court—Practice on shewing cause against final order.

This was the day named for the insolvent's final order, when *Gaisford*, of Berkeley, solicitor, appeared, and stated his intention to oppose on behalf of a creditor.

Homes, for the insolvent, objected that Mr. Gaisford was not *enrolled* in this Court.

His HONOUR.—I cannot allow any person to appear and oppose for a creditor, unless the party appearing is an attorney duly enrolled in this Court.

Gaisford then said he was himself a creditor, and on its appearing that he was entered as a creditor for a sum of thirty shillings for law charges, he proceeded to oppose on his own account. He proposed to examine the insolvent, when

Homes objected that the insolvent had already passed his examination; this was the day named for the final order, and if the opposing creditor wished to examine the insolvent for any purpose, it must be only as a witness, and the purpose must be stated beforehand. He submitted that the opposing creditor had now upon himself the whole burden of shewing cause against the final order, and should first

(*a*) By the decision of the Court of Queen's Bench, in *Re Partington*, reported *ante*, p. 173, the order which the Commissioner is empowered to give by section 29, is decided to be a final order to take effect at a future period, with a limit as to the power of [illegible]

state what cause he proposed to shew, and then prove his case by witnesses.

His Honour.—We invariably require creditors opposing on the final order to state the grounds of opposition on which they rely.

Gaisford then said, the points he relied on were the omission of a creditor, and that the schedule did not contain a full discovery of the insolvent's estate.

Homes objected that it was now too late to enter into the grounds of opposition mentioned in sec. 24 of 7 & 8 Vict. c. 96. Creditors relying on any such ground of opposition should oppose *on the day for the first hearing, or some adjournment thereof.* Notice of that day was now given to the creditors, and it was their own laches to neglect it, and delay their attendance until the final order. The words "on the *day for the first examination, or some adjournment thereof,*" ride over the whole of the 24th section, and there is no other clause in either of the Acts which permits a creditor to oppose on any of those grounds after a day has been named for the final order.

His Honour.—Then what is *shewing cause against the final order?*

Homes.—Pointing out some fatal objection to the proceedings; such as, for example, an inaccuracy in the petition or affidavit; proving that insolvent was a trader liable to the bankrupt laws, or shewing that he had not resided within the district for twelve months. All such matters as these may properly be shewn as *cause* against the final order; but by the 24th section the commissioner is to be satisfied that the insolvent has made a full discovery, &c. *before*, and not *after*, a day is appointed for the final order. It has been decided that a remand could not be made under the 24th section on the day of the final order for the same reason.(a) The object of the Legislature seems to have been to require vigilance on the part of the creditor, and limits him to only one opportunity of opposing. After the first hearing, the matter is settled as far as regards any of the points of opposition enumerated in section 24, and the creditor can then only shew cause on some fundamental objection, striking at the jurisdiction of the Court in the matter of the petition.

Gaisford said that his debt being under 5*l.* he had no notice of the first hearing.

His Honour.—The words in the two Acts relative to naming a day for the final order are exactly the same; by the 4th sec. of 5 & 6 Vict. c. 116, the Court was "to cause notice to be given that on a certain day to be named therein, he would proceed to make an order, *unless cause be shewn to the contrary,* which order shall be called a final order." The words in the 24th section of 7 & 8 Vict. c. 96, are precisely the same. Under the first Act, a creditor was allowed to oppose on the day named for the final order on any of the grounds set forth in the 4th section of that Act; and the words of the new Act being the same, I see no reason to alter the practice. Why is the power of adjourning the final order *sine die* given by section 27 unless an opposition be contemplated? It appears to me that the Court has even a wider discretion as to the cause that may be shewn against the final order than it has under the 24th section, which specifies particular grounds of opposition. I will not *at any time* refuse to permit a creditor to examine the insolvent on a suggestion that a true account has not been given of his estate and effects: to refuse such a permission may lead to mischief and encourage fraud.

Gaisford then proceeded with his examination.

Ecclesiastical Courts.

ARCHES COURT.

Saturday, Nov. 2.

The Dean of the Arches took his seat at ten o'clock, and opened the Ecclesiastical Courts with prayer and the usual formalities.

The Office of the Judge Promoted by Titchmarsh v. Chapman.

When clergymen are called upon to read the Burial Service of the Church of England over the body of a parishioner, what is the "convenient warning" to which they are entitled under the 68th canon.

This is a proceeding under the Church Discipline Act, brought by letters of request from the Bishop of Ely, against the Rev. Herbert Chapman, vicar of Basingbourne, in the diocese of Ely, for having violated the 68th canon of the Church of England by refusing, without sufficient cause, to bury the corpse of the infant daughter of a parishioner on the 26th of May, 1841."

The articles laying the charge having been admitted, a defensive allegation was offered on behalf of the Rev. H. Chapman. It pleaded that the parents of the child belonged to a sect known as Independents; that the minister and members of that sect avowed open hostility to the Church of England, and that consequently they were *ipso facto* excommunicate; that the child herself had been baptized by a minister thus excommunicate; that the baptism was thereby heretical and schismatical, and in consequence the child, being "unbaptized" within the meaning of the Rubric of the Book of Common Prayer, was not entitled to have the burial service of the Church read over her body. This defensive allegation was rejected by the Court during the last Term, in a very elaborate judgment. (Reported at length in 3 Law T. 353.)

The articles having gone to proof, the case now came on to be heard upon the evidence.

Phillimore and *Harding*, for the rev. defendant.—The canon under which this proceeding has been instituted provides that "convenient warning" shall be given to every clergyman before he is called upon to perform the burial service. Indeed, that warning is absolutely necessary to an obedience of the requirements of the canon. It enjoins that the Burial Service shall be read over all parishioners excepting those who are "excommunicate." Without notice, how can a clergyman tell who have or who have not been excommunicated? —and if he read the service over a corpse not entitled thereto, he is liable to censure. So "convenient warning" being indispensable, what was the warning given in this case? The evidence is, that the father of the child took the corpse to the porch of the church—there left it—then ran down to the vicarage, and, meeting the vicar, requested him at once to bury the body. Was this "convenient" warning? Did this enable the vicar to ascertain whether the person to be buried was or was not excommunicate? To hold such to be the due notice required by the canon would be to introduce scandal and confusion into every parish of the land. The present is a criminal proceeding, and the objection that the defendant had relied upon another and more substantive defence at the time, is utterly opposed to every principle prevailing in such cases.

Sir *J. Dodson*, Q.A. and *Addams*, contrà.—Here the charge against the clergyman is not that he has been guilty of delay, but that he has twice positively refused to bury the body of a child entitled to the privilege of the Church Burial Service. To the former case alone do the words of the canon requiring "convenient warning" apply. No such notice is requisite in a case of refusal. But if this be not so, the evidence proves adequate warning. From the notoriety of the circumstances the defendant must have been aware of the intention to bring the body, and his sole ground of refusal was not the absence of notice, but the inefficacy of the child's baptism.

Sir H. Jenner Fust.—The great point is, whether "convenient warning" has or has not been given; and as it is important to clergymen to ascertain what is sufficient notice in these cases, I shall take time to consider. *Cur. adv. vult.*

The Office of the Judge Promoted by Nurse v. Henslowe.

The refusal to bury the body of a parishioner baptized by a minister of the sect denominated "Primitive Methodists" is a violation of the 68th canon,(a) and incurs the punishment of suspension for three months. The Court has no power in a proceeding under the canon to alter the penalty.

This is also a proceeding by articles under the Church Discipline Act, brought by letters of request from the Bishop of Norwich, against the Rev. Wm. Henry Henslowe, perpetual curate of the parish of Wormegay, in the county and diocese of Norwich, for having refused, on the 17th of February and the 3rd of March, 1844, to bury the corpse of Sarah Bowden, a parishioner, who had been baptized by a minister of the sect known as "Primitive Methodists."

The articles having been admitted, the rev. defendant (who conducted his own case) gave thereto a negative issue; but subsequently he has retracted that plea, and given an affirmative issue, thereby admitting the facts as set forth in the articles.

Harding and *White*, for the promoters, cited *Mastin* v. *Escott* (2 Curt. 692).

Sir H. Jenner Fust said that, however the Court might lament the position in which the rev. defendant had placed himself, it was bound to pronounce sentence in the terms of the canon. As the proceeding was not under the general ecclesiastical law, the Court had no discretion to diminish or increase the punishment, which the canon had fixed at suspension from the ministry for three months. The Court could not conclude the case without observing that a long protest in arrest of judgment had been delivered to the registrar by Mr. Henslowe. It went into a history, of which no notice whatever could be taken, referring to persons and matters not before the Court, and attributing to those persons the most malevolent motives. The Court lamented that a case of this kind should be brought before it, and that a clergyman should place himself in a situation from which the Court could not relieve him. It would be wise on the part of clergymen to recollect that an unsuccessful opposition to a legal right only afforded a triumph to those who sought the downfal of the Established Church. It was his duty now to pronounce that the defendant in the cause had incurred the penalty affixed by the canon, unless he had any thing to urge to the contrary.

Mr. Henslowe alleged that justice had not been done him. He complained of the proceedings.

Sir H. Jenner Fust.—You have admitted the facts as set forth in the articles.

Mr. Henslowe.—I did so because I was intimidated on the ground of costs. I was sensible that there was a predetermination.

Sir H. Jenner Fust.—I cannot hear this. I must desire the registrar to record that Mr. Henslowe is suspended from the ministry for the space of three months, and he is condemned in the costs of the proceedings.

Mr. Henslowe.—I solemnly protest against this judgment. I will appeal to the great council of the realm and to the Convocation.

Sir H. Jenner Fust.—If you mean to appeal, you must appeal to her Majesty in Council. Let the sentence take effect from the 10th of November.

Nisi Prius.

QUEEN'S BENCH.

Saturday, Nov. 30.

(Before Lord Denman, C.J.)

Hill v. Stratford.

Under a plea of illegality of consideration and notice thereof to an action on bill of exchange, evidence of the pecuniary circumstances of the person from whom the holder obtained it may be given, as it may afford a ground for the jury to infer that the holder had sent notice.

This was an action on bills of exchange for 3,550*l.* by the plaintiff as indorsee, against the defendant as acceptor. Amongst other pleas it was pleaded that the consideration of the bills was a gambling debt due to the drawer, one Coghlan, and that the plaintiff had discounted them with notice. The evidence clearly established the illegal nature of the consideration as alleged, and then evidence was offered of the pecuniary circumstances of Coghlan, for whom the plaintiff had discounted the bills for 3,000*l.* to shew that he was hiding from his creditors, and had long been so, and that many executions against him were unsatisfied, when

Kelly, Q. C. objected that it was incumbent upon the defendant to prove that there was a distinct communication of the nature of the consideration to the plaintiff before he discounted the bills, and that the position and circumstances of Coghlan were wholly immaterial and irrelevant.

Jerris, Q.C. (with whom was *Shee*, Serjt. and *Henderson*) argued that the evidence was admissible, for that there was no necessity to prove a notice in distinct terms, but that the fact of such a notice having been given might be inferred from a number of concurrent circumstances, and one such circumstance of great importance was that Coghlan, to whom the plaintiff had given so large a sum of money as 3,000*l.* was in a state of hopeless insolvency, and it had been proved that the plaintiff was in some degree acquainted with him prior to this transaction. There is no necessity to prove express notice.

Kelly, Q. C. said he should not enter into the question whether express notice must be proved, but insisted that even if it were proved that the plaintiff knew of the state of Coghlan's circumstances, that would be irrelevant to the issues under which it was incumbent on the defendant to prove that a certain communication was made by Coghlan to the plaintiff. Such evidence, if admitted, would give rise to a number of collateral issues, and let in evidence on the other side to explain how the money came to be given to Coghlan, and why he then received so large a sum.

Lord Denman, C.J.—It certainly does admit that consequence, but I nevertheless think that it may be shewn that Coghlan was in extremely embarrassed circumstances, and therefore not likely to have *bonâ fide* transactions of this extent. It will, of course, be open to the other side to offer explanations.

Kelly, Q. C. requested his lordship to take a note of the objection, and the evidence was then admitted.

In summing up, Lord Denman evidently laid great stress upon the circumstances and character of Coghlan, although he told the jury that they were not to find for the defendant unless they could say that they could not doubt that the plaintiff knew of the gambling nature of the consideration.

After a brief deliberation, the jury found a verdict on the plea as to notice for the defendant.

Verdict for the defendant.

(a) See Re Baker, 3 Law T. [illegible]; and Re Waterfield, *ib.* 486; but see also Re Partington, *ante*, p. 172.

(a) The 68th canon is as follows:—"*Ministers not to refuse to christen or bury.*—No minister shall refuse or delay to christen any childe according to the form of the Booke of Common Prayer, that is brought to the church to him upon Sundayes or Holy-dayes to bee christened, or to bury any corpes that is brought to the church or churchyard (convenient warning being given him thereof before) in such manner and forme as is prescribed in the sayd Booke of Common Prayer. And if he shall refuse to christen the one or bury the other, except the party deceased were denounced excommunicated, *majori excommunicatione*, for some grievous and notorious crime (and no man able to testifie of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months."

Tuesday, Dec. 3.

REG. v. GORDON.

Evidence of payment to banker—Notice to produce documents in the custody of the officers of the Court of Chancery—Two witnesses to prove perjury.

This was an indictment for perjury arising out of Chancery proceedings taken by a Mr. Price, now dead, against the firm of which the defendant was a member, to restrain them from proceeding on certain promissory notes. It appeared that, some months after the bill and answer had been filed, a supplemental bill had been filed, to which the defendant put in an answer in due course. In this answer an account was given as to the notes in question different from that in the first answer; it being stated in the second answer that one of them had been taken from the custody of Mr. Bryant, who had advanced money upon it as a security, and deposited with Messrs. Glyn, which was contrary to the statements in the first answer, that it had been always in Mr. Bryant's possession. The defendant was indicted for perjury upon the first answer.

Kelly, Q.C. and *Butt*, for the prosecution.

Jervis, Q.C. *Bodkin*, and *Humfrey*, for the defence.

In the course of the trial, *Kelly* called two clerks in Messrs. Glyn's house, Mr. Daniel and Mr. Pickering, the object being to prove the payment of 1,000*l*. by Mr. Gordon. The ledger was produced, and it appeared that the practice was for Daniel to receive the payment, and write the amount on a piece of paper, which was then handed to Pickering, who entered it into the ledger, and it was given to the person paying in. Neither of them from his own memory could recollect the fact of the payment, and the question was, whether they might be allowed to refresh their memory from the book.

Jervis objected to this, as the paper from which the entry was made was not produced.

Kelly.—It was in the course of Pickering's business to receive the memorandum from Daniel, and enter something in the book; and this fact of entry may be proved without the production of the paper. Pickering is not called to prove the fact of payment, but the entry, and then Daniel may recollect the fact of payment.

Lord DENMAN, C. J.—Daniel may certainly be asked what he recollects.

Daniel, however, could recollect nothing, and Pickering was not allowed to refer to the entry.

Kelly, Q. C. then called for the pass-book. It was not produced, and

Jervis, Q.C. objected that it was not in the possession of the defendant, and therefore the non-production after notice did not authorize the admission of secondary evidence.

It appeared that the pass-book had been given up under an order in Chancery, and was in the custody of the clerk of the records, together with other books and papers. Some of these he had produced and had in court, but the pass-book was not forthcoming.

Jervis, Q.C. said, that the prosecutor could have obtained it equally with the defendant, however,

Lord DENMAN, C.J. ruled, that it was so far within the power of the defendant, that secondary evidence might be given; but, at the request of *Jervis*, his lordship took a note of the objection, when,

Kelly, Q. C. said, in that case, rather than incur any risk, he would withdraw the evidence.

The evidence of the perjury consisted merely of the statement on oath in the second answer, contradicting the first, and a statement of the witness in whose custody the notes in the first answer were said to have been, that he recollected the defendant telling him at a subsequent period that he, the defendant, had had the note from him for the purpose of depositing it at Messrs. Glyn's. The witness, however, swore that he himself had not the slightest recollection of this, and that the note (one for 1,000*l*.) had, to the best of his knowledge and belief, never been out of his possession during the period stated, and that it was locked up in his strong box and sent every night to his bankers'; and that most certainly he had never been to Messrs. Glyn for any purpose connected with the note. He admitted, however, that had he been asked by Gordon to allow him to have it for any special purpose, he should not have refused, having full confidence that it would be returned.

Jervis, in his address to the jury, said that his lordship would point out to them that as the law required two witnesses to prove perjury, there was, in fact, no evidence to go for their consideration, but

Lord DENMAN, C.J. in the course of his summing up, treated the evidence as sufficient.

Jervis objected to the direction.

Lord DENMAN, C.J.—The rule of law with reference to two witnesses being necessary has been much relaxed. I consider it sufficient if there are circumstances sufficient to shew that the statement is false. I am not aware that any case has gone so far as this, but here, although there is only one witness who speaks to the conversation with the defendant, there is also his oath, and there is evidence to go to the jury. The requirements as to two witnesses are sufficiently complied with.

The jury almost immediately acquitted the defendant, and the point therefore will not be decided at present. *Verdict for the defendant.*

[The first point is reported to shew the necessity of counsel who advise on the evidence being acquainted with the exact course of business in a bank or other office. The secondary evidence was most properly rejected. As to the ruling of Lord Denman, it is in accordance with his previous holding in *Rex* v. *Mayhew* (6 C. & P. 315); but see *Wheatland's* case (8 C. & P. 259, before Gurney, B.), and *Mary Jackson's* case (1 Lew. 270, before Holroyd, J.), and the note of the learned editor of Russell on Crimes, vol. 2, 653, where the objection is clearly put, that it is a mere assumption to say that the second statement is false.]

Circuit Reports.

WESTERN CIRCUIT.

SOMERSET WINTER CIRCUIT.

Taunton, Dec. 10.

(Before Mr. Baron ALDERSON.)

REG. v. WILLIAM CLOTHIER and JAMES TILER.

Practice.

Where prisoners are jointly indicted, and a statement is put in evidence in which he implicates the other, the judge will sum up the cases separately, requesting the jury to consult and come to a decision upon the one case, but not to deliver their verdict, and then he will sum up the case of the other, and take the verdict against both.

The prisoners were jointly indicted for burglary.

On the part of the prosecution, a statement by prisoner Clothier was put in evidence, admitting his own guilt and affecting prisoner Tiler.

ALDERSON, B. (to the jury).—The evidence affects the two prisoners differently. Clothier has made a statement involving Tiler, which is not evidence against Tiler. That your judgments might not unconsciously be biassed by a statement, which is evidence against the one and not against the other, I shall first lay before you the case of Tiler alone, and ask you to form your opinion upon that, and then I will call your attention to the case as against Clothier.

His Lordship having summed up the evidence as it affected Tiler, requested the jury to consult and come to a decision upon his case, but not to say what that decision was.

The jury having deliberated, and announced that they had decided,

His Lordship proceeded to sum up the evidence as it affected Clothier. *Verdict—Tiler, not guilty. Clothier, guilty.*

Stone, for the prosecution.

Edwards, for prisoner Tiler.

Clothier was undefended.

Wednesday, Dec. 11.

REG. v. CHARLES DYER.

Practice.

Even where the prisoner is defended by counsel, he will be permitted to make a statement in his defence, and afterwards his counsel may address the jury and comment upon the prisoner's statement, together with the evidence for the prosecution.

The prisoner was indicted for larceny.

Stone, for the prisoner, in his address to the jury, remarked upon the hardship of the prisoner's position, who could himself give no evidence to contradict the statements of the witnesses against him.

ALDERSON, B. (interrupting).—You have no right to make such an observation. The prisoner might make his own statement in explanation in contradiction of the evidence against him.

Stone.—There are contradictory decisions upon that. Some learned judges have refused to permit a prisoner who is represented by counsel to make a statement. In *Reg.* v. *Malings* (8 C. & P. 242), Patteson, J. permitted the prisoner to do so, but only under *special circumstances*, as it is expressly stated in the report.

ALDERSON, B.—I would *never* prevent a prisoner from making a statement though he has counsel. He may make any statement he pleases before his counsel addresses the jury, and then his counsel may comment upon that statement as a part of the case. If it were otherwise, the most monstrous injustice might result to prisoners. If the statement of the prisoner fits in with the evidence, it would be very material, and we should have no right to shut it out.

Thursday, Dec. 12.

REG. v. JOHN ROBINS.

Practice.

Where a long period of time (nearly two years) has elapsed from the time of the committing of the offence before complaint was made to the justices, the case will not be permitted to go to the jury.

Prisoner was indicted for bestiality.

No counsel appearing for the prosecution, the depositions were handed to *Fitzherbert*, and his Lordship directed his attention to the date of the offence, and the time when the parties went before the magistrates.

The offence was alleged to have been committed on the 17th of December, 1842, but no complaint was made to the justices until Oct. 1844.

The first witness being called, his Lordship asked him why he did not mention the offence until so long a time had elapsed. Witness said he did do so.

ALDERSON, B.—Yes, but not to a magistrate. Is there a confession?

Fitzherbert.—No, and I am unable to explain satisfactorily the cause of the delay.

ALDERSON, B. (to the jury).—I ought not to allow this case to go farther. It is monstrous to put a man on his trial after such a lapse of time. How can he account for his conduct so far back? If you accuse a man of a crime the next day, he may be enabled to bring forward his servants and family to say where he was and what he was about at the time; but if the charge be not preferred for a year or more, how can he clear himself? No man's life would be safe if such a prosecution were permitted. It would be very unjust to put him on his trial.

His Lordship then directed the jury to acquit the prisoner.

THE LEGISLATOR.

Summary.

THE New Settlement Bill continues to be actively opposed alike in the agricultural and the manufacturing districts. It appears to please nobody, and we believe that in fact it is a crotchet of its parent. There is no probability of its passing, at least without material alteration. It is rumoured that it is not in favour at Somerset-house.

Imperial Parliament.

HOUSE OF LORDS.

Yesterday being the day to which Parliament stood prorogued, both Houses met *pro formâ*. The Lord Chancellor, the Earl of Haddington, and the Earl of Dalhousie, at a quarter past two o'clock took their seats as Lords Commissioners in front of the throne, when the LORD CHANCELLOR directed the Deputy-Usher of the Black Rod to summon the House of Commons to hear her Majesty's commission read for the further prorogation of Parliament. In a few minutes Mr. Ley, jun. attended by several officers of the House of Commons, appeared at the bar, upon which her Majesty's commission for the further prorogation of Parliament was read by one of the clerks at the table. The LORD CHANCELLOR then, in the usual form, declared that it was her Majesty's pleasure that her Parliament should be further prorogued to Tuesday, the 4th of February next, then to meet for the despatch of business, and the Parliament was prorogued to that day accordingly. The Lords Commissioners then withdrew, as did also the officers of the House of Commons.

NEW STATUTES.

Of the Session 8 Victoria.

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page 134.*)

CAP. XCIII.

An Act to Regulate Joint Stock Banks in England. (Sept. 5, 1844.)

THIS statute, on account of its general interest, we give entire.

No joint stock bank established after 6th May last to carry on business unless by virtue of letters patent granted according to this Act; but companies previously established not restrained from carrying on business until letters patent have been granted.—Whereas the laws in force for the regulation of copartnerships of bankers in England need to be amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall not be lawful for any company of more than six persons to carry on the trade or business of bankers in England, after the passing of this Act, under any agreement or covenant of co-partnership made or entered into on or after the sixth day of May last passed, unless by virtue of letters patent to be granted by her Majesty according to the provisions of this Act; but nothing herein contained shall be construed to restrain any such company established before the said sixth day of May, for the purpose of carrying on the said trade or business of bankers in England, from continuing to carry on the said trade and business as legally as they might have done before the passing of this Act, until letters patent shall have been granted to them according to their application.

as herein-after provided, to be made subject to the provisions of this Act.

2. *Company to petition for charter.*—And be it enacted, That before beginning to exercise the said trade or business every such company shall present a petition to her Majesty in Council, praying that her Majesty will be graciously pleased to grant to them letters patent under this Act; and every such petition shall be signed by seven at least of the said company, and shall set forth the following particulars (that is to say):—

First, The names and additions of all the partners of the company, and the name of the street, square, or other place where each of the said partners reside:

Second, The proposed name of the bank:

Third, The name of the street, square, or other local description of the place or places where the business of the bank is to be carried on:

Fourth, The proposed amount of the capital stock, not being in any case less than one hundred thousand pounds, and the means by which it is to be raised:

Fifth, The amount of capital stock then paid up, and where and how invested:

Sixth, The proposed number of shares in the business:

Seventh, The amount of each share, not being less than one hundred pounds each.

3. *Charter to be granted on report of Board of Trade.*—And be it enacted, That every such petition shall be referred by her Majesty to the Committee of Privy Council for Trade and Plantations, and so soon as the lords of the said committee shall have reported to her Majesty that the provisions of this Act have been complied with on the part of the said company, it shall thereupon be lawful for her Majesty, if her Majesty shall so think fit, with the advice of her Privy Council, to grant the said letters patent.

4. *Deed of settlement.*—And be it enacted, That the deed of partnership of every such banking company shall be prepared according to a form to be approved by the lords of the said committee, and shall, in addition to any other provisions which may be contained therein, contain specific provisions for the following purposes (that is to say),—

First, For holding ordinary general meetings of the company once at least in every year, at an appointed time and place:

Second, For holding extraordinary general meetings of the company, upon the requisition of nine shareholders or more, having in the whole at least twenty-one shares in the partnership business:

Third, For the management of the affairs of the company, and the election and qualification of the directors:

Fourth, For the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors for at least twelve calendar months:

Fifth, For preventing the company from purchasing any shares or making advances of money, or securities for money, to any person on the security of a share or shares in the partnership business:

Sixth, For the publication of the assets and liabilities of the company once at least in every calendar month:

Seventh, For the yearly audit of the accounts of the company by two or more auditors chosen at a general meeting of the shareholders, and not being directors at the time:

Eighth, For the yearly communication of the auditors' report, and of a balance-sheet, and profit and loss account, to every shareholder:

Ninth, For the appointment of a manager or other officer to perform the duties of manager:

and such deed, executed by the holders of at least one half of the shares in the said business, on which not less than ten pounds on each such share of one hundred pounds, and in proportion for every share of larger amount, shall have been then paid up, shall be annexed to the petition; and the provisions of such deed, with such others as to her Majesty shall seem fit, shall be set forth in the letters patent.

5. *No company to commence business till deed executed and all the shares subscribed for and at least half the amount paid up.*—Provided always, and be it enacted, That it shall not be lawful for any such company to commence business until all the shares shall have been subscribed for, and until the deed of partnership shall have been executed, personally or by some person duly authorized by warrant of attorney to execute the same on behalf of such holder or holders, by the holders of all the shares in the said business, and until a sum of not less than one-half of the amount of each share shall have been paid up in respect of each such share; and it shall not be lawful for the company to repay any part of the sum so paid up without leave of the lords of the said committee.

6. *Company to be incorporated.*—And be it enacted, That it shall be lawful for her Majesty in and by such letters patent to grant that the persons by whom the said deed of partnership shall have been executed, and all other persons who shall thereafter become shareholders in the said banking business, their executors, administrators, successors, and assigns respectively, shall be one body politic and corporate, by such name as shall be given to them in and by the said letters patent, for the purpose of carrying on the said banking business, and by that name shall have perpetual succession and a common seal, and shall have power to purchase and hold lands of such annual value as shall be expressed in such letters patent; and such letters patent shall be granted for a term of years, not exceeding twenty years, and may be made subject to such other provisions and stipulations as to her Majesty may seem fit.

7. *Incorporation not to limit the liability of the shareholders.*—Provided always, and be it enacted, That notwithstanding such incorporation the several shareholders for the time being in the said banking business, and those who have been shareholders therein, and their several executors, administrators, successors, and assigns, shall be and continue liable for all the dealings, covenants, and undertakings of the said company, subject to the provisions hereinafter contained, as fully as if the said company were not incorporated.

8. *Actions by or against shareholders.*—And be it enacted, That no action or suit by or against the company shall be in anywise affected by reason of the plaintiff or defendant therein being a shareholder or former shareholder of the company; but any such shareholder, either alone or jointly with another person as against the company, or the company as against any such shareholder, either alone or jointly with any other person, shall have the same action and remedy in respect of any cause of action or suit whatever which such shareholder or company might have had if such cause of action or suit had arisen with a stranger.

9. *Decree or judgment to be enforced against company and shareholders.*—And be it enacted, That every judgment, decree, or order of any court of justice in any proceeding against the company may be lawfully executed against, and shall have the like effect on, the property and effects of the company, and also, subject to the provisions hereinafter contained, upon the person, property, and effects of every shareholder and former shareholder thereof, as if every individual shareholder and former shareholder had been by name a party to such proceeding.

10. *Execution against company to precede execution against present or former shareholders.*—And be it enacted, That it shall be lawful for the plaintiff to cause execution upon any judgment, decree, or order obtained by him in any such action or suit against the company to be issued against the property and effects of the company; and if such execution shall be ineffectual to obtain satisfaction of the sums sought to be recovered thereby, then it shall be lawful for him to have execution in satisfaction of such judgment, decree, or order against the person, property, and effects of any shareholder, or, in default of obtaining satisfaction of such judgment, decree, or order, from any shareholder, against the person, property, and effects of any person who was a shareholder of the company at the time when the cause of action against the company arose: provided always, that no person having ceased to be a shareholder of the company shall be liable for the payment of any debt for which any such judgment, decree, or order shall have been so obtained, for which he would not have been liable as a partner in case a suit had been originally brought against him for the same, or for which judgment shall have been obtained, after the expiration of three years from the time when he shall have ceased to be a shareholder of such company; nor shall this Act be deemed to enable any party to a suit to recover from any individual shareholder of the company, or any other person whomsoever, any other or greater sum than might have been recovered if this Act had not been passed.

11. *Reimbursement of individual shareholders.*—And be it enacted, That every person against whom or against whose property or effects any such execution shall have issued, shall be reimbursed out of the property and effects of the company for all moneys paid, and for all damages, costs, and expenses incurred by him by reason of such execution, or of the action or suit in which the same shall have issued, or in default of such reimbursement, by contribution from the other shareholders of the company.

12. *Individuals paying under execution to recover against company.*—And be it enacted, That if any such execution be issued against any present or former shareholder of the company, and if, within fourteen days next after the levying of such execution, he be not reimbursed, on demand, out of the property and effects of the company, all such moneys, damages, costs, and expenses as he shall have paid or incurred in consequence of such execution, it shall be lawful for such shareholder, or his executors or administrators, to have execution against the property and effects of the company in satisfaction of such moneys, damages, costs, and expenses; and the amount of such moneys, damages, costs, and expenses shall be ascertained and certified by one of the Masters or other officer of the court out of which such execution shall issue.

13. *How such execution is to be had.*—And be it enacted, That in the cases provided by this Act for execution on any judgment, decree, or order in any action or suit against the company, to be issued against the person or against the property and effects of any shareholder or former shareholder of such company, or against the property and effects of the company at the suit of any shareholder or former shareholder, in satisfaction of any moneys, damages, costs, and expenses paid or incurred by him as aforesaid in any action or suit against the company, such execution may be issued by leave of the Court, or of a judge of the Court in which such judgment, decree, or order shall have been obtained, upon motion or summons for a rule to shew cause, or other motion or summons consistent with the practice of the Court, without any suggestion or *scire facias* in that behalf, and that it shall be lawful for such Court or judge to make absolute or discharge such rule, or allow or dismiss such motion (as the case may be), and to direct the costs of the application to be paid by either party, or to make such order therein as to such Court or judge shall seem fit; and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively, for giving effect to the provision in that behalf aforesaid, as the judges of such courts respectively shall from time to time think fit to order, and the execution of such writs shall be enforced in like manner as writs of execution are now enforced; provided that any order made by a judge as aforesaid may be discharged or varied by the Court on application made thereto by either party dissatisfied with such order; provided also, that no such motion shall be made nor summons granted for the purpose of charging any shareholder or former shareholder until ten days' notice thereof shall have been given to the person sought to be charged thereby.

14. *Contribution to be recovered from other shareholders.*—And be it enacted, That if such shareholder be not by the means aforesaid fully paid all such moneys, with interest, damages, costs, and expenses, as he shall have paid or incurred by reason of any such execution, it shall be lawful for him, his executors, or administrators, to divide the amount thereof, or so much thereof as he shall not have been reimbursed, into as many equal parts as there shall then be shares in the capital stock of the company (not including shares then under forfeiture); and every shareholder for the time being of the company, and the executors or administrators of every deceased shareholder, shall, in proportion to the number of shares which they may hold in the company, pay one or more of such parts, upon demand, to the shareholder against whom such execution shall have been issued, or to his executors or administrators; and upon neglect or refusal so to pay, it shall be lawful for such shareholder, his executors, or administrators, to sue for and recover the same against the shareholder, or the executors or administrators of any shareholder, who shall so neglect or refuse as aforesaid, in any of her Majesty's courts of record at Westminster, or in any other court having jurisdiction in respect of such demand.

15. *Further remedy in case of bankruptcy, &c. of company's shareholders.*—And be it enacted, That if the shareholder or former shareholder against whom any such execution shall have issued, his executors or administrators, shall, by reason of the bankruptcy or insolvency of any shareholder, or from any other cause, but without any neglect or wilful default on his own part, be prevented from recovering any proportion of the moneys, costs, or expenses which he shall have so paid, it shall be lawful for him, his executors or administrators, again to divide the amount of all such moneys, costs, and expenses as shall not have been recovered by him or them into as many equal parts as there shall then be shares in the capital stock of the company (not including the shares then under forfeiture), except the shares in respect of which such default shall have happened; and every shareholder for the time being of the company, and the executors or administrators of every deceased shareholder, except as aforesaid, shall rateably, according to the number of shares which they shall hold in the company, upon demand, pay one or more such last-mentioned parts to the shareholder against whom such execution shall have issued, his executors or administrators; and in default of payment he or they shall have the same remedies in all respects for the recovery thereof as under the provisions hereinbefore mentioned are given in respect of the original proportions of such moneys, damages, costs, and expenses; and if any proportion of the said moneys, damages, costs, and expenses shall remain unpaid by reason of any such bankruptcy, insolvency, or other cause as aforesaid, such shareholder, his executors, or administrators, shall have in like manner, from time to time, and by way of accumulative remedy, the same powers, according to the circumstances of the case, of again dividing and enforcing payment of the amount of such proportion, until he or they shall, in the end, if a former shareholder, be fully reimbursed the whole of the said moneys, costs, and expenses, and if then a shareholder, the whole, excepting the portions belonging to the shares held by him.

16. *Memorial to be registered.*—And be it enacted,

That within three months after the grant of the said letters patent, and before the company shall begin to carry on their business as bankers, an account or memorial shall be made out, according to the form contained in the schedule marked (A.) to this Act annexed, wherein shall be set forth the true title or firm of the company, and also the names and places of abode of all the members of such company as the same respectively shall appear on the books of such company, and also the name and place of abode of every director and manager or other like officer of the company, and the name or firm of every bank or banks established or to be established by such company, and also the name of every town or place where the business of the said company shall be carried on; and a new account or memorial of the same particulars shall be made by the said company in every year, between the twenty-eighth day of February and the twenty-fifth day of March, while they shall continue to carry on their business as bankers; and every such memorial shall be delivered to the Commissioners of Stamps and Taxes at the Stamp Office in London, who shall cause the same to be filed and kept in the said Stamp Office, and an entry or registry thereof to be made in a book or books to be there kept for that purpose by some person or persons to be appointed by the said commissioners in that behalf, which book or books any person or persons shall from time to time have liberty to search and inspect on payment of the sum of one shilling for every search; and the company shall from time to time cause to be printed and kept, in a conspicuous place accessible to the public in their office or principal place of business, a list of the registered names and places of abode of all the members of such company for the time being.

17. *Memorials of occasional changes.* — Provided also, and be it enacted, That the manager or one of the directors of every such company shall, from time to time as occasion shall require, make out in manner hereinbefore directed, and cause to be delivered to the Commissioners of Stamps and Taxes as aforesaid, a further account or memorial, according to the form contained in the schedule marked (B.) to this Act annexed, of the name and place of abode of every new director, manager, or other like officer of such company, and also of the name or names of any person or persons who shall have ceased to be members of such company, and also of the name or names of any person or persons who shall have become a member or members of such company, either in addition to or instead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where the business of the said company is carried on; and such further account or memorial shall from time to time be filed, and kept and entered and registered at the Stamp Office in London, in like manner as is hereinbefore required with respect to the original or annual account or memorial hereinbefore directed to be made.

18. *Form of memorials.* 5 & 6 *Wm.* 4, c. 62.— And be it enacted, That the several memorials aforesaid shall be signed by the manager or one of the directors of the company, and shall be verified by a declaration of such manager or director before a justice of the peace, or a master or master extraordinary of the high Court of Chancery, made pursuant to the provisions of an Act passed in the sixth year of his late Majesty's reign, intituled "An Act to repeal an Act of the present Session of Parliament, intituled, 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits,' and to make other provisions for the Abolition of unnecessary Oaths;" and if any declaration so made shall be false in any material particular, the person wilfully making such false declaration shall be guilty of a misdemeanour.

19. *Evidence of memorials.*—And be it enacted, That a true copy of any such memorial, certified under the hand of one of the Commissioners of Stamps and Taxes for the time being, upon proof made that such certificate has been signed with the handwriting of the person certifying the same, whom it shall not be necessary to prove to be a Commissioner of Stamps and taxes, shall be received in evidence as proof of the contents of such memorial, and proof shall not be required that the person by whom the memorial shall purport to be verified was, at the time of such verification, the manager or one of the directors of the company.

20. *Commissioners of Stamps to give certified copies on payment of ten shillings.*—And be it enacted, That the said Commissioners of Stamps and Taxes for the time being shall, upon application made to them by any person or persons requiring a copy, certified according to this Act, of any such account or memorial as aforesaid, in order that the same may be produced in evidence, or for any other purpose, deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of ten shillings and no more.

21. *Existing liabilities to continue till new memorials.*—And be it enacted, That the person whose names shall appear from time to time in the then last delivered memorial, and their legal representatives, shall be liable to all legal proceedings under this Act, as existing shareholders of the company, and shall be entitled to be reimbursed, as such existing shareholders only, out of the funds or property of the company, for all losses sustained in consequence thereof.

22. *Bills and notes to be signed by one director or manager. Manager not personally liable.*—And be it enacted, That all bills of exchange or promissory notes made, accepted, or endorsed on behalf of the said company may be made, accepted, or endorsed (as the case may be) in any manner provided by the deed of partnership, so that they be signed by one of the managers or directors of the company, and be by him expressed to be so made, accepted, or endorsed by him on behalf of such company: provided always that nothing herein contained shall be deemed to make any such manager or director liable upon any such bill of exchange or promissory note to any greater extent or in a different manner than upon any other contract signed by him on behalf of any such company; and that every such company, on whose behalf any bill of exchange or promissory note shall be made, accepted, or endorsed in manner and form as aforesaid, may sue and be sued thereon as fully as in the case of any contract made and entered into under their common seal.

23. *Transfers of shares to be registered, &c.*—And be it enacted, That, subject to the regulations herein contained, and to the provisions of the deed of settlement, every shareholder may sell and transfer his shares in the said company by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the form in the schedule marked (C.) annexed to this Act, or to the like effect; and the same (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book, to be called the "Register of Transfers," and shall endorse such entry on the deed of transfer, and for every such entry and endorsement the company may demand any sum not exceeding two shillings and sixpence; and until such transfer have been so delivered to the secretary as aforesaid the purchaser of the share shall not be entitled to receive any share of the profits of the said business, or to vote in respect of such share.

24. *Transfer not to be made until all calls paid.*—And be it enacted, That no shareholder shall be entitled to transfer any share until he shall have paid all calls for the time being due on every share held by him.

25. *Closing of Transfer Books.*—And be it enacted, That the directors may close the register of transfers for a period not exceeding fourteen days previous to each ordinary meeting, and may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

26. *Transmission of shares by other means than transfer to be authenticated by a declaration.*—And with respect to the registration of shares the interest in which may have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other legal means than by a transfer according to the provisions of this Act, be it enacted, That no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the said business, or to vote in respect of any such share as the holder thereof, until such transmission have been authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice of the peace, or before a Master or Master Extraordinary in the high Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register book of shareholders of the company; and for every such entry the company may demand any sum not exceeding two shillings and sixpence.

27. *Proof of transmission by marriage, will, &c.*—And be it enacted, That if such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production, in either of the cases aforesaid, the secretary shall make an entry of the declaration in the said register of transfers.

(*To be continued.*)

THE MAGISTRATE.

Summary.

Mr. Baron Alderson has repeated at Taunton the suggestion he threw out at Winchester for avoiding a Winter Assize by a new regulation of the Terms, and appointing the regular Assizes at equal intervals. We can never revert to this subject without reminding our readers that there is a more effectual plan for accomplishing the same purpose, and providing for other acknowledged defects in our jurisprudence—the reform of the Quarter Sessions' Courts. That is the simplest and the surest remedy for Winter Assizes, County Courts' Bills, and other evils present and threatening.

The Petition nuisance.—A party of disreputable mendicants have recently infested the neighbourhood of Monmouth with petitions for relief, under various and feigned pretences. In one instance a fellow who bore an apparently respectable exterior, and representing himself as nearly blind, carried a testimonial with him purporting to be signed by several of the resident gentry, and stating the petitioner was reduced from affluent circumstances, nearly the whole of which signatures were forged. In another instance a memorial was sent, bearing the Monmouth postmark, to Penry Williams, esq. the Lord Lieutenant of Breconshire, representing the petitioner, Mrs. Martha Williams, to be the widow of a missionary who had shot himself in the East Indies, and had left a large family without the means of support. This statement purported to be vouched for by the Rev. Mr. Llewellyn, vicar of Dingestow, near Monmouth, and was signed with the forged name of the Bishop of Llandaff, 10*l.* 10*s.*, with several names of the leading families of Monmouthshire for various sums. Mr. Williams forwarded the petition to the postmaster of Monmouth, who immediately ascertained that no person of the name of Llewellyn was incumbent of Dingestow, that the whole affair was a fraud, and the names appended to it forged. In the neighbourhood of Ross the same parties have attempted their impositions, in some cases pretending to be sufferers from fire at Goodrich; and in others purporting to seek assistance to place the petitioner, who represented himself as nearly blind, in an institution for the relief of that affliction. In these instances, the names of some of the Herefordshire gentry are also appended to the memorials, vouching for their accuracy, and with the amount of their subscription annexed to them. The signatures to these petitions are in many cases excellent imitations; they exhibit a natural diversity of style, and are written in ink of several colours. From information given to the police at Ross, where the parties were traced, an active pursuit has been set on foot, which we trust will eventually terminate in their capture. The blind man has an assortment of forged crests, with which he seals his memorial, thereby giving an additional cloak to the fraud.—*Cambrian.*

The following circular has been addressed to the Bankers:—

"Stamps and Taxes.
"Dec. 2, 1844.

"Gentlemen,—I am directed by the Commissioners of Stamps and Taxes to direct your particular attention to the following extract from the Bank Charter Act, 7 & 8 Vict. c. 32, s. 21:—And be it enacted, 'That every banker in England and Wales who is now carrying on, or shall hereafter carry on business as such, shall, on the first day of January in each year, or within fifteen days thereafter, make a return to the Commissioners of Stamps and Taxes, at their head office in London, of his name, residence, and occupation, or, in the case of a company or partnership, of the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carry on the business of banking, and of every place where such business is carried on, and if any such banker, company, or partnership shall omit or refuse to make such return within fifteen days after the said first day of January, or shall wilfully make other than a true return of the persons as herein required, every banker, company, or partnership so offending shall forfeit and pay the sum of fifty pounds; and the said Commissioners of Stamps and Taxes shall, on or before the first day of March in every year, publish in some newspaper circulating within each town or county respectively, a copy of the return so made by every banker, company, or partnership, carrying on the business of bankers within such town or county respectively, as the case may be.'

"I am also directed to inform you, that the return must be made in the subjoined form, within the time specified by the Act, addressed to the Commissioners

of Stamps and Taxes, and marked on the outside 'Banker's Return.'

"I am, Gentlemen, your obedient servant,
"THOMAS KEOGH, Assistant Secretary."

THE LAWYER.

Summary.

THE week has been barren of events interesting to the lawyer. The Reports of the last Term are now completed, and next week we have to present our usual summary of the cases decided. Now that the work is done, we may refer with confidence to the success which has attended this the first attempt ever made to present to the Profession all the written judgments *verbatim*. It is probable that many of these will never be procurable in any other publication. It is certain that none of them will be published elsewhere for many months.

LEGAL INTELLIGENCE.

Court Papers.

CHANCERY CAUSE LISTS.

MICHAELMAS TERM, 1844.

Before the LORD CHANCELLOR.

APPEALS.

S. O. Clun Hospital v. Earl Powis, appeal
Attorney-gen. v. Earl Powis, ditto and petition
Marquis of Westminster v. Morrison, appeal
The Sheffield Canal Company v. the Sheffield and Rotherham Railway Company, appeal
Tulock v. Hartley, appeal, part heard
Day to be fixed—Strickland v. Strickland, appeal, pt. heard
Ditto v. Boynton, ditto
Ditto v. Strickland, ditto
Spalding v. Ruding, ditto
Millar v. Craig, ditto
S. O. G. Cochrane v. Craig, ditto
Ditto v. Colvin, ditto
Davenport v. Bishop, ditto
Clifford v. Turrell, ditto
Forbes v. Peacock, ditto
Marquis of Hertford v. Lord Lowther, two causes
Tyler v. Hinton
Miln v. Walton
Sandon v. Hooper
S. O. Vandeleur v. Blagrave
Crosley v. Derby Gas Company
Parker v. Bult
Ladbroke v. Smith
Hitch v. Leworthy
Coore v. Lowndes
Drake v. Drake
Dalton v. Hayter
Baggett v. Meux
Payne v. Banner
Dobson v. Lyall
Moorat v. Richardson
(Appeals)
Millbank v. Collier, ditto, for want of par.
Deeks v. Stanhope, three appeals
Wiltshire v. Rabbitt, appeal
Smith v. Earl of Effingham, ditto
Archer v. Hudson, ditto
Turner v. Newport, ditto.

Before the VICE-CHANCELLOR OF ENGLAND.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Thellusson v. Lord Rendlesham, demur.
To fix a day—Richards v. Wood, cause
Ditto v. ditto, exons. and fur. dirs.
Pt. heard, Dec. 13—Montague v. Cator, fur. dirs. and costs
Ditto v. Tebbs, ditto
Ditto v. Kenworthy, cause
Templeman v. Brelsforth
S. O. Freeman v. Roberts, four causes
Roberts v. Marchant, part heard
Boydell v. Golightly, fur. dirs.
Ditto v. Stanton, fur. dirs.
Ditto v. Moreland, cause
Wilson v. Wilson, two causes
Ditto v. Foster
Breese v. Hawker
Ditto v. English
Dec. 13—Williams v. Williams
Palmer v. Horton
Dec. 9—Baxter v. Atkinson, fur. dirs. and costs
Bosanquet v. Cazenove, at request of defendants
Craddock v. Piper, four causes, exons. two sets
Johnson v. Johnson, three causes, fur. dirs.
Shute v. Shute, fur. dirs. and petition
Rogers v. Rogers, ditto and costs
Greenwood v. Taylor, exons. two sets
Cox v. Pearce, ditto
Preston v. Melville, fur. dirs. and costs
Watson v. England, exons. and fur. dirs.
Pearse v. Brooke, five causes, fur. dirs.
Knight v. Wilmot, exons. two sets
Pemberton v. Jackson
Short—Player v. Watson
Williams v. Watson
Smith v. Weatherby, five causes
Hazlewood v. Partridge
Goldie v. Greaves, fur. dirs. and costs
Ditto v. Ramsbotham, ditto
Mapp v. Elcock
Ditto v. Scott
Jeffreys v. Hoare
Grand Junction Canal Company v. Dimes, at request of defendant
Snare v. Baker
Flight v. Rowley
Marshall v. Marshall
Emerson v. Gibbins, fur. dirs. and costs
Parente v. Salomons
Dickson v. Moss
Goldsbrough v. Hawdon
Hiles (pauper) v. Moore
Ditto v. Gleadon
Snow v. Hole
Ditto v. Sime
S. O. Sapsworth v. Sapsworth
Flint v. Warren, six causes, fur. dirs. and petn.
Christ's Hospital v. Grainger, exons.
Clowes v. Stanton, fur. dirs. and costs
Short—Attorney-gen. and Meshiter v. Glynn, ditto
Ditto v. St. Catherine's Dock Company
Fyson v. Foster
Ditto v. Mackreth
Gurney v. Goggs, fur. dirs. and costs
Jackson v. Brooke
Middleton v. Elliott
Beauchamp v. Lygon, fur. dirs. and costs
Short—Borton v. Marsh
Barnacle v. Nightingale, exons.
Ferris v. Willy, fur. dirs. and costs
Pearse v. Parker
Gray v. Gray
Short—Lloyd v. Laver
Aubery v. Hoper, five causes, fur. dirs. and costs
Casley v. Monypenny
Brooke v. Todd
Miller v. Harris
Sinnett v. Matthias.

Before VICE-CHANCELLOR KNIGHT BRUCE.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Michaelmas Term, 1845.

Dodsworth v. Kinnaird, two causes, at request of defdts.

Hilary Term.

Clayton v. Lord Nugent, fur. dirs. and costs

Last Day of Causes.

Doyne v. Cartwright, fur. dirs. and costs
Ditto v. Carey, ditto
Wood v. Cooper, part heard
Gross v. James, fur. dirs. and costs
Sutherland v. Cooke, ditto
Ditto v. Jackson, ditto
Thwaites v. Foreman
Stooke v. Vincent, plea
Wright v. Gill, defendant's objection for want of parties
S. O. G. Adams v. Paynter
Ditto v. Lloyd
Ditto v. Paynter
Brigg v. Hobson
Norton v. Pritchard, four causes, fur. dirs. and costs
Douglas v. Douglas, four causes
Gibson v. D'Este, exceptions
Dec. 10—Evans v. Scott
Soulsby v. Manning
Dec. 9—Bury v. Allen
Ditto v. Pinnell
Roberts v. Roberts
Dec. 12—Brocklebank v. Roller
Dec. 13—Stringer v. Court
Short—Reed v. Reynolds
Dec. 16—Jones v. Lewis
Dec. 12—Tween v. Haswell
Dec. 18—Hamond v. Swayne
Ditto v. Dickinson.

Before VICE-CHANCELLOR WIGRAM.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Dec. 3—Dickin v. Barker, demurrer

Hilary Term.

Broad (pauper) v. Robinson
Barnett v. Deane
To fix a day—Vincent v. The Bishop of Sodor and Man
S. O. G. Neeld v. The Duke of Beaufort, two causes
Part heard—Mallilieu v. Miller, fur. dirs. and eqy. resd.
Lea v. Pain, exons. four sets
Dec. 21—Massey v. Moss, fur. dirs. and costs
Sharp v. Collard, cause and petition
Ditto v. Bolton, ditto
Parker v. Carter
Ditto v. Parker
Ferrand v. Wilson
Ditto v. Turner
Massey v. Whichello
Emperingham v. Short, exons. and fur. dirs.
Ditto v. Newton
Finch v. Lipscomb
Brooks v. Jopling
Davies v. Davies
Oddie v. Tattersall
Moore v. Stafford
Barrett v. Buck
Paget v. Belcher
Morrison v. Morison, exons.
Next Term—Challen v. Shippen
Kay v. Wall, exons.
Attorney-gen. v. Northcote
Aspinell v. Andus, fur. dirs. and costs
Hughes v. Lipscombe
Smith v. Beesley, exons.
Cuttel v. Crowther
Coltman v. Harrison.

CHANCERY-OFFICE PAY AND PROFIT.

Much astonishment having been excited in certain high quarters at a few facts respecting remuneration paid in Chancery-offices for what are termed "office-copies," as of bills, answers, interrogatories, affidavits, reports, statement of facts, &c. with all the other technical *etcetera* of missiles in a Chancery suit, it may be as well to say a word or two by way of supplementary statement in respect of the Masters'-offices, referred to last week. The cause of complaint against these offices arose from the fact of a miserable pittance being given in reward of penmanship labours to the tune of a farthing per folio. It is satisfactory to find that this scale of pay has not been general; but condemnation of the half-penny a folio system will extend to all the Masters'-offices. Now, looking at the practice that has existed for years respecting the places in question, it is surprising so reprehensible a state of things should have existed to the present day. In most public offices some established and specific rules exist for regulating the copying business in them. In the Masters' offices, however, the mechanical part of the business has been executed by means according to the whim or caprice of the individual having control in them. From this has resulted that state of things we have already had occasion to comment upon. In some of the offices much work is done with them during the day, and the remainder is distributed amongst individuals out of them at four o'clock. In another, it appears, means have been devised for applying the screw pressure system to the greatest possible degree of application—the innovation of salaried and farthing-a-folio writers has been tried, and the cries have been loud and deep of "Shame, shame!" In others, again, the work is "farmed" by some favoured individuals out of the office, and holding employment elsewhere, who has had the copying business conferred upon him, and who distributes it amongst a circle of satellites; thence again it frequently finds its way into the hands of a third degree, whose pay, of course, is upon a sliding scale. Now, in certain classes of legal documents, in estimating the number of words in them, they are subdivided into 60, 72, or 90 words to the folio, as it may be. The position of this individual who distributes his favours may be compared to the Irish middleman, who makes much profit by dealing out oppression, and who stands between the landlord and the slave of the soil. He undertakes the writing at ½d. per folio (the quantity used to exceed 1,000 or 1,500 folios in an evening, perhaps it does sometimes, now); his writers are compelled to count it up at 90 words to the folio indiscriminately, and he deducts as his reward 1d. out of every 24 folios done. These pence, with what is made by his re-estimating at 60 or 72, as it may be, places him in a comfortable position at the day of reckoning. It appears ½d. has has been the *maximum*, about two-thirds the medium, and ¼d. the *minimum* price paid for preparing office copies, for which solicitors pay 4d. per folio. What becomes of the difference? Let us see. At the *maximum* price, 1d. profit on every folio goes to the "warrant-officer," who receives a salary of 150*l*. per annum. Now, if 1,500 folios go out in a day from one office, there is a clear profit to him of 6*l*. 5s.; at the *minimum*, a clear profit of 7*l*. 16s. 3d. The compensation or fee fund receives 2½d. upon every folio; its share then would be 15*l*. 12s. 6d. on the 1,500. Now, what are the several writer's shares? Why, at the *maximum* 3*l*. 2s. 6d. at the *minimum* 1*l*. 11s. 3d. out of 25*l*. the cost of 1,500 folios at 4d. After this, need we refer to the late wretched position and pay of the penny-a-shirt people as one of the greatest instances of galling and grinding oppression practised in the metropolis? Let us look to the state of things in the immediate neighbourhood of the High Court of Chancery.—*Times*.

TO THE EDITOR OF THE MORNING CHRONICLE.

SIR,—My attention has been directed to a report in your Saturday's paper, of the case of Charles Warren, who was tried at Winchester, for arson, in which I was counsel for the prisoner. At the close of the evidence for the prosecution, the report proceeds:—

"Mr. Saunders then rose to address the jury, when Mr. Baron Alderson, addressing him, asked him if he had observed the deposition of the last witness?

"The learned counsel said that he had, but that he felt a difficulty in the case; as, if he put it in, he should give his learned friend the reply.

"Mr. Baron Alderson.—And if I put the deposition in I shall prevent his reply. But I think you attribute too much consequence to a speech. *You expect to lead the jury by unfair arguments, which, by God's grace, I will try to prevent.* I think the deposition very important.

"Mr. Saunders assured the learned judge that he had no such wish as that imputed to him; and as his lordship thought the deposition material, he should certainly put it in."

The words which I have underlined are not correctly reported; and they convey in the place where they occur an impression which is in every way unfair to the judge and to myself.

When I stated that I felt a difficulty in putting in the deposition, because of the reply, the judge said, "There is that difficulty, and if I put in the deposition I shall deprive the prosecutor of a reply." Then addressing me his lordship observed, "But I think you attach too much importance to a speech. If any

unjust observations are made to mislead the jury, I shall endeavour to prevent it; but I do not suppose that there will. I think the deposition material."

I do not pledge myself to the very words, but such was their substance. Instead of suggesting that I thought too much of my own speech, as any one reading the report might suppose, his lordship was referring not to my speech but to the reply which would be given if I put in the deposition; and instead of imputing to me personally a wish to mislead the jury by unfair arguments, his lordship's purpose was to intimate that if, in the reply, any unfair arguments were used it would be his duty to remark upon them. Then, to guard against imputation to any one, his lordship, in a marked manner, added the words, "But I do not suppose that there will."

In making this statement, I have the sanction of Mr. Baron Alderson; and I am sure you will do me the justice, by publishing this letter, of correcting an impression which is entirely erroneous and prejudicial.

I am, Sir, your obedient servant,

Temple, Dec. 9, 1844. CHARLES SAUNDERS.

WHITEHALL, Dec. 11.—The Queen has been pleased to appoint Sir Henry De la Beche, knt. and Thomas Cubitt, esq. to be her Majesty's Commissioners for inquiring into the causes of the falling of a cotton-mill, at Oldham, and as to the failure of a part of the prison, at North Leach.

The Lord Chancellor has appointed Charles Pemberton of Liverpool, in the county of Lancaster, gent., and Thomas Topham, of Middleham, in the north riding of the county of York, gent. to be Masters Extraordinary in the High Court of Chancery.

MR. FITZROY KELLY.—This gentleman was compelled to quit England for the Continent late last night, in consequence of the sudden and dangerous illness of his daughter, Mrs. Paley.

We understand that the Earl of Rosse is likely to be the new representative peer of Ireland, in the room of the late Earl of Limerick.

THE TEMPLE.—The Benchers of the Hon. Societies of the Inner and Middle Temple have, at length, conceded to the wishes of a large body of requisitionists, members of both societies, for daily service in their church; and it is now announced, that the church will be opened for daily service at nine o'clock a.m.

PROCLAMATION OF OUTLAWRY.—Yesterday a county court of the Sheriff of Middlesex was held at the Sheriffs Court, Red Lion-square, when proclamation of outlawry was made against John Robert Duncan, Frederick Hawkes, Charles John Attwood, — Spalding, Aaron Jolly, Henry Brown, John Scott Lillie, Arthur Selby, Edward Benjamin Lake, James Tongue; and the Court was then adjourned.

SLAVES OF CHANCERY.—During the last term the Lord Chancellor, on occasion of some papers being laid before him, took the opportunity of animadverting upon the way in which office copies of legal documents in Chancery were sometimes executed, in fact, as his Lordship observed, "disgracefully written." The papers in question were copies of depositions in the Examiner's office, for which 8d. per folio had been paid, of which sum the copyist received for his labour 0½d.; his Lordship expressed his surprise at the smallness of the sum, and said "the matter should be looked into." This is one of the best samples of the griping system pursued towards copyists of Chancery-office documents; it is not, however, a thing of modern growth; it has not resulted from the reduction of 18,000*l.* a-year to the public by the abolition of certain Chancery offices in 1842, as previous to that time nearly all the office copies of bills and answers in Chancery were prepared by individuals in the neighbourhood of the Chancery offices, who eked out a wretched existence by copying the parchment documents usually at a trifle less than a halfpenny a folio of ninety words; at that time the charge to solicitors for office copies was 10d. per folio; it is now 4d. The work was then given out in the evening, and executed during the night. It is now done within the Office of Records and Writs. As regards the Masters' office, the old plan still exists of employing persons as copyists who reside in the neighbourhood, independently of the few who have permanent sittings within the Masters' office. The charge for copies of documents in the Masters' office is 4d. per folio of 90 words; of this sum the copyist receives one halfpenny per folio, sometimes less; in fact, to such an extent has this grasping, griping system been carried, that in one at least of these offices the pay has been cut down to one farthing per folio of 90 words. A steady writer will get over 10 folios in an hour:—what is the result of his labour for a day's work of 10 hours at a farthing per folio?—2s. 1d.! A great part of the copies of documents in the Masters' office are and ever were prepared at night, and delivered in by 10 o'clock in the morning by individuals who, to carry out their miserable existence, lend, and have lent, their aid in perpetuating a system that has long required investigation and amendment. Many an unfortunate being, whose fortune has not thrown better means in his way, with a view of putting a larger loaf before his impoverished and half-famished family, by the present copying system, secures, as the reward of his midnight toil, at one farthing per folio, perhaps 1s. 6d. and an early passage to the grave; whilst the sleek and well-paid Chancery-office clerk proceeds in his career of wealth, extracted from the pockets of Chancery litigants through the toilsome pen of the miserable office-copy slave.—*Times*.

RAILWAY INTELLIGENCE.—Two most important railway meetings have been held at Liverpool this week—first, for the purpose of submitting the conditional agreement entered into by the Liverpool and Manchester Company with the North Union Company for the amalgamation of the lines, and other minor matters; and, secondly, to obtain the sanction of the proprietors of the Grand Junction Company to the consolidation of the Manchester line with theirs. The terms of the first agreement are, that each consolidated North Union stock be considered equivalent to 64*l.* 7s. 6d. of the Liverpool and Manchester, or amalgamated stock. Those of the second, as stated in the report that the Liverpool and Manchester Company having already created new 40*l.* shares this year to extinguish their debt, and the Grand Junction Company having issued new 12*l.* 10s. shares to meet their subscriptions to the Lancaster and Carlisle Company, each holder of a Grand Junction 100*l.* share, or other stock equivalent in amount, shall have a new 25*l.* share, and that being done, that the whole shall be consolidated on equal terms, in one capital stock (instead of shares), under clauses in the Bill for which, with the concurrence of the trustees, the directors intend to apply in the ensuing session.

CIRCUMSTANTIAL EVIDENCE.—A woman, 52 years of age, the wife of a small farmer named Benvoisin, residing at Epreville, was tried on the 27th ult. before the Court of Assizes of the Eure, for the murder of her brother, Pierre Vautier. It appeared from the indictment and the evidence that the brother and the sister had for nearly 15 years been on bad terms, in consequence of the anger felt by the latter at her brother having a larger portion of the property left by the father than she thought right, and that Vautier, in his just resentment against his sister, who was a woman of the worst feelings, had made a will bequeathing his property (about 16,000*f.*) to a friend. The mother, however, being attacked with severe illness, and therefore desirous of seeing her daughter, Vautier, who resided with his mother, consented to receive his sister, and at the death-bed of the parent a reconciliation took place. Vautier having about the period of his mother's death broken his thigh, the sister remained at his house to nurse him; and although her selfish disposition was again shewn by her desiring to have the whole of the household furniture of the deceased, and a quarrel ensued, yet Vautier, as a proof that the reconciliation made by the bedside of his mother was sincere on his part, revoked the will which he had made in favour of his friend, and executed another, in which he left everything to his sister. This act of generosity caused his death. The prisoner anxious to get immediate possession of the property, and taking advantage of his feeble state, entered his room at night, and with a club beat out his brains. Early on the following morning she went to a neighbour, and told him that during the night some thieves had broken in, and after robbing the house, had murdered her brother. The character of the woman, however, created suspicion, and the officers of justice had soon proof that the murder was committed by her. On the trial the evidence was such as not to admit of a doubt of her guilt; but the jury, to the surprise of the Court, declared that there was no proof of the murder having been committed with premeditation. She was therefore only sentenced to imprisonment for life, with hard labour. A remarkable fact was revealed on the trial, shewing that even the most calculating criminals frequently commit great oversights. The murderess had taken the precaution, after the consummation of the crime, to proceed to a neighbouring spring, and wash away the stains of blood from her hands and some of her clothing, but she had placed a bloody hand upon a latch on the inner side of a door which was locked, and the key of which was found in her possession. Her story of thieves having entered the house was contradicted by this fact, for they could not subsequently have locked a door of which they had not the key; the marks of blood also were those of the left hand, and it was proved that the prisoner was left-handed.—*Galignani's Messenger*.

STATISTICS OF CRIME.—The *National* states that the number of thieves who pursue their Profession in the capital, according to M. Gisquet, amounts to 10,000. Of this number 6,000 would take your purse if they found it lying about; 3,000 would pick your pocket; 2,000 would pick the lock of your door; 1,000 would enter your apartment at night by breaking open your doors or windows; and 600 would not hesitate to commit murder in order to effect a robbery. The Prefect of Police of Paris, yielding to the appeals of the press, had resolved that the night patrols, which hitherto consisted of six men each, should hereafter be reduced to three, so as to render the rounds more numerous, and consequently more efficacious. The *Constitutionnel* pronounces the measure to be insufficient, and observes that a few isolated precautions cannot remedy the imperfections of the present system, and that the gravity of circumstances, the light thrown by recent trials on the organization of bands of malefactors which have existed undisturbed since 1836, and the alarm of the population, imperiously require a complete reform in the police of the metropolis.

IRELAND.

RIGHT OF CHALLENGE IN FELONY CASES.

In consequence of the decision of the House of Lords in the appeal of *Reg.* v. *Samuel Gray*, the Government have caused circulars to be issued to the Crown solicitors, directing them to sue out writs of error in the cases of the several prisoners tried at the last assizes for felony, and to whom the claim to challenge peremptorily had been denied, as the offences with which they had been charged were not capital. The result of this proceeding will be a very material increase to the calendars at the next spring assizes. The writs are to be sued out without expense to the prisoners.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

The defects of the present mode of preparing and carrying through Public Bills in Parliament have been long very generally admitted. They have been the subject of constant complaint by the judges, and were referred for inquiry to a select committee of the House of Commons in 1836.(*a*)

Some progress has been made in both Houses of Parliament as to the revision of private Bills. In the House of Lords a general supervision takes place by the chairman of committees and his counsel; and in the House of Commons the same superintendence is effected by means of the chairman of Ways and Means and the Counsel to the Speaker. But no care whatever on the part of the Legislature is taken as to the preparation of public Bills. In the House of Lords Bills may be presented, and are usually read a first time and ordered to be printed as a matter of course on the motion of any peer. In the House of Commons, although in some cases the principle is discussed on moving for leave to introduce a Bill, no precaution whatever is taken as to the mode and language in which the principle is carried into effect. The member, indeed, who moves for leave to introduce the Bill is, in conjunction with one or two other members, ordered to prepare and bring in the Bill; but this proceeding is a mere formality, as he does not, in fact, usually prepare it. The Bill is then brought in, and not unfrequently in its progress through Parliament it rests entirely on the individual responsibility of its promoter. If it excites no party feeling, or interferes with no vested interest, and even if it does, when its principles and fate is once decided on, its details, and still less its language, are hardly looked to by any one, and are not, in many cases, attentively considered, until the Bill becomes the law of the land. Sometimes a particular clause or part of a Bill, is severely contested, or express attention is called to it; and then this clause or part of a Bill is critically considered; but even when this is the case, all the other parts and clauses frequently pass without any proper attention being paid to them.

Thus it may happen that a Bill affecting the whole country may be drawn by a person who never drew a Bill before; by one ignorant of law as a science, and possessing merely a superficial acquaintance with the usual technicalities of Acts, prepared possibly after a similar fashion. There is no uniformity of expression. There is in many cases no attempt to use the same word or phrase in the same sense throughout. There is no responsibility, except a very vague one attaching to the mover of the Bill, who is rarely its draftsman.

The Bill thus passed into law sometimes remains a dead letter in the statute-book from inability to work it. In other cases, consequences result from the Act which were never intended or anticipated; but at best the parties attempting to carry the measure into execution are frequently beset by the greatest doubt and difficulty. A very considerable proportion of the cases laid before counsel are occasioned by the difficulty of construing these statutes; and the same observation applies to actions and suits in the courts both of common law and equity, the time of which is taken up in

(*a*) Much information on this subject may also be found in a document presented to Parliament in 1836, and compiled by Mr. Arthur Symonds, intituled "Papers relative to the Drawing of Acts of Parliament." The judicial expressions of disapprobation of the present system of legislation are very numerous. It is only necessary here to refer, in addition to those referred to by Mr. Symonds, to the strong opinion of Lord Hardwicke in the House of Lords, on the discussion of the Militia Bill in 1756; to the opinion of Lord Eldon (see his life by Mr. Horace Twiss, vol. ii. p. [illegible]); to the opinion of Sir Edward Sugden, now Lord Chancellor of Ireland, in his letter to Mr. Humphreys in 1826; and to the [illegible] opinion of Lord Langdale, Master of the Rolls, on [illegible] June, 1836, in the House of Lords.—Original Draft.

expounding and settling the meaning of the Legislature. But all this is of course attended with great and sometimes ruinous expense and delay to the parties.

It may however be said that legislation, in the nature of things, must be attended by disadvantages and hazards. But it is found that where Acts have been drawn by competent persons, as for instance in the Acts for the Consolidation of the Criminal Law, brought in by Sir Robert Peel, and most of the Acts passed under the direction of the Real Property and Common Law Commissioners, very few doubts comparatively have arisen, although many of these Acts have made great alteration in the law, and have legislated on points of much technical nicety and of constant occurrence. It is to be observed that most of the statutes to which allusion is now made passed very nearly as they were brought in.

It may be asserted, therefore, that legislation is capable of being so conducted as to avert the evils which are now so deeply felt, and of which complaint has become so general.

The inquiry then arises, whether it be not possible to devise some plan by which Acts may be passed, which will not be attended by the evils of the present system?

The plan which appears to this Committee best calculated effectually to guard against and remedy these evils, is to appoint certain persons selected from the legal profession, officers of Parliament, for the examination and revision of all public Bills.

After much consideration, it appears to this Committee that these officers should not be employed to draw the Bills either of the Government or of private members. All that they would recommend, at any rate, in the first instance is, that every Bill should, after its second reading, be revised by the officers to be appointed. On the Bill being so revised, it should be returned to the House of Parliament in which it originated for committee; but the duty of the revising officers should not be supposed to end when the Bill was so returned; but it should be their duty to watch it throughout, and attend to all alterations made in either House of Parliament, until it received the Royal assent; and on any alterations being made, it should be referred back again to the revision of the officers.

It does not seem unreasonable to expect that the following advantages would attend the establishment of this office, some of which are now not even attempted to be gained.

1. A uniformity of style and expression in Acts of Parliament.

2. A knowledge of the existing state of that part of the law intended to be affected by the proposed measure.

3. A greater degree of clearness in the Act when passed, and thus greatly lessening the doubts as to the intention of the Legislature, and the subsequent expense of ascertaining it either by opinions of counsel, or actions or suits for his purpose.

Another great advantage that would be gained is, that competent persons would be induced to turn their attention to the framing of Acts of Parliament, a branch of study hitherto almost entirely neglected, and yet surely demanding exclusive attention as much as any other.

The principal disadvantages appear to be, that the establishment of this office might lessen the responsibility which now attaches to the Government and to the Speaker in matters of public legislation, and that when appointed, the new officers might relax in their zeal, and leave things much as they now are.

On the whole these disadvantages, although they deserve attention, appear to be far outweighed by the advantages which would attend its establishment.

One difficulty which has been sometimes urged to the establishment of the officers proposed is, that it might tend to fetter individual members in the exercise of some of their powers in committee on the Bill; but it is conceived that this difficulty is not very formidable. Where the committee is a select committee, one of the Public Bill officers might attend the committee (which is now not an unusual course for the gentleman to take who has prepared the Bill) to make explanations and provide for objections. A committee of the whole House is not perhaps the best place for settling construction of language; but it would be still open to members to make objections of this nature if they thought fit, although, as there would probably be less occasion for it, so it may be considered that this privilege would not be so often acted on as now.

It is quite possible that the office might, at some portion of the session, have a great press of work, and at others very little to do. When there was an excess of business they might have means afforded them of obtaining some assistance.

When the House was not sitting, or when business was not so pressing, their time might be usefully employed in consolidating and digesting the statute law, or advising on what statutes are obsolete or repealed, in reporting on the state of the law affected by proposed alterations, and in the general care and supervision of the statute law. The officers might also with advantage accompany the bills which they returned to the House with a short statement of the existing law, and the effect of the proposed alteration.

Another question of great difficulty will be, whether the new officers should continue in practice? It is considered that the chief officer, having the task of supervising the whole, should devote himself exclusively to the duties of the office. The other members might with advantage be allowed to remain in practice in the several branches of their profession.

In effecting an object of this nature, so important to every member of the community, it is conceived that the expense to be incurred should not be the difficulty in the way of carrying it out. But it seems capable of proof that the saving that the office would effect in stopping inconsiderate and useless legislation, in shortening bills, in preventing reprints of bills in many cases, and in saving the time of the courts, which is now occupied in construing the present imperfect statutes, would amply pay for its establishment.

For the reasons here given, and subject to the restrictions above alluded to, this committee are of opinion that parliamentary officers to revise public bills might be appointed with great advantage, as well to the Legislature as to the public.

CORRESPONDENCE.

TRANSFER OF PROPERTY ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The Act of 7 & 8 Vict. c. 76 was passed with so little notice or discussion, that it surprised me in the midst of the preparation of some arrangements *as to contingent remainders* affecting a considerable estate, and being apprehensive that I could not proceed with the deeds to destroy such estates, I laid the papers before an eminent conveyancer, and the following is an extract from his opinion: "With respect to the question under the late Act, that is a very important question, and has given me a good deal of trouble in the consideration; but I am of opinion that contingent remainders may still be barred until the end of this year, notwithstanding the exception of the provision regarding contingent remainders in the 13th section."

As you do not notice this point in the treatise on the above Act, in your publication of Saturday last, I have deemed it advisable to call your attention to it, being of very great importance in estates now under settlement.

I am, Sir, your obedient servant,

T. W. DAVIES.

Leominster, Nov. 25, 1844.

IMPRISONMENT FOR DEBT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Forthcoming events cast their shadows before. Lord Eldon must surely have been possessed of the gift of second sight, when he thus denounced, in the House of Lords, some Insolvent Debtors Bill of his day:—

"The Chancellor reprobated the false humanity and real injustice which these measures so often involved. They were made effectual instruments of chicanery and swindling, until *creditors* were reduced by them to the situation of debtors, and compelled to seek the refuge of such legislation for themselves." —*Horace Twiss's Life of Lord Eldon.*

I fear the ready resort to—

"The sponge which wipes out all, and costs you nothing."

will destroy the fine old spirit and bearing of the English trader, who formerly looked on bankruptcy as a crime, but will now be too apt to consider it as a periodical operation so usual, that it will not lower him in the scale of society, or destroy his self-respect,

I am, &c.

43, Bow-lane, City, THOMAS LOTT.

Dec. 9, 1844.

8 VICTORIA, CAP. 96.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have previously troubled you with some remarks upon this Act, for which you were pleased to find a place in page 446, Vol. III. No. LXXV. Since then I have seen a little more of its operation, and have heard various constructions put upon certain sections, but particularly upon the power to imprison for fraud in sec. 59.

When I wrote to you before, I had been consulted about this power to imprison, and a client of mine afterwards received a summons for debt from the Honour of Pontefract Court here, which is held two or three times a month before the Deputy-Steward or Judge, a gentleman of many years' standing at the Bar. My client told me that, from what he had heard in an indirect manner, the plaintiff intended to prefer some charge of fraud against him—what in particular he knew not—and therefore he desired I would attend the court to watch the case for him. I did so, and when the case was called on, I allowed a verdict to be given by the judge, the same as a judgment by default. After the verdict, the plaintiff's advocate proceeded to prefer certain charges of fraud against my client, and proved them. I then called the learned judge's attention to the words, "who shall try the cause," contending there had been no trial; and the objection was overruled. I next applied for the case to stand adjourned, to give my client an opportunity of rebutting, by evidence of absent persons, the charges brought against him; but this was refused, and the learned judge made an order for payment of debt and costs, and, in default, that defendant should be imprisoned three calendar months.

The same day another person had an action against my client; no defence being offered, the judge gave a verdict for the amount claimed, and again, on the application of the opposing advocate, an order was made for payment, and in default, that defendant should be imprisoned forty days, such imprisonment to commence on the expiration of the former sentence, in case he went to gaol. At the time I thought, and still think, the learned judge exceeded the authority given him by the above section—but this with all due deference. Had nothing further occurred, I should have allowed it to pass unnoticed. On Wednesday last, however, my client, who was in gaol, sent me another summons he had received, and desired me to watch the case for him. I attended at the court, but having other business before the magistrates who were sitting in an adjoining room, and while I was attending to it, the case against my client, in the Honour Court, was called on and disposed of, my clerk being present, but knowing nothing of the case, he declined to interfere. After the verdict, as usual, the same opposing advocate applied for an order *for a further term of imprisonment, which was ordered accordingly.* Whether the charges for fraud were the same I know not, neither do I know whether they were charges for offences committed about the same time as the other, as I presume the order for imprisonment could not be legally made in either case. If so, a person owing many debts might be detained in prison for years for what was all ONE offence, excepting you allow that offence to be divisible, *e. g.* in the case of a removal or concealment of half a dozen chairs, at as many different times, and to as many different places, all before the first action commenced. Or unless you limit the authority to make only so many different orders for imprisonment, not to extend over more than the period of six calendar months altogether; or not to make an order only within six calendar months from the date of the first, and the latter not to make the imprisonment more than six calendar months in the whole. Something of this kind I believe has been insinuated to me. But as the Act is a recent one, and the question general—perhaps, if you could find a place for this in your valuable periodical, some gentlemen connected with inferior courts might make known their practice, and others might give their opinions through the same medium.

I am not aware of reading about any similar cases in the superior courts.

I am yours, &c.

B. TERRY.

Bradford, Yorkshire, Dec. 11, 1844.

COURT OF CHANCERY, IRELAND.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have just read, in the LAW TIMES of Dec. 7, under the head of "Legal Intelligence, 'Ireland,'" a paragraph purporting to be a report of what took place before the Lord Chancellor of Ireland on the 3rd inst. in the matter of *Andrew Christopher Palles*, and in relation to the cause of *Foster* v. *Goold*, and I beg leave to correct some errors and omissions in it, which I am sure were not intentional.

In the first place, the affidavit of Mr. Palles did not state that the DEEDS were prepared in my chambers, but only the *drafts* of them; and it is not, I believe, even pretended or alleged, that I had any thing whatever to do with the *engrossing* of them, or the *dating* of them.

The deeds were admittedly in *strict accordance* with the arrangement between the parties; and the offence charged against Mr. Palles was, that the dates of some of them had been *altered*, and that some of them had been *antedated*. But it appeared from the affidavit of Mr. Palles that such was done with the knowledge, concurrence, and approbation of all the parties; and, in fact, that the dates inserted were the dates at which the original arrangement was entered into, and when the deeds *ought* to have been executed.

Your report should have also stated that the proceedings in the Court of Chancery were *behind my back*, as the Lord Chancellor himself admitted; and that I applied to him by my counsel in open court, to be allowed to make an affidavit in the matter, in order to shew that my conduct had been entirely free from blame; but his lordship thought that he had not any power to hear me. I have been, and am, most anxious to make such an affidavit.

I will thank you to insert this in the next number of the LAW TIMES, and am, Sir,

Your most obedient servant,

JAMES J. HARDEY.

Dublin, Dec. 11, 1844.
Chambers, 34, Kildare-street.

SELECTIONS FROM CORRESPONDENCE.

Mr. M. S. directs attention to another character in which SHAM LAWYERS are the source of infinite mischief:—

"Having, from the commencement of your useful publication, noticed an evident desire on your part to redress the numerous grievances under which our Profession labours, attention being called to them through your means, and not having hitherto observed any communication on the matter I am about to mention, I forward this, trusting some remedy may be devised. The subject I allude to is the drawing of wills by persons other than attorneys. Scarcely is there a town in the kingdom which has not, in the person of its bailiff or schoolmaster, a *sham lawyer*, though, thanks to the deserved exposure a few of these gentry have met at your hands, the race, I hope, is on the decrease. Still in the preparation of wills, their ready services may at all times be procured, unfortunately it being unnecessary that a qualified person should prepare these documents. Surely when it is considered how many points may arise in the construction of wills, and the intimate acquaintance with the law requisite to enable a person properly to draw them, it is time this practice was put a stop to. How seldom we hear of a will prepared by an attorney (so far as the legal effect is concerned) being called in question, compared with those prepared by persons not in the Profession. It would have been well had the late Act contained a clause invalidating any will not prepared by an attorney, unless drawn by the testator himself. This would have had the effect of confining the schoolmaster to his legitimate occupation, and by so doing have prevented numerous lawsuits and their ruinous consequences. The attorney already pays a sufficient tax in the shape of stamp-duty for articles, admission, and certificate, without the further wrong of having business properly belonging to him carried off by those who are both unable and unqualified to perform it.

A. P. transmits the following, and a reply will no doubt be interesting to others as well as to the writer. It is strictly a point of practice.

I shall feel particularly obliged by your allowing me the use of a corner of your valuable journal to ask some of my professional brethren the following points of practice:—

A. B. dies intestate as to a certain freehold estate contracted to be purchased by him, and his heir-at-law claiming to have the purchase completed out of the assets, has the solicitor to the executors of A. B. or the solicitor to his heir-at-law, the right to peruse the abstract and to prepare the conveyance?

If both have the right to *peruse* the abstract, and the solicitor to the executors is dissatisfied with the title, which the heir-at-law, however, is willing to accept, can the executors be compelled to complete the purchase?

"H. A." thus answers a practical query in our last:—

In answer to the query of your correspondent "Z." on the subject of creditors' deeds of assignment, I think there can be but little, if any, doubt that the execution of a deed by an agent acting under a memorandum not under seal is not a valid execution of the deed, and that the clause lately introduced into deeds of assignment for the benefit of creditors cannot have the effect intended. In support of this position, I would refer to the case of *Berkeley* v. *Hardy* (5 B. & Cr. 355). That was an action of covenant, and it appeared that the deed was expressed to be made by A, on behalf of B, of the one part, and C of the other part, A being authorized in writing, but not under seal, to execute the same for him, and the agreement, reddendum, and covenants were expressed to be between B and C only, but A executed the deed, and in his own name only. The Court held that B could not maintain covenant on the deed, and would not, upon the production of an insufficient instrument, presume the existence of another, which would be sufficient.

THE anecdote of Justice HERLE in our last has elicited some more.

It may be interesting to your readers to know something further concerning the Sir William Herle, Chief Justice of the Common Pleas, mentioned in the gentleman's letter who signs himself "Hal."

It appears he was a very *modest judge!* for Sir Edward Coke (10 Rep. 38 b.) says, "Sir William Herle, Chief Justice of the Common Pleas, in 9 Edw. 3, fo. [illegible], saith, 'that they were wise people who made that statute'" (*de donis*, 13 Edw. 1, c. 1). No one would of course suspect this learned judge to be administering a dose of self-praise, and yet Coke immediately adds, in his dry way, "And that Sir William Herle himself was at the making of the said statute, it appeareth in 41 Edw. 3, gam. 16." Indeed, Sir William Herle appears to have thought that the having had a share in the making of that statute was a sufficient stock to set up for a wise man; for in the 5 Edw. 3, fo. 14, he is reported to have said "that King Edward the First (who, by assent of his Common Council in Parliament, made the said Act *de donis*) was the wisest King that ever was."

To Readers and Correspondents.

LONG BENNINGTON *v.* FOSTAN.—*One or two errors crept into our report of this case, which were manifest to the reader. It is, however, worth while stating, that though the rule absolute for a writ of prohibition (against which Kelly, Q. C. shewed cause) was refused, a rule was granted that Dolby, the defendant in the Ecclesiastical Court, should declare in prohibition in the first four days before next Term. We are obliged to our correspondent for enabling us to supply this omission.*

W. R. (Mold).—*Thanks for the communication, but which is not available, as the case is less of public than private interest, and involves no point of law.*

A CONSTANT READER.—*The report in the* Times *escaped our notice. A coroner undoubtedly needs both legal and medical knowledge. He cannot efficiently discharge his duty without a familiarity with both professions.*

JOB and OTHERS *v.* THOMPSON (4 Law T. 121).—*In this case Mr. Justice Patteson stated that the proceedings on the part of the plaintiffs were perfectly regular, but he thought no injustice would be done to the plaintiffs by granting a new trial on the payment of costs by the defendant.*

We have no doubt our reporter was accurate as to the grounds upon which the rule was moved; but it by no means follows that the grounds were true.

A SUBSCRIBER (A. Z.), Norwich.—*The best work on the Poor Laws is the 4th volume of* Burns' Justice of the Peace, *of which a new edition is just published; but of less costly works,* Archbold's Poor Law, *edition* 1845, *is that which gives the most recent and the fullest information.*

A STUDENT (J. P., 2, New Millman-street).—*The costs are, as nearly as may be, as follows: Stamp for Certificate, 25l.; fees to officers of the several courts, about 6l.; certificate, 6l.; making a total of 37l. or thereabouts.*

[illegible] R. (Bideford).—*The suggestions will receive early and considerate attention.*

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THE LAW TIMES.

SATURDAY, DECEMBER 14, 1844.

THE CERTIFICATE DUTY.

WE return to this subject, for we fear the bulk of the Profession is not sufficiently alive to its importance, and does not feel the urgency of the demand for immediate, energetic, and united *action*.

Why the lawyers were selected by the legislature as special objects for taxation; in what sleepy moment they tamely permitted the burden to be placed upon their shoulders; and by what charm they have been soothed into silent acquiescence for so long a period; are problems it would be more curious than useful now to solve. Certain however it is, that they have been, and continue to be, unmercifully plucked by the tax-gatherer. The embryo attorney is not permitted to learn his Profession without first contributing 120*l.* to the revenue, nor admitted as a member of it without another good round sum, nor to practise it without a yearly tribute.

If the same tax were imposed upon all professions, the injustice would not be so glaring: but we cannot understand why the pocket of the attorney alone should be subjected to the process of exhaustion.

We presume, for in the obscurity we can do no more than hazard a conjecture, that it was supposed by the Government and the Parliament, that the Profession was a profitable one, and that it enjoyed some pecuniary privileges beyond those that were within reach of the rest of the community. Probably the reasoning, if not avowed in words, ran in this fashion through the brains of ministers and senators:—"We permit to the lawyers a fine harvest in the shape of costly justice and complicated laws. We yield nothing to the idle clamour for Law Reform; they can bear some bleeding; they make their clients pay; there can be no harm in taking a portion of the spoil."

So the taxes were imposed, we may suppose not without some grumbling at the first. But in time they came to be considered as perfectly natural, as a necessary part of legal existence, and from sheer habits their real hardship ceased to be felt. And, indeed, at the period of their infliction, their burden was not in fact so heavy as it has since become. At no period of their existence could we admit their justice or propriety. If the law permitted to the lawyer greater gains than he was entitled to in fairness, it was an odd method of adjusting the balance to tax him beyond his proportion; it was a clumsy contrivance to meet one wrong by another, and very similar to the morality of Eastern despots, who permit their bashaws to plunder a province and then strangle the plunderers, and seize their ill-gotten gains. There is no escaping from the dilemma; the lawyers were either over-taxed or over-paid; if the former, the law plundered them; if the latter, it plundered their clients through them.

But if such was the pretence for these partial taxes at the period of their imposition, that pretence will no longer avail. Successive Governments and Parliaments have curtailed the emoluments of lawyers, and even reduced them below the limits of a fair remuneration for their education, their time, their responsibilities, and their anxieties. But there has been no correspondent reduction of taxes. "*Cessante ratione cessat ipsa lex,*" is a favourite phrase in our books; but it has been forgotten to be applied to ourselves. The reason has ceased, indeed, but the tax remains. It will depend upon the attorneys themselves how long it shall continue to victimize them.

We protest against the taxes altogether, as essentially unjust in principle. But if we take another step, and survey their operation in practice, we shall see still more potent reasons for denouncing them.

The Certificate Duty is a fixed sum, or, at least, it is varied only by two tests:—first, according to place, being 12*l.* in London, and 8*l.* in the country; secondly, according to standing, the attorney for the first four years being graciously permitted his certificate at half-price. Thus is it a poll-tax in its most odious shape; a tax not proportioned to the actual means of the payer, but regulated by distinctions, of which one must be wholly irrespective of means, and the other very partially observant of them. The fortunate

man fattening on his two thousand a year pays no more than the unfortunate who pines upon a hundred a year. Surely this is not the British justice upon which British law so prides itself.

We suspect that much of the apathy that has prevailed upon this subject has proceeded from a *feeling* (for scarcely can it be called an *opinion*) that in some way or another these taxes deter persons from joining the Profession, and thus prevent competition.

A moment's reflection will shew the fallacy of this notion. Does it, in fact, so operate? Is not the Profession already crowded to suffocation? If gains are to be got in it, would the tax of 8*l*. or 12*l*. per year discourage a single adventurer? Has not every man such a reliance on his own good fortune, that when there is a prize to be won he will still recklessly start for it, though he sees thousands falling round him? In sooth, it is not the tax-gatherer who can keep a Profession select in number or capacity. The former will be regulated, like every thing else in a free country, by the law of demand and supply, with a continual tendency to a surplus of supply: and the standard of qualification will be determined by the bearing of the mass of the Profession, and the position it maintains in public esteem and respect. Taxes, such as those we are denouncing, operate only as a severe burden upon those who can least afford it, without working for the advantage of the Profession, or of any of its members.

The revision of the taxation of the Country, which the renewal of the Income Tax will require of the Government, affords an oppotunity for procuring a redress of the grievance which may not occur again for many years.

We hinted in our last the manner in which the attorneys throughout the kingdom should proceed to work the question. We hope those hints will not be lost upon them. The plan is practical, easy of accomplishment, and sure to be successful.

VERULAM SOCIETY.

The first part of the *Practice Cases* is published. The second is in the press.

The *Magistrates' Cases* of the last Term are likewise in the press.

Another number of *Criminal Law Cases*, one of *Registration Appeals*, and one of *Real Property* and *Conveyancing Cases* are in a state of forwardness.

Simultaneously with the Reports, similar in shape and size, and in like numbers, stamped, it is proposed to issue a miscellaneous collection of *Practical Forms* and *Precedents*, gathered from the widest range of authorities, and embracing every subject to which reference is likely to be required in the office.

It is believed that such a work will be of extreme value to practitioners; and by thus publishing it in numbers, similar to the Reports, it will have the advantage of examination by the Profession, of their suggestions for its improvement, and, as we hope that also which will give it incalculable worth, contributions from the members of the Profession throughout the country of the many forms and precedents by the ablest lawyers this kingdom has produced, which must at present be hidden in the dust of their offices.

All will, of course, be carefully revised previous to publication, to see that they are adapted to the existing law, and, wherever necessary or useful, explanatory notes will be added.

May we at once prefer a request to our readers, especially to the members of the Society, to forward any forms or precedents of *proved* excellence which they may possess, for the work will be begun with the least possible delay, and each number will appear as speedily as materials for each are gathered.

The following new member has been enrolled:—

Trimmer, Charles and Henry, Alton, Hants.

LAWS OF FRANCE.
No. III.

TRIBUNAL DE COMMERCE OF PARIS.

A Frenchman can summon a foreign trader before the French tribunals.

An indorsement given in England, although not fulfilling all the conditions required by the French law, transfers the property to the bearer.

The certificate obtained in England by an English trader, does not free him from his French creditor, who has not been a party to it.

Mr. Balfe, the composer, had been at the head of a theatrical undertaking in England, and failed on the 7th July, 1841.

His creditors authorized and signed at the Bankruptcy Court his act of liberation, conformably to the English Laws, the 25th September, 1841.

By this certificate of conformity, which answers to the *concordat* in France, Mr. Balfe was released from all debts due by him when he became bankrupt, and from all claims and demands proveable under a commission of a fiat of bankruptcy.

Mr. Balfe owed Mr. D——, an English merchant, a sum of 280*l*. which was on his books, and amongst other bills he had given him a note of hand for 102*l*. 3*s*. payable the 5th July, 1841, and endorsed as follows, by Mr. D——: "M. Chateau, London, 22 May, 1840."

M. Chateau, thus in possession of this draft, demands the payment from Mr. Balfe, who had established himself in France, and summons him before the Tribunal de Commerce of Paris.

On the 12th January, 1844, a judgment of condemnation by default was given against him, in consequence of which M. Chateau seized his rights of authorship at the theatre of the Opera Comique.

Mr. Balfe made opposition to the seizure, and maintained that M. Chateau has only put his name to Mr. D. his brother-in-law; that the real creditor, being an Englishman like himself, the Tribunal de Commerce of Paris is incompetent, and that in fact the indorsement was irregular, since it does not express the value received (*a*), and is only equal to a power of attorney.

Moreover, as the real creditor was one of those who had signed the certificate before the Bankruptcy Court of London, he cannot, through the medium of a complaisant third, take proceedings which would not be authorized in England. It was further contended, on the part of Balfe, that it is true that in England the law prescribes no formality for the indorsement of drafts, a signature alone being sufficient; but then such an indorsement is far from being as powerful as a regular indorsement in France, and one can always demand of the bearer an account of his possession of the bill, the payment of which he claims.

Mr. Balfe demands, then, of M. Chateau the proof of the value received, and an affidavit of his presence in London on the day of the indorsement, the indorsement being dated London.

Judgment was given by the Tribunal, as follows:—

"The Tribunal admits the opposition of Balfe against the judgment by default given against him the 12th January, 1844, and judging the merits of his opposition:

"Touching the competency:

"Inasmuch as the plaintiff is a Frenchman, and can, in virtue of art. 14 of the Code Civil, summon Balfe, a foreigner, before the tribunals of France:

"Inasmuch as, since Balfe was in trade at the time he accepted the bill of which Chateau is the bearer, the Tribunal de Commerce is competent:

"For these reasons the Court retains the case, and judging—

"Touching the indorsement:

"Inasmuch as it results from the debates and explanations that D—— indorsed the said bill to Chateau the 22nd May, 1841, in London, in payment of a stipend due to the latter for architectural works:

"That if the indorsement of D—— is irregular, and only equal to a power of attorney in the eyes of the French law, according to the English law, this indorsement is sufficient to confer upon Chateau the property of the draft;

"That accordingly, Chateau became the owner of it the 22nd of May, 1841, in London, by the indorsement of D——; that, by coming into France, he cannot have ceased to be the owner of it; that he ought, therefore, to be considered as a legal holder.

"Touching the *concordat* of Balfe:

"Inasmuch as Chateau was not present at the *concordat* obtained by Balfe in London, 25th August, 1841:

"That, consequently, he has not contracted towards Balfe any personal engagement of which this latter may claim the fulfilment:

"Inasmuch as, moreover, that this *concordat* which restrains all creditors in England, whether they have signed or not, has not been acknowledged by a French court.

"That it cannot, therefore, be opposed to Chateau in France, and cannot exonerate Balfe from honouring his note:

"For these reasons,—

"The Court rejects Balfe's opposition to the judgment given against him 12th January, 1844, which is to be executed according to the form and tenour thereof, and condemns him to all expenses."

N. Trefft,
Avocat à la Cour Royale,

Paris, Nov. 23, 1844.

[This decision seems contrary to the rules adopted in our law of recognizing a foreign certificate. We hope to make it the subject of an article at an early period, as the question is one of general interest.—Ed. Law T.]

PRACTICE—PLEADING—EVIDENCE.

By Professor Carey.

Delivered at University College, London.

LECTURE XIV.

When the evidence is gone through, the judge, in the presence of the parties, sums up the whole to the jury, stating to them what is the general law on the subject before them, and explaining the precise points on which the verdict is to be given, and shewing how the evidence that has been adduced bears upon the question, with such remarks as he thinks necessary for their direction. In ordinary cases the verdict is given generally for the plaintiff or the defendant; but if there are more issues than one upon the record, it is necessary to enter a separate finding on each issue. Generally when a verdict is given for the plaintiff or the defendant the effect of it is immediately understood, and it is entered on the several issues by the officer of the court. If it is not so clear, a separate finding is required from the jury with respect to each issue. Thus, in an action of debt for goods sold and delivered, if the defendant pleads first, never indebted; secondly, that he was an infant; thirdly, that the debt did not arise within six years; and, fourthly, that he has paid it; four issues are raised for the jury, and the defendant has four separate grounds of defence. In order to be entitled to a verdict the plaintiff must succeed in all the issues; it must appear that the goods were delivered, that the defendant was of age, that the debt was incurred within six years, and that he (the plaintiff) had not been paid. The defendant defeats the action if he succeeds only on one of these issues. So, in an action of *quare clausum fregit*, if the defendant pleads,—first, not guilty; secondly, that the close did not belong to the plaintiff; and, thirdly, a right of way; if the verdict is found for the plaintiff on the two first, and for the defendant on the third issue, the defendant there actually succeeds. If the burden of proof lies on the plaintiff, and he fails to produce any evidence sufficient to make good his case, he may be nonsuited. You may remember that, originally, at every stage of the proceedings, the parties were required to appear, and if, at the conclusion of the trial, the plaintiff did not appear, no verdict could be given. And for this reason; when the plaintiff said that the case he had brought forward was not sufficient, so that the verdict, if any, would be given against him, and was in hopes that on some subsequent occasion he might be better provided, he left the court; he was then called three times, and on his not answering, he lost his writ of *nisi prius*. One might infer from that that he only loses the *nisi prius* record, but in fact he loses the action, and every step that has been taken from the first writ of summons. But he is not finally debarred of his claim, for he may sue the defendant again for the same cause of action: the right remains, though the action is defeated. The words in the formal entry are, "when the plaintiff, being called, comes not; nor does he further prosecute his suit against the defendant,"—he is nonsuited—*non prosequitur*. When the trial is ended, the result is noted down at the time, and is afterwards entered on the back of the record. The former part of the record sets forth the earlier stages

(*a*) Necessary in France. See *Code du Commerce*, 181.

of the proceedings, inclusive of the jury process, and by this entry the cause is continued one step further, by shewing what took place afterwards at the trial. Formerly the proper mode of trial was at the bar of the court at Westminster; but to avoid the inconvenience that resulted from that proceeding, the judges of assize are commissioned to try the issues, and according to the result of this delegated trial, proceeds the judgment of the Court above. The object of the *postea* is to record the proceedings at the trial, and to shew the result, so that the Court above may have sufficient notice thereof on which to form their judgment. Hence the *postea* operates as a certificate that the person who succeeded is entitled to judgment, the trial ending in his favour. Hence, also, the party who succeeds is entitled to the *postea*. If the plaintiff succeed on two issues, and the defendant on the third, that is substantially a finding for the defendant, provided the third issue goes to the whole cause of action, and the defendant is entitled to the *postea*.

I have supposed the case to go on, and that the investigation is merely one of fact; but frequently questions of law arise. When a question of law arises at Nisi Prius, several methods have gradually grown into use, by which the determination of it is reserved for the consideration either of the Court in which the action was commenced or some higher tribunal. The methods of most ancient date are,—*demurrer to the evidence*, *bill of exceptions*, and *special verdict*. By a demurrer to the evidence, the party admits all the evidence to be true; the whole testimony is entered of record, and the effect submitted directly to the consideration of the Court. An action commenced in the Queen's Bench goes to be tried at Nisi Prius; one of the parties wishes to have all that is proved set forth "of record;" he then refers to the evidence, and says it is *not sufficient in law* to make out the case of his adversary; that being so, the whole of the evidence is set down on the record, and then carried into the Court of Queen's Bench, from which the cause originally came, and the Court has to decide whether, if the facts be true, they bear out the issue or not. A demurrer to the evidence has nearly the same effect as a demurrer to the pleadings. You will find a case in which the proceedings are set out (*Gibson* v. *Hunter*, 2 H. Blackstone, 187), and also a case of great importance in other respects (*Lickbarrow* v. *Wason*, 2 T. R. 63, and 1 H. Blackstone, 358). The question there is as to the right of stoppage *in transitu*: one of the parties demurred to the evidence, and the question was so brought before the Court. If either party is dissatisfied with any ruling of the judge in point of law, he may tender a *bill of exceptions*. If the judge says such and such a witness is not admissible, or that such and such is the law with respect to any point brought before him, or if he misdirects the jury in point of law, either party may tender a *bill of exceptions*, which is a statement in writing of the objection taken to the decision, to which statement, if truly made, the judge is bound to set his seal. In practice, a note of the bill of exceptions is always taken down at the time, and then a formal bill is drawn out involving the point, and tendered to the judge and by him sealed. This proceeding was provided by the statute Wm. 2, and there is a recent case on this point (*Wright* v. *Doe dem. Tatham*, 1 A. & E. 3). By this means the ruling of the judge is thus entered of record, for the bill of exceptions when framed, like a demurrer to the evidence, is part of the record. The cause goes on independently of the bill of exceptions. The judge takes his own course, and the cause proceeds according to the directions of the judge. For instance, the judge has admitted a witness, who, one of the parties thinks, ought not to have been admitted; a bill of exceptions is tendered, the judge signs it, and decides that the witness shall be examined; the jury give their verdict on the testimony of the witness, and on that verdict judgment follows. Nothing is done in the court out of which the cause came, but the *bill of exceptions* is joined to the record, and the party on whose behalf the bill was tendered may move the cause, by writ of error, into the court above; the bill of exceptions goes with it, and then the Court decides whether [illegible] a good witness or not, and if not, the verdict [illegible] aside. (*Bulkeley* v. *Butler*, 2 B. & C. [illegible].) It is the duty of the judge to direct the jury in point of law; if the direction is wrong, either party may tender a bill of exceptions; if this is not done, it is the duty of the jury to follow his direction; if they do not, there may be a new trial. If the jury go directly against the decision of the judge in point of law, a new trial will be granted as a matter of course. But if the jury experience any difficulty in applying the law to the facts—if they are not decided as to the effect of the facts in their own mind, or how far they come within the law, they may find a *special verdict*, wherein they state the facts as proved, and leave the effect of these facts to the consideration of the Court, and the Court decides. In the three modes of proceeding which I have enumerated, the question of law, or the fact on which that question is to be raised will become part of the record; but the opinion of the Court is, in modern practice, taken in a less formal manner. A *demurrer* to the evidence puts the facts on the record for the Court above; a *bill of exceptions* puts an exception to the proceedings on the record for the decision of a Court of Error; a *special verdict* finds the particular facts of the case, to enable the Court to give its judgment whichever way it thinks proper on those facts. Now, instead of a demurrer to the evidence, or bill of exceptions, it is more usual for the judge to reserve the point for the consideration of the Court, and give the party leave to move to enter a nonsuit, as the case may be. Or it may be that the damages are not proportioned to the circumstances of the case, and the judge will then give leave to either party to move to increase or lower them. Applications of this kind cannot be made except by leave of the judge; so, instead of a special verdict, a general verdict is taken, subject to a special case, that is to say, a verdict is taken merely *proformâ*: the facts on which the question of law arises are set forth in writing by the parties, not formally "as of record," but merely as a memorandum for the parties. The Court above, after hearing the argument, gives its opinion,—it declares on the facts stated what is the legal result; in the meantime the record has been in the custody of the officer, and is finally delivered to the succeeding party, indorsed with the *postea*. This was found to be the readiest means of deciding disputed questions of law, and it frequently happened that where the parties agreed on the facts, and disputed the legal result, they consented to admit the facts, and to take a formal verdict subject to a special case. Parties thus availed themselves of a formal trial at Nisi Prius in order to obtain the decision of the Court. However beneficial might be the result of this mode of proceeding, it was attended with all the trouble, expense, and delay occasioned by a formal trial. This objection has been obviated by 3 & 4 Wm. 4, c. 42, s. 25, for upon the pleadings being completed, and issue joined, the parties may, by consent, apply to any one of the judges, and obtain an order to state the facts in the form of a special case; upon which the opinion of the Court is afterwards taken and the judgment entered. The Court, however, will not allow that opinion to be taken on any case that has not actually occurred. The Court sits to administer justice between litigant parties: and if a sham case is got up on special facts, in order to fish for a decision of the Court, the parties engaged in the proceedings will be guilty of contempt. (*Re Elsam*, 3 B. & C. 597.) Elsam was an attorney, and, anxious to have the opinion of the Court as to a certain will in which he was interested, he got up an action on that will, or another will containing the same words; he was plaintiff and defendant, and the case was stated for the opinion of the Court: the case stated was to be argued by counsel, but somehow or other it was ascertained to be a sham case, and he was fined 40*l.* or to be committed for the contempt.

These are the several ways of raising the point of law on a record,—demurrer to the evidence, bill of exceptions, and special verdict, in order to get the decision of the Court,—the substitute in modern times being the usual practice of reserving the point for the judge on taking a verdict, subject to a special case. There are other ways, however, when the parties are dissatisfied with what has taken place at the trial, of providing a remedy: one of these is by a *venire facias de novo*. A *venire facias de novo* is granted where there has been a *mistrial*, as where the jury have been irregularly retained, or where the verdict they give is one that cannot be allowed by the Court, or where the verdict is, on the face of the record, bad or insufficient. A *venire facias* is a *new awarding of the jury process* to summon a fresh jury to try the case over again. A *venire facias de novo* is not of very frequent occurrence, but it does sometimes occur, and it is deserving of notice, as being probably the first step towards the introduction of trying a case over again when the result of the first appears to be unsatisfactory. One frequent case in which the *venire facias* is awarded is, where there is, for instance, a declaration containing two counts, and one of these counts is a good count, and the other is a bad one. There are two counts, one setting forth a good cause of action, and the other not; the jury assess their damages on both together; now it is impossible to say on which of these two counts the damages are assessed, and therefore they must go to another jury to ascertain the damages on the good count. (*Leach* v. *Thomas*, 2 M. & W. 427; and *Empson* v. *Griffin*, 11 A. & E. 186; 2 M. & G. note b, p. 238; also the case of *Leek* v. *Anon. and Mason*, 2 East, 19, note.) The defendant, in this case, demurred to the evidence, and the plaintiff was therefore obliged to set out the evidence on the record; it was carried to the Exchequer Chamber, and afterwards to the House of Lords, who decided that the demurrer to the evidence was informal, and they therefore, on that ground, awarded a *venire facias de novo*. A *venire facias de novo* can therefore only be obtained on account of some defect apparent on the record. That you find stated in *Gee* v. *Swan* (9 M. & W. 685), where there was a defect on the record, though only a formal one; and the Court would not grant a *venire facias de novo*, but left it to the party to bring a writ of error. In a subsequent case of the same kind the Court allowed the mistake to be amended.

A *new trial* is a much more expensive remedy. The first instance to be met with in the books of a new trial for matter not apparent on the record was in the case of *Wood* v. *Gunstone*, A.D. 1665, in Style's Reports. There are several cases in which a new trial may be now obtained: first, where the judge has improperly admitted or received evidence; and, secondly, where the judge has misdirected the jury on any point of law. Either of these might be the ground of a bill of exceptions, and on either of them, particularly the latter, the point is frequently reserved; still if it is not reserved it is ground for a new trial. (*Holliday* v. *Atkinson*, 5 B. & C. 501.) There was a promissory note in favour of a child nine years old, and the judge told the jury that the note, being expressed to defer value received, implied that a good consideration existed, and that gratitude to the infant's father, or affection for the child would suffice. The question was, whether there was a sufficient consideration, and the jury, by direction of the judge, found that there was. "I think this case must be sent to a new trial," says Abbot, J. When a verdict is against the weight of evidence, it will rarely be interfered with, because evidence is peculiarly matter for the jury; and only when the Court conceive they are completely and grossly in the wrong, will it interfere. (*Millan* v. *Taylor*, 8 Bing. N.C. 109.) Where a verdict has been obtained by trick or surprise, a new trial will be granted. (*Thurtell* v. *Beaumont*, 1 Bing. 339.) Where a witness on a trial has since been convicted of perjury or the like, that will be a ground for applying to the Court for a new trial. (3 Doug. 24.) Where the damages given are excessive, that is a case in which the Court will interfere with the discretion of the jury. (*Price* v. *Severn*, 7 Bing. 316.) In this case the language that is used by Tindal, C. J. is nearly the same as that used by him in *Millan* v. *Taylor*. An importunate beggar having been given in custody by the gentleman at whose door he was, the beggar brought an action to recover 100*l.* damages, when Tindal, C. J. said, "I think the case must go before another jury." Another case in which a new trial is granted is where the jury misconduct themselves (*Rennaye* v. *Ryan*, 9 Bing. 333), where one of the jury, before the trial, expressed which way he should like to give a verdict. The plaintiff sought to recover damages for an article which appeared in the *London Medical and Surgical Journal*, which was conducted by the defendant Ryan. It is ground for a new trial if a juror, before being sworn, has expressed a determination to bring a verdict one way. This case was argued, but the facts did not quite come up to it. (*Hale* v. *Close*, 1 Strange, 642.) When evidence has been improperly rejected, or, having been objected to, has been improperly received, the party suffering thereby is entitled to a new trial. Where the evidence has been improperly received, the Court will not inquire whether, besides this, there was not some unobjectionable evidence sufficient to support the verdict; nor, when the evidence was improperly received, will they inquire what degree of weight was due to it, un-

less it is clear that any verdict which might be given on the strength of it would be improper and liable to be set aside. The Court will not interfere with the discretion of the jury unless the verdict is contrary to law, as expressed and acted upon by the Court in *Doe dem. Taylor*, 6 Bing. 551). Subsequent cases have ruled that the Court will not inquire in cases of this kind whether the evidence was sufficient to support the verdict; it must always be a question for the jury. (*Creese* v. *Barnet*, 5 Tyr. 458.) This was in the Exchequer; and there is a similar case in the Queen's Bench, reported in 4 A. & E. 53. Where the objection to the former trial is that the verdict was against evidence, the Court will not interfere in an action at Nisi Prius if the action is for less than 20*l*.

There are certain other proceedings that may be taken to obviate the effect of a verdict. Where a verdict has been given for the plaintiff, but, on examining the record, it appears that it does not disclose any sufficient cause of action, the defendant may move *in arrest of judgment*. The trial has ascertained that the *facts* are *true*, but the defendant urges that they are *not sufficient in law*. The insufficiency of the facts alleged is, we have seen, the ground of a demurrer, and no motion can be made in arrest of judgment except where there is upon the record such an objection as would have been the ground of demurrer. But it is not every ground of demurrer that will support a motion in arrest of judgment. A judgment might formerly have been arrested for a mere formal objection; this has been altered by the several statutes of Joefails and amendment, and judgment will not be arrested unless the objection is one which might be taken on *general* demurrer. The statute 4th Anne produces that effect, because in matters of form an objection to the demurrer must be special, and if not, no objection can be taken in any form afterwards. And there are also objections which, though fatal if taken on general demurrer, are *aided by verdict*. For instance, a rent-charge is pleaded: now, a rent-charge can only be granted by *deed*, and if it is not so alleged, this is ground of demurrer. But if the grant of the rent-charge is put in issue, and found by the jury, this objection cannot be raised in arrest of judgment. The reason of this is, that without a deed there could be no grant. If a deed had not been proved, they could not have found there was a grant. The deed, therefore, must have been given in evidence. The rule is, that where there is any defect, imperfection, or omission, if the issue joined be such as necessarily required on the trial proof of the facts so omitted, or defectively or over-stated, without such proof it is not to be presumed that the judge would have directed the jury to give, or that the jury would have given, the verdict that such defect, imperfection, or omission has cured (1 Wms.'s Saunders, 227, note 1; *Dally* v. *Hurst*, 1 Brod. & B. 222); that is, the Court will presume that though the facts may be insufficient, the facts proved must have been such as to support a statement sufficient in law.

The next mode is judgment *non obstante veredicto*, which is rather the reverse of the arrest of judgment. Where a plea is pleaded by way of confession, and a verdict is found for the defendant, it may happen that the matter so relied upon by the defendant may be an invalid defence in point of law, though true in point of fact. An action was brought against a schoolmaster by the French usher, for discharging him without notice: the schoolmaster pleaded that when the holidays were over, the usher absented himself for two days, whereby the schoolmaster was delayed in his business. The Court held that this was not such an absenting as to put an end to the contract; though it was proved to be true, it was no answer to the action; the plaintiff therefore had judgment, *non obstante veredicto*. (*Tillient* v. *Armstrong*, 7 A. & E. 557.)

Where a verdict has been given on an issue, if the facts put in question by the issue are immaterial to the merits of the action, the Court will award a *repleader*. That may take place on either side. Where a false step has been made, the judgment will be arrested, and the party who first made it must plead over again. Suppose an action on a bond conditioned to pay money *on or before* December 5th; plea, payment on December 5th; replication, traversing payment on December 5th, verdict for the plaintiff; i. e. there was no payment on December 5th. The issue is immaterial, for the payment might have been made on another day. (*Tryon* v. *Carter*, 2 Strange, 994.)

THE CRITIC.

New Books.

A Lecture on the Law of Representations in Marine Insurance, with Notes and Illustrations; and a Preliminary Lecture on the Question whether Marine Insurance was known to the Ancients. By JOHN DUER, LL.D. Counsellor-at-Law. New York. Wiley and Putnam, London.

A COMMON system of jurisprudence is a strong tie between nations, and the possession of such a system is one amongst many causes which leads us to hope for permanent harmony between this country and the United States. They drew their first principles from the fountains of English justice, and we now gladly avail ourselves of the acuteness, knowledge, and profoundness of their jurists, not only for deductions, illustrations, and applications of these principles, but also for the elaboration of others which are so much more frequently discussed and called into practical operation, from the complicated relations between the different States of the Union. How great are the obligations of the lawyer of the present day, who seeks to reduce the chaos of cases to fundamental principles, to the works of Chancellor KENT and Mr. Justice STOREY. These two are, in our opinion, the brightest stars in the intellectual world of America. None have achieved for themselves so high and so enduring a reputation.

The reception which their works have met with in England, and the confidence that for such works at least an unprejudiced audience can be found, has probably led Mr. DUER to adopt the course he has done in the book which we have the pleasure of now introducing to our readers, and we may add, to the English public. The nature and object of it are stated in a fair and manly manner in the following Preface.

The Lecture "Of Representations" now published, is extracted from an extensive work on Marine Insurance, which the author during the past year has been engaged in preparing, and to the completion of which all the hours of labour that the immediate duties of his profession may allow him will hereafter be devoted. Although the views contained in this lecture, it is believed, are fully sustained by the authorities, it must be confessed, that in some respects they differ widely from those of former elementary writers, and hence, before he finally adopts them, the author is desirous to submit them to the critical judgment of the profession in England, as well as in the United States. He is also desirous to have the judgment of the profession on the general plan of his intended work, which is meant to embrace a wider range of research, a fuller discussion of principles, and a more thorough and critical analysis of the adjudged cases, than have been hitherto attempted. Of this plan, and of the mode of its probable execution, he is willing that the Lecture now published, with its Notes and Illustrations, shall be regarded not merely as a sufficient, but as a favourable specimen. For its actual imperfections he has no apology to plead. It is not a hasty production, but the result of much labour and of a frequent and careful revision.

In addition to these reasons, the author wished to draw attention to some recent decisions in the United States, which we shall have occasion to notice in a future article. We shall to-day confine ourselves to the preliminary lecture, in which Mr. DUER discusses the *vexata quæstio* as to the knowledge of marine insurance amongst the ancients, and comes to the conclusion in the affirmative—a conclusion from which we altogether dissent. GROTIUS, BYNKERSHOECK, CLEIRAC, PARDESSUS, PARK, and MARSHALL are among the supporters of the negative; while our opponents can certainly boast of the opinions of PUFFENDORF, LOCCENIUS, BOUCHON, and possibly of EMERIGON in favour of their views. Mr. DUER has certainly argued most ingeniously and resolutely in favour of his hypothesis, but we are only the more convinced that it is without foundation. He commences, like an able tactician, by shewing the egregious blundering of some of his opponents; but he must recollect that destruction of some of *their* reasonings is not equivalent to building up a new structure. Mr. PARK (and Mr. Serjt. MARSHALL copied) this error, said that the commerce of the ancients was inconsiderable, and comparatively free from danger; at the same time admitting (what we are not inclined to do) that insurance must necessarily have followed the introduction of foreign commerce.

That the dangers of ancient navigation were thought much more of by those who experienced them or heard of their frequent occurrence than by the modern writers on the subject, is plain from the allusions to them in the poets—

> Suspendisse potenti
> Vestimenta maris Deo—

and numberless other passages familiar to the classical scholar, must have been replaced in the memories of those learned men of the law by the Roes and Does of the reports ere they could have made such a statement. Moreover, that the commerce of the Roman empire was very widely extended, is a fact now universally admitted. Every country in the world was drained to supply the wants and luxuries of the imperial city. The Mediterranean, itself not very free from perils of the sea, was not the limit of their voyages. The Red Sea, the Persian Gulf, the Indian Ocean, were all traversed by the sailors of the empire.

The great usefulness of insurance would lead us to give the fullest weight to any probable evidence of its having then existed, but we cannot assume that an extended commerce is impossible without it, and then, with Mr. DUER, allow a few passages of very doubtful import to be of sufficient authority to support a *strong presumption* that it was known and practised. Still less can we do so when its kindred form of security, bottomry-bonds, are constantly referred to in the ancient writers, and no passage (we shall presently notice the alleged authorities) can be found in which marine insurance is mentioned.

The first passage quoted as a proof of its existence is the account given in LIVY of the means taken to procure a supply of corn for the army in Spain in the early part of the second Punic war. The merchants were invited to lend their money, to be repaid from the first moneys that came into the public treasury. They were to receive no interest, and so far they gave up something for the public good, but they wished for some return—as LIVY says, two conditions were demanded: "Unum ut militia vacarent, dum in eo publico essent: alterum, ut *quæ in naves imposuissent ab hostium tempestatisque vi publico periculo essent.*" (Livy, lib. xxiii, cap. 49.) Their demands were granted, and this, it is said, shews that insurance was known. Now it has been long ago observed, that there was no premium paid; nor does the answer, that in effect there was, because without this arrangement the corn would have been sold higher, meet the objection. For, if so, where was the peculiar advantage to the merchant? Is it not clear that they took the opportunity to obtain a *boon*,—a security which they had no other means of gaining? If they could have insured, they would have done so, and not exposed themselves to the imputation of preferring their pockets to their country. The transaction proves, in our opinion, the non-existence of any insurance companies or underwriters. It was far more like our system of "bounties," and similarly it led to frauds to obtain a higher bounty than was due. (See Livy, lib. xxv. cap. 3 & 4.) We again admit that Mr. DUER has annihilated the reasoning of his opponents, for it is impossible to agree with Mr. PARK that the government were bound in justice to suffer the risk of the transit. The subsequent account of the frauds shews that they did not buy at Rome, but that the corn-merchants were to be paid for what they delivered, unless the non-delivery was prevented by shipwreck.

A passage in SUETONIUS, relating what was done by the Emperor CLAUDIUS to obtain a more regular supply of corn, in consequence, as that anecdote-loving writer says, of his having been pelted with crusts during a dearth, is also cited as an authority. This, again, proves that insurance did not exist, for CLAUDIUS was anxious to *find out* some effective bounty system to induce merchants to freight ships *even in the winter*; and what he did is thus stated: "*Negotiatoribus certa lucra proposuit suscepto in se damno si cui quid per tempestates accidisset et naves mercaturæ causa fabricantibus magna commoda constituit pro conditione cujusque civi, vacationem legis Papiæ Poppææ, Latino jus Quiritium, fœminis jus quatuor liberorum, quæ constituta hodieque servata.*" Would this have been noticed as so extraordinary if a system of insurance had existed? Does it not prove the contrary? The emperor says: "I know you are afraid of sailing in winter, because the risk is so great, and you have no mode of protecting yourselves. I will therefore pay for any loss that you may incur, and will moreover confer great privileges on those who build ships."

The passage in CICERO's Letters (Epist. ad Famil.

2, 17) we shall not quote, as even Mr. Duer admits it has no bearing upon the question; nor could any one, we think, not determined to find support for a preconceived hypothesis, see any evidence in the passage—"Si navis ex Asia venerit—dare spondes—si navis non venit" (quoted by Emerigon)—of any thing approaching to insurance. The context clearly shews it was merely a wager, not like a policy, but a simple bet; for another instance is given in the next line—"Si Titius consul factus sit."

Mr. Duer has taken a different view of the above passages; and having considered that the evidence adduced is sufficient, proceeds to grapple with the strange fact that the Roman law is silent on the subject. He does this in an ingenious and interesting manner. He says—

The grand difficulty of the argument yet remains to be encountered—the entire omission of the subject of insurance in the Roman law—a difficulty much strengthened by the fact that the analogous contract of bottomry is fully and carefully treated. I shall not dissemble the extent of the difficulty, nor deny that, on the first consideration of the subject, the inference seemed to me unavoidable and necessary, that insurance was omitted because it was unknown. It did not then occur to me that any other explanation of the fact could be given. Subsequent reflection and research have led me to a different conclusion. The argument founded on the silence of the Roman law, proceeds on the supposition that the Justinian Code (I use the term in its largest sense, as comprehending the whole body of the civil law) was intended to embrace all laws of a permanent character, that from the time of its promulgation, were to be in force throughout the empire, and to constitute the rules of decision in all its tribunals. That such was the general design of the work cannot be doubted, but, that it was meant to supersede all local laws and usages whatever on subjects not embraced in the code, or not in actual conflict with its provisions, it would be unreasonable to suppose, and for such a supposition there is not, that I am aware, the slightest authority. Now, if marine insurance was known in the time of Justinian, its knowledge and use were probably confined to the maritime cities of the empire, and it existed in each, not by virtue of any positive law, but as a local usage. It was a custom of merchants, and it was either by the merchants themselves, or by local tribunals, that all questions arising under it were probably determined. Such was the form in which insurance arose in modern Europe. Merchants were its sole inventors. The custom of merchants supplied the rules by which it was governed, and, for a long period, all its controversies were exclusively decided, either by the arbitration of merchants, or by tribunals specially established for their use. It was not a subject of positive law, nor within the jurisdiction of the ordinary courts of justice. It is highly probable that a similar state of things existed under the empire; and if so, the omission of insurance, in a compilation of its general laws, is readily explained. The contract and the law of insurance were unknown to the tribunals and magistrates, by whom the general laws of the empire were administered, and must have been equally unknown to the jurisconsults at Rome, from whose writings the laws of Justinian were principally extracted.

It may be thought that this reasoning, however specious, is effectually refuted by the fact, that the contract of bottomry, and the laws by which it is defined and regulated, were recognized and adopted by Justinian. Bottomry, it may be said, is as truly a mercantile usage, of the existence and provisions of which it might be presumed that the tribunals and lawyers of Rome were ignorant, as marine insurance. The same causes, whatever they were, that led them to the knowledge of the one, must have led them to the knowledge of the other: nor can it be denied that the law of insurance was just as proper to be inserted in a body of general laws, as the regulations of maritime loans. The conclusions are, that had such a law existed it would have been known; if known, it would have been adopted. It is in these objections that the weight of the opposite argument consists. That they have much apparent force cannot be denied. Yet a reply, not satisfactory, may perhaps be given. The reply will be satisfactory should it appear that the facts, that maritime loans were familiar to the knowledge of the Roman jurists, and a favourite object of their regulation and study, may be explained by reasons that are not at all applicable to marine insurance.

It is well known to scholars, that the patricians and senators of Rome, in the latter days of the republic, and its nobles under the empire, from causes that history too clearly explains, were, in an eminent sense, the capitalists of the world, and that the usual and favourite mode in which they employed and sought to augment their riches, was in loans at a high rate of interest—loans, not confined to the capital, but freely extended to the provinces. It is for voyages of more than ordinary importance that loans on bottomry are commonly needed, and it is the advance of a large sum that is usually required. Such loans the merchants desirous to borrow would very often find it difficult to effect in the cities of their residence, and we may affirm without hazard that it was in Rome itself, the great money-market of the empire, that they were usually sought and obtained: hence the tribunals of Rome necessarily acquired jurisdiction of the subject—hence the learning and sagacity of the Roman jurists, themselves belonging to the class by which the loans were made, were soon employed to define and regulate the interesting contract—a contract not liable to the attaint of usury—such were the early decisions—whatever might be the rate of interest it secured. It is not surprising that this contract became a favourite at Rome, nor that the regulations concerning it, framed with the most attentive care, were incorporated in the labours of Justinian. Although it is probable that maritime loans were usually obtained at Rome, it by no means follows that a resort to Rome was necessary, where the only aid required was that of insurance. If insurance was practised at all, it was probably effected, in ancient as in modern times, either by the mutual guaranty of associated merchants, or by a division of the burden among several individuals, each becoming responsible for a moderate proportion of the sum insured, and hence the merchant, as a general rule, would effect it without difficulty in the place of his residence. Thus it may well have happened that marine insurance, retaining its original form of a mercantile usage, continued a stranger to the laws of Rome, while maritime loans were first adopted, and then protected and cherished by the same laws, with more than ordinary affection and care.

But how will Mr. Duer, and those who espouse his view, explain the equally strange silence of all the Roman writers? We read frequently enough of bottomry-bonds, we hear not a little of usury in its various branches, and the satirists lash unsparingly the money-lenders and their various schemes of becoming rich; yet not a word of insurance. We readily admit that the Pandects did not include all the existing maritime laws. The famed Rhodian code was confirmed by the republication of the edict of Antoninus respecting it (Dig. lib. xiv. tit. 2, l. 9), but not repeated at length; and the regulations as to insurance would have probably been found there, if they ever existed. But although this would in some degree explain the silence of the Roman law, and prevent us from using it *against* other evidence of the existence of insurance, yet it does not avail much as the argument actually stands. For it is just as consistent with the non-existence of insurance as with its existence.

We have commented at some length upon this preliminary lecture, because Mr. Duer has advocated his views ably, and has brought forward every thing that can be said to support them. We place, however, his conclusion before our readers, and let them judge if we have not shewn it to be erroneous.

In supporting the affirmative of this question, it is a *presumption* only that I have sought to establish. I have meant only to affirm, and have endeavoured to prove, that this presumption is fair, reasonable, and consistent, and that its force is rarely weakened, far less is it annulled, by the hostile arguments that have been arrayed against it.

In conclusion we will mention that the earliest authentic notice of insurance in modern times is an ordinance of the town of Barcelona in 1435, and that it is not alluded to in the famous *Consolato del Mare*, nor the laws of Aleron, nor in those of Wisbuy. The Spaniards, therefore, have the strongest claim to the honour of having invented it. In connection with this subject it is worth observing that by the 43 Eliz. c. 12, a court was expressly appointed for hearing questions relating to insurances, but that, singularly enough, not a trace of its proceedings can be discovered. The preamble of the statute spoke of the immemorial custom of insuring, and contained the following curious recitals:—

Whereas, heretofore assurers have used to stand so justly on their credits that few or no controversies have arisen thereupon, and if any have grown, the same have from time to time been ended and ordered by certain grave and discreet merchants appointed by the Lord Mayor of London as men, by reason of their experience, fittest to understand and speedily to decide those causes.

It further recites—

That of late years divers persons have withdrawn themselves from that arbitrary course, and have sought to draw the parties assured to seek their moneys of every several assurer by suits commenced in her Majesty's courts, to their great charges and delays.

The probable reason of the failure of this city court is to be found in the enactment that no fees were to be taken.

We shall, in a future article, examine the more strictly legal portion of this work, in which Mr. Duer discusses the interesting and important doctrine of "Representations."

The Law Review and Quarterly Journal of British and Foreign Jurisprudence.

[CONCLUSION.]

The sixth article discourses of the Joint Stock Companies Acts, a paper which departs altogether from the proper plan of this Review, and the next in like manner notes the recent alterations in the alien law. The eighth reviews Lord Denman's speech on the relief of persons from taking oaths, and the ninth is nothing more than a Report from a Committee of the Law Amendment Society on the propriety of establishing a board for revising and settling Public Bills in Parliament. Of the necessity for some such revision there cannot be two opinions.

The tenth article is a short Memoir of the late Lewis Duval, esq. of which we extract a considerable portion.

MEMOIR OF MR. DUVAL.

Mr. Duval was the son of an eminent diamond merchant, settled in this country, but of Genevese origin, with a pedigree of some syndical dignity, and, we believe, connected by marriage with the family of the celebrated Monsieur Dumont. He was sent early to Cambridge, and entered at Trinity-hall; and as the members of that college generally, as it is termed, go out in law, his attention was not particularly turned to the study of mathematics, and it is not understood that he applied to any particular subject during his residence beyond the usual college exercises. Some few elementary books on the civil law were read during his time, and some courses of lectures were attended; but he did not in after-life pretend to have derived much benefit from his elementary studies in civil law. Soon after leaving college he was elected a fellow, and until his marriage, long after, continued many years at Christmas to join the party of lay-fellows who regularly attend during the Christmas holidays. Here he formed a close intimacy with the late respected master, Dr. Le Blanc. On leaving college he became a pupil of Mr. Charles Butler, who entertained the highest opinion of his industry and talents, often saying that he was a draftsman by intuition. It may be presumed that the hesitation in his speech determined the branch of the profession which Mr. Duval was to select, though perhaps it was expected when he entered Trinity-hall (the College where the civilians are usually educated) that he might have overcome this defect, and have been enabled to practise at Doctors' Commons. After remaining with Mr. Butler somewhat more than two years, he began to practise for himself, but was not immediately called to the bar; a course at that time common with conveyancers; and it is understood that during the early years of his professional career he was much employed by Mr. Butler in the preparation of such of his drafts as required elaborate care. Some adverse circumstances in the affairs of his father rendered him very early almost entirely dependent on his profession; and, perhaps, in the particular branch to which he devoted himself, never was there a more steady and complete conquest of all the difficulties which beset the path of the early practitioner. When he commenced practice, Mr. Butler and the late Mr. Shadwell were at their greatest eminence. Mr. Hargrave also was in full practice as a conveyancer, and the late Mr. Sanders and Mr. Preston were, with others, rising into eminence. The merits of Mr. Duval were early discovered by all these persons, but especially by the late Mr. Sanders, a conveyancer of great skill and profound learning, and with whom Mr. Duval continued on intimate terms of friendship till the death of the former. In a memoir which we intend to give to our readers, we propose to shew what was the state of practice amongst conveyancers when Mr. Butler first began his career, and to set forth what were his labours, and to what extent his peculiar practice had the effect of improving the system in the preparation of legal instruments.

The system, for the improvement of which Mr. Butler did so much, was in a great degree adopted by Mr. Duval, and, in many respects, as his experience increased, he was enabled to introduce important amendments of his own. Unlike Mr. Butler, Mr. Hargrave, Mr. Sanders, Mr. Preston, and other eminent conveyancers, Mr. Duval owed his rise entirely to his skill as a chamber practitioner. He never published any professional work; and, indeed, it is believed that the only articles from his pen which are in print are the very celebrated reasons in the appeal case of *Scarisbrooke* v. *Scarisbrooke*, and the greater part of the Second Report of the Real Property Commissioners which relates to the establishment of a general registry of deeds. It is known that Mr. Duval, who was one of the Real Property Commission-

ers, took a leading part in the discussions relating to this measure, and it is understood that his reasoning tended much to bring round the late Mr. Bell and Mr. Sanders to his views. The plan of this registry, and the reasons in support of it, were mainly his. Beyond the accidental contact at an occasional consultation, up to the time of his becoming a member of the Real Property Commission, he had been confined to the perusal of abstracts, and the preparation of drafts, and the answering of cases. On joining the commission, he felt, perhaps for the first time, fully his own superiority on general subjects connected with jurisprudence; till then he had scarcely looked beyond the acquiring the law necessary for his immediate wants; but having entered on the subject of a registry, he applied the whole energies of his profound and clear mind to it, and produced a plan, and reasons in support of it, which obtained the respect and applause of all, as well as the approbation of many of the most eminent lawyers of the day. If it had a defect, it was *too perfect*; every detail was so elaborated, that persons studying the plan were startled at its apparent complexity and difficulty, and it was only on a laboured and minute examination that its entire merits and completeness were discovered. Indeed it is apprehended that the plan in question is *the* plan for a registry, and that any scheme founded on other principles will be erroneous, as all existing registries are without question erroneous as well as defective. With the plan as to the registry, his particular interest in the Real Property Commission seems to have ceased, though he entered largely into the discussions of the various recommendations contained in the other Reports. On the retirement of Mr. Butler, Mr. Sanders, and Mr. Preston, Mr. Duval came to be considered as the head of the Profession, and perhaps no one of his predecessors held that situation so completely without a rival and by universal consent as he did. His clearness, caution, and great practical experience, combined with his patience and extreme urbanity, rendered him eminently suited to this important situation—and we say important advisedly, because one who holds such a rank as he did, and who has the entire confidence of both branches of the Profession, becomes in fact a judge in ninety-nine cases out of the hundred which are brought before him; and where one case relating to real property is settled by a court of law, a hundred are decided by the opinion of the leading conveyancer of the day. He would have been a bold man who, except under very particular circumstances, advised his client to undertake a suit in the teeth of a clear opinion of Mr. Duval.

He early took pupils, as is the custom of all conveyancers, and many very eminent practitioners studied under him. Amongst the earliest of his pupils were the present Lord Chancellor of Ireland, Mr. Tinney, Mr. Bellenden Kerr, Mr. Christie, and Mr. Loftus Wigram, all of whom, we know, were affectionately attached to him, and entertained the highest respect for his professional attainments. He died on the 11th of August, 1844, in his 70th year. His death was almost instantaneous, arising from affection of the heart.

Mr. Duval had not the slightest pretensions to scholarship, but was not wanting in the attainments necessary to constitute a well-educated gentleman. In writing he expressed himself with perfect precision, and with the utmost purity and elegance. He had read most of the popular English classics, and had a considerable tincture of French literature. In his latter years he sedulously avoided all unprofessional reading which did not directly minister to his amusement. Having carefully read all the great English poets and novelists of the last forty years, he testified much gratitude to a friend who directed his attention to Balzac, and the other leading French novelists of the day; and the leisure hours of the last two years of his life were devoted to a considerable extent to their not very improving pages. No man could be less liable to the charge of any grossness or excess in his enjoyments; but Mr. Duval was epicurean in his disposition, and a careful economist of his pleasures. He loved port wine, but always drank claret; he dined well, and prolonged his dinner, and read books of amusement with deliberation, for he would not dispatch an enjoyment which might be protracted.

Mr. Duval was not what is called a learned lawyer; he was not very familiar even with the cases decided in his own time; but no man's eminence rested on a more solid foundation. To a competent supply of legal learning he added vast experience, and the comprehension and clearness with which his mind took in the extensive and complicated matters with which he had to deal could not be exceeded. He possessed a quick and subtle apprehension of legal principles, and a *natural logic* which was never at fault. To all this he added infinite caution, and a patience which could not be tired out. Candour was, with him, rather a necessary consequence of the frame of his mind than a virtue. His understanding was so just, that conviction inevitably followed the propounding of sufficient reasons; and he would have shrunk from being guilty of the absurdity of withholding his assent after good grounds for yielding it were presented to him. In his intercourse with his friends he was in a high degree kind and confiding; and in his attachments was wholly devoid of changeableness or caprice. His personal demeanour was eminently conciliating; and, whilst he was universally looked up to as the great light of the day in conveyancing lore, he was in an equal degree loved and esteemed by the whole profession for his kindness and urbanity.

The eleventh article is devoted to the topic of "Legal Education." It condemns with justice the present system of *no* education pursued by the Inns of Court. A very discursive range of study is recommended to students for the Bar, and especially physical and moral science, and polite literature. Attendance at debating societies is strongly urged. We take a scrap of excellent

ADVICE TO YOUNG ADVOCATES.

But the circuits, and first of all sessions, are important in another view. It is here that he will have in all probability his first taste of business. The first brief is a grand event in his life; and it demands his utmost attention. Never let him be above anxiously and minutely making himself master of every part, every line, every word of it. Whatever he would have more fully explained, he has a perfect right by the most rigid rules of a jealous profession to get explained by either speaking to his client, the attorney, in court, or by sending for him to his lodgings. He will thus prove useful to his leader and his client; but he will also prove useful by noting on the blank pages of the brief any observation both on the law and the fact that may occur to him in studying its contents. Don't let him either be so much above his business or his own standing as to despise this study, and to refrain from consulting his seniors on the circuit (not in the cause), on any difficulty that occurs to his mind. Don't let him be afraid of setting down needless references to authorities. These will sometimes be puerile enough, and, were he to shew them all to his practised leader, who goes instinctively through his case, might draw a smile over his countenance at the innocence of youth, of an age which he hardly can now recollect. But a little attention and acuteness at consultation will shew him what are of any use and what are but burning daylight; and his client will be all the better pleased with his diligence when he receives back his brief, and possibly will suppose the references to be of much importance, from their being new to him.

When he is in consultation or in court, never let him on any account keep back any really useful suggestion from his leader; nor withhold a point, that he may make it when heard (as however rarely happens) to support an objection; nor above all withhold a view of the case, when he has to follow in a motion, or in shewing cause at Westminster. The leader and the client have a right to all, and are unjustly dealt with, if any thing is "*bottled up*" for the junior's own separate use.

The time is now come when, by the accidents of business, he is to lead himself. Then double care is required. Above all, he must be prudent, circumspect, and never sacrifice the cause to any display. But also he must not be fastidious, and afraid of seeming to over-do and over-labour. It is not for him to have the confidence which experienced leaders derive from long use. He must supply this necessary deficiency by double labour and attention; and never let him for one moment imagine that by an absurd, a misplaced, an unreasonable imitation of the practised leaders, he can impose upon his clients, and make them take him for an experienced man, and overlook the fault of carelessness, which in even old leaders is no grace, in young ones, who have not the same excuse, an inexcusable fault.

The twelfth article treats of the "Recent Alterations in Conveyancing Forms," and the thirteenth of the "Writ of Certiorari in Criminal Cases," in which the following amendments are urged:—

If then, an act were passed enabling special jurors to be summoned to attend these courts, and authorizing the presiding judge of every court which is competent to try an indictment, as also the several police magistrates, to make such orders respecting views as the justice of each case demands, it is clear that the necessity for obtaining a writ of *certiorari*, to remove proceedings from the assizes, or from the Old Bailey, would in all cases be obviated, while, even from the sessions, such writs would be rendered so much the less frequent, in proportion to the number of applications to remove, in which the necessity of obtaining a view is a material ingredient. As to the very few cases in which it would be proper to remove indictments found at the sessions, either on the ground that abstruse points of law were likely to arise at the trial, or that the facts were such as ought to be submitted to the superior intelligence of a special jury, provision might be made for these, by authorizing the justices at sessions to transmit the indictments to the assizes, and in the event of their refusing to do so, by further empowering either party to apply to one of the superior judges for an order to that effect.

The last article reviews the recent changes in the law of Bankruptcy and Insolvency, and is a somewhat lame attempt at a defence of the blundering measure of the last session.

A selection of adjudged points is appended; but these are out of place in such a Review; they should be left to periodicals whose express purpose it is to expound the existing law. They occupy much space that might be more usefully filled, are of no value, add to the bulk, and therefore to the cost of *The Law Review*, and we hope in the next number to find them omitted, and the entire of the pages dedicated to the one object for which *The Law Review* will be read—as the best, indeed the only, repertory of *jurisprudence*, practical and theoretical. If it attempt to combine that with professional law, it will assuredly fail; for the lawyer will object to the jurisprudence, and the jurist to the law. In its own sphere its success is certain.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

DART.—On the 6th inst. the wife of J. Henry Dart, esq. barrister-at-law, of a daughter.

HANCE.—On the 7th inst. at 17, Alexander-square, Brompton, wife of Charles Hance, esq. barrister-at-law, of a daughter.

MARRIAGES.

FITZPATRICK, Richard William, of the Inner Temple, esq. to Harriet, the eldest daughter of Thomas Chandless, of Gloucester-place, esq. on the 12th inst. at St. Mary's, Bryanstone-square.

DEATHS.

CHATER, Isabella, relict of Edward Chater, attorney, of Birmingham, on the 8th inst. aged 61.

EYRE, Edward, esq. formerly of Gray's-inn, on the 6th inst. at Islington, in his 72nd year.

LOTHERINGTON, Thomas, esq. on the 4th inst. at Holden House, Louthborough, Kent, one of the magistrates of that county, aged 55.

NICHOLL, Mary Anne, eldest daughter of the late Right Hon. Sir John Nicholl, at 20, Park-street, Grosvenor-square, on the 6th inst. aged 52.

NUNN, Mr. Thomas, 19, Great James-street, Bedford-row, on the 7th inst. in his 68th year.

SHEPHERD, Miss Sarah T. of Blyth, Northumberland, at the house of her brother-in-law, Mr. James Dyer, on the 6th inst. in her 52nd year.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	100¼	100¼	100¼	100⅛	100⅛	100⅛
Three per Cents. Reduced	100	100¼	100¼	100⅛	100⅛	100⅛
New Three-&-a-quarter per Cts	102¼	102¾	102⅝	102⅝	102⅝	103
Long Annuities............	12¾	12⅝	12¾	12⅝	12¾	12⅞
Bank Stock	207	207½	207½	208	208½	209
India Stock	289	289	289½	288¾	289½	290½
India Bonds, prem..........	84	83	84	85	85	75
Exchequer Bills, prem.	55	56	54	53	53	56
FOREIGN.						
Spanish Five per Cents.......	24	24¼	24	24¼	24⅛	—
Spanish Three per Cents.	35⅛	35⅛	35⅝	36	36⅛	37⅛
Russian	119⅛	119	118⅛	119	119⅛	119⅛
Peruvian..................	24½	25	25¼	25⅛	25⅛	—
Portuguese	55	55⅛	55¼	55⅛	55⅛	56⅜
Mexican..................	36¼	36	36⅛	36⅛	36⅛	37¼
——— Deferred	16¼	16¼	16⅛	16⅛	16⅛	17⅛
Dutch Two-and-a-Half per Cents..................	63¼	63¼	63	63	63¼	64⅛
——— Five per Cents.	99	99¼	99¼	99	99¼	99
Danish	89⅛	89⅛	89¼	89	89⅝	89⅛
Colombian................	14	14¼	14¼	14⅛	14¼	14⅛
Chilian	102	102	102¼	102¼	102¼	103
Buenos Ayres	36	36¼	36	36⅛	36¼	36⅛
Brazilian.................	89	88¼	88⅝	89	89¼	88
Belgian	101⅛	102¼	102¼	102⅛	102⅛	102⅛

Public Sales.

By Messrs. SHUTTLEWORTH and SONS, at the Mart.

A policy for 1,500*l.* with the additions thereto, amounting to 1,867*l.* 10s. effected with the Equitable, the 8th August, 1816, on the life of a gentleman now in the 56th year of his age; annual premium, 38*l.* 6s. 6d.—1,990*l.*

The absolute reversion to 2834*l.* 10s. late Three-and-a-Half per Cent. Bank Annuities, receivable on the death of two persons, aged 72 and 73—1,620*l.*

The contingent reversion to 1,000*l.* Three-and-a-Quarter per Cent. Bank Annuities, to one moiety of which the purchaser will be entitled provided two gentlemen now in the 41st and 42nd year of their respective ages, shall survive a lady now in the 74th year of her age, and to the whole of which the purchaser will be entitled if the elder of these gentlemen die in the lifetime of the said lady, and the other survive—200*l.*

The reversion to a freehold estate, comprising 39a. 0r. 19p. of arable, pasture, and meadow land, with a house, orchard, and garden, situate in the parish of Habberton, on the southern coast of Devon, let at 65*l.* per annum, to which the purchaser will be entitled, provided a gentleman in his 41st year shall survive a gentleman now aged 67; also a policy for 600*l.* effected with the Atlas, the 30th September, 1844, on the young life against the elder; annual premium, 14*l.* 9s. 6d. —140*l.*

A policy for 300*l.* effected with the Economic, the 14th October, 1822, on the life of a gentleman now in the [illegible] year of his age; annual premium, 17*l.* 3s.—118*l.*

A policy for 2,000*l.* with a bonus thereon amounting to 336*l.* 10s. effected in the Union on the 14th January, 1820, on the life of a gentleman now in the 50th year of his age; annual premium, 55*l.* 15s.—650*l.*

A policy for 2,000*l.* with the additions thereto from the year 1830, amounting to 2,700*l.* effected with the Equitable the 26th January, 1809 on the life of a gentleman now in the 82nd year of his age; amount of premium, 120*l.* 15s.—4,780*l.*

Six forfeited shares in the Hungerford Market Company, the annual dividend paid by the company every year has been 1*l.* per share for the last six years—56*l.* per share.

By Mr. LEIFCHILD, at Garraway's.

A freehold estate, comprising a villa residence, with lawns, pleasure-grounds, &c known as Rose Mount, which has been lately erected with great taste; it is seated on a gentle eminence, and is approached by a carriage drive; it abuts on the Queen's-road, Brentwood, Essex; let at 100*l.* per annum—sold for 1,650*l.*

Six family residences, Nos. 17 to 21, Great Percy-street, Soley-terrace, Claremont-square, with walled gardens in the rear—sold in six lots, at 680*l.* each house.

Forty-six freehold houses, with fore court and garden to each, situate at Hamley Green, near Romford, Essex, the property is immediately contiguous to the engine-house and factory of the Eastern Counties Railway—sold for 3,050*l.*

Two freehold houses, in the cottage style; the houses are at present unfinished. They are situated near the Eastern Counties Railway Station, at Brentwood, Essex—575*l.*

By Messrs. SOUTHEY and SON.

Four freehold houses, Nos. 33 to 36, Salisbury-lane, Bermondsey-wall, Surrey—335*l.*

Two houses, with gardens and fore-court, situated Nos. 16 and 17, Wellington-street, Stoke Newington, let at 39*l.*, held for 23½ years, at 7*l.* 2s. 6d. per annum—320*l.*

Two houses, Nos. 27 and 28, Hughes's-fields, and six tenements in the rear, let at 78*l.* 7s. per annum; held for [illegible] years at 15*l.* per annum—165*l.*

[illegible], at the Mart.

By Messrs. MUSGRO[illegible] parish of Stockbury, Kent, The [illegible]-house, homestead, barns, stabling, and agricultural buildings of every description, and 180a. 1r. 10p. of arable, pasture, and meadow land, producing a rental of 535*l.* per annum. The above, excepting the freehold portion, containing 4a. 3r. 36p. are held under a lease granted by the Dean and Chapter of Rochester, for 21 years, from Michaelmas 1842, but renewable every seven years upon payment of a fine, upon a ground-rent, which with augmentation amounts to about 70*l.* per annum—4,950*l.*

An inclosure of freehold arable land, known as Parson's Old Town, near the preceding lot, containing 14a. 2r. 8p. let at 25*l.* per annum—620*l.*

The lease of the premises situated in Gloucester-street Shoreditch, known as the japanned enamel leather and japanned hat manufactory, held for 17½ years, at 20*l.* per annum—100*l.*

The leasehold premises, No. 38, Throgmorton-street, City, held for 21½ years from Lady-day, 1810, at a rental of 310*l.* per annum—100*l.*

By Mr. HENRY BROWN.

A residence, No. 27, Crutched-friars, let at 135*l.*, held for 10½ years, at 70*l.* per annum—110*l.*

A stack of warehouses, known as French Horn-yard, Crutched-friars; held for 61 years, from Sept. 1813, at a ground-rent of 15*l.* per annum—230*l.*

A residence, No. 1, Clifton Cottages, Denmark-st. Camberwell, let at 24*l.*; held for 70 years, from June 1812, at 3*l.* 10s. per annum—185*l.*

A ditto, No. 2—180*l.* A ditto, No. 3 180*l.*

A ditto, No. 4—185*l.*

A house and business premises, adapted for a carpenter or builder, No. 1, Robert-street, North Brixton; held for 47 years, from June 1825, at 24*l.* per annum—20*l.*

By Mr. LEIFCHILD.

The fifth and last portion of the freehold building ground, with seven cottages and small farm, situate near the town of Brentwood, and immediately surrounding the Eastern Counties Railway Station, divided into 30 lots, produced the sum of 4,510*l.*

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given to whom apply for the Dividends.

Birks, E. grocer, third and final, 2s. 4d. Freeman, Leeds.—*Brewer*, T. flag dealer, first, 2s. 3d Cazenove, Liverpool.—*Dakeyne and Co.* flax spinners, first and final of Dakeyne, 6d. Fraser, Manchester.—*Gregory*, J. knife manufacturer, first and final, 1s. 8¾d. Freeman, Leeds.—*Harvey*, T. innkeeper, first, 6s. Groom, London.—*Hilton and Walsh*, paper makers, first of E. Hilton, 2d. and ⅘ths of 1d. Fraser, Manchester.—*Hudson and Co.* calico printers, first, joint, 3s. 1d. B. 20s. and Hudson 20s. Stanway, Manchester.—*Layton*, J. fruit merchant, final, 4½d. Hope, Leeds.—*Lodge*, R. innkeeper, first and final, 2s. 6d. Freeman, Leeds.—*Parker*, J. miller, first, [illegible]s. 0d. Freeman, Leeds.—*Shore*, J. flannel manufacturer, first, 5s. Fraser, Manchester.—*Smith*, E. innkeeper, final, 4¾d. Freeman, Leeds.—*Smith*, J. miller, final, 2s. Freeman, Leeds.—*Willock*, M. merchant, second and final, 7½d. Freeman, Leeds.—*Womack*, G cloth merchant, final, 7-12ths of 1d. Hope, Leeds.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Dec. 6.

Biggs, M. wholesale stationer, Fore-st. Nov. 13. Trusts. H. Allnutt and T. Smith, paper manufacturers, Tovil, near Maidstone. Sols. Hardwick and Davidson, Weavers'-hall.—*Packer*, W. D. boot maker, Red Lion-st. Holborn, Dec. 3. Trusts. W. Packer, stone mason, East-st Red Lion-sq. and W. Taylor, currier, Lisle-st. Sol. Church, Bedford-row.—*Sloan*, W. shopkeeper, Banbury, Nov. 16. Trusts. J. Outhwaite, tea dealer, Fenchurch-st. T. How, tea dealer, High-st. Southwark, and W. Webster, auctioneer, Banbury. Sol. Hunt, St. Mildred's-court.

Gazette, Dec. 10.

Bagley, R. sen. [illegible], Lichfield, Oct. 16. Trusts. R. Greene, banker, and J. Smith, mercer, both of Lichfield. Sol. Hodson, Lichfield.—*Dixon*, E. sen. surgeon, Ramsgate, Nov. 2. Trusts. J. Richards, upholder, and J. Harris, gas fitter, both of High Holborn. Sol. A'Beckett, Golden-sq.—*Evans*, J. cabinet maker, Haverfordwest, Dec. 4. Trusts. J. Marychurch, ironmonger, and R. Davies, glazier, both of Haverfordwest. Sol. Gwynne, Haverfordwest.—*Patterson*, R. cheese factor, Bradford, Sept. 18. Trusts. A. MacKean, stuff merchant, Bradford, and J. Dabell, cheese factor, Manchester. Sol. Rees, Bradford.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Dec. 6.

BUCKNALL, STEPHEN, carman, Hendon, Middlesex, Dec. 17, at half-past one, Jan. 28, at one, Basinghall-st. Com. Williams; Graham, off. ass.; Abrahams, Lincoln's-inn-fields, sol. Date of fiat, Nov. 18. C. Bromsgrove, blacksmith, Dudley-grove, Paddington, pet. cr.

CARTER, CHARLES, miller and baker, Saddington, Leicestershire, Dec 14 and Jan. 9, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Braham, Chancery-lane, and Rowlinson, Birmingham, sols. Date of fiat, Dec. 31. Bankrupt's own petition.

MACKAY, JAMES, merchant, Liverpool, Dec. 20 and Jan. 23, at twelve, Liverpool, Com Ludlow; Turner, off ass.; Sharpe and Co Bedford-row, and Mulet and Peel, Liverpool, sols. Date of fiat, Nov. 28. Bankrupt's own petition.

ROBSON, JOHN WORDSWORTH, and BARROW JOHN [illegible], tcht pump and water closet manufacturers, Limehouse, Dec 10, at one, Jan [illegible] twelve, Basinghall-st. Com. Wallace [illegible] off ass; Randall, Birchin-lane, sol [illegible] of fiat, Dec. 3. Bankrupt's own [illegible]

SAWYER, JOHN, butcher, Egham, Surrey, Dec. 17, at twelve, Jan 15, at half-past one, Basinghall-st. Com. Evans; Johnson, off. ass; Smith, Barnard's-inn, sol. Date of fiat, Nov. 23. J. Fuller, cattle salesman, Slough, pet. cr.

Gazette, Dec. 10.

AYLING, JAMES, cabinet maker and upholsterer, Leeds, Dec 17, at twelve, Jan 10, at eleven, Basinghall-st. Com. Williams, Turquand, off ass.; Torkington, New Bridge-st sol Date of fiat Dec 6. Bankrupt's own petition

BEALE, JOHN, grocer and shopkeeper, Cadoxton, Glamorganshire, Dec 31 at one, Jan 21, at eleven, Bristol, Com. Stephen, Hutton, off ass; Beer, Swansea, and Short, Bristol, sols. Date of fiat, Nov. 26. W. Mansden, draper, Swansea, pet. cr.

BRETT, JOHN, currier and leather seller, Bury St. Edmunds Dec. 20 and Jan 22, at two, Basinghall-st. Com. Goulburn, Green, off ass; Nettleship Clifford's-inn, and Durrant, Bury St. Edmunds, sols. Date of fiat, Dec. 7 Bankrupt's own petition.

DRURY, WILLIAM STARR, ironmonger, Chester, Dec 20 and Jan 23, at twelve, Liverpool, Com Ludlow; Bird, off. ass., Chester and Co Staple-inn, and Hostage, Chester, sols. Date of fiat, Dec 5. S Walker, brass founder, Wolverhampton, pet cr.

GIBBONS JOHN THOMAS, grocer, Eaton, Buckinghamshire, Dec 18 at one, Jan 25, at twelve Basinghall st Com. Goulburn, Green, off ass.; Bell and Co Bow Churchyard, sols. Date of fiat, Nov 25 J B Shuttleworth and S. Shuttleworth, tea dealers, Eastcheap, pet crs.

MAIDSTONE, CAROLINE, milliner and dress maker, King's-parade, Cambridge, Dec 17, at three, Jan 15, at half-past eleven, Basinghall-st Com. Evans; Bell, off ass.; Robinson, Half-Moon-st. sol. Date of fiat, Nov 28. Bankrupt's own petition.

MARTIN, JOSIAH, tallow chandler, 229, High-st. St Leonard, Shoreditch, Dec. 17, at half past ten, Jan 14, at eleven, Basinghall st Com Evans; Johnson, off. ass; Walters, Basinghall-st sol. Date of fiat, Dec 7. Bankrupt's own petition.

NEEDHAM, ELIAS, the younger, clogger and currier, Little Houghton, Lancaster, Dec 21 and Jan. 16, at twelve, Manchester; Hobson off. ass., Johnson and Co. Temple, and Needham, Manchester, sols Date of fiat, Dec. 6 E Fletcher, spinster, Sale, Cheshire, pet. cr.

RENDLE, WILLIAM SKINNER, tea dealer and grocer, Penzance, Cornwall, Dec 19 and Jan. 16, at eleven Exeter, Com Bere, Hernaman off ass; Hill and Matthews St Mary Axe, and Terrell, Exeter, sols. Date of fiat, Nov. 25. J. Stubbs, E Absolom and W. A. Stubbs, wholesale grocers, Rood-lane, pet. crs.

ROSE, THOMAS, brick burner and builder, Nursling, Southampton, Dec. 17 and Jan. 21, at one, Basinghall-st Com. Fonblanque; Belcher, off ass; Johnson, Walcot-sq. sol. Date of fiat, Dec. 9. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Dec. 3.

Bayley, T. and *Chittenden*, H. corn factors, Mark-lane, Dec. 3. Debts paid by Bayley.—*Burrowcliffe*, J. and C and *Cartwright*, F. H. timber and coal merchants, Bawtry and Gringley-on-the-Hill, Jan. 1, 1843.—*Corbett*, S., J. W., and V., *Broadbent*, G., *Burkinshaw*, D., *Surtees*, R., *Baker*, S., *Wigglesworth*, W. W., *Dyace*, J., *Hough*, C., *Moore*, J., *Taylor*, J., *Steer*, W., *Copley*, A. and B., *Holden*, F., *Darwent*, M., *Senior*, G., *Copley*, B., *Marshall*, W., *Flint*, J., *Cox*, J., *Surtees*, H., *Staniforth*, J. and J. jun., *Lee*, J., *Marsden*, J., *Broadbent*, J., *Windle*, A., *Lodge*, F., *Parkin*, G., *Frogatt*, J., *Swift*, J., *Wadsworth*, W., *Clegg*, J., *Newton*, R., *Tasker*, J., *Broadbent*, T., *Wadsworth*, J., *Laycock*, R., W., and W. sen., *Eaton*, J., *Hunt*, I., and *Parrott*, T., grocers, drapers, and flour dealers, Wortley, Yorkshire, Aug. 10.—*Firth*, D., *Helliwell*, E., *Sykes*, R., *Firth*, S. and G., *Lockwood*, B., and *Firth*, W. and J., silk spinners, Marsden, near Huddersfield, so far as regards D. and W. Firth, Nov. 30.—*Gaskins*, J. and *Winder*, R., lantern-leaf and comb manufacturers, Birmingham, Nov. 30. Debts paid by Winder.—*Hannaford*, S. and *Beare*, W. grocers, Dawlish, Oct. 31. Debts paid by Hannaford.—*Lester*, T. and C. pork merchants, Dudley, Nov. 28.—*Newton*, J. and *Watkins*, T. cabinet makers, Bruton-st. and Wardour-st. Nov. 30. Debts paid by Newton.—*Peet*, I., *Walker*, J., and *Paine*, T. ac[illegible] Walker, Dec. [illegible]—[illegible] ship brokers, Liverpool [illegible] and [illegible] mills, Daisy, Oct. [illegible]

Gazette, Dec. [illegible]

Berry, [illegible] Dec. 4. Debts paid by [illegible] W. F. and [illegible], E. auctioneers, Manchester, [illegible]—*Booth*, [illegible], J. and *Marland*, E. spindle makers, New Earth, Oldham, so far as regards [illegible] remaining partners.—*Clarke*, H. G., [illegible] G., *Wright*, R., *Nicholls*, R., [illegible] *Mace*, F., [illegible], so far as regards [illegible] remaining partners.—[illegible], W. and [illegible], Lawrence-lane, Dec. 4. Debts paid by J. W. [illegible] G., *Brumall*, J. and W. [illegible], Dec. 4. Debts paid by [illegible] *Jackson*, J. [illegible] Debts paid by Holbrook.—*Jagger*, D. and W., [illegible] W. glass-bottle manufacturers, [illegible] so far as regards Kilner, May, 24. Debts paid by the remaining partners.—*Lamy*, C. and *English*, [illegible], Aylesbury-street, Clerkenwell, Nov. 30. Debts paid by Lamy.—[illegible] and *West*, A. eating-house keepers, [illegible]—*Philpotts*, J. and [illegible], Dec 4.—*Stubbs*, T. and [illegible], Manchester, Nov. 28. Debts paid by [illegible], D., and W. tobacconists, [illegible] J. W. T. and [illegible] R. C. [illegible] Nov. 30. Debts paid by [illegible] Taunton, [illegible] 30. Debts paid by [illegible] *head* [illegible] and [illegible], Rochdale and [illegible] Aug. 31.

[illegible]

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Dec. 6.

Addis, T. coach carver, Norfolk-st. Middlesex-hospital, Dec. 18, at twelve.—*Baker*, R. shopman, Old-st. Saint Luke's, Dec. 17, at twelve.—*Baker*, T. tailor, Ipswich, Dec. 12, at one.—*Billings*, S. W perfumer, Harwich, Dec. 16, at twelve.—*Bruner*, M. A. widow, St. John's-terr. [illegible], Dec. 16, at half-past twelve.—*Broad*, F. R. [illegible], Aylesbury, Dec. 19, at half-past two.—*Gill*, T. [illegible] shopkeeper, Rochester-row, Westminster, Dec. 12, at half-past one.—*Green*, T. D. tobacconist, Oxford, Dec. 18, at eleven.—*How*, J. wheelwright, Enfield, Dec. 17, at half-past eleven.—*Hunt*, G. boarding-house keeper, Knightsbridge, Dec. 18, at twelve.—*Stockbridge*, E. baker, Euston, Dec. 16, at half-past eleven.—*Toomer*, W. J. out of business, Chelsea, Dec. 16, at eleven.—*Vile*, J. china dealer, Hampstead, Dec. 18, at half-past eleven.—*Walters*, H. bridle cutter, Type-street, Finsbury, Dec 10, at one.—*Williams*, W. H. comedian, Great Percy-st. Clerkenwell, Dec. 18, at eleven.—*Wilson*, S. farmer, Ipswich, Dec. 17, at eleven.

Gazette, Dec. [illegible]

Blake, A. J. carpenter, Hounslow, Dec. 18, at one.—*Davison*, B. pilot, Hampden-road, Dec. 23, at two.—*Engelblett*, B. A. butcher, Henry-st. Hampstead-rd. Dec. 23, at eleven.—*Fellgate*, I. confectioner, Gravesend, Dec. 23, at half past [illegible].—*Cumm*[illegible], [illegible] the Debtors' Prison, Dec. 10, at half-past eleven.—*Garratt*, J. G. attorney, Stockwell, Dec. 18 at twelve.—*Hickin*, T. jun. horse dealer, Bishop's Stortford, Dec 23, at half-past one.—*Hughes*, T. hair dresser, Park-st. Camden Town, Dec. 18, at eleven.—*Jeffson*, G. plate worker, Walworth-common, Dec. 10, at eleven.—*Millington*, H. clerk, Milbank-st. Dec. 23, at half-past twelve.—*Moss*, J. veterinary surgeon, Plaistow, Dec. 23, at eleven.—*Notweller*, W. surveyor, Finchley, Dec. 18, at one.—*Oliver*, P. out of business, Albany-rd. Dec 23, at half-past eleven. *Parsonage*, J. W. cheesemonger, Sandwich-st. Burton-crescent, Dec. 23, at twelve.—*Prothero*, J. R. clerk, Billericay, Dec. 23, at half-past eleven.—*Ramming*, W. clerk, Cheapside, Dec. 10, at eleven.—*Self*, C. corn merchant, Hampton-wick, Dec. 23, at twelve. *West*, E. coal merchant, Nicholl's sq. Hackney-rd. Dec. 23, at one.

Country—Gazette, Dec. [illegible]

Batty, J. sen. labourer, Darfield, Dec. 20, at eleven, Leeds.—*Bloss*, R. out of business, Little Budsworth, Dec 20, at eleven, Liverpool.—*Bromley*, B. carpenter, Corsham, Dec. 21, at twelve, Bristol.—*Carruthers*, J. boot maker, Cumwhitton, Dec. 19, at one, Newcastle.—*Eala*, T. butcher, Nottingham, Dec. 24, at twelve, Birmingham.—*Halley*, J. G. beer retailer, Manchester, Dec. 18, at eleven, Manchester.—*Lewis*, W. R out of business, Marsfield, Dec. 18, at twelve, Bristol. *Mulligan*, A out of business, Banbury, Dec. 23, at eleven, Birmingham.—*Oldacre*, R. clerk, Wednesbury, Dec. 23, at half-past ten, Birmingham.—*Pullman*, J. earthenware dealer, Ottery Saint Mary, Dec. 12, at eleven, Exeter.—*Rutherford*, G. clock maker, Huddersfield, Dec. 16, at eleven, Leeds.—*Whistance*, R tin-plate worker, Tredegar, Dec 19, at twelve, Bristol.

Country.—Gazette, Dec. [illegible]

Chapman, J. R. schoolmaster, Ferryhill, Dec. 10, at eleven, Newcastle.—*Cookson*, W. jun. cord manufacturer, Huddersfield, Dec. 19, at eleven, Leeds.—*Greenwood*, J. velveteen manufacturer, Huddersfield, Dec. 19, at eleven, Leeds.—*Hill*, J. wheelwright, Martin, Dec. 19, at eleven, Leeds.—*Howells*, W. shoe maker, Werthen, Dec. 24, at twelve, Birmingham.—*Lewis*, J. farmer, Llandisilio, Jan. 2, at eleven, Bristol.—*Pearce*, J. boot maker, Harthill, Dec. 10, at eleven, Leeds.—*Robinson*, W. labourer, Silkstone, Dec. 19, at eleven, Leeds.—*Smith*, L. victualler, Dudley, Dec. 31, at half-past ten, Birmingham.—*Swinburne*, C. plasterer, Middlesborough, Dec. 19, at eleven, Leeds.

From the Gazette of Friday, December 13.

Bankrupts.

Sneezum, C. victualler, Wynyatt-st.—*Atkinster*, W. dyer, Devonshire-st. Queen-sq.—*Libbis*, S. innkeeper, Stratton Saint Mary, Norfolk.—*Stockley*, R. upholsterer, Ramsgate.—*Forster*, J. cloth manufacturer, Leeds.—*Creigh*, B. and T. R. cartwrights, Newcastle-upon-Tyne.—*Bentley*, H. commission-agent, Liverpool.—*Francis*, A. ironfounder, Halkin, Flintshire.—*Harrold*, G. merchant, Birmingham.—*Beresford*, T. boat owner, Lincoln.—*Parsons*, S. paper-hanger, Manchester.

THE REPORTS.

The following are the names of gentlemen who favour the Law Times with the Reports:—

PRIVY COUNCIL by Thomas Campbell Foster, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by William Paterson, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by Richard Griffiths [illegible], Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by [illegible], Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by Henry [illegible], Esq. of Lincoln's-inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by L. C. Symons, Esq. of the Middle Temple, Barrister-at-Law, and Edward Wise, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law, and W. Paterson, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by John Bridge Aspinall, Esq. of the Middle Temple, Barrister-at-Law, and Henry Miles, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. Saunders, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. Fry, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by John W. Bittleston, Esq. of the Middle Temple.

ADMIRALTY COURT by John W. Bittleston, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. Angus Homes, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. Robinson, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by James A. Foot, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by Henry Mills, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law, and Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by Edward W. Cox, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by Edw. W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by William Duggan, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by Wm. St. Leger Babington, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. Gregory, Short-hand Writer.

Equity Courts.

LORD CHANCELLOR'S COURT.

Friday, Nov. 15.

FORMAN *v.* NEVILLE.

Mortagor—Purchaser for value—Pleading—Supplemental answer—Retracting admission—Production of papers—Parties—Practice on appeal—Right to begin.

A purchaser for value will not be compelled to produce documents which have been left with him by the vendor for safe custody only, in a suit instituted by persons claiming a mortgage paramount to his purchase.

Where an admission is made it must be taken together with the explanation accompanying it.

On an appeal against the whole order made upon exceptions, the excepting party, though the respondent, begins, it being a re-hearing.

This was an appeal by the plaintiffs from the decision of Vice-Chancellor Wigram, upon exceptions taken by the defendant to the Master's report, that his answer was insufficient; the Vice-Chancellor had allowed the exception.

The plaintiffs, Thomas Seaton Forman and Thomas Stanley Benson, had filed their bill to establish as against the defendant Nevill certain old mortgages upon leasehold lands and collieries in Carmarthenshire to which they claimed title. The mortgages had been executed more than 40 years ago, and had been subsisting charges during a series of complicated transactions, in which the owners of the collieries, Alexander Raby and his son Arthur Turnour Raby had been involved. The defendant Nevill had, in 1826, purchased the collieries from Messrs. Raby, and now asserted that no claim had been made by the plaintiffs in respect of their mortgages since 1818, when they accepted a composition from Messrs. Raby, in common with the rest of their creditors. Alexander Raby was dead, and A. T. Raby was made a defendant, and alleged to be out of the jurisdiction. Nevill, by his first answer set forth the documents in his possession in the usual way, but subsequently to the filing of his answer, he discovered, or recollected, that he had also in his possession eight boxes of papers which had been left in his charge by Arthur Turnour Raby in 1826, and had remained in his care ever since. Accordingly, in April, 1842, Nevill obtained leave to file a supplemental answer, by which he said, "that since putting in his former answer he had discovered that he had in his possession eight boxes containing other documents, papers, and writings, *which, or some of which, might relate to or concern the matters in the said bill stated and charged on some of such matters*; and that such boxes were deposited with him in the year 1826, by the said A. T. Raby, *for safe custody only; and that he, Nevill, had no personal knowledge of the purport or contents of the documents, papers, or writings contained in the said boxes*: that he had caused the said boxes to be marked with the letters A, B, and C, and that he was *ready and willing to produce and leave the same in the hands of his clerk in court for the usual purposes*."

To that answer the plaintiffs excepted, and their exceptions were allowed.

A further supplemental answer was then filed, in which the defendant Nevill said, "That the said eight boxes mentioned or referred to in or by the supplemental answer of this defendant, filed in this cause on the 19th day of July, 1842, and in such answer stated to have been deposited with this defendant by Arthur Turnour Raby, another defendant in the said bill named, for safe custody only, belong as between this defendant and the said Arthur Turnour Raby, solely and exclusively to the said A. T. Raby, and that this defendant has no right, title, or interest to or in the said boxes, or, according to the best of his belief, to or in the contents of the same or any of them, save and except only in his this defendant's character or capacity of a depositary for safe custody; and that he, this defendant, is responsible to the said A. T. Raby for the safe keeping, and also for the due return on demand of the said boxes and the contents of the same respectively; and that this defendant will be bound and compellable to deliver up the said boxes and the contents thereof to the said A. T. Raby; and this defendant further saith, that he is not, and to the best of his belief never was, authorized by the said A. T. Raby to part with the said boxes or the contents thereof, or any of them, or to disclose or communicate the contents of the said boxes, or any of them, to any person or persons whomsoever, nor to take, or permit to be taken, any copies or extracts of or from such contents, or any of them, without the express sanction or consent of the said A. T. Raby first had and obtained; and this defendant further saith, that he, this defendant, has, as stated by him in his said former supplemental answer to the said bill, no personal knowledge whatever of the contents of the said boxes, or any of them, and is unable to state as to his knowledge, remembrance, information, or belief, whether such contents, or any of them, are in any manner material for the purposes of the complainants in this suit, or whether the same do or do not relate to or concern, or in any manner affect, the matters in the said bill mentioned, or any of them, or whether thereby or any of them, if the same were produced, the truth of the several matters in the said bill mentioned, or any of them, would appear; and this defendant, in consequence of the manner in which the said A. T. Raby had been connected with the matters in the said bill mentioned and charged for that reason, only supposed that the same, or some of them, might relate to or concern the matters in the said bill stated and charged, or some of such matters; and this defendant further saith, that when he made the offer in his said former supplemental answer contained, of producing and leaving the said boxes with his clerk in court for the usual purposes, he, this defendant, conceived that this Court would protect him from being called upon or required to do more in regard to producing and leaving the said boxes, or the contents thereof, with the clerk in court, than this Court might think he was in strictness bound or compellable to do, and could safely and properly do, as such depositary for safe custody only as aforesaid; and inasmuch as the said A. T. Raby was and is a party defendant in this said suit, this defendant is advised that this Court could not, and would not, act upon such submission without notice to the said A. T. Raby, whereby as between this defendant and the said last-mentioned defendant, this defendant would be fully protected, as at the time of putting in his said former supplemental answer he believed he would be; and this defendant further saith, that for greater certainty and security he hath caused the said boxes to be sealed up; and this defendant saith, that except in respect of such sealing up the said boxes and the contents thereof respectively, are, according to the best of this defendant's belief, in precisely the same state and condition as the same were at the time of putting in his further supplemental answer."

The plaintiffs then again excepted to the further supplemental answer, and the Master allowed their exceptions. The defendant, Nevill, then excepted to the Master's report, which exceptions were allowed by the Vice-Chancellor.

Heathfield, for the defendant, claimed to begin, although the respondent; the appeal being against the whole of the Vice Chancellor's order.

Koe, for the plaintiffs, contended that the rule did not apply to exceptions, but

The LORD CHANCELLOR.—It is a rehearing of the exceptions, and it is most convenient that the excepting party should begin.

Heathfield contended that *Nevill* had no right to open the boxes or disclose the contents, as he had never been authorized to do so.

The LORD CHANCELLOR.—He might have had an action brought against him if he had opened the boxes without authority.

Heathfield.—It would have been a gross violation of duty. (*Christian* v. *Taylor*, 11 Sim. 401.) The defendant asserted that he was only a depositary in each of his answers.

Koe and *Collins* contended that Nevill had notice of the plaintiff's claim at the time of his purchase from Raby, and that the allegation of want of authority from Raby to produce the boxes was a mere colour. In his first answer the defendant had made an admission of his possession of the papers, and had offered to produce them for the usual purposes; he would not therefore be permitted to withdraw therefrom, and retract by his subsequent answers. (*East India Company* v. *Keighley*, 4 Madd. 16; *M'Carthy* v. *M'Carthy*, 1 Molloy, 187.) He only speaks to his own personal knowledge; but he should have carried it further, and denied that his solicitors or agents had no knowledge of the contents of the documents. It would be consistent with the answer that the defendant's solicitor might have a schedule of the documents contained in the boxes. (*Glengall* v. *Frazer*, 2 Hare, 99; *Tipping* v. *Clarke*, 2 Hare, 383.)

Heathfield, in reply.

The LORD CHANCELLOR.—The only point is, whether the defendant Nevill, having once admitted by the first answer that the deeds contained in these boxes may relate to the matters in question in the cause, he is at liberty to retract such admission. He explains, however, that the boxes were only deposited with him for safe custody by Raby, and that Raby is a co-defendant. It must be recollected that the admission is accompanied by an explanation that he is only a depositary, and that the person who is stated to have the right to the papers is a co-defendant. The defendant Nevill, by his first answer, says that he is willing to place these documents in the hands of his clerk in court for the usual purposes; but he says the documents are not his, they belong to a co-defendant; that he is a mere depositary. So far as he is concerned, he had no objection to leave them with the clerk in court. That is the only part of the answer in which there was supposed to be any inconsistency between the first and the supplemental answers. Upon the principal point I think the defendant ought not to produce these documents, and that he cannot be compelled to do so. The decision of the Vice-Chancellor must be affirmed, with costs.

A motion by the plaintiff's counsel, for time to amend, which was granted; but the costs were held to follow the fate of the appeal, the motion being the consequence of the appeal, and that in the result was wrong.

November 18 and 23.

DUKE OF LEEDS *v.* LORD AMHERST.

Will—Construction—Bequest of portraits—evidence. Under the words of a will, which bequeathed all the testator's portraits of several of his ancestors whom he enumerates, a large equestrian picture, in which one of those ancestors constituted the principal figure, and which had been deemed to be a portrait, was held to pass.

In construing the meaning of a will, the evidence of those most conversant with the subject of the bequest will be resorted to.

How far etymology will be used in construing the meaning of a bequest.

This was an appeal from the Vice-Chancellor of England. The bill was filed for the administration of the estate of the late Duke of Leeds, and the question at issue between the parties was raised on exceptions to the Master's report. The Duke of Leeds, by his will, left all the real property of which he had the power to dispose to Sackville Lane Fox, esq. the husband of his daughter, and he also left him all his personal property in Hornby Castle, the family residence of the Duke and his ancestors, to the exclusion of his son, the Marquis of Carmarthen. The testator, by a codicil to his will, directed that the trustees were to have all the pictures, busts, and ornamental furniture at Hornby Castle, valued, and offered to his said son for purchase, at twenty per cent. less than the amount of the valuation. It happened that amongst the ornamental furniture was a picture of the

great Duke of Schomberg, a maternal ancestor of the testator, let into the wainscot over the fire-place in the hall of the castle. This picture the present Duke of Leeds wished to purchase, but Mr. Lane Fox denied his right, on the ground that it was not a portion of the ornamental furniture, but included in a specific bequest to him of certain portraits in the will. The clause on which the claim was founded gave Mr. Fox all testator's portraits of his mother and brother, of the Lord and Lady Holderness, his grandfather and grandmother, and of the Duke of Schomberg. There were in Hornby Castle three pictures representing the Duke of Schomberg; the first, the large equestrian portrait fixed over the fire place in the hall; the second a half-length portrait in one of the bed-rooms; and the third a portrait in crayons, hung in the drawing-room. Mr. Fox claimed all the three as passing to him under the bequest of "portraits" of the Duke of Schomberg; but the present Duke of Leeds asserted that the first of them, the equestrian picture in the hall, did not come under the denomination of a portrait, but was an historical piece, and as such included amongst the ornamental pictures and furniture which he had the option of purchasing. Upon a reference to the Master, he reported that there were three "portraits" of the Duke of Schomberg in Hornby Castle, according to the evidence brought before him. To that report the plaintiff, the present Duke of Leeds, took exceptions; but the Vice-Chancellor, after a full argument, overruled those exceptions, and expressed an opinion in a very elaborate and critical judgment, that the picture in question was beyond doubt a portrait. From that decision the plaintiff appealed.

Bethel and *Lloyd*, for the appeal, contended that the picture was plainly a historical one, and could never have been intended by the testator to pass under the designation of a portrait. They cited *Thompson* v. *Lawley* (5 Ves. 476); and *Watkin* v. *Lee* (6 Ves. 633, 1 Mer. 654).

Stuart and *G. L. Russell*, for the defendants, insisted that there was nothing in the picture to prevent its passing as a portrait, and referred to catalogues of paintings and writers upon art to shew that in the strict technical sense it was a portrait.

Bethel, in reply.

The LORD CHANCELLOR, after a statement of the facts and a most elaborate review of the arguments on both sides, held the picture in question to be a portrait, and as such to have passed by the will of the testator to Mr. Fox. His Lordship referred to the portrait of Charles the First, at Hampton Court; to that of Napoleon crossing the Alps; of the Duke d'Angoulême; of the Duke of Wellington, by Lawrence, in the possession of Sir Robert Peel; Lord Ligonier, in the National Gallery; and several others, as illustrating the artistical accuracy of the Vice-Chancellor's view, whose decision was affirmed.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, Nov. 19.

PALMER v. PATTERSON and TURTON.

Practice—Double Administration—Interpleader.

A person going by the name of C. P. died in India intestate. Some time after advertisements had been published in England for the next of kin of C. P. without any claimant coming forward, F. P. obtained letters of administration to the effects of C. P as his next of kin, and claimed the fund that had been remitted by D, the registrar of the Supreme Court at Calcutta, to his agents F. and Co. in England, but which had been sent back by them to India. Upon the death of D, Sir T. T. (one of the defendants) having succeeded to the situation of registrar in his stead, transferred the fund again to this country to his agents Messrs. P. & Co. (the plaintiffs), accompanied with a letter directing them to hand over the property in question to the defendant F. P. administratrix to the estate of C. P. she proving his title, and giving a legal discharge. C. P. failing to prove her title to the satisfaction of the plaintiffs, and several other claimants appearing, F. P. commenced an action at law against the plaintiffs for the property of the intestates in their hands. In the meantime it having appeared, through inquiries instituted in India, that the intestate's real name was A. K. a native of Zante, the defendant Sir T. T. put in his claim to the intestate's property as administrator. Whereupon the plaintiffs P. & Co. filed their bill of interpleader against F. P. and Sir T. T. Upon the chief question, whether the letter instructing P. and Co. to pay the money to F. P. under the conditions therein contained, was a promise upon which she could sustain her action at law against the plaintiffs P. & Co. sufficient to destroy their right of interpleader. Held, that the letter so remitted raised the very question, viz. whether the estate administered in India was that to which administration had been granted in England, and therefore that the plaintiff was entitled to an inquiry before the Master as to that fact.

This being an interpleader suit was commenced under the following circumstances. A person who passed under the name of Charles Patterson died in Calcutta in the year 1825 intestate, leaving considerable personal property, which he had accumulated during his residence in India. A Mr. Dickens, the Ecclesiastical Registrar of the Supreme Court of Bengal took out letters of administration to the personal estate and effects of the deceased. This property, which amounted to about 3,000*l.* was transmitted, in 1837, by Mr. Dickens to his agents, Messrs. Fletcher and Co. residing in England. The usual advertisements, addressed to the next of kin of Charles Patterson, were published by Fletcher and Co. but no person appeared to claim the fund in answer to such advertisements, whereupon they remitted the property to India, as unclaimed in England. In the meantime the defendant, Frances Patterson, procured letters of administration to be granted to her out of the Prerogative Court in this country as next of kin to the intestate, and claimed the fund so remitted. Dickens died, and Sir T. Turton who had been appointed to the situation of Registrar of the Supreme Ecclesiastical Court in the room of Mr. Dickens, transferred the fund again to this country to Messrs. Palmer and Co. his agents here, with written instructions requesting them to hand over the property in question to the defendant, F. Patterson, administratrix to the estate of Charles Patterson, on being satisfied of the administration having been granted to her, and her giving a legal discharge to the registrar. The claim of Mrs. Patterson gave rise to a lengthened correspondence between the parties in England and the authorities in India. The principal reason for such intercommunication was the difficulty under which Mrs. Patterson laboured in proving the identity of the intestate, C. Patterson, to the satisfaction of Messrs. Palmer and Co. By this time several counter claimants appeared in respect of the intestate's property, which occasioned a suit in this country, and Mrs. Patterson commenced an action at law against the plaintiff's for the amount of the intestate's effects in their hands. In the meantime, fresh inquiries having been instituted in India at the instance of Sir T. Turton it was discovered that the intestate merely passed on his voyage to India, and during his residence in that country, under the name of C. Patterson, although he was in fact a native of Zante, by name Antonius Kommooto, and had been buried according to the rites of the Greek Church under that name. Sir T. Turton now, therefore, put in his claim to the intestate's property as administrator; whereupon Palmer and Co. filed the present bill, to compel the defendants to interplead. The principal question raised by the parties was, whether the letter written by Sir T. Turton to Palmer and Co. contained sufficient instructions to them to pay the remittance to the defendant Frances Palmer, coupled with the condition contained in the latter part of the letter, that they were to be satisfied that administration had been granted to her, and to take a proper legal discharge was a promise upon which she could sustain her action at law against the firm of Messrs. Palmer and Co. sufficient to destroy their right of interplender.

Bethel and *R. Palmer*, for the plaintiff, contended that it was a clear case for an interpleader; that Sir T. Turton has placed his agents in England in a situation which rendered them liable to an action at law by a third person, in respect of the fund in question. The answers of Mrs. Patterson and Sir T. Turton shewed that they both admitted a claim; moreover there was no distinct title in either, for that all the letters giving directions to the plaintiff as the agent of Sir T. Turton were merely written upon the assumption that Mrs. Patterson was really the character she pretended to be. (*Stevenson* v. *Anderson*, 2 V. & B. 407.)

Lowndes and *Stinton*, for the defendant, Mrs. Patterson. The title cannot be tried here. The plaintiff has made, or endeavoured to make, a case against us, which he has no right to do for interpleader. At law we have proceeded to trial, and the plaintiffs filed their bill of injunction to restrain the action, which was dismissed with costs. As to the conduct of plaintiffs towards Mrs. P. after the money had been returned to Calcutta, the plaintiffs wrote to Turton to retain the money "on behalf of the legal personal representative of C. Patterson." The money was again remitted by Turton to the plaintiffs requesting them to pay the same to Mrs. P, upon her procuring letters of administration. Turton, as registrar of the Supreme Court of Calcutta, was official administrator in India. Upon his letter to his agents, Palmer and Co. we have an action at law. In *Crawshcy* v. *Thornton* (1 M. & C. 7 Sim. 391), there was a similar letter written, and if we recover at law against Messrs. Palmer and Co. that will be a good defence in an action by Turton. The bill, as a bill of interpleader, is demurrable.

Stuart, for Sir T. Turton, urged that as the defendant and the plaintiffs were the same, and had no beneficial interest in the fund, Mrs. Patterson, the first defendant on the record, must establish her right.

The VICE-CHANCELLOR.—My opinion is this, that the letter of 18 Oct. 1841, written by Sir T. Turton to his agents in England, raises the very question, whether the estate to which he had administered in India, is the same to which Mrs. Patterson has administered in England, and that therefore the plaintiffs have a right that a reference should be made to the Master to institute this inquiry.

Thursday, Dec. 5.

WATSON v. ENGLAND.

Practice—Presumption of death—Exceptions.

M. B. left her father's house many years ago, and the last communication or tidings of her was in 1814. Upon a reference to the Master, he certified that M. B. was dead, but that there had not been sufficient evidence laid before him to enable him to find when she died, or whether or not she died unmarried or without issue.

The statement of one of the witnesses, upon whose evidence the Master had found his report, was, among other facts, that about four or five years ago, his brother W. B. (the father of M. B.) had told him that he had intelligence that his daughter M. B. was dead.

Exceptions having been taken to this report—1st, that the Master ought to have found that M. B. was dead, and that she died some time previous to the end of the year 1821; 2nd, that he ought to have found that she died unmarried and without issue. Held, that the evidence in support of the facts was insufficient. The first exception overruled, but the second one allowed.

This was a case which arose upon the presumptive death of a party who had not been heard of for many years; it came before the Court in February last,(a) upon exceptions to the Master's report, who had found that Mary Bilton (the party in question) was dead, and that she died in the year 1821 (seven years after the time she was last heard of) without issue and unmarried.(b) To this report an exception was taken upon the ground that he had improperly raised a presumption of Mary Bilton's death without issue and unmarried.

Bethel and *Hubback*, on that occasion, appeared in support of the exceptions, and

Wakefield and *Cankrien* for the Master's report.

The result was, that the exception was allowed, and it was referred back to the Master to issue advertisements as he should think fit, and be at liberty to exhibit interrogatories.

The Master, in his report dated July 1st, found that Mary Bilton left her father's house at Cottingham, in the county of York, in the year 1810, or thereabouts, and that she was then unmarried and without issue, and that she had not been heard of by any member of her family since the year 1814; the Master, therefore, found that she was dead, but that there had not been sufficient evidence laid before him to enable him to find when she died, or whether or not she died unmarried and without issue. Two exceptions were, therefore, taken to this report—the first exception was, that the Master ought to have found that Mary Bilton was dead, and that she died some time previous to the end of the year 1821. The second exception was, that he ought to have found that she died unmarried and without issue.

The evidence which the Master had taken in his inquiries, whereon to ground his report, and upon which the excepting defendant, J. Snowball, now relied, consisted of the depositions of Peter Bilton, the brother of William Bilton, Mary Bilton's father, and William Mutch. Peter Bilton deposed that "I have known my said brother from the time of his marriage, which took place in the year 1787, down to the time of his death, which occurred in the year 1842, and I have been in the constant habit of associating with him and his family during that time; I knew one of the daughters of the said William Bilton, who was called Mary Bilton. She left her father's house when she was about sixteen or seventeen years of age. The said William Bilton was then living at Cottingham. I think the said Mary Bilton left her father's house about the year 1813 or 1814. I do not know the reason why the said Mary Bilton left home, but she went to London. She was not married when she left home; she never returned afterwards to her father's house. I never heard the said William Bilton, nor any of the sisters of the said Mary Bilton, say that they had heard or believed that the said Mary Bilton was married, or to that purport or effect, or that she had any lawful issue, or to that purport or effect. But I have heard them say that she was single and unmarried. About four or five years ago, and after the said Mary Bilton left her father's house, my brother, William Bilton, told me, that he had intelligence by a man who came from London that his daughter, the said Mary Bilton, was dead. Some

(a) *Vide* the circumstances of the case, vol. 2, 455.

(b) The true principle of presumption, however, appears to be this. If a party has not been heard of for seven years, the presumption of his being alive continues during that period, and the burden of proof lies upon those who attempt to set up his alleged death. But after that period another presumption arises, viz. the death of the party at or from the time he was last heard of, and the proof of his being alive must be shewn by those whose interest it is to sustain that fact.

[illegible] my brother informed me that his [illegible] Margaret had had a letter from Mary at [illegible]. I do not believe that the said Mary Bilton ever had any lawful issue, because I do not believe that she was ever married. I believe that she is dead."

The affidavit of William Mutch went to establish the same facts. There was, however, this discrepancy, namely, his deposing that Mary Bilton left home in 1810, and that she was then about fifteen years of age, and that she left home to pursue a dissolute course of life.

Wakefield and *Cankrien*, in support of the exceptors.—There existed no presumption that Mary Bilton, from her mode of life, was ever married. If a person is not heard of for seven years, his death is presumed. We want, therefore, to presume that she died before the end of the year 1821. The only other question is, whether Mary Bilton left issue; and we submit that the *onus* lies upon those who would set up that fact to prove it.

Bethel and *Hubback*, against the exceptions.—We submit that, although the rule of law allows the presumption of death after seven years, yet no authority allows one to carry it beyond that period. There was no such evidence before the Master, enabling him to ascertain the time of Mary Bilton's death. There is a difference between saying to the Master, "You ought to presume that she died after seven years," and telling him that he ought to state at what particular time she died. The evidence of her uncle, Peter Bilton, goes to shew that she left her father's house *in* or *about* 1814; now in or about, in respect of a day, means by extension four or five days, and the same latitude in years may be extended to four or five years, *i. e.* about the year 1818. How are we, according to the testimony, to fix the last time of her being heard of? [The VICE-CHANCELLOR.—The unfortunate part of this case is, that if I presume her death she might walk into Court and disprove all.] Her uncle says she left her father's house in 1813 or 1814; the next witness states that it was in 1810. In ordinary cases you may draw a conclusion, but when you embark on such a sea of uncertainty, to steer to the point of time when she was actually heard of, it is impossible. (*Dixon* v. *Dixon*, 3 Bro. C. C. 510.)

Wakefield.—The Master has found that she was last heard of in 1814.

The VICE-CHANCELLOR.—The Master's finding that she was last heard of in 1814 is founded upon that which discloses fresh intelligence, *i. e.* the father telling his brother, four or five years ago, that she was dead.

Bethel.—The next question, whether she died unmarried and without issue, is an immaterial exception; the other is the important one, viz. that which relates to her death.

Hubback.—The Court will lean against presumption of failure of issue. [The VICE-CHANCELLOR.—There is no evidence to induce me to believe that she was ever married.] If any evidence existed it would be received by parties interested in suppressing that evidence; therefore both exceptions ought not to be allowed. [His HONOUR here intimated that he would hear *Wakefield* upon the first, but not on the second exception.]

Wakefield.—There is always a difficulty in these cases of presumption. The law presumes that if a party has not been heard of for seven years he is dead—because if he had been living, tidings would have been received of him. The presumption in our case, therefore, is, that Mary Bilton was dead in 1814. The moment you arrive at the conclusion of death you may take any time between the years 1814 and 1821 for any thing we care. Our object is to prove that at all events she was dead prior to the end of the year 1821. The Master has found that she left her father's house in 1810, and has not been heard of since 1811; the presumption, therefore, is, that she died seven years before the latter part of 1821.

Cases cited: *Doe* v. *Griffin* (15 East, 293); *Doe* v. *Nepier* (5 Bar. & Adol. 86); *Webster* v. *Birchmore* (13 Ves. 362).

The VICE-CHANCELLOR.—The evidence before the Master created a difficulty in finding that Mary Bilton was dead before the year 1821. I am aware that he finds that she had not been heard of since the year 1814; but the question before him was as to when she was last heard of alive; and it is to this circumstance—viz. as to hearing of her being alive—the Master directs his attention in his finding; because it is manifest that she has been heard of as dead since that period, namely four or five years ago, upon certain information given to her uncle, P. Bilton, by her own father, derived from a third party. Now, take it to be four or five years ago, that would bring it up to 1839, which would make it about eighteen years from 1821, when her death is supposed to have taken place. It is very strange that in such a case the first intelligence of her death, had she died in 1821, should have been communicated by the father as a circumstance of recent occurrence. It is a great pity that a further inquiry was not made; the parties have been proceeding in the dark, without knowing what evidence would be required. It must go back upon the second exception, which is allowed. The first exception must be overruled.

Refer it back to the Master to prosecute the inquiry, with liberty to state special circumstances.

ROLLS COURT.

Monday, Dec. 2.

TREVANION *v.* TREVANION.

The general rule is, that a solicitor should have a written authority before instituting a suit, and the contrary course is only excusable in cases of imminent danger and risk to the interests of the party; but even then the sanction of the party should be obtained at the earliest moment possible, or the suit dropped.

Mr. Trevanion, a gentleman residing in Bruges, had considerable estates in Cornwall, but greatly incumbered. Some of them were conveyed to the trustees of his marriage settlement; and for the purpose of liquidating his debts, it became necessary to convey to trustees to sell. Accordingly he conveyed several of his estates for that purpose, with the necessary powers, &c. and appointed J. Davis to manage and act for him, and Messrs. Pyne and Richards were the solicitors. In the course of proceedings objections were raised by purchasers on the ground of its not being clear, from the wording of the marriage-settlement, whether it did not include some of the estates proposed to be sold. A bill was accordingly filed by Richards to ascertain the point, but without the particular retainer of Mr. Trevanion in that case, and the latter now moved to have the bill taken off the file. It was alleged that the general authority given to Davis as manager, &c. coupled with the fact of Mr. Trevanion being aware of the mistake in the marriage-settlement, and of his having sent his son over to put in an answer in the suit justified the solicitor in filing the bill in his name. The letters, however, shewed that the suit Mr. Trevanion understood was being instituted was one "by you (Richards) to set right some few words in the marriage settlement," and not this particular suit; and that he even refused to sign an authority sent over to him for that purpose. Something was said also as to his being an outlaw, and of Mr. Richards not being an attorney at the time when the bill was filed, because of the certificate not being duly taken out, but that was not noticed in the judgment.

Kindersley and *Bevan*, for the motion.

Turner and *Willcock*, contrà.

The MASTER of the ROLLS.—I must do as all before me have done; that is, consider not whether the prosecution of the suit is profitable or otherwise, but whether, on the evidence before me, I can ascertain that an authority has been actually given. I will not, however, on this occasion, say as to solicitors, that, though the general rule requires written authority, they may not, in cases of great and pressing emergency, file a bill without a special retainer, but they always do so on their own responsibility; and, as just and honourable men, they ought to get the sanction of their client as soon after as they possibly can, and if not, then they should immediately stop proceedings. Now how does the matter stand here? Mr. Trevanion is abroad in difficulties, and it might be of importance to file a bill. But the bill here was filed on the 21st of March, and on the 4th of April he first was told of it, and that it was necessary to rectify the settlement. His answer is in the form of a disclaimer of all knowledge of what is wanted of him; and to a subsequent application for a direct authority he gives a flat refusal. Is that a sanction? I grant the motion with costs.

Dec. 2 and 3.

DALTON *v.* HAYTER.

The six days within which, by the 5th General Order of 1828, exceptions to an answer for insufficiency are to be referred to the Master, reckon from the expiration of the eight days, after which, by the same Order, an order of reference may be obtained, and not from the date of the order itself, the whole time from the date of the exceptions being taken till they are supposed to be abandoned being fourteen days.

Exceptions were taken to the answer in this cause on the 8th of November, 1844, and on the 18th of the same month an order to refer them to the Master was obtained, and served on the 23rd. A motion was now made to discharge the order for irregularity, it being too late, according to the 5th General order of April, 1828. It was contended, on the one hand, that the six days mentioned in the Order commenced to run from the date of the Order of reference to the Master; and on the other, that it commenced to run after the eight days after which the order may be obtained. In this case also the 17th happened on a Sunday.

Kindersley and *Bevan*, for the motion, cited *Attorney-General* v. *Clark* (1 My. & Cr. 367); *Taylor* v. *Harrison* (8 Sim. 21, 1 My. & Cr. 274); *Hunter* v. *Capron* (5 Beav. 96).

Wood, contrà.

The MASTER of the ROLLS.—If the cases cited shew that the whole time allowed by the 5th Order is fourteen days, and that the six are in continuation of the eight, there is an end of the matter. The first part of the Order is prohibitive—not to be within the eight days; the other is declarative—shall be within the six days. The question is, What do "the next six days" mean? I shall mention it to-morrow.

Tuesday, Dec. 3.

The MASTER of the ROLLS.—I think it is to be inferred from what is said, though it is not directly expressed, that in the case cited the judge understood the whole number of days to be fourteen, and consequently the six reckon next after the eight. I must grant the motion.

Saturday, Dec. 7.

HOLLAND *v.* GWYNNE.

Re BYRCH.

An order of course to tax a solicitor's bill of costs in one cause, and to deliver up all papers, &c. belonging to his client, there being papers, &c. in other matters as well as that particular suit, is irregular.

Mr. Byrch was the solicitor of the plaintiff in this, as well as in another cause of *Holland* v. *Roper*, and also transacted other business for him, not in any cause. This particular suit had been going on from 1819 till 1841, when all of a sudden the plaintiff asked Mr. Byrch for his bill of costs in it, for the purpose, as he alleged, of understanding the state of it, as it was of so long standing. Accordingly, Mr. Byrch desired his clerk to make it out, but without the charges to the several items. This the clerk did, but by some mistake he put down the charges also, but did not cast them up. The bill was then so given to the plaintiff, and by him to Mr. Fiddy, who did not immediately take any step, but some time afterwards, as the solicitor of the plaintiff, he applied for and obtained an order for taxation of the bill, and, upon payment thereof, for the delivery up upon oath, by Mr. Byrch, of all papers, &c. belonging to the plaintiff. It was now moved that the order so obtained upon the petition of the plaintiff, Francis Holland, be discharged for irregularity.

Turner and *Malins*, for the motion, insisted that the bill was not made out with a view to delivery as such, or to taxation and payment, and that payment was of course never demanded. Besides, before the order was obtained, Byrch offered to strike out any objectionable item. And moreover the petitioner asked too much, namely, *all* papers, &c. belonging, &c.

Lowndes and *Tomano*, contrà, contended that it was only all the papers of that suit that were asked, and at all events they did not seek more. Moreover, the plaintiff was a trustee for his sister, and permitted her to use his name in the suit of *Holland* v. *Roper*.

Turner, in reply. [The MASTER of the ROLLS.—Mr. Turner, you would not have called it an irregular order, if they had only asked for the papers in that suit?] No.

The MASTER of the ROLLS.—It is certainly irregular to ask in this case for all the papers belonging to the plaintiff. It is by no means an order of course. I will not, however, preclude Mr. Lowndes from explaining if he can, and for that purpose will allow it to stand over.

Saturday, Dec. 7, and Tuesday, Dec. 10.

MATTLEBURY *v.* HAYWARD.

The 18th Order of 26th Oct. 1842—*Change of solicitors.*

Mr. Thomas, the solicitor in this cause, having taken his son into partnership,

Bilton moved that the name should be changed from Thomas to Thomas and Son, to comply with the 18th Order of 26th Oct. 1842. That Order is, "That a party suing or defending by a solicitor shall not be at liberty to change his solicitor in any cause or matter without an order of the Court for that purpose, which may be obtained by motion or petition, as of course; and that until such order is obtained and served, and notice thereof given to the clerk of records and writs, the former solicitor shall be considered the solicitor of the party." *Bilton* stated that he had obtained a like order from the Vice Chancellor of England in the cause of *Mahon* v. *O'Grady*.

The MASTER of the ROLLS.—I will consider and let you know; accordingly,

Tuesday, Dec. 10.

The MASTER of the ROLLS.—If you ask the order, Mr. Bilton, I will grant it, as no harm can come of it. His Lordship, however, gave no reason.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Thursday, Dec. 12.

GLOVER *v.* COCKERELL.

Practice—13th amended order of April 1828.

After the expiration of six weeks from the time the defendant's answer shall have been deemed sufficient, an application to amend the bill, though it may be the first application, must be made upon the special affidavit required by the 13th amended order of April 1828.

The plaintiff in this case obtained an order to amend his bill after six weeks had elapsed from the time the defendant's answer had been deemed sufficient. This order was obtained upon an affidavit applicable

only to an application made *within* the six weeks, according to the 13th amended order of April 1828. The defendant, however, had been served with notice of the intended application, and had instructed counsel to appear and oppose it, but through inadvertence the order had been obtained in the absence of defendant's counsel. A motion was now made, on the part of the defendant, to discharge the order, on the ground of its irregularity, and the defendant also moved to have the bill dismissed, or that the plaintiff should give the usual undertaking to speed the cause.

Wigram and *Cockerell*, for the defendant, contended that the order to amend was irregular, as by the 13th amended order of April 1828, a special affidavit was required after the expiration of six weeks from the time the answer was deemed sufficient, &c. and that in this case the amendments had not been of mere clerical errors.

Russell and *Lloyd*, for the plaintiff, argued that the order being made on a first application to amend, no special affidavit was necessary.

The VICE-CHANCELLOR said, that a party taking an order to amend upon affidavit of service, must take it at his own peril. He made the order supposing that the party served did not intend to appear. He was of opinion that, even on a first application to amend, if the six weeks had elapsed, there must be a different affidavit from that required on an application within the six weeks. The order, therefore, was irregular upon the face of it, and the plaintiff must pay the costs of that order or of the motion to discharge it. He should, however, allow the amendments to remain on the record as if made on that day. The motion to dismiss must be refused without costs.

Friday, Dec. 13.

TURNER *v.* SAMPSON.

Practice—Demurrer—Costs.

Where a plaintiff neglects to set down a demurrer for argument within twelve days, according to the 34th Order of August 1841, the defendant may obtain an order for his costs, upon an ex parte application.

The defendant in this suit filed a demurrer to the bill, which the plaintiff did not cause to be set down for argument within the twelve days required by the 34th Order of August 1841.

Rogers, for the defendant, now moved *ex parte*, that the plaintiff should pay the costs of the cause. He cited *Mackenzie* v. *Cloridge* (6 Bea. 123).

The VICE-CHANCELLOR said that he should follow that authority.

QUARRILL *v.* BINMORE.

Practice—Guardian—Reference.

A husband and wife, parties to a suit, being minors, and the wife having no guardian, the Court directed a reference to the Master to appoint a guardian for her, and that the Master should give a preference to her father-in-law, if there appeared to be no objection to him.

Two of the parties in this suit were a husband and wife, both minors. The husband's father was living, but the guardians of the lady were dead. One of the objects of the suit was to appoint a guardian for the lady, and it was proposed that the husband's father should be the person.

Terrell, for the plaintiffs.

Elwin, for the defendants.

The VICE-CHANCELLOR at first said that he would appoint the father-in-law guardian to the young lady without a reference; but as it appeared afterwards that a reference to the Master would be necessary to appoint a guardian for another infant party, his Honour directed that there should be a reference in both cases, but that as to the young lady, the Master should give a preference to her father-in-law, provided there appeared to be no objection to him.

Tuesday, Dec. 17.

ROBINSON *v.* BODKIN.

Pleading—Demurrer for want of equity.

The bill in this case was filed by Robinson and Wright on the 8th Nov. 1844, against W. H. Bodkin and Harriett, his wife, and Thomas Blyth, and stated that in March 1811 Bodkin *represented* to the plaintiffs that he was a proprietor of, and absolutely entitled to, one-ninth part or share of and in two estates, called Boxell and Mary's Hope, situate in the Dutch settlement of Surinam, *subject only* to the mortgage and legacies affecting the entirety of the estates, and thereinafter mentioned, and that, in reliance upon such statement the plaintiffs agreed with Bodkin for the purchase of the one-ninth share, subject as aforesaid, *but free from all other incumbrances*, in consideration of 8*l.* per month to be paid to Bodkin during his life. The bill then stated the instrument of conveyance, which is called a deed of session and transport, and bears date the 10th of March, 1841, and appeared to be a conveyance of the share, subject to the mortgage and legacies affecting the entirety, but free from all other incumbrances. The deed contained a delegation of authority to two persons, named M'Donald and Lemon, to appear before any court, or judge registrar, or other proper officer of Surinam, to "make, declare, and perfect the cession and transport, according to the true intent and meaning of the said agreement," so that the same might be valid, according to the laws and customs of the settlement of Surinam. Shortly after the execution of the deed, the plaintiff, Robinson, proceeded to Surinam, for the purpose of perfecting the cession and transport, and before his arrival there Lemon died. The plaintiff, Robinson, called upon M'Donald to perfect the deed of cession and transport, and to deliver up possession of the one-ninth share, which he refused to do, on the ground that Bodkin had before the sale contracted debts which were registered, and, according to the laws of Surinam, chargeable on the produce of the share in the estates. These debts were distinct from the incumbrances mentioned in the deed. After some legal proceedings, and the payment of some of these debts, the plaintiff Robinson obtained possession in April 1842. The monthly payment of 8*l.* was afterwards refused by Wright, and the defendant Bodkin commenced an action against him for it. The bill, after stating the above facts, proceeded, amongst other things, to charge that it was alleged that the monthly payment of 8*l.* had been assigned to Blyth, another defendant, as a trustee for Bodkin's wife; and also that, by reason of the existence of the debts, the cession or transport, or conveyance of the said one-ninth part or share to the plaintiffs, had not then been perfected. The bill prayed an account of the sums paid, and costs incurred by the plaintiffs, and that the amount might be treated as a set-off against the monthly payments of 8*l.*; that Bodkin might be decreed to pay off all the remaining debts charged upon the one-ninth share not mentioned in the deed of cession and transport, and in default, that they might be paid out of the accruing payments of the monthly sums of 8*l.*; that Bodkin might be decreed to perfect the cession, transport, and conveyance of the share, and that the defendants might be restrained from prosecuting the action in any other action against the plaintiffs in respect of the monthly payments.

To this bill the defendant Bodkin and his wife filed a *demurrer* for want of equity.

Wigram and *Steere*, for the *demurrer*, cited *White* v. *O'Brien* (1 Sim. & Stu.); *Ranson* v. *Samuel* (Cr. & Ph. 161); *Darthez* v. *Clemens* (6 Bea. 169); *Cator* v. *Lord Pembroke* (1 & 2 Bro. Ch. Ca.); *Buchanan* v. *Rucker* (9 East); and *Gordon* v. *Pynn* (3 Hare, 223).

Russell and *Prior*, for the bill, were not heard.

The VICE-CHANCELLOR, after reviewing the various allegations in the bill, observed, that without saying that every equity alleged was sustainable, he was of opinion that there was sufficient upon the bill to shew an equity against Bodkin, and that his wife had such an interest as to render her a proper party.

Demurrer overruled; costs reserved.

Wednesday, Dec. 18.

LLOYD *v.* WARING.

Practice—Official assignee.

The provision in the 6 Geo. 4, c. 19, for the non-abatement of suits by the death or removal of assignees, parties thereto, held to extend to official assignees.

By the 6 Geo. 4, c. 16, s. 67, it was enacted, that suits should not be abated by the death or removal of an assignee who might be a party to the suit, but that, upon suggestion of such death or removal, the name of the surviving or new assignee should be substituted in the place of the former. By the 1 & 2 Wm. 4, c. 56, s. 22, the office of official assignee was created, but the Act contained no provision for the substitution in a suit of a new official assignee, where a former one had died or been removed. By the 5 & 6 Vict. c. 122, s. 48, the appointment of official assignees was extended to country fiats. In this case Mr. John Follett, the official assignee for the Liverpool district, was a plaintiff, and upon his removal to London Mr. Morgan was appointed in his place.

Dean now moved for the substitution in the pleadings of the name of Mr. Morgan in the place of that of Mr. Follett. He stated that, on the 26th of April last, a similar order had been made by Lord Langdale, in a case of *Norraille* v. *Flight*, where an official assignee had died.

The VICE-CHANCELLOR accordingly made the order.

STEELE *v.* MAUNDER.

Parties—Foreclosure suit.

In a foreclosure suit, where it appeared that, after the mortgage a marriage settlement of the estate was made by the mortgagor, under which his wife and children alone took a benefit, and the mortgagor consequently became insolvent, his assignees were held not to be necessary parties.

This suit, which was a foreclosure suit, had been set down under the 39th order of August 1841, upon an objection for want of parties, taken by the answer of the trustees of a marriage settlement affecting the mortgaged estates. The objection was, that the mortgagor was insolvent, and that his assignees ought to be made parties. The mortgage was made in 1825, the marriage settlement in 1827, and the insolvency was subsequent to the settlement. The wife and children, who alone took a benefit under the settlement, were already parties to the suit.

Paton, for the trustees.

Fooks, for the plaintiff.

The VICE-CHANCELLOR said, that upon the statements in the pleadings the objection must be disallowed, without prejudice to any question in the cause.

Costs reserved.

VICE-CHANCELLOR WIGRAM'S COURT.

Thursday, Dec. 19.

MACKENZIE *v.* MACKENZIE.

Practice—Executors—Conversion of assets.

Where a difference of opinion exists between two executors as to the propriety of converting assets at any particular period, the Court will not adjudicate upon the question on petition any further than to refer it to the Master to inquire what course would be most advantageous for the estate.

In the administration of the testator's estate in this suit, a reference had been made to the Master to inquire whether it would be for the benefit of the persons interested under the will of the testator, that an immediate sale should be made of the various securities in which his property was at the time of his death, and still continued to be invested, regard being had to that portion of the will which, while it contemplated at some future time a sale and conversion of all his property into government securities, yet had given the executors a wide discretion both as to the varying of the interim investments as well as to the period when the ultimate conversion was to be made. The Master had reported in favour of an immediate sale. The property *inter alia* consisted of Real del Monte shares, New Jersey Canal shares, and Alabama Stock. At the date of the Master's report the Real del Monte would have realized only a nominal sum, whereas they had cost upwards of 1,300*l.*; they would now produce considerably more than at the date of the Master's report. The gross income derivable from these sources exceeded 600*l.* per annum, and that which would be derived from the government securities purchaseable with the proceeds of these foreign stocks would be little more than 200*l.* per annum. The executors had concurred in opposing the Master's report so far as it advised an immediate sale at the time when such report came on before the Court, and they obtained an order authorizing them to sell from time to time as they should deem it most expedient. The rise which had taken place in the first-mentioned securities, added to the present features of the money market, was looked upon by one of the executors as a favourable opportunity for a general sale and conversion, which was resisted by the other, and the present petition was presented by the former for a sale.

Heathfield, for the petition.

R. Palmer, contra, cited *Buxton* v. *Buxton* (1 M. & C. 96), and contended that it was competent for his client to exercise a discretion in the matter, and that he was not bound to surrender his own judgment because his co-executors entertained a different opinion from himself on the nature and prospective value of the securities; he further stated that the income at present derived was barely sufficient to pay the incumbrances and the sum which had been awarded by the Court for maintenance of an infant party in the suit. Under these circumstances the Vice-Chancellor could only refer it again to the Master, and at the request of *Heathfield*, in the event of the Master's opinion coinciding with his client's, a sale was to ensue, without requiring the parties to come before the Court again.

COURT OF EXCHEQUER.

Monday, Nov. 25.

YOUDE *v.* JONES.

By marriage articles, in the year 1773, certain estates, not including P. M. an estate of the intended wife, were agreed to be settled in a certain manner in case the marriage took place. The marriage having taken place, no settlement was made in pursuance of the articles; but in 1802 the estates so agreed to be settled, and also the estate of P. M. were afterwards conveyed to J. to make him tenant to the præcipe, and the uses of the recovery were declared to be such as T. Y. and his wife, and T. W. Y. should appoint, and in default to the use of T. Y. and his wife for their joint lives, and on the death of either of them to such uses as T. W. Y. and the survivor of them should appoint, and in default to the use of such survivor for life, and then as T. W. Y. should appoint, and in default upon the same powers, provisoes, &c. as the said hereditaments and premises were limited to by the articles of settlement of 1773. T. Y. died.

By deed of appointment and release, in 1800, between Mrs. Y. of the first part, T. W. Y. of the second part, and other parties, Mrs. Y. and T. W. Y. appoint to the uses therein mentioned. S. Y. also releases (except P. M. for her life) all her estates to trustees for 1,000 years, upon certain trusts, and subject thereto, to the use of T. W. Y. in fee.

Held, that no estate at law passed in any of the

estates, particularly in P. M. under the last limitation in the deed of 1802, having reference to the articles of 1773.

Held, also, that the exception in the deed of 1809 of the life estate, and the term of 1,000 years, was repugnant and void at law.

This case was sent by the Vice-Chancellor of England for the opinion of this Court. The facts appear fully from the judgment.

Kelly, for the plaintiff, citing *Smith v. Parkinson* (3 Atk. 134); *Moseley v. Mattocks* (10 M. & W. 231).

Hodgson, Watson, Daniels, and *Aldridge*, for the several defendants.

JUDGMENT.

Mr. Baron Parke.—This case, which was sent for the opinion of this Court by the Vice-Chancellor of England, was argued a few days ago before my brothers Gurney, Rolfe, and myself, and I have now to state the reasons for the certificate which we are about to transmit to his Honour. By the case it appears that the Rev. Thos. Youde, being entitled in fee simple to certain freehold estates in the county of Denbigh in the year 1773, married Sarah Edwards, who had freehold estates in the county of Montgomery, and also in the county of Denbigh, including Plas Madoc, situate in the latter county. Prior to the marriage, articles were executed between these parties and Messrs. Parry and Middleton on the 18th Oct. 1773, by which it was stipulated that in case the marriage took place Mr. Youde's estates should be settled, subject to terms of 500 years, and Mrs. Edwards's (not including Plas Madoc) to the use of Mr. and Mrs. Youde for their lives and the life of the survivor, and to the use of the first and other sons of the marriage successively in tail, and in default of such issue to the first and other sons of Mrs. Edwards by any future marriage, with divers limitations over, and with powers of exchange, &c. There were children of this marriage, two sons, Thomas Watkin Youde and Edward, and also two daughters. Thomas W. Youde attained his majority before August 1801, and on the 11th and 12th of that month the property of Mr. Youde, the father, was by indenture of lease and release conveyed to Whitley for 2,000 years by way of mortgage, and subject to that term, to such uses as Thomas Youde and his wife, and Thomas Watkins Youde during their joint lives by deed should appoint, and in default to the use of Thomas Youde and wife for their lives and the life of the survivor, and afterwards to such uses as Thomas Youde should appoint, and in default to such uses as the said estates then stood limited and settled. On the 1st and 2nd April 1802, by deed of lease and release between Thomas Youde and his wife, and Thomas Watkin Youde of the first part, Thomas Jones of the second, and Thomas Skye of the third; Thomas Youde and wife, and Thomas Watkin Youde, conveyed to Jones and his heirs all the estates of Thomas Youde and wife, and Thomas Watkin Youde, or any or either of them in Montgomery or Denbigh, and certain tithes theretofore, the inheritance of Mr. Youde, in order to make Jones tenant to the *præcipe*, and the uses of the recovery were declared to be as follows:—To such uses as Thomas Youde and wife, and Thomas Watkin Youde, by any deed, &c. during their joint lives should appoint, and in default to the use of Thomas Youde and wife during their joint lives, and on the death of either, to such uses as Thomas Watkin Youde, and the survivor of Thomas Youde and wife, should by deed appoint; and in default to the use of the survivor of Thomas Youde and wife; and after their decease as Thomas Watkin Youde should appoint; and, in default of appointment, then to, for, and upon such and the same powers, provisoes, limitations, and agreements as the said hereditaments and premises were and stood limited to immediately before the execution of that indenture, by virtue of the articles of settlement, meaning those of the 18th Oct. 1773, or to, for, and upon such and so many of them as should be then existing undetermined and capable of taking effect. Common recoveries were accordingly suffered in 1802, and Thomas Youde died shortly afterwards. The first question proposed by the Vice Chancellor is as to the effect of the last-mentioned deed, and the recoveries suffered in pursuance of it. It is, "Whether, under the said indentures of lease and release of the first and second days of April, 1802, and the said common recoveries suffered in pursuance thereof, or any of them, the said Sarah Youde was entitled to any and what estate or estates of and in the said capital, messuage, or mansion, with the lands, buildings, gardens, and appurtenances thereto belonging, called Plas Madoc estate, in the parish of Rhuabon, in the county of Denbigh, and other the said messuage, lands, and hereditaments situate within the said parish of Rhuabon, and the said mines of coal, iron, and minerals in or under the said lands or hereditaments in the said parish of Rhuabon, or of or in any and which of them; and whether under the said indentures and recoveries, or any of them, the said Edward Youde took or was entitled to any, and what, estate or estates, of or in the said capital, messuage, or mansion house, with the lands, buildings, gardens, and appurtenances thereto belonging, called Plas Madoc, and other the said messuages, lands, and hereditaments, situated within the said parish of Rhuabon, and the said mines of coal, iron, and minerals, in or under the said lands in the said parish of Rhuabon, or of or in any, and which of them." We proceed first to answer this question. We can have no doubt what the parties to the deed of 1802 intended by that deed to have done; it may be said to be certain that they meant to settle all the wife's property to the uses specified in the articles of 1773. But the question in this and all other cases of construction is, not what the parties intended to have done by the instrument executed by them, but what the meaning of the words of the instrument is? There is no question as to the effect of the instrument of 1802, and the recovery was in limiting the wife's estates to herself and her husband for their lives, and to the survivor for life, subject to the powers of appointment mentioned in the deed of 1802. The doubt that has arisen is as to the meaning of the subsequent provision. It seems to us that after the determination of those estates, and in default of appointment, the deed of 1802 and the recovery do not operate so as to create any other legal limitations. By the words of the deed of 1802, which are clear, the estates are limited to the same uses as they stood limited to before by virtue of the articles of settlement of October 1773, and no others; but those articles contained no legal limitations of these estates; nor, indeed, do they comprise Plas Madoc at all; and consequently all the estates, and particularly Plas Madoc, were unaffected by the provisions of the deed of 1802 at law. The articles were obligatory upon the parties as a contract which equity would enforce against them and their representatives, and those claiming the estate under them with notice, but they did not otherwise affect the estates. We must construe the words of the indentures of 1802, as we find them, and we are not at liberty, in order to effect what we may well suppose the parties meant to do, to alter the language of the deed, and read it as if it had contained, instead of its present terms, a provision "that in default of appointment, the estate should be held on such and the same uses as are mentioned and described in the articles of settlement of October 1773 with respect to the hereditaments therein mentioned." We shall therefore answer the first question of the Vice-Chancellor in conformity with what I have stated. The second question of the Vice Chancellor relates to the effect of a deed of appointment and release dated the 22nd day of Dec. 1809, and made between Sarah Youde of the first part, Thomas Watkin Youde of the second part, and other parties. It is a deed of appointment by Sarah Youde to Thomas Watkin Youde, reciting to the deed of 1802, and reciting it, and reciting that Plas Madoc was subject to a mortgage, and reciting a contract by Thomas Watkin Youde to purchase the life interest of Mrs. Youde in the estates therein mentioned for an annuity of 400*l.* per annum, and the payment of her debts. By this deed Sarah Youde and Thomas Watkin Youde exercised their power of appointment given by the deed of 1802 over all the estates in the county of Denbigh (except Plas Madoc and the mines and minerals, which excepted hereditaments are stated to be thereinafter more particularly described, but are not), and appoint to the uses thereinafter mentioned and declared. And by the same deed Sarah Youde releases all her estates (save and except to her and her assigns during her life Plas Madoc, the mines and minerals) to Evan Jones and his heirs to the use of trustees for a term of one thousand years, which is to secure to her 500*l.* per annum, and 5,000*l.* and for the children of the marriage, and subject to this term to the use and intent that Mrs. Youde might receive an annuity of 400*l.* a year, with powers for the recovery thereof, and subject thereto, to the use of Thos. W. Youde, his heirs and assigns for ever. The second question of the Vice-Chancellor is "whether under and by virtue of the deeds of lease and release and appointment of December 1809 Thomas Watkin Youde took any and what estate in Plas Madoc, and in the mines and minerals?" We are of opinion that as Mrs. Youde was entitled to Plas Madoc and the mines, in fee simple, at the time of the execution of those deeds, and as that estate was excepted from the appointment, and passed under the conveyance from her to Thomas Watkin Youde, in fee, subject to the mortgage affecting that estate, that the term for 1,000 years, and the exception of the life estate to Mrs. Youde, was repugnant and void. The result, therefore, of our opinions will be in accordance with what I have stated.

HARGREAVES v. PARSONS.

Where a contract has been made between A and B for the performance by B of certain matters therein contained, A may transfer his interest in that contract to a third party, and may guarantee the performance of it by B without a contract in writing, and such guarantee is not a promise to be answerable for the debt, default, or miscarriage of another within the Statute of Frauds.

Where a plea alleges that an agreement was made without the knowledge of the defendant between the plaintiff and another person, a traverse that it was made modo et formâ puts in issue the knowledge of defendant as well as the making the agreement.

Watson, Q. C. moved for a new trial, or to enter a nonsuit pursuant to leave reserved at the trial.

The case was tried before Cresswell, J. at the last assizes at Liverpool, and a verdict found for the plaintiff. There were two contracts of a similar nature. The first count stated that before making the agreement therein mentioned between the plaintiff and the defendant an agreement had been made between C. P. and the defendant, whereby in consideration of a certain sum C. P. had agreed either to take from or to deliver to the defendant on or before a certain day, at a certain price at the option of the defendant, fifty shares in the Havre and Rouen Railway. The contract was what is commonly called in the share market *put and call*. The declaration went on to state, that afterwards, and before the day, and before defendant had exercised his option, a certain other agreement was made between plaintiff and defendant, by which plaintiff bought of defendant his right and property in the said agreement between defendant and C. P.; and the defendant guaranteed the performance of the said agreement by C. P. in consideration of a certain sum then paid by plaintiff to defendant. It was then averred that plaintiff had performed his part of the contract, and had elected to receive the shares of which he gave notice to C. P. and the defendant; yet neither C. P. nor defendant supplied the shares.

The second count stated the original contract, and the transfer of it, and guarantee from defendant to plaintiff in the same manner; but it further alleged that before the day arrived, at the request of defendant, it was agreed between all the parties that the delivery of the shares should be postponed till a further day, and should take place at the house of Lafitte and Co. at Paris, and that the defendant guaranteed the performance of that contract.

There were several issues, but the principal one was raised by the sixth plea, which alleged that the plaintiff and Parker agreed without the knowledge of the defendant to postpone the delivery of the shares.

There was also a traverse of notice to defendant on the first contract.

Before granting a rule, the Court took time to consult the learned judge, and now delivered judgment:—

JUDGMENT.

Parke, B.—In this case a motion was made by *Watson* for a nonsuit upon a point reserved, or for a new trial on misdirection, upon the case tried before my brother Cresswell at Liverpool. The Court wished to look at the judge's notes, in order to ascertain the facts more perfectly, and understand the objection raised. It was an action by the plaintiff against the defendant for the breach of a contract made by him with the plaintiff on the assignment of two other contracts between the defendant and one Parker to take from and deliver to the defendant at his option certain shares in a foreign railway at a fixed premium on or before the 18th of February, 1844, and the defendant agreed to guarantee the delivery by Parker to the plaintiff. There were counts on each contract, and also on a variation from that agreement by a subsequent one, by which it was stipulated that instead of the shares being delivered in England on the 18th of February they should be delivered in France on the 2nd of March by Parker. Several issues were raised on each count; one was as to the allegation in third and fourth counts of the declaration, that the defendant guaranteed to perform the new agreement by Parker; and another was, that no notice was given to Parker to deliver the share; another plea (the sixth) was, that after the notice to Parker it was agreed between the plaintiff and Parker without the knowledge or consent of the defendant that the delivery should be postponed. The issue thereon in the replication was, that it was not so agreed *modo et formâ*. It appeared on the trial that notice was given by the plaintiff to the defendant before the 18th of February to deliver the shares on that day, and a like notice of the defendant to Parker's broker; and that by and at the request of the plaintiff at some conversation at which the notice was given, the defendant procured Parker's broker to deliver the shares at Paris on the 2nd of March instead of delivering them in England on the 18th of February. This agreement was by parol. Three objections were made by Mr. Watson at the close of the plaintiff's case, and the points were reserved by the learned judge. The first and the most important was that the note in writing was necessarily under the Statute of Frauds, because the agreement or guarantee by the defendant for the performance by Parker of the new agreement was a promise to answer for the default of Parker. The learned judge intimated his opinion that this was not a case within the statute, but an original promise, and we are of the same opinion. The statute applies only to a promise made to a person who is already, or to another who is to become answerable. It must be a promise to be answerable for debt or default of some duty by that other person. This was decided, and no doubt rightly, by the Court of Queen's Bench in *Green v. Cresswell* (10 A. & E.) In this case Parker had not contracted with the plaintiff, nor was it contended that he had. There

was no privity between them. The non-performance of Parker's contract with the defendant would be no default towards the plaintiff, and consequently the undertaking by the defendant was no promise to answer for default or miscarriage by Parker in any debt or duty towards the plaintiff. It was an original promise that a certain thing should be done by a third person. The next objection was, that there was no proof of notice to deliver on the 18th of February, because in the same conversation the 2nd of March was substituted. We agree with the learned judge that there was proof of notice, though it was afterwards withdrawn. The last point was, that the verdict ought to have been in favour of the defendant on the issue on the sixth plea, because the agreement was only said to be put in issue, and not the want of knowledge or consent of the defendant; whereas we think this objection cannot be supported, because both circumstances were, in our opinion, in issue, and certainly both were not proved. There must, therefore, be no rule. *Rule refused.*

Tuesday, Dec. 10.

BROWN *v.* FULLERTON.

The Court will amend the writ of summons, by insertion of the name of a party to be co-plaintiff, to save the Statute of Limitations.

Gray shewed cause against a rule *nisi* obtained by *Hugh Hill* in this case, calling on the defendant to shew cause why the plaintiff should not be at liberty to amend the writ of summons and subsequent proceedings in this case, by adding the name of William Turquand to that of the plaintiff's.

The plaintiff was creditor's assignee, and had given directions to his attorney to issue the writ in this case. The writ was accordingly issued, but it was issued without the joinder of the name of the official assignee with that of the plaintiff's. The fault was discovered, but in the meantime the Statute of Limitations had run as to 50*l.* part of the claim. Thence arose the present question.

Gray argued that the Court had no power to evade the Uniformity of Process Act, which they would do by an alteration of the writ, and that no indictment would lie upon any affidavits taken in the action before the alteration, if the writ was altered; and that if they had power they would not exercise it in this instance.

Hugh Hill, contrà, relied upon the cases in which alterations had been made.

Cases cited: *Lukin* v. *Watson* (2 Dowl. P. C. 633); *Roberts* v. *Bate* (6 A. & E. 778); *Eubank* v. *Owen* (5 A. & E. 298); *Eccles* v. *Cole* (8 M. & W.); *Williams* v. *Williams* (10 M. & W. 476); *Mayor* v. *Spalding* (1 Dowl. & Lound. 878); *Billing* v. *Flight* (6 Taunt. 419); *Storr* v. *Watson* (2 Scott 842).

Cur. adv. vult.

At the Sittings, 10th December, in Vacation after Michaelmas Term, Parke, B. delivered the judgment of the Court.

PARKE, B.—This is a case in which there was an application made by Mr. Hill to amend a writ of summons and subsequent proceedings, by adding the name of the official assignee to that of the plaintiff's. It appeared, in that case, that if the amendment was not made, the Statute of Limitations was a bar. Some doubt has been entertained as to whether we ought to accede to this motion; but in compliance with the precedents in this Court, which are acted upon in many cases in other courts, the Court think that the rule ought to be made absolute.

Rule absolute with costs.

FRANKLYN *v.* NEATE.

A right of property remains in the pawnor of goods—He may sell the goods pending the pawn: and the vendee may maintain trover against the pawnee on the refusal of the pawnee to redeliver the goods after tender of the amount due.

Petersdorff shewed cause against *Humfrey's* rule obtained in this case.

This was an action of trover for a chronometer. The question arose on the plea of not possessed. The chronometer had been deposited by one David Gilbert with the defendant, who was a pawnbroker, as a collateral security for the repayment of the sum of 15*l.* and interest, with authority to sell at the end of the year in case the property should not be redeemed in the meantime. A memorandum of the transaction, which the defendant delivered to Gilbert at the time of the pawning, disclosed this. The year elapsed, but the chronometer was not sold, and the plaintiff brought the action on the strength of an assignment thereof to him by Gilbert, and the refusal of the pawnbroker to deliver it to him, though he tendered what was due.

The jury found that Gilbert had sold the chronometer to the plaintiff as fully as he could sell it.

Verdict was entered for defendant on the plea of not possessed, with leave reserved for verdict to be entered for plaintiff if the Court should be of opinion that the sale passed the *property* in the chronometer to the plaintiff.

Petersdorff, for the defendant.—The 14th section of the Pawnbrokers' Act, which imposes a penalty for not delivering up the pawned property; and the 15th section, which enacts, that the holder of the duplicate shall be deemed the owner, evince that at common law the property in the goods does not pass by the assignment of the pledge. The question is, whether the vendee of the pawnor's right to redeem can maintain trover against the pawnee. The contract is a contract to deliver to the pawnor on payment of a given sum: there is no contract to deliver to any one else. The bailor has no property in the thing pledged, save the right to restitution. (See 2 Blackst. Com. 395, 452; Jones on Bailments, p. 80; *Hartopp* v. *Hoare*, 3 Atkyns, 36; and 1 Atkyns, 167.) Could the vendee of the pawnor's interest sue for injury done to the property during the pledge? Suppose the property consisted of divers articles, could the pawnor sell them to different persons, and give several rights of action to each? The passage in Jones on Bailments was first impugned by Storey, J. (On Bailments, p. 237), where he says, that subject to the rights of the pawnee the pawnor may sell, and the vendee redeem and bring action; but for this he only cites *Kemp* v. *Westbrook* (1 Ves. sen. 278), which was the case of a bill filed against the pawnee by the assignee of a bankrupt, and is no authority, since this assignee stands by *statute* in the position of the pawnor. In *Rich* v. *Aldred* (6 Mod. 216), when detinue was brought for Oliver Cromwell's pictures, it is said, assignee of bailor cannot maintain trover against bailee. I do no not argue that a bailment for safe custody is a case in which my arguments would apply.

POLLOCK, C. B.—Does a man by pawning reduce his right to the mere right of bringing an action on the contract? or does he retain such a property in the goods as he may transfer? Suppose consignor sends goods to a factor, and draws on him for a small amount, consignor, according to you, could not sell these goods?

Petersdorff.—The cases are parallel.

Humfrey, in support of the rule.—By the civil law pledgee had nothing in the goods save the right of detainer. (Storey on Bailments, 206.) Our common law was an innovator, but it only gave a special property. (*Ratcliffe* v. *Davis*, Bulst. : ; Cro. Jac. 245.) A mortgage transfers the property in the thing mortgaged; but in a pledge a special property is all that is taken. The general property is in the owner, and on mere tender he has the absolute property back again.

POLLOCK, C. B.—Whatever be the decision in this case, and however the decision in it may extend to some other cases, it cannot affect property in the hands of consignees, or goods in dock warehouses, and the like. A recognized practice of sale, notwithstanding consignment, exists.

PARKE, B.—The question is, whether this is a simple case of lien. *Cur. adv. vult.*

At the sittings Dec. 10 in vacation after Michaelmas Term, Rolfe, B. delivered the judgment of the Court.

JUDGMENT.

ROLFE, B.—This was an action of trover for a chronometer. It appeared at the trial that the chronometer in question had been pawned, and at the time of the pawn the owner delivered to the defendant a written paper authorizing him to sell the chronometer if it should not be redeemed within a year; the owner afterwards sold the chronometer to the plaintiff, subject to the right of the pawnee; the plaintiff then, after the year had expired, tendered to the defendant the amount due on the pawn, but the defendant denied the plaintiff's right to redeem, and refused to deliver up the chronometer, and therefore the plaintiff brought this action. On this state of facts a verdict on the issue on the plea, denying the plaintiff's possession, was taken by my brother Parke, who tried the case, for the defendant, with liberty nevertheless to the plaintiff to move to enter a verdict for him with 19*l.* 10*s.* damages in case the Court should be of opinion that he had proved that issue. The learned judge was inclined to think that this was not a case of simple pawn, but the terms on which the chronometer was pledged were such as to give the defendant something more than the right of a pawnee, and that this operated as a mortgage. If he was a mortgagee, and an absolute property was transferred to him defeasible upon the repayment of the money advanced, the assignee had only the right of redemption which remained in the original owner, and could have maintained no action of trover after tendering the money. But on considering the terms of the instrument which accompanied the deposit, we all agree in thinking, that although it gave more than the ordinary right of a pawnee—that is to say, a right to sell, which, being part of the security for the advance, was recoverable by the pledgor or the assignee,—it did not constitute a mortgage or transfer of the entire legal property in the chattel itself. The case, therefore, stands on the same footing, so far as relates to the rights of a pawnor, as an ordinary pledge. A rule *nisi* having been granted pursuant to leave reserved, Mr. *Petersdorff* shewed cause, and contended that the verdict was right, on the ground that a pawnor cannot transfer to another such a right of possession as enables him to bring an action of trover. There is very little to be found in the books on the subject of the right of a pawnor over a chattel pawned; but this is very clear, that, notwithstanding the pawn, the pawnor still retains a qualified property. In the absence of a direct authority on this point, this seems decisive in favour of a right to sell; but the sale transfers to the purchaser his qualified property in the goods pawned, together with all the rights incident thereto. The case was argued for the defendant as if what the pawnor transferred, or sought to transfer, was a mere right of action. This is not so; he transferred the property in the chattel, qualified, indeed, by a right existing in the pawnee; but still the right of property and the right of action afterwards exists in the purchaser, not in consequence of it being transferred to him by the original pawnor, but by reason of the pawnee having wrongfully converted to his own use that which by sale became the property of the purchaser. We do not feel at all pressed by the argument *ab inconvenienti*, urged by Mr. Petersdorff. "If several chattels," he asks, "afterwards should be pawned for one sum, could several sales be made to different purchasers?" The answer undoubtedly is, they may. A pawnee will not of course be bound to part with any one of the chattels till the whole debt is paid, but will hold them subject to the claim of the pawnor to the same right over each chattel separately which he had before the pawn was made. Again, it is said, suppose the chattel is injured by the fault of the pawnee while in his custody, who is to sue the pawnee—the original pawnor or the purchaser? The answer is obvious. The person with whom the original contract is made; that is, the original depositor is the proper plaintiff, if an action be brought for a breach of contract, express or implied. Unless a new contract be made with the purchaser, the owner for the time being is the proper plaintiff, if the injury be by destruction or conversion of a chattel; just as, in the case of a carrier, the original owner is the person to sue for loss or negligent carriage, or other breach of contract, or for a subsequent conversion after the purchase. That in ordinary cases of a bailment not by way of pawn, the bailor may sell, is a proposition admitting of no doubt, and is even assumed by Lord Holt, in one of the cases relied upon by Mr. Petersdorff, *Rich* v. *Aldred* (6 Mod. 216), where he says, "If A bail goods to C, and afterwards give his whole right in them to B, A cannot maintain detinue for them against C, because the special property he acquires by the bailment is thereby transferred to B." There does not seem to be any well-grounded or any solid ground of distinction in this respect between a bailment by way of pawn, and any other bailment, but with the older and direct authority we must act, on the general principle that a pawnor, like every other bailor, retains his property in the goods pawned, subject to the qualified property transferred to the pawnee, but as an incident to such property he has the right of sale, and after the sale the purchaser has the same interest in the chattel which the pawnor had, and this rule must therefore be made *absolute.*

MAHON *v.* DUMBERLEY.

In this case *Hoggins* moved on November 12 for a new trial. The case stood over in order that the Court might consult the notes of Cresswell, J. before whom the cause was tried, to see whether there was any evidence to go to the jury.

The COURT now said that there was no such evidence, and they could grant no rule.

Rule refused.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Thursday, Dec. 12.

Ex parte HURST *re* LETT.

Sale of mortgaged property—Reference to commissioner.

Where the assignees declined, upon the petition of the mortgagee, to assent to a sale of the mortgaged property, but asked that the Court should exercise a discretion as to the propriety of the sale, a reference for that purpose was directed to the commissioner.

This was a petition for the ordinary equitable mortgagee's order for a sale of the subject of the mortgage, &c.

Renshaw, for the petition.

Fooks, for the assignees, declined to assent to the immediate sale of the property, but wished that the court might exercise a discretion as to the propriety of the sale. He stated that it was a mortgage in the legal form of equitable property, with a proviso for redemption, but no power of sale. After the proviso for redemption there was a special provision that, if default were made, the mortgagee should receive the subject of the mortgage, pay himself what was due, and pay the remainder to the mortgagor. A sale immediately would cause much loss to the bankrupt's estate. He cited *Sampson* v. *Pattison* (1 Hare, 533), as to the effect of the peculiar form of mortgage.

Renshaw, in reply, objected to the postponement of the sale, and urged that the Court would not, on the application of the assignees, postpone a sale asked for

by a mortgagee. (*Ex parte Belcher*, 2 Dea. & Ch. 587.)

The Chief Judge, however, directed a reference to the commissioner to inquire and report what course it would be proper to take with reference to the property, due regard being had to the rights of the petitioner and the assignees.

Monday, Dec. 16.

Ex parte Hammond *re* Hammond.

Trader—Market gardener.

Cultivation and sale of vegetables incidental to a farming business not a trading within the 5 & 6 Vict. c. 122, s. 10.

This was a petition by a bankrupt to annul the fiat on the ground of his not being a trader within the meaning of the bankrupt laws. The alleged trade of the bankrupt was that of a market gardener, the carrying on of which is, by the 5 & 6 Vict. c. 122, s. 10, made a trading, subject to the operation of the statutes relating to bankrupts. From the affidavits filed in this case, it appeared that Samuel Hammond the younger was the lessee of a farm at Upminster, in Essex, of 138 acres of arable and meadow land, at a rent of 316*l.* 8*d.* The lease was subject to the usual covenants for cultivation, &c. Upon twenty acres of the land Hammond had cultivated green peas, and on ten acres, new potatoes. The produce of these acres had been sent to market, and disposed of through various salesmen. It was proved that peas and potatoes were, according to the custom of the county of Essex, used as clearing crops, and it was alleged that these thirty acres had been so cultivated by Hammond. These acres had also been cultivated by means of the plough, instead of the spade, which is ordinarily used in market gardens. Hammond was in his neighbourhood generally known as a farmer, was so assessed to the income tax, and so described on his carts.

Anderdon and *Rett*, for the petitioner.

Russell and *Chandless*, for the petitioning creditor.

Glasse, for the assignees.

The Chief Judge.—The exact definition of a market gardener within the terms of the Act it might be difficult to give, and it is not my intention to give it, though it would be easy to say in a variety of instances what a market gardener is not. I am satisfied that Samuel Hammond, the younger, is a farmer, but, perfectly consistent with that, he might also be a market gardener. I am satisfied, from the facts deposed to in the case, that he was not a market gardener within the meaning of the Act, and shall therefore annul the fiat.

Ex-parte Garnett. *Re* Garnett.

Insolvent Debtors Act—Fiat.

Where some of the petitioning creditors to a fiat had adopted an assignment of the bankrupt's estate under which proceedings had been taken in the Insolvent Debtors Court, the fiat was notwithstanding held to be valid.

In this case, which was a petition by a bankrupt to annul a fiat, among other grounds urged in support of the petition, it appeared that four of the six petitioning creditors had adopted a deed of assignment of the bankrupt's estate and effects, under which proceedings had been taken in the Insolvent Debtors Court. Under the former Bankrupt Act the Lords Commissioners had, in the case of *Ex-parte Barrington* (1 Deacon, 3) affirmed a fiat similarly circumstanced on this point with that now in dispute. The question was whether the present Bankrupt Act had effected any alteration in this particular, but

The Chief Judge considered the decision in *Ex-parte Barrington* to be applicable now.

Swanston, for the petitioner.

Bacon, for the respondents.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

Wednesday, Dec. 18.

(Before Mr. Commissioner Stevenson.)

Re Lewis.

Having incurred debts and liabilities by acting as an executor de son tort, without fraudulent intention, is not a sufficient objection to an insolvent's passing.

The insolvent's mother had died, leaving a little property and a great many debts, amongst which was one of 70*l.* for rent of a farm. The landlord of the farm, after her death, threatened to distrain for his rent, and the insolvent, fearing that if the assets of the deceased were sold under a distress they would barely satisfy the rent, borrowed 70*l.* from a friend, and paid the rent. He then remained in possession of the farm until the crops were ripe, when he made them over to the person who had advanced the 70*l.* who took such crops at the sum of 40*l.* in part payment, and insolvent paid 30*l.* the residue, with his own money in cash; he also sold all the remaining assets of the deceased, and divided the whole produce among his mother's creditors.

Bachelor, of Bath, solicitor, now appeared for the landlord, and opposed on the ground of the removal of the crops from the farm, and the acting as executor *de son tort*.

Homes, in support of the insolvent, urged that this was a mere error of judgment, without fraudulent intention; that insolvent had honestly administered his mother's effects, without appropriating a farthing for his own benefit, and that he had paid part of her debts with his own money.

His Honour.—The insolvent has not acted with any fraudulent intention, nor has he appropriated any of the assets. The bare fact that he has acted as executor *de son tort* is not a sufficient objection to my naming a day for the final order.

Thursday, Dec. 19.

(Before Mr. Commissioner Serjt. Stephen.)

Re Whistance.

Omission in insolvent's petition fatal.

The insolvent came up for his first hearing, when *Homes*, for an opposing creditor, pointed out an omission in the insolvent's petition. In that part of the form which runs thus, "That your petitioner is *not* a trader within the meaning of the statutes now in force relating to bankrupts," the petitioner had struck out the word "*not*," but had omitted to add, after the word "bankrupts," the words, "but owing debts amounting in the whole to less than 300*l.*" The 7 & 8 Vict. c. 96, s. 2, enacts, that if the petition shall not be in the form prescribed, it must be dismissed.

His Honour.—This omission is fatal; the petition must be dismissed.

Petition dismissed accordingly.

Circuit Reports.

WESTERN CIRCUIT.

DEVON WINTER ASSIZES, 1844.

Exeter, Tuesday, Dec. 17.

(Before Mr. Baron Alderson.)

Reg. *v.* Corfeli.

Practice—Right to reply.

Counsel for the prosecution has a right to reply generally, even where witnesses to character only are called for the defence. It is in the discretion of counsel whether he will exercise that right, and it will be sanctioned by the Court where the counsel for the prosecution is of opinion that a fallacious argument has been used for the defence.

Stone, for the defence, called a witness to character.

Bird, for the prosecution, asked the Court to permit him to reply to some fallacious arguments employed by the counsel for the prisoner.

Alderson, B. Certainly. It is entirely in the discretion of counsel. I have been always of opinion that the right to reply is general, and that counsel should exercise their full discretion whether, under the circumstances, they will resort to it or not.

Bird then replied. *Verdict—Not guilty.*

NORTHERN CIRCUIT.

LANCASHIRE WINTER CIRCUIT.—LIVERPOOL.

(Before Mr. Baron Gurney.)

Reg. *v.* Pigot.

In an indictment for uttering false money after a previous conviction under 2 Wm. 4, c. 34, s. 7, the indictment set out the previous indictment in the past tense, but copied verbatim the allegation therein contained, that the offence was committed "within the jurisdiction of the Court." Held, that in the present indictment those words must mean the Court of Assize now held, and that there was a variance.

The prisoner was indicted for feloniously uttering, after a previous conviction for uttering as a misdemeanour.

The indictment set forth the previous conviction as follows:—"The jurors, &c. present that heretofore (to wit at the General Quarter Sessions of the Peace of our lady the Queen, held at Liverpool in and for the borough of Liverpool, in the county of Lancaster, on Monday, the 18th day of March, in the seventh year of the reign of our sovereign Lady Victoria, by the grace of God, &c. and A.D. 1844, before Gilbert Henderson, esq. Recorder of the said borough, and justice of our said Lady the Queen, assigned to hear and determine divers felonies, trespasses, and other misdemeanors in the said borough committed), Michael Pigot, by the name and description of Michael Pigot, late of the said borough, labourer, was in due form of law tried and convicted by a certain jury of the county duly taken and sworn between our said Lady the Queen and the said Michael Pigot, in that behalf, upon a certain indictment then and there depending against him the said Michael Pigot, for that he, the said Michael Pigot, on the seventh day of February, in the seventh year, &c. at the borough aforesaid, in the county aforesaid, and within the jurisdiction *of this Court*, one piece of false and counterfeit coin, resembling and apparently intended to resemble and pass for a piece of the Queen's current silver coin called a sixpence, unlawfully, &c. did utter and put off to one H. C. well knowing the same to be false and counterfeit, in contempt, &c. and against the peace, &c.; and it was then considered and adjudged by the said Court, &c. (reciting the sentence) and that afterwards, &c. the said Michael Pigot, at, &c. did feloniously utter, &c. against the peace, &c."

Upon the production of the record of the conviction at the Liverpool sessions, it appeared that the words "within the jurisdiction of this Court," which were used in that indictment, referred to the Court of Quarter Sessions.

James, for the prisoner, now submitted that there was a variance. In this indictment, which is a proceeding in your lordship's court, the words, "within the jurisdiction of this Court," must be taken to mean your lordship's court, and it would appear from the indictment so read that the indictment at the sessions alleged an offence within the jurisdiction of your lordship's court. But upon the production of that indictment it does no such thing. It merely alleges an offence within its own jurisdiction, and makes no allusion to the court of your lordship. The mistake appears to have been made from simply copying the former indictment, without accommodating its allegations to the past tense in which it is recited.

Cobbett and *Whigham*, contrà, for the prosecution.

Gurney, B. thought the objection fatal to the indictment. —— *Prisoner acquitted.*

Reg. *v.* Cook.

Practice—Right of prisoner to examine witnesses.

The prisoner, at the end of the examination in chief of the first witness for the prosecution, began to examine the witness. Upon his asking the first question, he was interrupted by Gurney, B. who said, "You must put your questions through me, if you wish to put any." Upon the prisoner's attempting again to put a question, the learned Baron interrupted him with some energy, saying,

"Prisoner, if you wish to put any questions, you must put them through me. I have told you so two or three times, and you shall not do it yourself."

Prisoner.—"I wish to ask the witness what clothes I had on."

Gurney, B.—Witness, did you know the prisoner by his clothes or by his face?"

Witness.—"By both, my lord."

Gurney.—"Now, prisoner, I have asked your question. Have you any more?"

Prisoner.—"No, my lord."

The above case is reported, because it is in accordance with the universal practice of the same learned judge throughout the present circuit, a practice which is believed to be somewhat unusual.

THE LEGISLATOR.

Summary.

No incident of the week calls for notice.

NEW STATUTES.

Of the Session 8 *Victoria.*

[In this record of actual Legislation, we adopt the plan of giving the titles alone of the statutes of no general or professional interest; and analyses of the more important changes in the law, printing at length such statutes or parts of statutes only as are of particular interest to our readers.]

(*Continued from page* 198.)

28. *Notices to joint proprietors of shares.*—And be it enacted, That with respect to any share to which several persons may be jointly entitled, all notices directed to be given to the shareholders shall be given to such of the said persons whose name shall stand first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

29. *Receipts for money payable to minors, &c.*—And be it enacted, That if any money be payable to any shareholder, being a minor, idiot, or lunatic, the receipt of the guardian of such minor, or the receipt of the committee of such idiot or lunatic, shall be a sufficient discharge to the company for the same.

30. *Company not bound to regard trusts.*—And be it enacted, That the company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

31. *Power to make calls.*—And be it enacted, That from time to time the directors may make such calls of money upon the respective shareholders, in respect of the amount of capital stock respectively subscribed by them, as they shall think fit; and whenever execution upon any judgment against the company shall have been taken out against any shareholder, the directors, within twenty-one days next after

notice shall have been served upon the company of the payment of any money by such shareholder, his executors or administrators, in or toward satisfaction of such judgment, shall make such calls upon all the shareholders as will be sufficient to reimburse to such shareholder, his executors or administrators, the money so paid by him or them, and all his or their damages, costs, and expences by reason of such execution, and shall apply the proceeds of such calls accordingly; and every shareholder shall be liable to pay the amount of every call, in respect of the shares held by him, to the persons, and at the times and places, from time to time appointed by the directors.

32. *Interest on calls unpaid.*—And be it enacted, That if, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he may be liable, then such shareholder shall be liable to pay interest for the same at the yearly rate of five pounds in the hundred from the day appointed for the payment thereof to the time of the actual payment.

33. *Enforcement of calls by action.*—And be it enacted, That if at the time appointed by the directors for the payment of any call the holder of any share fail to pay the amount of such call, the company may sue such shareholder for the amount thereof in any court of law or equity having competent jurisdiction, and may recover the same, with interest at the yearly rate of five pounds in the hundred from the day on which such call may have been payable.

34. *Declaration in action for calls.*—And be it enacted, That in any action to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is a holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount, in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this Act.

35. *Matter to be proved in action for calls.*—And be it enacted, That on the trial of such action it shall not be necessary to prove the appointment of the directors who made such call, or any other matter, except that the defendant at the time of making such call was a holder of one share or more in the company, and that such call was in fact made, and such notice thereof given, as is directed by this Act; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon.

36. *Proof of proprietorship.*—And be it enacted, That the production of the register book of shareholders of the company shall be evidence of such defendant being a shareholder, and of the number and amount of his shares.

37. *Forfeiture of shares for nonpayment of calls.*—And be it enacted, That if the holder of any share fail to pay a call payable by him in respect thereof, with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of six calendar months from the day appointed for payment of such call, may declare such share forfeited, and that whether the company have sued for the amount of such call or not; but the forfeiture of any such share shall not relieve any shareholder, his executors or administrators, from his and their liability to pay the calls made before such forfeiture.

38. *Notice of forfeiture to be given before declaration thereof.*—And be it enacted, That before declaring any share forfeited the directors shall cause notice of such intention to be left at the usual or last place of abode of the person appearing by the Register Book of shareholders to be the proprietor of such share; and if the holder of any such share be not within the United Kingdom, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted shall not be known to the directors, the directors shall give public notice of such intention in the *London Gazette;* and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

39. *Forfeiture to be confirmed by a general meeting. Sale of forfeited shares.*—And be it enacted, That such declaration of forfeiture shall not take effect, so as to authorize the sale or other disposition of any share, until such declaration have been confirmed at some general meeting of the company, to be held after the expiration of two calendar months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of; and after such confirmation the directors shall sell the forfeited share, either by public auction or private contract, within six calendar months next after the confirmation of the forfeiture; and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

40. *Evidence as to forfeiture of shares.*—And be it enacted, That a declaration in writing by some credible person person not interested in the matter, made before any justice of the peace, or before any Master or Master Extraordinary in the High Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of a director or manager of the company for the price of such share, shall constitute a good title to such share, and thereupon such purchaser shall be deemed the holder of such share discharged from all calls made prior to such purchase; and a certificate of proprietorship shall be delivered to such purchaser, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to any such sale.

41. *No more shares to be sold than sufficient for payment of calls.*—And be it enacted, That the company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited share be more than sufficient to pay all arrears of calls, and interest thereon, due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

42. *On payment of calls, forfeited shares to revert.*—And be it enacted, That if payment of such arrears of calls, and interest and expenses, be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

43. *Service of notice on the company.*—And be it enacted, That in all cases wherein it may be necessary for any person to serve any notice, writ, or other proceeding at law or in equity, or otherwise, upon the company, service thereof respectively on the manager or any director for the time being of the company, by leaving the same at the principal office of the company, or, if the company have suspended or discontinued business, by serving the same personally on such manager or director, or by leaving the same with some inmate at the usual or last abode of such manager or director, shall be deemed good service of the same on the company.

44. *Existing companies may continue their trades until twelve months after the passing of this Act.*—Provided always, and be it enacted, That every company of more than six persons, for the formation or establishment of which proceedings had been begun or taken before the sixth day of May last, and which before the fourth day of July then next following was registered at the Stamp Office, and on the fourth day of July actually carried on the said trade or business of bankers in England, although under a covenant or agreement of copartnership made or entered into on or after the sixth day of May last, may continue to carry on the said trade or business under any such agreement or covenant of copartnership for any time not exceeding twelve calendar months next after the passing of this Act, in the same manner in all respects as they legally might have done before the passing of this Act, and after the expiration of the said twelve calendar months, in case the company shall not be incorporated under this Act, shall have, for the purpose of closing their trade or business, but for no other purpose, the same powers and privileges which they would have had if this Act had not been passed.

45. *Existing companies may be brought under this Act.*—And be it enacted, That it shall be lawful for any company of more than six persons carrying on the trade or business of bankers in England before the said sixth day of May, or any company which by the provision hereinbefore in that behalf contained is enabled to carry on the said trade or business of bankers in England for a time not exceeding twelve calendar months next after the passing of this Act, to present a petition to her Majesty, praying that her Majesty will be pleased to grant to them letters patent under this Act; and if, upon their compliance with the provisions hereinbefore contained with respect to companies formed after the said sixth day of May, her Majesty shall be pleased to grant to them letters patent under this Act as aforesaid, it shall be lawful for them thereafter to carry on their trade and business of bankers as aforesaid according to this Act, and not otherwise: provided always, that a majority of the directors of any such company for the time being, with the consent of three-fourths in number and value of the shareholders present at a general meeting of the company, to be specially called for that purpose, may resolve to make any alterations in the constitution of such company, or otherwise, which may be deemed necessary or expedient for enabling such company to come within the provisions of this Act; and the majority of the directors of such company may, in pursuance of the resolutions of such meeting as aforesaid, execute a new deed of partnership on behalf of such company, and it shall not be necessary for such deed to be executed by any other shareholder of such company; and it shall thereupon be lawful for such company to present such petition as aforesaid, and a copy of such resolution and of such new deed of partnership so executed by a majority of the directors of the company as aforesaid shall be annexed to such petition; and if her Majesty shall thereupon grant letters patent to such company under this Act, all the shareholders of such company at the time of the grant of such letters patent shall be deemed to be incorporated under such letters patent, and to be the first shareholders in such incorporated company; and the said new deed of partnership so executed by a majority of the directors as aforesaid shall have such and the same effect, to all intents and purposes, as if it had been executed by all the shareholders.

46. *Agreements entered into with companies after their incorporation to be enforced as if made before incorporation.*—And be it enacted, That notwithstanding the incorporation of any company under this Act, all contracts and agreements entered into by and with such company shall continue in force as between such incorporated company and the parties with which the company entered into such contracts and agreements before the incorporation thereof, and may be enforced in like manner as if the company had been incorporated before the making of any such contract or agreement, and that no suit at law or in equity by or against such company shall be abated by reason of such incorporation; but on the application of either of the parties to such suit to the Court in which such suit is pending, at any time before execution on any judgment in such suit shall have been issued, it shall be lawful for the Court to order that the corporate name of such company be entered on the record, instead of the name of the plaintiff or defendant representing such company before the incorporation thereof, and thereupon such suit may be prosecuted and defended in the same manner as if the same had been originally instituted by or against the said incorporated company; and where execution on any judgment in such suit shall have issued before such application, execution of such judgment may be had as if such company were not incorporated as if this Act had not been passed.

47. *Existing companies to have the powers of suing and being sued.* 7 *Geo.* 4, *c.* 46.—And be it enacted, That after the passing of this Act every company of more than six persons established on the said sixth day of May for the purpose of carrying on the said trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of this Act, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership; and that all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, intituled "An Act for the better regulating Copartnerships of certain Bankers in England; and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,' as relates to the same;" provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Stamps and Taxes the several accounts or returns required by the last-mentioned Act; and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies, as if they had been originally included in the provisions of the last recited Act.

48. *Banking companies to be deemed trading companies.*—And be it declared and enacted, That every company of more than six persons carrying on the trade or business of bankers in England shall be deemed a trading company within the provisions of an Act passed in this Session of Parliament, intituled "An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements."

49. *Interpretation of Act.*—And be it enacted, That in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say,)

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number;

Words importing the masculine gender shall include females:
The word "plaintiff" shall include pursuer and petitioner:
The word "defendant" shall include defender and respondent:
The word "execution" shall include diligence or other proceeding proper for giving effect to any judgment, decree, or order of a court of justice.

60. *Act may be amended.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A).

Memorial or account to be entered at the Stamp-office in London, in pursuance of an Act passed in the eighth year of the reign of Queen Victoria, intituled [*here insert the title of this Act*]; viz.:—

Firm or name of the banking company; viz. [*set forth the firm or name.*]

Names and places of abode of all the members of the company; viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such company; viz. [*set forth all the names and places.*]

Names and places of abode of the directors, managers, and other like officers of the said banking company; viz. [*set forth all the names and places of abode.*]

Names of the several towns and places where the business of the said company is to be carried on; viz. [*set forth the names of all the towns and places.*]

A B, of , manager [*or other officer, describing the office*] of the above-mentioned company, maketh oath and saith, That the above-written account doth contain the name, style, and firm of the said company, and the names and places of the abode of the several members thereof, and of the banks established by the said company, and the names, titles, and descriptions of the directors, managers, and other like officers of the said company, and the names of the towns and places where the business of the company is carried on, as the same respectively appear in the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of , at , in the county of .

C D, Justice of the Peace in and for the county of [*or* Master *or* Master Extraordinary in Chancery].

SCHEDULE (B).

Memorial or account to be entered at the Stamp Office in London on behalf of [*name of the company*], in pursuance of an Act passed in the eighth year of the reign of Queen Victoria, intituled [*insert the title of this Act*]; viz.

Names and places of abode of every new or additional director, manager, or other like officer of the said company; viz. A B in the room of C D, deceased or removed [*as the case may be,*] viz. [*set forth every name and place of abode.*]

Names and places of abode of every person who has ceased to be a member of such company; viz. [*set forth every name and place of abode.*]

Names and places of abode of every person who has become a new member of such company; viz. [*set forth every name and place of abode.*]

Names of any additional towns or places where the business of the company is carried on; viz. [*set forth the names of all the towns and places.*]

A B, of manager [*or other officer*] of the above-named company, maketh oath and saith, That the above-written account doth contain the name and place of abode of every person who hath become or been appointed a director, manager, or other like officer of the above company, and also the name and place of abode of any and every person who hath ceased to be a member of the said company, and of every person who hath become a member of the said company since the registry of the said company on the day of last, as the same respectively appear on the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of at in the county .

C D, justice of the peace in and for the county of [*or* Master *or* Master Extraordinary in Chancery].

SCHEDULE (C).

Form of transfer of shares.

I, of in consideration of the sum of paid to me by of do hereby transfer to the said share [*or* shares], numbered in the business called "The Banking Company," to hold unto the said his executors, administrators, and assigns [*or* successors and assigns], subject to the several conditions on which I held the same at the time of the execution hereof. And I, the said do hereby agree to take the said share [*or* shares], subject to the same conditions. As witness our hands and seals, the day of .

LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC,

AND TO BE JUDICIALLY NOTICED.

1. An Act to enable the Ribble Navigation Company to raise a further sum of money; and to enable the owners of reclaimed lands to pay a sum in gross in lieu of the annual rents.

2. An Act to effectuate the Sale by the Bolton and Preston Railway Company of their Railway and other Property and Effects to the North Union Railway Company; to incorporate with such last-mentioned Company the Proprietors of the Bolton and Preston Railway; and to consolidate Shares into Stock.

3. An Act to amend the several Acts relating to the Great Western, the Cheltenham and Great Western Union, and Oxford Railways; to amalgamate the two last-mentioned Railways with the Great Western Railway; and to authorize the Formation of additional works at Cheltenham by the Great Western Railway Company.

4. An Act to amend and enlarge some of the Provisions of the Act authorizing the Construction of the Yarmouth and Norwich Railway, and to authorize the Construction of certain new Works in connection therewith.

5. An Act for making a Railway from the London and South-Western Railway to Guildford in the County of Surrey.

6. An Act for providing for the Liquidation of the Debt owing by the Charity Workhouse of the City of Edinburgh, for regulating the Assessment for Relief of the Poor of the said City, and for other purposes relating thereto.

7. An Act to amend an Act passed in the Third Year of the Reign of her present Majesty, for abolishing certain Petty and Market Customs in the City of Edinburgh, and granting other duties in lieu thereof.

8. An Act for establishing a Market in the Town of Glossop, in the County of Derby.

9. An Act to amend the Powers and Provisions of an Act of the First Year of King William the Fourth, for making the River Waveney navigable for Ships and other Seaborne Vessels from Roschall Fleet to the Mouth of Oulton Dyke, and for making and maintaining a navigable Cut from the said River into the said Dyke.

10. An Act to alter and extend the Provisions of an Act for improving the navigation of the River Severn.

11. An Act for enabling the Company of Proprietors of the Birmingham Canal Navigations to borrow a further Sum of Money; and to extend and alter some of the Provisions of their present Acts.

12. An Act for more effectually lighting with Gas the Borough and Parish of Rochdale in the County of Lancaster.

13. An Act to amend and enlarge the Provisions of Two several Acts, for lighting with Gas the Town of Liverpool and certain Places adjacent thereto.

14. An Act for regulating legal Proceedings by or against the Durham County Coal Company, and for other Purposes.

15. An Act for making a Railway from Norwich to Brandon, with a Branch to Thetford.

16. An Act for maintaining a Railway from the Manchester and Leeds Railway to Heywood; and for amending the Acts relating to the Manchester and Leeds Railway.

17. An Act for enabling the Manchester and Birmingham railway Company to vary the Line of their Branch Railway to Macclesfield, and to make another Branch therefrom; and for amending the former Acts relating to the said Company.

18. An Act to consolidate the North Midland, Midland Counties, and Birmingham and Derby Junction Railways.

19. An Act to rectify a Mistake as to the Proceedings on the Eastern Counties Railway Bill and the Eastern Counties Railway (Brandon and Peterborough Extension) Bill.

20. An Act to authorize the letting on Lease to the Eastern Counties Railway Company of the Railways and Works of the Northern and Eastern Railway Company, and to give effect to certain Arrangements entered into by the said Companies, and to amend and enlarge some of the Provisions of the Acts relating to the first-named Company.

21. An Act for vesting the Leeds and Selby Railway in the York and North Midland Railway Company, and for enabling that Company to raise a further sum of money to complete the purchase of such Railway.

22. An Act for making a Railway from Rampside and Barrow to Dalton, Lindale and Kirkby Ireleth, in the County Palatine of Lancaster, to be called "The Furness Railway."

23. An Act to amend an Act for maintaining the Pier and Harbour of Newquay in the County of Cornwall, and to make certain tram roads in connection therewith.

24. An Act for regulating, maintaining, and improving the Port of Padstow, in the County of Cornwall, and the navigable parts of the River Camel or Allen, in the same county.

25. An Act to enable the South-Eastern Railway Company to make a Railway from the said South-Eastern Railway, near Ashford to the City of Canterbury and the Towns of Ramsgate and Margate, and to join the Canterbury and Whitstable Railway.

26. An Act for enabling the Pontop and South Shields Railway Company to widen a part of their Railway, and to make a Branch therefrom; and for other purposes.

27. An Act for authorizing the Sale of the Durham Junction Railway to the Newcastle and Darlington Junction Railway Company: and for enabling the said Company to make a Station at Gateshead, with a Bridge and Approaches, to connect the said last-mentioned Railway with the Town of Newcastle-upon Tyne; and for other Purposes.

28. An Act for making a Harbour and Dock near to Hartlepool in the County of Durham.

29. An Act for dividing, allotting, and inclosing lands in the hamlet of Thetford in the Parish of Streatham in the Isle of Ely and County of Cambridge; and for draining and embanking certain Parts of the said Lands, and other Lands in the said Hamlet, and in other Parishes in the said Isle and County.

30. An Act for granting certain Powers to "The New British Iron Company."

31. An Act for enabling the Northern Coal Mining Company to raise Money for paying off existing Debts of the Company.

32. An Act to authorize the Purchase of "Monk's Ferry" by the Commissioners for the Improvement of Birkenhead, Claughton-cum-Grange, and part of Oxton in the County of Chester, and for amending the Acts relating to the said Commissioners.

33. An Act for opening certain Streets, and otherwise improving the Town of Salford; and for Amending an Act passed in the eleventh year of the reign of his Majesty King George the Fourth, for better cleansing and improving the said Town of Salford, in the County Palatine of Lancaster.

34. An Act for making a Railway from the Town of Blackburn to the North Union Railway in the township of Farrington, near Preston, all in the County of Lancaster.

35. An Act to enable the Northern and Eastern Railway Company to make certain deviations in the Line of their Railway between Bishops-Stortford and Newport; and to alter and amend the Acts relating to the said Railway.

36. An Act to amend the Acts relating to the Maryport and Carlisle Railway, and for making certain Extensions and Branches connected therewith.

37. An Act for making a Railway from the Lancaster and Preston Junction Railway at Lancaster to or near to the City of Carlisle.

38. An Act for extending and amending some of the Powers and Provisions of the Act relating to "The Leeds New Gas Company."

39. An Act to enable the Globe Insurance Company to alter and amend some of the Provisions of their Deed of Settlement.

40. An Act for the good Government and Police Regulation of the Borough of Manchester.

41. An Act for the Improvement of the Town of Manchester.

42. An Act for amending and rendering more effectual an Act for draining and preserving certain Fen Lands and Low Grounds in the Parishes of Lakenheath and Brandon in the County of Suffolk.

43. An Act to enable the President, Treasurers, Deputy Treasurers, Benefactors, and Subscribers of and to the Manchester Royal Infirmary, Dispensary, and Lunatic Hospital or Asylum to enlarge the said Infirmary, and to purchase and hold Land for the erection of a new Lunatic Hospital or Asylum.

44. An Act to amend an Act for altering and amending several Acts for the improvement of the Harbour of Swansea in the County of Glamorgan.

45. An Act for uniting the Sheffield Gas Light Companies.

46. An Act to facilitate the Settlement of the Affairs of the British Iron Company.

47. An Act to enlarge the Powers granted by an Act passed in the Second Session of the Fifth Year of her present Majesty, intituled "An Act for regulating legal Proceedings by or against the Cwm Celyn and Blaina Iron Companies, and for granting certain Powers thereto."

48. An Act for regulating legal Proceedings by or against "The European Life Insurance and Annuity Company," and for granting certain powers thereto.

49. An Act for making and maintaining a Turnpike Road from Sidmouth to Cullumpton, and also to or near to Hele Mill in the parish of Bradninch, all in the County of Devon.

50. An Act to amend Three Acts, for more effectually draining and preserving certain Marsh Lands or Low Grounds in the Counties of Kent and Sussex draining into the River Rother and Channel of Appledore.

51. An Act to alter and amend an Act of the Sixth and Seventh Years of the Reign of Her present Ma-

jesty, for the better Protection of Property in the Borough of Liverpool from Fire.

52. An Act to explain and amend the Acts incorporating the British Society for extending the Fisheries and improving the Sea Coasts of the Kingdom; for enlarging and improving the Harbour of Pulteney Town in the County of Caithness; and for lighting, cleansing, and improving the said Town, and better supplying the same with Water.

53. An Act for amending certain Acts for paving, cleansing, and lighting the Streets and other public Passages and Places within the City and Borough of Canterbury.

54. An Act for improving the Marsh and other Common Lands, and extending Rights of Common and of Recreation, within the Town and County of the Town of Southampton.

55. An Act to amend the several Acts relating to the Preston and Wyre Railway, Harbour, and Dock Company.

56. An Act for better supplying with Water the Parishes of Saint Michael, the Holy Trinity, and Saint John the Baptist, in the City of Coventry and County of Warwick.

57. An Act for amending the Provisions of an Act for forming a Canal and other Works within and near certain Lands called the West Croft, in the Parish of Saint Mary in the Town and County of the Town of Nottingham; and for making certain Improvements within the said town.

58. An Act to authorize an Extension of the Edinburgh and Glasgow Railway, and to amend and enlarge the Provisions of the Acts relating to such Railway.

59. An Act for making a Railway from Leeds to Bradford, with a Branch to the North Midland Railway.

60. An Act for making a Railway from the Manchester and Bolton Railway in the Parish of Eccles to the Parish of Whalley, all in the County Palatine of Lancaster, to be called the Manchester, Bury, and Rossendale Railway.

61. An Act for enabling the York and North Midland Railway Company to make a Railway from York to Scarborough, with a Branch to Pickering.

62. An Act to enable the Eastern Counties Railway Company to make a Railway from the Northern and Eastern Railway at Newport, by Cambridge, to Ely, and from thence, Eastward to Brandon and Westward to Peterborough.

63. An Act to make a Branch Railway from the London and South-western Railway to Salisbury.

64. An Act for making a Railway from the Town and Port of Whitehaven to the Town and Port of Maryport in the County of Cumberland.

65. An Act for making a Railway from Chester to Holyhead.

66. An Act for making a Railway from the City of Edinburgh to the Town of Berwick-upon-Tweed, with a Branch to the Town of Haddington.

67. An Act for making a Railway from the Shoreham Branch of the London and Brighton Railway to Chichester.

68. An Act for making a Railway from Exeter to Plymouth, to be called "The South Devon Railway."

69. An Act to enable the South-Eastern Railway Company to complete and maintain a Branch Railway and Approach to the Harbour of Folkestone, and to construct other Works in connexion with the said Harbour, and also to effect certain Alterations and Extensions of the Works of the Maidstone Branch of the said South-Eastern Railway; and to amend the Acts relating to the said Company.

70. An Act for making a Railway to connect the Edinburgh and Glasgow and Slamannan Railways.

71. An Act for making a Junction Railway from the Eastern Counties Railway at Stratford in the County of Essex to the River Thames, with a Branch Railway therefrom; and for constructing a Pier in the River Thames.

72. An Act for repairing, maintaining, and improving the Road from Flint Lane to Holmfirth, and thence to the Huddersfield and Woodhead Turnpike Road, and for making and maintaining a new Line of Road from the said Road at a Place called Bents to or near Dunford Bridge, all in the West Riding of the County of York.

73. An Act for more effectually repairing the Road from Market Harborough in the County of Leicester to the City of Coventry.

74. An Act for uniting the York Gas Light Company and the York Union Gas Light Company, and for more effectually lighting with Gas the City of York and the Suburbs and Vicinity thereof, in the County of York.

75. An Act for paving, lighting, draining, cleansing, and otherwise improving the Town of Southampton, and for removing and preventing Nuisances and Annoyances therein.

76. An Act for enabling the Mayor, Aldermen, and Burgesses of the City of Coventry to make certain Improvements, to provide a Residence for the Judges during the Assizes in the said City, and to establish a Cemetery for the Dead near the said City.

77. An Act for making a Landing-place at or near Hythe in the parish of Fawley and extra-parochial places adjoining thereto in the county of Southampton.

78. An Act for authorizing the Newport Dock Company to raise further Monies, and to make Sale of the Docks and Works; and for amending certain Acts relating to the said Dock.

79. An Act for constructing Tidal Basins, a Dock, and other works at Birkenhead in the County of Chester, and for other purposes.

80. An Act for enabling the Trustees of the Liverpool Docks to construct additional Wet Docks and other Works, and to raise a further Sum of Money; and for amending and extending the Acts relating to the Docks and Harbour of Liverpool.

81. An Act to alter, explain, revive, and continue the Powers and Provisions of the Acts relating to the Edinburgh, Leith, and Newhaven Railway, and to make Two Branch Railways therefrom.

82. An Act for making a Railway from the Manchester and Leeds Railway to the towns of Ashton-under-Lyne and Staley Bridge.

83. An Act to enable the Sheffield, Ashton-under-Lyne, and Manchester Railway Company to make a Branch Railway to Ashton-under-Lyne and Staley Bridge; and to alter and enlarge the powers of the said Company.

84. An Act to amend the Acts relating to the Taff Vale Railway; to authorize the Alteration of certain Works thereby authorized, and the Formation of additional Works; and to enlarge the Powers of the Company.

85. An Act for making a Railway from Colchester to Ipswich.

86. An Act to amend the Acts relating to the London and South-Western Railway, and to authorize an Extension of the said Railway and other Works at or near the Nine Elms Station.

87. An Act to extend the Line of the Garnkirk and Glasgow Railway; to enable the Company to raise a further Sum of Money; and to alter and amend the Acts relating to the said Railway.

88. An Act for making a Railway from Mellorn, in the Parish of Minster, to Black Rock, in the Parish of St. Michael, in Saint Minver Lowlands, in the County of Cornwall.

89. An Act to remedy certain Defects in the Apportionment of the Rent-charge in lieu of Tithes in the Parish of Necton, in the County of Norfolk.

90. An Act to confirm and extend the Provisions of an Act of the Provincial Parliament of Canada, passed in the Seventh Year of the Reign of her present Majesty, for incorporating the Gaspé Fishery and Coal Mining Company.

91. An Act for making a Railway from the London and Brighton Railway to Lewes and Hastings, with a Branch therefrom, all in the County of Sussex.

92. An Act for making a Railway from the London and Croydon Railway at Croydon to Epsom.

93. An Act for improving the Harbour and Quay of Wells, in the County of Norfolk; and for extending and altering some of the Provisions of the Act relating to the said Harbour and Quay.

94. An Act for lighting, paving, cleansing, widening and improving the Streets of the Town or Parish of Wells, in the County of Norfolk; for removing and preventing Nuisances therein, and for making new Streets or Roadways.

95. An Act for Incorporating the London Gaslight Company.

96. An Act for regulating Legal Proceedings by or against the Mariners' and General Life Assurance Company, and for granting certain Powers to the said Company.

97. An Act to continue and extend the Powers of "The London and Croydon Railway Company."

98. An Act to alter, amend, enlarge, and in part repeal, the Acts relating to the Wishaw and Coltness Railway.

99. An Act for making a Railway from the River Dee, in the County of the City of Chester, to Wrexham, in the County of Denbigh, to be called "The North Wales Mineral Railway."

100. An Act for making and maintaining a Railway from the City of Dublin to the Town of Cashel, with a Branch to the Town of Carlow.

101. An Act for widening, repairing, and maintaining the Bridge of Ayr, commonly called the New Bridge, leading across the River of Ayr at the Royal Burgh or town of Ayr, in the County of Ayr; and for other Purposes in relation thereto.

102. An Act for paving, lighting, cleansing, watering, regulating, and otherwise improving the Town and Borough of Swansea in the County of Glamorgan, and for removing and preventing Nuisances and Annoyances therein.

103. An Act for making new Docks, and other Works connected therewith, in addition to the present Docks at Kingston-upon-Hull; and for amending the Acts relating to such last-mentioned Docks.

104. An Act for better lighting, paving, cleansing, watching, regulating, and improving the Town of Rochdale and the Environs thereof, in the County Palatine of Lancaster.

105. An Act for better paving, lighting, cleansing, and otherwise improving Part of the Parish of Newchurch in the Isle of Wight, called Ventnor, and for establishing a Market therein.

106. An Act for improving the Drainage and Navigation of the Middle Level of the Fens.

107. An Act for the better supplying and lighting with Gas or other illuminating Power Parts of the Abbey Parish of Paisley, and certain Towns or Villages and Places adjacent; and for other Purposes relating thereto.

108. An Act to authorize the Division of the Parish and Vicarage of Leeds, in the County of York, into several Parishes and Vicarages.

PRIVATE ACTS.

Printed by the Queen's Printer, and whereof the Printed Copies may be given in evidence.

1. An Act for inclosing Lands in the Parish of Bury in the County of Huntingdon.

2. An Act for inclosing Lands in the Parish of Ramsey, in the County of Huntingdon.

3. An Act to enable the Rector, Churchwardens, and Overseers of the Poor of the Parish of Bow Brickhill, in the County of Buckingham, to sell certain Parcels of Land in the said Parish, which were allotted to them under the Award of the Commissioners made in pursuance of the Bow Brickhill and Fenny Stratford Inclosure Act, passed in the thirtieth year of King George the Third.

4. An Act for inclosing Lands in the Parish of Brandes Burton in the County of York.

5. An Act for inclosing Lands in the Township of Haltwhistle, in the Parish of Haltwhistle, in the County of Northumberland.

6. An Act for inclosing Lands in the Manors or Lordships of Farrington and Cwmgilla, in the Parish of Knighton, in the County of Radnor.

7. An Act for altering and amending an Act passed in the Third Year of the Reign of her present Majesty, for inclosing certain Lands in the Town and County of the Town of Nottingham.

8. An Act for inclosing Lands in the Parishes of Bleddfa and Llangunllo, in the County of Radnor.

9. An Act for enabling George Edwards and Walter Colbourn, the Committees of the Estate of William Beckett Neachell, a person of unsound Mind, to make Conveyances for carrying into execution an Agreement for the Partition or Division of the Real Estates of William Orme, deceased, pursuant to an Order of the High Court of Chancery.

10. An Act for authorizing a new Entail to be made of those Parts of the Lands and Estate of Blythswood, which lie in the County of Lanark; and for enabling Archibald Campbell, Esquire, of Blythswood, the Heir in possession of the said Estate, and his Successors, with Consent of Trustees, to sell or grant Feus of certain Parts thereof; and for other Purposes therein expressed.

11. An Act to enable Archibald, Marquess of Ailsa, to borrow a certain Sum of Money, upon the Security of his entailed Estates of Cassillis and Culzean, for Repayment to him of a Portion of the Moneys laid out by him in the Improvement of these Estates.

12. An Act to authorize the Sale of the Fee Simple of the Estates of Francis Hale Rigby, of Mistley, in the county of Essex, Esquire, deceased, as devised by his Will, and for laying out the Moneys to arise by such Sale.

13. An Act for selling the entailed Estate of Schivas, in the County Aberdeen, belonging to Alexander Forbes Irvine, Esquire, and for investing the Price thereof in the Purchase of other Lands, to be entailed in lieu of the said Estate.

14. An Act for carrying into effect a Contract between Edward Gresley Stone and Thomas Fulljames, Esquires, for the Sale to the said Thomas Fulljames of an estate in the parishes of Hasfield, Ashleworth, and Corse, in the County of Gloucester, Part of the Estates devised by the Will of John Stone, Esquire, deceased, and for investing the Purchase Money in other Estates, to be settled to the same Uses; and for vesting certain other detached Estates in the Counties of Gloucester and Worcester, devised by the same Will, in Trustees, for Sale, and for investing the Moneys arising therefrom in the Purchase of more convenient Estates, to be settled to the same Uses.

(*To be continued.*)

PARLIAMENTARY RETURNS.

EXCISE AND CUSTOMS DUTIES.—Some returns of the amount of Excise and Customs duties received in the United Kingdom during the years ending the 5th of January 1842, 1843, and 1844 (in continuation of the Parliamentary paper No. 45, of Session 1843), have been printed, on the motion of the Hon. John Stuart Wortley, M.P. for the West Riding of Yorkshire. As regards the excise duties, we find that the amount charged in 1843, in the whole of the United Kingdom, was distributed as follows:—viz. on auctions (amount of sales), 284,655*l.*; on bricks, 363,375*l.*; on flint glass, 83,454*l.*; on plate glass, 65,909*l.*; on crown glass, 394,542*l.*; on German sheet glass, 112,498*l.*; on green glass, 123,595*l.* (making a total amount, on glass alone, of 779,900*l.*);

on hops, 243,796*l.*; on licenses, 1,021,082*l.*; on malt, 4,827,950*l.*; on paper, 678,888*l.*; on post-horses (amount of duty) 162,198*l.*; on post-horse licenses, 4,400*l.* (in neither of the two preceding items does Ireland figure at all); on hard soap, 1,081,337*l.*; on soft soap, 67,349*l.*; on spirits, 4,903,201*l.* (viz. 3,025,253*l.* in England, 1,025,529*l.* in Scotland, and only—thanks to Mr. Matthew—852,418*l.* in Ireland!); on medicated spirits and sweets, 970*l.*; on British manufactured sugar, 4,843*l.* (on 3,843 cwts.); on vinegar, 26,256*l.*; and on game certificates in Ireland (3,756) 11,831*l.*; making altogether for the past year, a grand sum total for excise duties alone amounting to 15,471,831*l.* We have neither time nor space at present to institute a comparison between the excise duties received in 1843 and those received in the years 1841 and 1842, excepting that in the following articles, viz. auctions, bricks, glass, hops, licenses, malt, post-horses, spirits, and vinegar, the difference of duty is, between the two extreme periods, in favour of 1841, but of course this fact is utterly insufficient to warrant any inference; we merely mention the circumstance *en passant*. As regards the Customs duties, the total amount of duty received in the year 1843 was 22,636,659*l.* against 22,596,263*l.* in the year 1842, and 23,606,124*l.* in the year 1841. The details of the separate articles of import, and the duties received on each, are given at length in the return before us, but it is manifestly impossible to transfer them to our columns.

Merchant Seamen.—An account of the income and expenditure of the corporation for the relief of seamen in the merchant service, from the 1st day of January to the 31st day of December, 1843, has just been presented to both Houses of Parliament, pursuant to the Act 4 & 5 Wm. 4, c. 52. It appears from the return before us, which has been printed, that the total amount of the sums received during the year 1843 as income by the president and governors of the above corporation was 18,485*l.* of which 15,464*l.* arose from duties; 605*l.* from dead men's wages; 384*l.* from benefactions; and 2,031*l.* from the interest on capital. The total amount of the sums concurrently expended was 20,697*l.* of which 15,687*l.* was appropriated to pensions, 2,466*l.* to temporary relief, 439*l.* to the Seamen's Hospital Society, and 2,104*l.* to the expense of management; leaving a surplus of expenditure amounting to the sum of 2,212*l.* The general account of the receipts and payments of the corporation shews a total amount of 21,731*l.* received, and one of 20,330*l.* paid away, leaving a balance in hand of about 1,400*l.* Of the sums paid, it appears that 11,245*l.* was appropriated to London pensioners; 3,903*l.* to outport pensioners (1812); 1,596*l.* to temporary relief in London; 891*l.* to temporary relief in outports; 1,427*l.* to the charges of management in the metropolis; and 637*l.* to the charges of management at the outports, &c.

THE MAGISTRATE.

Summary.

Nothing of special interest claims attention.

MEETING OF MIDDLESEX MAGISTRATES.

A special meeting of justices of the county of Middlesex took place on Thursday, for the election of a chairman, at the Sessions-house, Clerkenwell-green. There was a very numerous attendance of magistrates. Mr. Tulk took the chair.

The two candidates put in nomination were Mr. Pownall and Mr. Rotch. The first was proposed by Mr. Wilks, seconded by Mr. Walesby; and the last named gentleman was proposed by Captain Bague and seconded by Mr. Whiskin.

The ballot commenced shortly after twelve o'clock, and terminated at three o'clock; when the scrutineers, Mr. Witham and Mr. Orm, announced the result, namely:—For Mr. Pownall, 70; and for Mr. Rotch, 25.

Mr. Pownall was accordingly declared duly elected.

Important to Attorneys.—At the recent Quarter Sessions at Lichfield, the Chairman was requested by one of the counsel present to give his decision upon a question raised at the previous sessions, as to the right of attorneys to plead in the presence of barristers, when the honourable gentleman stated that he had consulted Lord Denman upon the matter, and he had decided that attorneys should be allowed to plead either for prosecution or for prisoners: barristers should be allowed pre-audience, but not exclusive audience.

The Police Offices.—The *Gazette* of Tuesday contains an Order in Council defining the boundaries of the divisions assigned to the different metropolitan police-offices, and the following are the extreme points of the spaces they include:—Bow-street: Temple-stairs, Holborn-hill, King-street (by Southampton-row to) New-road, Tottenham-court-road, Trafalgar-square, Cleveland-row, Storey's-gate, (crossing the Park), Westminster-bridge (north side), Temple-stairs. Queen-square: Westminster-bridge (south side), Hyde Park-corner, Knightsbridge and Fulham roads to Stamford-bridge, Kensington Canal to the river Thames, Westminster-bridge (south side). Marylebone: Victoria-gate, Hyde Park, eastward by Oxford and Regent-streets and New-road to Tottenham-court-road, Upper Seymour-street, Maida-lane, near the north Cemetery, Shoot-up-hill, Kilburn, Westbourne-green to Queen's-road, Victoria-gate, Hyde-park. Marlborough-street: Victoria-park, Oxford and Regent-sts. to New-road, Tottenham court-road, along Bow-street boundary to Hyde-park-corner, Knightsbridge and Kensington-roads to the Camden Arms, thence (including the Palace and Gardens) to Victoria-gate. Clerkenwell: Type-street, by Worship-street boundary to Stamford-hill; Hanger, Hornsey, and Maida-lanes; Camden-road, Red Cap public-house; High-street, Camden-town, and Seymour-street, to New-road, by Bow-street boundary to Holborn-hill, and by City of London boundary to Bunhill-row. Worship-street: High-street, Whitechapel, by Thames-police boundary to river Lea; northward to High-bridge; westward to Stamford-hill; Kingsland-road, to Regent's canal: Ashley-crescent, Shepherdess-walk; Bunhill-row, Type-street, to city of London boundary; thence to High-street, Whitechapel. Thames Police: Tower-stairs to High-street, Whitechapel, Globe-lane, Mile-end-road, Eastern Counties Railway, Hackney-cut, Bow-bridge; along the river Lea to the Thames, Tower-stairs. Southwark (office removed from Union street to Blackman-street): Waterloo-bridge (south-east side), by Lambeth boundary, southward to Greenwich boundary, northward to the Thames, Waterloo bridge. Lambeth (office removed from Whitechapel to Kennington-lane, Lambeth): Waterloo-bridge (south-west side), Waterloo, London, New Kent, and Kent-roads, to Greenwich boundary; westward to Wandsworth boundary, thence to the Thames, Waterloo-bridge.

The following buildings have been duly registered for the solemnization of marriages, pursuant to the Act of the 6 and 7 Wm. 4, c. 85:—Eden Wesleyan Chapel, situated at Keighley, in the parish of Keighley, in the county of York, in the district of Keighley union. The Baptist Ebenezer Chapel, situated at Bacup, in the parish of Whalley, in the county of Lancaster, in the district of Haslingden. Charlwood Union Chapel, situated at Charlwood-common, in the parish of Charlwood, in the county of Surrey, in the district of Reigate union.

THE LAWYER.

Summary.

We have brought up a long arrear of material that has been waiting leisure to make its appearance, that we may begin the next Term with unencumbered columns.

The following timely hint has appeared in the daily papers; we transcribe it:—

MASTERS IN CHANCERY.

TO THE EDITOR OF THE TIMES.

Sir,—By the 17th section of the statute 2 & 3 Wm. 4, c. 94, it is enacted, that each of the Masters, within the first four days of Michaelmas Term in every year, shall present to the Lord Chancellor a report in writing, stating the days on which he shall have attended at his office during the preceding twelve months, specifying the number of hours occupied in each of such day's attendance; and shall annex to such report a list or schedule of the several causes and matters then pending in his office, shewing the then state and stage of the same respectively; and the Lord Chancellor may order such list or schedule to be published in such manner as he shall think fit.

This is a most useful provision, and, if carried out to the letter, would prove highly beneficial to the suitors. Can you inform me whether any of the lists or schedules have ever been published?

I am, Sir, your obedient servant,
An Inquirer.

REVIEW OF THE CASES DECIDED IN ALL THE COURTS OF COMMON LAW,

During Michaelmas Term, 1811.

In commencing our Reviews of the Decisions in the Courts of Common Law for the second year, we may be pardoned for giving the following illustration of their usefulness. We find, on examination of the standard reports, that out of *forty-four* cases we noticed in our Review of Michaelmas Term, 1843 (2 Law T. 290) *thirty-one* have been since reported; and of the remaining thirteen, several, if not all, will most probably be reported; for they comprise important judgments in the Exchequer Chamber, and neither the reporters of the Queen's Bench or Common Pleas have yet reached to the end of that Term. In the present Review we have equally aimed at practical usefulness, and we trust not without success.

ARBITRATION.

Setting aside for misconduct.—It is well settled that conduct may amount to legal misconduct in an arbitration, however free from suspicion or blame the arbitrator may be (*Phipps* v. *Ingram*, 3 Dowl. P. C. 669); but in some instances the courts have supported awards made under circumstances which would now be held to amount to legal misconduct, because there was no imputation of moral misconduct, as in *Atkinson* v. *Abraham* (1 B. & P. 175), where a witness had been re-examined after the case had been closed, and in the absence of the parties (and see *Hewlett* v. *Laycock*, 2 C. & P. 574). In *Dobson* v. *Groves* (4 Law T. 155), however, these cases were disregarded, and the rule laid down by Lord Eldon, in *Walker* v. *Frobisher* (6 Ves. 69); *Featherston* v. *Cooper* (9 Ves. 68) declared to be the true principle. The examination of a single witness in the absence of the other party is, therefore, a fatal irregularity, although the award may appear to be perfectly just, and the arbitrator swears that the evidence so improperly obtained had no influence upon his decision. For, as Lord Eldon observed, "No court could permit an arbitrator to decide so delicate a question as whether a witness examined in the absence of the other party had an influence on him or not." It seems, however, that an irregularity of this kind may be waived by delay in making the objection, or proceeding with the case before the arbitrator. (*Kingwell* v. *Elliot*, 7 Dowl. P. C. 423; *Bignall* v. *Gale*, 2 Man. & G. 830.)

Finality.—In *Angus* v. *Redford* (11 M. & W. 69), Parke, B. differed from the majority of the Court upon the construction of a clause in the order of reference, empowering the arbitrator to determine "what he shall think fit to be done by either of the parties," and gave it as his opinion, that, in addition to disposing of the action referred, he was bound to give some directions. On this opinion, in *Makepeace* v. *Lorraine* (1 Law T. 113), it was sought to set an award aside, in which an action for obstructing a stream was referred to an arbitrator with power to give such directions as he should think proper consistently with the legal rights of the parties. But the Court of Common Pleas held that the power was enabling, and not obligatory, confirming, therefore, the views of the majority of the Court of Exchequer.

Costs in the cause.—These words do not include the costs of witnesses called before the arbitrator, whether the action alone, or other matters in difference, be referred. (*Brown* v. *Nelson*, 4 Law T. 139.)

Practice when award is referred back again.—Under the clause which has been lately introduced to enable the Court to refer the award back again to the arbitrator to be amended, if it is referred back to him generally, he is bound to hear fresh evidence if offered to him. (*Nichalls* v. *Warren*, 4 Law T. 156.)

Signature by arbitrators.—In *Little* v. *Newton* (2 Man. & G. 351), an objection was raised to an award, because it had not been signed by the arbitrators at the same time. It became unnecessary for the Court to decide on the validity of the award in that respect, but the inclination of their opinion seemed to be in favour of the objection, on the ground that the act was a judicial, and not a ministerial act, and there are several cases which establish that such an act must be done by both at the same time, as the signature of justices to a parish indenture. (*Rex* v. *Hamstall Ridwares*, 3 T. R. 380.) In *Stalwart* v. *Ings* (4 Law T. 159), an application to set aside an award on this ground was refused, not because the Court of Exchequer thought differently, but because they did not wish to deprive the parties of a writ of error, and they therefore left the award to be enforced by action, saying that they thought it was a judicial act. It may be observed that, according to the analogy of the case of *Rex* v. *Winwick* (8 T. R. 454), the subsequent signature of the second arbitrator would be good if given in the presence of the one who had first signed. (See *Battye* v. *Gresley*, 8 East, 318, and the note there.)

ATTORNEY AND SOLICITOR.

On the subject of taxation we shall also notice the decisions in equity.

Delivery of bill.—The new Act relaxed the strictness required for the delivery of a bill; but

questions will still arise upon the construction of the words used. *Re Bush* (4 Law T. 131) deserves therefore to be noticed. The Master of the Rolls decided that a delivery to the solicitor of the party chargeable, at his request, was a delivery within the statute; and that to shew that they came to the hands of the solicitor through his agents, amounts to a delivery to him directly. It was unnecessary to decide whether for this purpose the delivery to the agent by the direction of the solicitor would be a sufficient delivery to the party chargeable; but it is apprehended that the general principle of *delegatus non potest delegare* would apply, and make it insufficient. At any rate it would be imprudent to run the risk.

Power to tax.—It having been clearly settled that the Courts had no common law jurisdiction to tax bills containing no taxable item, either before or after action brought (*Williams* v *Griffith*, 6 M. & W. 32), it is somewhat surprising that any attempt should have been made under the new Act to obtain from a court of common law taxation of such a bill. But as this attempt was made, we here refer to the case, to prevent any similar mistake. The Court of Common Pleas, in *Bush* v. *Sayer* (4 Law T. 135), recognized the old rule, and decided that they had no more jurisdiction since the statute 6 & 7 Vict. c. 73, than before, under such circumstances.

That the statute must be looked upon as the sole authority now, is also shewn by *Ex parte The Great Western Railway Company* (4 Law T. 99, 138). Under the company's Act (and some other similar Acts, we believe) it had been usual for bills as to expenses under the Act to be taxed on the equity side of the Court of Exchequer. It was now sought to obtain taxation in the Exchequer, rather than before the Master of the Rolls under the new Act. The Court, however, decided that they had no jurisdiction, none of the items being for business transacted in any court of law.

Special circumstances.—In *Whicher* v. *Thomas* (4 Law T. 159), the definition given by the Court of Exchequer to "special circumstances," after verdict, was, fresh facts or circumstances coming to the knowledge of the party which he was not aware of pending the action. There the application was refused, because, according to defendant's own statement, he could have resisted the action with success, and he must therefore suffer for his own neglect.

Taxation precluded by agreement.—Payment under an agreement between the parties that there shall be no taxation will be so far binding that taxation cannot be obtained in the usual course. (*Re Whitcombe*, 4 Law T. 130); and settling an account by the solicitor and client, in which the bill of costs is an item, is an appropriation of moneys of the debtor equivalent to payment. (*Re Cattlin*. 4 Law T. 152.) Such agreements, however, would almost inevitably be set aside by bill in equity. (See *Scougall* v. *Campbell*, 3 Russ. 545, and other cases cited in *Drax* v. *Scroupe*, 1 Dowl. P. C. 69.)

Negligence.—We have before had occasion to draw the attention of our readers to the importance of attending to the real construction of the 2 Wm. 4, c. 39, s. 10, as to writs to save the Statute of Limitations (2 Law T. 448), and in now noticing the case of *Hunter* v. *Caldwell* (4 Law T. 155), for a different reason, we wish again to point out that the note in Archb. Prac. p. 922, is incorrect, and that the second and subsequent writs must contain a memorandum of the dates of the return of the first writ as well as of the writ itself. (See as to amendment of writs, *Mavor* v. *Spalding*, 2 Law T. 448, and 1 Dowl. & Lowndes, 878.) In *Hunter* v. *Caldwell* an action was brought against an attorney for negligence in not having filed the *pluries* writs within five months of the time that they issued. The words of the statute require every writ "to be returned *non est inventus* and *entered of record*, within one calendar month of the expiration thereof, including the day of such expiration." It appears that the practice has not been uniform as to filing; and the Court of Queen's Bench expressed great doubts whether the omission could be held to be such gross negligence as to render the attorney liable. We may here remark that in several cases, the erroneous construction of a statute has not been deemed *crassa negligentia* so as to disentitle the attorney to recover for work and labour, as in *Elkington* v. *Holland* (9 M. & W. 659), as to the construction of the 1 & 2 Vict. c. 110, on attestation of warrants of attorney, of a standing order of the House of Lords (*Bulmer* v. *Gilman*, 4 Man. & G. 108), or to render him liable to an action, as in *Kemp* v. *Burt* (4 B. & Ad. 424). As Alderson, B. said in *Shilcock* v. *Pressman* (7 C. & P. 289), "It is not every mistake or misapprehension that will make him liable in an action for negligence, and the question is for us to consider whether he has used reasonable skill and reasonable care." It would seem to be quite clear that if he follows a statute literally, he would not be liable. (Per Patteson, J. in *Kemp* v. *Burt*.) In *Davies* v. *Jenkins* (1 Dowl. & Lownd. 321; 11 M. & W. 745), an attorney was held not to be liable in case for bringing an action and issuing execution by mistake, and without malice, against the wrong person.

Privilege.—The privilege of an attorney to be sued in his own court was formerly lost when he was sued with an unprivileged person, except where both parties could be sued by the same process. (*Ramsbottom* v. *Harcourt*, 4 M. & S. 585.) And following this principle, it was held in *Keep* v. *Biggs* (2 Dowl. P. C. 278) that, when jointly sued, an attorney was not liable to be arrested, because, under the Uniformity of Process Act, one might be arrested and the other only served upon the same process. Hence, in *Rastrick* v. *Beckwith* (4 Law T. 114), the inference was sought to be established that an attorney sued with an unprivileged person could now retain his privilege of being sued only in his own court. The Court of Common Pleas, however, decided that he did lose his privilege by being sued with an unprivileged person. There is no privilege from arrest under 1 & 2 Vict. c. 110. (*Flight* v. *Cook*, 1 Dowl. & L. 714, confirming *Thomson* v. *Moore*, 1 D. N. S. 283; see 1 Law T. 612.)

BANKRUPTCY.

Simultaneous proceedings under 5 & 6 Vict. c. 112, s. 11, and by action.—In *Covington* v. *Hogarth* (4 Law T. 157), the power given of summoning a trader under 5 & 6 Vict. c. 122, was decided to be so completely a collateral proceeding, that if an action has also been commenced, the trader is not entitled, after payment in the Bankruptcy Court, to stay the action, except on payment of the costs incurred.

Power of Commissioners to remand after refusal of final order under 7 & 8 Vict. c. 96. Construction of proviso at the end of s. 28.—*Re Partington* (4 Law T. 172—see p. 1) is an important decision upon one of the most obscure parts of the too notorious Act of last session. It determines—1. That where a prisoner has got out of prison by an *interim* order, to which, in fact, he was not entitled—as, for instance, being a trader with debts above 300*l.*—the commissioners have power to remand him to his former custody after the expiration of the *interim* order. 2. That the power of the commissioners is not confined to the cases mentioned in sec. 24, but extends to false statements in the points essential to the title of the prisoner to the benefit of the Act. 3. That their decision, if it can be reviewed anywhere, is not liable to be so by the Court of Queen's Bench. 4. That the proviso "that no debtor shall be imprisoned for more than twelve months," is to be construed with reference to the former part of the 28th section, and as a limitation upon the power given to the commissioners to imprison for a period, by the indirect method of granting a protecting order to date from a certain future day, and to remand in the meantime. We have before expressed our inability to comprehend what the Legislature meant by this proviso (3 Law T. 496), nor do we now feel quite sure that we have understood this decision rightly upon this point.

CONTRACT.

Acceptance and delivery within Statute of Frauds and 9 Geo. 4, c. 14, s. 7.—The distinction between an order for a chattel to be manufactured and a purchase of a specific chattel already in existence, is well established. In the latter case, the property passes by the contract; in the former, the chattel must be finished and delivered, or at least ready for delivery, and approved of by the purchaser. (*Laidler* v. *Burlinson*, 2 M. & W. 601; and *Clarke* v. *Spence*, 4 A. & E. 448.) The delivery may in some instances be constructive, where it is clear that there was an appropriation by the vendor of the finished chattel to the purchaser, with his consent. This was the case in *Carruthers* v. *Payne* (5 Bing. 270), where, after payment for, but before the actual delivery of a chariot ordered to be made, a front seat was directed to be added by the purchaser. This was not done; but the builder promised to deliver it, thereby recognizing the property to be in the purchaser, and on his becoming dissatisfied, the builder, according to his direction, placed it in his warehouse for sale. The builder became bankrupt, and the purchaser was held to be the owner of the chariot, and that he was therefore entitled to maintain trover against the assignees. So in *Wilkins* v. *Bromhead* (2 Law T. 328) the property was held to have passed, where, without having seen the finished chattel, the vendee had paid for it on the application of the vendor, upon whose premises it continued to remain. Since the action for goods sold and delivered of course only lies where the property has been so changed, the case of *Bax* v. *Beetham* (4 Law T. 112) is well deserving of our notice, as a similar state of circumstances must often occur. The defendant had ordered a cloak to be made with a particular lining, which was to be paid for in ready money. When the tailor brought it home, the defendant told him to take it back, and make the lining into a chaise-cloth, and put a silk lining instead. This was done, and when both were brought home the defendant objected to the *fit* of the cloak, but wished to retain the chaise-cloth. The tailor refused to leave them without the money, and took both back. An action for goods sold and delivered was then brought, and the Court held that the jury were quite right in considering that there had been a delivery and acceptance within the statute. This may at first seem to clash with the cases of *Atkinson* v. *Bell* (8 B. & C. 277); *Maberley* v. *Sheppard* (10 Bing. 99); *Baldey* v. *Parker* (2 B. & C. 37), but they are distinguishable. In *Atkinson* v. *Bell*, although it is true alterations were directed and made, yet the machines never left the possession of the maker, and there was no delivery to divest his lien. In *Maberley* v. *Sheppard* the additions were made to the cart during the time it was *being constructed*, and it also was never out of the possession of the maker. So in *Baldey* v. *Parker* the dealing with the goods took place in the shop of the vendor, and whilst they were in his possession, but the vendee refused to accept them as soon as they were sent home. There was a willingness to deliver, but not to accept; and to constitute a contract there must be both delivery and acceptance. (*Bill* v. *Bament*, 9 M. & W. 37; *Dixon* v. *Yates*, 5 B. & Ad. 340.) It is not indeed quite clear how in the principal case the owner had so parted with his possession as to lose his right of lien, which the last-cited cases shew is necessary to constitute a delivery. But we apprehend the ground of the decision was, that since the cloak, when sent home, was finished just as the defendant had directed, and was then accepted without any objection, except so far as his opinion of the suitableness of the lining had changed, nothing remained to be done to complete the original agreement, and the sending it home was an appropriation by the vendor, the effect of which was not to be qualified by the subsequent alteration of the lining.

Company—Liability of person not a partner who interferes in the preliminary proceedings.—The liability of persons connected with unincorporated companies depends upon the circumstances in each case, and it is for the jury to determine whether a person sought to be charged either was a partner, or, by holding himself out as one, is liable for the contracts of the company. And there is also a distinction between members of a company actually formed, and members of a company which commences operations before the conditions upon which subscribers joined it have been fulfilled. (See *Fox* v. *Clifton*, 6 Bing. 776; *Pitchford* v. *Davis*, 5 M. & W. 2.) But still it is useful to notice any new case on the subject, as it will throw light upon the subject generally. With this view we wish to call attention to *Lake* v. *The Duke of Argyll* (4 Law T. 171). It appeared that the Duke of Argyll had consented to be named as president of an emigration society, and had attended a meeting in that capacity, and signed a resolution that certain papers should be printed. He was at first a proprietor, but ceased to be so, and the society was never formed according to its intended constitution. The duke had been sued in the Common Pleas for work done for the company, but had obtained a verdict, no partnership, either actual or implied, having been proved. He was now sued for printing and other work connected with the preliminary proceedings of the Company. The jury found against him, and on motion for nonsuit or new trial, Lord Denman, C. J. said:—

When persons meet to prepare measures for calling a society into existence, *attendance* upon such meeting,

and concurrence in such *measures*, may be strong evidence that any individual there present held himself out as the paymaster to all who executed their orders, and, although not liable as a member or shareholder, yet his declared intention to become president, or to take shares, may be material to shew he authorized contracts with those whose services were required by what may be called the constituent body. In this case the work done by the plaintiff was obviously necessary for the objects of the society. Part of it was ordered by a resolution read by the duke from the chair. The proof was certainly not conclusive, as the plaintiff might have been informed, or he might believe that others were to pay, and that the duke is merely giving his name to promote the general objects of the society.

His Lordship also observed, that this decision did not establish that the Duke was liable upon contracts, similar to that which was unsuccessfully attempted to be enforced against him in *Wood* v. *The Duke of Argyll* (see 2 Law T. 311).

Husband and wife.—The later cases have very much qualified what Lord Ellenborough laid down in *Waithman* v. *Wakefield* (1 Campb. 120), that "where a husband is living in the same house with his wife, he is liable to any extent for goods which he *permits* her to receive there." *Seaton* v. *Benedict* (5 Bing. 20), and *Atkins* v. *Curwood* (7 C. & P. 756), may be particularly cited to shew that the suitableness of the goods supplied, both in number and quality, are material questions in cases of implied liability of the husband. In *Freestone* v. *Butcher* (9 C. & P. 613), Lord Abinger went even further than these cases, and held, that although cohabitation was good ground for inferring authority for *necessaries* in the absence of any contrary evidence, yet excess in the extent of the order or extravagance would be sufficient to repel the inference of the wife's agency. As in *Lane* v. *Ironmonger* (4 Law T. 117) that case was fully upheld, we give the words of Lord Abinger at length. Pollock, C.B. had read them as part of his charge to the jury, and a motion was made for a new trial on the ground of misdirection, but refused. Gurney, B said he was glad that this case might now be added to *Freestone* v. *Butcher*. The passage is as follows:—

In the cases of orders given by the wife in those departments of her husband's household which she has under her control, the jury may infer that the wife was the agent of her husband till the contrary appear. So, for such articles as are necessary for the wife, such as clothes, if the order is given by the wife, and she is living with her husband, and nothing appear to the contrary, the jury do right by inferring the agency; but if the order is excessive in point of extent, or if, when the husband has a small income, the wife gives extravagant orders, these are circumstances from which the jury would infer that there was no agency. The tradesman who supplies the goods takes the risk, and if the bill is of an extravagant nature, such as the husband would never have authorized, that would alone be sufficient to repel the inference of agency.

Promise to pay for support of bastard child need not be in writing.—It is important to remark the case of *Baxter* v. *Cope* (4 Law T. 121). The putative father of a bastard child had verbally promised to pay so much a week towards its maintenance in the house of its mother's father. It was contended that as the mother was, under the Poor Law, primarily liable to the support of the child, this was a promise for the debt in default of another, and should therefore have been in writing. But Patteson, J. held that it was an original and not a collateral contract, and therefore sufficient.

On this subject another case must be added, reported in the LAW TIMES of this day. In *Hargreaves* v. *Parsons*, it was decided that where a contract has been made between A and B for the performance by B of certain matters therein contained, A may transfer his interest in that contract to a third party, and may guarantee the performance of it by B without a contract in writing, for such guarantee is not a promise to be answerable for the debt, default, or miscarriage of another within the Statute of Limitations. See the recent case of *Butcher* v. *Stuart* (11 M. & W. 857).

Restraint of trade.—Two cases have occurred in connection with this subject, one a direct decision, on a point not before clearly decided; the other defining the meaning of the word "London." In *Rennie* v. *Irwin* (4 Law T. 133) the question was whether an agreement on the sale of a goodwill of a trade, that the vendor should not supply any of the customers then dealing at the shop without the consent of the vendee, was a valid restriction of trade. The principles upon which certain restraints of trade are held legal have been much discussed within the last few years in the cases of *Hitchcock* v. *Coker* (6 A. & E. 438); *Warde* v. *Byrne* (5 M. & W. 548); *Proctor* v. *Sargent* (2 M. & G. 89); *Mallan* v. *May* (11 M. & W. 653). The general rule is, that all restraints, though only partial, if nothing more appear, are presumed to be bad. (See *Pragnell* v. *Close*, Aleyn, 67; *Horner* v. *Graves*, 7 Bing. 744.)

But contracts for partial restraint are upheld, because it is for the benefit of the public that they should be enforced, as through them the goodwill of a business becomes valuable, and knowledge, skill, and experience are made more useful to the community by being imparted to others without risk to the teacher or employer. These restraints, however, must not be "larger and wider than the protection of the party with whom the contract is made can possibly require." (See Tindal, C. J. in *Hitchcock* v. *Coker*, 6 A. & E. 438, adopted by Parke, B. in *Ward* v. *Byrne*, 5 M. & W. 548.) Accordingly, an absolute restraint from carrying on trade for any time would be bad; as that of a coal merchant for nine months, in *Ward* v. *Byrne*, or a dyer for six months (Year Book, 2 Hen. 5, pl. 26), where Mr. Justice Hale thus vehemently expressed his opinion—"*La condition encount' common ley: et per Dieu si le pl' fuit icy, il irra al prison, et uny: il ust fait fine au roy.*" But many restrictions limited as to space have been held good. In *Davis* v. *Mason* (5 T. R. 118) Thetford, and ten miles round; in *Hayward* v. *Young* (2 Chit. 407) twenty miles round a place was held a reasonable limit in the case of a surgeon; in that of an attorney, London and 150 miles round (*Pasmore* v. *Gun*, 4 East, 190); and in *Proctor* v. *Sargent* (2 Man. & G. 20; 2 Scott, N. R. 289) five miles from Northampton square, in the county of Middlesex, was held reasonable in the case of a milkman. In *Hunlocke* v. *Blacklocke* (2 Wms. Saunders, 156) a covenant "not to exercise the trade of a tailor with any of the customers named in the schedule," seems to have been considered valid, and the learned editor there adds in a note, "it seems that a bond covenant or promise not to use a trade with particular customers by name, if founded upon good consideration, is also valid. Good consideration, it must be remembered, means *a consideration*; for the Courts will not entertain the question of its adequacy. (*Hitchcock* v. *Cocker*, 6 A. & E.) The doctrine laid down in this note has been settled by *Rennie* v. *Irvine*, 4 Law T. 133; 8 Jur. 1051.

The Court of Common Pleas there decided that a restriction not to deal with any of the customers of the vendor was valid; for it was, in fact, as much a limited restriction as if the customers had been named in a schedule. Their number and names were known to the vendor, and were in his books, and it was a proper and salutary restriction. The judgment on a demurrer to the declaration setting out such an agreement was given, therefore, for the plaintiff, and the learned counsel for the defendant, Serjeant Byles, by obtaining leave to amend upon undertaking not to bring error, seems to have acquiesced in the correctness of the decision. It appears to us fully in accordance with the principles established by the previous cases, although the effect of the agreement might possibly, under extraordinary circumstances, be a greater restraint than was necessary, as if, for instance, both vendor and customer went to a distant part of the country. "I do not see why," said Tindal, C. J. "if the contract is reasonable at the time it was made, we are bound to see any extravagant supposition or contingency which may possibly arise, but must be very rare in order to render the contract void."

Mallan v. *May* (4 Law T. 174) was a question arising out of a proceeding in Chancery between the same parties as the case of *Mallan* v. *May* (11 M. & W.) It had been there held that a restriction not to carry on business as a dentist in London, or in any of the towns or places in England or Scotland, where the plaintiff or the defendant on their account might have been practising, was good as to London, but bad as to the other towns. It was now decided that "London" meant only the city of London, and did not include what was popularly called London, and that therefore practising in Great Russell-street, Bloomsbury, was not within the restriction.

COSTS.

Attorney and Client.—Notwithstanding the direction to taxing-masters of Hil. Vac. 4 Wm. 4, the Master may in taxation between attorney and client allow for higher fees, if they have been distinctly agreed upon by the client after due explanation that they will not be recoverable from the opposite party. (*Re Smith*, 4 Law T. 159). As to the difference between plaintiff's and defendant's costs under this rule, see 2 Law T. 293, and 3, 308.

Certificate.—If a judge enter in his notes, "certificate for costs if necessary;" this, if occasion arise to require that certificate to be granted, is enough to authorize its being given. (*James* v. *Jones*, 4 Law T. 138.)

Under 3 & 4 *Vict. c.* 24.—We may here again repeat what has been long ago made known to our readers (*supra* 2 Law T. 323, 3, 308), that this statute does not apply to judgment on demurrer, but at the same time the plaintiff is only entitled to the costs of the demurrer without a certificate. (*Poole* v. *Grantham*, 4 Law T. 157.)

Married Woman.—According to an *Anonymous Case* (4 Law T. 143), a married woman succeeding on plea of coverture, which must be pleaded in person, is entitled only to costs out of pocket.

Postea.—Where the defendant has substantially succeeded in the action, costs of obtaining the *postea* are costs in the cause. (*Rocksedge* v. *Chandler*, 4 Law T. 139.)

EVIDENCE.

There are not many decisions to notice under this head, although some important questions remain, as the admissibility of *Lloyd's List* and the evidence of underwriters in *Eccles* v. *Harvey* (4 Law T. 99), and the effect of an admission upon the record in *Gale* v. *Lewis* (4 Law T. 110). *Norton*, or *Lawton* v. *Sweeny* (4 Law T. 98, 8 Jur. 964) must, however, be mentioned. In action for money lent, the only evidence was, that the defendant having asked the plaintiff for some money, the latter handed him a note, which was believed to be a bank note, but the amount of which did not appear, it was held that the jury were rightly directed to presume it to have been a note for 5*l.* as being the smallest note in circulation in this country. This is analogous to the case of *Clunness* v. *Pezzy* (1 Campb. 8). That was an action brought by a liquor merchant, who was proved to deal in several kinds of liquor, and the only evidence against the defendant was, that the plaintiff had caused to be delivered to the defendant a certain quantity of some liquor, the nature of which did not appear. On this it was held that the liquor ought to be presumed to have been the cheapest liquor which the plaintiff dealt in.

Inferences by jury.—Although an elementary rule, we may quote here what Pollock, C. B. said in *Cook* v. *Stratford* (4 Law T. 138), on the right of the jury to draw inferences in the absence of distinct evidence. Whenever a person, reasonably acting in his own concerns, would draw a conclusion, the jury are to draw the same conclusion, if they think proper.

LANDLORD AND TENANT.

Rights of out-going tenant.—According to *Griffiths* v. *Bulestock* (4 Law T. 115), the out-going tenant entitled to emblements is legally in possession of the land until all that he is entitled to do by the custom of the country is done; and therefore his vendee is entitled to enter for the purpose of removing the crops.

Lease or agreement.—In the construction of documents purporting to be agreements or leases, it is often by no means easy to determine whether there is a present demise or not. According to Patteson, J. in *Jones* v. *Reynolds* (1 Q. B. 506) in all those cases where it has been held that a present demise took place, there was either, on actual present demise, immediate possession given, or something to shew that possession and the relation of landlord and tenant were to commence before a lease was executed."

In *Doe dem. Morgan* v. *Powell* (4 Law T. 134), Tindal, C. J. considered that the words "I agree to let and grant a lease," coupled with an agreement to execute a formal lease as soon as it could be prepared, did not amount to an actual demise.

What effect the 4th section of 7 & 8 Vict. c. 86 will have upon agreements of this kind is as yet very doubtful. After providing that no lease in writing shall be valid except it shall be made by deed, it enacts that the person who shall be in the possession of the land, in pursuance of any agreement to let, may, from payment of rent or other circumstances, be construed to be a tenant from year to year.

INTERPLEADER.

In *Apstead* v. *Tickener* (4 Law T. 154), proceedings were stayed in an action brought by the successful party under an interpleader rule, to recover the difference between the amount for which the goods had been sold under the direction of the judge and the value when seized. The Court would not say whether a recovery under the Interpleader Act was a bar in all cases; but they seemed to rely much upon the assent of the claimant and the now plaintiff to the order for sale made by the judge. In the argument in *Whitmore* v. *Black* (4 Law T. 99), which we heard, it was assumed that it was not a bar; although in that case the assignees were held not entitled to recover the difference.

MANORIAL CUSTOMS.

Period for admittance.—In *Doe dem. Tresidder* v. *Tresidder* (1 Q. B. 416), it was decided that if a copyholder leases for years without license of the lord, a custom authorizing such lease, the lessee had a title against every one but the lord, and could maintain ejectment, the lease being only voidable, and not void; and *Doe dem. Warwick* v. *Coombs* (4 Law T. 156) may be noted as supporting this principle. It was there held, that the non-observance of the custom of the manor, as to the period of admittance, did not render a subsequent admittance invalid. The custom was for the benefit of the lord only, which he could waive, as in this case he had done, by admittance.

PLEADING.

Judgment recovered against a joint contractor.—The principal decision in pleading which we have to notice is that of *King* v. *Hoar* (4 Law T. 174). It was there held, and it appears to be the first decision on the point, that it is a good plea to an action *ex contractu* against one of several joint contractors, that a judgment has been already recovered against another of them. For the reasoning we refer our readers to the judgment of Parke, B.

We may also refer to *Nichols* v. *Payne* (4 Law T. 114), as to the plea of bankruptcy; *Marriage* v. *Marriage* (4 Law T. 133) as to pleading payment to a bond of a peculiar nature; and *Beckett* v. *Bradley* (4 Law T. 131, 8 Jur. 1073), as to estoppel on the record.

PRACTICE.

We have more cases than usual to notice under this division, and some of great importance. As before, we have arranged the subject alphabetically.

Acknowledgment under Fines and Recoveries Act.—The certificate of an acknowledgment under 3 & 4 Wm. 4, c. 74, s. 84, taken under a special commission, purporting to be the certificate of two of the commissioners, is good, although it be signed by more. (*Watt and Others* v. *Smith*, 4 Law T. 158). In the same case it was held to be no objection to the affidavit verifying the acknowledgment, that it was made before one of the commissioners being qualified to take oaths.

Affidavit.—It is a fatal defect in an affidavit to omit the words "before me" in the jurat, and cannot, therefore, be amended. (*Reg.* v. *Bloxham*, 4 Law T. 132.) It may be well doubted whether the omission of the place where the affidavit is sworn would again be held an amendable defect, as it was in *Cass* v. *Cass* (1 Dowl. & Lownd. 698).

Amendment of rules.—The Courts are becoming much more strict in all matters of form, and defective rules will not, in general, be allowed to be amended, because they do not suit exactly the purpose of the parties who obtain them. In such case, the proper course is to give notice of motion to discharge the rule with costs, and then to bring forward a new motion for another rule. (*Reg.* v. *Mayor and Corporation of Dover*, 4 Law T. 93.) But in *Dailey* v. *Loveday* (4 Law T. 139), a rule for judgment *non obstante veredicto* was allowed to be altered, at the hearing, to rule for verdict for the plaintiff, it being considered a mere clerical error.

Amending writs to save Statute of Limitations.—In *Brown* v. *Fullarton* (4 Law T. 139, and report of this day), the Court of Exchequer, after taking time to consider, have decided that they will amend writs of summons by insertion of a co-plaintiff to save the Statute of Limitations.

Charging prisoner in execution.—In our Review of Hilary Term (2 Law T. 448), we noticed the decision in *Ireland* v. *Berry*, since reported (1 Dowl. & Lowndes, 866), in which it was held that the rule of T. T. 3 Wm. 4, requiring that prisoners should be declared against in the Term next after the arrest, did not apply to a defendant in custody by virtue of a writ of *capias* issued under 1 & 2 Vict. c. 110, s. 3. But the 85th rule of H. T. Wm. 4, which requires the prisoner to be charged in execution within two Terms inclusive after trial or judgment, does apply to the case of a person arrested under this statute, and against whom judgment has been obtained. (*Walker* v. *Richment*, 4 Law T. 132; 8 Jur. 1016). And judgment in debt by default in which costs have not been taxed, is final judgment within the rule.

Discontinuance. — In *Goodenough* v. *Buller*, 3 Dowl. P. C. 751, it was said by Parke B.—"That a rule to discontinue was never granted after a general verdict; but while the Court of Queen's Bench refused such a rule in *Young* v. *Hickens* (4 Law T. 151), they seemed to imply that, under very peculiar circumstances, they must grant such a rule if applied for in due time.

Discontinuance does not prevent error being brought.—The discontinuance of an action, upon which there are issues of fact outstanding after judgment on demurrer, does not preclude the parties from bringing a writ of error; and the proper course, under these circumstances, is to tax the plaintiff's costs, and to tax the defendant's, and not to set them off, but to leave each to his remedy to gain them: the defendant, by writ of error, to dispute those on demurrer by disputing the judgment.

Distringas.—A *distringas* will not be granted upon an affidavit of calls at the office of the party to be served, although it appears that a communication of the fact has been made to him by his clerks. (*Russel* v. *Knowles*, 4 Law T. 113; 8 Jur. 1050.) That two calls only are necessary. (See *Gregory* v. *Eastabrook*, 1 Dowl. & Lowndes, 881.)

Elegit.—In an inquisition on an *elegit* taken since the 1 & 2 Vict. c. 110, s. 11, it is not necessary to set out the land by metes and bounds. It is sufficient to describe it in such a manner as would be sufficient to identify it in a conveyance. (*Doe dem. Roberts* v. *Barry*, 4 Law T. 97; 8 Jur. 963.)

Indorsement on writ of summons.—The rule of H. T. 2 Wm. 4, c. 111, requiring the amount of debt to be indorsed upon every bailable writ and warrant, and upon the copy of any process served for the payment of any debt, does not apply to *qui tam* actions, but only to suits arising out of a contract between the parties. (*Hobbs* v. *Young*, 4 Law T. 111; 8 Jur. 1029.)

Irregularity.—The well-known rule is, that an irregularity is waived by delay; but as there is no fixed time within which the irregularity must be taken advantage of, each instance may with advantage be observed. Thus where an execution was levied on the 7th of November in an action where no notice of declaration had been served, and eleven days elapsed before the affidavit to ground the motion to set it aside was made, and thirteen before the motion was made, the application was held to be too late. (*Cooke* v. *Peace*, 4 Law T. 111.) So also an application on the 16th of November to set aside a judgment signed on the 10th of August, and execution issued thereon on the 21st August, was too late. (*Austin* v. *Darcy*, 4 Law T. 160.)

New trial.—In two cases on the same day (*Geach* v. *Ingell*, 4 Law T. 98, and *Watson* v. *Whitmore* (4 Law T. 99), the Court of Exchequer explained the principle upon which new trials were granted for misdirection. The application being in substitution for a bill of exceptions, a new trial would not be granted where it would not lie, as, for instance, on a misdirection unobjected to, nor unless manifest injustice were done. Thus they refused to grant a new trial because the party had been deprived of the right to begin at the trial.

When a cause in the superior courts has been tried before the judge of the Sheriffs' Court, the counsel who attended the trial may move for a new trial without the production of the judge's notes. (*Tanley* v. *Evans*, 4 Law T. 100).

Peremptory undertaking.—The Court of Exchequer, in *Smith* v. *Lloyd* (4 Law T. 99), seemed to think that an affidavit that the action was brought solely for the purpose of arresting the defendant, and so obtaining payment, and that since 7 & 8 Vict. c. 96 it was useless to proceed, the sum, being under 20*l*., was sufficient ground for discharging a peremptory undertaking.

Rescinding judge's order.—The Court of Exchequer have directed that in future motions to rescind a judge's order made at chambers, all the materials should be brought before the Court in the first instance. (*Stedman* v. *Barnett*, 4 Law T. 119.)

Staying proceedings for evasion of 7 & 8 Vict. c. 96.—A mode has been adopted of evading the Act for preventing imprisonment on debts under 20*l*. by suing upon the judgment, where, as is usually the case, by the addition of the costs, it is above 20*l*. An application was made in the Court of Exchequer to stay proceedings in an action so brought, on affidavit that the defendant believed it was brought solely for the purpose of imprisoning him, but refused. The Court said that, even supposing they had any power of interfering, it could only be after the arrest. (*Hopkins* v. *Francis*, 4 Law T. 117.) It is not easy to see on what principle they could interfere to supply this *casus omissus*. The course is not likely to be frequently adopted, as the costs of the action in the judgment would hardly be allowed under 43 Geo. 3, c. 46, s. 4.

Staying proceedings upon payment of debt and costs.—Where a payment had been made by a defendant of the amount of damages and costs indorsed upon a writ of summons more than four days after the service of the writ to the clerk of the plaintiff's attorney, who gave a receipt for the amount, and the attorney himself afterwards repudiated such payment but retained the money, the Court would not disturb an order of a judge staying further proceedings in the action, without the money was returned. (*Hodding* v. *Stuchfield*, 4 Law T. 95; 8 Jur. 988.)

Subpœna.—We wish particularly to draw attention to *Edgell* v. *Curling* (4 Law T. 135), as it shews that what we believe to be very commonly the practice with reference to *subpœnas* is erroneous. It decides that the Uniformity of Process Act does not apply to writs of *subpœna*; and that, therefore, they can only be tested in Term time. If tested in vacation, the writ is absolutely void, and no action could be maintained against the witness for non-attendance. So in *Seaton* v. *Heap* (5 Dowl. P. C. 217), a *scire facias* was held void for being tested in vacation.

Venire and jury process—Variance.—In *Codrington* v. *Lloyd* (8 A. & E. 449), the omission of the *tam quærendum* clause in the jury process was held to be irregularity, for which the issue and notice of trial were set aside; but in *Wood* v. *Peyton* (4 Law T. 117), after trial, the Court of Exchequer refused to set aside the trial, leaving the defendant to bring a writ of error *coram nobis*.

SHERIFF.

Bound by admission of under-sheriff.—The rule as to the effect of admission by the under-sheriff in binding the sheriff, was laid down in *Snowball* v. *Goodricke* (4 B. & Ad. 451) to be, that an under-sheriff is not competent to charge the sheriff by his declarations, unless they accompany some official act, or unless they tend to charge himself, he being in truth the real party in the cause. Such an official admission is an answer to an inquiry as to who is in possession of the goods seized (*Cheston* v. *Gibbs* (4 Law T. 115).

Liability for neglecting to arrest.—The 5 & 6 Vict. c. 98, s. 31, has taken away the right of bringing debt on an escape against the sheriff, and he is now liable only to an action upon the case for damages sustained by the execution creditor. It appears, however, that actual damage is not necessary, but that the plaintiff will be entitled to nominal damages, although the jury negative actual damage. (*Clifton* v. *Hooper and Another*, 4 Law T. 92; 8 Jur. 958.) This is in accordance with the principle established by *Marzetti* v. *Williams* (1 B. & Ad. 415), and *Blofeld* v. *Payne* (4 B. & Ad. 410), and *Taylor* v. *Henniker* (12 A. & E. 488), that in every case of legal injury the injured party has a legal right to damages.

TRESPASS.

Seduction.—The Court of Common Pleas has given judgment in *Grinnell* v. *Wells* (4 Law T. 173), after a delay which had excited the surprise of those cognizant of the case. The question was, whether the action for seduction would be maintained by the father without any allegation in the declaration of loss of service, but, in lieu thereof, averments that the girl was poor, and maintaining herself by her own exertions, and that, in consequence of her being seduced and becoming pregnant, she was unable any longer to maintain herself, and that the plaintiff, her father, was thereupon forced and obliged to expend moneys for her maintenance, &c. &c. The judgment was arrested upon this declaration; the Court holding that no principle or decision authorized an action where there was no actual or constructive

loss of service; and that the liability of the father to support the daughter, under the Poor Law statutes, was no ground of action. To hold the contrary, would have been to introduce numberless new actions, as the principle would apply to every case of beating of a servant, whether his services were lost or not; and upon this supposition, the beating of a son, of whatever advanced age, and although altogether emancipated from his father's family, would form a ground of action at the suit of the father, if called upon under the statute to maintain his son.

TROVER.

Right of assignee of pawnor.—We refer our readers to the argument and judgment in *Franklin* v. *Neate*, reported in this number of the Law Times, as an instructive case on this subject.

WILLS.

Execution of powers.—The general principle as to the execution of a power, as laid down by Lord Chief Baron Alexander, in *Doe dem. Nowell* v. *Rooke* (6 Bing. 475) is, that it is not executed unless by some reference to the power or authority, or to the property which is the subject of it, or unless the provision made by the person intrusted with the power would have been ineffectual—would have had nothing to operate upon, except it were considered as an execution of such power or authority. In accordance with this, the power in *Doe dem. Caldecott* v. *Johnson* (1 Law T. 172) was held not to be executed. There A, having a power by will to appoint certain real estate to the use of such child or children, in such shares, manner, and form and for such estates and interests therein, and subject to such payments, conditions, and limitations as he should direct, &c. by his will, without any reference to the power, devised *all* his real and personal estate whatever, whatsoever, and wheresoever, and of what nature or kind soever, to certain trustees, upon trust to apply the profits as follows.—one-third part to his wife during her life or widowhood, and the other two-third parts unto and for the benefit of his three children, equally. There was no evidence whether he had, or not, any real other property, upon which the devise could operate, except that which was the subject of the power. But this evidence ought to have been produced by the party who wished to establish the execution of the power; for where a party seeks by extrinsic circumstances to give an effect to an instrument, which, upon the face of it, it would not have, it is incumbent on him to prove the circumstances, though involving the proof of a negative; or, in the absence of such proof, the deed must have its natural effect and operation given to it, and no other.

LEGAL INTELLIGENCE.

EXCHEQUER OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir Frederick Pollock, knight, Lord Chief Baron of Her Majesty's Court of Exchequer, in and after Hilary Term, 1845.

IN TERM.—MIDDLESEX.

1st sitting, Monday, January 13.
2nd sitting, Monday, January 20.
3rd sitting, Monday, January 27.

LONDON.

1st sitting, Friday, January 17.
2nd sitting, Friday, January 24.
And by adjournment, to Saturday, January 25.

AFTER TERM.—MIDDLESEX.

Saturday, February 1.

LONDON.

Monday, February 3, to adjourn only.

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at Ten o'clock.

MIDDLESEX.

List of the Sessions of the Peace to be held at the Sessions-house, Clerkenwell, in and for the year 1845, pursuant to the provisions of the statute 7 & 8 Vict. c. 71.

January Quarter Sessions, Tuesday, 7th January.
Bail Cases, Thursday, 9th January.
County Day, Thursday, 16th January.
*Adjourned Quarter Sessions, Tuesday, 28th January.
Bail Cases, Thursday, 30th January.
Appeal Day, Friday, 31st January.
February First Sessions, Tuesday, 11th February.
Bail Cases, Thursday, 13th February.
February General Sessions, Tuesday, 25th February.
Bail Cases, Thursday, 27th February.
Appeal Day, Friday, 28th February.
County Day, Thursday, 6th March.
March First Sessions, Tuesday, 11th March.
Bail Cases, Thursday, 13th March.
March Second Sessions, Tuesday, 25th March.
Bail Cases, Thursday, 27th March.
April Quarter Sessions, Tuesday, 8th April.
Bail Cases, Thursday, 10th April.
County Day, Thursday, 17th April.
*Adjourned Quarter Sessions, Tuesday, 22nd April.
Bail Cases, Thursday, 24th April.
Appeal Day, Friday, 25th April.
May First Sessions, Tuesday, 6th May.
Bail Cases, Thursday 8th May.
May General Sessions, Tuesday, 20th May.
Bail Cases, Thursday, 22nd May.
Appeal Day, Friday, 23rd May.
County Day, Thursday, 29th May.
June First Sessions, Tuesday, 10th June.
Bail Cases, Thursday, 12th June.
June Second Sessions, Tuesday, 24th June.
Bail Cases, Thursday, 26th June.
July Quarter Sessions, Tuesday, 15th July.
Bail Cases, Thursday, 17th July.
County Day, Thursday, 24th July.
*Adjourned Quarter Sessions, Tuesday, 29th July.
Bail Cases, Thursday, 31st July.
Appeal Day, Friday, 1st August.
August First Sessions, Tuesday, 12th August.
Bail Cases, Thursday, 14th August.
August General Sessions, Tuesday, 26th August.
Bail Cases, Thursday, 28th August.
Appeal Day, Friday, 29th August.
County Day, Thursday, 4th September.
September First Sessions, Tuesday, 9th September.
Bail Cases, Thursday, 11th September.
September General Sessions, Tuesday, 23rd September.
Bail Cases, Thursday, 25th September.
October Quarter Sessions.
For [illegible] Parish Rates, Monday, 6th October.
Criminal Business, Tuesday, [illegible] October.
Application for Licenses for Music and Dancing, Thursday, 9th October.
Bail Cases, Friday, 10th October.
County Day, Thursday, [illegible] October.
*Adjourned Quarter Sessions, Tuesday, 21st October.
Bail Cases, Thursday, 23rd October.
Appeal Day, Friday, 24th October.
November First Sessions, Tuesday, 4th November.
Bail Cases, Thursday, [illegible] November.
November General Sessions, Tuesday, 18th November.
Bail Cases, Thursday, 20th November.
Appeal Day, Friday, 21st November.
County Day, Thursday, 27th November.
December First Sessions, Tuesday, 2nd December.
Bail Cases, Thursday, 4th December.
December Second Sessions, Tuesday, 16th December.
Bail Cases, Thursday, [illegible] December.

Henry [illegible],
[illegible]

⁎ Appeals to be heard at [illegible] Sessions must be entered on the [illegible] the preceding Quarter Session.

Downing-street, Dec. 16.—The Queen has been pleased to appoint Denis Benjamin Viger, esq. to be President of the Committee of the Executive Council of Canada.

Her Majesty has also been pleased to appoint Henry Sherwood, esq. to be her Majesty's Solicitor-General for that part of the province of Canada formerly called Upper Canada.

Her Majesty has also been pleased to appoint R. Y. Cummin, esq. to be Accountant [illegible] the Surveyor General's Department for the Island of Mauritius.

Her Majesty has further been pleased to appoint Wm. Dudley Ryder, esq. to be Assistant Secretary for the Island of Ceylon.

Crown Office, Dec. 16.—The Queen has been pleased to appoint William Fuller Boteler, esq. one of her Majesty's counsel learned in the law, to be one of the Commissioners of the Court of Bankruptcy to act in the prosecution of Fiats in Bankruptcy in the country, in the place of Edward Goulburn, Serjeant-at-law, resigned.

The Lord Chancellor has appointed Thomas Topham, of Middleham, in the North Riding of the county of York, gent., W. Hinde, of Liverpool, in the county palatine of Lancaster, gent., George Stevenson, of Leicester, in the county of Leicester, gent.; George Grey, of Torquay, in the county of Devon, gent.; George Palmer, of Rugeley, in the county of Stafford, gent.; John Gwynne, of Tenby, in the county of Pembroke, gent.; George Scurfield, of Sunderland, in the county palatine of Durham, gent.; and George James Haines, of Faringdon, in the county of Berks, gent. to be Masters Extraordinary in the High Court of Chancery.

Chancery Order.—Prisoners in Contempt.—By this order, made a day or two since, the Right Hon. John Singleton, Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and consent of the Right Hon. Lord Langdale, Master of the Rolls, the Right Hon. Sir L. Shadwell, Vice-Chancellor of England, the Right Hon. the Vice-Chancellor Sir J. L. Knight Bruce, and the Right Hon. the Vice-Chancellor Sir J. Wigram, hath ordered and directed,—"That in every case in which application shall be intended to be made for the discharge of any prisoner in contempt, and for the payment out of the Suitors' Fund of the costs of such contempt, in pursuance of the provisions for that purpose contained in an Act of the 1st year of his late Majesty King William IV. entitled, "An Act for altering and amending the law regarding commitments by Courts of Equity for contempts, and the taking of bills *pro confesso*," notice in writing of such intended application shall be served upon the solicitor to the Suitors' Fund two clear days at the least before the day upon which the application is intended to be made; that in every case in which a reference to the Master, under the said Act, shall be directed to inquire into the fact of the poverty of any prisoner in contempt, notice in writing of the order of reference, and of every warrant to proceed thereupon before the Master, shall be duly served upon the solicitor to the Suitors' Fund."—Signed by all the Equity Judges.

The death of Mr. John Moore has caused a vacancy in two appointments, held by him in Doctors'-commons: one, the London seat in the Prerogative Registration, worth about 700*l.* a year, in the gift of the Rev. George and Robert Moore, sons of Archbishop Moore, the registrars of that court; the other, the registrar of the vicar general, in the gift of his Grace the Archbishop of Canterbury, of the value of 500*l.* a year. Rumour has already pointed to two relatives of Sir Herbert Jenner Fust, the judge of the Prerogative Court, as the individuals to be appointed to these offices.—*Kentish Observer.*

JUDICIAL WAGGERIES.

(From the *Examiner.*)

Risu inepto res ineptior nulla est.

We recommend our friend *Punch* to take the Court of Privy Council in hand. The facetiousness of the tribunal is quite overpowering. The Lord Chancellor, in particular, will be so very, very funny.

In the Guernsey case, Mr. S. Wortley having to argue about a conference—

"The Lord Chancellor.—I remember attending some 'conferences' in Parliament which did not lead to much. (A laugh.)"

Mr. Roebuck having said that he answered a challenged question, our wag, the Chancellor, let fly again incontinently—

"The Lord Chancellor.—Ay, but the question is, have you a right to accept a challenge? (A laugh.)

"Mr. Roebuck observed, that he had been told by the learned counsel on the other side."

The Court was by this time tickled into such a merry mood by the Lord Chancellor, its first wag, that it was ready to laugh at any thing, as will be seen in this specimen of its cachinnatory powers—

"Mr. Roebuck.—The Royal Court have great power in that island, my Lords, and frighten everybody except the Governor. (A laugh.)

"The Lord Chancellor.—He does not appear easily frightened. (Laughter.)"

Excepting, should have been added, upon conspiracies to celebrate the Queen's birth-days by shooting him. But this would have been no joke.

The fun of the Chancellor and hilarity of the Court were not yet exhausted.

Mr. Roebuck having noticed the claim of members of the Royal Court to speak to the governor separately, each in his own right—

"The Lord Chancellor.—And as long as he likes. (A laugh.)"

People who want to laugh should clearly go to this real Court of Momus, instead of throwing away their money on theatres ostensibly representing farces, which are often very serious performances. There is the difference between the Judicial Committee of the Privy Council and the minor theatres of burlesque or farce between the real and the sham pig.

By the will of the late Colonel Olney, who died in 1836, the sum of 8,000*l.* is given to the corporation of Gloucester on the death of his wife, upon the condition that the council should, within ten years after the testator's demise, provide a suitable site for building some almshouses. Of the principal sum of 8,000*l.*, 1,300*l.* is to be spent in the erection, and 100*l.* in furnishing, leaving the interest of 6,600*l.* to support the establishment. The providing of a site has lately engaged the attention of the council, and in order that the poor may not lose the benefit of the bequest, some of the members have offered to subscribe towards the purchase of land for the building. It is curious, however, that the weekly allowances to the number of inmates, clothing, &c. prescribed by the testator, exceed in amount the interest of the money, so that it will probably be necessary to apply to the Court of Chancery for a new appropriation. The case offers a serviceable hint to benevolent individuals, either to see their bounty laid out properly during their lifetime, or to leave their wealth unclogged by conditions which may swallow up the principal portion in litigation.

Statistics of Shipping.—The *National* says:—"The effective force of the French commercial shipping, in 1843, amounted to 13,656 vessels of all sizes, measuring in all 599,707 tons. In 1842 it was composed of 13,408 vessels, of 589,517 tons; and in 1841, of 13,383 vessels, of 592,266 tons. To exhibit the more clearly the weakness of this portion of our naval force, we subjoin a statement of the commercial shipping of England. In 1843, the number of trading vessels of all kinds registered in the ports of that country amounted to 23,024, of 2,956,927 tons, of

which 2,277,788 tons, for 17,473 vessels, belong to England; 481,670 tons, for 3,519 vessels to Scotland; and 198,460 tons, for 2,012 vessels, to Ireland. We ought to add, that in England, as in France, there exists a multitude of small vessels occupied in fishing, which are not included in the above calculation. In 1843, the number of such vessels in France amounted to 5,928, gauging only 41,401 tons, giving an average of about seven tons each."

To Readers and Correspondents.

A West-Riding Solicitor.—*We are greatly obliged by the communication forwarded to us, with the "Address, &c." inclosed therein. We may, hereafter, avail ourselves of the latter.*

A Subscriber (Christchurch).—*The abstract of the Statutes proposed for the Verulam Society's publications will receive consideration in due course.*

Errata.—*In the report of the appeal,* Perry v. Gugy, *in the Court of Privy Council, in our last week's impression, by an error of the printer, the word "Tutrix," the Canadian term for* guardian—*next friend* (tutor)—*is converted into "Testatrix,"* i.e. *a deceased woman who has made and left a will. By this error the appellant in the suit, "Francis Ermatinger, widow of the late Francis Perry, deceased, as tutrix to her minor children," is made to appear as a deceased woman, who, of course, cannot sue, and the report is, by a repetition of the error, made unintelligible. The words "Mr. Gugy" are also, by a similar error, in one or two places, printed as "Mrs. Gugy."*

A review of Mr. Sergeant Stephen's "New Commentaries on the Laws of England, from the text of Blackstone," is in type; but we have been compelled by press of matter, of more immediate interest, to postpone it.

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THE LAW TIMES.

SATURDAY, DECEMBER 21, 1844.

MR. BARON ALDERSON'S PROPOSAL.

Mr. Baron Alderson has availed himself of his charges to the grand juries of the Winter Assize upon the Western Circuit, to promulgate a scheme for which he exhibits a parental regard that proves it to be his own. Assuming the winter circuit to be a nuisance, and yet a necessary evil, according to existing arrangements of the legal year, he proposes to recast the terms and the assizes, so that the latter may be held twice in the year at equal, instead of, as now, at unequal periods. The learned Baron would hold one assize in January, and the other in July; postpone, or rather abolish Hilary Term, and extend Easter and Trinity Terms from March to the end of June, and lengthen Michaelmas Term, to Christmas.

But though this would remedy some of the evils, it would not meet them entirely. The prolongation of the assizes in each county, owing to increase of population, and consequent increase of business, leads to the conclusion that a third circuit will ere long be, if it be not already, unavoidable. As an amendment, therefore, it has been proposed that there should be three circuits in the year, for civil as well as criminal business, namely, in December, in April, and in August. The vacation to extend, as at present, from the close of the August circuit to the 2nd of November, and the Terms to be limited to three, occupying all the other intervals between the circuits.

This scheme has its advantages and disadvantages. Among the former, would be the facilitating of legal business, and probably the averting from the Profession the great degradation that threatens it in the shape of fifteen shilling local courts. The disadvantages lie in the inconvenience of three times incurring the expenses of circuit, and three times taking the Profession from their homes.

Again and again we repeat that the true remedy for Winter Circuits, small courts for breeding pettifoggers, Sheriffs' Courts, Quarter Sessions law, and Quarter Sessions justice, is to amend the existing Courts of Quarter Sessions by re-constituting them and enlarging their jurisdiction, giving to them the dignity of the superior courts with lawyer judges.

Thus, and thus only, can be attained all the objects sought by the change that is inevitable, and in no way could they be effected so easily, so certainly, with so little disturbance of existing arrangements, and so little of that change which in law is always to be deprecated, and which nothing but necessity will justify. When it is necessary, it should be done effectually, that it may be permanent.

THE CERTIFICATE DUTY.

A grievance was never yet redressed simply because it *was* a grievance: the aggrieved parties must complain, or nobody will believe them injured, and lustily too, or nobody will listen to them. Chancellors of the Exchequer are always afflicted with an official deafness and blindness. Like persons under the influence of mesmerism, their external senses are shut up; but their minds are wide awake; they are very *clairvoyants;* they can look into the future with wonderful accuracy, and prophesy the results of coming elections to a miracle. In this state they obey the will of the party that converges upon them the worst influences, and wrongs often denied are recognized in a moment, and redress long withheld conceded with a smile.

So will it be with the certificate duty. The Profession will have made but trifling progress toward their end, when they shall have done no more than exclaim in the Law Times, "What injustice! Right us, Mr. Goulburn!" Another step will be to petition Parliament, collectively and individually, as a Profession, as Law Societies, and each sending up his own prayer for relief from a wrong. But the goal is far distant yet, and there is a world of work to be endured in the winning of it. Petitions are somewhat out of favour now-a-days; they are no positive advantage, but their absence is always made the foundation of the argument so fallacious, but with a willing audience so effective, that the grievance cannot be great which excites no demand for redress.

Petitions, therefore, are *necessary*, but they must be followed by other operations more private and a thousand-fold more telling. Let petitions besiege the collective Parliament, but let the petitioners besiege the individual members of Parliament. Almost all the representatives of the people are dependent upon attorneys for their places. In their hands are lodged the fortunes of the election. Let them but be unanimous upon this matter of the certificate duty, and intimate the resolution of each, and all, to oppose any senator who should refuse to vote for the redress of their acknowledged grievances; and honourable members would straightway open their ears to argument; they would see and feel how harshly the Profession has been treated; virtuous indignation would fill their patriotic bosoms; speech would declare the lawyers' wrongs, and votes would redress them: Government will yield with an affectation of generosity to a power they dare not resist; the certificate duty will be abolished, and then the world will wonder how such an injustice was first inflicted, and by what philosophy it was so long endured.

We repeat that only by some such process as this can the repeal of the solicitors' Poll-Tax be carried. They have not numbers for a formal *agitation*, nor can they look for external aid or sympathy from a public only too glad to shift taxation from their own shoulders to any other class; and certainly not likely to be less selfish where the lawyers are the party concerned. They must look to themselves alone; and most true it is that "Heaven helps those who help themselves."

And to work well they must work with method; they have no surplus strength to throw away upon vain efforts; the forces scattered throughout the country must be concentrated, and applied in the most vulnerable quarters; for this there must be organization and subscription. The Law Societies throughout the country should forthwith appoint committees, and the Legal Association would be a central point from which instructions might be issued for simultaneous action, and its results directed to importuning the Government and going to the Parliament with humble petition, backed by stern resolutions to oppose any of its members who shall decline to do "Justice to the attorneys."

ADVERTISING ATTORNEYS.

A subscriber in Calcutta has sent us the following advertisement, taken from the *Friend of India*, a newspaper published at Serampore, bearing date July 4th, 1844.

We trust that Mr. Thomas Luxmoore Wilson, and such as may be inclined to follow his example, will learn from this that, even on the other side of the globe, professional malpractices will not pass undetected, and that they cannot hope to escape, even in those distant regions, exposure in the Law Times.

MR. THOMAS LUXMOORE WILSON, Solicitor and Conveyancer, No. 43, Bedford-row, Red Lion-square, London, begs to offer his services as Law Agent to the Profession and to residents in India generally, for the conduct of any legal proceedings in Great Britain in which they may be interested. Mr. Wilson's connections with India and with Indian authorities in England, with Dr. Horace Hayman Wilson in particular, give him peculiar advantages, which he engages to employ for the benefit of those who may honour him with their confidence. Reference may be made to Messrs. Colvin, Ainslie, Cowie, and Co.

We can assure colonial advertisers that there is not one of our colonies in which the Law Times is not read. They had better beware!

The following lithographed circular addressed to insolvents, was some time since exhibited in the Bankruptcy Court as the production of an attorney, who was then named, and whose name we possess, but which we are unwilling to publish until we can, beyond all question, prove it to be his. Perhaps some of our readers may be able to furnish us with that proof. If so, we shall be obliged by the communication.

Litera scripta manet.

TO INSOLVENTS and OTHERS.—An Attorney of many years' experience in Insolvent Matters, assisted by an able Accountant, offers his services to those who are involved. They are informed that by virtue of the Insolvent Debtors Act, 5 & 6 Victoria,

cap. 116, imprisonment for debt may be totally avoided by presenting a petition to the Court of Bankruptcy, which will protect them, and stay all process against the person. Apply to Mr. Henry Lee, No. 12, Cook's-row, Old Saint Pancras-road, where the parties will be satisfied of the advertiser's integrity; security for half the costs agreed upon taken, as well as reference given to those who in difficult circumstances have availed themselves of the advertiser's practice, on very reasonable terms.

N. B. Debts legally recovered at 10 per cent. and the parties guaranteed from all further liability. Leases, Assignments, Mortgages, Bills of Sale, &c. prepared on like moderate charges.

SHAM LAWYERS.

Here is another specimen of the doings of this noxious tribe:—

V. R.

LANCASTER CASTLE COURT OF REQUEST WARRANT.

Lancashire to wit. } You are hereby legally warned and apprised by her Majesty's Officer of the New Court of Request (an act passed in the fourth and fifth Vic.—Sess. 1841. For the more speedy recovery of Small Debts in England.) That Unless you immediately pay the whole of your debt into my hands, within THREE whole DAYS, from the date hereof, which you owe to Mr. Geo. Johnston, of Blackburn, in the county of Lancaster, and which you unjustly withold and for which complaint hath been duly made by the said Mr. Johnston to our Royal Court assembled.

Take NOTICE, unless the above be punctually complied with, or an arrangement instantly made, the Court Officers will be forthwith dispatched to your abode to apprehend your body, and seize upon your goods and chattels, and confine you in her Majesty's Gail, where you must remain the complainant's pleasure. Fail not at your peril as this warrant is final. Yours etc.

Given under my hand this 24 day of Octr. in the year of our Lord. 1844. } BENJ. MORTON, Clerk of the Court, 2, Syke-st. Blackburn.

	£	s.	d.
Amount of debt......	3	14	0
	£	s.	d.
Next expense will be .		13	4

To Mr. Rd. Bolton.

THE VERULAM SOCIETY.

Number V. of *Bittlestone and Symons's Magistrates' Cases*, containing a portion of the cases of last Term, and also the *second* number of *Practice Cases*, also containing the reports of the last Term, will be delivered in the course of the next week.

A circular, with a list of text-books, for whose immediate commencement the arrangements are made, provided they receive a sufficient number of orders to justify the expenditure, is now in the press, and will be forwarded to the members in a few days.

For the projected "*Collection of Practical Forms and Precedents*," we ask our readers to contribute such useful ones as they may possess, either in common law, conveyancing, or the general business of the office. Invaluable stores must be piled upon their shelves, and we trust that no person possessing a useful precedent will hesitate to extend the benefit of it to his professional brethren.

The following new members have joined the society during the last week:—

Hill, W. A. esq. Barrister-at-law, 3, Gray's-inn-square.
Stanton and Jones, Chorley.
Day, G. G. St. Ives, Hunts.
Woods, A. W. Epsom.
Brunton and Whiting, New Inn, Strand.
Blake, A. E. 24, Essex-street, Strand.
Davies, Thos., Builth.
Floyd and Booth, Huddersfield.

LAWS OF FRANCE.

No. IV.

TRIBUNAL DE COMMERCE DE LA SEINE.

Can a foreign tradesman take proceedings, either personally or through his agents, for the piracy of his name and marks against a French tradesman?

A decree of the Court of Cassation, which was inserted in the Law Times (vol. 4, p. 83), has lent an additional interest to this question.

The Tribunal de Commerce of Paris, placing natives and foreigners under the same generous protection, admitted the claims of foreigners to the exclusive use of their name, and, not taking into consideration the counterfeits of French names so often practised in England, proclaimed that true and faithful justice ought to be rendered to foreigners who placed themselves under the protection of the French laws, in order to claim and obtain the same protection for French citizens residing abroad.

This doctrine was adopted by the Cour Royale of Paris in the affair of the Macassar Oil.

But the Court of Cassation was less lenient to foreigners, and would only allow them the rights which are reciprocally granted to Frenchmen by the treaties with the nation to which these foreigners belong. And, since no special treaty exists between England and France authorizing a civil action in reparation for commercial damages caused by the reciprocal use of names, and that moreover a foreigner cannot transmit to an agent in France a right which he himself cannot exercise, the Court annulled the judgment given in favour of Bouveret, agent of Rowland and Son, English manufacturers of the Macassar Oil.

The question has now again presented itself in the affair of Sanders's buttons, which has already appeared before the courts.

The preliminary facts are as follows:—

MM. Sanders and Son, of Bromsgrove, England, are manufacturers of buttons, known by the name of Sanders's buttons, and they have established a depôt at MM. Trélon and Langlais Souër's, Paris.

M. Letailleur, merchant at Paris, imported buttons from English manufactories, and sold them in France with wrappers ornamented with the arms of England, and the English marks employed by Sanders and Son.

Summoned for this counterfeit by MM. Trélon and Langlais Souer, he was condemned by a first judgment given the 31st March, 1841, by the Tribunal de Commerce of Paris, to change his labels and to suppress the name of Sanders and Son.

M. Letailleur accordingly effaced from his sign the arms of England, and the condemned indications, but retained the denomination of Sanders's buttons.

In consequence, a fresh action was brought against him by MM. Trélon and Langlais Souër, and the Tribunal de Commerce gave another judgment on the 31st January, 1842, which, considering the name of Sanders has become generic, and that M. Letailleur can employ it by indicating at the same time his own name and direction, to prevent confusion, ordains that in future Letailleur shall add to the words *Sanders's buttons* the following: *at Letailleur's, rue Mauconseil, No. 18*, under penalty of 500f. for each proved counterfeit.

In virtue of this judgment, MM. Trélon and Langlais Souër have made several seizures at M. Letailleur's, and have found that 913 gross of buttons put up for sale without the addition prescribed by the Court, and have summoned M. Letailleur for the payment of 456,500f. damages, reckoning 500f. per gross.

The advocate of M. Letailleur, in replying to the plaintiff's counsel, said:—

"My adversary has ingeniously succeeded in sheltering his cause under the appearance of bad faith and persistance in a counterfeit already condemned by several judgments and decrees. But a few words will suffice to explain all. It is wished to consecrate in France a privilege benefiting foreigners; it is wished to impose upon us a monopoly which does not exist in England, where the name of Sanders and Son has become public property, and where all tradespeople publicly and ostensibly sell Sanders's buttons.

"And it is a complete ruin that is exacted. It is a sum of 456,500f. for I know not how many pretended counterfeits, at the rate of 500f. for each gross of buttons seized! While he was about it, I really see not why my adversary might not have discovered a fraud in each button, and demanded of us a thousand millions; perhaps more!

"It is true that in 1841 M. Letailleur was a merchant in Paris. It is also true that he was most anxious to struggle against English inroads, which injure our trade and respect nothing. Sanders invented in England, twenty-five years ago, a peculiar kind of button. He took out a patent for them, which expired long since, and now Sanders's buttons are manufactured everywhere, for the name of the inventor has attached itself to the goods. M. Letailleur has only done what English tradespeople do in England, and what every one has a right to do in France. He has taken the name of Sanders to apply it to the same kind of button manufactured by himself.

"MM. Trélon and Langlais did not interfere until this unlucky judgment in the Macassar Oil affair upset the ideas of all the world, and opened their eyes. The result was the judgments of which my adversary now avails himself. The name of Sanders and Son was the difficult point, and the last judgment authorises us to sell Sanders's buttons, adding that they are sold by us.

"We have submitted to this judgment; we have had bags made with our direction; but what is the consequence? Our buttons no longer find customers. We sell by wholesale to retail tradespeople, who would no longer buy our bags, because when the name of the manufacturer is found on the goods, purchasers buy them at the manufactory in preference to the retailer. Thus it is why the manufacturer's name is the retailer's secret.

"In consequence, therefore, of the judgment which prevented M. Letailleur selling his Sanders's buttons without adding his address, and of the impossibility of selling them with this address, M. Letailleur took the only alternative which remained for him. He has renounced the fabrication of Sanders's buttons, and since the month of July 1842 he has imported the buttons from the house of Somerville, London, with the bags manufactured in England and English labels. The Court shall be informed how these importations were effected.

* * * * *

"And, first, am I pleading against English or French tradespeople? The assignment was given me in the name of Sanders and Son, and of Trélon and Langlais Souër. In your pleading, the Englishmen have disappeared from the case, and you have appeared for Trélon and Langlais. We are French merchants, licensed; we form a society. True; but you sell English goods. Your warehouse has two compartments; in the one you sell French goods; in the other, English goods. France and England are separated by a partition. I respect your rights as French manufacturers, but as the representatives of Sanders and Son, as their agents, you have no right in France. An English tradesperson has not the right of action before our courts against a French tradesperson; and not having the right of action, he could not transmit to you a right he does not possess. I am perfectly aware of the unfavourable appearance the system I maintain may seem to wear at first sight; it would, undoubtedly, be better to respect a foreigner's property, but it could only be conditionally that he respected ours, according to the rules of reciprocity. But this reciprocity does not exist.

"At a period when noble and generous ideas reigned in France, the Constituent Assembly wished to grant to foreigners all the rights of property. The Assembly believed that its generosity would be imitated by foreign nations,—it had relied upon reciprocity, it had reckoned without the English. They came to France to claim the rights which were so liberally granted them, but refused to grant similar rights at home to foreigners. Then free and loyal competition became impossible with us. The Civil Code has restored the equilibrium by stating in Art 11 that the foreigner shall enjoy in France the same civil rights as those which are or shall be granted to Frenchmen by the treaties with the nation to which the foreigner may belong. The principle of reciprocity—the principle of supreme justice—has thus been re-established.

"France, more than any other country, complains of counterfeits. England imitates our productions, takes the name of our manufacturers, and copies their marks and labels to the extent that the imitation of foreign labels is a public and avowed trade in England. There is even a commercial house whose business it is to counterfeit foreign marks. The Court is requested to look at these prospectuses which I have to shew, drawn up by English merchants, who offer to the public the marks of all the manufacturers of Europe, and particularly of France. The names of all our most celebrated manufacturers are inserted; and if I appeal to the English authorities complaining of this usurpation,—if I apply to the laws of the country, saying, the name of a merchant is his principal and most precious property,—if I tell them that honour and integrity belong to all countries, I shall be unmercifully repulsed, I shall be expelled the Court because I am not an Englishman.

"If I am not listened to in England, an Englishman ought not to be listened to in France. Such are the true principles of reciprocity. If you wish to obtain international conventions which will allow property to be respected in all countries, do not shew yourselves foolishly generous, suffer the French trade to be at war with the English trade; it is the only way to arrive at reciprocity.

"Can our legislation protect the English? It is evident that it cannot. One single law might be appealed to; the law of the 22nd Germinal, year 11. But this law requires of the manufacturer the deposit of his mark in the capital to which his manufactory belongs,—and this is impossible for a foreigner.

"All the mischief has arisen from the judgment given in the Macassar oil affair. The situation of the

parties was the same; M. Bouveret, consignee of the goods of Rowland and Son, summoned several perfumers who manufactured and sold Macassar oil with the wrappers of Rowland and Son. The Court of Cassation, applying the true principle of reciprocity, annulled the decree of the Cour Royale, which had confirmed the judgment. The Court of Cassation founded its judgment upon Art. 11 of the Civil Code, and upon the principle that Rowland and Son had not been able to transmit to Bouveret rights which they did not themselves possess."

THE JUDGMENT.

"Inasmuch as the question is to ascertain if B. Sanders and Son, or their consignees, Trélon and Langlais, can validly bring an action in France to prohibit the conterfeit of the marks of B. Sanders and Son:

"Inasmuch as the name of Sanders has become the distinguishing sign of a kind of button, the manufacture of which has now become public; that the bags bearing the name of Sanders are publicly sold in England without any opposition on the part of Sanders and Son:

"That the wrapper of Letailleur and Robert is similar to that which circulates freely in England:

"That B. Sanders and Son, or their consignees, cannot therefore, in justice, prohibit the use of it in France:

"Inasmuch as, moreover, that B. Sanders and Son and Trélon and Langlais Souer have not the right to oppose the use of these marks:

"That in fact B. Sanders and Son are foreigners:

"That Trélon and Langlais Souer, in depositing at the register of the court these manufacturers' marks, after having added the initials of their own commercial house, have not been able to transform the foreign mark of Sanders and Son into the mark of a French manufactory, and thus in virtue of that *mark obtain the privileges of a French manufacturer*:

"That it is expedient, therefore, to apply the clauses of the law which refer to the property of foreign manufacturers' marks:

"Inasmuch as the laws of the 22nd Germinal, year 11, and of the 28th of July, 1824, grant to French manufacturers only the right of proceeding against the counterfeit of their marks before the French courts; that, according to Articles 11 and 13 of the Civil Code, a foreigner not domiciled in France only enjoys the civil rights granted to Frenchmen by the treaties with the nation to which he belongs:

"Inasmuch as B. Sanders and Son were not domiciled in France, that no treaty allows French manufacturers the right of proceeding against the counterfeit of their marks in England; that one cannot, therefore, without positively violating the law, admit to B. Sanders and Son, or to Trélon and Langlais Souër, their representatives, an action against the counterfeiters of Sanders's mark:

"That the severe application of these principles of the law does not insure impunity to fraud, since it is always in the power of the purchaser deceived upon the origin of the goods he buys, and of the public ministry, to proceed against the counterfeiter, in virtue of Art. 423 of the Penal Code, and to require the suppression of the fraud, and a reparation of the detriment occasioned by it:

"That accordingly, in equity and in right, Letailleur and Robert ought to be allowed to sell in France bags of buttons with a label bearing the name of Sanders, and similar to those they have produced in their suit:

"For these reasons, the Court

"Rejects the claims of Trélon and Langlais Souer against Letailleur, Laurent, and Alger;

"Does not admit their demands and conclusions;

"Condemns Trélon and Langlais Souer, and Sanders and Son to all the costs."

This trial was complicated with other questions, which we have omitted as being unconnected with the rights of foreigners. In this case, you may observe, the Tribunal de Commerce of Paris has adopted the opinion of the Court of Cassation, and if this is to become the recognized law in France, it would be most essential for the two governments to enter into a treaty for the purpose of reciprocally insuring to their subjects the property of their labels and marks.

N. Treitt,
Avocat à la Cour Royale.

Paris, Dec. 17, 1844.

LECTURES ON MEDICAL JURISPRUDENCE.

By Alfred S. Taylor.

Delivered at Guy's Hospital, 1844.

Lecture VI.

We have now to consider the processes for the induction of nitric acid. Cases of poisoning by nitric acid are very unfrequent, and it would appear from a table that has been drawn up, and to which I have before adverted, that there were only two cases of poisoning by this substance tried in England and Wales for the years 1837-8. Still it is sometimes employed for the purposes of murder, and other illegal objects; and therefore it is proper to consider the processes necessary for its induction. Either in the concentrated or the diluted state, nitric acid is very much used in commerce, and is sold under the name of aquafortis. With regard to its properties, it is of a red-yellowish colour, and gives off acid fumes; and it is highly acid, and gives a deep yellow colour to any organic substance with which it comes in contact. The best test for it is copper-cuttings, and when boiled with this metal there is almost instantaneously a violent reaction produced, the liquid acquires a greenish colour, and red fumes are given off. It is thus distinguished from sulphuric acid and muriatic acid, with which there is no such re-action. Tin will answer the purpose of detecting this acid; but it is also useful in another way, namely, it enables us to distinguish the very strong acid from the comparatively weak form of it. If you pour a small quantity of the ordinary nitric acid on some tin filings, in the course of a very short time there is a decided action, and red vapour is given off in very great abundance. This is a very useful test to enable us to distinguish the weak from the powerful acid, because we find that the most powerful acid does not so easily decompose the metal; and this is owing to its being so extremely strong as to require water to bring the acid freely into contact with the tin; therefore, by lowering its strength to the acid of commerce, the decomposition will ensue. We learn by this that the very strong acid is known by its having no effect upon tin, and this experiment *sufficiently shews us that it is really the nitric acid in the strong state*. Now, suppose we have before us the diluted nitric acid; the copper test entirely fails in general, but we may, however, get very slight reaction; the liquid will become blue from the partial decomposition, and on boiling it there will be faint red fumes given off. The first test to employ for the induction of diluted nitric acid, and perhaps one of the best, is the sulphate of indigo. It is found by experiment, that when nitric acid in the diluted state is coloured with sulphate of indigo, and boiled, the colour is discharged. This does not happen with muriatic acid, or with sulphuric acid; this, therefore, is a very useful test for distinguishing nitric acid from the other two acids; but it is not a very delicate one. Then we observe, further, with regard to this acid, that it should not be precipitated by the nitrate of barytes, or nitrate of silver. These are negative experiments, and shew us that we cannot mistake this acid for sulphuric acid or muriatic acid. Another character which distinguishes nitric acid is this; that it turns organic matters yellow. If you make a streak on a piece of white paper with diluted nitric acid, and a streak with diluted sulphuric acid, you will find on heating the paper that the nitric acid turns it yellow, and the sulphuric acid turns it black; in short, nitric acid does not possess the power of carbonizing organic matter at a low temperature, like sulphuric acid. This is a very important point to be attended to on the examination of articles of dress of a white colour, because sulphuric acid, even in the most diluted state, perfectly carbonizes the substance when the stuff on which it has fallen is gently heated; whilst nitric acid merely gives to it a yellowish tinge. The tests for diluted nitric acid are not very conclusive; but the best way to test it, when in very small quantities, is to convert it to nitrate of potash. This is done easily by taking a small quantity of diluted nitric acid, and adding to it a solution of carbonate of potash. In this way you get the nitric acid fixed in the state of nitre, or nitrate of potash, and in this state you may test it by dipping a piece of paper in the liquid and drying it, when you will find on ignition that it burns with deflagration. Further, if we add a small quantity of muriatic acid, and a small portion of gold leaf to the solution, and boil it, the gold will be dissolved. This is a strong proof of the presence of nitric acid. If you take some of the nitrate in the pure condition, and add to this a few particles of gold leaf and boil the liquid, there will be no effect; but if, on its boiling, you add a small quantity of muriatic acid the gold leaf will be instantly dissolved. The liquid acquires a slight yellow colour, and that is the clearest proof that there is some nitrate present. In order to find out whether any portion of gold has been dissolved, we may add a little protochloride of tin to it. Another very beautiful method of detecting a nitrate, or nitric acid, is by decomposing it through the medium of metallic copper and sulphuric acid. By evaporating the solution of nitrate of potash we obtain crystals, which are known to be those of nitric from their prismatic character; if these crystals be broken up, and put into a tube with a few copper turnings, a few drops of distilled water, and strong sulphuric acid, the nitric acid is set free by the action of the sulphuric acid; and as soon as the nitric acid comes in contact with the copper, the red fumes of nitrous acid are evolved; and this furnishes us with a very good proof that nitric acid is present. The fiftieth or the sixtieth part of a grain of nitre may thus be detected in a small tube. Other tests for the nitric acid in nitre have been proposed, and among them that of adding sulphuric acid to a mixture of morphia and the salt; but this is an uncertain test. Another test adopted by Orifila is the sulphate of narcotine; but it is inferior to the experiment with copper and sulphuric acid. We must now consider the method of analysis for nitric acid, when mixed with *organic liquids*: for instance the contents of the stomach. We shall generally find it in all the corroded parts of the œsophagus and the stomach, and the appearances presented under these circumstances is very characteristic. But let us suppose that we do not find any nitric acid in the contents of the stomach; we should then cut off portions of the corroded stomach, and operate upon them. I ought to observe, that in those cases where the stomach is perforated the liquids will be found in the pelvis, where we must look for them; and, in a case of this kind, the cause of the liquids being there found is obviously due to the position of the body. Now, suppose we have to assist, by a chemical analysis, in the investigation of an attempt made to administer this poison to a person, the point for our consideration will be—How are we to detect it? You must first try whether the substance presented to us for analysis possesses any acid reaction; if you find it does, then, supposing it to be nitric acid, you convert it into nitrate of potash, and evaporate the liquid to crystallization. Should there be any difficulty in getting rid of the organic matter, you must digest the crystals in alcohol, and then you get it in the pure state. Nevertheless, a small quantity of organic matter does not interfere with the demonstration of its presence. It is not our object to get all the nitre, and if from five drops of the liquid we can prove nitric acid to be present, that is all which is commonly required. It is, however, difficult to detect it in very small quantities in organic liquids. Nitric acid may be thrown on the person, and in this way it is very injurious. For the detection of the acid in such cases, it may be necessary to test the clothes or the skin of the person on whom it has been maliciously thrown. Nitric acid, when poured on black cloth, produces a yellow tinge, which remains; in this respect it differs from sulphuric acid and muriatic acid, which produce red stains. Nitric acid, being volatile, very soon passes off, and the cloth dries to a greenish brown colour. In order to find out whether nitric acid be present or not, we should take a portion of the cloth, that part most deeply coloured, and introduce it into a test-tube with water; but if the stains disappear, which they commonly do, after six or eight weeks, it will be impossible to detect the presence of the acid, more especially if there has been any washing. But, supposing the stains to be recent, we then place a portion of the cloth stained in a test-tube, in a small quantity of warm distilled water; the acid will then be extracted, and the liquid will present most of the characters that belong to nitric acid in a very diluted state. It may be tested in the usual way, by sulphate of indigo, or gold leaf. In order to determine the quantity present in organic mixtures, it is necessary to convert the nitric acid contained in a measured quantity of the liquid to nitre, which is then to be converted to sulphate of potash, and dried and weighed; then calcine the residue, and for every one hundred grains of dry sulphate of potash we may estimate that there were present in the measured quantity of the liquid eighty-two grains of nitric acid.

With regard to muriatic acid it is not commonly used for the purpose of poisoning. In 1837-8, there were no cases of poisoning by this acid, and for a period of thirteen years there appear accounts of only three cases of poisoning by it in this metropolis. The commercial acid is of a yellow or lemon greenish colour, and is commonly called spirits of salt. It is not commonly so concentrated as to possess the property of fuming in the air, a

property which, of course, depends on the strength of the acid, and therefore its presence is very uncertain. It is highly acid, and tinges organic substances of a yellow colour, and corrodes them. With regard to the test for it, the best is to boil it with black oxide of manganese, and then chlorine is given off, which, by its colour, odour, and bleaching properties on vegetable colours, is easily distinguished. This acid may be tested in another way; *e. g.* if it be moderately pure, it may be boiled entirely away on mercury without being affected by the metal. Another test also is this, that when mixed with nitric acid it dissolves gold leaf. This acid may be found in the diluted state, and in this state we do not get any chlorine by boiling it with oxide of manganese. There is only one test required for it in the diluted state, and that is nitrate of silver, which gives a dense white precipitate with a very small quantity of the muriatic acid. The diluted muriatic acid possesses the property of being insoluble in strong nitric acid. Oxalic and prussic acid also give white precipitates with nitrate of silver, and in this respect they resemble the muriatic.

This precipitate is also soluble in ammonia, in which respect it differs from that formed by iodic acid, which also gives a dense white precipitate with nitrate of silver. Another property which chloride of silver possesses is, that when heated on platina or glass it melts like a resin, but it is not volatile. The precipitate found by prussic acid (cyanide of silver) is known by its giving out cyanogen when heated. Again, if we mix acetic, tartaric, or citric acid with common salt we have the same precipitate as that produced by muriatic acid only, and the presence of some free acid might lead to difficulty. When a suspicion of this kind arises, the difficulty thus created may easily be removed by evaporation; if we take equal portions of the acid liquid, and precipitate one portion entirely by nitrate of silver, and then evaporate the other portion to dryness, dissolving the dry salt in water, and precipitating the solution entirely by the same test, if there be no free muriatic present the precipitated chloride will have the same weight in the two cases; but if there be free muriatic acid present in the liquid, then the precipitate obtained in the former case, *i. e.* before evaporation, will exceed in weight that obtained in the latter.

With regard to the detection of muriatic acid in organic liquids, there are two processes; one is by distillation, and the other by the conversion of the acid contained in the liquid into a fixed salt. Most organic liquids give a precipitate with nitrate of silver, whether muriatic acid be present or not. This is owing, either to the presence of soluble chlorides (salt) in most organic liquids, or to oxide of silver being itself precipitated by certain organic principles. It must be remembered that muriatic acid is very volatile, and in analysing the contents of the stomach, if they be clear, then we may have a very clear solution. In giving evidence upon the presence of muriatic acid in the contents of the stomach, in a supposed case of poisoning by it, a medical witness may be asked whether the natural secretions of the stomach do not owe their acidity to the presence of free muriatic acid? It is true the muriatic acid exists in the gastric juice in the stomachs of all animals, though the quantity is very small, not exceeding the 1,000th-part by weight, or five grains in sixteen ounces. This would suffice to give only a very feeble acidity, and whether we get the effect looked for will depend on some greater portions of free muriatic acid in the solution. If common salt is present, muriatic acid will come over by distillation. If the acid is employed for the purpose of poisoning, there will be evidence of its action on the œsophagus, the throat, and the alimentary canal, and therefore it is from an examination of the body, and noticing the *post mortem* changes, which are produced, that a medical jurist must form an opinion. There is one remarkable fact, that seems to set aside this examination; that muriatic acid has never yet been detected in the body in the few cases of poisoning by it, which are recorded. The reason of this is, that the whole, or the greater part, of the acid may have been rendered neutral by the antidotal treatment. Nevertheless it is an acid which is very easily separated and detected, as for example, by neutralizing it by carbonate of soda,—converting it to chloride of sodium, and then testing it in the usual way. In order to ascertain the quantity of poison present, the best way is to precipitate a measured quantity of the liquid by nitrate of silver, then boil the chloride of silver in strong nitric acid, and from the weight of the precipitate it is easy to calculate the quantity of acid that must have been present. For every 100 grains the dry chloride of silver represents, we may allow sixty-nine grains of liquid muriatic acid.

Muriatic acid is sometimes thrown upon articles of clothing, and also upon the persons of individuals. When thrown upon cloth it produces a red colour, which becomes a bright red in the course of an hour, and in four or five days it turns to a deep red brown. It is easy to detect muriatic acid thrown upon articles of clothing soon after its action has commenced. If that portion of the dress on which the stain appears be digested in warm water, a highly acid liquid may be obtained on filtration, which will yield with nitrate of silver or white precipitate, possessing all the properties of chloride of silver. As muriatic acid is a very volatile acid, there cannot be much hope of detecting it, supposing four or five weeks to have elapsed, as by the end of that time it commonly disappears.

Mineral acids are taken sometimes in a compound or mixed state; as, for example, nitric muriatic acid, or *aqua regia*. This acid is of a deep yellow, or red colour, and is intensely acid. It is known from either of the two acids, of which it is composed, by its immediately dissolving leaf-gold, by the aid of a gentle heat. It also discolours indigo; and by boiling evolves chlorine gas. Another liquid which sometimes has caused death is nitro-sulphuric acid, or, as it is called, *aqua regina*. There is only one case of death caused by this compound recorded. It was that of a young man who swallowed a mixture containing one ounce of nitric acid and two drachmas of sulphuric acid. It was attended with the usual symptoms, and he died in eight hours. The two acids may be separated by carbonate of barytes. The nitric acid may be detected in that portion of the salt which is dissolved while the sulphuric acid may be detected in the insoluble precipitate of sulphate of barytes formed. The process is the same as that already described in speaking of the analysis of sulphuric acid.

THE CRITIC.

New Books.

Best on Presumptions of Law and Fact.

(*Continued from page* 139.)

Antecedent preparations and previous attempts, and the presumptions thence arising, are next considered. Some curious instances of this are recorded.

Of all species of preparations, those which are resorted to for the purpose of averting suspicion require the most particular notice. A remarkable instance is presented in the case of Richard Patch, who was convicted and executed in 1806, for the murder of his patron and friend Isaac Blight. The prisoner and deceased lived in the same house, and the latter was one evening shot while sitting in his parlour, by a pistol from an unseen hand. A strong and well-connected chain of circumstantial evidence fixed Patch as the murderer, in the course of which it appeared, that, a few evenings before that on which the murder was committed, and while the deceased was away from home, a loaded gun or pistol had been discharged into the same room. This shot the prisoner represented at the time as fired at him; but there were strong grounds for believing that it must have been done by himself, in order to avert suspicion and induce the deceased and his servants to suppose that assassins were prowling about the building. (a) It has been remarked, that murderers, especially in the lower walks of life, are frequently found busy for some time previous to the act, in throwing out dark hints, spreading rumours, or uttering prophecies relative to the impending fate of their intended victims (*b*). As, for instance, a man meditating the murder of his wife was heard to say, "My wife is a queer body; I should not be at all surprised if she were to take herself off some fine morning." In the case of Susannah Holroyd, who was convicted at the Lancaster Assizes of 1816, for the murder of her husband, her son, and the child of another person; about a month before committing the crime the prisoner told the mother of the child that she had had her fortune read, and that within six weeks three funerals would go from her door, namely, that of her husband, her son, and of the child of the person whom she was then addressing. (*c*) So, where the death of a young man of fortune was resolved on, the mind of the neighbourhood was prepared for the event by reports that his health was rendered desperate by his own imprudence, which was daily accumulating causes upon causes to accelerate his end. (*d*)

As to the presumption arising from declarations of intention and threats, they must be subject to the following doubts. Words may be misunderstood or misremembered; or uttered through bravado; or by the agency of a third party.

The presumption of guilt from silence under accusation, evasive or false answers, and suppression of evidence are very slight, and so are those proceeding from attempts to evade justice. Indications of fear and consciousness on the part of the accused are of still less value.

Mr. Best then reviews with masterly ability the entire subject of confessions, pointing out both the law and the *rationale* of that dangerous species of proof.

In conclusion, the author adverts to some practical defects in the administration of justice where the evidence is of a presumptive nature.

First, he considers that too much weight is attached to a supposed power on the part of the accused of explaining circumstances, forgetful that he cannot be a witness for himself, and he is commonly too poor to pay other witnesses.

Secondly, he thinks that the rule that forbids a man to criminate himself has been carried too far.

Thirdly, witnesses to character are too indulgently treated.

Fourthly, the public press often exercises a most mischievous influence, and in the following remarks we cordially agree with him.

But the pure administration of justice does not depend wholly on the practice of tribunals—its stream, and even its source, may be poisoned by malpractices as well as by mistaken notions elsewhere. Among the former of these, it will only be necessary to notice one of the most formidable, namely, misconduct in the public press. When facts have come to light, indicating the commission of some offence peculiar or atrocious in its character, the press of this country has too often forgotten the honourable position it ought to occupy, and the fearful responsibility consequent on the abuse of its power. Under a horror, real or affected, of the *crime*, but more probably with the view of pandering to excited curiosity and morbid feelings in the public, a course is taken calculated to deprive the unfortunate person suspected of all chance of a fair trial. For weeks or months previous to it, his conduct and character are made the continual subject of discussion in the public prints, and, through their influence, everywhere else. Circumstantial descriptions of the mode in which the crime was committed, and in some cases actual delineations of it, with the accused represented in the very act,—elaborate histories of his past life, in which he is frequently spoken of as guilty of crimes innumerable,—minute accounts of his conduct in the retirement of his cell, and when under examination,—and, lastly, expressions of rage and wonder that he has had the audacity not to confess his guilt, are daily and hourly poured forth. In one case, matters were carried so far, that, while certain parties were awaiting their trial for murder, the whole scene of the murder, of which, of course, they were assumed to be the perpetrators, was *dramatized*, and represented on the stage to a metropolitan audience.(*e*) The necessary consequence is, that a firm belief of the guilt of the accused is silently and imperceptibly worked into the minds of the better portion of society, while those of the rest are inflamed to the highest pitch of excitement and exasperation against him. In the midst of all this he is brought to trial, which, under such circumstances, can be little better than a mockery. The judge and jury who sit in judgment on such a man are not looked on, perhaps even by themselves, as individuals chosen to investigate calmly the guilt or innocence of the accused—they are rather expected to be the formal registrars of a verdict of guilty, already unjustly and

(*a*) Trial of Richard Patch, for the murder of Isaac Blight, London, 1806.

(*b*) 1 Stark. Ev. 566, 3rd ed.; Wills. Cir. Ev. 111.

(*c*) Wills. Cir. Ev. 111, 112.

(*d*) 3 Benth. Jud. Ev. 65, 66.

(*e*) Trial of John Thurtell and Joseph Hunt for the murder of William Weare, London, 1824. Weare was murdered on the 17th October, 1823; the play was represented at the Surrey Theatre on the 17th November in the same year; and Thurtell and Hunt were tried on the 7th January, 1824. It also appeared that, before the trial, prints delineating the murder were published in the newspapers. Notwithstanding that all this, with many other circumstances equally unjust and disgusting, were brought before the judge of assize by affidavit, an application to postpone the trial until the next assizes was refused. A more just course was taken by Parke, and Alderson, B B. in the recent case of *R. v. Archibald Bolam* (2 M. & Rob. 192), who was indicted at the Spring Assizes of 1839 for the murder of John Millie. These learned judges then made the precedent (well deserving imitation) of postponing the trial until the next assizes, on an affidavit made by the prisoner's attorney, that the prejudice and excitement raised against the prisoner, chiefly by the local newspapers, was so strong, that an impartial trial could not reasonably be expected. This conduct was the more creditable, as few cases have presented a more mysterious aspect, or required more careful consideration than that of Bolam. He was afterwards found guilty of manslaughter.

iniquitously given against him by society, before he was heard in his defence.

We now take leave of Mr. Best with great respect for the legal and logical acumen which he has exhibited in this treatise. He has proved himself one of the very few *scientific* lawyers our age can boast.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

MARRIAGES.

Bignold, Rev. Frederic, second son of Samuel Bignold, esq. of Surrey-street, Norwich, to Jane Maria, youngest daughter of Henry D'Esterre Emsworth, esq. of Shropham-hall, on Thursday last, at Shropham, in the county of Norfolk.

Belt, William Charles, of the Middle Temple, barrister-at-law, to Penelope Avice Anne, eldest daughter of Humphry William Woolrych, esq. of Croxley-house, Herts, on the 18th inst. at Rickmansworth, Herts.

Girdlestone, Horatio, esq. of Hanley, Staffordshire, great nephew of the late Viscount Nelson, to Ellen Catherine, youngest daughter of the late Sir William Bolton, Captain, R.N. on the 12th inst. at Burnham, Norfolk.

Robins, Mr. T. F. of Tokenhouse-yard, solicitor, to Mary Elizabeth, daughter of William Trewheela, esq. of Stoke Newington, on the 12th inst. at Rotherham.

DEATHS.

Kiernan, James, esq. of Doctors'-commons, and late of South Lambeth, on Thursday, the 12th inst. aged 87.

Norreys, Robert Josias Jackson, esq. one of her Majesty's justices of the peace, and a deputy-lieutenant for the county of Lancaster, at Davy Hulme Hall, on the 13th inst. aged 61.

Quayle, Thomas, esq. bencher of the Middle Temple, and lately chairman of sessions for the western division of the above county, at Barton-mere, in the county of Suffolk, aged 85.

Stuart, A. Burnett, esq. of the Inner Temple, at Torquay, on the 11th inst. aged 26.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Andrews, T. B. tea dealer, first, 3s. 6d. Fraser, Manchester. — *Appleyard*, S. stuff merchant, first and final, 3s. 1½d. Pott, Manchester.—*Austin*, E. V. apothecary, first, 7d. Follett, London.—*Bail*, J. cabinet maker, first, 6s. 8d. Green, London.—*Ball*, J. tailor, first, 9d. Green, London. —*Barham*, R. draper, first, 2s. 6d. Follett, London.—*Buseley*, D. cheesemonger, third, 1s. Follett, London.—*Bates*, W. H. factor, first, 3s. 3d. Christie, Birmingham.—*Cadbury*, J. cheesemonger, final, 1s. 4½d. Green, London. —*Cockburn*, J. merchant, final, 1s. 0½d. Turquand, London.—*Curtis*, T. shipping butcher, first and final, 1s. 8d. Green, London.—*Dunphy*, J. victualler, first, 4s. 3d. Green, London.—*Else* and *Dixon*, millers, first joint, 3s. first and final sep. of Else, 12s. 6d. Hope, Leeds.—*Forth*, J. hatter, first, 2s. Bittleston, Birmingham.—*Forster*, J. G. tailor, first, 1s. Green, London.—*Fothergill*, J. sen. apothecary, first, 3s. 3d. Hope, Leeds.—*Hammond*, G. sen. brewer, first, 1s. 6d. Green, London. — *Jenkins*, J. currier, first, 4s. 6d. Whitmore, London. —*Ludd* and *Fenner*, merchants, 4d. Follett, London. — *Milner*, J. engine manufacturer, second, 1s. 6d. Follett, London.—*Phillips*, S. carpet warehouseman, 10d. Follett, London.—*Ogden*, A. sizer, first, 5s. 9d. Pott, Manchester.—*Senior*, J. fancy cloth manufacturer, second, 2d, first, 3s. 11d. to new proofs. Fearne, Leeds.—*Smith*, W. B. surgeon, first, 6s. 1½d. Whitmore, London. —*Tansley*, P. straw plait dealer, first, 2s. 0¾d. Whitmore London.—*Thomas*, D. merchant, second, 4½d. Pott, Manchester. — *Tucker*, J. shipowner, first, 6s. 8d. Green, London.—*Webb*, W. hotel keeper, 7s. 6d. to new proofs. Bittleston, Birmingham.—*Williams* and *Co.* drapers, first, 4s. 1d. to new proofs. Cazenove, Liverpool.—*Wood*, H. woollen factor, first, 2s. Whitmore, London.—*Wood*, J. F. surgeon, first, 2s. 6d. Follett, London.—*Yeardley* and *Co.* flax spinners, first, 3s. 9d. Fearne, Leeds.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Dec. 13

Andrews, G. music master, Bridgwater, Nov. 8. Trusts. F. W. Collard, jun. pianoforte manufacturer, Cheapside, and D. W. Phillips, draper, Bridgwater. Sols. Paramore and Copp, Bridgwater.—*Ballance*, T. victualler, Ratcliffe-highway, Dec. 9. Trust. R. Hanbury, brewer, Brick-lane, Christchurch. Sols. Parnell and Tanqueray, New Broad-st. —*Clark*, H. builder, Holbeach, Nov. 25. Trusts. G. Prest, merchant, Sutton-bridge, and J. Townsend, merchant. Sols. Johnson and Co. Holbeach.—*Daw*, J. draper, Sidney-pl. Commercial-road, East, Nov. 29. Trusts. W. Hitchcock and J. W. Barnet, warehousemen, Wood-st. Cheapside. Sol. Messrs. Sole, Aldermanbury.—*Groom*, G. wheelwright and smith, Ivinghoe, Bucks, Dec. 5. Trusts. J. Hawkins, farmer, Pitstone, and W. Manley, jun. grocer, Leighton Buzzard. Sols. Messrs. Smith and Grover, Hemel Hempstead.

Gazette, Dec. 17.

Craig, J. draper, St. Thomas the Apostle, Devonshire, Dec. 11. Trusts. J. Clark, tea dealer, and T. Hex, both of St. Thomas the Apostle. Sol. Fryer, St. Thomas the Apostle.—*Edman*, J. F. T. miller and baker, Lincoln, Dec. 11. Trusts. W. Winn, manager of the Lincoln and Lindsey Banking Company, and W. Rudgard, merchant, both of Lincoln. Sols. Mason and Andrew, Lincoln.—*Hall*, W. and *Twigg*, J. hatters and furriers, Northampton, Dec. 2. Trust. J. Macquire, auctioneer, Northampton.—*Nicholson*, P. draper, Southampton, Dec. 15. Trusts. J. Dignam, warehouseman, Watling-st. and C. Rogers, draper, Southampton. Sols. Sharpe and Harrison, Southampton.—*Pardon*, W. printer, Bolt-court, Fleet-st. Oct. 24. Trust. H. Mayo, broker, Mincing-lane. Sol. Hudson, Old Jewry.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Dec. 13.

Attwater, William, dyer and scourer, 34, Devonshire-st. Queen-st. Middlesex, Dec. 19, at twelve, Jan. 28, at eleven, Basinghall-st. Com. Fonblanque; Fletcher, off. ass.; Whitaker, Furnival's-inn, sol. Date of fiat, Dec, 6. Bankrupt's own pet.

Bentley, Henry, commission and forwarding agent, Liverpool, Lancashire, Dec. 20 and Jan. 28, at eleven, Liverpool, Com. Ludlow; Turner, off. ass.; Oliver, Old Jewry, and Evans, Liverpool, sols. Date of fiat, Dec. 7. Bankrupt's own pet.

Beresford, Thomas, boat owner and carrier by water, Lincoln, Dec. 24, Jan. 14, at eleven, Leeds, Com. West; Fearne, off. ass.; Galsworthy and Co. Cook's-ct. and Payne and Co. Leeds, sols. Date of fiat, Nov. 14. T. Dunston, Torksey, Lincolnshire, boatwright, pet. cr.

Creigh, Benjamin and Thomas Russell, cartwrights, Newcastle-upon-Tyne, Dec. 19, at half-past twelve, and Feb. 3, at two, Newcastle, Com. Ellison; Baker, off. ass.; Gibson, Newcastle, and Maples and Co Frederick's-pl. sols. Date of fiat, Dec. 2. J. L. Neil, timber merchant, Newcastle-upon-Tyne, pet. cr.

Forster, John, cloth manufacturer, Armley, Leeds, Yorkshire, Dec. 24 and Jan. 21, at eleven, Leeds, Com. West; Fearne, off. ass.; Smith, Leeds, and Wiglesworth and Co. Gray's-Inn-sq. sols. Date of fiat, Dec. 3. R. Dorrington, cloth manufacturer, Leeds, pet. cr.

Francis, Absalom, ironfounder, Halkin, Flintshire, Dec. 3 and Jan. 22, at twelve, Liverpool, Com. Phillips; Morgan, off. ass.; Milne and Co. Temple, and Roberts and Son, Mold, sols. Date of fiat, Dec. 6. E. Oakeley, ironmaster, Mold, pet. cr.

Harrold, George, merchant, Birmingham, Dec. 24 and Jan. 21, at half-past ten, Birmingham, Valpy, off. ass.; Messrs. Ryland, Birmingham, sols. Date of fiat, Dec. 7. F., W. and A. Harrold, merchants, Birmingham, pet. crs.

Libbis, Samuel, innkeeper, Stratton St. Mary, Norfolk, Dec. 24, at half-past one, Jan. 21, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Abbott, Rolls-yard, Chancery-lane, and Day, Norwich, sols. Date of fiat, Dec. 6. W. Pulley, attorney, Norwich, pet. cr.

Parsons, Samuel, paper hanger, Manchester, Dec. 24 and Jan 21, at eleven, Manchester, Fraser, off. ass.; Edge and Parker, Manchester, and Mawe New Bridge-st. sols. Date of fiat, Dec. 6. W. M'Clary Lightfoot, paper stainer, 5, Charles-st. Westbourne-ter. Middlesex, pet. cr.

Sneezum, Charles, licensed victualler, 51, Wynyatt-st. Clerkenwell, and Beckford's Head public-house, Old-st. Saint Luke's, Dec. 20, at twelve, Jan. 24, at one, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Buchanan and Grainger, Basinghall-st. sols. Date of fiat, Dec. 12. Bankrupt's own petition.

Stockley, Richard, upholsterer, cabinet maker and paper hanger, Ramsgate, Dec. 23, at twelve, Jan. 22, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Llewellen, Cook's-court, sol. Date of fiat, Dec. 10. Bankrupt's own petition.

Gazette, Dec. 17.

Balne, Humphrey Charles, grocer, Poole, Jan 4 and Feb. 4, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Shaw, Furnival's-inn, sol. Date of fiat, Dec. 7. H. Mayor and T. Skinner, hop and oil merchants, Upper Thames-st. and W. Panton and T. Turner, brush manufacturers, Smithfield, pet. crs.

Blockley, Richard, linen draper, Crewe, Cheshire, carrying on business there in copartnership with Isaac Booth, also carrying on business as a draper, on his own account, at Market Drayton, Salop, as a trader jointly and together with his said partner, Isaac Booth, Jan. 3 and 23, at twelve, Manchester; Pott, off. ass.; Makinson and Sanders, Temple, and Atkinson and Saunders, Manchester, sols. Date of fiat, Dec. 9. W. Bowdler and S. and J. Watts merchants, Manchester, pet. crs.

Fothergill, Francis, and M'Innes, James, lamp black, coal tar, and ammonia manufacturers, Bell's-close, near Scottswood, Northumberland, Jan. 7, at half-past two, Feb. 11, at two, Newcastle, Com. Ellison; Wakley, off. ass.; Chisholme and Co Lincoln's-inn-fields, Harle and Kent, Newcastle, sols. Date of fiat, Dec. 10. J. Brown, cooper, Newcastle-upon-Tyne, pet. cr.

Peach, Samuel, grocer, Nottingham, Jan. 6, at eleven, Jan. 28, at one, Birmingham; Christie, off. ass.; Maples, Nottingham, and Motteram, Birmingham, sols. Date of fiat, Dec. 11. W. Wright, tobacconist, and H. Millward, tallow chandler, both of Nottingham, pet. crs.

Thorley, James, glass and chinaman, Abingdon-street, Northampton, Dec. 31, at half-past twelve, Jan. 24, at half-past eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Smith and Taylor, Basinghall-st. sols. Date of fiat, Dec. 7. J. Green, Etna Glass-works, Birmingham, pet. cr.

Watson, Leonard, smith and ironmonger, Rickmansworth, Hertfordshire, Dec. 23, at two, Jan. 28, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Walters, Basinghall-st. sol. Date of fiat, Dec. 13. T. Constable and D. Green, ironmongers, King William-street, pet. crs.

Worth, William Alfred, victualler, Cock and Crown, Hampstead, Jan. 2, at half-past eleven, Feb. 18, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Pyke, Lincoln's-inn-fields, sol. Date of fiat, Dec. 12. C. A. Young and A. F. Bainbridge, brewers, Wandsworth, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Dec. 10.

Attwood, R. and *Hewitt*, J. W. attorneys, Fareham, Dec. 1.—*Booth*, I. and *Blockley*, R. mercers and drapers, Monks Coppenhall, Nov. 28.—*Booth*, T. and *Hornby*, R. drapers, Blackburn, Dec. 2. Debts paid by Booth.—*Bowman*, R. and *Knight*, W. jun. Manchester, June 14.—*Cawley*, E. and J. cabinet makers, Lambeth-ter. Lambeth-rd. Dec. 2. —*Collisson*, W. *Trimmer*, E. and *Tolley*, C. brewers, Worcester, Dec. 3.—*Conway*, T. and *Marden*, J. drapers, Beaminster, Nov. 12. Debts paid by Conway.—*Forrest*, H. R. and *Garty*, F. B. merchants, Mitre-chambers, Fenchurch-st. Dec. 9.—*Hargreaves*, H. and *Gill*, R. M. printers, Blackburn, Dec. 6. Debts paid by Gill.—*Hill*, J. and *Topham*, G. jun. manufacturing chemists, Chester, Dec. 6.—*Iona*, T. and *Leybourne*, T. curriers, Newcastle, Dec. 2.—*Linsley*, J. jun. and *Fatherley*, M. and H. farmers, Washington, Durham, Dec. 3.—*May*, A. and *Stewart*, H. smiths, High Holborn, Dec. 9. Debts paid by Stewart.—*Pausey*, F. *King*, J. and *Ridley*, H. ink manufacturers, Ipswich, Nov. 6.—*Rankin*, R. L. and *Gleave*, J. manufacturing chemists, Northwich, Dec. 30.—*Stanfield*, J. and *Palmer*, J. booksellers, Wakefield, Dec. 30. Debts paid by Stanfield.—*Tillett*, G. and W. quarrymen, Winterborne and Frampton Cotterill. Dec. 7.—*Woolley*, S. and *Bell*, W. N. merchants, Liverpool and Smyrna. Dec. 7.

Gazette, Dec. 13.

Barker, D. and *Cotton*, W. corn dealers, Dorset-place, Pall-mall East, King-st. Westminster, and Savoy-st, Strand, Dec. 11. Debts paid by D. Barker.—*Beaumont*, S. *Kennedy*, F. and *Binks*, W. stock brokers, Bradford, Dec. 10.—*Brooking*, B. and *Bate*, H. surgeons, Bow-st. Dec. 7. Debts paid by Brooking.—*Cartwright*, J. (deceased), *Appleton*, T. and *Cort*, P. bleachers, Turton and Bradshaw, so far as regards J. Cartwright, June 30. Debts paid by Appleton and Cort.—*Childs*, R. and *Baker*, J. tailors, Queen Anne-st. Sept. 29.—*Dangar*, R. C. *Bowden*, H. and *Marshall*, N. porter merchants, Plymouth, so far as regards R. C. Dangar, Nov. 21.—*Gale*, S. and H. Judd-place West, St. Pancras, Dec. 12.—*Garrett*, H. J. and *Walter*, F. B. eating-house keepers, Shoe-lane, Dec. 9.—*Gledhill*, R. *Scott*, J. W. and *Halliday*, J. coal merchants, Adwalton, Dec. 9.—*Gould*, W. and *Nichols*, F. W. carriers, Blandford Forum and Dorchester, Aug. 30.—*Harrison*, T. and *East*, G. glass manufacturers, Birmingham, Dec. 12. Debts paid by Harrison. —*Jackson*, W. W. and *Smith*, J. dealers in waterproof fabrics, Manchester, Dec. 10.—*King*, S. and *Tuck*, J. ironmongers, Bath, Dec. 7. Debts paid by Tuck.—*Lewis*, A., E. and M. milliners, Cardigan, Dec. 4. Debts paid by A., E. and E. Lewis.—*Millard*, J. and *Dowding*, G. maltsters, Old Sodbury, Sept. 29.—*Stirling*, W. and W. and *Beckton*, J. (deceased) cotton spinners, Manchester, Oct. 5. Debts paid by Messrs. Stirling.—*Tydeman*, W. and *Morgan*, J. coal merchants, Chelmsford, Nov. 29. *Underwood*, L. and *Hall*, W. fishmongers, Adam-st. West, Bryanstone-sq. Dec. 7.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Dec. 10.

Allden, T. ironmonger, Freeschool-st. Southwark, Jan. 7, at half-past eleven.—*Buckland*, I. whitesmith, Salisbury, Jan. 9, at eleven.—*Carpenter*, W. commission agent, Beaumont-row, Stepney, Dec. 18, at eleven.—*Dalton*, W. A. out of business, Park-walk, Chelsea, Dec. 19, at twelve.—*Foster*, P. widow, Kennington-green. Dec. 24, at half-past eleven.—*Freeman*, J. yeoman, Oxford Castle, Jan. 6, at eleven, *Hayden*, W. S. haberdasher, King's-rd. Chelsea, Jan. 9, at half-past eleven.—*Holmes*, J. lieutenant, Highgate, Jan. 7, at eleven.—*Jerris*, J. R. carpenter, Kennington-green, Dec. 24, at half-past eleven.—*Johnson*, J. G. servant, Cambridge, Dec. 18, at twelve,—*Jones*, R. W. H. clerk, China-ter. Kennington, Dec. 19, at two.—*Le Mercier*, N. R. teacher of dancing, Portland-pl. North Clapham-rd Dec. 24, at eleven.—*Newman*, G. brewer, John-st. Liverpool-rd. Jan. 9, at twelve.—*Phillips*, P. watch maker, Steward-st. Bishopsgate, Dec. 18, at eleven.—*Phillips*, S. carpenter, Cecil-court, St. Martin's-lane, Dec. 24, at two.—*Stevens*, J. Deptford, Dec. 24, at half-past eleven —*Streeter*, W. butcher, Croydon, Jan. 9, at half-past eleven.—*Tyler*, H. jun. builder, Charlotte-row, Bermondsey, Dec. 24, at eleven.—*Wetherall*, T. esq. Hammersmith, Jan. 6. at one.—*Williams*, O. W. physician, Southampton, Dec. 24, at twelve.—*Winter*, J. jun. bricklayer, Brixton-pl. Newington-causeway, Jan. 9, at eleven.

Gazette, Dec. 13.

Bacon, W. bailiff, Eastwood, Dec. 21, at one.—*Kember*, S. wattle gate maker, Waldershare, Dec. 17, at twelve.—*Thomas*, H. W. victualler, Andover, Dec. 24, at half-past twelve.—*Wiffen*, R. gardener, Loramore-lane, Newington, Dec. 17, at twelve.

Country.—Gazette, Dec. 10.

Bent, D. cabinet maker, Wolverhampton, Jan. 6, at eleven, Birmingham.—*Crossdale*, J. Accrington, Jan. 3, at twelve, Manchester.—*Dewick*, J. shoemaker, Leicester, Dec. 24, at half-past twelve, Birmingham.—*Evans*, I. farmer, Llandyssil, Dec. 20, at eleven, Liverpool.—*Fowler*, W. printer, Bridgend, Jan. 6, at twelve, Bristol.—*Gregory*, R. butcher, Toxteth-park, Dec. 16, at eleven, Liverpool.—*Hopgood*, J. coach proprietor, Frome, Jan. 6, at half-past twelve, Bristol.—*Jenkins*, P. jun. wood dealer, Trelleck, Jan. 2, at twelve.—*Jones*, A. straw bonnet maker, Gloucester, Jan. 3, at twelve, Bristol.—*Jones*, R, slater, Liverpool, Dec. 17, at twelve, Liverpool.—*Roose*, G. master mariner, Carnarvon, Dec. 17, at eleven, Liverpool.—*Rushton*, H. hair dresser, Nottingham, Dec. 31, at eleven, Birmingham.—*Smith*, H. S. teacher of music, Rosthern, Dec. 31, at twelve, Manchester.—*Walker*, J. provision dealer, Manchester, Jan. 3, at twelve, Manchester.

Gazette, Dec. 13.

Carnock, W. cattle dealer, Birmingham, Jan. 17, at half-past ten, Birmingham.—*Davies*, J. victualler, Newcastle-under-Lyme, Jan. 15, at twelve, Birmingham.—*Horwood*, J. out of business, Bath, Jan. 2, at one, Bristol.—*Macnaboe*, T. plumber, Manchester, Jan. 7, at twelve, Manchester.—*Maxwell*, W. commission agent, Manchester, Dec. 31, at twelve, Manchester. — *Nicholls*, W. brewer, Birmingham, Jan. 17, at eleven, Birmingham. — *Osborn*, J. provision dealer, Birmingham, Jan. 22, at half-past ten, Birmingham. —*Steel*, H. shoemaker, Wetheral, Dec. 18, at twelve, Newcastle.

From the Gazette of Friday, December 20.

Bankrupts.

Balne, H. C. grocer, Poole.—*King*, S. warehouseman, Newgate-st.—*Moutrie*, J. music seller, Bristol.—*Oldham*, J. silk warehouseman, Wood-st. City.—*Berley*, J. P. plumber, Brompton-row, Brompton.—*Watkins*, H. D. and *Innes*, J. lead merchants, Manchester.—*Hodgson*, T. calico printer, Manchester.—*Sheraton*, G. corn merchant, Hartlepool, Durham.—*Foothead*, H. H. wholesale milliner, Fore-st. Cripplegate.

Equity Courts.

LORD CHANCELLOR'S COURT.

Tuesday, Dec. 11.

BOOTH *v.* CRESWICK.

Costs of a mortgagee in defending the mortgagor's title impeached.

This cause, which had several times been spoken to upon the minutes of the decree with reference to certain costs incurred by the plaintiff, the mortgagor, as a defendant in the suit of *James* v. *Creswicke*, and in a suit of *Creswicke* v. *Booth*, which the defendant had instituted to set aside the plaintiff's securities for fraud. The last suit was still pending at the Rolls. The minutes were now to be disposed of.

Wakefield and *Beale*, for the plaintiff, contended that the costs were incurred in defending the title to the mortgaged property; and that where the mortgagor's title is impeached, it is quite of course that the mortgagor should be paid those costs before he is redeemed.

Stuart and *Parry*, for the defendant, insisted that there was nothing upon the record in this court to sanction the allowance of the costs in *James* v. *Creswicke* in this cause. By the decree, admitting the defendant to a rehearing of the cause after a decree absolute for a foreclosure, it was ordered that the defendant should, upon the rehearing, be liable to pay such further costs as it should then appear to be just that the defendant should pay. That order had reference only to the further costs which might be incurred in working out the suit, not the costs in other suits of which there is no notice upon this record. The Court reserved to itself a discretion as to further costs, but that was a judicial discretion in reference to the matter upon which and the shape in which it had to adjudge. The suit of *James* v. *Creswicke* was dismissed with costs, and the pretence made by the plaintiff is, that James is unable to pay costs—in fact, that he is insolvent. But there is nothing to prove that; he has taken no proceedings against James, who is primarily liable. The decree of dismissal in that suit was so long ago as in 1837.

The LORD CHANCELLOR.—I cannot entertain the question of James's insolvency without evidence.

Stuart.—The Court has not now before it the materials for exercising a sound discretion as to these costs; and even if it had such materials, such hard terms would not be imposed upon the defendant.

Wakefield, in reply.—In the suit of *Jones* v. *Creswicke*, a balance was paid into court, and to which the plaintiff was entitled, subject to a prior charge in favour of Sevier. Now Sevier had also been a defendant in the case of *James* v. *Creswicke*, and he was allowed his costs in that suit out of that balance. The petition upon which the plaintiff afterwards obtained that balance out of court, states the order of payment to Sevier of his costs in *James* v. *Creswicke*, that petition was served upon Creswicke, and yet it was alleged there was no evidence. Sevier was allowed his costs in *James* v. *Creswicke*, upon the express ground that James was unable to pay them.

The LORD CHANCELLOR.—The defendant was let in to have the cause reheard upon certain terms; those terms were, that he should pay all the costs subsequent to the decree *nisi*, and such further costs upon the rehearing I should think just. I meant to retain a large discretion. The case upon the whole of its circumstances was so complicated that I determined to reserve to myself a large discretion, to do that which upon the hearing would appear to be right. It was a large indulgence that was given to the defendant. Other parties having charges upon the mortgaged estate were awarded their costs in the suit of *James* v. *Creswicke*, and I think the plaintiff is also entitled to have his costs in arrear in that suit. His costs, charges, and expenses are to be allowed. The defendant must dismiss his suit at the Rolls. There will be no costs on either side on this application.

GREAT NORTH OF ENGLAND JUNCTION RAILWAY COMPANY *v.* The CLARENCE RAILWAY COMPANY.

Construction of powers given to a railway company by Act of Parliament—Injunction—Legal question—Case for opinion of Court of law—Interim injunction—Easement.

Where one party claims an easement which he has never actually enjoyed, over land of another party, no injunction will be granted, the effect of which would be to give the claimant possession of the right claimed, until that right, which is a mere legal question, has been decided at law.

The plaintiffs had obtained an Act of Parliament, 1 Vict. authorizing them to make a railway to connect the Great North of England, Clarence, and Hartlepool railways, in the county of Durham, and for that purpose it was necessary to cross a branch of the *Clarence* railway. By a clause in the above Act of Parliament, the company were forbidden to take the land of any persons or corporations, for the purposes of the railway, without their consent, and the Act only empowered a line to be made across other railways upon a level. The Clarence company refused to permit the plaintiffs to cross that line. Another Act of 6 & 7 Vict. was afterwards passed, which directed that the plaintiffs' line should be carried over the Clarence railway by means of a bridge instead of on a level, and that the consent of the Clarence railway company should not be requisite. And it was enacted, that for the purpose of carrying the plaintiff's railway over the Clarence line they were to construct a sufficient bridge over the line, and the width of the bridge between the abutments should not be less than twenty-six feet at right angles with the Clarence line, and that no part of the underside of the soffit of the bridge should come within sixteen feet of the surface of the rails; and it was provided that the bridge should be constructed of such materials, and in such manner, as should be agreed upon between the plaintiff's engineer and the engineer of the Clarence Company, and in case the engineer of the Clarence Company should not, within three weeks after the plaintiff's engineer should have submitted to him a plan of the proposed bridge, signify in writing his assent thereto, then the materials of which, and the manner in which the bridge should be constructed, should be referred to the surveyor of bridges for the county of Durham for the time being, whose decision should be final and binding upon all parties.

Much litigation had taken place between parties previously to passing the last mentioned Act, which had resulted in the decision that the plaintiffs could not cross the defendants' line without their consent, and such consent was withheld. The second Act having been passed, the plaintiffs proceeded to act under it, and on the 25th of September, 1843, Mr. Robinson, the engineer of the plaintiffs' railway, gave notice to the defendants' engineer, Mr. Child, of the plaintiffs' intention to construct a bridge, and furnished him with a plan of the intended bridge. On the 27th of September, Child returned an answer to Robinson, stating that he should require the arch of the bridge to be constructed of brick or stone, but made no other objection to the plan or to the bridge. Robinson not acceding to Child's alterations, the county surveyor, Mr. Benomi, was called in, who on the 23rd of November made his award as to the way in which the bridge should be constructed. By the plan so settled the buttresses of the bridge would have rested upon the slips or sides of the Clarence Railway; and the plaintiffs having made a contract for the erection of the bridge, sent workmen upon the Clarence line for that purpose, when the defendants assembled a great body of their own workmen, and drove off, by force, the plaintiffs' workmen. The plaintiffs then desisted from further attempts, and placed the matter in the hands of Mr. Bower, their solicitor in London. The defendants also placed the matter in the hands of their solicitor, Mr. Bell, and various discussions and communications took place between the solicitors and between the plaintiffs' solicitor and the directors of the Clarence Railway, who objected that the Acts gave no power to the plaintiffs to place their buttresses upon the land of the Clarence Company; and on the 27th of February, 1844, Mr. Bower, the plaintiffs' solicitor, received a letter from Mr. Bell, the solicitor of the defendants, in which he, on behalf of the Clarence Company, gave notice that they repudiated the award of Mr. Bonomi, and that if the plaintiffs entered upon the land of the Clarence Company they would be deemed trespassers; and that their plan was "irregular, void, and unjustifiable." The plaintiffs submitted to that view of their powers under these Acts, and entered into a treaty with Mr. Williams, who owned the land adjoining the Clarence line, for the purchase of land for placing the buttresses of their intended bridge. This treaty was not concluded until May, when the plaintiffs gave notice to the defendants that the plan of Mr. Bonomi, and the proceedings thereupon, would be abandoned as of no effect; and that their engineer, Mr. Robinson, would, on a day therein named, deliver a plan, and if the Clarence Company did not assent to that plan that the plaintiffs would refer it to Mr. Bonomi, the county surveyor of bridges, pursuant to their Acts of Parliament. The Clarence Company took no steps in accordance with that notice, and the plaintiffs, after the expiration of the three weeks, served a second notice on the Clarence Company, informing them that on a certain day Mr. Bonomi would attend on the spot to determine on the plan. The defendants then ran up a high brick wall, which just extended so far as the land purchased by the plaintiffs. On the 21st of July Mr. Bonomi made his second award; but in the previous May the defendants gave notice that they would resist any attempt on the part of the plaintiffs to construct a bridge at all; and, on the 2nd of Sept. 1844, the defendants filed a bill to restrain the plaintiffs from making a bridge across the Clarence line, insisting that Bonomi's functions, under the Act, were discharged when he had made the first award, and that he had no authority to make the second. That the plaintiffs, having abandoned the first award, had no right to begin *de novo*, and that their power under the Act to make a bridge was altogether gone. The second plan did not propose to place buttresses upon the land of the Clarence Company.

Vice-Chancellor KNIGHT BRUCE declined to grant the injunction the defendants had prayed by their bill, but directed a case to be stated for the opinion of the Court of Exchequer upon two questions; 1st, Whether the plaintiffs had a right, under their Acts, to make the proposed bridge according to the first award, and if so, whether the Clarence railway was entitled to compensation; and, 2nd, Whether they had a right to make such bridge under the second award.

The Vice-Chancellor suggested that the plaintiffs should undertake to remove their works if the decision should be ultimately against them.

Upon this decision the plaintiffs again commenced building the bridge according to the second plan, and in so doing it was necessary to place scaffolding upon, and that the workmen should cross and recross the Clarence line. The Clarence Company then threatened to drive steam-engines along the line so as to prevent the workmen proceeding, and the present bill had been filed by the plaintiffs for an injunction to restrain the Clarence Company from interfering to prevent the construction of the bridge according to the second award.

The Vice Chancellor had declined to grant the injunction, but had directed the plaintiff's motion to stand over, with leave to apply to the Lord Chancellor upon the same notice of motion.

Wigram, *Geldart*, and *Hare*, for the motion, cited *Rankin* v. *Huskisson* (4 Sim. 13); *Lane* v. *Newdigate* (10 Ves. 192); *London and Brighton Railway* v. *Blake* (2 Railway Cases); *London and Birmingham Railway* v. *Grand Junction Canal* (1 Railway Cases).

Russell and *Collins*, contra.

The LORD CHANCELLOR.—It is entirely a question of law. A party never in possession, who has never enjoyed an easement, calls upon the Court to put him in possession, and to give him the easement. Is there any authority for that? Put the case of a right of way claimed by one person over the land of another, and that the party claiming that easement has never enjoyed it, can I establish the right, and put him in possession of it without any decision at law? Stripping it from all form, the right claimed by the plaintiffs is a mere easement, and is properly a case for the decision of a court of law. The plaintiffs have never been in possession, and the defendants deny their right. The party claiming the right, before establishing it at law, asks to be put in possession on making compensation. I cannot undertake to say there is no substantial question at law. I cannot say that the plaintiffs have not a right to place the buttresses of their bridge on the defendants' land. The defendants say that in the month of February last they have given the plaintiffs notice that all proceedings in reference to the first award were void, and it was not until ten weeks afterwards that the plaintiffs gave them a fresh notice. A case will be stated under the order of the Vice-Chancellor in the other cause, and it may be heard by the Court of Exchequer in the first week of Hillary Term. Nobody can say that the questions raised are free from doubt. I admit the plaintiffs are not obliged to resort to extraordinary means to erect their bridge without going upon the defendants' railway, and that if they have a right to erect a bridge at all, they are entitled to the ordinary facilities for that purpose, which can be had without impeding the defendants' traffic; but while the question of law remains undecided they cannot ask me for an injunction. The loss of traffic is certainly an irreparable injury.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Thursday, Dec. 12.

GARCIAS *v.* RICARDO.

Practice—Plea of foreign judgment—Amendment of plea and bill.

Where a plea was considered imperfect, and in an order for the defendant to amend his plea liberty was also given for the plaintiff, at his own request, to amend his bill: Held, in the absence of any specified time for such respective amendments, that the amended plea was not to be taken as to the original bill merely, but that the true construction of the order was that the plaintiff ought to amend his bill first; but that if he did not amend within a reasonable time, the defendant should be at liberty to amend his plea to the original bill as it then stood.

By referring to the above suit, *ante*, p. 130, in the present volume, it will be seen that when it last came before the Court, upon a plea of foreign judgment, his Honour the Vice-Chancellor allowed an order for the defendant to amend his plea, and in the same order (which was done at the instance of the plaintiff) he also allowed the plaintiff to amend his bill.

The amended plea having been filed, an application was now made by the plaintiff to take the plea off the file for irregularity, as having been filed before the amended bill.

Bethel and *Lewis*, for the plaintiff, urged that notwithstanding, on the former occasion, leave was given to amend the plea, yet the proper course would have been to let it stand over, with liberty to answer; that

the plaintiff, before he amended his bill, found it necessary to obtain foreign affidavits, &c.; these were first to be translated, and then submitted to council previously to amending the bill; that the object of the former order was that both parties should amend, and neither should take advantage of the other; so that if the defendant had found the plaintiff delaying, his proper course would be to move that he should amend within a certain time. The defendant, however, without applying to the plaintiff, and without considering the time which must elapse before the plaintiff could obtain the proper information from a foreign country, had so manœuvred as to steal a march upon the plaintiff, and file his amended plea before the plaintiff had an opportunity to amend his bill.

Stuart and *Heathfield*, for the defendants.—Nothing is said about time in the former order. Moreover, as liberty was given to amend the bill, it was given because pressed for. The important part of the order related to the amendment of the plea. The plaintiff, therefore, must take his chance as to the consequences of amending his bill. The plaintiff contends that, according to the terms of the order, the amendment of the bill was to come first, but the Court can only deal with the proceedings of either side according to the terms of the order. According to the affidavit of Mr. P. three weeks were allowed for the plaintiff to amend his bill, and one month for the defendant to amend his plea, but this was not a correct understanding. [The Vice-Chancellor.—What occurred to my mind was, that it would not be proper to fix any specific time, because the plaintiff might not think fit to amend his bill; but even upon the supposition that he should be so inclined, he was not to have an unlimited period. In the first place, there is a regularity in filing our plea, therefore I shall have the application to take it off the file with costs refused with costs. The main question is, whether we have offended against the order by amending the plea before the plaintiff had amended his bill, seeing that our amended plea is to the *original* bill. The second part of the order as to the plaintiff amending his bill, he might have obtained in another way, but he chose to press it under that order. Now it was not your Honour's meaning that our amended plea should be otherwise than to the original and not to the amended bill; we are right both as it respects facts and regularity; for no notice was given by the plaintiff that he intended to amend his bill. Now, if an extraordinary time was required for that purpose, it was not an unlimited time, so that even if it were a race, as the other side endeavours to make it out, the question would be for the Court to consider whether our filing the plea, which was to the original bill, would be irregular. Here has been no manœuvre, but a deliberate acquiescence with the order. You are to deal with this plea according to the terms of the order. This motion is made to intercept a calamity which is likely to befal the plaintiff between amending the plea and amending the bill. Now we have shown a perfect identity with the proceedings, and have gone on with perfect regularity; but this motion is intended to prevent our having the benefit of the amended plea to the original bill which the order gives us; but no allowance of this plea can deprive the plaintiff the benefit which he may derive from his amendment; neither does it deprive him of strict justice; although by the discussion of this plea we shall have that substantial justice done us which this application is intended to deprive us of. As to that which is contended for by the plaintiff, viz. that by the terms of the original order the argument of the amended plea shall be stayed till the plaintiff shall amend his bill, the Court cannot do justice to our client if this be complied with; for what use is it to us to be compelled to wait till the amended bill is filed, since we may be called upon afterwards to demur to the amended bill? Now it must be admitted that the order was a very unusual one, but still in this case it was a very fair one, because it gives both parties a benefit. But we could not afterwards defend ourselves by a plea. We submit, therefore, that it ought to take its course. If it be a bad plea, it is a bad plea; if a good one, it is a good one. When, however, the orders of the Court are made, we are bound to obey the meaning of them. This is, therefore a monstrous application, and we ask to have it refused with costs. Let the original order as it stands be worked out; it is a good order, and we will abide by it.

The Vice Chancellor.—The order arose as Mr. Stuart has described the transaction; but my own experience in giving limits of time is that such a practice is bad, because it gives rise to many questions; therefore it is better to leave the order as it originally stood, without limiting the time. The reasonable construction of the order, as I take it to be, is this: let the plaintiff amend his bill; if he fails to do this, then the defendant shall be at liberty to amend his plea to the original bill as it stood. Upon the face of the order this is the first thing to be done; and it would be quite as well, although not the strict practice, for the defendant's solicitor to ask the plaintiff whether he intended to amend his bill; then, if long delay intervened, the defendant may at once proceed to file his amended plea. Now the counsel who is to draw the amendments to the bill must necessarily require a certain time for that purpose. There must be the arrangement of the materials when laid before him; the foreign papers must be translated, conferences with the solicitor, &c.; all which will be the work of some time; therefore let the argument of the amended plea stand over till the plaintiff shall amend his bill, for which purpose he may take three weeks.

Breeze v. English.

Practice—Interrogations to prove death—At what stage of the cause allowed.

The court will, notwithstanding there is a defect in the chain of evidence, sometimes pronounce a decree upon the merits, subject to the omission being supplied; but it will grant its indulgence to examine witnesses upon interrogatories to prove the required fact only in those cases where, if the fact were already proved, the cause would uninterruptedly proceed to its termination, and not when the evidence, if proved, would not accomplish the desired object.

This was a motion in a supplemental suit to the cause of *Breeze* v. *Hawkes*. The two suits came on for hearing a few days since, when an objection was taken that there was no evidence of the death of John Almes, one of the defendants to the original suit. The causes were directed to stand over until the following week, with liberty for the plaintiffs to make such application as they might be endorsed with a view of amending the defect. The present application was, therefore, made upon the affidavit of the plaintiff's solicitor.

Cooper, *Lee*, and *Elderton*, in support of the motion, contended that every branch of the Court will struggle to decide upon the merits whenever there is a defect in the evidence, but in such a case it will make a decree, subject to the parties supplying a link that may be wanting in the required evidence. And thus, as in the case of *Hood* v. *Pimm* (4 Sim. 101), which forms the basis of modern practice, the Court will extend its indulgence in dealing with collateral matter, such as where a party is out of the jurisdiction. And as was observed by the Vice-Chancellor Wigram, in *Hughes* v. *Eades* (1 Hare, 488), that in some cases the cause has been directed to stand over, suspending the whole decree, but giving leave to exhibit an interrogatory before the examiner. In another to prevent the delay in taking accounts, the account has been directed with leave to exhibit an interrogatory in the meantime; a third course is to allow an opportunity of proving that parties are out of the jurisdiction. Moreover, that it would be an alarming doctrine to hold, that the bill ought to be dismissed on account of a mistake or defect of evidence; for even before the case of *Hood* v. *Pimm*, there was *Moons* v. *Bernales* (1 Russ. 301), where, at the hearing, a cause was allowed to stand over, and liberty given to the plaintiff suing as administrator, to exhibit interrogatories to prove the death of the intestate.

Bethell, for the defendants, urged that the concatenation of blunders which characterized the plaintiff's conduct all throughout the suit were of themselves sufficient to take it out of that class of cases wherein the Court has granted the indulgence sought. That the suit was commenced in the year 1832, and was not brought to a hearing until 1842, when it was found to be in a miserably defective state. An order to amend the bill was granted in February 1842; but no amendment was made till June 1844, without any reasonable excuse offered for the delay; and after having been in the paper several times, it came on only within a few days of the present application, it being at that time suggested, that unless it could be brought within the case of *Hood* v. *Pimm*, it should stand dismissed; then came the notice of motion to exhibit interrogatories to prove the death of John Almes. That the conduct of the solicitor was most extraordinary; for having a knowledge of the fact of J. Almes's death, from the deposition of the nurse who attended him in his last illness, and that he died in the year 1837, which caused an abatement in the suit, he notwithstanding proceeded to take evidence in the year 1838, assuming J. Almes to be still living and out of the jurisdiction, and thus multiplies error upon error, for knowing the man died in 1837, he proceeds to take evidence as if he were living; that it was his duty, under the state of things, and knowing the cause of abatement, to have filed a bill of review and supplement, and to have adduced, in 1838, proof of the death of F. Almes; instead of which the evidence is taken in the original cause. But the supplemental bill was not filed until the 17th of July, 1839, which for the first time alleges the death of F. Almes. The learned counsel concluded by saying that the suit was, from beginning to end, conducted with the most unexampled error. Such, that even if the present application were granted, would leave the suit still defective in the matter of evidence. That it was not a case for the Court's leniency, as in *Hood* v. *Pimm*, where the only reasons are either, 1st, the point to be proved forms no subject of dispute between the parties; 2nd, a defect in title; or, 3rd, a slip made by some individual in a document through mere inadvertence; but that for the Court to extend its indulgence in the present case, would be against practice, and principle, and public policy.

Cooper, in reply.—The errors complained of in the proceedings exist only in imagination, and it has not been denied on the other side that there were matters in which the Court has remedied an omission. It is a novel thing to be told that because a few poor people have been in litigation eleven years, they, by reason of a series of misfortune, should be debarred of the Court's indulgence from a mere error. As to the letters of administration not being admitted as evidence of the death it is a mere collateral matter, and the objection is thrown in for placing impediments in the way. [Vice-Chancellor.—I cannot, sitting as a judge, admit a party's death from the mere letters of administration; it is neither the law,(a) nor is it proper to assume death from that evidence alone, because experience has often proved the contrary.] Hawker died and England became his representative, therefore it became necessary to file a bill of revivor. Mrs. Breeze died, and then her husband consults as to whether or no he had an interest under the will of Admiral J. Almes.(b) Mrs. Nichols survived her sister Mrs. Breeze, and took out letters of administration of John Almes. The defendants did not think fit to take the objection at the time. If they thought it a valid one, why did they not move to take the bill off the file for irregularity before filing the bill of revivor. [Vice-Chancellor.—A blank is left in the supplemental bill for the date of J. Almes's death; and the question is, whether the order of narration in the supplemental bill does not assume that J. Almes died after the examination of witnesses? Now, suppose I give you leave to prove the death of John Almes, should I do you any good without giving you leave at the same time to amend your supplemental bill? In other words, is it a favour to allow the rectification of one error which may leave another error untouched?] The depositions are certainly binding upon the persons who were the parties to the suit, but not upon after-made parties. Suppose we bring the cause to a hearing, and there is then found an important person necessary to be added to the record, and he is accordingly made a party, he might object to the depositions. In our depositions taken in the supplemental suit, we had to prove the death of Mrs. Breeze, and we were right to entitle them in the *supplemental* suit only; for publication had passed in the original cause—the depositions, therefore, taken in the supplemental suit, ought to be entitled in that suit. Our facts prove three deaths and three administrations; this circumstance will sufficiently account for the two years and a half before the bill of revivor was filed. It was in the meantime necessary to consider what interest the will of Admiral John Almes gave to the parties which was the work of time. But the only question is, whether our case does not come within that of *Hood* v. *Pimm*; therefore, according to practice, and the authority of Vice-Chancellors Wigram, Knight Bruce, and the Master of the Rolls, the case ought not to stand over, but a decree must be made, subject to supplying the defective evidence as to the death of John Almes. There was no necessity to alter the record, because it was for some time a doubt whether or no J. Almes had any interest; but when Hawker died, we found it necessary to amend, to bring his representative before the Court. Then, indeed, a question arose respecting F. Almes's title, by reason of Mrs. Breeze's death; we then bring the cause to a hearing in 1842, and it was at that time we might have expected to hear every possible objection; but all we were told was that it was necessary to bring the representative of T. Hill, one of the original trustees, before the Court. Thence to the present, therefore, only makes a period of two years and a half; neither is it extraordinary that ten years should elapse from the commencement of the suit, considering there was not that rapidity of progress in Chancery causes as at present adopted. So that, even if there were a series of errors, there is no reason why our application should be refused.

The Vice-Chancellor.—I have not been satisfactorily answered this question. Suppose I grant an examination as to the death of John Almes, whether the evidence, if true, will support the allegation in the record after the year 1837? Whenever the indulgence now asked for has been given by the Court, it is where the cause would properly proceed to its termination upon obtaining that evidence. I cannot make the order under the circumstances as they at present appear; for were I to give leave to obtain the evidence sought, the evidence itself, when produced, would not accomplish the desired object. In the case of *Hood* v. *Pimm*, when once the fact upon which evidence was required had been proved, there remained no further question. I cannot say that I am satisfied with the *bonâ fides* of the allegation in the supplemental bill. The matter must stand over for counsel's further consideration.

(a) Vide the case of *Moones* v. *De Bernales* (1 Russ. 301), already referred to in the argument. The recent case of Miss Ann (or Anne) Slack, also will doubtless be associated in the mind of the reader with the law here recognised.

(b) Admiral John Almes, the testator, was the grandfather of John Almes, Mrs. Breeze, and Mrs. Nichols.

ROLLS COURT.

Nov. 21 and Dec. 12.

BOSCHETTI *v.* POWER.

One of three trustees, defendants in a suit respecting the estate of their cestui que trust, in his answer, admits that the sum of 28,000*l. is standing in their names; the other two admit a "considerable sum" is standing in their names, but do not name any definite amount; a motion for payment into court of the said* 28,000*l. was refused.*

Affidavits by the two trustees in the proceedings in the Master's office, admitting a sum of 26,000*l. to be standing in their names, are not a sufficient admission to obtain an order for payment of that sum into court. The admission must be made in the answer.*

Inquiry at the bank as to the particular sum standing in the names of trustees is not the regular mode of proceeding in such a case.

The answer of the three defendants, who are trustees of certain property, being found by the Master to be insufficient, Power, one of them, moved, on the 7th Nov. last, for time to put in a further answer; and on that occasion it was sought, on the part of the plaintiff, to make the payment into court of 28,000*l.* admitted by Power to be standing in their names as trustees, a condition of obtaining the order, there having been delay, &c.; but the Master of the Rolls would not consent to make an order on Power to do an act depending on the two others not then before the Court. A motion was then made on the 21st Nov. to have the payment into court, it having been admitted by the other two defendants that a "considerable sum" was standing in their names; and in certain proceedings in the Master's office there were affidavits made by both, in which it was admitted that the sum of 26,000*l.* was standing in their names. It was stated, also, that application had been made at the bank on the subject, and it was found that that sum was so standing.

Lowndes (with him *Torriano*), contended, that inasmuch as one of the defendants admitted a sum of a definite amount was standing in the names of the trustees, and the other two admitted a considerable sum was so standing, and had actually in their affidavits in the Master's office stated a definite sum, the order should be made. [The MASTER of the ROLLS.—This is a motion for payment into court, on the admission of one, aided by the affidavits only of the other two; there is no case in which such an order has been made.] Can it be material whether the admission is made in the affidavit or the answer? It is sufficient to have it admitted by the answer of one and the affidavit of the other two.

Turner, contrà.

The MASTER of the ROLLS.—Let it stand over till the matter be more carefully examined. The money ought to be paid into court; but this is not an ordinary application for that purpose. The order, if made, might be successfully impeached.

Thursday, Dec. 12.

Lowndes applied for an order again, but did not adduce any new grounds, except the fact of an application to the bank, by whom they were assured that the sum in question was standing in the names of the trustees.

Turner, contrà.

The MASTER of the ROLLS.—I cannot grant the order; there is no case of an application of such a nature, unless there has been a clear admission in the answers of the defendants. Here there is only the affidavits of two of them in the Master's office. As to the information obtained at the bank, that is an irregular course of procedure.

Re CAREW.

It is irregular, under the Solicitors Act (6 & 7 *Vict. c.* 73), *to obtain the common order to tax a solicitor's bill of costs after payment thereof. It should be an application to tax under special circumstances shewn to the Court at the time of making the same. An application by a mortgagor, therefore, for the taxation of a mortgagee's solicitor's bill of costs, after being told at the time of delivery to the mortgagor that it had been paid by the mortgagee, is irregular, if only for the common order, and must be discharged.*

This was a motion to discharge the common order obtained for the taxation of the bill of costs of Mr. Carew, amounting to 96*l.* 14*s.* 8*d.* on the ground of irregularity. Mr. Carew had been employed by the mortgagee of certain estates on the occasion of a transfer of the mortgage, and the bill of costs in question had been incurred in that transaction. White and Sons were the solicitors of the mortgagor. On the 13th of November, White and Sons wrote to Carew for an account of the charges. No immediate notice was taken of the application, but on the 20th November the bill, with a receipt signed by Carew, was sent, and it was intimated that payment had been made by, or a sum of money had been received from, the mortgagee. At the same time Carew claimed to retain the deeds, &c. till the general account was settled. White and Sons replied that the demand was excessive, and made a tender of 40*l.* which was refused; and they then applied for and obtained the common order to tax the bill, which it was now moved to discharge for irregularity.

Turner (with him *Glasse*), contended that the order should have been obtained on special application, the bill having been paid, and referred to the 6 & 7 Vict. c. 73, s. 41, the now Solicitors Act.

Kindersley (with him *Hallett*), contrà.—Simple acknowledgment of the payment is not sufficient to put a party to the necessity of obtaining an order by special application. The mortgagor was the real party to pay the bill. Carew did not say the bill was paid but merely that he had received a sum of money, and a sum of money had been paid in the day before to the general account. There appeared to have been no communication with the trustees, and it could not, therefore, be known that the bill was being paid. The payment, therefore, was not such as to bring it within the operation of the Act, and therefore the common order for taxation was sufficient.

The MASTER of the ROLLS.—No doubt the bill may be taxed, if the order is regular. There is nothing to prevent third parties from having a bill taxed, and the mortgagor is not precluded from applying to the Court. Whether the bill was paid or not is not altogether clear; it was that of the mortgagee and not of the mortgagor, and though it may be proper to procure an order for taxation, still I think it must be obtained on special circumstances shewn, and the present order must be discharged. The statement, as to the payment, is ambiguous, and therefore I shall consider as to the costs, and mention it on Monday next; accordingly,

Monday, Dec. 16.

The MASTER of the ROLLS said he would grant the motion to discharge the order, but without costs, inasmuch as there might be some doubt as to the actual payment of the bill being clearly stated.

BELL *v.* DUNMORE.

Multifariousness—37th Order of 26th Aug. 1841.

A bill of discovery as to a bond, &c. is filed, and an answer put in, the bill is then amended by the introduction of quite new matter, and the defendant demurs to the amended bill for multifariousness, submitting at the same time to answer as to the part contained in the original bill, the demurrer was overruled, notwithstanding the 37th order of the 26th August, 1841.

This was a bill of discovery filed by the plaintiff, Mr. Bell, against the defendants, Dunmore and Wartnaby, in reference to a bond and other securities for 2,000*l.* held by one Masters, who was the testator of the defendants, and for the recovery of which sum of 2,000*l.* they, as his executors, had brought an action at law. The object of the plaintiff was to shew that he did not now owe the 2,000*l.* for which the bond had been originally given. On the answer coming in, the bill was amended, by introducing additional and totally different matter in reference to another bond, and securities for a different sum of 2,000*l.* in a transaction with one Bates, quite distinct from that in the original bill, and in reference to which the plaintiff prayed relief. To this the defendants demurred, for multifariousness, submitting, at the same time, to answer, as they had already done, to the part included in the original bill, but demurring to the relief sought in the other part; and the question was, whether this submitting to answer did not overrule the demurrer.

Kindersley (with him *Faber*), for the demurrer.—We admit the new Order (37th of 26th Aug. 1841) only applies to cases where you purport to answer a part of that which the demurrer covers. Here we say we are ready to answer the part contained in the original bill, but not that which has been improperly introduced in the amended bill. [The MASTER of the ROLLS.—You say the bill is such as you will not answer?] No; we don't object to answer. [The MASTER of the ROLLS.—Yes; the form of your demurrer being for multifariousness supposes that, for it is an objection grounded upon the putting together of things which ought not to be joined, and that is the same as saying no answer is to be given.] They cited *Hodgkin* v. *Longden* (8 Ves. 2); *Todd* v. *Gee* (17 Ves. 273); *Powell* v. *Aiderne* (1 Vernon, 416); *Hester* v. *Weston* (1 Vernon, 463); *Ellice* v. *Goodson* (1 M. & Cr. 653); *Cressy* v. *Beavan* (MS. 24th Nov. 1842, V. C. E.)

Turner (with him *Bates*), contrà.—The defendant picks out one part and consents to answer it, and then demurs for multifariousness to the rest. That cannot be permitted. The case does not come within the 37th Order of 1841, and the answer overrules the demurrer. The cases cited are cases of demurrer for want of equity.

Kindersley, in reply, said that the reasoning on the other side would apply, if part of the matter included in the original bill were selected to be answered, and the rest demurred to; but here there was entirely new matter additional to the former, and totally different from it.

The MASTER of the ROLLS.—When you demur for multifariousness, you are not to answer; or, if so, you overrule the demurrer. That has been the rule of the Court, and I think the 37th Order of 1841 does not substantially alter that rule. I cannot see that the practice of the court is wrong on that point. Multifariousness is an objection to the form, and a demurrer on that ground is a demand that the plaintiff put his bill in a better shape,—less complicated,—there being difficulty enough even in a simple case. The defendant has a right to have it as simple as possible; and the plaintiff should not bring forward together things not connected. Now, the objection being to the form, how does the defendant proceed? He answers one part, and demurs to the other. But it is one part added to the other that makes the bill multifarious; it is the junction of things not connected, not the part itself objected to. I do not see that the defendant's is a reasonable course. I shall look at the cases cited, but at present I think they do not apply. My present impression is, that the demurrer must be overruled. It was then agreed that the demurrer should be overruled, and six weeks were allowed to put in an answer.

Wednesday, Dec. 18.

Re BYRCH.

Taxation of solicitor's bill—Common order discharged with costs.

This case, which is reported in 4 LAW TIMES, 211, stood over for further explanation. A long affidavit was now read as to the plaintiff being only a trustee, and permitting his name to be used in the cause of *Holland* v. *Roper* by his sister, the *cestui que* trust.

Turner and *Malins*, for the motion.

Lowndes, contra, contended that the fair construction of the words "all the papers," &c. was all the papers in that particular suit.

The MASTER of the ROLLS.—The case is this:—Mr. Byrch was employed in several matters, both in carrying on suits, and in other business. A bill of costs as to this suit was delivered; the common order to tax was obtained, not including all the costs, but only those in this particular cause; and *all* the papers of the plaintiff are asked to be delivered up. The order of course was discharged for irregularity, and I cannot alter that now; it must be discharged, and with costs. I allowed it to stand over; but I could not then see how any evidence could be brought forward to sustain it as an order of course.

BLAKE *v.* BLAKE.

On the plaintiff undertaking to speed, a bill will not be dismissed for want of prosecution, though an order to amend has been obtained, and the time within which the amendment ought to be made is long since past.

This was a motion by the defendant to dismiss the bill for want of prosecution. The same motion was made last March, and an order of course was then obtained to amend, and according to the practice of the court, the amendment should have been made within three weeks afterwards. No steps were taken, however, since, and *Lovatt* now moved to dismiss.

Bagshawe contra, undertook to speed.

The MASTER of the ROLLS.—You might have moved in April last to dismiss, and so put them then upon terms to speed, but instead of doing that you wait till now. As they undertake now to speed, I must refuse the motion.

Lovatt.—They ought to give us the costs.

The MASTER of the ROLLS.—Yes.

Thursday, Dec. 19.

FULTON *v.* GILMOUR.

Even after an answer put in, and exceptions taken to it allowed, and a fresh answer put in, and after the cause is in the paper for hearing, the defendant will be allowed to put in a supplemental answer, to correct an error or make a true statement of a fact, by a slip of memory falsely stated in the answer; but he will be held strictly to the particular matter in the notice of motion, and will not be permitted to add any thing else.

This was a motion for leave to file a supplemental answer to correct the statement of a fact now just discovered by the defendant to be false, the cause being in the paper for hearing.

The defendant, John Gilmour, was the executor and trustee of the father of the plaintiff, Marian Fulton, and was a partner in the firm of Ferguson and Co. in Calcutta. The assets of the testator were all paid into, or left in the possession of, Ferguson and Co. who in 1833 became insolvent. The plaintiff having come of age in 1840, and finding her property in a great measure lost, filed her bill in May 1843, for the recovery from the defendant of the dividend which accrued due on the debt from the firm to him as executor and trustee of the testator. At that time it was supposed the defendant was a certificated bankrupt in England as well as in India, and was therefore discharged from liability on the debt due from the firm to the testator's estate. By his answer he admitted he was a partner of Ferguson and Co. and with them became insolvent in 1833, and that he was subsequently, in April 1835, discharged under the Insolvent Act then in force by the Insolvent Court in India, but he denied he was a bankrupt in England. Thereupon it was sought to recover from him not only the dividend due upon the debt, but the entire amount of assets received by the firm, inasmuch as, being uncer-

tificated in England, he remained liable to plaintiff; and the bill was amended accordingly, charging him therewith. To this he answered as, before, and the cause being in the paper for hearing, the defendant now moved for leave to file a supplemental answer, to correct an error as to the date of his discharge in the Insolvent Court in India, falsely stated to be in April 1835, whereas it was in June 1836. He said he had no documents in this country to guide him, they being all in India, and he had answered entirely from memory, and had discovered, on the 6th inst only, that his memory had deceived him.

Kindersley (with him *Tennant*).—The object of the bill is to make Mr. Gilmour liable for the amount of the loss sustained by the estate of Robert Fulton, the testator, from the failure of Ferguson and Co.; and it becomes of importance to his defence that the error should be corrected; for if the discharge took place in 1835, and not in 1836, the case does not come within the operation of the last Insolvent Act. The evidence of the discharge is only found in the defendant's answer, and as that was made without reference to papers, &c. and only from memory, it is clear how the error arose. The application for the conditional discharge was in April 1838; but as fourteen months must elapse from the application before the full discharge is granted, in order to allow time to insert notice thereof in the *Gazette* in England, for the benefit of Europeans; and as the defendant was compelled to put in his answer the best way he could, it is obvious the mistake arose from no fault of his. His recollection was incorrect, but he cannot be absolutely bound thereby. He moved immediately after discovering his error, which he did on the 6th inst.

Turner (with him *Toller*).—The question in the suit is, whether the defendant is liable for the amount of balance left in the hands of Ferguson and Co. or only for the dividends which their estates would produce. In his answer, he says he was discharged under the Acts then in force. Now, the 9 Geo. 4, c. 73, did not exonerate him from liability to pay all the debts, and that Act continued in force till the 4 & 5 Wm. 4, c. 79 came into operation, under which an insolvent became entitled to petition for a complete discharge. If, then, the defendant's discharge was in April 1835, as he swears in his answer, he cannot take advantage of the latter Act. In this state of things, the defendant, now, when the cause is at issue, moves to correct his answer by adding a new fact. [The MASTER of the ROLLS.—I shall assume you do not want the benefit of a falsehood, and that, therefore, if a fact at first sworn to be now found to be falsely stated, you will not take advantage of it.] It is stated in his answer, he was discharged under the Act then in force, that is, the 9 Geo. 4, c. 73, and he now seeks to come under the later Act. There is no case of a supplemental answer stating an entirely new fact after issue taken in a cause, and where the whole question depends on that fact. Neither is a supplemental answer allowed for the purpose of supplying a defect, if the party had the means, as in this case, of knowing the fact sought to be introduced. (*Macdougal* v. *Purrier*, 4 Russ. 486; *Greenwood* v. *Atkinson*, 4 Sim. 54; *Livesey* v. *Wilson*, 1 Ves. & Beam. 149; *Curling* v. *Marquis of Townshend*, 19 Ves. 628.) It would make an entirely new case at an advanced period of the cause. Besides, in his answer to the original bill, in June 1843, he disputed the plaintiff's identity, resisted the demand, and exceptions were taken to his answer, and all allowed. Then he had another opportunity, in his second answer, in March last, of having the thing brought to his recollection. He says he did not know a fact in his own power to know, and the object of this motion is to set up an entirely new defence.

Kindersley, in reply, was not heard.

The MASTER of the ROLLS.—It is stated the defendant answered from memory, without the help of paper, to which he could not have access. The fact in question was one which was not a secret matter in his own breast, but the adjudication of a public Court, under which the defendant obtained his discharge. It was now found that an error had been committed in the statement of that fact, and the question is, whether I will allow an alteration to be made in that statement, so as to make it in accordance with the truth; and I think I must. I am sensible of the inconvenience that may result from this, and that the consequence may be that the plaintiff will have to reply to facts, and shape her course differently from what she would have done if the alteration had not been permitted. But if the fact is that the statements are not true as sworn in the answer, and if the correction were not allowed, we would be deciding at the hearing on false facts, and might come to a very wrong conclusion; and a judge must feel a species of horror in adjudicating upon a state of facts which are not correct. Besides, this is not the statement of a new fact or matter, as was that of the *modus* in *Macdougal* v. *Purrier*, but only the correction of a statement of a fact before falsely stated. I must allow the correction according to the notice of motion, but the defendant must set forth the whole of the answer which he intends to make, and give the plaintiff an opportunity of objecting to it. In all these cases, if the defendant add any thing beyond what is contained in the notice of motion, the supplemental answer must be taken off the file. The defendant must pay the costs of this motion.

VICE-CHANCELLOR WIGRAM'S COURT.

Saturday, Dec. 21.

VIVIAN *v.* COCHRAN.

JUDGMENT.

The VICE-CHANCELLOR said, that the question which arises in this case is new, and one of law, the solution of which he was more inclined to refer to the decision of a court of law; but as the parties had expressed a desire to have his opinion, he would now deliver it. The subject-matter for decision was dependent on the decree of the Act 37 Henry 8, c. 12. The facts are these: the plaintiff is the rector of a parish in London; the defendant is a public officer of the National Bank of Ireland, who was the lessee and occupier of the premises, the tithes of which are the subject of the present suit; the lease was granted some years ago, at a reserved rent, the lessees covenanting to expend 2,000*l.* on the premises. The right of the plaintiff to 2s. 9d. in the pound on the reserved rent is not in dispute, but the plaintiff insisted that he was entitled to 2s. 9d. on the estimated annual value. The question, then, between the plaintiff and defendant was this, viz. upon how many pounds sterling the 2s. 9d. was to be paid? whether upon the reserved rent, whatever this might be, or upon the full annual value, irrespective of the actual rent which might be equal to, or fall short of, such estimated value in proportion to the sum which might have been given by way of fine, or covenanted to be expended in the shape of improvement. That part of the decree which affected the present question was in the following words:—"That the citizens and inhabitants of the city of London and liberties of the same for the time being, shall yearly, without fraud or covin, for ever pay their tithes to the parsons, vicars, and curates of the said city, and their successors for the time being, after the rate hereafter following, that is to wit, of every 10s. rent by the year of all and every house and houses, shops, warehouses, cellars, stables, and every of them, within the said city and liberty of the same, 16d. ob.; and of every 20s. rent by the year of all and every such house and houses, shops, warehouses, cellars, and stables, and every of them, within the said city and liberties, 2s. 9d., and so above the rent of 20s. by the year, ascending from 10s. to 10s. according to the rate aforesaid. Item—That where any lease is or shall be made of any dwelling-house or houses, shops, werehouses, cellars, or stables, or any of them, by fraud or covin, reserving less rent than hath been accustomed, or is, or that any such lease shall be made without any rent reserved upon the same, by reason of any fine or income paid beforehand, or by any other fraud or covin; that then, in every such case, the tenant or farmer, tenants and farmers thereof shall pay for his or their tithes of the same after the rate aforesaid, according to the quality of such rent or rents as the same house or houses, shops, warehouses, cellars, or stables, or any of them were last letten for, without fraud or covin, before the making of such lease. Item—That every owner or owners, inheritor or inheritors, of any dwelling house or houses, shops, warehouses, cellars, or stables, or any of them, within the said city and liberties, inhabiting or occupying the same himself or themselves, shall pay after such rate or tithes as is above said, after the quantity of such yearly rent as the same was last letten for, without fraud or covin." No doubt that if the construction of the decree was to be taken from the consideration of these clauses, "all houses, buildings, &c." are made liable to pay tithes at the rate of 2s. 9d. in the pound on the full annual value; but the decree, assuming this construction, admits as a possible exception "houses and buildings" which had been let before the decree at an accustomed rent. The defendants say, that unless you can affect the case with fraud or covin, 2s. 9d. can only be exacted on the actual rent so far as it relates to new-built houses. The same reasoning would apply to a peppercorn rent. But with this doctrine I am not, as at present advised, prepared to agree; and the case of *Antrobus* v. *East India Company* (13 Ves. 9) is a direct authority in favour of the assessment on the estimated rent of the full value to be let by the year. The decree did not require such a construction, nor do the reported cases warrant such a conclusion. This is not the case of a fine, it is the case of an ordinary building lease, and possibly distinguishable. Fraud and covin are out of the question; and in the case of a building-lease there is certainly this difference. One objection, however, against construing this decree in favour of a calculation of the tithes on the rent reserved on a *bonâ fide* building-lease, would be whether, in case of a new lease to be granted, if the tithes in respect of such new lease were to be measured by the present rent as the last rent payable without fraud or covin, this would not in effect be to make ground-rent only the measure upon which to calculate all future tithes. If the lessee had built the house, a full rent might have been reserved, and the tithes payable on such full rent. Can the mere arrangement between the parties, as to the amount of rent according as the expenditure may have been on the part of the lessee or lessor, oust the parson of his right? If the lessee were voluntarily to build a house, could he claim exemption on the ground of not paying any rent in respect of the house? Can the existence of a contract by him to expend a certain sum in building make any difference? The question is one of great difficulty; but on the whole I think I am bound to hold that the tithes are to be computed on the full annual value, and that the clergyman is entitled to an account on this footing.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

(Before Mr. Commissioner FONBLANQUE.)

Monday, Dec. 23.

Re DAVISON, an Insolvent.

The Court will punish for immorality.

In this case the insolvent was a pilot, earning on an average 200*l.* per annum, for debts amounting to 147*l.* 4s. 8d. with no debts due to him.

Buchanan opposed for several creditors, and

Sturgeon supported the insolvent.

Buchanan objected to the balance sheet as being defective, and that the insolvent had parted with his wife, and was living with and supporting another woman and four children he had by her, and that as such immorality had led the insolvent into extravagant expenses, he called upon the Court to protect the interest of creditors, and set apart from the insolvent's future income a sum of at least 40*l.* a year until the creditors were paid.

The Learned COMMISSIONER acceded to the suggestion, and named a day for the final order, and intimated that if the insolvent did not on that day agree to set aside 40*l.* a year as proposed, the Court would dismiss the petition.

Circuit Reports.

NORTHERN CIRCUIT.

LIVERPOOL WINTER ASSIZE.

CROWN CASES.

REG. *v.* CLARKSON.

A promissory note made payable to a number of persons associated together under the name of the "Temple of Peace United Lodge of Odd-fellows" appears upon the face of it to be good, and will sustain an indictment for forgery.

The indictment charged the prisoner with forging a promissory note, which being set out appeared to be made payable to the "Temple of Peace United Lodge of Odd-fellows." There was a second count describing the note as in larceny.

At the close of the prosecutor's case, *James*, for the prisoner, objected that the note was not perfect, there was no legal payee.

GURNEY, B.—You must take that in arrest of judgment.

James.—I take it upon the second count, my Lord, because if your Lordship agrees with me it will save the necessity of going to the jury. I submit that the paper produced is not a promissory note, and does not therefore sustain the second count. There is no payee, or at least no person to whom the bill is made payable, whom the law can recognize, which is equivalent to no prayer at all. This is not a trading company, which may be described by the name of a firm, nor is it a corporation. *Rex* v. *Box* is precisely in point. There the note was made payable to A B, stewardesses of a certain society and their successors in office. It was there held that the note became payable at law to A and B in their own right, and would pass to their executors and administrators; but it was assumed by the Court that was the only view in which the note could be said to be perfect. *Rex* v. *Collicott* (4 Taunt. 300), and *Rex* v. *Jones* (1 Leach, 204), are also in point.

Monk, contrà, submitted that there was a payee. It is not necessary, in order to maintain an indictment, that the instrument should be such as might be recovered upon, although it is necessary that it should appear so upon the face of it. There is nothing here to shew the contrary. This may be the name of a trading firm, or even of a corporation. It is not sufficient even that the contrary may be shown by evidence. Suppose the note were payable to John Smith, a person who never existed, which, in point of law, is all that can be said of the present payee, surely it would then be the subject of an indictment, otherwise the forger would only have to make a non-existing person payee, and he might forge the names of the drawer and indorsers at pleasure. That it is sufficient if the document appears to be good upon the face of it, so that it might get into circulation, appears from the case of *Rex* v. *Macintosh* (2 Leach's Crown Cases, 883).

GURNEY, B. said he should not stop the case, but would let it go to the jury, and would find judgment

upon the objection in the course of the assizes, if necessary. The prisoner was found guilty, and judgment was afterwards given upon this point for the prosecution, and sentence passed.

The learned judge intimated to the counsel for the prisoner that he himself had felt some doubt on the point, but that he had consulted Parke, B. and Rolfe, B. who had none, and he did not therefore feel justified in reserving the point.

Judgment for prosecution.

REG. v. MURPHY.

Semble, that the putting poison into a teapot, with intent to murder A, B, and C, constitutes three distinct offences, and that the one act cannot properly be charged in distinct counts of one indictment varying the intent. Upon a motion to quash an indictment the prisoner may be remanded to the next assizes.

The indictment was as follows:—

1st Count. Charges that prisoner feloniously and unlawfully did attempt to administer to one Margaret Murphy half an ounce of deadly poison, to wit, oxalic acid, with intent her, the said Margaret Murphy, to kill and murder.

2nd Count. Charges that prisoner, a certain quantity, to wit, &c. of deadly poison, to wit, oxalic acid, into a certain quantity, to wit, half a pint of tea, which the said Margaret Murphy, had prepared to be by her drank and swallowed down, feloniously did put, mix, and mingle, and that prisoner, by means in this charge aforesaid, attempted to administer to Margaret Murphy the said deadly poison, with intent to murder her.

3rd. Same as 2nd, but varying the means and manner of attempt.

4th. Charges in the words of the statute 7 Wm. 4 & 1 Vict. c. 85, s. 3, that prisoner attempted to administer to a "*a certain other person, to wit, Margaret Murphy,*" poison, with intent to commit the crime of murder.

5th. Charges against prisoner, putting poison into the teapot of one James Murphy, and thereby attempted to administer poison to James Murphy, with intent to murder him.

6th. Charges in verbal statement, attempt to administer poison to James Murphy, with intent to commit the crime of murder.

Prisoner being called on to plead,

Pollock, for prisoner, submitted to the discretion of the Court, whether this indictment should not be quashed, inasmuch as it charged the prisoner with the commission of several distinct felonies, and quoted *Young and Others* v. *The King in error* (3 T. R. 98), in which Buller, J. stated this to be the practice. He argued that the stat. 7 Wm. 4 & 1 Vict. c. 85, s. 3, joined in each case the intent to commit murder with the attempt to administer poison, and that the mere attempt without the intent would not constitute the felony. In this case, where three of the counts charged the attempt and intent as against Margaret Murphy, the 4th, as against *another* Margaret Murphy, and the 5th and 6th, as against one James Murphy, he submitted, that though the act which endangered life might be one only, yet the separate intents alleged, and necessary to be alleged, rendered the charge made in this indictment one of three distinct felonies as against the prisoner.

Monk, for prosecution, after stating the indictment as above.—The 1st, 2nd, and 3rd counts are not complained of. The 4th is, because it alleges that prisoner attempted to administer poison to a "certain other person, to wit, Margaret Murphy," with intent to murder her, and it is contended that this Margaret Murphy must be a different person from the Margaret Murphy mentioned in the former counts, and the offence consequently an entirely different offence. In every indictment for felony containing more than one count, several offences in point of law are supposed to be charged. The pleading would be bad, if it charged the same offence twice; and to preserve the integrity of each count the pleader inserts the word "other" before the person injured, or the injury complained of. If, in this case, two separate attempts to poison either one Margaret Murphy or two persons of the name were proved, the Court would no doubt require the counsel for the prosecution to elect. As to the 5th and 6th counts, though they in fact charge an attempt to poison James Murphy, it by no means follows that this attempt is not the same act complained of in the 1st, 2nd, and 3rd counts. Suppose A obtains access to the room in which B and C are about to breakfast, and puts poison into the teapot on the breakfast-table; and suppose there is no evidence of previous malice against either of them. If charged with the attempt to murder B he may make the shameless defence that he intended to murder C. A failure of justice might ensue, if both sets of counts could not be joined. Besides, the argument on the other side defeats itself by going too far, as it is every days' practice to charge an act with several different intents in different counts of one indictment. The Court will take care the prisoner is not prejudiced, and will put prosecuting counsel to elect, if several offences are proved.

Pollock replied.

GURNEY, B.—I will take indictment and depositions home with me, and consider them.

His lordship afterwards said, I have considered the point raised by the prisoner's counsel, and the result of my opinion is, that I shall order the case to stand over till the next assizes, when the prosecutor may decide whether he will stand upon the present indictment or prefer another indictment or indictments.

(Before Mr. Baron GURNEY.)

REG. v. MORGAN.

Upon an indictment for making a false declaration in lieu of an oath under the stat. 5 & 6 Wm. 4, c. 62, s. 12, relating to pawnbrokers, it is not sufficient for the prosecution to prove the handwriting of the justice before whom the declaration is made, but it must be shewn that when it was made he was acting within the district of which he is such justice.

The prisoner was indicted for a misdemeanour, in making a false declaration before a magistrate for the borough of Liverpool, that she had lost the pawn-ticket of certain goods pledged by her. The course to be taken by a person to obtain goods under such circumstances is pointed out by stat. 39 & 40 Geo. 3, c. 99, s. 16, which, however, requires an affidavit to be made by the applicant. By stat. 5 & 6 Wm. 4, c. 62, s. 12, it is enacted, "That where, by any Act or Acts in force for regulating the business of pawnbrokers, an oath, affirmation, or affidavit might, but for the passing of this Act, be required to be taken or made, the person who, by or under such Act or Acts might be required to take or make such oath, affirmation, or affidavit, shall, in lieu thereof, make and subscribe a declaration to the same effect; and such declaration shall be made and subscribed at the same time, and on the same occasion, and in the presence of the same person or persons, as the oath, affirmation, or affidavit in lieu whereof it shall be made and subscribed would, by the Act or Acts directing or requiring the same, be directed or required to be taken or made; and all and every the enactments, provisions, and penalties contained in or imposed by any such Act or Acts as to any oath, affirmation, or affidavit thereby directed or required to be taken or made shall extend and apply to any declaration in lieu thereof as well and in the same manner as if the same were herein expressly enacted with reference thereto."

By the former statute, after specifying the affidavit required, it is enacted, "That the caption thereof shall be authenticated by the handwriting thereto of the justice before whom the same shall be made, and who shall and is hereby required so to authenticate the same."

Blair, for the prosecution, having proved the falsity of the declaration of the prisoner, was about to prove the declaration itself by calling a witness to speak to the handwriting of the magistrate of Liverpool before whom it was made.

The witness, who was clerk to the magistrate, stated, on cross-examination, that from the great number of these declarations, he could not remember when or where it was made, but would only speak to the handwriting.

James, for the prisoner, submitted that there was no evidence that the declaration had been made before the justice acting as such, or even that it had been made within the borough.

Blair, contrà, contended that the Court would not assume that the magistrate had acted wrongly or out of his jurisdiction, and that further evidence could only be had by calling the magistrate, which was very unusual.

GURNEY, B.—This case has not been got up as it ought to have been. If you could not identify the time or place when this particular declaration was made, you might at all events have called the magistrate to say that he never took any declaration out of the borough. I think Mr. James's objection a good one, and that the evidence is not sufficient.

Prisoner acquitted.

CENTRAL CRIMINAL COURT.

SEPTEMBER SESSION.

Wednesday, Sept. 18.

REG. v. JENNINGS.

Indictment for trading in slaves—Plea of autrefois acquit, and demurrer thereto—Duplicity—Identity of the charges in the former indictment and in the present one.

Semble, that in criminal as well as in civil cases, only one counsel can be heard on each side in arguing a demurrer.

The prisoners were indicted for that they, on the — day of —, with force and arms, to wit, at London aforesaid, and within the jurisdiction of the Central Criminal Court, did illegally and feloniously man, navigate, equip, despatch, use and employ a certain ship or vessel called the *Augusta*, in order to accomplish a certain object which, in and by a certain Act of Parliament, made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act to Amend and Consolidate the Laws relating to the Abolition of the Slave Trade," was and is declared unlawful, that is to say, to deal and trade in slaves, contrary to the form of the statute in such case made and provided, against the peace, &c.

There were three other counts alleging the same acts to have been done, namely, the manning, navigating, equipping, and despatching the said ship, but each varying the object with which they were performed. In the second it was alleged to be "*to purchase slaves;*" in the third, "*to deal and trade in persons intended to be dealt with as slaves;*" in the fourth, "*to purchase persons intended to be dealt with as slaves.*"

The fifth count charged that the prisoners on, &c. with force and arms, to wit, at London aforesaid, and within the jurisdiction, &c. did illegally and feloniously and against the form, &c. ship on board a certain ship, or vessel, called the *Augusta*, divers goods and effects, to wit, twenty-nine hogsheads of tobacco, six cases of arms, &c. to be employed in accomplishing a certain object which was in and by a certain Act of Parliament made, &c. in the fifth year of the reign of his late Majesty George the Fourth, entitled, &c. (as in first count), declared unlawful—that is to say, to trade and deal in slaves, contrary to the form of the statute, &c. and against the peace, &c.

The sixth count was the same as the fifth, except that the object with which the acts were done was alleged to be to *purchase slaves*.

The seventh, that it was *to deal and trade in persons intended to be dealt with as slaves*.

The eighth, *to purchase persons intended to be dealt with as slaves*.

Pleas of autrefois acquit of defendant Jennings.

And the said Thomas Jennings, in his own proper person cometh into court here, and having heard the said indictment read, saith that our said lady the Queen ought not further to prosecute the first count of the said indictment against the said Thomas Jennings, because he says that heretofore, and before it was presented by the jurors aforesaid, in manner and form as in the said first count mentioned, to wit, on Monday, the 22nd day of March, in the fourth year of the reign of our sovereign Lady the Queen, at a special session of oyer and terminer of our said sovereign Lady the Queen, of the colony of our Lady the Queen, at Sierra Leone, in parts beyond the seas, to wit, on the day and year last aforesaid, holden at the Court House, in the free town, in the said colony, before his Honour Logan Hook, our said Lady the Queen's chief justice, *ad interim*, of the said colony (the chief judge thereof) and officiating judge of the Court of Vice-Admiralty for the same, and the Hon. Norman Wm. Macdonald, the Hon. Wm. Cole, and the Hon. Wm. Farguson, respectively, members of the council of the said colony, and others their fellows, justices and commissioners of our said Lady the Queen, assigned by her letters patent of our said Lady the Queen, under her great seal of Great Britain, made to them and others, and any three or more of them (of which number the will and pleasure of our said Lady the Queen was that her governors, lieutenant-governors, or other officer administering the Government of the said colony, her chief judge of the said colony, her other judges of the same or one of them, or her judge of her said Court of Vice-Admiralty respectively for the time being, should always be one), to inquire upon the oath of good and lawful men of the said colony, and by other ways, means, and methods, according to their best knowledge and abilities, as well within liberties as without, whereby the truth of the matter might be better known and inquired into concerning all treasons, piracies, felonies, robberies, murders, conspiracies, and other offences whatsoever, and accessories thereto whomsoever and howsoever done or committed upon the sea, or in any haven, river, creek, or place where the admiral has power, authority, or jurisdiction, &c.; also concerning all offences against an Act made in the 5th year of the reign of his late Majesty King George the Fourth, intitled an Act to amend and consolidate the Laws relating to the abolition of the Slave Trade, committed in any place where the admiral has not jurisdiction, &c. and not being within the United Kingdom aforesaid nor within the local jurisdiction of any ordinary court of a British colony, settlement, plantation, or territory competent to try such offences, and the said offences to hear and determine according to the laws and customs of the realm of England, and the statutes in the said letters patent mentioned, and all other statutes in that behalf made and provided upon the oaths of Henry Houghton Rugeley, &c. (setting out the names of the grand jury), good and lawful men of the said colony of Sierra-Leone, then and there impannelled, sworn, and charged to inquire for the said Lady the Queen, touching and concerning the premises in the said letters patent mentioned. It was presented in manner and form as followeth, that is to say, the jurors of our Lady the Queen upon their oath present, that Thomas Jennings, late of Freetown, in the colony of Sierra-Leone, mariner, on the 7th day of February, in the 4th year of the reign of our Sovereign Lady Victoria, with force and arms upon the high seas, within the jurisdiction of the Admiralty of England, to wit, in and on board of a certain brig or

vessel called the *Augusta*, in a certain place upon the high seas, off the Gallinas, on the western coast of Africa, feloniously and unlawfully did take charge and command of the said brig or vessel as master, he the said Thomas Jennings then and there well-knowing the said brig or vessel was engaged and employed in carrying and conveying goods, wares, and merchandize to the Gallinas on the coast of Africa, being employed and used in the slave trade, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen her crown and dignity; and the jurors aforesaid, upon their oath aforesaid, do further present, that the said T. Jennings afterwards, to wit, on the 7th of February, in the year aforesaid, with force and arms, upon the high seas aforesaid, in the brig or vessel aforesaid, at the place aforesaid, and within the jurisdiction of the admiralty of England aforesaid, feloniously and unlawfully did take charge and command of the said brig or vessell as master aforesaid, he the said T. Jennings then and there well knowing that the said brig or vessel was employed or intended to be employed in carrying and removing slaves or other persons as or in order to their being dealt with as slaves, from the coast of Africa to parts beyond the seas, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity; whereupon the provost marshal of the colony aforesaid was commanded by the said Court that he should omit not, for any liberty, in his marshalship, but that he should take the said Thos. Jennings, if he might be found in his marshalship, and him safely keep to answer to the premises; and afterwards, to wit, at the same sessions of oyer and terminer of our said Lady the Queen, on the said Monday the 22nd day of March, in the said fourth year of the reign of our said Lady the Queen before the said justices and commissioner of the said Lady the Queen above named, and others their fellows aforesaid, there came the said Thos. Jennings, under the custody of Charles Brown, esq. provost marshal and sheriff of the colony aforesaid, in whose custody, in the gaol of the colony aforesaid, for the cause aforesaid, he had been before committed, being brought to the bar there in his proper person by the said provost marshal and sheriff to whom he was there also committed, and forthwith being demanded concerning the premises in the said indictment above specified and charged upon him how he would acquit himself thereof, he said he was not guilty thereof, and thereof for good and evil he did put himself upon the country; and John Carr, esq. our said Lady the Queen's advocate of the said colony, who then prosecuted for the said Lady the Queen, in that behalf, did the like; therefore it was thereupon commanded by the said Court that a jury thereupon there immediately should come before the said justices and commissioners of the said Lady the Queen, of good and lawful men of the colony aforesaid, by whom the truth of the matter might be better known, and who were not of kin to the said Thos. Jennings, to recognise upon their oath whether the said Thos. Jennings was guilty of the premises in the indictment aforesaid above specified or not, because as well the said John Carr, esq. prosecuting for the said Lady the Queen in this behalf, as the said Thos. Jennings, had put themselves upon the said jury, and the jurors of the said jury, by the provost marshal for this purpose impannelled and returned, to wit, James Graham Jones, &c. being called, then came, who being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oath, said, that the said Thos. Jennings was not guilty of the premises aforesaid above specified, in manner and form as the said Thos. Jennings, for himself above by his plea had alleged, whereupon all and singular the premises being seen, and by the said justices and Commissioners there fully understood, it was considered by the said Court there, that the said Thos. Jennings, of the premises aforesaid in the indictment last aforesaid above specified, should be discharged, and should go thereof without day, as by the record thereof more fully and at large appears, which said judgment still remains in full force and effect, and not in the least reversed or made void. And the said Thos. Jennings, in fact, saith that he, the said Thos. Jennings, and the said Thos. Jennings so indicted and acquitted as last aforesaid, are one and the same person, and not other or different persons and that the felonies of which he the Thos. Jennings was so indicted and acquitted as aforesaid, and the felonies in the said first count of the present indictment mentioned, are the very same felonies, and not other or different felonies; and the said Thos. Jennings further says that the said court before whom the said Thos. Jennings was so indicted and acquitted as aforesaid had full and competent power and jurisdiction to try the said felonies, and to acquit him, the said Thomas Jennings, thereof, and to do all the things so recorded to have been done by the said last-mentioned court as aforesaid, and this he, the said Thos. Jennings, is ready to verify, wherefore he prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the said first count of the present indictment specified. There was a like plea to each of the other counts.

To these pleas the following demurrers were put in. And John Clark, esq. who for our said Lady the Queen prosecutes in this behalf, as to the plea of the said Thos. Jennings, by him to the first count of the said indictment pleaded, saith, that the same and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude our said Lady the Queen from further prosecuting the said first count, and that our said Lady the Queen is not bound by the law of the land to answer the same, and this he, the said John Clark, is ready to verify, wherefore, for want of a sufficient plea in this behalf, the said John Clark, for our said Lady the Queen, prays judgment, and that the said T. Jennings may further answer to the said first count, &c."

There was a similar demurrer to each of the other pleas. The joinder in demurrer was in these terms.

"And the said Thomas Jeunnings saith, that the said plea by him to the first count of the said indictment pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude our said Lady the Queen from further prosecuting the said first count of the said indictment against the said Thomas Jennings, and the said T. Jennings is ready to verify and prove the same as the said court here shall direct and award. Whereupon, inasmuch as the said John Clark, for our said Lady the Queen hath not answered the said plea, nor hitherto in any manner denied the same, the said T. Jennings prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the said first count of the said indictment specified."

Payne (with whom was *Lush*), on the part of the Crown. The present indictment consists of two parts. It charges first, that the defendant with another person, on the 1st of November, in the ninth year of her Majesty's reign, at London, within the jurisdiction of the Central Criminal Court, illegally and feloniously did man, &c. a vessel called the *Augusta*, to accomplish certain objects, against the Act of Parliament. It alleges, secondly, that the defendant did illegally and feloniously ship on board the said vessel certain articles for the purposes of the slave trade.

The first part of the plea of *autrefois acquit* sets out a former trial at Sierra Leone under a commission, by which certain parties had authority to try the offences thereinafter mentioned. (It was subsequently conceded that the Court there had such authority to try.) It goes on to say that the jurors presented that on the 7th of February, in the fourth year of the reign of her Majesty, upon the high seas within the jurisdiction of the Admiralty, the defendant did feloniously take charge of the same vessel as master, he well knowing the same was engaged and employed in the slave-trade. The 2nd count was to the same effect, except that it alleged his knowledge that the vessel was *meant* to be employed for the purpose of the slave-trade. The plea then avers that the defendant was found "not guilty," with an allegation that he is the person now charged, and that the said felony is the same as is contained in this indictment. We, on the part of the Crown, thought it advisable not to traverse the averment that the offences were the same, but as the record shews on its face that the offences were different, we have demurred to the plea. *R.* v. *Taylor* (3 B. & C. 502) decides on such a plea that if the offences appear on the record to be different, an averment that they are the same will be of no avail. There the charge was the keeping of a gaming-house on a certain day, and the plea alleged an acquittal on an indictment which charged the same offence on a different day. Such is precisely the case here. But the distinction between them is apparent, not only in the date, but in the substance of the charges themselves. If put side by side, this will be manifest.

The present indictment is for equipping, navigating, and shipping goods on board, &c. This he might do without taking the command, as the indictment set out in the plea charges. Can the averment, then, that they are the same, be proved against the palpable difference that appears on the face of the record? In Hawkins's Pleas of the Crown, b. ii. c. 35, s. 3, there is this passage: "I take it to be clear, that if the nature of the crime be in substance the same, a variance may generally be helped by proper averments." But here there is nothing but the general averment of identity to help a variance not in immaterial matter, but in the very nature and substance of the two charges.

Lush was then about to address the Court.

WIGHTMAN, J.—We only intend to hear one counsel on each side.

M. D. Hill, Q.C. called Cresswell, J.'s attention to a case in which, under similar circumstances, the Attorney and Solicitor-General were heard.

CRESSWELL, J.—It was so, but there was then no discussion on the point.

WIGHTMAN, J.—Precisely such a demurrer as this was argued before me at Winchester, and I heard but one counsel on each side. But surely there must have been numberless cases by which the practice, one way or the other, was settled.

M. D. Hill suggested that different rules might prevail in different courts, and that with regard to this particular instance it had been taken for granted by the counsel on both sides that each was to be heard.

WIGHTMAN, J.—If it has been so arranged let it be done on this occasion; but it might be understood distinctly that such a proceeding is to form no precedent for the future.

Lush.—The indictment as set out in the plea consists of two counts. The first count charges, &c. (See the plea, *supra.*) It is framed on the 10th sec. of the 5 Geo. 4, c. 113. Now there is no part o. that section which makes it unlawful to carry goods which are to be used in the slave-trade. The allegation is very loosely worded. For instance, it is charged, "he well knowing the vessel was engaged." It ought to have been averred that he so knew *at the precise time* when he took the command. Again—"The vessel was engaged in taking goods to a certain place, which goods were to be employed in the slave trade." There is no allegation that he knew they were to be so employed; neither is it alleged that he was taking goods to a place where the slave trade was carried on. It is clear that, on a count of this kind, no judgment could have been given; and therefore, the prisoner never having been put in jeopardy, the plea of *autrefois acquit* is bad. Moreover, the slave trade is not absolutely prohibited by this Act. There may be a slave trade which is lawful. The 13th section provides that nothing in this Act should be construed to prevent persons bartering, &c. any slaves, &c. belonging to his Majesty, if they are to be kept in the island. The count in the plea does not negative this exception, and is bad on that ground. The second count appears to be still more objectionable. It avers that he did feloniously take charge and command, &c. he well knowing that the vessel was employed or intended to be employed, &c. This is bad from being in the alternative. It should have shewn to which of the two his knowledge applied. But further, it might be that the vessel was intended to be so employed at some future time, even after his command should have ceased. There is no averment confining it to the period of such command, nor any thing to shew by whom the vessel was intended to be used. There is nothing, moreover, to shew what sort of goods were carried. They might be clothes, or food—mere necessaries, in fact, without which the slaves could not exist; and it cannot be contended that these would be within the meaning of the Act.

Hill, Q.C. (with whom were *Prendergast* and *V. Williams*), for the defendant.—The same objections that have been taken to the indictment in the plea will equally apply to that on which the prisoner is now charged. First, with regard to the place, it will assuredly turn out that nothing was done within the jurisdiction of the Central Criminal Court, except with regard to the enlargement of that jurisdiction, and if it does not extend to the offences charged in the former indictment, neither does it extend to the present. The venue is laid in London, but no offence has been there committed. It is said, that by comparing the indictments it will clearly appear that the charges are not the same. I am justified in saying that every intendment will be made in favour of an acquittal. The first four counts here charge an offence by navigating the vessel. In the charge at Sierra Leone it is for navigating as *master*. It is true this may be a different offence. A felony may be committed by a person who is not master; but supposing the fact to be that he was so, each mode of laying the charge would be good, and all, therefore, that can be said is that the authorities at Sierra Leone have adopted one mode, here the other has been followed. The being in command of a ship would have procured a conviction on the ground of navigating: the question must have gone to the jury, and must have been decided. The acquittal was general, and on both counts; therefore if either can be sustained, the judgment must stand. As to the objection to the second count, that it is in the alternative, it cannot be now sustained. A different rule of construction will be used with regard to an indictment to be tried by the Court, and one which comes merely collaterally before it. Indictments may be bad for some purposes but good for others. As to the present indictment it is divided into two sets of four counts each. The first four are clearly bad for duplicity, or rather multiplicity of felonies contained in each. It is alleged that the defendant did navigate, that he did equip, that he did use, &c. This averment runs through the first four counts. Now the vessel must be manned before she starts upon her voyage; therefore that must be a distinct felony from the navigating. And so of the other acts charged. This objection disposes of the first four counts. As to the second set, one short remark will dispose of them. The *scienter* is omitted in all. But there is another objection to the whole indictment. The 5 Geo. 4, c. 113, does not render slave trading illegal in general. It is subject to some exceptions.

WIGHTMAN, J.—And they are in the enacting part of the clause, and therefore should appear upon the pleadings.

CRESSWELL, J.—The charge is, that these several acts were performed for the purpose of doing what

the statute declares to be illegal. But it declares it to be so with certain exceptions and not absolutely.

Hill.—The Acts of any Legislature must be bounded by the territory over which it has control, and the operation of this Act will not extend beyond her Majesty's dominions. It is necessary therefore that the indictment should contain either this,—that the voyage was within the limits of the British empire, or that the party committing the offence was a natural born subject. Here is an act which the law of England has made an offence, but it is not an offence if it take place in another country. It was not until the 6 & 7 Vict. c. 98, that British natural born subjects were prohibited from slaving any where.. By the 6 Geo. 4, the Legislature used words which must be limited to the general principle. That Act does not apply to British subjects that were out of the jurisdiction; but even if it did, an averment to that effect would be necessary.

V. Williams (on the same side).—First, with regard to the duplicity apparent in the indictment. The same rule holds in criminal as in civil cases.

WIGHTMAN, J.—In order to accomplish a particular act, which the Legislature meant to prevent, he does all the things enumerated in the indictment, but the whole series comprehends but one offence. I recollect an indictment which was held good under the Stamp Act; there the words "cut, tear, and get off," &c. were used.

CRESSWELL, J.—When the whole is proved, you have proved but one offence, though possibly each might be an offence of itself. If by employing the word "use" alone, you might give evidence of the rest, why might they not be pleaded?

WILLIAMS, J.—Each of these is described as a felony by the Act, and therefore five or six felonies are charged in the indictment.

CRESSWELL, J.—Does not the statute mean that whoever should do a certain Act, or should take certain steps towards it, as in burglary, it is alleged that the prisoner did break in with intent to steal, and did steal.

WILLIAMS, J.—That might be decided to be bad, if the question were raised as it is here by these pleadings. In *Archbold's Criminal Pleading*, p. 50, it is said, "The defendant must not be charged with two or more offences in any one count of the indictment." "The only exceptions are found in indictments for burglary," the same instance being given as your lordship puts. By this indictment each of the defendants might be convicted of different acts. (*R.* v. *Fuller*, 1 B. & P. 181.)

Payne (in reply).—With regard to the four last counts, I must admit that they cannot be sustained. As to the question of duplicity, this case cannot be distinguished from a "stabbing, cutting, and wounding," which words are constantly used, and without any objection, on the score of duplicity. Then as to the alleged necessity of averring that the defendant was a British subject, or that the offence was committed within the jurisdiction of Great Britain, our answer is, that the indictment states the offence to have taken place in London. If this is wrong, it is for the defendant to plead it. Besides which, the 3 & 4 Wm. 4, c. 73, repeals all the exceptions which have been referred to.

At the conclusion of the argument,

WIGHTMAN, J. observed:—Though upon many of these objections we entertain no doubt whatever, still there are others of a very important character, and consequently we shall not give judgment until the next session. Accordingly in the October session the following judgment of Mr. Justice Wightman and Mr. Justice Cresswell was read by Mr. Baron Rolfe:—In the case of Thomas Jennings, an argument took place before us at the last sessions, on a demurrer to a plea of *autrefois acquit* at Sierra Leone, to an indictment on the 5th Geo. 4, c. 113, s. 10. On the part of the Crown, several objections to the plea were made; but the counsel for the prisoner, very little relying on its validity, objected to the indictment as bad in substance. As to some of the points made, we thought it right to take time for consideration. We entertain no doubt that the plea is bad. The offence charged in the indictment at Sierra-Leone as set out in the plea, appearing on the face of it to be different from that which is the subject of the indictment in this Court. This objection is not removed by the averment of identity. (*Reg.* v. *Taylor*, 3 B. & C. 502.) We have, therefore, to consider the validity of the objections that were urged to the indictment. The indictment contains eight counts founded upon the 10th section of the 5 Geo. 4, c. 113, and it was admitted upon the argument by the counsel for the Crown, that the last four counts in the indictment could not be supported, on account of the omission of the words *knowingly* and *wilfully*, which are used in the statute in describing the offence proposed to be charged upon the prisoner in these counts. The question, therefore, is, whether the first four counts, or any of them, are good. The first count stated that the prisoner, after the first day of January, in the year of our Lord 1825, to wit, on the first day of November, in the fourth year of the reign of Queen Victoria, with force and arms, to wit, at London aforesaid, and within the jurisdiction of the said Court, that is, of the Central Criminal Court, did illegally and feloniously man, navigate, equip, depatch, use, and employ a certain ship or vessel, to wit, a ship or vessel called the *Augusta*, in order to accomplish a certain object, which, in and by the said Act of Parliament, made and passed in the fifth year of the reign of his late Majesty Geo. 4, entitled an Act to amend and consolidate the Laws relating to the abolition of the Slave Trade, was and is declared unlawful, namely to deal and trade in slaves, contrary to the form, &c. The three following counts only varied from the first in describing the object of the several acts charged to have been done by the prisoner differently, as in the Act of Parliament. To these counts it was objected, in the first place, that each was bad, as charging several distinct felonies, the statute making it a felony to fit out, man, navigate, equip, despatch, use, or employ any ship or vessel, in order to accomplish any of the objects therein before declared unlawful, and each count charging the prisoner with having done *all the acts* before mentioned, each of which would have been of itself a a felony, if done with the object stated in the act; but we think that each count contains a charge of one felony only, the whole being alleged to have been done to accomplish one and the same single object, the essence of the felony consisting in using the means described in the act to accomplish that object. It was also contended that these counts were bad for not negativing the exceptions in the act, of circumstances which might render the transaction lawful. But on reference to the subsequent statute, 3 & 4 W. 4, c. 73, s. 12, it appears to us that these exceptions are virtually repealed, and that for this purpose the 10th section of 5 G. 4, c. 113, must be considered as if they never existed, and it is to be observed that the offences in the present indictment are charged to have been committed in the reign of her present Majesty, and therefore necessarily after the passing of the repealing statute. Another objection was, that the indictment contained no allegation that the prisoner was a British subject, or that the offence was committed within her Majesty's dominions, but we think that the indictment does in substance allege it to have been committed within her Majesty's dominions. It is stated in each count to have been committed at London, within the jurisdiction of the Central Criminal Court, and therefore *primâ facie* at least within the district mentioned in the 3 & 4 Wm. 4, c. 36, s. 2. Upon the argument our attention was drawn to the 50th sec. of 5 Geo. 4, c. 113, by which it is enacted that all offences committed against that Act might be inquired of, tried, determined, and dealt with, as if the same had been committed within the body of the county of Middlesex. Without determining what might be the effect of that clause upon an indictment differently framed from the present one, we are of opinion that it has no application to this, in which no use is attempted to be made of that section. All the objections that were urged to the indictment appear to us to be substantially included within those to which we have adverted, and for the reasons assigned we are of opinion that the first four counts of the indictment are good in substance, and that our judgment upon the demurrer must be for the Crown.

Irish Reports.

ROLLS COURT.

Michaelmas Term, 1844.

READ AND ANOTHER *v.* HODGENS.

Will—Construction of—Residuary estate—Superstitious uses.

Testator devised as follows. "I further order that all my effects be sold by auction, and all such money and valuables as I may die possessed of, be handed over to D. to be by him applied to the use and benefit of my sister K. widow, weekly or monthly, a certain sum, according to his discretion, not exceeding 20 guineas or thereabouts per annum, taking care to see the rent of her apartments regularly paid: and if, after her demise, there remain any residue, I direct such residue to be expended in masses for my soul's sake; and in case of my death in a foreign country, I trust H. will recover any money that may remain of the letter of credit which he has had the goodness to obtain from N. to be applied as above directed. My Royal Canal Stock is to be sold, also my Grand Canal debentures, as necessity may require, at the discretion of my executors or executor above mentioned."

Held, that the direction, "that all my effects be sold by auction," overruled the whole clause, and was a disposition of the entire residue of the testator's effects.

Held, also, that the bequest, "to be expended in masses for my soul's sake," was not void as a superstitious use.

His HONOUR said the bill in this case was filed by the plaintiffs, as next of kin to the Rev. Nicholas Kearnes, described therein as late parish priest of Rathfarnham. The bill prays that an account may be taken of the assets of the testator which came to the hands of the defendant, and of the testator's debts, legacies, funeral and testamentary expenses; and for payment of a residue to plaintiff, which their bill contends not to have been disposed of in the will. The defendant is now sole executor of the estate, the Rev. Patrick Duigenan, who was named as a joint-executor, having died before the death of the testator, and the defendant, in his capacity of executor, has demurred to the plaintiffs' bill for want of equity. By that demurrer the defendant contends that there was a valid distribution of the whole residue made in the will; and if he be right in that, this suit is negatived; but if there be any, even the smallest portion of assets undisposed of, the plaintiffs' right to sue remains indisputable. The bill charges that the testator was possessed of considerable personal estate, consisting, amongst other matters, of household furniture and effects, cash, Grand Canal and other debentures, and Royal Canal and Government stock; and further states that he made a will on the 5th of September, 1827, in which, after bequeathing several legacies, and appointing the Rev. Patrick Duigenan, and the defendant, Robert Hodgens, as his executors, proceeded—"I further order that all my effects be sold by auction, and all such money and valuables as I may die possessed of be handed over to the Rev. Mr. Duigenan, of Meath-street, to be by him applied to the use and benefit of my sister, Mary Kenny, widow, weekly or monthly, a certain sum, according to his discretion, not exceeding 20 guineas or thereabouts per annum, taking care to see the rent of her apartments regularly paid; and if, after her demise, there remain any residue, I direct such residue to be expended for masses for my soul's sake; and in case of my death in a foreign country, I trust Mr. Hodgens will recover any money that may remain of the letter of credit which he has had the goodness to obtain from John O'Neill, esq. to be applied as above directed. My Royal Canal Stock is to be sold, also my Grand Canal Debentures, as necessity may require, at the discretion of my executors or executor above mentioned." It is on this clause that the case depends: the plaintiff insists that this does not dispose of the whole residue of the personal estate of testator, but of part only; and if this be so the demurrer must be overruled. The plaintiff further insists, that, even if it be held that this word "residue" includes the residue of the whole property, still the bequest is a bequest for superstitious uses, and is therefore void according to the policy of the laws. If this point be correct, then the property must be held as undisposed of, and as belonging by right to the next of kin of the testator. The first point is a question of construction, and may be thus taken—has the testator expressed his will to be, that after payment of certain legacies the residue of all his property shall be applicable, after his sister's death, to be expended in masses for the good of his soul? This depends on the meaning of the clause. Now, in the first member of that clause we have a distinct direction to have all the testator's effects sold by auction. There is not any express direction to pay to the Rev. Patrick Duigenan the produce of this sale, though it may have been, as I conceive, intended, for it is evident that Duigenan was to be a trustee, with considerable discretionary powers, of a fund for support of testator's sister, and was on her behalf to have at his command property of every description which the execution of this special trust might require. It therefore seems to me impossible to hold that his right or power as trustee was limited to "money and valuables," or that any part of the testator's property was exempted from the trust as long as his sister lived. The word "residue" in the clause must mean the residue after satisfying the trusts so confided—that is, that the fund, whatever it consisted of, which was applicable to her support during her lifetime, also became disposable in discharge of the ultimate trust. When, therefore, I arrive at the conclusion that all the effects were applicable to the payment of the testator's debts and legacies, it seems to me also conclusive that the residue includes all, and that no part of the assets remain undisposed of in the will. The plaintiff's counsel did not contend that the fund left to the Rev. Patrick Duigenan consisted alone of money and valuables, but they contended that the words "all my effects" did not mean the canal stock and debentures, and that the context of the will proved they were excluded. Now, before I consider the argument in support of this construction, it may be useful to refer to some authorities on the subject. His Honour cited various cases in which decisions were given by learned judges, that the word "effects" was equivalent to all personal property, and that it should be so taken, unless where it appeared to be used in a restrictive sense by the context. These are rational interpretations of the word, and it requires a departure from the construction given in all the authorities to hold that the word residue here is to be used in a restrictive sense. I think I have quite sufficiently shewn upon what grounds I have come to the decision I am about to pronounce in this matter. We are then to see whether the general sense of the words "all my effects" is to be restricted by the context, and if there be in the context any thing to shew that the testator did not intend including the canal stock

and debentures. It may be observed that in thus narrowing the question I concur with the plaintiffs' counsel that such property cannot pass as money—this is decided in *Holham* v. *Sutton* (15 Ves. 266); and we now come to consider the arguments in support of the restricted sense. The plaintiffs, in arguing for the restricted sense of the word "effects," state that the effects here mentioned are ordered to be sold by auction, and that stock cannot be so disposed of. It is certainly true that in ordinary cases stock of this description is seldom sold by auction; but though it cannot be transferred to a purchaser otherwise than by a written contract, yet it is not improbable that a possessor of such stock would consider a sale by auction the best way of increasing its value. This argument, however, becomes of very little value when we have much better grounds for shewing that these words cannot be taken to have a restrictive operation. The direction to sell the effects is one for the government of the executors, and can be hardly said to have been given with a view of specifying particular items to be sold or excluding by description any items not to be disposed of. [His Honour cited the case of *Hearne* v. *Wiggins* (6 Man. 619), in support of the view.] In this case it was uncertain at the time of making the will what the testator's property might consist of at his death, and the direction in the will was, that the residue of the property should be converted into money for the benefit of the residuary legatee, and this is a strong authority against the inference here adduced from the direction to sell by auction. A further argument on the part of the plaintiffs is rested upon the constructive direction in the will that there shall be a sale as necessity may require; this, it is said, shews that Canal Stock and debentures cannot be held as having passed as effects, for if they had, they should, as effects, have been immediately sold by auction. In my opinion, the proper construction is to exclude the stock and debentures from the direction to sell by auction, but not to narrow the general operation of the word effects: its meaning seems to me to be this—that the effects generally should be sold by auction, but that as there was a portion already invested, and producing an annual income, such should not be sold except necessity required, which necessity, and the extent of it, the executors were to determine. If that was the meaning of the testator, as I believe it was, full operation will be given to the clause without limiting the word effects. The stock and debentures, of which, it is to be observed, there is no particular description made, were also, in my opinion, liable for the benefit of the testator's sister; as assets, all were to be applied to her use while she lived; and, therefore, I repeat my opinion, that the word residue is not to be limited by the construction of the will. As to the second point relied upon by the plaintiffs, to which I before adverted, I now come to make a few observations. They say that a residuary bequest for masses, being for superstitious uses, becomes void—that the property is, therefore, undisposed of, and belongs of right to them as next of kin. This question was argued with great ability by the gentlemen at both sides, and, together with the valuable assistance received from them, I myself gave the subject all the time and attention which it was in my power to command. But before I formed any opinion, I was put in possession of a decree in a case decided by Lord Manners in 1823 a decision upon a question precisely similar to this; and on the authority of that decision, I have now to declare that the bequest is valid, and that the second ground upon which the title of the plaintiffs rested is removed. [His Honour stated briefly the case referred to, by which it appeared that in the year 1822 Mrs. Judith Rush left at her death several sums to the Rev. Messrs. M'Cormack and Rouke to be appropriated to masses for her soul's sake. Exception was taken to bequests by the Commissioners of Charitable Donations, and a bill was accordingly filed against her executor, Mr. Thomas Walsh. The argument before Lord Manners occupied two days, and the exceptions taken by the plaintiffs were eventually overruled, and the bequests held valid, and an order was accordingly made that the executor should pay the several sums for the purposes specified in the will of the testatrix.] This, therefore, continued his Honour, closes all further discussion on this point; and, as I before stated, in deference to the authority of that decree, from which I am far from saying that anything has occurred to form in my mind any grounds of dissent—I say in obedience to that decree I of course rule for the defendant, and allow this demurrer. The only other matter to which I would refer, and I think the case has not been mentioned before—is a judgment of Lord Lyndhurst in *Walsh* v. *Gladstone*, in Phillips's Reports.

Deasy.—It was not mentioned before, my lord.

His **Honour** cited the case, in which, though the grounds were not precisely similar, the principle of the decision was sustained, and, in conclusion, gave judgment for the defendant, allowing the demurrer.

THE LEGISLATOR.

Summary.

The present week has been barren of news relating to legislation.

LOCAL AND PERSONAL ACTS.

(Concluded from p. 218.)

15. An Act to authorize the Sale of a certain Leasehold Estate in the County of Kent, Part of the settled Estate of the Earl of Guilford.

16. An Act to enable Sir James John Randoll Mackenzie, of Scatwell, Baronet, to add certain Lands and Estates belonging to him in Fee Simple to his entailed Estate, upon certain Terms and Conditions, and to borrow certain Sums of Money upon the Security of his entailed Estate, for Repayment of certain claims for Money laid out and to be laid out in Improvements upon the said Estate.

17. An Act for vesting in Trustees certain Parts of the entailed Estate of Seaforth, to be sold, and the Price applied in Payment of the Entailer's Debts, and the Surplus to be laid out in the Purchase of other Lands; for enabling the Heiress in possession to borrow a Sum of Money on the Credit of the said entailed Estates; and for other purposes connected therewith.

18. An Act for authorizing the Sale of certain Estates in the Counties of Meath and Cavan, limited by the Settlement executed on the Marriage of Pierce Morton and Louisa Morton, otherwise Somerville, his Wife, and for applying the Monies thence arising in Payment of Incumbrances affecting the said Estates prior to said Settlement.

19. An Act to authorize the Sale of certain Estates and Mines belonging to the Chapel of Willenhall, in the Parish of Wolverhampton, in the County of Stafford; and to provide a Residence for the Incumbent of the Chapel.

20. An Act to enable the Guardian of Henry Peach Keighley Peach, an Infant, to sell the next Presentation to the Rectory and Parish Church of Idlicote in the County of Warwick.

21. An Act for enlarging the Powers contained in the Will of Sir John Ramsden, Baronet, deceased, to grant Leases of the Hereditaments in the townships of Huddersfield, Honley, Dalton, and Aldmondbury, devised by such Will; and for other Purposes.

22. An Act for enabling the Trustees under the Will of the late Mr. Jonathan Passingham to grant Leases of the devised Estates, with Licences to dig Brick Earth; and to raise Monies upon Parts of the said Estates; and for the Purchase of an adjoining Property; and for other Purposes.

23. An Act for enabling the Trustees under the Marriage Settlement of William Henry Bowen Jordan Wilson, Esquire, to sell the Estates comprised in the same Settlement, and for laying out the Monies arising from such Sales in the Purchase of other Lands, to be settled to the same Uses.

24. An Act for enabling Trustees to sell the Estates devised by and settled to the Uses of the Will of William Harris, Esquire, deceased, and for authorizing the laying out of the Moneys arising therefrom in the Purchase of other Estates, to be settled to the same Uses.

25. An Act for carrying into effect a Compromise of a Suit for raising Portions for the younger Children of the Right Honourable Thomas Lord Le Despencer, deceased, out of the settled Estates of the said Thomas Lord Le Despencer, deceased, at Mereworth, in the County of Kent and elsewhere in the said County; and also for authorizing the Sale and Exchange of certain Parts of the said settled Estates.

26. An Act to enable Thomas Alexander Baron Lovat to borrow a certain Sum of Money upon the Security of his entailed Estates, for Repayment to him of a Portion of the Moneys laid out by him in the Improvement of these Estates.

27. An Act to enable the Trustees of the Will of Sir George William Tapps Gervis, Baronet, deceased, to convey a Church at Bournemouth, in the County of Southampton, to Her Majesty's Commissioners for building new Churches, and to endow the same.

28. An Act for enabling the Trustees of the Will of William Atkins Bowyer, Esquire, deceased, to grant building, improving, and other Leases of certain Estates at Clapham, in the County of Surrey, devised by the said Will and the Second Codicil thereto to the Trustees therein named.

29. An Act for effecting an Exchange of the entailed Estate of Rosehall, belonging to the Right Honourable James Edward Lord Cranstown, situated in the County of Sutherland, for certain Lands in the County of Kincardine, belonging to James Matheson, Esquire, of Achany.

30. An Act for confirming and carrying into execution certain Articles of Agreement made and entered into between Charles James Lord Bishop of London, Thomas Thistlethwayte, Esquire, Thomas Somers Cocks, Esquire, Christopher Hodgson, Esquire, the Company of Proprietors of the Grand Junction Canal, and the Grand Junction Waterworks Company; and for other Purposes therein mentioned.

31. An Act for vesting Parts of the Estates of William Devaynes, Esquire, deceased, in Trustees, upon trust to be sold; and for paying off a Mortgage Debt of Eight thousand two hundred Pounds due to James Parkinson, Esquire, out of the first Purchase Monies, and for laying out the residue of the Purchase Monies, under the Direction of the Court of Chancery, in the Purchase of other Estates, to be settled to the same Uses.

32. An Act for annexing to the united Bishopricks of Down, Connor, and Dromore the House known as Down and Connor House, with the Appurtenances; and for other Purposes.

33. An Act to confirm certain Contracts for Leases made and entered into by James Weller Ladbroke, Esquire, of Lands and Premises at or near Notting Hill, in the County of Middlesex; and to alter and enlarge the Powers of an Act passed in the First and Second Years of the Reign of his late Majesty King George the Fourth, intituled "An Act to enable James Weller Ladbroke, Esquire, and others to grant Building Leases of Lands in Kensington, Paddington, Notting Barns, and Westborne, in the County of Middlesex;" and for other Purposes relating thereto.

34. An Act to explain an Act passed in the First Year of her present Majesty, intituled "An Act for authorizing the Sale and Exchange of the Real Estate devised by the Will of the Right Honourable William Henry Earl of Rochford, deceased, and for the Application of the Produce thereof; and for authorizing the granting of Leases of the same Estate; and for other purposes;" and for extending the Operation of such Act to certain parties whose Consent thereto was required.

PRIVATE ACTS,

Not printed.

35. An Act for naturalizing John Frederick Sang,

36. An Act for naturalizing Samuel Schuster.

37. An Act for naturalizing Dame Susan Victoria Regina, Widow of Sir James Nugent, Baronet, deceased.

38. An Act for naturalizing Antonio Lascaridi.

39. An Act for naturalizing Michael Spartal.

40. An Act for naturalizing Paul Cababé.

41. An Act for naturalizing Frederick Figge.

42. An Act for naturalizing Henri Victor Malan.

43. An Act to enable Mary Bean, Widow, and her Issue, and Edward Whitley, Esquire, and Charlotte his wife, and the Issue of the said Charlotte Whitley, respectively to take the Surname and use the Arms of Rodbard.

44. An Act for naturalizing Dionysius Onufri Marianski.

45. An Act to dissolve the Marriage of Samuel Archbutt, the younger, Gentleman, with Mary Amelia his now wife, and to enable him to marry again; and for other Purposes therein mentioned.

46. An Act for authorizing the Endowment of the Curacies of Werrington and Saint Giles-in-the-Heath, in the County of Devon, and the Alienation and Conveyance of the Rights of Patronage of the same Curacies respectively to Persons who shall further endow the same; and for other purposes relating thereto.

47. An Act to dissolve the Marriage of John Cheape, Esquire, a Lieutenant-Colonel in the Military Service of the Honourable East India Company, with Amelia Frances Chicheley Cheape his now wife, and to enable him to marry again; and for other Purposes therein mentioned.

48. An Act to dissolve the Marriage of William Hough, a Major in the Military Service of the Honourable East India Company, with Sophia his now wife, and to enable him to marry again; and for other Purposes.

49. An Act to dissolve the marriage of Thomas Foreman Gape with Fanny Louisa his now wife, and to enable him to marry again; and for other Purposes therein mentioned.

PARLIAMENTARY RETURNS.

STATISTICS OF THE CATHOLIC CHURCH IN GREAT BRITAIN.

England and Wales.—Bedfordshire, churches and chapels, 1; Berkshire, 5; Buckinghamshire, 2; Cambridgeshire, 6; Cheshire, 14; Cornwall, 4; Cumberland, 9; Derbyshire, 9; Devonshire, 8; Dorsetshire, 9; Durham, 17; Essex, 7; Gloucestershire, 7; Hampshire, 13; Herefordshire, 3; Hertfordshire, 2; Kent, 12; Lancashire, 98; Leicestershire, 15; Lincolnshire, 12; Middlesex, 25; Monmouthshire, 7; Norfolk, 8; Northamptonshire, 5; Nottinghamshire, 3; Northumberland, 22; Oxfordshire, 7; Shropshire, 9; Somersetshire, 13; Staffordshire, 32; Suffolk, 6; Surrey, 7; Sussex, 8; Warwickshire, 22; Westmoreland, 2; Wiltshire, 3; Worcestershire, 12; Yorkshire, 58; Isle of Man, 1; Guernsey, 1; Jersey, 2. *South Wales;* Brecknockshire, 1; Glamorganshire, 3. *North Wales;* Carnarvonshire, 1; Denbighshire, 1; Flintshire, 2. Total of chapels in England and Wales, 509.

Scotland.—Aberdeenshire, churches and chapels, 10; Argyleshire, 3; Ayrshire, 1; Banffshire, 11; Caithness-shire, 1; Dumbartonshire, 2; Dumfries-shire, 2; Edinburghshire, 4; Inverness-shire, 17; Kincardineshire, 1; Kirkcudbright, 3; Lanarkshire, 3; Linlithgowshire, 1; Morayshire, 2; Peebleshire, 1; Perthshire, 2; Renfrewshire, 3; Ross-shire, 1; Roxburghshire, 1; Stirlingshire, 2; Wigtonshire, 1. Total of chapels in Scotland, 73; besides 27 stations where divine service is performed.

Grand total of Catholic churches and chapels in Great Britain, 582.

Catholic Colleges.—In England there are ten Catholic colleges, viz.:—St. Edmund's, Hertfordshire; St. Peter's, St. Paul's, St. Gregory's, Somersetshire; Stonyhurst, Lancashire; St. Mary's, Staffordshire; St. Cuthbert's, Ushaw, Durham; St. Lawrence's, Yorkshire; St. Edward's, Lancashire; College of the Immaculate Conception, Leicestershire. In Scotland, one, viz.:—St. Mary's Blairs, Kincardineshire.

Convents.—London district, 11: Central, 8; Western, 5; Lancashire, 3; Yorkshire, 2; Northern, 1; Scotland, 1; total, 31.

Monasteries.—Central district, 3—Missionary Priests in Great Britain.—England: London district, 133; Central, 122; Eastern, 34; Western, 68; Lancashire, 166; Yorkshire, 65; Northern, 58; Wales, 20. Total in England, 666, including priests without any fixed mission.—Scotland: Eastern district, 20; Western, 40; Northern, 26; St. Mary's College, Blairs, 5. Total in Scotland, 91. Grand total of missionary priests in Great Britain, 757.—*Roman Catholic Directory*, 1845.

THE MAGISTRATE.

Summary.

IN this department of the LAW TIMES, we have only to direct attention to the extraordinary course pursued by Mr. Baron GURNEY in the trials of prisoners, which has been commented upon in a leading article. The more we think of it, the more we feel the impropriety, if not the illegality, of his practice.

REVIEW OF MAGISTRATES' CASES,

In Michaelmas Term, 1844.

ALTHOUGH the cases touching the duties of magistrates, decided during last term, have been far from unusually numerous, *Reg.* v. *Ellis* and *Reg.* v. *Wilson* are sufficiently important to characterize the term, they having both of them decided hitherto undetermined points of much practical moment.

The improbability that a measure so faulty and unpopular as the proposed Settlement Bill will survive next session, renders it as necessary as it ever was to note the leading judgments and decisions of the Court of Queen's Bench, which is, and in all likelihood will continue to be, the only standard and exponent of what the law is in this extensive branch of practice. We are induced to state this, because we are aware that in some quarters an inattention to the current of cases has grown up, built on the fallacious expectation that the old law would be soon swept away. With all its manifold defects, it will take more wisdom to improve upon it than that which inspired the authors of the new Bill. Added to the difficulty of introducing so large a change as the abolition of all removals, is the growing feeling that no botching of the present system, short of such abolition, would be practically beneficial; for all new schemes must introduce fresh doubt and litigation. It is, therefore, all but certain that the existing law will remain unchanged for some time to come.

We proceed to review the leading decisions of last Term.

SWEARING IN OF CHURCHWARDENS.

Reg. v. *The Archdeacon of Coventry* (4 Law T. 92).—This case is not otherwise of importance than as shewing that a rule will be granted *absolute in the first instance* for a *mandamus* to compel an archdeacon to admit churchwardens, such office being purely ministerial. A peremptory *mandamus*, however, will not issue so as to prevent a return. We believe a return has been made, and this case will therefore be again before our readers. The question may then arise, whether, although the ordinary's function is clearly ministerial (Bac. Abr. Churchwardens, A.); and though in general he cannot control or inquire into the validity of an election, *Morgan* v. *Cardigan* (1 Salk. 166), he may not object to a person obviously disqualified, whose election was void: for offices the most ministerial leave a discretion not to join in an illegal act. (1 Hag. Consist. Rep. 10.) Suppose a practising barrister or attorney is presented to the archdeacon, is he bound to admit him?

REMOVAL OF PAUPER LUNATICS TO COUNTY ASYLUMS.

Reg. v. *Ellis* (4 Law T. 113), has decided a new point arising upon the construction of the 38th section of 9 Geo. 4, c. 40, which requires the justices, "to cause the person to be conveyed to, and placed in the county lunatic asylum, established under the direction of this, or any former Act: and if no such county lunatic asylum shall have been established, then to some public hospital, or some house duly licensed for the reception of insane persons." Now, in this case there was a county lunatic asylum, at Hanwell, in the county of Middlesex, *but the asylum was full.* The justices had therefore removed the pauper to an asylum in Surrey. The learned counsel for the order of removal suggested that an asylum full was tantamount to no asylum at all, and put the case of a county whose asylum was swallowed by an earthquake; but the Court, unshaken by the earthquake argument, held that this statute must be literally construed; that the case was one for which no special exception had been made, and that the Court had no power to import one into the Act. The tendency of many recent cases has been to increase the rigour of the construction of statutes. This case is perhaps the most extreme one of all, and certainly overrules the principle that where manifest inconvenience results from the literal construction, which is repugnant to the plain intention of a statute, its express terms need not be strictly followed. As regards the Act in question, it follows that the justices are not empowered to remove even to a private asylum or licensed house, even though in the same county, when there is a county asylum already established, which is full. Neither by section 45 of the Poor Law Act can "any lunatic or idiot" be kept in workhouses above fourteen days. Under such circumstances, it is difficult to suggest any means save that of the parish providing proper care of the pauper, and sending him in proper custody to the place of his settlement, and so to proceed precisely as in the case of a sane pauper. If he is too ill to be removed (which will rarely occur), the proceeding must be as in cases of suspended removals.

EVIDENCE OF CHARGEABILITY.

Reg. v. *St. Anne's, Westminster* (4 Law T. 112), gave another instance of the forlorn bewilderment of some parishes as to the requisite evidence of chargeability. All that the examination contained was this statement by the pauper, "Examinant further saith upon her oath that she hath, together with her children, *become chargeable* to the parish of St. James, Westminster, *and are now actually chargeable thereto.*" It would hardly be supposed that the judgment in *Reg.* v. *High Bickington* (1 Bit. & Sym. M. C. 1) had been so lately pronounced in this very city of Westminster; the chief parish of which is still ignorant of how orders are to state chargeability!

The order was quashed without argument. When will parishes learn to let some one witness state the fact, that relief is given, and, if possible, the amount and date of it? It is really a rare thing to see an order perfect in this respect. Where the statutable certificate of chargeability is given, it is very commonly defective by not proving the seal and the signature of the chairman and the secretary, both of which are essential, and neither of which prove themselves. (*Reg.* v. *Farthinghoe*, 1 Bit. & Sym. M.C. 46.)

APPRENTICESHIP—SETTLEMENT—MISNOMER IN INDENTURE.

Reg. v. *Wooldale* (4 Law T. 132), in some degree relaxes the rigour with which deeds essential to settlements are to be regarded. It would be tedious, and scarcely useful, to dilate upon the detail of specific informalities of expression, with which this particular indenture swarmed, inasmuch as they will be found at length in the part just published of Bit. & Sym. M. C. Verulam Reports, p. 134. It suffices to state that in this case the chief informality was a misnomer, the apprentice having been first called John, then Joseph, and the signature was in his right name, Joseph. It was held that this could not mislead. Then, again, it did not clearly and expressly appear how long the binding was for: the indenture merely saying that it was until the lad should attain the age of twenty-one years, and this was ungrammatically stated. It might, therefore, have been that only a few days elapsed between the binding and the twenty-first birthday. But this was held to be holpen by other provisions expressly of a yearly nature. So that altogether, clumsy, illiterate, and blundering as the indenture was, it passed muster, and the order was upheld.

TENEMENT SETTLEMENT; SUFFICIENCY OF EXAMINATION.

Reg. v. *Honley* (4 Law T. 132) is an instructive example of the slovenly and insufficient statement of the time during which tenements were rented. The words were these:—

When I was about thirty years of age, I went to live in the township of Honley. In the year 1821, and whilst I still resided in the same place, I rented and occupied between three and four acres of land at Scoll Gate Head, in Honley aforesaid, of John Todd, of Honley aforesaid, clothier, of the annual value of 7*l.* and for which I paid 7*l.* rent for many years. In the year 1821, and at the same time that I so occupied the land of John Todd, I also rented and occupied three acres of land at Scoll Gate Head aforesaid, of one John Bottomley, of Meltham, sizer-boiler, of the annual value of 7*l.*, at 7*l.* rent, which I occupied for one year, and then gave it up in the year 1822.

In the first place there is no averment of the *payment* of any rent for the second parcel of land therein mentioned; although the statute then in force (in 1821, 59 Geo. 3, c. 50) expressly requires that the rent shall have been "actually paid."

In the second place there is no statement of any occupation of the first land for any specific period. It is essential that there should be occupation of *land* for one whole year, by the terms of the statute, though it is not necessary that *houses* should be occupied, but merely holden. (See *Rex* v. *Stow Bardolph*, 1 B. & Ad. 219, and *Rex* v. *Great Bolton*, 8 B. & Cr. 71.) But where the tenement is *land*, under that statute there must have been *occupancy* for the *whole year*. (*Rex* v. *Ockley*, 1 B. & Adol. 818.) In both cases there must have been *residence* in the *parish* where the tenement is for *forty days*. (*Rex* v. *Whaplect*, 8 B. & C. 227.) The grounds of appeal were, that "the examination shewed no occupation or holding by the said M. W. of any tenement of the *yearly value* of 10*l.* for *forty days* during 1821, or any such occupation or holding of any such tenement of *the yearly value* of 10*l.* for *forty days* during any other year or years." We confess that we should have thought that this ground of appeal was bad. It is not at all necessary that the tenement should be of the "yearly *value*" of 10*l.* under 59 Geo. 3, c. 50, so long as that rent was *actually paid.* The case of *Rex* v. *Ashfield-cum-Thorpe* (9 B. & Cr. 930) is a distinct authority on the point; but even if the man had *occupied* for *forty* days, that would not have sufficed. There is a confusion between residence in the parish and occupation of the land. However, the Court held that the grounds of appeal sufficiently let in the appellants to shew the in-

sufficiency of the examination; and with our unfeigned deference to the judgment of the Court of Queen's Bench, we must conclude that the grounds sufficiently state the defects in this case; but parishes will do well to understand the law, before they draw objections based upon it. We know a parish which spent 137*l.* upon grounds drawn by some wise person, "who did them cheap," and failed to quash the order, though it was clearly bad, thus saddling themselves with the pauper. Economies of this kind are rather costly in the long run.

The same settlement is involved in the case of *Reg.* v. *St. Sepulchre, Northampton* (4 Law T. 138), but there the date of the letting was in 1839, bringing it under the terms of 1 Wm. 4, c. 18, which requires *houses*, as well as land, to be occupied for the term of one year by the person hiring the same,(*a*) under a yearly hiring. The question in this case was, whether this sufficiently appeared in the following examination:—

"I let a house to John Adams at the rent of 10*l.* a year, in July 1839. The said John Adams occupied the house, and paid the whole of the rent during that time." The pauper, who was the wife of John Adams, stated, "In July 1839, my husband hired a house of Mrs. Brown (the landlady). We resided in that house until March 1842."

It was here held by Lord Denman, C. J. that this did not sufficiently shew a holding or an occupancy for a year; Williams, J. concurring. Wightman, J. agreed that the statement of occupancy was insufficient, but not the statement of the letting and hiring. Coleridge, J. dissented wholly from the other judges, and held every thing to be stated which was necessary. *Reg.* v. *The Recorder of Pontefract* (2 Q.B. 548) was relied on by the Court and in the argument, that nothing must be left to surmise or inference in these essential statements. Supposing that there was some degree of rigour in this case, where is the difficulty in plainly and fully stating that the man occupied the house for and during the whole of the said year? Parishes really cannot complain with any justice of costs they entail upon themselves by this stupid carelessness. The removing parish will have paid, and will hereafter pay, for aught we know, 100*l.* for each word omitted. Would it not have been as well to have paid a guinea or two for competent professional advice as to the evidence and statements necessary? There was clearly a good settlement, which they have now debarred themselves from proving for ever.

POWER OF QUARTER SESSIONS TO QUASH INDICTMENTS.

In our last Review of the Cases in Trinity Term, we entered at some length upon this question, and gave grounds and cases for the conclusion that Courts of Quarter Sessions possess full power to quash indictments. The case of *Reg.* v. *Wilson* (4 Law T. 153) confirms our view. The dictum in Jervis's Archbold (p. 66) is overruled. The main question was decided on the ground that there is a common law jurisdiction on the part of the Sessions to do all that is requisite to be done for the ends of justice by courts of assize. The quashing of indictments falls within these requirements, and is a power exercised constantly by judges of assize. The indictment must, however, be always quashed before plea pleaded. It, however, by no means follows that the mode in which the justices exercise their jurisdiction is not to be subject to the revision of the Court of Queen's Bench. In this case, from what fell from the Court, it is clear that the mode in which the power of quashing was here exercised might be questioned, and the order, perhaps, set aside. The mode, however, of doing this, would be by writ of error, and not as was attempted in this case by writ of *certiorari*.(*b*) We cannot now enter upon the peculiarities of this case; inasmuch as the Court refused to go into them under the motion as it was then made; but if the matter proceed further, we shall most unhesitatingly deal with all the facts and bearings of the case as strict justice may seem to us to require. Mr. Newton, who was the prosecutor below, entered into many of the circumstances of the case, but these form at present an *ex parte* statement, and give us no sufficient warranty or data to say more.

The point which *is* fully decided, and decided for the first time, by an express decision on the point, is, *that Courts of Quarter Sessions have full power to quash indictments before plea pleaded.* The report in the LAW TIMES, together with the remarks we previously made on this case when the rule was obtained for the *certiorari*, dispense with the necessity for further comment on the case as it stands.

Next week we shall review one or two other cases which occurred last Term.

(*a*) The 6 Geo. 4, c. 57, which intervened, had omitted to do this.

(*b*) We shall probably give a few brief rules ere long for the correction of orders made at sessions.

POOR LAW CIRCULAR.

(*Continued from page* 137.)

4. REMOVAL OF AN IRISH MOTHER AND CHILDREN.

July 24, 1844.

Clerk of East Retford Union—Stated that an Irishman deserted his wife, an Irishwoman, and three infant children, about eight years ago. The woman had since resided in a parish in the East Retford Union, and had had three children born during her husband's absence since 1834. Inquired, whether the mother and her children (as well those born while the husband and wife lived together, as those born during his absence), might be removed to Ireland. Observed that it is laid down in 3 Archbold's Justice of the Peace (ed. 1844), that the bastard children of Irish mothers are not so removable; and some doubt is suggested whether the Poor Law Amendment Act applies (as respects the settlement of bastards) to the children of Irishwomen.

Ans.—The woman being an Irishwoman by birth, and not having any settlement in England, is removable to Ireland under 3 & 4 Wm. 4, c. 40, with such of her legitimate children as are not emancipated. The case is distinguishable from *Rex* v. *Cottenham* (7 B. & C. 615). There the wife was not born in Ireland, and had a maiden settlement in this country; and the Court held that in the absence of her husband she could not be removed to Ireland, but was properly removed to her maiden settlement. In the case stated in your letter, the woman has no maiden settlement, but is directly within the terms of the first section of 3 & 4 Wm. 4, c. 40, viz. a person born in Ireland, not having gained any settlement in England. With regard to the children alleged to be illegitimate, having been born during the absence of the husband, and since the 14th of August, 1834, *Rex* v. *Mile End Old Town* (4 A. & E. 196) shews that they cannot be removed with the mother to Ireland. It must be observed, however, that as the woman is a married woman, the principle of course is that the children are legitimate, unless non-access on the part of the husband be proved; and this fact must be shewn by some other evidence than the oath of the wife herself. (See *R.* v. *Reading*, quoted in 1 Burn's Justice, 327.)

SERVANTS.

MAINTENANCE OF IN SICKNESS.

June 11, 1844.

Clerk of Bedminster Union—Stated, that application had been made to the guardians by a ratepayer for an allowance of weekly relief and a nurse for his domestic servant, she being confined to her bed in his house by illness. The guardians doubted whether they ought to grant relief to a domestic servant, under such circumstances, and wished the Commissioners' advice upon the subject.

Ans.—In the absence of any agreement on the subject, a master is not bound to provide his servant with medical attendance, if the latter fall sick during the period of service. There may be cases in which the earnings of a yearly-hired servant are so small as to be obviously insufficient to enable him to procure medical attendance at his own cost. The question, whether the guardians, in any particular case, can grant medical relief to a domestic servant, must be determined upon a consideration of the circumstances of such case. For example, the liability of the master under any agreement, or the ability of the servant himself to provide or procure medical aid, independently of the parish. This is a question for the guardians themselves to decide, upon their knowledge of the facts, though it may be observed generally, that the circumstance of a person being in service and earning wages, raises a presumption against the necessity of his resorting to the parish.

SETTLEMENT.

1. BY BIRTH—PROOF.

April 29, 1844.

Rev. Henry Eley, Broomfield Vicarage, Chelmsford—Inquired whether the register of baptism at the parish church was, in itself, sufficient evidence to prove the settlement of the parties baptized.

Ans.—The register of baptism is not, of itself, sufficient evidence to prove the place of birth of any person, with a view to ascertaining his settlement, although it may be adduced as one of the circumstances tending to prove it. (*R.* v. *North Petherton*, 5 B. & C. 508; *R.* v. *Lubbenham*, 5 B. & Ad. 968.)

2. SETTLEMENT—VALIDITY OF MARRIAGE.

Feb. 23, 1844.

Clerk of Stow-on-the-Wold Union—Inquired as to the validity of the marriage of Sarah Upstone, the same having taken place about three years ago, at Cheltenham, by banns, neither of the parties living at that place either at the time the banns were published, or when the marriage took place.

Ans.—The Commissioners presume that the objection which the statement of facts has suggested to the guardians, is, that the marriage is invalidated by the fact that neither of the parties was actually resident in the parish in which the banns were published and the marriage was solemnized. The Commissioners would direct the attention of the guardians to the 4th Geo. 4, c. 76, by which, section 26, it is provided that after the solemnization of any marriage under a publication of banns, proof of the actual residence of the parties is not necessary to the validity of the marriage; and that in any suit touching the validity of any such marriage, evidence in support of non-residence is not admissible.

VESTRIES.—1. VOTING AT.

April 22, 1844.

Messrs. C. Sanders and W. Hill, jun. Bickland, Budock, near Penryn—Stated, that the larger rate-payers of the parish out-voted the smaller rate-payers, by claiming and exercising the right of voting at a higher scale in proportion to their rental, contending that persons whose rental was under 200*l.* were entitled only to one vote, those under 400*l.* to two votes, and so on, according to the 40th section of the Poor Law Amendment Act. Requested the Commissioners' opinion upon the subject.

Ans.—The scale of voting fixed for rate-payers by the 40th section of the Poor Law Amendment Act, is expressly confined to cases of the election of guardians under that Act, or in which "the consent of the owners of property or rate-payers in any parish or union shall be required for any of the purposes of that Act." The voting at vestries is still regulated by the Vestries Act, 58 Geo. 3, c. 69. (See 8 Vict. c. 101, s. 14.)

2. DITTO.

June 12, 1844.

Rev. ——— stated, that A. B. entered upon a rateable house on the 29th October, 1843: an assessment was made on the 2nd November, 1843, in which A. B.'s name was omitted by the overseer, consequently no rate was demanded from him on that assessment: previous to the next assessment, A. B. claimed to have his name put on the rate-book, and to have the privilege of giving a vote at a vestry meeting, under sections 4 or 5, or both, of 59 Geo. 3, c. 69. Inquired, whether A. B. was entitled to a vote under either of the above sections.

Ans.—After a careful consideration of the case, the Commissioners cannot come to any other conclusion than that, according to the strict letter of the statute, the individual in question was not entitled to vote in vestry under the circumstances which you describe. The 3rd section of the 58 Geo. 3, c. 69, applies only to inhabitants "who shall by the last rate which shall have been made for the relief of the poor, have been assessed and charged," &c. In the case put, the party was not assessed in the last poor-rate made before he came to vote, and therefore, as it appears to the Commissioners, he is not within that section. The 4th section of the same statute refers to those cases only in which "any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof." The person alluded to became an inhabitant of the parish, and became liable to be rated therein, on the 29th October; the last rate being made before he claimed to vote, was made on the 2nd November; consequently he became an inhabitant, and became liable to assessment before, and not after, the making of such rate. The Commissioners do not see that the 5th section is any way bears on the question. (See 7 & 8 Vict. c. 101, ss. 14, 127.)

VESTRY CLERKS.

July 16, 1844.

Mr. James Grant, Skirlaugh—Stated that he had been, in the month of April last, elected vestry clerk of the parish of Skirlaugh, at a salary of 15*l.* per annum, and inquired whether such salary could be legally paid out of the poor-rates, and placed in the overseers' accounts?

Ans.—Whatever powers may belong to the vestry to appoint a clerk to record their proceedings, the

law does not appear to have made any provision for the payment of a salary to that officer out of the poor-rates. This appears clear from the judgment of Lord Kenyon, in *Rex v. Churchwardens of Croydon* (5 T.R. 714). It is true that by section 109 of the Poor Law Amendment Act the word officer is construed to extend amongst others to a vestry clerk. But, though, the effect of this section is to bring any person acting as a vestry clerk, so far as he may be aiding in carrying the laws for the relief of the poor into execution within the control of the Commissioners, it does not thence follow that he is such an officer as the Commissioners have authority to direct the overseers of the parish, or the guardians of any union, to appoint at a salary to be paid out of the poor-rates. The construction which the word officer used in the 46th section 4 & 5 Wm. 4, c. 76, as explained by the 109th, has received in *Reg. v. The Poor Law Commissioners, re The Cambridge Union* (2 P. & D. 323), where it was held not to extend to a collector of poor-rates, seems plainly to shew that a less restricted interpretation would not be given if the question were as to the appointment under the section referred to of a vestry clerk, whose ordinary duties and functions are still more foreign to the objects and purposes of the Act than those of a collector.

The Metropolitan Prisons for Debt.—The metropolitan prisons for debt presented a very different appearance on Christmas-day last to what they do on the present occasion. In Whitecross-street Prison there were this time last year upwards of 300 debtors, and now they do not exceed 130, notwithstanding a great influx within the last fortnight—no fewer than 70 persons having taken up their abode there in that period. The prisoners will each receive a piece of beef and some bread, and on New-Year's-day a similar supply. In the Queen's Prison there are but comparatively few to the number of last year, and they will be furnished with an allowance of food, besides other assistance. The Marshalsea prisoners are confined in the same prison, and in the Act consolidating the prisoners, passed two years ago, provision was made in regard to the contributions to those particular prisoners. In Horsemonger-lane there are only 27 debtors. The whole number of debtors confined in the three metropolitan prisons is at the present period under 300, which is about a third of the inmates of last year. The Act of last session, abolishing execution on debts not exceeding 20*l.* has certainly been the cause of the present appearance of debtors' prisons, both in London and the country—in the latter, the prisons are nearly deserted by debtors. Creditors complain that the Act of last session regarded the convenience of debtors, and neglected the interest of creditors; the latter being left to the honesty of the former, and compelled to ask in "bondman's key" for their money. By a return of last session it appears that there were in March last between 3,000 and 4,000 debtors, of which more than 1,600 were confined for debts, exclusive of costs, of under 10*l.*

The following building is certified as a place duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—Providence Chapel, Upper Tean, Staffordshire, Thomas Walters, superintendent registrar. The Presbyterian Church, situated at the New-road, in the parish of Woolwich, in the county of Kent, in the district of the Greenwich union. Pencader, situated in the parish of Llanfyhangelrarth, in the county of Carmarthen, in the district of Newcastle in Emlyn. The Independent chapel, Howdon-on-Tyne, situated at Howdon, in the parish of Wallsend, in the county of Northumberland, in the district of Tynemouth union. Providence Chapel, Checkley, Staffordshire.

THE LAWYER.

Summary.

A week of holiday is necessarily barren of intelligence. But the next week will bring into operation the very questionable "Transfer of Property Act," and as any opinion upon its doubtful provisions is interesting and may be useful, we take the following from the *Times*:—

THE TRANSFER OF PROPERTY ACT.

TO THE EDITOR OF THE TIMES.

Sir,—The spare room in the *Times* cannot, I am sure, be more usefully employed than in clearing up any doubts or removing any misconceptions, as to the operation of the Act entitled "An Act to Simplify the Transfer of Property," which is on the eve of coming into operation. My observations will be chiefly confined to the second section; and I am chiefly, indeed solely, induced to send them to you, because every writer, without exception, who has treated of this section seems to me to have misapprehended its object. The section begins thus,—"That every person may convey by any deed, without livery of seisin, or enrolment, or a prior lease, all such, &c." By the present law, an immediate estate of freehold cannot be conveyed to a stranger by deed alone. The deed must be enrolled in Chancery, or must be accompanied by livery of seisin. To a tenant for years in possession it may be released by deed alone; but in order to create the tenancy, there must be a previous demise and entry by the tenant, or a bargain and sale for a term (the well-known lease for a year, which does not require entry). Now, it appears to me quite clear that the section I have quoted only takes away the necessity for the livery of seisin, the enrolment, or the lease for a year. The conveyance is still a feoffment, which by aid of the statute requires no livery of seisin, a bargain and sale not requiring enrolment, or a release not requiring a lease for a year. The act does not give a new statutory mode of conveying the land, but retains the old, dispensing with some of the cumbrous formalities, which were of no use.

The distinction is not unimportant. The chief practical result is, that the words "bargain and sale" must be avoided as carefully in conveyances and uses as the word "grant" used to be in conveyances by trustees. There can be no doubt, I think, that if under the new act A for money bargains and sells land to B and his heirs, to the use of C and his heirs, the legal estate will vest in B.

The writers to whom I allude have all considered this clause as giving a new statutory deed which will operate as a conveyance by force of the statute, and the properties of which remain to be discovered. The forms which have been published contain a new operative word—"convey;" but until the the legal operation of this word is settled, I cannot help fearing there will be some danger in using it. If A enfeoffs B and his heirs, in trust for C. and his heirs, or grants or releases land to B. and his heirs, in trust for C and his heirs, the legal estate is executed in C. If A bargains and sells (for money) to B and his heirs, in trust for C and his heirs, the legal estate remains in B; but if A "conveys" land to B. and his heirs, in trust for C and his heirs, who can say where the legal estate is?

The word "release," and the idea of a release, should be generally given up, except where it is appropriate, and conveyances of freeholds should be considered as feoffments or grants, according as they are conveyances of freeholds in possession or in remainder, and the most appropriate operative words would seem to be "give and grant," or give, grant, and confirm."

The construction of the 2nd clause appears to me to throw a good deal of light on the much disputed 13th clause, which enacts that the Act "shall not extend to any deed, act, or thing, executed or done, or (except the provisions therein contained as to existing contingent remainders) to any estate, right, or interest, created before the 1st day of January, 1845." Now the object of the 2nd section being, as I conceive, not to give a new statutory conveyance, in which case it might be contended that no estate, right, or interest, created before 1845 could pass thereby, but only to relieve the present modes of conveyance of some formalities, it seems clear that a feoffment without livery of seizin, a bargain and sale not enrolled, or a release without a lease for a year, or reference to the statute, will convey estates created before the 1st of January, 1845.

The 13th clause can, I conceive, only apply to those clauses which give new powers to the old forms of conveyances, as the clauses relating to contingent interests and conveyances, by executors of mortgagees. I do not think it so clear as some of my brethren that it applies even to them, but, at all events no conveyancer, until the meaning of the clause is settled by the highest authority, can accept a conveyance of any contingent interest created before 1845, which he would not have accepted before 1845.

Your obedient servant,

Lincoln's-inn, Dec. 23. A Conveyancer.

P.S. I am no pleader, but I should imagine there would be some difficulty in pleading a deed in which the only operative word was "convey."

This letter has called forth the following reply, part of which we subjoin, concluding that whatever tends to elucidate the obscurities of the statute will be welcome:—

Real property lawyers must, however, interpret the Act in some way, for next week it will be rung in with the new year. The chimes will ring—"Every man his own conveyancer, or simplification and '45."

Concurring in much that has fallen from your correspondent of this morning, "Conveyancer," and thinking his observations on the whole useful and corrective of some errors now abroad, I beg to add a few observations, and to point out one or two errors into which I think he has fallen.

I agree with him that no new form of deed is intended to be created, and that those gentlemen who may exercise their imaginations in inventing new forms will but entangle their clients. By the second section, "every person may convey any deed without livery of seisin or enrolment, or a prior lease, all such freehold land, &c." Now, so far from any new form of deed being here created, or authorized, I think it pretty clear that the only deeds aimed at are the three kinds of deeds now requiring livery of seisin, enrolment, or a prior lease, viz. a feoffment, a bargain and sale of freehold, and a release. Other deeds cannot be alluded to. A grant or assignment without livery of seisin, &c. would be nonsense. To understand the new law we must know something of the old. The statute does away with the above formalities from the three kinds of deeds mentioned. So far I agree with your correspondent. But when he says that "the practical result is that words 'bargain and sell' must be carefully avoided in conveyances to use, and that a bargain and sale under the new Act to B and his heirs, to the use of C and his heirs, will vest the legal estate in B," I take leave to differ; for sec. 2 goes on to enact, that a deed made under the Act "shall take effect as a lease and release." Now the above limitation in a lease and release, would clearly vest the legal estate in C.

The Act does not abolish a feoffment with livery, the enrolling of a bargain and sale, or the prior lease, or the reference in a release to the Act of the 4th of Victoria, or interfere with the effect of such deeds, so framed in the old way, except to this extent, no feoffment shall operate tortiously, as it may now—sec. 7.—A bargain and sale enrolled would, therefore, operate as heretofore, and under the limitation supposed the legal estate would vest in B. The word "convey," as a technical word of conveyance, is not, as your correspondent says, authorized by the Act.

An able writer, who has published an edition of the Act, seems to think that any sort of deed will do, and that technical words are no longer necessary. If this be so, deeds and wills will soon be on a par, and vast will be the flood of litigation a few years hence.

How far your correspondent's view of the 13th section is correct, it is hard to say. It declares that "the Act shall not extend to any deed or thing executed or done, or (except as to contingent remainders) to any estate or interest created before January, 1845." He thinks this only applies to the clauses giving new powers to the executors of mortgagees, &c. I confess I see nothing to confine it thus. It appears to me to apply to all life estates, estates tail, &c. created before 1845. It seems a great blunder, and deprives the Act of the little portion of good it contains.

There are questions as to the powers of married women, &c. into which I will not enter at present. I would just observe, that contingent remainders are not abolished, though so stated in the marginal note of the act published by her Majesty's printer. The framer may have intended abolition—probably did—but he has not succeeded; for in order to create an estate by deed which shall have the properties of an executory devise, you must create a proper contingent remainder (*vide* sec 8), and thus all the intricate lore relating to contingent remainders is perpetuated.

On the forms of deeds, then I should thus sum up:—

All the present kinds, with the ceremonies attached to them, and their peculiar operation and effects (and which are well understood by those whose business it is to understand them), are preserved, except as regards feoffments, with livery, which are not to operate by wrong; and, in addition, the act enables a person who can convey by lease and release, to convey by deed of feoffment, without livery of seisin, bargain and sale unenrolled, or by a release without a prior lease, and such deeds shall operate as a lease and release would do.

I am, &c.

Lincoln's-inn, Dec. 25. E. R.

LEGAL INTELLIGENCE.

ATTORNEYS ADMITTED,

MICHAELMAS TERM, 1844.

(From the *Legal Observer*.)

Names of Candidates.	*To whom Articled, Assigned, &c.*
Abrahams, Samuel, jun.	Samuel Abrahams, 4, Lincoln's-inn-fields
Aldridge, Walter William	Joseph Warner Bromley, 1, South-square, Gray's-inn
Allen, William	John Garrard, High-st. Onley
Amphlett, Thomas	Roger Williams Gem, jun. Birmingham
Armstrong, George	Charles Thompson, Workington
Ashmore, Charles Cliff	Robert Few, 2, Henrietta-street
Barnard, John, jun.	John William Allen, Carlisle-street, Soho-square; Charles Pettitt Allen, Carlisle-street
Barnett, Richard Humphreys	Charles James Palmer, 24, Bedford-row
Baynes, George	Daniel Smart, Emsworth, Southampton
Bearcroft, Harry	John Bury, Bewdley
Bignold, Edward Samuel	Thomas Bignold, Norwich
Bird, Wm. Robinson	Thomas James, Crampton; John Lee, Brampton
Bray, Philip	Henry Bray, Droitwich
Brockbank, James	Wilson Perry, Whitehaven
Brown, Henry Hill	Isaac Wrentmore, 19, Lincoln's-inn-fields
Burbeary, James Pashley	Benjamin Burbeary, Sheffield; Charles Few, Henrietta-street, Covent-garden; Benjamin Burbeary

Burrell, William Fitchett	David William Weddell, Gosport
Bush, Henry Edgell	Elijah Bush, Trowbridge
Button, James, jun.	Samuel David Young, late of Woolpit, Suffolk, now of Bury St. Edmunds; William Parr Jeanneson, New Market, St. Mary
Capron, Frederick Lucas	Charles Markham, Northampton; William Hughes Brabant, Saville-place
Clarke, [illegible] Harwood Bye	Robert Burley Follett, Bedford-row; John Seabrook Gregory, Bedford-row
Clarke, William, jun.	William Clarke, sen. Thetford
Cleave, John James	John Cleave, Hereford
Cox, Ebenezer [illegible]	John Mallanach, Honiton, Devon
Crisp, John William Howard	George Pearson Wragg, Birmingham
Dabbs, John	Halford Adcock, Leicester; Richard and Stephens Taylor, Gray's-inn
Dayman, Thomas	William Pugh, Hay
Derry, George Whitfield	Herbert Mends Gibson, Plymouth
Dew, Robert Cullen	James Bushell, Ramsbury, Wilts; John Frederick Isaacson, 40, Norfolk-street, Strand
Dix, Thomas	John Ford Wyatt, Newcastle under Lyme
Dixon, William	Samuel Bomphlip Merriman, 2, Austin Friars
Downward, George	Jonathan Scarth, Shrewsbury
Dunkall, Robert, jun.	William Pearsley, Howden, York; Joseph Blanshard, Burland of Howden, and south Cave
Dunnett, Daniel, jun.	Charles Hennell, Bury St. Edmunds; John Green, Bury St. Edmunds
Edmett, Thomas	George Furley, Canterbury
Edwards, James	Charles Edwards, Totnes
Elliott, William Tumbrell	George Frederick Abraham, 6, Great Marlborough street
Fattorini, Charles Wyatt	Henry Sewell, Newport
Everill, Thomas George	George Price Hill, Birmingham
Fell, William Cotton	Edward Fisher, Ashby de-la-Zouch
Fisher, James	Edward Stewart, Norwich
Fox, Charles Wright	Thomas Hippisley Jackson, Stamford
Franklin, George Fairfax	Frederick Fairfax Franklin, Attleburgh
Freeman, Daniel Alexander	Thomas Freeman, Brighton; John Tillard, 34, Old Jewry
Gates, William Brooks	Charles Britten, Northampton
Gooding, Edward Bryant	James Randolph, Milverton
Goodrich, Arthur	John Aubrey Whitcombe, Gloucester; John Peter Fearon, Inner Temple
Gratton, Enoch Grafton	John Rogers Wheeler, Wokingham
Gribble, Henry	William Gribble, Barnstaple
Haines, George James	James Haines, Faringdon
Hammond, Henry	Sayers Turner, Colchester; Charles Duroe, jun. 10, Billiter square
Harrison, Eldred	Lawrence Harrison, Penrith
Harrison, John Seppings	Alexander Poulden, Pittaca
Harvey, Richard	Edward Elwin, Dover; William Bertram Bishop, 2, Verulam buildings, Gray's-inn; Joseph N. Mourilyan, Verulam-buildings
Heath, Allan Borman	Henry Earle, Andover; Walter Hughes, 17, Bucklersbury
Herring, George Anthony	Thomas Walker, York
Hicks, Richard	John Coverdale, 1, Bedford row
Hillerdson, Frederick Edward	William Thomas Loughbourne, 4, South square, Gray's-inn
Hillard, William Edward	Nash Grosier Hillard, 2, Raymond-buildings, Gray's-inn; Edward Amos Chaplin, 1, Gray's-inn square
Hinde, William	William Pritt, Liverpool
Hodgkin, Christopher	John Postlethwaite Myers, Broughton in Furness, Lancashire
Hodgson, Edward	Thomas Hodgson, Castlegate
Holden, Wyld Ashton	John Yend, Bedford; William Spencer and W. Spencer, Birmingham
Hunt, Benjamin	James Platt, 11, New Boswell court, Lincoln's-inn; George Hall, 11, New Boswell court
Irving, James Corbet	David Graham Johnstone, 12, Lothbury
Jones, William Stephens	Thomas Chubb, Malmsbury
Kirlew, Daniel	Henry Maltby, 41, Old Broad street
King, Charles Stafford	Charles Reeves, Furnival's-inn, Holborn; Cyrus Jay, 15, Serjeants' inn, Fleet-street
Lamplough, Robt. Elliott	Henry Smithson, New Malton; Charles Smithson, New Malton
Langley, Robert Francis	John Henry Langley, Cardiff
Lee, Charles Marsh	Matthias Thomas Hodding, Salisbury
Lee, Edward Alphonso	John Cressey Richardson, Kingston upon-Hull
Lewis, Fred. Augustus	Hugh Lewis, 25, Artillery-place West, Bunhill row; Michael Lewis, 16, Wilmington square, Clerkenwell
Luscombe, John Teed	Joseph Elliot, [illegible] square, Plymouth
Mackenzie, John Henry	John Chappell Tozer, Teignmouth
Manners, William	Robert Henry Johnson, Grantham
Matthews, Benjamin	Edwin Tilsley, Moreton-in-Marsh
Milner, Christian Splidt	William Richard Bishop, Exeter
Milnes, Robert	Charles Harrison Clarke and Henry Wells, Nottingham; Charles Harrison Clarke
Mingaye, William Robert	Robert Crabtree, Halesworth, Suffolk; John Crabtree, Halesworth; John Meadows White, 35, Lincoln's inn fields; John Wood, Woodbridge
Mules, Horace Vibart	Philip Mules, Honiton
Nantes, Henry	William Timmer, Devizes, Wilts; Henry Parker, Gray's-inn
Nicholl, Charles Hill	Draney Everett, 5, Nightingale-street
Nixon, Charles	George Rawson, Nottingham
Paine, William Stephen	William Stephens (deceased), Frederick's-place, Old Jewry; Thomas Frederick Maples, Frederick's-place
Palmer, George	John Richardson, Burton-upon-Trent
Partridge, William	James Partridge, Tiverton
Pearse, Peter John Thomas, jun.	Peter John Thos. Pearse, sen. Frederick's-place
Pemberton, Charles	John Casewaite, 17, Cable-street, Liverpool
Pennington, James Masterson	Richard Armistead, Whitehaven; Charles Bevan, Bristol
Philbrick, George Edward	Frederick Bloomfield Philbrick, Colchester
Plummer, Stephen, jun.	Stephen Plummer, sen. Canterbury; William Henry Cullen, 20, Bloomsbury-sq.
Poole, Richard	Robert Gaul, 11, Gray's-inn
Randles, Edward	William Robinson, Dudley; J. W. Freshfield, jun. 5, New Bank Buildings
Raven, Samuel, jun.	Rowland Wills (deceased), Finsbury place; David Morice Johnson, 64, Moorgate-street
Rawlins, David Archibald Dixon	Samuel Mundley, South Market Harborough; Thomas Ingram, Leicester (deceased); Thomas Ingram (the son), Leicester and Market Harborough
Roberts, William Henry	John Lucarie Ranney, Great Yarmouth; James Derow Waters, Great Yarmouth
Rowland, William Henry	William Rowland, Ramsbury
Salmon, George	William Wise, Ruby, Frederick Dowding, Bath
Serjeant, William Pye	Charles Cobley Whiteford, Plymouth
Shaw, George John	Rowland Walls, jun. 8, Furnival's inn
Shekell, John Halton	John Wells, Oldaker, Pershore, Worcester
Shugar, John Merritt	Henry Fothtull, Brighton
Silver, John	John Hoskins, 2, New Boswell-court, Lincoln's-inn
Simpson, Reuben	John Gaodwin, 1, Raymond buildings, Gray's-inn
Simpson, Richard	William Slater, Manchester
Simpson, Thomas	William Trotter, Bishop Auckland
Sisson, Robert Jaine	David Williams, formerly of Pwllheli, now of Penmaenmawr, Carnarvon; William Wybrigh How, Shrewsbury
Smith, Robert Edwin	Thomas Thorpe, Alnwick
Smith, William, jun.	Robert Rogers, Sheffield; Thomas William Rogers, Sheffield
Smithson, Alfred	Charles Smithson (deceased), 23, Southampton buildings, Chancery lane; Thomas Miller, Southampton buildings
Scames, Charles	Thomas Butts Lanquery, 35, New Broad street
Stevenson, George	Richard Toller, Leicester
Sudlow, John, jun.	James Crossley, Manchester
Surtees, Alfred Wright	Michael Clayton, 6, New square, Lincoln's-inn
Thomas, Edmund	Archibald Cameron, Worcester
Thompson, Frederick	Frederick Hugh Thompson, 3, Laurence Pountney [illegible] building
Tindal, Arthur	Watkinson, Tindal, Hall, Wakefield
Turner, George	William Hughes, 43, Northampton square, Clerkenwell
Vincent, George Godby	Thomas Randall, Castle street, Holborn
Walter, Arthur Antoine	Arthur Walter, Wellford, Northampton; Wm. Leeks, and Howell, Iveliffe, highway
Webb, Henry	Robert Hinde, Milton; John Hinde, Milton
Weir, Robert Arundel	Abram Lindow Rawlinson, Coppins, Norton
Wood, John Edward	John Wood, jun. Woodbridge
Wortham, Hale	Thomas Wortham, Royston

FEES OF ATTORNEYS IN IRELAND.

A new scale of fees, allowances, and charges, was approved by the Judges of the Common Law Courts in Ireland, on the 25th November, under the authority of the 7 and 8 Vict. c. 107, s. 39. It includes the general rules which regulate the principles upon which taxation shall be conducted.

Michaelmas Term, 1844. *Rule 1.*

It is ordered by the judges, that the fees, allowances, and charges, mentioned in the following table, shall be the established fees, allowances, and charges, to be allowed to attorneys, on taxation of costs in common law business, in respect to all business done from and after the 11th of October, 1844, subject to such alterations as the judges may from time to time direct; and that in such taxation regard shall be had to the several instructions and directions accompanying the said table.

INSTRUCTIONS—LETTERS.

	£	s.	d.
Instructions to proceed or defend	0	6	8
Letter for payment, or to settle and copy, if sent	0	3	6
N.B. Not to be allowed, unless sent a reasonable time before action commenced.			
Other letter, when necessary, and copy	0	3	6
Each additional copy	0	1	0

WRITS AND PROCESS.

	£	s.	d.
Capias or subpoena ad respondendum	0	10	0
Letters missive	0	10	0
Distringas, or other process, original or mesne, to enforce appearance	0	10	0
Replevin and recaption, for both	0	10	0
Recordari	0	10	0
Pone	0	10	0
Attachment	0	10	0
Certiorari, or habeas corpus cum causa	0	10	0
Procedendo	0	10	0
Prohibition	0	10	0
Supersedeas	0	10	0
Writ of error	0	10	0
Venire facias juratores	0	5	0
Distringas, common or special jury, with copy of panel	0	6	0
Distringas, common or special jury, with clause of view	0	10	0
Habeas corpus ad testificandum	0	5	0
Subpoena ad testificandum	0	4	0
Subpoena duces tecum	0	5	0
Commission for witnesses	0	12	6
Capias ad satisfaciendum, including testatum	0	12	6
Fieri facias, ditto	0	12	6
Elegit, ditto	0	12	6
Retorno habendo	0	10	0
Habere facias possessionem, single demise	0	10	0
Ditto, for every additional demise	0	1	0
Writ of possession, 1 & 2 Wm. 4, c. 31, s. 24, &c.	0	10	0
Writ of restitution	0	10	0
Levari facias, or other writ issued after final judgment not herein particularly specified	0	12	6
Writ of inquiry, fee	0	6	8
Engrossing ditto, per folio	0	0	6
Record of Nisi Prius, fee	0	13	4
Engrossing ditto, per folio	0	0	6
Writ of scire facias, fee	0	10	0
Engrossing ditto, per folio	0	0	6
Alias or testatum scire facias, fee	0	3	4
Engrossing ditto, per folio	0	0	6

N.B. The above fees to include all certificates at foot and endorsements, sealing, and all things requisite to complete the writ or process.

	£	s.	d.
Præcipe for chancery writ	0	3	4
Appearance	0	5	0
Appearance and defence in ejectment	0	5	0
Term fee	0	6	8

N.B. Not to commence for either party until appearance, and to end with final judgment. Not to be chargeable for plaintiff, unless an act in court be done in the Term. In cases where several separate persons or defences are put in by the same attorney, one Term fee only to be allowed for all. One Term fee to be allowed in ejectment, although no defence be taken.

DRAFTS, COPIES, &c.

	£	s.	d.
Drawing and engrossing any pleading, three folios or under	0	4	6
Drawing declarations, and all pleadings, suggestions on record, bills of exceptions, special verdicts, &c. (to include instructions and copies for counsel, when employed), per folio	0	1	0

N.B. In cases of difficulty and importance, wherein the pleading is short, an additional compensation for instructions given to counsel may be allowed, but within the rule as to cases for advice of proofs. Nothing in this schedule is to interfere with the general rule of the 8th of May, 1832.

	£	s.	d.
Engrossing ditto, per folio	0	0	6
Drawing and engrossing affidavit, when five folios or under	0	4	0
Drawing affidavit, per folio	0	0	6
Engrossing ditto, per folio	0	0	3
Drawing and engrossing petition, charge, or discharge, and copy, five folios or under	0	6	8
Drawing petition, charge or discharge, per folio	0	0	6
Engrossing ditto, per folio	0	0	3
Drawing and engrossing recognisance, or bail-piece	0	6	8
Drawing assignment of judgments, ten folios or under	0	10	0
Engrossing ditto	0	10	0
Drawing and engrossing memorial of ditto	0	6	8
Drawing and engrossing warrant to enter satisfaction of judgment	0	6	8
Drawing and engrossing submission or award, five folios or under	0	10	0
Ditto for each additional folio	0	1	0
Drawing and engrossing consent or undertaking, 5 folios or under	0	3	4
Ditto for each additional folio	0	0	6
Drawing and engrossing receipt for money or other matter, in a cause	0	2	6
Drawing deeds, or like instruments, not herein specially provided for, for each skin of 15 folios	0	15	0
Engrossing ditto	0	15	0
N.B. At the same rate for a greater or a less quantity.			
Filing common bond and warrant	0	12	4

Drawing and engrossing any ordinary power of attorney . . . 0 12 4
Copy deeds for oyer, per folio . . . 0 0 6
Summons in ejectment . . . 0 1 10
Notice that ejectment is brought for non-payment of rent, or on elegit, or the like 0 5 0
Each necessary copy of declaration in ejectment, summons, and notices, not exceeding 200 copies, as limited by statute 4 Geo. 4, c. 89 . . . 0 2 6
N.B. The attorney for the lessor of the plaintiff shall verify the necessity of the service claimed as to each respective individual, to the satifaction of the officer.
Drawing notice, particulars of demand or set-off . . . 0 4 0
N.B. The officer may allow for drawing long and special notices, where requisite, at a rate not exceeding 6d. per folio.
Copy, ditto, 6 folios or under . . . 0 1 0
Ditto, for each additional folio . . . 0 0 2
Service of notice, rule, or order in Dublin on opposite attorney . . . 0 1 0
Certificate of description of defendant, &c. pursuant to statute 9 Geo. 4, c. 35, ss. 8, 9 . . . 0 2 6
Drawing report, including attendance on the Master, &c. for instructions for his report, and drawing rough draft thereof and of schedules, for each folio, or concluding part of a folio, for so many as the signed report and schedules shall contain . . . 0 0 6
Engrossing report and schedules, for each folio . . . 0 0 3
Drawing and engrossing report upon order to tot . . . 0 6 8
Each copy of an ordinary writ, order, notice, consent, summons, or the like . . . 0 1 0
All copies of documents not herein otherwise provided for, for each folio . . . 0 0 2
N.B. Paper or parchment not to be charged for or allowed in any case, being included in the allowances made in this schedule.

ATTENDANCES.

Attendance and fee on side bar rule, or to make order of Nisi Prius a rule of court 0 3 4
Attendance on each motion in court, or in chamber, not requiring notice, including attendance on counsel . . . 0 6 8
Attendance on common motions on notice, day of hearing . . . 0 6 8
Attendance on new trial motions, trials by the record, or law arguments, day of hearing . . . 0 13 4
Attendance, while case in the list and not called on, each day . . . 0 3 4
N.B. This fee not to be allowed for any day on which, by the practice of the court, the case is not to be called on.
Attendance, to mark judgment . . . 0 3 4
Attendance, to satisfy judgment, including signing the roll . . . 0 6 8
Attendance, on writ of inquiry or inquisition, in Dublin . . . 1 1 0
Ditto, in the country . . . 2 2 0
N.B. These fees to include all attendances for delivery and return.
Ditto, on record of Nisi Prius, in Dublin, day of trial . . . 2 2 0
Ditto, each succeeding day of trial . . . 2 2 0
Attendance on ditto, while cause in the list unheard, each day . . . 0 6 8
Assize fee, jury being sworn . . . 5 5 0
For each day of trial after the first . . . 2 2 0
If record at the assizes entered and jury not sworn . . . 2 2 0
To be increased on circumstances, but not to exceed . . . 5 5 0
As between attorney and client, if the attorney employed at the trial be not a practitioner of the county, the client will be liable to pay him in lieu of the assizes fee, for each day necessarily occupied . 2 2 0
Also his actual travelling and other expenses, or in lieu of them, per diem . 1 1 0
Attendance on the sheriff, or his returning officer, coroner, or elisor, with writ and for return, or for assignment of bail or replevin bond . . . 0 3 4
Attendance on the registrar, with docket of record, and copy of bill of particulars (with certificate of counsel, where requisite) and to enter cause for trial . . 0 6 8
Attendance and docket for registrar, of plea of confession or consent for judgment given, and that cause will not proceed to trial . . . 0 3 4
Attendance for postea, if not filed on the proper day . . . 0 3 4
Attendance to see cause set down for argument . . . 0 3 4
Attendance on officer, with notice of motion 0 3 4
Attendance for and filing first summons to go before officer or arbitrator . . 0 3 4
Attendance on judge or baron for order and fiat, or letter missive . . . 0 6 8
Attendance and docket for judge or baron, with notice for new trial motion, or conditional order for setting aside verdict or nonsuit, together with the necessary documents . . . 0 3 4
Attending noting books for the judges, indexing and endorsing the points of exception or objection, including instructions and attendance on counsel for the points, if necessary . . . 0 13 4
Attendance before the Master on special reference . . . 0 6 8
Attendance to enrol memorial of assignment of judgment . . . 0 6 8
Attending to amend pleadings under order or by consent . . . 0 6 8
For all the attendances in the offices of the courts in cases where no term fee allowed 0 6 8
Attending to draw money out of court . 0 13 4
Attendance to strike special jury . . 0 6 8
Attendance to reduce special jury . . 0 6 8
List of 48 names . . . 0 2 0
List of 24 names . . . 0 1 0
Attendance, inquiring as to solvency of sureties proposed . . . 0 6 8
Attendance, putting in or opposing special bail or sureties . . . 0 6 8
Attendance at the Stamp-office . . . 0 6 8
Attendance to settle and pay debt and costs (debt 20*l*. or upwards) . . 0 6 8
Ditto debt under 20*l*. . . . 0 3 4
N.B. In actions of assumpsit, debt, or covenant, for sums under 20*l*. or within the proviso of the rule of 8th May, 1832, the instructions and attendances shall be taxed at the scale of charges mentioned in this schedule, reduced by one-half, and if for sums under 5*l*. no instruction or attendance shall be allowed. But this shall not extend to actions brought for the purpose of trying a right to property more extensive than the sum sued for.
Attending and obtaining or giving undertaking to appear, including undertaking 0 6 8
Attendance to pay money into court . . 0 13 4
Attending on a view jury, in Dublin . . 0 13 4
Ditto, in the country, according to distance, not exceeding, exclusive of travelling expenses, per diem . . . 2 2 0
Attendance on arbitrators, for each hour when business done . . . 0 6 8
Not to exceed on any day . . . 2 0 0
Attending the parties on execution of deeds, warrants to acknowledge satisfaction, or to see assignments of judgments and memorials executed . . . 0 6 8
Also for each execution at a different time and place . . . 0 6 8
Attending to examine witnesses, in cases of difficulty and importance, not to exceed in any case . . . 2 0 0
Attending to inspect or exhibit documents . 0 6 8
Attending counsel with briefs, cases, pleadings when special, refreshers, retainers, to appoint consultations, this to include attendance on all the counsel, no matter how many . . . 0 6 8
Attending consultation (see rule of 8th May, 1832) . . . 0 13 4
Each necessary attendance not herein otherwise provided for, for the first hour . 0 6 8
If on a public board, for the first hour . 0 13 4
For each further hour on same day . . 0 6 8
Not to exceed on same day . . . 1 0 0
Each necessary attendance on the client, or on any other person by his directions, for the first hour . . . 0 6 8
For each succeeding hour employed . . 0 6 8
Not to exceed on same day . . . 1 0 0
On appointment of new attorney, for his necessary instructions to enable him to obtain a knowledge of the cause, in ordinary cases . . . 0 6 8
To be increased when the officer is of opinion the labour deserves it, but not to exceed . . . 2 0 0
N.B. This not to be allowed against the party, except in cases where the change arises from absolute necessity, not from the voluntary act of the client.
Drawing memorandum of judgment, &c. and copy for the register, under the 7 & 8 Viet. c. 90, s. 2, &c. . . . 0 5 0
Attending the register . . . 0 3 4
Signing pleadings, affidavits, reports, or other documents, to be filed pursuant to any statute or rule of court . . . 0 2 6
N.B. The signing fee for writs and records is included in the allowances above made for those instruments.

SEARCHES.

Search in the office for appearance, declaration, or the like . . . 0 3 4
N.B. These searches to be allowed when the time limited for performing the act has expired.
Search if ejectment moved on, unless ejectment be moved on upon the first day of term . . . 0 3 4
N.B. Where several separate defences are taken in ejectment by the same attorney, one search only to be allowed.
Search for judgment, on reviving, enforcing, or assigning (to include instructions) . 0 6 8
Docket and copy for requisition for searches to be made by the register of deeds . 0 3 4
Attending register of deeds for office searches, whether common or negative . . 0 13 4
Search on adversary's title in registry of deeds by attorney, previous to bringing ejectment, for each hour really and necessarily employed in making the search 0 6 8

BRIEFS.(*a*)

Draft brief for trial, comprising statement of the case, testimony of the witnesses, and necessary observations, for each brief sheet containing 6 folios . . . 0 3 4
Copies of ditto; also copies of the necessary pleadings and documentary evidence for each sheet containing 6 folios . . 0 [illegible] 0
Draft observations and copy for counsel on motion, law argument, or the like . . 0 5 4
Copies to accompany ditto, of affidavits, pleadings, and other necessary documents (when they exceed 6 folios), each sheet containing 6 folios . . . 0 2 0
Docket of retainer, refresher, or the like, for the first counsel . . . 0 3 4
For each of the other counsel . . . 0 1 [illegible]
Copy statement of case for counsel to advise proofs (see rule of 8th May, 1832) for each sheet of 6 folios . . . 0 2 0
N.B. The draft of such case allowed where brief for trial not afterwards made. Copies of pleadings and documents sent with case for proofs must be afterwards incorporated with briefs for trial.

TAXATION OF COSTS.

Draft costs between party and party, per page, to contain on the average 20 items 0 1 0
Copy . . . 0 0 6
N.B. In costs between attorney and client no draft allowed, nor copy, save that if the attorney had furnished his bill to his client for payment, and he is afterwards obliged to furnish his bill, pursuant to the statute, or if he be obliged or requested to furnish extra copies to his client, or to third parties (as receivers in Chancery, &c.) or for taxation, then the extra copies are to be allowed for at the above rate.
Attendance to tax costs, not requiring summons . . . 0 3 4
Ditto, on summons, debt under 20*l*. . . 0 3 4
Ditto, on summons, debt or demand 20*l*. or upwards, or in ejectment, replevin, case, or trespass, &c. . . . 0 6 8
For each successive hour . . . 0 6 8
Examining a bill of costs by the attorney opposing it on taxation, for each 200 items, or less . . . 0 3 4
On enrolling judgment, or other matter of record prepared by the officer, for the first roll . . . 0 5 0
For each succeeding roll . . . 0 2 6
Half roll, 1 & 2 Geo. [illegible] s. 30 . . 0 [illegible] 3
Transcript for the cou[illegible] . . 1 0 0
Engrossing ditto, per folio . . . 0 0 6

Rule 2.

The above table being intended as fixing merely the amount of fee or charge in each item, whether between party and party, or attorney and client, is not, from the introduction of such items, to be construed as thereby authorising any charge, or entitling the attorney to any fee, as between party and party heretofore only allowed, or which ought only to be properly charged between attorney and client, or the contrary but in so far as the officer in the taxation of costs may have, or may think fit to exercise, under the control of the Court, a discretion on the subject of particular charges, it is considered by the judges to be desirable that the fees and charges between party and party should assimilate as nearly as may reasonably and justly be attainable, to those between attorney and client.

Rule 3.

The taxing officers are authorized, from time to time, to issue general directions respecting the mode of preparing affidavits to be used before the taxing officers for the purpose of regulating the taxation, and likewise the mode of preparing bills of costs, and the use to be made of printed forms of bills of costs in common cases, and the charges to be made for costs to which such forms are applicable.

Rule 4.

The judge at Nisi Prius may, if he shall think fit, certify on the back of the record at the trial, that, in his opinion, any particular witness or witnesses produced at either side was or were unnecessary; and in the taxation of costs, the expenses of the said

(*a*) These allowances are much less than in England.

witness or witnesses shall not be allowed against the opposite party.

(Signed) EDWARD PENNEFATHER.
JOHN DOHERTY.
MAZIERE BRADY.
CHARLES BURTON.
RICHARD PENNEFATHER.
ROBERT TORRENS.
P. C. CRAMPTON.
L. PERRIN.
JOHN RICHARDS.
N. BALL.
THOS. LEFROY.
J. D. JACKSON.

HABEAS CORPUS IN JERSEY.

The following interesting and learned article on this important question is extracted from the columns of the *Morning Chronicle*:—

The case of Mr. Charles Carus Wilson, involving, as it does, the right of the Queen's Courts at Westminster to send the writ of *habeas corpus* into the Channel Islands, is one of great and imperial importance in a constitutional sense, and cannot be permitted either by the press or the public to sink down to the low Peel level of mere expediency. From such consideration as we have been enabled to bestow on the subject, we have, as *laymen*, come to the conclusion that, supposing the circumstances to have occurred before the passing of the Habeas Corpus Act, Mr. Wilson had his remedy by treaty and by common law. Still more is he that remedy now further secured, as we shewed it was, by the explicit provisions of the two Acts of Parliament, namely, the 31 Car. c. 2, and the 56th Geo. 3, c. 100, s. 5.

The first authority we shall cite is Selden, Mare Clausum, 306:—

That a possession and dominion of this Southern Sea hath been held also of old by the Kings of England, is not a little manifest by the dominion of those islands that lie before the shore of *France*. For 'tis generally known that, after King John and Henry III. were driven out of Normandy itself, that the isles of Caesaria and Sarnia (which we call Jersey and Guernsey), Ameney, and some other neighbouring isles lying near the shores of Normandy and Bretaign, yea and situated within that creek of sea which is made by the shore of Bretaign on the one side, and Normandy on the other, have in the following ages, both now and heretofore, remained in the dominion of England.

It may be freely admitted that prerogative writs would not have run into the islands of Jersey and Guernsey as part of the Duchy of Normandy; but by the 2nd, 3rd, 4th, 5th, 6th, 7th, and 11th articles of the treaty of Bretigny, all the honours, obediences, homages, allegiances, vassalages, fiefs, services, mere and mixed empire of certain places—Calais, Guines, Jersey, Guernsey, &c. among the number—is transferred to the King of England.

The 11th article of the treaty says:—

"That the subjects thereof shall be liegemen to the Kings of England without being subject to any recognizance or service to the Crown of France."

A bull of Innocent VI. consented to the execution of this treaty, though it contained articles prejudicial to the Holy See, but a little more than a century afterwards, a subsequent Pope having interfered with the royal prerogative of England, a commission issued at Westminster, on the 14th May, 1485, to examine whether "a bull sent by his Holiness is not prejudicial to the King;" thus early, even, repudiating the spiritual power of the Holy Father. The Kings of England subsequently continued to maintain supremacy in all matters, civil as well as ecclesiastical, in these islands; and at length the Roman See, finding that further resistance was useless, by a bull of Alexander VI. in the reign of that politic prince Henry VII. transferred the spiritual jurisdiction from the Bishop of Constance to the Bishop of Winchester. This bull is dated the 13th of February, 1500; and whether the present Bishop of Winchester claims (to use a legal phrase) "to take under it," or not, we believe the fact to be, that, while we write, the Bishop of Winchester exercises spiritual jurisdiction in these islands. If, therefore, the Right Rev. Father in God, Richard Sumner, exercises plenary episcopal authority in the Channel Islands, we think it right and reasonable, and, whatever Frederick Thesiger may say "to the contrary notwithstanding," expedient and necessary, that the Queen's writ should run there also. But whether it runs there or not, which is the question to be ultimately determined by the Queen's Bench, we believe that by the common law of this land, as fully appears from "Horne's Mirrour," cap. 2, sec. 2, Mr. Carus Wilson has his appeal of imprisonment, and may also claim the writ *moderata misericordia*, which is founded according to Fitzherbert, on the stat. Magna Charta, cap. 14: "Quod nullus liber homo amercietur nisi secundum quantitatem delicti;" and, according to Staunford, 71; and Fitzherbert, 152, his writ *de homine replegiando*. The case of Mr. Wilson is manifestly a case of oppression; and, lest we should be supposed to speak popularly, we will give the legal definition of the word, as we find it in "Pulton de Pace Regis et Regni:"—

"Oppression is a grievance done by one man or more to the hurt or prejudice of others, without any warrant of law or colour of justice; or it is a burden or charge which one man doth impose upon another more than the law doth lay upon him, and is, for the most part, wrought by the superior in countenance, ability, or officer to the inferior in the same; for the oppressor, *sicuti Nimroth robustus venator et tanquam leo subversor in domo sua* is always offering hard measure to them who are to deal with him, until they be able and willing to resist him."

Now in *Bagge's* case, (11 Rep. 98), before the Habeas Corpus Act had passed, it was resolved,

That to this Court of King's Bench belongs authority not only to correct errors in judicial proceedings, but other errors and misdemeanors extra judicial, tending to the breach *of peace, or oppression of the subjects*, or to the raising of faction, controversy, debate, or any other manner of misgovernment; so that no wrong or injury, either *public* or *private*, can be done, but that it shall be reformed or punished by due course of law.

And in the 3rd and 4th Institute, c. 7. p. 71, it is also laid down that the Court of Queen's Bench

Hath not only jurisdiction to correct errors in judicial proceeding, but other errors and misdemeanours extra judicial, tending to the breach of the peace, *or oppression of the subjects*, or raising of faction, controversy, debate, or any other manner of misgovernment; so that no wrong or injury, either *public* or *private*, can be done, but that this shall be reformed or punished in one court or other by due course of law.

Camden, who wrote in the time of Elizabeth his description of Britain, and necessarily before the passing of the Habeas Corpus Act, thus speaks of Jersey:—

Under these lieth southward *Cæsaren*, whereof *Antonine* hath written, scarce twelve miles distant from *Alderney*, which name the Frenchmen now have clipped so short, as the Spaniards have *Cæsaraugosta* in Spain, for they call it *Gearzey*, like as *Cherbourg* for *Cæsarisburgus*, and *Saragose* for *Cæsar Augusta*. *Gregorius Turonensis* calleth it *the island of the sea that lieth to the citie Constantia*, where he reporteth how *Prætextatus*, Bishop of *Roan*, was confined hither; like as *Prapinius Massonias* termeth it *the isle of the coast of Constantia*, because it butteth just upon the ancient city *Constantia*, which may seem in *Ammianus* to be named *Castra Constantia*, and in the foregoing ages *Moritonium*.

"As touching the politic state thereof, a governor sent from the King of England is the chief magistrate; *he appointeth a bailiff, who, together with twelve jurates, or sworn assistants, and those chosen out of the twelve sever all parishes by the voices of the parishioners, sitteth to minister justice in all civil causes: in criminal matters, he sitteth but with seven of the said sworn assistants; and in causes of conscience, to be decided by equity and reason, with three.*"

It is plain from this description—and no one has ever doubted the literal accuracy of Camden—that in his day Jersey, Guernsey, Alderney, and Sark, were considered British Islands—that the governor sent from the King of England was the chief magistrate, and that such governor appointed the jurates and baliffs.

In Calvin's case, which was determined in the 6th year of James I. and a report of which may be found in the 4th vol. or 7th part of Lord Coke's Reports, is the following passage:—

"And so much (omitting many other authorities) for Normandy; saving I cannot let pass the isles of Jersey and Guernsey, parts and parcels of the dukedom of Normandy, yet remaining under the actual legiance and obedience of the King, I think no man will doubt, but those that are born in Jersey and Guernsey (though those isles are no parcel of the realm of England, but several dominions enjoyed by several titles, governed by several laws), are inheritable and capable of any lands within the realm of England."

Since the statute of 31 Chas. 2, c. 2, the personal liberty of the subject has been more guarded and fenced round; and by sec. 11 of that Act it is plain that the writ may issue either to Jersey or Guernsey. And the 12th section of the Act cited by the Solicitor-General applies not to persons in prison, but to the sending of inhabitants or residents of England to foreign prisons. In the anonymous case, in 2 Ventris, 357, in the 33rd Chas. 2, it is stated "that writs mandatory had been awarded to Calais, and now to Jersey and Guernsey." And in *Roy* v. *Overton*, ten years before the passing of the Act of Habeas, we find the following short report in the "hatchet-faced, mutton-fisted Siderfin," as Roger North calls him:—

La fuit habeas corpus grant direct al Governour de Jersey pour porter icy le corps. Ce prisoner fut la several ans.

The Solicitor-General seemed not to know exactly who Overton was; but surely a lawyer at all read in English history ought to have been aware that he was sent out of the kingdom before the passing of the Habeas Corpus Act, by Oliver Cromwell. Ludlow, in his *Memoirs*, speaks strongly against his imprisonment, and his removal to Jersey, "at the hazard of his life, and to the great prejudice of his estate." Robert Overton, however, was a double traitor. He could neither expect favour nor obtain mercy. But he was, according to Noble, in the Tower of London, and not at Jersey, at the period of Charles II.'s return. The Overton referred to in Siderfin is probably, therefore, Richard Overton, the sufferer with Lilburne, and not Colonel Robert, governor of Hull. It is, however, no argument against the existence of a right that the imprisoned person, probably without funds or friends, did not exercise it. Lambert, the Parliamentary General, it is well known, lived a prisoner for thirty-six years in the island of Guernsey, without ever having appealed to the English courts. After the Habeas Act had been some time in operation, the judges shewed a forward and laudable desire to let the writ go in every case. In Archer's case, in 1 Lord Raymond, the writ was granted on a mere letter; and in a note to that case the reporter says:—

Mr Northey said that in the case of the Lord Leigh, of Stoneley, a *habeas corpus* was granted only upon the letter of the Lady Leigh. And, per Holt, without a doubt a *habeas corpus* may be granted upon the sight of a letter.

So also in the more recent case of the Hottentot Venus, reported in 13 East, the writ was granted on the affidavit of the Secretary of the African Institution that the woman was a foreigner ill-used. By the 23rd Article of War it is declared:—

No officer or soldier, who shall be put in arrest or imprisonment, shall continue in his confinement more than eight days, or until such time as a court-martial can conveniently be assembled.

If this rule be transgressed, the Court of King's Bench have power to grant a *habeas corpus* to any part of the Queen's dominions. In the case of Richard Blake (2 Maule and Selwyn, 428) the Court granted a rule *nisi* for a *habeas corpus* on the application of an officer who had been under confinement for more than eight days, and whose affidavit disclosed circumstances whence it seemed probable that a court might conveniently have assembled before.

In the tract "Against the Jurisdiction of the King's Bench over Wales, by process of Latitat," published by Mr. Hargrave, it is said that the Parliament binds Ireland, Jersey, and Guernsey, if they are specially named; and we have already shewn that Jersey and Guernsey are specially named both in the Habeas Corpus Act and the 56th Geo. 3, c. 100, s. 5. We trust that the judges of England will not allow a benefit so indispensable for the security of personal liberty to be impaired or frittered away.

It sufficiently appears from the cases of *Darnel*, *Corbet*, *Earl*, *Hevingham*, and *Hampden* (3 Howell's State Trials), that the benefits secured by the common and statute law were gradually impaired and reduced by the corrupt ingenuity of lawyers, and the oppression of men in power; and in order that such scenes may never again occur, it becomes the more important to insist that the writ shall go in the case of Mr. Wilson.

We cannot close these observations more appropriately than by the following extract from the speech of John Selden, in Parliament, relative to the State trials (3 Chas. 1, 1628), in which he had been of counsel:—

In that precious thing "liberty" there are divers

remedies by which it appears, if no known cause be of further detainment, he is to be delivered. I will not mention the action of false imprisonment, but the writ *de odio et atia*, which is not taken away, for that it is in Magna Charta. That writ was sent to know if the party imprisoned were committed for any cause of malice and hatred, and this was to be inquired of by jury. For the writ *de homine replegiando*, if one be imprisoned under the sheriff, he must be delivered, if he be not detained for a cause for which he is not replevisable. For the *habeas corpus*, the keeper is to bring the body, "*ad subjiciendum et recipiendum*." If there be no cause, how can the Court consider of the cause? For appeal, by the old law, in the time of Henry I, one imprisoned might have his appeal, as appears by Bracton, c. 25, lib. de Corona Fleta, c. 42.

RATES OF POSTAGE FOR THE ARMY AND NAVY.

The following notice appeared to-day at the General Post Office, St. Martin's-le-Grand:—

"BY COMMAND OF THE POSTMASTER-GENERAL.

"Notice to the Public, and instructions to all Post-masters, sub-Postmasters, and Letter Receivers.

"General Post-office, Dec. 1844.

"The following regulations and alterations in the rates of postage, having been authorized by warrant of the Lords Commissioners of her Majesty's Treasury, dated the 28th ultimo, will commence and take effect on, and from the 1st of January next. Letters addressed to commissioned officers of the Army, Navy, or Ordnance, while employed on actual service in any of her Majesty's colonies, or on any foreign station, who shall have removed to the United Kingdom in the execution of their public duty, shall not be liable to any additional postage on their re-direction from such colony or foreign station to this country.

"British newspapers duly stamped, addressed to commissioned or non-commissioned officers of the Army or Navy, or to any soldiers, sailors, or marines, while actually employed on her Majesty's service in any foreign country, or on any foreign station, may be forwarded by packet free of postage, provided they are made up and despatched under the existing regulations as regards the transmission of newspapers to foreign countries.

"The privileges at present enjoyed by soldiers and sailors in her Majesty's service, and by soldiers in the service of the East India Company, of receiving and sending letters, not exceeding half-an-ounce, at a reduced rate of postage, is extended to seamen in the service of the East India Company while actually employed in such service."

The Lord Chancellor has appointed Robert Drinkall, jun. of Howden, in the county of York, gent. and Thomas Baker, of Abergavenny, in the county of Monmouth, gent. to be Masters Extraordinary in the High Court of Chancery.

WHITEHALL, DEC. 14.—The Lord Chancellor has appointed William Hinde, of Liverpool, George Grey, of Torquay, Devonshire, George Palmer, of Rugeley, Staffordshire, John Gwynne, of Tenby, Pembrokeshire, George Scurfield, of Sunderland, and George James Haines, of Farringdon, in the county of Berks, to be Masters Extraordinary in the High Court of Chancery.

The Lord Chancellor, accompanied by Lady Lyndhurst and the Hon. Miss Copley, left George-street, Hanover-square, on Saturday, for Turvile Park, near Henley-upon-Thames, where his lordship is expected to remain until Thursday, the 10th of January, when the Christmas vacation will end.

INGENIOUS SMUGGLING AT PLYMOUTH.—The contraband dealers in tobacco have just been detected in an attempt to introduce this commodity by a mode which for ingenuity will bear comparison with any of those recently discovered. The sailing packet *Zebra*, Captain Lauraines, from Jersey, commenced discharging her cargo on Saturday, the 14th instant, at the legal quay, Sutton-wharf, Plymouth. Among other goods on her manifest were thirteen casks, said to contain pitch. This article is not frequently brought from the islands, and as the casks weighed only 3½ cwt. instead of the usual average 4 cwt. to 4½ cwt. the suspicions of the officers of Customs were naturally excited. They, however, very prudently deferred seizing the suspected goods, until an owner presented himself at the Custom-house. In due course Mr. Christopher John Arrowsmith, the only passenger by the *Zebra*, came to clear the casks, and he was soon handed over to the civil authorities. On examining the casks, they were each found to contain a small quantity of pitch, surrounding what appeared to be a number of bricks, but these on inspection proved to be tin cases, covered with coarse red paint, mixed with fine gravel or sand. Each case had from 3¼lb. to 3½lb. of unmanufactured tobacco, closely wedged within it; indeed, so closely, that it took six or seven men all one day to examine the contents of eleven casks. The thirteen casks, each having about forty-one cases, containing 134lb. will probably produce 14 or 15 cwt. of tobacco in all. One of the cases has been sent to the Board of Customs. It is supposed that the tobacco was made to assume the form of bricks, to facilitate the transport unsuspiciously from the first place of deposit after landing. The officers concerned in the capture are Mr. Rich, landing-surveyor; Mr. Pothury, tide-surveyor; and Mr. Ramsey, landing-waiter.

DEPOSITORS IN SAVINGS-BANKS.—For the guidance of the numerous class of persons who are interested in the management of savings-banks, we are induced to subjoin the following brief, but, we trust, clear and concise, summary of the provisions of the New Savings-bank Act, which has just come into operation:—After the 20th ult. the interest of all moneys invested by the trustees of savings-banks in the national stocks is reduced to the rate of 3¼ per cent.; and the *maximum* of interest to be in future allowed to depositors is not thenceforward to exceed the rate of 3*l*. 0s. 10d. per cent. From the same date, every depositor, on making his first deposit, must sign a declaration, as provided by previous Acts, a copy of which is to be annexed to the deposit-book; the latter to be produced once, at least, in every year, for the purpose of examination. When deposits are made in trust for another, the sum is to be inserted in the names of the trustee and the person on whose account the same is so invested; and no repayment can be made without the receipt of both or that of their trustees, executors, or agents, duly appointed by power of attorney. Annuities under the Act 3 & 4 Wm. 4, c. 111, are not to exceed the sum of 30*l*. in the whole, but separate annuities to that amount may be granted to a husband and wife: instead, however, of the charges under the former Act, the charges are henceforward to be—for an annuity under 5*l*. the sum of 5s.; 5*l*. and under 10*l*., 10s; 10*l*. and under 15*l*., 15s.; 15*l*. and under 20*l*., 20s.; 20*l*. and under 25*l*. 25s.; 25*l*. and under 30*l*., 30s. Where deposits, exclusive of interest, do not exceed 50*l*. if a will or letters of administration are not produced within a month, the money may be paid to the widow, or to the person entitled to the effects of the deceased; if a depositor be illegitimate and die intestate, the managers may, with the sanction of the barrister appointed to certify the rules, pay the same to such persons as would be entitled to the same under the Statute of Distribution; and where married women have made deposits, it will be lawful for the managers to repay such women, unless the husband give notice to the contrary. The time for issuing the half-yearly receipts for interest is extended to sixty days, from the 20th of May and the 20th of November; and the time for transmitting the annual statement is extended to nine weeks after the 20th of November in each year. Payments to the relatives of intestate depositors are to be made to the next of kin by the law of Scotland, in the case of deposits in that country.

CURIOUS CASE.—The important and novel case of perjury connected with the will of the late Peter Murphy, of New York, formerly of Wexford, was decided at New York Sessions Court on the 18th ult. when John Clements was indicted for wilful perjury in swearing to an answer in Chancery, to obtain possession of a property worth 60,000 dollars, by falsely claiming as nephew of said Murphy, and alleging that Margaret Murphy, mother of the prisoner, was Murphy's sister, and that her name was not Alice O'Brien. The fraud was proved in evidence by Peter Murphy, nephew of the deceased, who came from Wexford for that purpose, and by other Irish witnesses. Mr. Jacob Harvey, of New York, proved the inquiry made at Shanagolden, county of Limerick, under a commission, and that Clements and his mother were known there, and that her name was Ally O'Brien, and not Murphy. Mr. Harvey produced depositions taken before the local commission, and the jury in two minutes found a verdict of *Guilty*. The offender, John Clements, was then sentenced to nine years' hard labour in the state prison.—*Cork Southern Reporter*.

The Court of Cassation was occupied on the 21st with an appeal brought by the Procureur-General of Rouen against a decision of the Cour Royale of that city, which quashed a judgment passed by the Correctional Court of Havre against M. Boissier, for having in his possession several cases of potted partridges. M. Boissier had proved that the articles were prepared some months before the passing of the New Game Law Bill, and argued that, as that enactment had no retrospective application, he could not be fined for having the preserved game in his possession. The Cour Royale had taken this view of the question, and the Court of Cassation has now given its judgment in the same sense, declaring that "as the Bill evidently meant game properly so called (which appeared from the wording of art. 2, ordering all articles seized to be immediately sent to the nearest charitable institution to prevent their being spoiled by being kept), potted partridges could not be considered as coming under the dispositions of the Bill; that therefore the judgment of the Cour Royale of Rouen was correct; and that the appeal of the Procureur-General must be rejected."

NEW MERCHANT SEAMEN'S ACT.—On Wednesday next the New Merchant Seamen's Act will come into force. There are 65 sections and several schedules in the statute. During the present month seamen in the merchant service have obtained tickets of registration from the office near the Tower. From the 1st proximo no seaman can be taken on board without the requisite ticket, under a penalty of [illegible]. The Act is "to amend and consolidate the laws relating to Merchant Seamen, and for Keeping a Register of Seamen." By the preamble it is declared that the prosperity, strength, and safety of the United Kingdom, and her Majesty's dominions, depend greatly on a large, constant, and ready supply of seamen, and that it is expedient to promote the increase of the number of seamen, and to afford them encouragement and protection; and it is further declared to be expedient to keep a register of seamen. Agreements are to be made in writing between masters and seamen, stating the situations, wages, and length of service of the men. Parish boys may be sent to sea with their consent, or boys soliciting alms. No seaman is to be discharged abroad, nor to be abandoned or left behind, without the sanction of the consul of the place, as great mischief has been caused by such proceedings—the poor men having been reduced to great distress, and have, according to the language of the Act, been tempted to become pirates. By the 64th section it is provided, that if any person being a Malay, Lascar, or native of the territories under the Government of the East India Company, or if any Asiatic or African seaman, having been brought to the United Kingdom on board any ship, shall be found to be in the United Kingdom in distress for want of food, clothing, or other necessaries, the Commissioners of the Admiralty may supply assistance to every such person or seaman, and maintain him until he shall be sent on board some ship to be taken back to the place from which he was shipped. The assistance rendered is to become a debt, and may be recovered from the owner or master of the ship on board whereof such person or seaman was brought to the United Kingdom from Asia or Africa.

THE ACT TO SIMPLIFY THE TRANSFER OF PROPERTY.—There are fourteen short clauses in this Act, which will take effect from Tuesday next, the 31st inst. In future, deeds not to be "indented," at the top as they have been from time immemorial. The following is the provision on the subject:—Section 11. "That it shall not be necessary in any case to have a deed indented, and that any person not being a party to any deed may take an immediate benefit under it, in the same manner as he might under a deed-poll." By another clause, it is provided, "That the *bonâ fide* payment to, and the receipt of any person to whom any money shall be payable upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees, or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security."

THE HEIR OF COCHRANE OF CLIPPENS.—We learn that a commission from the Court of Chancery is to commence sittings in a few days in Paisley or neighbourhood for the purpose of ascertaining, by the examination of witnesses on the spot, who is the proper heir to the residue of the large fortune left by the late Mr. Cochrane, of Clippens. The funds at present in Chancery, and to be disposed of, amount to the handsome sum of 170,000*l*.—*Glasgow Courier*.

PUBLIC SALARIES.—On Friday a lengthened Parliamentary paper, obtained on the motion of Mr. Williams, the member for Coventry, was issued, giving an account of all salaries, pensions, profits, pay, fees, emoluments, grants or allowances of public money, held and enjoyed by all persons between the 5th of January, 1842, and the 5th of January, 1843, the total amount of which exceeded 1,000*l*. specifying with each name the total amount received by each individual, and distinguishing the source from whence derived. The whole list embraces the names of 754 persons. In the first branch of the return, civil officers, there are 250 names; in the second, judicial officers, officers of courts of law, &c. there are 134, and 30 pensioners; in the third, consular and diplomatic officers, there are 52, and 22 pensioners; in the fourth, naval officers, there are 34, and 1 pensioner; in the fifth department, military officers returned by the War-office, appears the names of 95 individuals; in the sixth, ordnance and military officers not returned by the War-office, there are 30; in the seventh, officers in the colonies, there are 118; and in the eighth branch, officers of the House of Commons, only 10; making in the aggregate 754 persons whose incomes from the public money exceed 1,000*l*. a year. The highest sum in the list of civil officers is the allowance to the Lord Lieutenant of Ireland of 20,000*l*. and the next, two pensions to the Duke of Grafton, amounting to 10,584*l*. In the list of judicial officers Lord Lyndhurst, as Lord Chancellor, is the highest, namely, 10,000*l*. which is exclusive of his salary as Speaker of the House of Lords. Among the military officers the Duke of Wellington receives

the largest amount. His grace had in the period mentioned 8,916*l*. 16s. 8d. consisting of 3,379*l*. 17s. 6d. as Colonel of the 13th Foot Guards; 238*l*. 15s. 8d. as Colonel-in-Chief of the Rifle Brigade; 992*l*. 3s. 8d. as Constable of the Tower of London; 305*l*. 19s. 8d. as Captain of Dover Castle, and 4,000*l*. pension granted by Act of Parliament. The noble Duke succeeded Lord Hill as Commander-in-Chief in December, 1842, who, it appears by the return, received in the year as Commander-in-Chief 2,284*l*. 15s. 10d. The Speaker of the House of Commons has 5,000*l*. a year, and a house; and Sir W. Gosset, the Sergeant-at-Arms, 1,500*l*. besides 320*l*. 12s. 11d. as a retired Colonel of Royal Engineers.

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

(From a Correspondent.)

The operations of this body directly affect the interests of each individual member of the Profession. It is incumbent on every attorney to contribute his aid to the funds and otherwise to assist the Association in carrying out its laudable objects.

We think solicitors will not like to avail themselves of its aid who have not joined the Association, and therefore many abuses may escape its notice which would otherwise have found a remedy; if they should, however, the spirit that will prompt them is far from praiseworthy, though we are convinced that without regard to membership the Association will render all the assistance in its power.

A few observations on the rules:—

1. This rule comprises all the objects of the Association.

And under this rule we conceive it will be the duty of the Association to watch every change in the practice of the Law. To take care that the ample salaries granted to officials may not be done so at the expense of the solicitors.

While it rigorously maintains the 5th rule of its conduct it will take care to prevent prejudice and unfair means depressing the station and respect to which attorneys are entitled.

This rule will justify the earnest efforts of the Association to obtain a repeal of the certificate duty.

2. This is an important branch of the duties undertaken by the Association; and if this were its only object it would be imperatively entitled to every assistance that the Profession could afford. It is believed that many unqualified persons are to be found in London who are little suspected to be so. There are conveyancers ranked as counsel who *solicit* Bills in Parliament, take instructions for and draw and engross deeds, attend the execution, and charge for them in the same manner as if they were attorneys.

Advice:—

In seeking the aid of the Association in attaining the object of this rule, it will be well for the members first to ascertain that there is evidence to sustain their case; by so doing, much time and expense will be saved. For instance, it is evident that not every assumption of the character of an attorney will render the party amenable. If he receives payment for business not strictly the province of an attorney to execute, his offence amounts to obtaining money under false pretences, but he does not incur a penalty for "usurping the duties or privileges of the Profession." But if the party should do any act which it is competent alone for an attorney or solicitor as an officer of court to perform, such as issuing a writ, then the penalty would attach, and it will be the duty of every solicitor to whom such conduct becomes known to seek the necessary evidence in support, and transmit the case to the Association.

Unqualified persons practising in the name of an attorney is a very great offence, and is often difficult of proof; when, however, the proof is clear, it is a reason why the aid of the Association should instantly be sought.

3. There is ample matter of employment in this division; and if but half-a-dozen useful and practical amendments of the law be enabled in the next five years to refer their origin to the Association on that ground, if on no other, the existence of the Association must be deemed a national benefit. It has already exerted itself to restrain the ill effects that have followed from the Act 7 & 8 Vict. c. 96; and we believe we are justified in expecting that the ensuing session of Parliament will testify to the usefulness of their labours.

4. The very existence of the Association will prevent many acts of malpractice by persons not wholly lost to shame; and prevention is at all times better than cure.

5. The course which the association will pursue, in putting this rule into operation, must be determined by the particular circumstances of each case, and a great deal of discretion and nice discrimination will be necessary in executing the duty imposed by this rule.

6. Unity is power. And it will be incumbent on the various Law Societies in England to afford their earnest assistance to the Association, which, from its metropolitan situation, is calculated to be more eminently useful than mere local ones. And we would suggest that, as members of local societies may not deem it necessary to join this Association, it would be desirable that a grant of the funds, by way of annual subscription or donation, should be made to it. The Legal Association is confined to no locality; wherever it finds a subject for its interference, there will its interference be exerted; wherever the profession of an attorney or solicitor is exercised, there will the Association afford their influence to promote and protect his interests.

EAST KENT LAW ASSOCIATION.

At a special meeting of the East Kent Law Association, held on the 11th inst. it was resolved that the said Association do join the Union of Provincial Law Societies, and that the secretary announce the same to Thomas Taylor, esq. secretary of the Manchester Law Society.

To Readers and Correspondents.

J. W. W.—*Thanks. The subject of his letter has already received attention.*

T. T. T.—*We shall be glad to communicate with him on the subject of his letter.*

A STUDENT.—*Stephen's Blackstone, certainly.*

J. B. RICHARDSON (Rochdale).—*We should involve ourselves in endless trouble were we to notice every wrong decision of magistrates, and therefore we will not begin it. Our correspondent will see the propriety of this resolve.*

A SUBSCRIBER.—*We have seen no edition of this statute. We know of none on Constitutional Law, save Blackstone.*

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THE LAW TIMES.

SATURDAY, DECEMBER 28, 1844.

TO OUR READERS.

EDITORS must be permitted a holiday at Christmas as well as other people; we therefore make no apology for abbreviating leading articles this week, and merely offering to our subscribers the compliments of the season.

VERULAM SOCIETY.

THE holidays have delayed the publication of the new number of *Magistrates' Cases* and of the second Number of *Practice Cases* beyond the period we had anticipated last week. The former, however, will be despatched by today's post, or on Monday, at the latest, and the latter next week.

MR. BARON GURNEY, AND HIS PRACTICE ON TRYING PRISONERS.

WE invite the attention of our readers to a case reported in our number for the 21st inst., in which GURNEY, B. in trying a prisoner on the Northern Circuit, is shewn to have adopted a course of practice which we hesitate not to assert is in open violation of every principle of law and justice. The report is short, and, for the better illustration of our argument, we transcribe it.

REG. *v.* COOK.

The prisoner, at the end of the examination in chief of the first witness for the prosecution, began to examine the witness. Upon his asking the first question he was interrupted by

GURNEY, B. who said, You must put your questions through me, if you wish to put any.

Upon the prisoner's attempting again to put a question the learned baron interrupted him with some energy, saying,

Prisoner, if you wish to put any questions you must put them through me. I have told you so two or three times, and you shall not do it yourself.

Prisoner.—I wish to ask the witness what clothes I had on.

GURNEY, B.—Witness, did you know the prisoner by his clothes or by his face?

Witness.—By both, my lord.

GURNEY, B.—Now prisoner, I have asked your question; have you any more?

Prisoner.—No, my lord.

Well may the reporter of the above case offer in excuse for giving it publicity, that it is believed that the practice, which has been uniform with this judge throughout the circuit, is *somewhat unusual*: it is, indeed, unusual, and, more than this, it is reprehensible in the extreme; and notwithstanding it is the practice of a learned judge who has the reputation of being an able criminal lawyer, it is one which ought at once and for ever to be suppressed. We are glad that this course of procedure has been put into the shape of a reported case, because it enables us to confirm it by our own observation of the same practice of this judge on other circuits,—a practice which we have always blushed to witness; for it is one which, more than any other, tends to make a mockery of a criminal trial, and to bring the administration of our law into disrepute.

The position of an accused party, unrepresented at his trial by counsel, is embarrassing and difficult enough, and it is the height of cruelty to deprive him of any of the limited means which are at his command for his self-defence. A prisoner on his trial has a right, of which nothing less than legislative enactment can deprive him, to cross-examine every witness who is brought against him; and the only limit upon the exercise of this right is that which confines his questions to regularity of form and substance; they must be pertinent to the matter in issue, and put in a legal, that is, in a fair and straight-forward, manner. No one, not even the judge who tries him, can take from the prisoner this right of putting his own questions, and common sense would so order it. Every thing may depend upon the precise form in which the question is put—upon the emphasis laid upon particular words—upon having the eye of the witness upon the questioner, or upon the return of an immediate and unpremeditated answer. Let us refer to the report we have quoted. The prisoner wishes to ask the witness what clothes he had on? and Mr. Baron GURNEY, who insists on asking the question himself, and who very probably did not see the point of the question, asks it thus—"Witness, did you know the prisoner by his clothes or by his face?" Now it is manifest that the question asked by the judge is any thing but that required by the prisoner; and well indeed may the prisoner, after such an exhibition, decline any other question on his behalf. But the report may in this particular be inaccurate; and we trust, for the credit of the law, that it is so.

We know that the practice is almost uniform with this learned judge, and because it is so we have deemed it our duty thus to call public attention to it. We believe that Mr. Baron GURNEY is actuated by no unworthy or indeed unkind motive in the course he thus pursues; nay, we are inclined to think that he adopts it from a praiseworthy desire, not only to further the best ends of justice, but to

facilitate the defence of the prisoner by putting his questions in a logical and legal shape; but we are nevertheless convinced that he thus steps beyond the bounds of his duty, and that he involuntarily defeats the best principles that regulate the administration of criminal justice in this country.

The unfortunate parties who are the victims of this practice are the penniless and friendless, and who are therefore incapable of effectually taking any steps to remedy the injustice to which they have been subjected; it is the business of no one in particular to vindicate the cause of the poor deserted prisoner, and thus it is that a course of proceeding so opposed to justice and humanity has been permitted to obtain for so long a period. If indeed the attention of the learned baron and of the public had been sooner called to it we are persuaded that it would ere this have ceased to exist; for we are convinced that in every case in which a prisoner has been deprived of his right personally to cross-examine the witnesses brought against him, *he has been mistried, and ought to receive a free pardon. We say this advisedly, and upon the best consideration we can give the subject.*

The winter assizes are now over; but we trust that before the judges shall again be sent on their missions Mr. Baron Gurney will have reconsidered his decision, or if he persist, that an intimation will be conveyed to him that he must alter his course of practice in the particular to which we have adverted. A few hints from his brother judges may be all that may be required; but should that be ineffectual, we hope that the Home Office will take up the subject, and impress upon the learned baron the necessity for an alteration.

LECTURES ON MEDICAL JURISPRUDENCE.

By Alfred S. Taylor.

Delivered at Guy's Hospital, 1844.

Lecture VII.

We now come to the poisoning by oxalic acid. This poison, although but very little known on the Continent, has acquired a fatal celebrity in England for being so frequently taken for the purposes of poisoning. From the coroner's return for the years 1837-8, there were nineteen deaths from poisoning by oxalic acid; in the greater number of those cases the individuals had taken the poison for the purpose of suicide. Oxalic acid is a very powerful poison, and when a dose of half an ounce and upwards is taken, the symptoms produced are well marked and very rapid in their course; indeed they are frequently so rapid that the person dies before medical assistance can be procured. It is one of the most fatal of all the common or accessible poisons. Immediately, or very soon after it is swallowed, there is a great pain felt in the abdomen; and therefore poisoning by oxalic acid might be mistaken for poisoning by a corrosive acid. The pain in the abdomen is very severe, followed by the vomiting of an acid liquid mixed with mucus and liquid blood of a dark or coffee grounds colour, which is characteristic of poisoning by this substance. As to the effects on the throat they are very remarkable. There is a copious secretion from the surface, and an effusion of a large quantity of blood, and in the vomited liquid you find shreds of mucus membrane floating. There is a sudden prostration of strength, which appears to arise from the action of this poison on the nervous system. The pain and tenderness in the epigastrium is followed by cold clammy perspirations, then by coma, convulsions, and death. A dose of this poison, from half an ounce to an ounce, commonly proves fatal in from a quarter of an hour to one hour. Vomiting continues so long as the person survives. A case is reported in which half an ounce of the crystals of oxalic acid destroyed life in ten minutes, but this was an unusually rapid case. A gentleman rang for his servant to bring him some hot water; in ten minutes the servant went up to the bed-room, and found his master dead. Oxalic acid is one of the most active of the common poisons, and in consequence of the rapidity with which life is destroyed, and its manifesting no action on the bowels, it differs from other irritants; but where the case is protracted, there is more or less irritation of the stomach and bowels, with diarrhoea. Sometimes the patient has not died for ten or twelve hours after taking the poison, and there has been no vomiting; but these must be considered exceptions to the rule. The prostration of strength is very great, so that if the individual be standing when taking the poison there will be loss of power in the extremities, and he will probably fall. The pulse is small, irregular, and scarcely perceptible, and the breathing is found to be spasmodic. The poison acts in different ways, according to the quantity of water in which it is taken. Supposing a fatal dose has been swallowed, if taken in the most concentrated state, it will cause death by syncope or fainting; when the dose is rather less, and more diluted, that is to say, not absolutely concentrated, then it is observed that it affects the spinal marrow, and produces convulsions, tetanus, and symptoms of that kind. If it is taken with a very large quantity of water it acts on the brain, and produces coma and stupor. We must, therefore, be prepared for these effects, which shew us that it is injurious to administer a large quantity of water in cases of poisoning by oxalic acid; because it is easily diffused over a large extent of the mucous membrane, and therefore becomes more speedily absorbed, the danger would be very great unless the water administered was speedily removed. The *post mortem* appearances are highly characteristic of the cause of death. In one case where the individual took two ounces of the poison, he died in three-quarters of an hour. The lining membrane of the mouth, fauces, and œsophagus is often coated with a dark mucous matter. The mucous membrane of the stomach in some instances is found pale and softened, but covered with a dark, thick layer of viscid mucus of a greenish brown colour, and of a gelatinous consistency. The membrane itself is soft and brittle, and easily detached, so that when raised up by the scalpel it seems to break by the pressure. The whole surface of the membrane, as well as the muscular coat, is intersected with a close network of vessels filled with a dark-coloured coagulated blood. In some instances the lining membrane presents traces of inflammation; but this is not often met with. Extensive patches, or indentations, are by no means unfrequent in the small intestines. The surface of the small intestines is covered with a dark-coloured mucus, like that of the stomach, the fauces, and the œsophagus, which are found corrugated. The first effect of the introduction of the poison is, to cause an abundant secretion of mucus, followed by an effusion of a large quantity of blood. There is no disease that will produce similar appearances in the stomach and œsophagus in the same time; therefore, if a person in good health takes a crystalline substance, and immediately after the symptoms I have described are manifested, it is certain that that substance must have been oxalic acid. Nevertheless, it is important to bear in mind that, in some instances, the *post mortem* appearances are not very striking. Dr. Christison mentions the case of a girl who died in thirty minutes after having taken an ounce of oxalic acid, and whose body, on inspection, presented scarcely any perceptible morbid appearances. On inspecting the body of an animal which died in five hours and a half after the administration of about thirty grains of the poison, there was only a small quantity of mucus found in the stomach, and but slight redness. We do not always find effusion of blood in these cases. We are often placed in some difficulty about deciding, from these appearances, what is the cause of death. Evidence is given, of a substance having been swallowed, at a coroner's inquest, and the person is buried without any inspection being ordered; and thus, you see, the means of ascertaining most important facts for the ends of justice are cut off from the profession; so that we are obliged to rely on the few accidental cases of persons who die in the hospitals, and on experiments on animals. The local action of this poison seems to be confined to corrugating the mucous membrane: it alters the colour of the blood, whether effused on the surface, or confined in the vessels, and in the latter case the effect on the blood is in some measure due to absorption or transudation; oxalic acid has never been discovered in the blood, and Dr. Christison states that in one instance he injected a quantity of oxalic acid into the femoral vein of an animal, which died in thirty seconds, and there was no trace of the poison in the blood. It is certain that it is absorbed, for when leeches have been applied to the abdomen of a person who has taken the poison, they have been observed to drop off dead; we therefore have some reason to believe that the poison does enter into the circulation.

With regard to the treatment, the best antidote to administer is chalk, mixed up with milk or water. A mixture of lime water and oil is also a very useful remedy; the lime water tends to neutralize the poison, and the oil shields the stomach from its action. Water should be sparingly used, unless there is active vomiting, because it is quite certain that a large quantity of water will rapidly carry the poison to the bowels, and we then may infer its presence from the seat of the pain. Supposing vomiting does not take place immediately, the best way to produce it is to exhibit a dessert spoonful of mustard mixed up with a little water, and at the same time promote its action by tickling the fauces with a feather. It is our duty to exhibit these remedies as long as the individual survives, though there is not much chance of recovery if some time have elapsed. A question is sometimes put to a medical witness as to the quantity of oxalic acid required to destroy life. This may be settled by attending to recorded facts, but unfortunately in most cases the quantity taken is only conjecturally stated. In a trial that took place in 1832, a medical witness stated that ten grains of oxalic acid were sufficient to kill; this is very doubtful, though a case is reported in which forty grains produced fatal symptoms, and the patient did not recover for a week. We are not entitled to say that even one drachm would be sufficient to kill; there are no facts to justify this opinion. It may be stated that the smallest fatal dose on record is half an ounce of the crystals, and in no instance has an adult person died who has taken a smaller dose, though persons have often recovered who have taken much larger doses. A woman was admitted into this hospital in November 1840, labouring under the effects of oxalic acid. She had taken half an ounce in water. The symptoms were mild; there was no vomiting, and she perfectly recovered, and left the hospital six days after her admission. Where these anomalies in the action of oxalic acid exist, it is difficult to come to any satisfactory conclusion on the subject. The following facts seem to shew that a quantity less than half an ounce is not likely to kill a person. A girl, aged 23, bought half an ounce of the crystals, and took more than half of it dissolved in water. Vomiting occurred immediately; carbonate of lime was given, and then carbonate of magnesia and lime water, and in the course of a few days she recovered. The quantity she had taken must have been between one and two drachms. In February 1842, a case occurred at King's College Hospital, where a girl had swallowed two drachms of the acid dissolved in beer. She suffered from slight pain in the abdomen, and recovered the next day. A case also occurred in 1841, in which three drachms of crystallized oxalic acid were taken, and there was immediate vomiting. This patient was not seen for two hours afterwards, but when seen, the symptoms were slight pain in the abdomen, a disposition to vomit, and a weak pulse. The usual means were adopted, and the man recovered in a few hours. Again, persons have recovered who have taken as much as one ounce of oxalic acid; but it is the general rule that when the dose exceeds half an ounce it proves fatal.

The period of time at which death takes place after poisoning by oxalic acid, is not commensurate with the quantity of poison taken; *i. e.* the same quantity taken does not always destroy life in the same period of time. It does not follow, therefore, that when a larger quantity is taken death will more rapidly ensue. You may be asked to explain this apparent anomaly. It may depend on the state of the stomach; whether food has been taken, whether vomiting has ensued, and many other circumstances that will suggest themselves to you. We may be justified, therefore, in saying that half an ounce may be considered a fatal dose; but it is not certain that, in other subjects, a less quantity will not suffice to destroy life in a shorter time.

Oxalic acid is a solid crystallized acid, soluble in water and alcohol; so that it has often been taken in brandy. It is soluble in most spirits, and acids render it more soluble in water. You may be asked, What quantity of water will dissolve it? This question is very frequent in cases of poisoning by oxalic acid; and this is very easily determined by evaporating the solution; sixty grains of the solution leave four grains of the crystals; so that there are fifty parts of water to four of the crystallized acid, and the deduction from this and other experiments is, that it is soluble in from twelve to fourteen times its weight in water; but it is rendered more soluble by nitric acid. The crystals of oxalic acid are liable to be mistaken for those of two very common substances; namely, sulphate of magnesia and sulphate of zinc. These resemble each

other so closely as to render it difficult to determine which is the one and which the other. Oxalic acid is crystallized in well-defined rounded prisms, like fine needles; and there is only one other poison which crystallizes like it—that is corrosive sublimate. Sulphate of magnesia crystallizes in transparent crystals in a feathery form, and sulphate of zinc crystallizes very like the sulphate of magnesia. They therefore differ from oxalic acid in crystalline forms.

How do we distinguish oxalic acid from these two bodies? You will observe that it is intensely acid; sulphate of magnesia is neutral when pure, and sulphate of zinc is faintly acid. If you add a solution of potash to a solution of oxalic acid there may arise a slight efflorescence, but no precipitate takes place, while if you perform the same experiment with the other two bodies, a white flocculent precipitate is produced. One of the best tests for oxalic acid is heat, which entirely dissipates it, and leaves nothing but a sort of white vapour, while the sulphates of magnesia and zinc are both fixed; they first lose their water on crystallization, and remain fixed. Nitrate of silver, when added to a solution of oxalic acid, will detect one-4,000th part of the acid in solution, giving a dense white precipitate of oxalate of silver. But nitrate of silver drops down many other acids,—muriatic acid, prussic acid, and iodic acid. These precipitates, however, are all insoluble in nitric acid, while oxalate of silver is dissolved by nitric acid. Oxalate of silver is also soluble in ammonia; and another property which it possesses is, that it is not changed by boiling, and in this way we distinguish it from the tartrate of silver, the cyanide, the citrate, and other salts of silver. The second test is the sulphate of lime, which is preferable to the muriate, because that precipitates a great many other substances. As sulphate of lime is slowly decomposed by oxalic acid, it requires to be given in large quantities. The oxalate of lime is soluble in nitric acid, but insoluble in all vegetable acids. We thus know it from the freshly precipitated tartrate and citrate of lime, by its insolubility in the vegetable acids. Now is there any other acid precipitated by the sulphate of lime? There is none; so that if we get a precipitate from this salt, possessing the properties above described, we are certain that it must be oxalic acid. This test precipitates acid as well as neutral solutions of the salts of barytes and strontia; but the precipitates are insoluble in nitric acid, and thus do we distinguish them from the oxalate of lime.

The next test is sulphate of copper, which forms with oxalic acid a blue-white precipitate of oxalate of copper, which is immediately thrown down. There is no other acid which precipitates sulphate of copper in the whole range of mineral and vegetable chemistry, so that here we have a very clear sort of criterion of the nature of the body.

The next point to be considered is how to detect oxalic acid in the contents of the stomach. Oxalic acid is not affected by organic matter; it is not decomposed or precipitated; so that if it exists at all in the stomach it is in a soluble form. It is not, like the mineral or some of the acids, liable to combine with organic principles. In analyzing the contents of the stomach we should use the trial test of sulphate of copper, which produces a precipitation if oxalic acid be present, otherwise not. The next step is to neutralize the liquid by weak ammonia, and then, having filtered the liquid, add acetate of lead, which is thrown down, and a precipitate of oxalate of lead formed. Having, by repeated washing, removed the other matters with which it is mixed, the oxalic acid is to be separated from the oxalate of lead by two processes. Diffuse the precipitate in water, and pass into the liquid a current of sulphuretted hydrogen gas, the effect of which is to take away the lead, and form the black sulphuret of lead, and the oxalic acid is set free, and dissolved by the supernatant liquid. We are still liable to have some sulphuretted hydrogen left, because the gas is soluble in water. We get rid of this by simply boiling it; the gas passes off, and nothing but oxalic acid and water are left. Another way to separate it is by boiling it with a small quantity of sulphuric acid, which forms a sulphate of lead, and sets the oxalic acid free. Supposing that the acetate of lead gives no precipitate, then your answer is, that there is no separable quantity of oxalic acid present; but even if you get a precipitate, is that evidence of the presence of the poison? You must remember that the acetate of lead is precipitated by most kinds of organic matter, and by many mineral and vegetable acids and their salts. Thus if you are operating on the contents of the stomach, the presence of Epsom salts, any alkaline sulphate, common salt, any tartrate, citrate, phosphate, or carbonate, would occasion a white precipitate with acetate of lead. The presence of sulphuric, muriatic, tartaric, or citric acid would give the same result. You may be subjected to a question of this kind in evidence—How can you judge to what the effect is due, when so many bodies are precipitated by the acetate of lead? The answer to such a question must be, that acetate of lead is not a test for oxalic acid, but it is the medium of rendering it fitted for testing. So that we do not rely on the action of acetate of lead as a test of the presence of the poison, but on the subsequent application of other tests.

Now oxalate of lime is sometimes found in the stomach, where lime has been used as an antidote, and in order to analyze this the best method is to boil it, in about an equal weight of carbonate of potash, in distilled water. The undissolved residue will contain some carbonate of lime, and the liquid some oxalate of potash; this may be filtered, and tested with the usual tests. The quantity of oxalic acid present in a liquid is easily determined. We neutralize the acid by ammonia, and precipitate the excess by acetate of lead, and then, for every hundred grains of the dried precipitate of oxalate of lead we must infer the presence of forty-two grains of crystallized oxalic acid. Oxalic acid is very liable to decomposition, and the contents of the stomach, when they have been long preserved, acquire an alkaline reaction from the production of ammonia. By decomposition the acid may be found two or three weeks after death, in the stomach; but beyond that period it is liable to disappear.

THE CRITIC.

New Books.

New Commentaries on the Laws of England. (Partly founded on Blackstone.) By Henry John Stephen, Serjeant-at-Law. Vol. III. London, 1844. Butterworth.

We have not been permitted the advantage of perusing the two preceding volumes of these Commentaries; it is therefore impossible to pronounce any opinion upon a design of which we know nothing. We are ignorant of the learned author's division of his subject, of his proposed method of treating it, and how far he adheres to or departs from the arrangements of his great predecessor; if it be an original work, or only a new edition of an old one—that is to say, whether it be rightly called *Stephen's Commentaries*, or if be not more properly *Stephen's Blackstone*.

In the absence of volumes one and two, we are necessarily limited to a very short and unsatisfactory notice of the third volume, which has been forwarded alone. As we can form no fair judgment of a fragment, we refrain from expressing any. We must be content with a brief account of the most prominent topics indicated in the list of contents, and a few extracts to exhibit the author's style, leaving it to the reader who may be familiar with the whole work to form his own opinion of its merits.

It seems, then, that this third volume comprises two portions of the books into which the whole treatise is divided; namely, Book IV. "Of Public Rights," and Book V. "Of Civil Injuries." It opens with a continuation of the "Civil Government," which constitutes the first part of the division; thence it proceeds in the second part to treat of the Church; and in the third, of the social economy of the realm. The fifth Book, "On Civil Injuries," carries the reader through an interesting and instructive description of the various forms of procedure for the redress of civil wrongs established by the jurisprudence of this country.

The impression which has been left upon our mind by the imperfect acquaintance we have been enabled to make with this work is an extremely favourable one. It appears to us to be Blackstone modernized. But so judiciously are the alterations made where requisite, that it is Blackstone still in spirit and in form, only moulded to existing circumstances, speaking as himself would have spoken had he lived and lectured at this day. Mr. Serjeant Stephen has admirably succeeded in catching the manner of his master, and so cleverly has he dovetailed his own sentences with the language of the elegant old lawyer, that it would be difficult for one who heard the book read aloud to discover which was speaking. If the rest of the work be like this, it must be one of the most valuable of recent contributions to the law student's library; and not the lawyer only, but every Englishman, whatever his calling, may read it with advantage, for so much of the constitution and laws of England as are here described ought to be familiar to every citizen, and should be made a branch of education in every school.

Where there is so much useful material for extract, we are perplexed, by the abundance, which to choose. We may take almost at hazard from any page, all is so good.

Perhaps the most useful, because the least familiar, will be the account of the Spiritual Courts and the injuries cognizable by them.

The Ecclesiastical Courts take cognizance of causes *pecuniary*, causes *matrimonial*, and causes *testamentary*. The following is

THE PROCEDURE IN THE ECCLESIASTICAL COURTS.

[The establishment of the civil law process in all the ecclesiastical courts was a masterpiece of papal discernment, as it made a coalition impracticable between them and the national tribunals, without manifest inconvenience and hazard: and this consideration had undoubtedly its weight in causing this measure to be adopted, though many other causes concurred. The time when the Pandects of Justinian were discovered afresh and rescued from the dust of antiquity, the eagerness with which they were studied by the popish ecclesiastics, and the consequent dissensions between the clergy and the laity of England, have formerly been spoken to at large. We shall only now remark upon those collections, that their being written in the Latin tongue, and referring so much to the will of the prince and his delegated officers of justice, sufficiently recommended them to the court of Rome, exclusive of their extrinsic merit. To keep the laity in the darkest ignorance, and to monopolize the little science which then existed entirely among the monkish clergy, were deep-rooted principles of papal policy. And as the bishops of Rome affected in all points to mimic the imperial grandeur, as the spiritual prerogatives were moulded on the pattern of the temporal, so the canon law process was formed on the model of the civil law: the prelates embracing with the utmost ardour a method of judicial proceedings, which was carried on in a language unknown to the bulk of the people, which banished the intervention of a jury (that bulwark of Gothic liberty), and which placed an arbitrary power of decision in the breast of a single man.

The proceedings in the ecclesiastical courts are therefore regulated according to the practice of the civil and canon laws, or rather according to a mixture of both, corrected and new modelled by their own particular usages, and the interposition of the courts of common law.(*a*) For if the proceedings in the spiritual court be ever so regularly consonant to the rules of the Roman law, yet if they be manifestly repugnant to the fundamental maxims of the municipal laws, to which upon principles of sound policy the ecclesiastical process ought in every state to conform,(*b*) (as if they require two witnesses to prove a fact, where one will suffice at common law,) in such cases a prohibition will be awarded against them.(*c*) But under these restrictions, their ordinary course of proceeding(*d*) is, first, by *citation*, to call the party injuring before them. Then by *libel* (*libellus*, a little book), or by articles drawn out in a formal *allegation*, to set forth the complainant's ground of complaint. To this succeeds the *defendant's answer* upon oath, when, if he denies or extenuates the charge, they proceed to *proofs* by witnesses examined and their depositions taken down in writing, by an officer of the court. If the defendant has any circumstances to offer in his defence, he must also propound them in what is called his *defensive allegation*, to which he is entitled in his turn to the *plaintiff's answer* upon oath, and may from thence proceed to *proofs* as well as his antagonist. The canonical doctrine of *purgation*, whereby the parties were obliged to answer upon oath to any matter, however criminal, that might be objected against them (though long ago overruled in the Court of Chancery, the genius of the English law having broken through the bondage imposed on it by its clerical chancellors, and asserted the doctrines of judicial as well as civil liberty), continued till the middle of the 17th century to be upheld by the spiritual courts, when the legislature was obliged to interpose, to teach them a lesson of similar moderation. By the statute of 13 Car. 2, c. 12, it is enacted, that it shall not be lawful for any bishop or ecclesiastical judge to tender or administer to any person whatsoever the oath usually called the oath *ex officio*, or any other oath whereby he may be com-

(*a*) See 10 Geo. 4, c. 53.
(*b*) Warb. Alliance, 179.
(*c*) 2 Roll. Abr. 300, 302.
(*d*) On this subject, see Report of Commissioners of Ecclesiastical Courts (Feb. 1832), p. 14.

pelled to confess, accuse, or purge himself of any criminal matter or thing, whereby he may be liable to any censure or punishment. When all the pleadings and proofs are concluded, they are referred to the consideration, not of a jury, but of a single judge, who *takes information* by hearing advocates on both sides, and thereupon forms his *interlocutory decree* or *definitive sentence* at his own discretion: from which there generally lies an *appeal* in the several stages mentioned in a former chapter.(e)]

The ecclesiastical courts have power to pronounce, among other sentences, that of excommunication, such sentences being pronounced as a spiritual censure for offences falling under ecclesiastical cognizance, and [this is described to be twofold, the less and the greater. The less excommunication is an ecclesiastical censure, excluding the party from the participation of the sacraments; the greater proceeds farther, and excludes him not only from these, but **also from the company of all Christians.] Formerly,** oo, [an excommunicated man was disabled to do any **act that was required to be done by a** *probus et legalis homo*. He could not serve upon juries, could not be **a witness in any court, and what was worst of all,** could not bring an action, either real or personal, to **recover lands or money due to him.]** But now, by 53 Geo. 3, c. 127, s. 3, no person who shall be pronounced excommunicate shall incur thereby any civil penalty or incapacity whatever, save such imprisonment, not exceeding six months, as the Court so excommunicating such person shall pronounce; which imprisonment shall be enforced in such manner as the Act provides, by a writ *de excommunicato capiendo*.

By the former practice of these courts, it was only by means of an excommunication that they were able to enforce their sentences in any case whatever; so here, the common law stepped in to their assistance; for in case of the refusal of the party to submit to his sentence, and being thereupon excommunicated as for a contempt, a writ *de excommunicato capiendo* was issued, under which he was to be taken and committed to the county gaol till he was reconciled to the church, and such reconciliation certified by the bishop. But now, by the same statute, 53 Geo. 3, c. 127, s. 2, excommunication in all cases of contempt is discontinued, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery whereupon **a writ** *de contumace capiendo* (f) shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*.(g)

THE COURT OF HONOUR AND THE ADMIRALTY COURT.

We are [next to consider the injuries cognizable in the *court military* or court of *chivalry*. The jurisdiction of which is declared by statute 13 Ric. 2, c. 2, to be this: "That it hath cognizance of contract touching deeds of arms or of war out of the realm, and also of things which touch war within the realm which cannot be determined or discussed by the common law; together with other usages and customs to the same matters appertaining." So that whenever the common law can give redress, this court hath no jurisdiction; which has thrown it entirely out of use as to the matter of contracts, all such being usually cognizable in the courts of Westminster Hall.

The words "other usages and customs support **the claim of this court,**—1. To give relief to such of **the nobility and gentry** as think themselves aggrieved **in matters of** honour; and 2. To keep up the distinction of degrees and quality. Whence it follows, **that the** civil jurisdiction of this court of chivalry **is principally in two points**: the redressing injuries **of honour, and** correcting encroachments in matters **of coat-armour,** precedency, and other distinctions of families.

As a court of honour, it is to give satisfaction to all such as are aggrieved in that point; a *point of nature* so nice and delicate, that its wrongs and injuries escape the notice of the common law, and yet are fit to be **redressed somewhere. Such, for instance, as calling a man coward, or giving him the lie;** for which, as **they are productive of no immediate damage to his person or property, no action** will lie in the courts at **Westminster: and] amends** was by the common law **appointed to be given in the court of chivalry.** (h) **Modern resolutions, however, have determined, that how much soever such a jurisdiction may be expe**dient, yet no action for words will at present lie therein. (i) And it hath always been most clearly holden, (k) that as this court cannot meddle with any thing determinable by the common law, it therefore can give no pecuniary satisfaction or damages; inasmuch as the quantity and determination thereof is ever of common law cognizance. And therefore this court of chivalry can at most only order reparation in point of honour; as, to compel the defendant *mendacium sibi ipsi imponere* or to take the lie that he has given upon himself, or to make such other submission as the laws of honour may require. (l) Neither can this court, as to the point of reparation in honour, hold plea of any such word, or thing, wherein the party is relievable by the courts of common law. As if a man gives another a blow, or calls him thief or murderer; for in both these cases the common law has pointed out his proper remedy by action.

[As to the other point of its civil jurisdiction, the redressing of encroachments and usurpations in matters of heraldry and coat armour: it is the business of this court, according to Sir Matthew Hale, to adjust the right of armorial ensigns, bearings, crests, supporters, pennons, &c. and also rights of place or precedence, where the king's patent or Act of Parliament (which cannot be overruled by this court) have not already determined it.

The proceedings in this court are by petition, in a summary way; and the trial not by a jury of twelve men, but by witnesses, or by combat. (m) But as it cannot imprison, not being a court of record, and as by the resolutions of the superior courts it is now confined to so narrow and restrained a jurisdiction, it has fallen into contempt and disuse. The marshalling of coat-armour, which was formerly the pride and study of all the best families in the kingdom, is now greatly disregarded; and has fallen into the hands of certain officers and attendants upon this court, called heralds, whose testimony as to descent is no longer of the same weight as formerly, nor even in general admissible in a court of justice. But their original visitation books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. (n)

Injuries cognizable by the court maritime, or admiralty courts, are the next object of our inquiries. These courts have jurisdiction and power to try and determine all maritime causes, or such injuries which, though they are in their nature of common law cognizance, yet being committed on the high seas, out of the reach of our ordinary courts of justice, are therefore to be remedied in a peculiar court of their own. All admiralty causes must be therefore causes arising wholly upon the sea, and not within the precincts of any county. (o) For the statute 13 Ric. 2, c. 5 directs that the admiral and his deputy shall not meddle with any thing, but only things done upon the sea, and the statute 15 Ric. 2, c. 3, declares that the court of the admiral hath no manner of cognizance of any contract, or of any other thing, done within the body of any county, (p) either by land or by water, nor of any wreck of the sea: for that must be cast on land before it becomes a wreck. (q) But it is otherwise of things *flotsam, jetsam,* and *ligan*, for over them the admiral hath jurisdiction, as they are in and upon the sea. (r) If part of any contract, or other cause of action, doth arise upon the sea, and part upon the land, the common law excludes the Admiralty Court from its jurisdiction; for, part belonging properly to one cognizance, and part to another, the common or general law takes place of the particular. (s) Therefore, though pure maritime acquisitions, which are earned and become due on the high seas, as seamen's wages, (t) are one proper object of the admiralty jurisdiction, even though the contract for them be made upon land; (u) yet, in general, if there be a contract made in England and to be executed upon the seas, as a charter-party or covenant that a ship shall sail to Jamaica, or shall be in such a latitude by such a day, or a contract to be made upon the sea to be performed in England, or a bond made on ship board to pay money in London, or the like: **these kinds of mixed contracts belong not to the admiralty jurisdiction, but to the courts of common law.**(x)] **It is to be observed, however, that [where the Admiralty Court hath jurisdiction of the original subject matter in the cause, it hath also jurisdiction of all consequential questions, though properly determinable at common law.**(y)] **Wherefore, among other reasons, a suit for beaconage of a beacon standing on a rock in the sea may be brought in the Court of Admiralty, the admiral having an original** jurisdiction over beacons. (z)

The jurisdiction over prizes in time of war between our own nation and another, or between two other nations, which are taken at sea and brought into **our ports,** though not properly incident to **the Admiralty,** is nevertheless exercised by the judge **of that court,** to whom the crown ordinarily **commits the cognizance** of prize causes, to **determine the same according to** the law of nations.

[The proceedings of the Courts of Admiralty bear much resemblance to those of the civil law, but are not entirely founded thereon: **and they likewise adopt** and make use of other laws, **as occasion requires;** such as the Rhodian laws, and the laws of Oleron. (a) For the law of England, as has frequently been observed, doth not acknowledge or pay any deference to the civil law, considered as such; but merely permits its use in such cases where it judged its determinations equitable, and therefore blends it, **in the** present instance, with other marine laws; **the whole** being corrected, altered, and amended by **Acts of Parliament** and common usage; so that out of **this com**position a body of jurisprudence is **extracted, which** owes its authority only to its reception **here by consent** of the crown and people. **The first process in these** courts is frequently by arrest of the **defendant's** person; (b) and they also take **recognizances or stipulation** of certain fide-jussors in the **nature of bail** (c), and in cases of default may imprison **both them and** their principal. (d) They may also **fine and imprison** for a contempt in the face of the court. (e) **And all** this is supported by immemorial usage, **grounded on** the necessity of supporting a jurisdiction so extensive, (f) though opposite to the usual doctrines of the common law: these being no courts of record, because in general their process is much conformed to that of the civil law.(g)]

Such in a general point of view is the nature of the jurisdiction and practice of the High Court of Admiralty, but it will be proper before we conclude to advert particularly to the specific regulations which have been recently introduced in reference to this subject by the Act 3 & 4 Vict. c. 65.

The provisions of this Act are chiefly as follows:—

1. That the Dean of Arches shall be assistant to and be competent to sit for the judge of the High Court of Admiralty in all suits and proceedings in the said court, and that the advocates, surrogates, and proctors of the Court of Arches shall be competent to practise in the Court of Admiralty.

2. That whenever any ship shall be under arrest by process issuing from the High Court of Admiralty, or the proceeds of any ship having been so arrested shall have been brought into the registry of the same court, the Court shall have jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively.

3. That the Court shall have jurisdiction to decide all questions as to the title to any ship or the proceeds thereof in the registry arising in any cause of possession, salvage, damage, or bottomry, which shall be instituted in such court.

4. That the Court shall have power to issue monition, and proceed in cause of distribution of salvage, under the Act 1 & 2 Geo. 4, c. 75, and c. 76, and shall also have authority to decide all claims in the nature of salvage, towage, or necessaries, whether the service were rendered in the high seas or otherwise.

5. That in all suits the Court may summon before it and examine witnesses by word of mouth, and either before or after examination by deposition or before a commissioner appointed by the Court; and notes of such evidence shall be taken down by the judge or registrar or such other person as the Court may direct.

6. That it shall be lawful for a judge or such commissioner to require the attendance of any witnesses and the production of any deeds and other writings by writ in the nature of *subpœna*, or *subpœna duces tecum*, as used in her Majesty's Court of Queen's Bench at Westminster.

(e) See 6 & 7 Vict. c. 38, s. 15, giving the Judicial Committee of the Privy Council power to regulate the practice and mode of proceeding in all appeals from ecclesiastical courts.

(f) R. v. Ricketts (6 A. & E. 537); R. v. Baines (12 Ad. & E. 210).

(g) See 2 & 3 Wm. 4, c. 93, giving the ecclesiastical courts of England and Ireland power to enforce obedience to their protests and decrees out of the limits of their respective jurisdictions; and 3 & 4 Vict. c. 93, authorizing the Judicial Committee of the Privy Council to discharge persons in custody under writs *de contumace capiendo*.

(h) Year Book, 37 Hen. 6, 21; Selden, Of Duels, c. 10; Hal. Hist. C. L. 37.

(i) Chambers v. Sir J. Jennings, Salk. 553; 7 Mod. 125; 2 Hawk. P. C.

(k) Hal. Hist. C. L. 3.

(l) 1 Roll. Abr. 128.

(m) By 59 Geo. 3, c. 46, the trial by combat, or wager of battle, in a *writ of right* was abolished.

(n) Comb. 63. Blackstone expresses an opinion that it would be desirable that this practice of visitation at certain periods were revived; for, as he remarks, the failure of inquisitions *post mortem*, by the abolition of military tenures, combined with the negligence of the heralds in omitting their usual progresses, has rendered the proof of a modern descent, for the recovery of an estate or succession to a title of honour, more difficult than that of an ancient.

(o) Co. Litt. 260; Palmer v. Pope (Hob. 104).

(p) As to what is *infra corpus comitatus* see Com. Dig. Admiralty (E. 14); Jac. Law Dic. "Admiral."

(q) See as to wreck, &c. vol. ii. p. 555.

(r) 5 Rep. 106.

(s) Co. Litt. 261.

(t) As to jurisdiction in case of seamen's wages, see Howe v. Napier (4 Burr. 1944).

(u) 1 Vent. 146.

(x) Bridgeman's case (Hob. 23); Hal. Hist. C. L. 35. As to the admiralty jurisdiction, see Le Caux v. Eden (Doug. 573).

(y) 3 Rep. ; Ridley v. Egglesfield (2 Lev. 25; Hardr. 183).

(z) Case v. Jugges (1 Sid. 158).

(a) Hale, Hist. C. L. 36; Co. Litt. 11.

(b) Clerke, Prax. Cur. Adm. s. 13.

(c) Ibid. s. 11; 1 Roll. Abr. 531; Par v. Evans (Raym. 78); Degrave v. Hedges (Lord Raym. 1285).

(d) 1 Roll. Abr. 531; God. 193, 260.

(e) Sparks v. Martyn (1 Ventr. 1).

(f) Pane (or Par) v. Evans (1 Keb. 552).

(g) Bro. Abr. tit. Error, 177.

7. That in any contested suit the Court of Admiralty shall have power to direct a trial by jury of an issue on any question of fact, and that the substance of such issue shall be specified by the judge at the time of directing the same; and in case of dispute the form of it shall be settled by him, and the trial thereon shall be had before some judge of the superior court of common law at the sittings at Nisi Prius, or before some judge of assize, and a new trial may afterwards be granted on application of any of the parties within three calendar months; and farther, that the power of granting or refusing such issue or new trial may be matter of appeal to her Majesty in Council.

8. That it shall be lawful for the judge of the Court of Admiralty, subject to the approbation of her Majesty in Council, from time to time to make such rules and orders respecting the practice of such court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and to repeal or alter the same.

9. That no action *shall lie* against such judge for error in judgment, and that he shall have all the privileges and protection which appertain to the judges of the superior courts of common law.

10. That the keeper of every common gaol shall be bound to receive and take into his custody all persons who shall be committed thereunto by the Court of Admiralty or by any coroner of the Admiralty.

11. That the judge shall have power to discharge any person in custody for contempt of the said Court for any cause other than the non-payment of money.

Lastly, that the said Court shall have jurisdiction to decide all questions concerning booty of war or the distribution thereof, which it shall please her Majesty to refer to the judge of the said court by the advice of her Privy Council, to be dealt with as in cases of prize of war.

The Law Magazine. No. I. New Series.

We have received the first number of this new series of an old and favourite periodical, but too late to pay to it due attention. We therefore prefer to postpone a notice of it until next week, when we shall be enabled to notice it as its merits deserve.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Ring.—On the 22nd inst. the lady of Charles Ring, esq. of Doctors'-commons, and Mitcham, of a son.

MARRIAGES.

Taylor, T. Hamlet, of Gray's-Inn, to Helena Gertrude, daughter of the late P. Waters, esq. of Fermoy, on the 17th inst. at Fermoy.

Phillimore, Robert Joseph, esq. D.C.L. second son of Joseph Phillimore, esq. D.C.L. to Charlotte Anne, youngest sister of Evelyn Denison, esq. M.P. of Ossington, in the county of Nottingham, on the 19th inst. in the Cathedral, Salisbury, by the Lord Bishop.

DEATHS.

Hargrave, Philip John, the infant son of John F. Hargrave, esq. barrister-at-law, on the 24th inst. at Leeds.

Curran, Sarah, widow of the Right Hon. John Philpot Curran, some time Master of the Rolls in Ireland, on the 18th inst. at her residence, No. 6, Mortimer-street, Cavendish-square, aged 89.

Halliday, Rev. E. T. on the 19th inst. at Yarde-house, Taunton, in the 52nd year of his age.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are gi[ven], to whom apply for the Dividends.

Bradwell, J. ironmonger, first and final, 4s. 9d. Fearne Leeds.—*Brooks*, W. A. quarryman, first and final, 8d. Wakley, Newcastle.—*Carter*, T. jun. butcher, first, 2s. 0½d. Whitmore, Birmingham.—*Cay*, J. coal fitter, second and final div. 9d. and 1-9th of 1d. Baker, Newcastle.—*Courtney*, J. banker, second, 1s. 9d. Hutton, Bristol.—*Duffield*, C. grocer, first and final, 3s. Kynaston, Bristol.—*Dunn* and Co. corn factors, joint second, sep. R. Dunn, 7s. 4d. Hope, Leeds.—*Gleadhill*, J. cotton spinner, interest on debts. Hobson, Manchester.—*Harding*, W. grocer, first, 7s. 8d. Green, London.—*Norman* and Co. ironmongers, 6s. Hutton, Bristol.—*Oaton* and *Paxton*, builders, final, 5s. 9d. Hutton, Bristol.—*Oxley*, C. jun. hatter, first, 3s. Groom, London.—*Pemberton*, J. soap boiler, first, 2s. 3d. Hope, Leeds.—*Rosselli*, P. merchant, second, 2½d. Green, London.—*Sedgwick*, E. scrivener, div. Feb. 12. Johnson, London.—*Thomas*, G. D. grocer, final, 10d. Whitmore, Birmingham.—*Thorpe*, W. scrivener, first, 1s. 2d. Fearne, Leeds.—*Watson* and *Co.* brewers, first and final, 3s. 10d. Hope, Leeds.—*Wells*, G. S. cotton spinner, second and final, 7½d. Hope, Leeds.—*Wilson*, J. warehouseman, second and final, 6s. 4d. Pott, Manchester.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Dec. 20.

Miller, J. baker, 11, City-rd. Dec. 16. Trus. C. Miller, baker, New-st. Covent-garden. Sol. Mills, Brunswick-pl. City-rd.—*Minson*, J. brazier, Leamington Priors, Nov. 30. Trus. J. Lett, baker, Leamington Priors. Sol. Forder, Leamington Priors.—*Must*, H. butcher, Wallingford, Berkshire, Nov. 8. Trusts. J. Pittman, Goring, E. L. Franklin, Ascott, and H. Frampton, West Challow, farmers. Sols. Messrs. Hedges, Wallingford.

Gazette, Dec. 24.

Brown, R. joiner and builder, Hull, Dec. 19. Trusts. R. Richardson, plumber, R. Wilson, stone mason, and J. H. Vallance, boot maker, Hull. Sols. Phillips and Copeman, Hull.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES,

Gazette, Dec. 20.

Berley, John Peart, plumber and glazier, 26, Brompton-row, Brompton, Middlesex, Jan. 10, at two, Jan. 31, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Buchanan and Grainger, Basinghall-st. sols. Date of fiat, Dec. 12. Bankrupt's own petition.

Foothead, Henry Hugh, wholesale milliner, 14, Fore-st. Cripplegate, Jan. 3 and Feb. 14, at twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Wilkins, Furnival's-inn, sol. Date of fiat, Dec. 18. Bankrupt's own petition.

Hodgson, Thomas, calico printer, Manchester, Jan. 2 and 23, at eleven, Manchester, Hobson, off. ass.; Abbott, Charlotte-st. Bedford-sq. and Messrs. Bennett, Manchester, sols. Date of fiat, Dec. 14. T. Edgley, merchant, Manchester, pet. cr.

King, Samuel, warehouseman, Newgate-st. Jan. 3, at eleven, Feb. 13, at half-past twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Messrs. Linklaters, Leadenhall-st. sols. Date of fiat, Dec. 17. J. P. Bull, woollen warehouseman, St. Martin's-lane, and W. Turquand and G. Smith, assignees of Watson and Byers, pet. crs.

Mouthrie, James, music seller and dealer in musical instruments, Bristol, Jan. 7 and Feb. 4, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Theobald, Furnival's-inn, sol. Date of fiat, Dec. 11. F. W. Collard and F. W. Collard, pianoforte manufacturers, Cheapside, pet. crs.

Oldham, James, silk warehouseman, Wood-st. City, Dec. 28, at eleven, Feb. 5, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Reed and Shaw, Friday-st. sols. Date of fiat, Dec. 17. B. Lyddall, silk manufacturer, Manchester, pet. cr.

Heraton, George, coal-merchant, Hartlepool, Durham, Jan. 9, at half-past two, Feb. 11, at half-past one, Newcastle, Com. Ellison; Baker, off. ass.; Holden, Hull, and Wilson and Turnbull, Hartlepool, sols. Date of fiat, Dec. 7. H. S. Bright, J. Taylor, and W. Clifford, corn merchants, Hull, pet. crs.

Watkins, Hugh Daniel, and Innes, James, lead merchants, Manchester, Jan. 8 and Feb. 3, at eleven, Manchester; Stanway, off. ass.; Sale and Worthington, Manchester, and Reed and Shaw, Friday-st. sols. Date of fiat, Dec. 6.—Bankrupt's own petition.

Gazette, Dec. 24.

Brentnall, Elijah, builder, Elizabeth-cottage, Cold Harbour-rd. North Brixton, Dec. 31 and Feb. 4, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Jenkinson, Cannon-st. sol. Date of fiat, Dec. 20. Bankrupt's own petition.

Burdett, John Peach, grocer, Uttoxeter, Stafford, Jan. 6 and Feb. 1, at eleven, Birmingham, Com. Daniell; Bittleston, off. ass.; Welby and Co. Uttoxeter, and James, Birmingham, sols. Date of fiat, Dec. 19. J. Steains, T. Rowley, T. Davies, and J. P. Steains, merchants, Liverpool, and T. Blaydon and G. G. Blaydon, mercers and drapers, Uttoxeter, pet. crs.

Christie, John, and Rogers, James, stone masons, Notting-hill, Middlesex, Jan. 10, at one, Feb. 7, at eleven, Basinghall st. Com. Fane; Alsager, off. ass.; Richardson and Co. Golden-sq. sols. Date of fiat, Dec. 14. T. Johnson, corn dealer, Little Chelsea, pet. cr.

Graham, Michael, ship owner, late of Middlesbrough, county York, but now of Darlington, county Durham, attorney-at-law, Jan. 9, 25, at eleven, Leeds, Com. West; Hope, off. ass.; Messrs. Rushworth, Staple-inn, and Sanderson, Leeds, sols. Date of fiat, Dec. 20. Bankrupt's own petition.

Harley, Joseph, plumber, glazier, and painter, Wolverhampton, county Stafford, Jan. 8, Feb. 1, at eleven, Birmingham, Com. Daniell: Whitmore, off. ass.; Harrison and Smith, Birmingham, and Clarke, Wolverhampton, sols. Date of fiat, Dec. 18. Bankrupt's own petition.

Hawke, Nicholas Trevenen, tea dealer and grocer, Penzance, county Cornwall, Jan. 7, 30, at eleven, Exeter, Com. Bere; Hirtzel, off. ass.; Hill and Mathews, St. Mary Axe, and Terrell, Exeter, sols. Date of fiat, Dec. 11. J. Stubbs, E. Absolom, and W. A. Stubbs, wholesale grocers, Rood-lane, pet. crs.

Higgins, Henry, merchant, Leeds, York, Jan. 14 and Feb. 11, at eleven, Leeds, Com. West; Freeman, off. ass.; Atkinson and Co. Leeds, Blackburn, Leeds, and Hawkins and Co. Boswell-court.

Preston, William, builder, 4, Monmouth-road, Westbourne-grove, Bayswater, Middlesex, Dec. 31, at one, Jan. 31, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Hooker, Bartlett's-bldgs. sol. Date of fiat, Dec. 12. W. Heron, D. Rutter, and C. Rutter, brick makers, Uxbridge, pet. crs.

Waller, Henry May, merchant and tailor, Foulsham, Norfolk, Jan. 7, at half-past two, Feb. 7, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Flower, Bread-st. and Taylor and Son, Norwich, sols. Date of fiat, Dec. 12. T. Steward, one of the public officers of the East of England Bank, Heigham, Norfolk, pet. cr.

Wood, John Walker, wine merchant and quarryman, Churton-st. Vauxhall-bridge-road, Jan. 3 and Feb. 18, at half-past eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Mottram, Birmingham, and Parkes and Co. Bedford-row, sols. Date of fiat, Dec. 19. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Dec. 17.

Bell, J. sen. and *Ross*, T. jun. elastic braid manufacturers, West Ham, Dec. 13. Debts paid by A. Boucher, solicitor, Gray's-Inn-sq.—*Bloomfield*, J. and *Sayers*, C. E. carpenters, Springfield, Essex, Dec. 11.—*Boag*, W. and N. music sellers, Great Turnstile, Holborn, Dec. 13.—*Brinkman*, F. and *Gollin*, B. watchmakers, Union-street, Bishopsgate, Dec. 6. Debts paid by Brinkman.—*Boulton*, T. and *Chapple*, C. H. surgeons, Westminster-bridge-road, Dec. 11.—*Browning*, J. and T. wine merchants, Great Marylebone-st. Sept. 9. Debts paid by T. Browning.—*Champion*, C. and *Barham*, T. attorneys, Ely-place, Dec. 1. Debts paid by Champion.—*Cyples*, W. *Barlow*, T. and *Cyples*, R. china manufacturers, Stoke-upon-Trent, Dec. 12. Debts paid by W. Cyples.—*Drummond*, W. and *Hill*, B. manufacturers of fancy coloured quiltings, Bolton and Manchester, Dec. 14. Debts paid by Hill.—*Eggleston*, G. and M. engravers, Humbledock-walls, Nov. 29. Debts paid by G. Eggleston.—*Hawley*, J. and F. H. earthenware manufacturers, Stoke-upon-Trent, Dec. 11. Debts paid by J. Hawley.—*Isdell*, J. and *Lawton*, J. M. fustian manufacturers, Manchester, Dec. 13. Debts paid by Lawton.—*Jacks*, J. and *Holmes*, J. tailors, Liverpool, Dec. 10.—*Lashmar*, J. and J. Y. millers, Brighton, June 24, 1843. Debts paid by J. Y. Lashmar.—*Littlewood*, G. and *Vickers*, M. maltsters, Holywell, Dec. 13. Debts by Vickers.—*Lupton*, T., W. B. and G. H. flax spinners, Leeds, so far as regards G. H. Lupton, Dec. 16.—*Mackay*, J. C. and *Patterson*, J. general agents, Manchester, Dec. 14. Debts paid by Patterson.—*M'Vine*, W. and J. tea dealers, Halifax, Dec. 14. Debts paid by W. M'Vine.—*Mason*, I., *Case*, J., and *Mason*, W. painters and cabinet makers, Knaresborough and Harrowgate, Dec. 4.—*Ormerod*, E., O. and W. carriers, Rochdale, Dec. 19.—*Wood*, J., *Brownfield*, W., and *Gerrard*, J. flint grinders, Boodenbrook, near Cobridge, and Hanley, Dec. 11. Debts paid by Wood and Brownfield.

Gazette, Dec. 20.

Banks, J. and *Massey*, W. wood merchants, Brayton and Sutton-upon-Derwent, Yorkshire, Dec. 17.—*Berry*, J. and *Ogden*, J. gas manufacturers, Nether Knutsford, Dec. 14.—*Bigglestone*, J. and J. W. marble masons, Abergavenny and Hereford, Nov. 1.—*Broad*, W., R. R., W. R., and A., merchants, Falmouth, so far as regards A. Broad, Dec. 12. Debts paid by the remaining partners.—*Coe*, J. and *Paterson*, R. attorneys, Size-lane, Dec. 17.—*Hartlepool Shipping Company*, Oct. 10.—*Leith*, J. and *Gordon*, B. Dec. 7.—*Moore*, H. and *Cooper*, J. victuallers, Great Russell-st. Dec. 13. *Motteram*, J. and *Giddy*, C. attorneys, Birmingham, Dec. 17.—*Mulvey*, T. S. and W. W. ship builders, Chester, Dec. 10. Debts paid by T. S. Mulvey.—*Phillips*, T., *Cooper*, T. W., *Beesley*, T., and *Phillips*, I. W. cabinet makers, Finsbury-place South, so far as regards Phillips and Beesley, Dec. 17.—*Salomons*, B., R., and A., and *Threlkeld*, D. W. so far as regards Threlkeld, Dec. 17.—*Sherwood*, W. deceased, *Gilbert*, T. and *Piper*, W. booksellers, Paternoster-row, so far as regards Sherwood, March 18, 1843. Debts paid by Gilbert and Piper.—*Thorn*, C. and E. ironmongers, Shaftesbury, Nov. 2. Debts paid by E. Thorn.—*Watts*, D. and *Farrar*, D. dyers, Dudbridge, Gloucestershire, Dec. 8. Debts paid by G. W. Saunders, Stroud.—*Wood*, J. and *Bicknell*, D. tobacconists, Coleman-st. Nov. 26.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, Dec. 17.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Adams, D. confectioner, Canterbury, Jan. 27, at half-past one.—*Baker*, J. lodging-house keeper, Church-passage, Chancery-lane, Jan. 8, at one.—*Baldock*, R. sen. timber hewer labourer, Brenchley, Jan. 1, at one.—*Barnes*, J. tailor, Clapham, Dec. 21, at twelve.—*Bragg*, J. fishmonger, West-st. Spitalfields, and Billingsgate, Jan. 27, at one.—*Buckler*, C. out of business, Garnault-pl. Clerkenwell, Jan. 9, at half-past two.—*Clarke*, W. H. shoemaker, Great Yarmouth, Jan. 16, at twelve.—*Davis*, I. attorney, St. James's-sq. Dec. 21, at eleven.—*Edmonds*, W. coffee-house keeper, Cable-st. Ratcliffe-highway, Jan. 1, at eleven.—*Fowler*, G. hair-dresser, Portsmouth, Jan. 8, at eleven.—*Goulder*, E. carpenter, Pickering-ter. Bayswater, Jan. 27, at half-past eleven.—*Grossmith*, R. jun. tailor, Hampton Wick, Jan. 1, at one.—*Hall*, G. T. plumber, Rotherhithe-st. Jan. 1, at twelve.—*Huddy*, H. prison warder, Henry-pl. Bride-st. Liverpool-rd. Jan. 27, at half-past twelve.—*Lee*, S. coach maker, Stratford, St. Mary, Dec. 21, at half-past eleven.—*Lofts*, R. bricklayer, Little Downham, Jan. 16, at half-past eleven.—*Loveday*, J. boot maker, Mount-pl. Walworth-rd. Dec. 21, at twelve.—*M'Dermott*, D. V. gent's servant, Lodge-rd. Regent's-park, Jan. 8, at half-past eleven.—*Morrison*, W. coal merchant, Ruffy's-row, High-street, Peckham, Jan. 9, at half-past two.—*Moxon*, M. H. out of business, Union-pl. Lower-rd. Islington, Dec. 21, at half-past eleven.—*Pounds*, J. boot and shoe maker, Portsmouth, Jan. 9, at half-past two.—*Sewell*, E. plumber, Chelmsford, Jan. 7, at twelve.—*Sheppard*, J. cordwainer, Crayford, Jan. 27, at two.—*Steptoe*, W. baker, St. Clements, Oxfordshire, Jan. 27, at twelve.—*Upton*, H. farmer, Margate, Jan. 1, at eleven.—*Wadmore*, J. butcher, Holles-st. Clare-market, Jan. 7, at twelve—*West*, W. zinc manufacturer, White Hart place, Kennington-lane, Dec. 21, at half past twelve.—*Willes*, E. P. gent. Albert-cottages, King-st. Hammersmith, Jan. 14, at twelve.

Gazette, Dec. 20.

Hercock, T. smith, Battersea-fields, New-st. Jan. 1, at one.—*Johnson*, J. servant to a horse dealer, Circut, Buckinghamshire, Jan. 1, at one.

Country.—Gazette, Dec. 17.

Barnett, J. retailer of beer, Twerton, Jan. 13, at eleven, Bristol.—*Keen*, J. C. brace and belt manufacturer, Jan. 8, at eleven, Birmingham.—*Preddy*, J. baker, Taunton Saint Mary Magdalen, Jan. 7, at one, Exeter.—*Smith*, J. hair dresser, Penrith, Jan. 8, at half-past two, Newcastle.—*Webb*, I. butcher, Tormarton, Jan. 13, at half-past eleven, Bristol.

Gazette, Dec. 20.

Bailey, T. clock maker, Liverpool, Dec. 27, at eleven, Liverpool.—*Pitman*, M. F. piano-forte tuner, Bath, Jan. 14, at twelve, Bristol.—*Wilson*, J. joiner, Wheelton, Jan. 3, at one, Manchester.

From the Gazette of Friday, December 27.

Bankrupts.

Thomans, L. I. tea dealer, Sidney-place, Commercial-road.—*Seed*, A. licensed victualler, Liverpool.—*Strange*, C. and *Parsons*, R. merchants, Raglan, Glamorganshire.—*Watson*, C. jun. tea dealer, Darlington.—*King*, J. R. druggist, Bath.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Friday, Dec. 13.

EDWARDS *v.* JONES.

Practice—Pleading—Production of Documents—Discovery.

Where a fact is neither admitted nor denied by the defendant in his answer, who says he does not know the fact one way or the other, affidavits will not be admitted to be read on an interlocutory application, to substantiate that fact.

What amounts to a denial in the answer of any knowledge of a particular fact charged by the bill.

This was an appeal motion to discharge an order of the Vice-Chancellor of England, made upon a motion by the plaintiff for the production of papers mentioned in the schedule to the defendants' answer, and admitted to be in their possession. The motion had been refused.

The defendant, Ellen Jones, the wife of the other defendant, Pierce Jones, was the administratrix and one of the next of kin of John Owen, her uncle, who had died intestate in June 1835. His only other next of kin was Howell Powell, the brother of Ellen Jones, who at the time of John Owen's death was resident at New York, in the United States. Howell Powell, as was alleged by the bill, departed this life at New York, in Dec. 1839, intestate, and the plaintiff, Margaret Edwards, had obtained letters of administration to his effects. The bill was filed for a distribution of the estate of the original intestate, John Owen.

In answer to an interrogatory, as to the time of the death of Howell Powell, the defendants said, "They had always, since the death of John Owen, been ignorant whether the said Howell Powell was living or dead; and that they were ignorant of the date of the death of Howell Powell, and whether letters of administration of his effects had been granted to the plaintiff, Margaret Edwards; and they denied that either of them had been informed that he had died, as in the bill mentioned, by letters which they or either of them had received from New York or elsewhere, mentioning his death or that they had been so informed by any other person or persons, save by the said plaintiff, Margaret Edwards, and by other children of Howell Powell, and by the plaintiff, Griffith Edwards." The answer then proceeded—"And these defendants say that they had not, nor had either of them, any reason either to doubt or to believe, and therefore they did doubt the testimony of the person or persons so informing them; and these defendants deny that they or either of them have or has always or at any time considered or believed that the said Howell Powell was dead; and these defendants deny that they or either of them have or has at various or any times or time informed many or any persons that such was the fact." Upon this answer the plaintiff claimed to read an affidavit to prove the fact and time of the death of Howell Powell, upon the ground that the defendants had by their answer neither admitted nor denied it. The answer likewise denied that a certain letter mentioned in the schedule to the answer related to the death of Howell Powell, or that it in any way related to the plaintiff's title; and it was proposed to prove by affidavits that such letter did relate to the plaintiff's title.

Renshaw, for the plaintiffs, on the appeal, offered to read affidavits to prove the handwriting of the defendant Pierce Jones, and that Howell Powell had died in the hospital at New York in 1839. He contended that the fact of the death of Howell Powell was not admitted or denied by the answer, and that it was the rule deduceable from the authorities, that upon an interlocutory application to adduce by affidavits evidence of facts not admitted or denied by the answer.

Craig objected that the plaintiff must shew his title to the production of the papers moved for by admissions upon the answer.

Renshaw, in support of his right to read the affidavits to prove facts not admitted or denied by the answer, cited *Hodson* v. *Dean* (2 Sim. & Stu. 221); *Jefferys* v. *Smith* (1 Jac. & W. 298, 300); *Ord* v. *White* (3 Beavan, 357); and for his right to read affidavits to verify documents not admitted or denied by the answer. He cited *Tagart* v. *Hewlitt* (1 Mer. 499); *Addiss* v. *Campbell* (1 Beav. 258). He admitted *Barrett* v. *Tickel* (Jacob, 154), was a decision the other way, as was also *Castellain* v. *Blumenthal* (12 Sim.)

Craig, in reply upon the preliminary objection, contended that the case of *Hodson* v. *Dean* is an authority, that as to the personal title of the plaintiff, the affidavits cannot be read. The case of *Jefferys* v. *Smith* had misled the Master of the Rolls into supposing it to be inconsistent with what Lord Eldon had said in other cases, and that there was therefore a conflict of authorities. In *Barwell* v. *Barwell* (5 Beav. 373), affidavits after the answer had been put in were refused. (*Walker* v. *Good*, 12 Sim.; *Duplex* v. *Flint*, 4 Myl. & Craig, 502; *Castellain* v. *Blumenthal, supra*; *Morgan* v. *Good*, 3 Mer. 10.)

The LORD CHANCELLOR (after reading the above passage in the answer.)—I think that amounts to a denial according to the best of their recollection and belief. Therefore there is an end of one part of the case.

Renshaw.—Then I am confined to the answer. The defendants say they do not know the time of the death of Howell Powell. Affidavits are therefore tendered to prove the time of his death.

The LORD CHANCELLOR.—That raises the question.

Renshaw stated letters of administration to effects of Howell Powell granted in 1842.

The LORD CHANCELLOR.—That only proves that he is now dead, and the plaintiff is administratrix. The weight of authority, according to my present impression, is against the admission of the affidavits; but I will look into the cases; for the present purpose I allow the objection.

The case then proceeded upon the general question, on which judgment had not been pronounced.

On the 14th of December, the LORD CHANCELLOR (after the argument upon the whole case had concluded), said:—I have looked into all the cases as to the admission of affidavits, and I have no doubt as to the rule, which I apprehend to be that they cannot be admitted. First, as to the particular document; the party says, that, to the best of his recollection and belief, he never did write such a letter; and the other party wishes to prove that letter by affidavit, distinctly to contradict the averment in the answer. Then, as to the other points; the plaintiffs seek to prove, by affidavit, facts which the defendants have neither admitted or denied by their answer. All the cases shew that the plaintiff cannot be allowed to produce affidavits as to facts about which the defendant says he does not know anything one way or the other. As to the other points of this case, I will consider them.

Re JONES, a Lunatic.

Residence out of the jurisdiction permitted—Security for return—Practice.

Wakefield supported a petition by the committee of the lunatic, that he might be permitted to reside in Scotland. In May, 1841, the lunatic's mother removed him into Scotland to settle there. After the death of his mother, which had since occurred, he had become entitled to a considerable additional fortune, and it was shewn that a continued residence in Scotland would be most conducive to the health and comfort of the lunatic.

The LORD CHANCELLOR.—Are you aware of any such order? I have no objection to make the order prayed by the petition provided security be given that he shall be brought within the jurisdiction, if the Chancellor shall at any time deem it right to require it. The security must be given by some one resident within the jurisdiction. *Ordered accordingly.*

Re BRENT SPENCER, a Lunatic.

Costs in lunacy—Practice.

The committee of the estate petitioned that Lady Garvagh, the executor of Sir Brent Spencer, deceased, might be ordered to transfer the sum of 3,300*l.* Consols into court. The lunatic was entitled thereto under Sir Brent Spencer's will on attaining twenty-five years of age; and it was shewn that he is now thirty-eight.

Kenyon Parker, for the petitioner.

J. Baily, for Lady Garvagh, asked that her costs might be deducted and retained. *Ordered.*

Re RUXTON, a Lunatic.

Reducing security given by committee—Reversionary interests—Grant to committee—Practice.

A petition was presented by the committee and next of kin, praying that the security might be given by the committee below the amount usually required, as no one who was willing to become such committee could find the full securities. There were three sums to which the lunatic was entitled in possession, and these it was proposed should be transferred into Court; and it was further proposed that three other sums to which the lunatic would become entitled upon the death of the tenant for life should be excluded from the grant to the committee, and that a copy of the order should be served upon the trustees of those reversionary funds. *Ordered.*

BLACK *v.* CLAYTON.

Appeal—Deposit—Consent—Practice.

James Black, one of the defendants in person, moved for leave to present a petition of appeal against a decree of the Vice-Chancellor.

His wife, who is the plaintiff in the suit, also in person wished to appeal against the decree. The suit related to her separate estate. She had changed her next friend several times, and the present next friend was unwilling to make the requisite deposit.

The LORD CHANCELLOR.—Leave to appeal is not required. Either of these parties may appeal as of right in the ordinary way. There has been a decree, and if the plaintiff's next friend refuses she must obtain another next friend who will consent to take the steps necessary for an appeal.

Bagshaw (for the trustees).—If any counsel will give an opinion that there is any ground for the appeal, the trustees will waive a deposit.

The LORD CHANCELLOR assented.

WOODBURN *v.* FISHER.

Breach of injunction—Discharge of defendant by consent—Waiver of costs—Practice.

This defendant, who had been committed for breach of an injunction, restraining him from taking stones from a sea bank on the Lancashire coast, applied in person to be discharged. He had been committed by Vice-Chancellor Knight Bruce, after very strict proof by affidavit, and had appealed against that order the last day before the long vacation.

The appeal had then stood over for the production of a further affidavit, and the defendant consequently remained in prison ever since.

Phillips, for the plaintiff.

The LORD CHANCELLOR suggested, before hearing the defendant's motion, that as he had been a long time in custody, the plaintiff should consent to his discharge, subject to the costs of the present motion, in the event of his committing another breach of the injunction.

It was finally ordered that the defendant should be discharged by consent; and that he should not be required to pay the costs of the motion, unless he should commit another breach of the injunction, and the Lord Chancellor should be of opinion that any act complained of should be a breach.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Monday, Dec. 2.

BASHIN *v.* DAVIS.

Practice—Injunction—Affidavit in support of.

Where an ex parte injunction has been obtained by one party against another by reason of certain facts contained in the affidavit in support of such application, and upon the coming in of the defendant's answer, followed by a motion to dissolve the injunction, there is a positive denial of all the facts sworn to in the plaintiff's affidavit, the Court will look at the amount of credit to be given on either side, and the party whose duty it is to protect the property in dispute till the hearing of the cause will be assisted by the Court in the control and management of the property.

An *ex parte* injunction had been obtained in July last, restraining the defendant from interfering in the management of a farm situate at Willesden, in Middlesex. The injunction had been granted upon a representation made to the Court that the plaintiff and defendant were jointly interested as partners in the farm, and that notwithstanding the defendant had provided the money to purchase the stock and crops, &c. at the time a contract was entered into with a Mr. Thacker, the owner, to grant a lease for fourteen years, still the understanding between the parties was that the plaintiff should exercise his own discretion, and have the sole management of the farm; that the defendant should furnish the means and make the advances necessary for the purpose of carrying it on, and that they should equally participate in the profits arising therefrom. In his answer, the defendant denied that there ever existed such a pretended understanding as the plaintiff had represented when he obtained the injunction, or that any contract of partnership had ever been in contemplation. On the contrary, the seeming partnership was nothing more than this; viz. that the plaintiff being indebted to the defendant to a considerable amount, the latter conceived that by placing him in the farm it would afford him the means and the opportunity of liquidating the debt which he owed the defendant. The lessor himself had refused to accept the plaintiff as his tenant, and the chief part of the negotiation respecting the lease had been carried on with the defendant, and the whole of the money had been advanced in respect of the farm by the defendant; and it was not until the embarrassed circumstances of the plaintiff rendering it impracticable for him to manage the farm, that the defendant interfered for the sake of protecting his own property. It was under these circumstances that the defendant now moved to dissolve the injunction; and the main points of argument related to the amount of credit to be given to the facts sworn on either side; the defendant positively denying all that had been sworn to by the plaintiff.

Stuart and *Wilcock*, for the defendant.

Bethel and *Ellis*, for the plaintiff.

His Honour the VICE-CHANCELLOR said, as the only question now to be determined was that which related to the preservation of the property until the hearing of the cause, and as the defendant appeared to be the party responsible for the protection of that property, it was rather difficult to understand how it could suffer injury by the defendant having the management, especially when the whole course of events in

the negotiation for the lease clearly proved that the circumstances of the plaintiff were the cause why the lessor refused to grant the lease to him; and he therefore was of opinion that it would be the grossest injustice to give such a party the management of the farm, and the injunction ought to be dissolved.

Injunction dissolved.

Friday, Dec. 20.

—— *v.* ——

Practice—New orders, 26th Aug. 1841—Entering appearance for defendant.

By the 8th of the above orders, "if the defendant, being duly served with a subpœna to appear to and answer the bill, shall refuse or neglect to appear thereto, the plaintiff shall, after the expiration of eight days from such service, be at liberty to enter an appearance for the defendant."

Under the 23rd order, the plaintiff may, if he sees fit, dispense with the appearance and answer of a defendant against whom no direct relief is prayed, by serving him with a copy of the bill, such bill praying that the party, upon being served with a copy of the bill, may be bound by all the proceedings in the cause; and by the 24th order a memorandum of service shall be entered at the office of the Clerks of Records and Writs, on obtaining an order for leave to make it.

The 25th order directs that where a defendant shall have been served with a copy of the bill under the 23rd order, and a memorandum of such service shall have been duly entered, and such defendant shall not, within the time limited by the practice of the Court for that purpose, enter an appearance in common form or a special appearance under the 27th order, which allows a party served with a copy of a bill under the 23rd order, who shall desire to be served with a notice of the proceedings in the cause to have the same prosecuted against himself, he shall be at liberty to enter a special appearance under the following form, viz. "A B appears to a bill for the purpose of being served with advice of all proceedings therein."

Three of the defendants under the 23rd order were served with copies of the bill filed on 22nd April: they did not, however, enter any appearance until 3rd June, nine days after such service, but no answer was required from them. On 22nd June a memorandum of service was, in pursuance of an order of the Court, entered with the Clerk of the Records and Writs. The cause being ripe for hearing (the other defendants having filed their answers), the plaintiff's attorney made several applications to the Clerk of the Records and Writs to grant the necessary certificate for the cause to be set down for hearing, which was refused unless the appearance entered for the three defendants was withdrawn. Applications were then made to these defendants to answer, and on 2nd November the Master allowed them fourteen days further time to answer, which expired on 16th November.

No answer was filed by the appointed time, but on 22nd November a warrant was taken out by defendant's solicitor, and served on plaintiff's solicitor, to shew cause on 26th November why they should not have a month's further time to answer, which, however, on that day they abandoned. Instead of the plaintiffs proceeding with the cause at once, they gave notice to the defendants, that unless they filed their answer by a given day they would move that the appearance entered for the defendants might be discharged, and that they should pay the costs of the application. This notice was accordingly served on 4th December, but pending the notice of motion the defendants had put in their answer: Held, that notwithstanding the defendants' delay, the plaintiffs' conduct had not been such as entitled them to the Court's interference, and therefore the motion was refused with costs.

The bill was filed on the 22nd April last, praying that three of the defendants, James William Glover, James Glover, and James Joynson, upon being served with copies of the bill, might be bound by all the proceedings in the cause. J. Inskip, a clerk to the plaintiff's attorney, on the 25th May, personally served the defendant, J. W. Glover, with a true copy of the bill, by leaving it at his residence; and on the same day the said clerk also served James Glover with a copy, at his residence; and on the same day, in like manner, he also served J. Joynson.

These defendants did not enter any appearance until the 3rd June; an appearance was entered by the clerk of the records and writs for them, and a notice thereof sent to the defendants' attorney. No answer was required to the bill from any defendant, save Sir C. R. Cockerell. By an order of the Vice-Chancellor, 12th June, it was ordered that a memorandum of such service might be entered in the record and writs office pursuant to the order of the Court.

On the 22nd June, a memorandum of such service was, in pursuance of the last order, entered with the clerk of the record and writs. No appearance was entered for either of the defendants on whom copies of the bill were served, except those three defendants. Sir C. R. Cockerell having filed his answer, and the cause being ripe for hearing, the said J. Inskip made several applications to the clerk of the records and writs to grant the necessary certificate to enable the said J. Inskip to set down the cause for hearing, which he refused, unless the appearance entered for the three defendants was withdrawn.

By the directions of plaintiff's solicitor, the said J. Inskip made frequent applications to the defendants' solicitor to put in their answer; and on the 2nd Nov. the master to whom the cause stood referred, upon the application of the defendants for a month further time to answer, made an order, whereby he directed that the defendants should have fourteen days' further time to answer, which expired on the 16th Nov.

No answer having been filed at the expiration of the time, the said clerk to the plaintiff's solicitor again applied to the defendants' solicitor to put in their answer; and on or about the 22nd Nov. a warrant was taken out before the master by the defendants' solicitor, and a copy served on the plaintiff's solicitor, calling on them to shew cause, on the 26th Nov. why the defendants should not have a month's further time to answer.

The said clerk (Inskip) attended on the last-mentioned day, when the warrant was made returnable, to oppose the application; but the defendants' solicitor did not attend.

The three defendants not having filed their answer, induced a supposition that they did not intend to do so, except for the purpose of delaying the plaintiffs from proceeding with the cause.

On the 2nd December the plaintiff's solicitor wrote the defendants' solicitor a letter as follows:—

"Dear Sirs,—*Powell* v. *Cockerell*, unless the answer of defendants Glovers and Johnson is filed on Wednesday morning next, we shall, in the afternoon of that day, give a notice of motion that the appearance entered for those defendants may be discharged, and that they may be ordered to pay the costs of this application.

This notice was served accordingly on the 4th December, that the Clerk of the Records and Writs be at liberty to withdraw the appearance which was on the 3rd June last entered to the plaintiff's bill for the three defendants, and that the plaintiffs may be at liberty to set down the cause for hearing, and that the three defendants might be ordered to pay the costs of that application.

The application was made on the authority of *Hall* v. *Bullock* (a case not reported), in which the Vice-Chancellor of England made an order in the terms asked by the present notice of motion, except as to the costs of the application. The only difference between the case of *Hall* v. *Bullock* and this present application was stated to be that, in the former the appearance for the defendants was not entered for the defendants until seventeen days after they had been served with copies of the bill, and the order for leave to enter a memorandum of service was obtained before such appearance was entered; whereas in the present case, the appearance for the defendants was entered nine days after service of copies of the bill on them, viz. 3rd of June, and the order for leave to enter a memorandum of service was not obtained until 12th June last: but it was submitted that these two circumstances did not at all affect the merits of the case; for if the defendants required the suit to be prosecuted against them, it was necessary that they should enter their appearance within the time prescribed by the practice of the Court, viz. eight days; the 24th Order of 26th August 1841, being silent as to within what time the order for leave to enter a memorandum of service, or of the entry of such memorandum is to be made. And it was submitted that this was a much stronger case than *Hall* v. *Bullock* to call for the interference of the Court in causing the appearance entered for the defendants to be withdrawn; for that when they had five months to answer they applied for an extension of time, and when that time expired they took out a warrant for further time, but abandoned it.

Bethel and *Cockerell*, for the motion, submitted that the plaintiffs had all along desired to have the cause heard, but had been prevented by the irregular appearance of the three defendants. After the eight days, for the 25th Order directs that "when a defendant shall have been served with a copy of the bill under the 23rd Order," &c. after the eight days, therefore, the rule is, that when you serve the defendant under the 23rd Order, he must enter an appearance in the common form, or a special appearance under the 27th Order; the plaintiff may proceed in the cause as if the party served with a copy of the bill were not a party thereto. In this case, therefore, the appearances was not duly entered. That the exposition of the 25th Order was made by the Court in *Hall* v. *Bullock* on 15th June, 1843, and that the plaintiffs were not able to set down the causes for hearing by reason of the incumbrances which the defendants had thought fit to put upon the progress of the suit by their month time to answer; they had been playing a game of obstruction, to whom it was said if you do not answer, we will take advantage of your not appearing, but if you put in your answer we will take no advantage. That the present application was made to discharge the appearance, of which notice was given, to which the defendants paid no attention; but then, when they are served with the notice of motion, *they then put in their answer*, and the question was, whether the defendants were not bound to pay the costs, as they had, after notice of motion, effected that which, had they done before, the notice itself would have been unnecessary.

Lloyd, for the defendants.

The VICE-CHANCELLOR thought that the plaintiffs had been trafficking with the defendants with respect to their putting in their answer; that if the defendants had been playing the game of obstruction, the plaintiffs themselves had not acted a straightforward part, but that there had been too much of the fast and loose system observed, and therefore

Refused the motion with costs.

ROLLS COURT.

Thursday, Dec. 19.

HEMMING *v.* DINGWALL.

After the allowance by the Master of exceptions to an answer, a further answer is put in by the defendant, and on the same day an order to amend, and for the defendant to answer the amendments, &c. is obtained by the plaintiff, but not served till some time after: the order is irregular, and will be discharged.

Southgate moved to discharge an order to amend, and for the defendant to answer, &c. obtained in this cause by the plaintiff on the 14th November last.

The Master had, on the 13th November, decided in favour of the validity of exceptions which had been taken to the defendant's answer, and on the 16th, the defendant filed a further answer. On the same 16th, the Master's certificate was obtained, and the plaintiff applied for and obtained an order to amend, and for the defendant to answer, &c. but did not serve it till the 4th inst. The order, therefore, it was contended, was irregular, on the ground that it was obtained before the Master's certificate, and ought to be discharged with costs.

Wilcock, contrà. [The MASTER of the ROLLS.—A further answer being put in, can you serve a subpœna with the order to amend an answer?] No; but the order is good as to the part not complied with, viz. the amendment. The order, therefore, became a mere common order to amend.

The MASTER of the ROLLS.—It is clear the order is irregular. The master having certified his allowance of the exceptions, the defendant files a further answer, and the plaintiff obtains his order to amend; which was obtained first makes no difference; they were both on the same day. If the defendant knew of the plaintiff's order, his course would be irregular. But the order to amend and answer was not served till the 4th of December; meanwhile the defendant's answer was put upon the file, and being there, nevertheless, says the plaintiff, I will serve him with the order. It is clearly irregular, and must be dismissed with costs.

Re THE GREAT WESTERN RAILWAY ACTS, and *Re* RHODES, a Solicitor.

A public company, who by their act of incorporation were bound to pay all costs, charges, and expenses incurred in the purchase of lands either by themselves or the vendor, entered into a contract for the purchase of lands not comprised within the compulsory clause of their Act, and in the memorandum of agreement it was stipulated that the costs, &c. as well of themselves as of the vendor, should be paid and discharged by them pursuant to their Act. Subsequently they obtained another Act of Parliament, by which it was enacted that all costs, &c. which they were liable to pay should be taxed as therein mentioned. Then the 6 & 7 Vict. c. 73, was passed; and the company having refused to pay the vendor's solicitor's bill of costs when delivered, an action of covenant was brought on the agreement. The company then moved to refer the bill for taxation, but the motion was refused with costs.

On a motion or petition for taxation, there is no jurisdiction to construe an agreement; but if there be any equitable grounds for interference with the legal effect of it, or any necessity to consider its import, it can only be by bill filed for that purpose.

In 1836 the Great Western Railway obtained an Act (6 Wm. 4), by which (as well as by previous Acts) it was, among other things, enacted, that in all purchases of lands, &c. the costs, charges, and expenses, both of the company and the vendors, should be exclusively borne by the company. And by a subsequent Act (2 Vict. c. 27) it was enacted, that all costs, &c. which the company should, by their acts, be liable to pay, should be taxable, and taxed as therein mentioned, viz. by an officer of the Court of Exchequer, &c. Between the passing of 6 Wm. 4 and the 2 Vict. viz. on the 1st Dec. the company purchased certain property, which they were not entitled, by their Acts, compulsorily to take from Mr. Palmer, of Holme Park, Berks, at the sum of 9,345*l*. 12s. 6d.; and on the 3rd Dec. 1836, a memorandum of agreement was drawn up, in which there was a stipulation that the costs, &c. of Mr. Palmer, as well as of the company, should be paid by the company pursuant to their Act, that is the 6 Wm. 4. After the 6 & 7 Vict. c. 73, came into operation, viz.

on the 23rd August, 1843, Mr. Rhodes, the solicitor of Mr. Palmer, delivered his bill of costs, which contained, among others, the following items:—100*l.* for maps; 75*l.* for two clerks, books, &c.; 130*l.* for abstracts; and 50*l.* a year for the year 1838 and four following years, for general attendance, which items were objected to. On the 12th May, 1844, Mr. Rhodes brought an action on the covenant in the memorandum against the company to recover the costs, &c. which they had agreed to pay; which action is still pending. In Nov. 1844 a rule *nisi* was granted by the Court of Exchequer to refer the bill for taxation under the 16th section of the 6 & 7 Vict. c. 73, and on the 29th of the same month the order was discharged, on the ground that their jurisdiction was gone under the 5 Vict. c. 5, which transferred the Equity Exchequer to the Court of Chancery, and the business being done out of court it was not competent for a common law court to adjudicate thereon. The company now moved to have the bill referred for taxation, under their Acts, as well as the 6 & 7 Vict. c. 73.

Turner (with him *Stevens*), for the motion, contended that the words "pursuant to the Act," &c. had relation, not to the mode of ascertaining the costs to be paid pointed out in the latter part of the 10th section of the Act, but to the costs which were to be paid by the company. The object of introducing the provision was this: the company were to pay the vendor's costs; they might not be ascertained, and they could not have possession without payment. Now there is an express condition that by depositing the purchase money, &c. in Exchequer bills, in Messrs. Child and Co's, they may enter into possession. Then all costs which the company are liable to pay (as they are these) are made taxable by the 2nd Vict. c. 5; and by the 6 & 7 Vict. c. 73, we are enabled to have taxation on special circumstances being shewn; and we are able to point to items unsustainable.

Kindersley (with him *Willcocks*), contended that the 2 Vict. c. 5, pointed out the mode of ascertaining the costs as between the vendor, not the solicitor, and the company, and superseded any other mode of ascertaining the costs. The company, therefore, had no right to call in question the solicitor's bill, or ask it to be taxed; there is an agreement between the parties to do the thing in a particular way, and an action is now brought for a breach of that agreement, and if the Court adjudicated, it might conflict with the decision of the Court of law.

Turner, in reply, denied that the agreement imported into it the Act to which it referred.

The MASTER of the ROLLS.—I am of opinion that the several Acts of Parliament did not give jurisdiction to decide a question arising upon special agreement between the parties, and that they only authorized the ascertaining of the amount, not whether there was a special agreement as to that. There are some points not included in the present consideration of the question. The company do not dispute their liability to pay the costs, nor does Mr. Palmer say he is to receive such costs as were claimed by his solicitor. The liability to pay is admitted by the company; the only claim they make being to have the bill reduced. The question then is, as to how that reduction is to take place. One side say by taxation, the other will have it settled in accordance with the agreement. If the contract had not contained a particular clause as to the costs, they would be regulated by the Acts. Many items, not taxable at the time of the agreement, are made so by the 6 & 7 Vict. c. 73, and means are provided for ascertaining the amount. But the agreement for the purchase contained many clauses not affected by the Act of Parliament which was said to relate to the nature of the agreement and mode of taxation. The conflict arises on this—whether the words "all expenses, &c. pursuant, &c." refer to the mode of ascertaining the costs, or not. It is said they apply only to what are costs, not to the mode of ascertaining them. Perhaps that is not the true construction, but can I on motion say what is the effect of an agreement on which an action is pending. I am desired to say the agreement is not applicable. I have not jurisdiction to do so on an application of this nature. If there should appear to be no legal defence, any equitable relief must be by bill. I refuse the motion, with costs.

Saturday, Dec. 21.

PRITCHARD *v.* MORGAN.

One of several persons entitled to a fund, on applying for his portion of the fund, must serve the others with notice, and pay the costs of their appearance.

The petitioner in this case stated that the sum of 17,000*l.* had been left to Mr. Pritchard and wife, for life, and on their death, to be divided among their children on their attaining twenty-one. The petitioner had now attained twenty-one, and was entitled to his share; but objected to pay the costs of appearance of the others, who had been served with notice. One only appeared, and

Lloyd asked for his costs, stating that had the petitioner waited till all the others were in a condition to come at the same time, he would have avoided the payment of any costs.

The MASTER of the ROLLS said, the practice had been settled ever since the time of Sir Thomas Plumer. The other parties had a right to appear and prevent the petitioner from taking out too much of the fund, and they must therefore have the costs.

Re THOMPSON.

Taxation of costs—Special agreement.

Where an adjustment of differences takes place between a plaintiff and defendant, and a memorandum of agreement is drawn up which contains a clause as to the payment of costs, the effect of which is disputed, the Court will not on petition construe the agreement. Also, if the circumstances of pressure, &c. are alleged as special circumstances on which to ground a petition for taxation, and an affidavit is put in just before the hearing, the petition will be allowed to stand over for an affidavit in reply.

This was a petition for the taxation of the bill of costs of Mr. Thompson, the solicitor of the plaintiff, in a cause of *Harris* v. *Harris*, amounting to 45*l.* 3s. 3d. Henry Harris, by his will in 1813, gave the residue of his estate to his son H. Harris, and daughters Sarah and Ann, whom he also appointed his executor and executrixes. Henry Harris, the son, died intestate, leaving his sisters and his widow, E. Harris, surviving. On the 13th September, 1842, the widow took out administration to her deceased husband, and demanded an account of the residuary estate from the executrixes, to which they demurred, conceiving, by some mistake, that they had an absolute right to the entire. On the 14th December, she filed her bill against the executrixes; and they, being better advised, became desirous to render an account without putting in an answer, and an adjustment at last took place, and a memorandum of agreement was drawn up, by which, among other things, it was stipulated that the defendants should pay all the costs, &c. After this the solicitor for the plaintiff delivered his bill of costs on the 26th October, 1843, and claimed as between solicitor and client on the grounds of the defendants having stipulated to pay the costs, &c. To this the defendants objected, but proposed to leave the matter to any solicitor. Several communications then passed between the solicitors on both sides, and finally the bill was paid on the 13th November, 1843, under protest, and under the pressure of a threat by the plaintiff's solicitor to compel the defendants to answer (they being then in contempt) and to put on a *distringas*. There was also an affidavit put in by one of the parties just before the hearing.

Lloyd, for the petition, which was answered on the 12th November, 1844, and therefore within the twelve months.

Kindersley, contrà.

The MASTER of the ROLLS said he could not construe a special agreement on a petition, and could, therefore, say nothing of the construction of the memorandum as to costs. The only special circumstances were pressure, &c. and he would permit the petition to stand over, to allow an affidavit in reply to that so lately put in.

In re WHEELER.

Where an order for taxation has been refused by a common law judge, who has competent jurisdiction to decide upon the question, it will not be reconsidered in a court of equity.

In this case, Mr. *Wheeler* had instituted a suit for the petitioner against the Great Western Railway Company, and having delivered his bill of costs, it was some time after paid. The petitioner then made an application to Mr. Justice Maule, to have the bill taxed, and he refused an order, on the ground that the petitioner was too late, saying, "you ought to have come earlier." Whether he referred to the delivery or the payment of the bill was not clear, and the petitioner thought he had a right, coming as he did within the twelve months.

Kindersley, for the motion, was stopped.

The MASTER of the ROLLS.—The application to Mr. Justice Maule was an application for the taxation of a taxable bill to an authority competent to adjudicate upon it. I fear I can do nothing; I ought to assume that Mr. Justice Maule did all that was right. This is a mere legal right. I cannot grant the petition.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Friday, Dec. 20.

PALIN *v.* GATHERCOLE.

Injunction—Publication of letters.

Motion to dissolve an ex-parte injunction to restrain the publication of letters upon which a plea of justification in an action had been grounded, a verdict for the plaintiff in the action having been taken by consent—refused.

In this case the defendant was a clergyman, the editor of a periodical publication called the *Church Intelligencer*. On the 8th of March, 1843, he published an article reflecting upon the character of a Mr. Nokes, for which an action for libel was brought against him. This action was discontinued upon an apology being made. The Rev. — Palin (the plaintiff), who had occasionally contributed articles for the *Church Intelligencer*, was alleged by Mr. Gathercole to have supplied the materials for the articles published by him respecting Mr. Nokes, and application was accordingly made to Mr. Palin for a portion of the costs incurred by Mr. Gathercole in Mr. Nokes's action, and refused. Mr. Gathercole, upon this, inserted in his paper an article imputing to Mr. Palin the authorship of the libel upon Mr. Nokes. For the publication of this Mr. Palin brought an action against Mr. Gathercole, in which issue was joined, and a verdict for 40s. was taken by consent, and it was alleged by the plaintiff in this suit that part of the arrangement upon which this verdict was taken was that his letters to Mr. Gathercole should be given up to him. Upon the defendant's threatening to publish these letters, Mr. Palin filed the present bill, and upon it obtained *ex parte* an injunction by which the defendant, his servants and agents, were restrained from printing or publishing these letters or any of them, or shewing them or any of them to any persons or person, and from informing any persons or person of their or any of their contents until the defendant should fully answer the bill, or order should be made to the contrary.

Wigram and *Hetherington*, on behalf of the defendant, now moved to dissolve this injunction. They cited *Gee* v. *Pritchard* (2 Swanst. 424), and *Lord and Lady Perceval* v. *Phipps* (2 Ves. & Bea. 25.)

Russell, *Terrell*, and *E. James*, for the plaintiff, were not heard.

The VICE-CHANCELLOR said that as to the fact of the alleged agreement before the verdict forming part of the grounds of that verdict, he had no means of knowing beyond the statement made by the defendant's counsel. Assuming that it did not, it was impossible for him to say more than that the defendant had done no more than bring that matter-of-fact in question. Assuming that it did, and that ultimately it would be decided against the plaintiff, his Honour was not in a condition then to say that it would be so. Under such circumstances he was not sure that had he proceeded in granting the injunction upon the fact so disputed, he should feel it right, on the materials now before him, to dissolve the injunction. But he did not grant the injunction upon the agreement which was said to be existing. The letters in question were not written with a view to publication as written; they were given to the defendant to use the information contained in them. The defendant said that he had used the information, and used it accurately. The plaintiff said that he used it inaccurately. The matter was considered libellous by a person named Nokes, and an action brought by him was compromised by the defendant's paying Nokes his costs and apologizing. That concluded the matter between the defendant and Nokes. That, however, would leave the matter of right and wrong between these parties as it stood before. The defendant, Mr. Gathercole, applied to Mr. Palin for half of these costs, and the plaintiff refusing to accede to the claim, the defendant published a short statement in his paper, to the effect that the plaintiff, by the information he had given, was substantially the author of the libel upon Mr. Nokes. For this the plaintiff brings his action, and to this action a plea of justification is filed, setting forth that the matter published in the case of Nokes was the production of Mr. Palin, and that the defendant had in his possession letters from the plaintiff to prove that such was the case. Upon that justification issue was joined; the venue was laid in Surrey, and the trial was to take place at Guildford. Immediately before the trial, the defendant, adopting with some reluctance the advice of his counsel, submitted to a verdict for the plaintiff, with 40s. damages and costs. Under these circumstances Mr. Gathercole desires to publish the letters between Mr. Palin and himself, which he says will establish the truth of his plea of justification. It would be too much to give way to the remarks and arguments made by the defendant's counsel. [illegible]haps hereafter, upon a more expanded view of t[illegible], on d[illegible]ons then to be taken, and upon mat[illegible] before the Court, the injunction might not s[illegible]. The time, however, had not arrived for those distinctions and those materials to be produced, and the Court was now called upon to exercise its jurisdiction only with regard to the materials before it. The injunction must stand until the hearing, without prejudice to those distinctions which did not at present exist, and which might hereafter be taken to shew that it ought not to be continued. His Honour had felt some difficulty as to interfering upon a verdict only, before judgment, and it was not without hesitation upon that point that he granted the injunction; but he did so as he had been informed that the verdict was taken by consent. The injunction could not now be dissolved; but the defendant might be at liberty to shew the letters to his attorneys and counsel for the purposes of the cause.

After hearing the plaintiff's counsel as to costs,

His HONOUR directed that they should be reserved.

Saturday, Dec. 21.

ASHBY *v.* ASHBY.

Will, construction of—Legacies charged on real estate—Assignment of wife's reversionary interest.

Legacies held under the particular terms of the will to be charged on the real estate alone.

A wife being entitled to a reversionary legacy, her husband assigned it by way of mortgage, and survived the period appointed for payment. Held, that the assignment was void.

In this case two questions arose upon the will of Edward Ashby, dated the 4th of May, 1811. The first question will sufficiently appear from the Vice-Chancellor's judgment.

Heathfield, Renshaw, and *Kinglake,* for the several parties.

The case of *Bennett* v. *Aburrow* (8 Ves. 609) was cited.

The VICE-CHANCELLOR.—The question is whether there is an intent apparent in this will that the three legacies should be paid out of the real estate alone. The testator gives his real estate to his wife for life, and subject thereto to his son William in fee, "but charged and chargeable nevertheless with the payment of the legacies hereinafter mentioned to my two sons, Thomas and Edward, and my daughter Elizabeth." It may be thought without more that the real estate is intended to be only the secondary fund for these legacies. He goes on—"I give to my said son, William Ashby, my silver half-pint cup, and desire my wife will give to my daughter Elizabeth two silver table spoons." It occurred to me that the wife's being directed to give the tablespoons would neutralize the intention to charge the legacies on the real estate alone; but I think that this might have given to the wife only the power to select. Then he gives the three legacies, to be paid at the end of twelve months after the decease of his wife by his son William. I do not say that this is of itself decisive, but it is very strong. Then—" and all my household goods and household furniture, ready money and securities for money, horses, cows, sheep, and other cattle, and all other my personal estate and effects whatsoever and wheresoever and of what nature or kind soever not by me before disposed of, after and subject to the payment of my interest, debts, and funeral expenses, and the charges and expenses of proving this my last will, I give and bequeath unto my said wife, Sarah Ashby, and my said son, William Ashby, equally:" William alone being the person by whom the legacy was to be paid. Taking it altogether, I think this will does indicate an intention to charge the legacies upon the real estate alone.

The second question upon this will arose as follows. The testator's daughter, Elizabeth, to whom he gave a legacy of 80*l.* payable twelve months after the decease of his wife, was married to Edward Palmer. The testator's widow continued in possession of the real estate until her death on the 2nd of October, 1827. By indenture dated the 11th of October, 1826, Edward Palmer assigned to Susannah Clarke, this legacy of 80*l.* by way of mortgage to secure the sum of 30*l.* and interest, and Susannah Clarke afterwards assigned it to her grandson, R. Clarke. Edward Palmer survived Sarah Ashby more than twelve months, and the question was, whether the assignment to Susannah Clarke was valid.

The following cases were cited:—*Elwin* v. *Williams* (21 Law Journal, N. S. 440); *Johnson* v. *Johnson* (1 J. & W. 472); *Purdue* v. *Jackson* (1 Russ. 1); *Bates* v. *Dandy* (3 Russ. 74 n.); *Honner* v. *Morton* (3 Russ. 63); and *Hutchings* v. *Smith* (9 Sim. 137.)

The VICE CHANCELLOR.—What would have been the effect on the wife's right and claims if the husband had *bonâ fide*, and for a valuable consideration, executed a deed of release of this legacy I give no opinion, but I think the case of *Elwin* v. *Williams* warrants me to act on my own opinion which agrees with it. I follow it, and accordingly decide in favour of the wife.

THE LEGISLATOR.

Summary.

As the time for the meeting of Parliament approaches, speculation is afloat as to the measures to be proposed for its deliberation, and the probabilities of success or failure. A few only of those talked about have a peculiar interest for our readers, and these we will recapitulate with the latest rumours relating to them.

Sir JAMES GRAHAM'S proposed alterations in the Law of Settlement are in the hands of our readers. They have been vehemently debated both within and without the Profession, and opinion inclines decidedly *against* the suggested changes; so that there is very little probability of the measure becoming law, and certainly not without considerable amendment. But so great is the difficulty of substituting a better law of settlement for the existing one, imperfect as undoubtedly it is, we suspect, and such is the general opinion, that the Bill will be altogether abandoned, and that as far as the Legislature is concerned, the law will remain unaltered for some years. It is understood that Sir JAMES GRAHAM'S Bill does *not* emanate from Somerset House, and that it is not altogether approved by the Poor Law Commissioners, nor is it a Cabinet measure. It is a crotchet of his own, and although any thing proposed by a statesman of such large experience and unquestionable ability is entitled to respectful consideration, he must himself be satisfied that in this scheme he does not carry with him the opinions of any of the parties interested, or from their position best fitted to form a judgment of the necessities of the case.

The Bill for regulating the fees of Clerks of the Peace, Magistrates' Clerks, &c. was another measure offered at the close of the session to the consideration of the public and of the parties most immediately interested in its provisions. From all we can gather, the measure, as a whole, appears to be approved, and therefore, with a few modifications, it may be expected to be one of the new laws of the coming Session.

Another admirable measure, or rather series of measures, has attracted but little attention, although fraught with important benefits. We allude to Mr. GLADSTONE'S model bills for facilitating and abbreviating private Acts. The design is to make a general enactment to apply to all private bills, comprising the general clauses now always introduced into each one. These will pass, of course, and thenceforth private bills will require only such clauses as apply directly to their object: or where, from the special circumstances of the case, it is necessary to deviate from the general law.

We trust that ere long a similar measure will be prepared to apply to all public Acts. It would not be difficult to frame a general constructive clause and some half-dozen others which might prevent the repetitions of the same provisions in each statute, and materially abbreviate the now unavoidable verbosity of our statute book.

Of the Criminal Law Consolidation Bill we hear nothing. We much fear that this and some other useful measures long talked of will be thrust aside to make room for the Railway Bill with which the Parliament threatens to be overwhelmed.

We shall glance at other projects of legislation next week.

The following excellent and truthful letter has appeared in the *Times*:—

LAW REFORMS.

TO THE EDITOR OF THE TIMES.

SIR,—You will confer a lasting obligation upon money-loving, time saving, and lawyer-hating John Bull, if you will follow up the observations of your correspondent "E. R." in the *Times* of this day, by exposing and condemning the reprehensible manner in which bills of the utmost importance in their effect upon commercial and landed interests are hurried through Parliament. Our statute-books are thus abounding with unintelligible clauses and verbal inaccuracies. It is a remarkable and deeply to be regretted fact, that whilst the laws of all other civilised nations are found in a comprehensive and condensed code, as originally enacted, the laws of England are to be read, not in our statute books, but in the voluminous reports of judicial decisions, extending over a period of more than two centuries; and yet the principle of our legislative enactments is, perhaps, the most perfect of any system of jurisprudence in the world. Acts of Parliament are hidden mysteries. That which every subject is not only supposed, but bound to know, is so involved in doubt and obscurity, that men who have devoted the greater portion of their lives to investigate and expound its meaning, often fail to elucidate or explain what that meaning is. So various and conflicting are the decisions upon many of the most important Acts of Parliament, that days may be occupied in searching out the construction to be given to a sentence of a few lines. Our forefathers have erred, but the present generation walk more blindly in their steps. Why? Because months are wasted in the discussion, in our Houses of Legislature, of questions involving no principle but party strength: and then, at the close of a session, Acts deeply, lastingly affecting the real interests of the community, are so hurried over, that both in logical construction and verbal accuracy a schoolboy would be ashamed of such productions. In the Acts only of the last session I could point out one hundred instances strongly justifying this remark. Section 58 of chapter 110 (a most important Act) refers to schedule I; that schedule has nothing to do with the subject-mater of section 58. The reference of that schedule is to section 50; but that section has equally nothing to do with schedule I. Schedule G, to which section 58 should have referred, contains a reference to section 56, that section requires no reference to any schedule; and so, in that one Act, fifty inaccuracies might be pointed out; but I ought to mention that the Act was not for the purpose of regulating the duty upon corn, or legislating for Ireland; it was *only* for the registration, incorporation, and regulation of Joint Stock Companies. If a solicitor were to prepare a deed or any legal document which required within a few months to amend it or explain its meaning, what would be the consequence? He would justly lose the confidence of his clients; and yet laws, the most solemn of recorded instruments, involving the interests of millions, and which ought to be read and understood by all affected by them, often require to be expounded by twelve judges of the land, six of whom will perhaps decide a sentence to have one meaning, and the other six will hold it to have exactly the contrary meaning. Look at the result; our statute-books abound with Acts amended and repealed, because the intent of those Acts could not be understood; and our law libraries are crowded with more than a thousand volumes of reported cases, expounding the way in which the laws are to be construed, whilst commentators and essayists for the same purpose are numberless. This is a most serious national evil, striking at the very root of our happiness and prosperity, because affecting the security of our rights. Well may Justice be represented in our courts blindfolded. The bill introduced into the House of Lords the last session but one, by Lord Campbell, was much ridiculed, and most justly so; but he was wiser than those who have endeavoured to simplify the transfer of property; he knew that he could not untie, and therefore attempted to cut the knot; but they endeavour to untie it, being equally ignorant of the intricacy of its folds. The men to frame statutes for remodelling our system of conveyancing law are not men who stand prominent for forensic talent and judicial wisdom. I am not mistaken when I say, that there are few articled clerks who in the third or fourth year of their studies would not be more capable of drawing a deed than the Lord Chancellor or the Lord Chief Justice. Judges are expounders of principles, not artificers able to form a machine; they know the result of its action when formed, but they cannot construct it. The men who understand how, and who ought to be employed to remodel the laws relating to the transfer of property are conveyancers, who in their silent chambers have plodded through all the mysteries and intricacies of the existing labyrinth, and know practically where the path may be cleared, and the way shortened, the right end still being attained. Let Government appoint six of the leading conveyancers of the day to frame a general act for simplifying the transfer of property, and there will be no need to have the often-inserted saving clause, "that this act may be amended this present session of Parliament;" nor would your correspondents "A Conveyancer," and "E. R." be antagonists on the arena of your columns, each attempting to prove that four lines must have a directly opposite effect to that which the other assigns to them. The public at large little know the labour and anxiety which such multiplied and self-multiplying statutes cast upon the professional man. He must now, after each session, wade through a large volume of 900 or 1,000 closely printed pages, attempt to reconcile discordant sentences, judge of the effect of verbal inaccuracies, and solve the meaning of confused and dubious clauses; and after all, when his mental energies have been worn out in the task, await anxiously, year after year, to see if the judges will put the same construction as his individual mind has adopted, and upon which he has been obliged to act in cases where thousands of pounds may be at stake.

In truth, a lawyer of the present day ought to have the strength of Hercules, the eyes of Argus, and the wisdom of Minerva, and then he would sink under the doubts and perplexities arising from the Act *for Simplifying* the transfer of Property.

I have the honour to be, Sir,

Your most obedient servant,

Nicholas-lane, Dec. 27. S. B. C.

PARLIAMENTARY RETURNS.

SIGNATURE OF EXCHEQUER-BILLS.—Sir George Clerk and Colonel Sibthorp have moved for and obtained some returns relative to the signature of Exchequer-bills and copies of letters addressed from the Controller-General of the Exchequer to the Lords Commissioners of the Treasury, dated the 15th of January and the 1st of April, 1844. From a general abstract contained in these papers, it appears that the gross total number of Exchequer-bills signed by the Controller-General in the year ending the 31st of December, 1842, amounted to 19,236, and the value thereof to 34,921,811*l*.; of these 10,981 were signed by Lord Monteagle and Mr. Perceval, and 8,255 by Lord Monteagle and Mr. Eden. The total number of bills signed by the Assistant Controller during the same period amounted altogether to 13,419, and the value thereof to 9,340,665*l*. The number of bills signed by the Controller-General, from Dec. 31, 1842, to March 28, 1844, amounted to 14,210, and the value thereof to 53,540,627*l*. The number of bills signed by the Assistant Controller during the same period amounted to 22,119, and the value thereof to 9,211,487*l*. The total number of bills signed in the same period by the Controller-General and the Assistant Controller, amounted to 78,984, and the value thereof to 107,021,491*l*. The movers of the return having instituted an inquiry into the number of days in which Lord Monteagle devotes himself to the high and important duties of his situation, it is answered that in the year 1842 the noble Controller-General of the Exchequer attended at his office for 199 days, and was absent during the same year 111 days. In 1843, his attendance was during 204 days, and his absence 106 days; manifesting a slight tendency towards increased application to business. Since New Year's day, 1844, the noble lord has attended 76 days without any interval of absence. The total of his attendance during the above interval has been 479 days.

A HINT FOR OUR LEGISLATORS.—M. Sauvard de Maupas, a young man of highly respectable family, was tried before the Court of Assize at Paris on Friday last, for having stabbed a carpenter in the Rue Laffitte, on the afternoon of the 7th of November last, by which the unfortunate man lost his life. The prisoner, who was defended by M. Chaix d'Est Ange, was acquitted of the homicide, but was sentenced by the court to pay a sum of 1,000f., and an annuity of 600f. for the joint lives of the father and mother of the victim.

JOHN HARDY, ESQ., M.P.—We are happy to hear that this estimable gentleman is recovering from his recent attack of indisposition. It is said, however, we know not with what degree of truth, that the honourable gentleman does not intend to resume his duties in Parliament, but will vacate his seat at the commencement of the next session. The rumour adds that Mr. Hardy's third son, Mr. Gathorne Hardy, barrister at law, will offer himself for the acceptance of the constituency. It is stated that the free traders contemplate starting Colonel Perronet Thompson, if a vacancy should be created.—*Leeds Intelligencer.*

THE MAGISTRATE.

Summary.

WE are averse to the punishment of death; we believe it to be as injurious in practice as it is wrong in principle, and if any further evidence of its evil effects were wanting, it would be found in an extraordinary document which has recently proceeded from the Bishop, clergy, and inhabitants of Chester, praying a mitigation of the sentence passed upon Mary Gallop for the deliberate murder of her father. Now, if ever there was a case that deserved the infliction of death punishment, this was one; for although the murder was suggested, as are so many crimes, by the perusal of another murder by poisoning reported in the newspapers, it was planned with malice aforethought, and executed deliberately. After her condemnation, the parricide expressed sorrow for her crime; and most people do when they are detected, and about to suffer punishment; and she made a confession, detailing motives which are but the transcript of the history of half the murders that are committed. Her father was opposed to a match on which her mind was bent, and because he was an obstacle in the way of the gratification of her wishes, she poisoned him, to get rid of him. It appears that she had been a teacher in a Wesleyan Sunday School, and had previously borne an excellent character.

Hereupon the following memorial was framed, and received the signatures of the Bishop of Chester, of many of the clergy, and a great number of the inhabitants of that city and its neighbourhood:—

REASONS FOR PETITIONING THE QUEEN TO OBTAIN A COMMUTATION OF PUNISHMENT TO MARY GALLOP, NOW UNDER SENTENCE OF DEATH IN CHESTER CASTLE.

1. That we have reason to believe that the above account of her past life and confession of her guilt to be true, and confirmed, in its leading points, by the evidence on her trial.

2. That *it is highly probable* that until the time when she committed the crime for which she was condemned to death, *her life had been irreproachable*, and that she had conducted herself as a teacher in a Wesleyan Methodist School *with strict propriety*.

3. That the dreadful crime which she confesses of *causing the death of her father*, does not appear to have been long premeditated, but to have been accidentally suggested to her mind by a person in her company relating the circumstance of a wife having poisoned her husband by obtaining arsenic for the alleged purpose of destroying rats; and that she, namely, Mary Gallop, *being at that time in great distress of mind from disappointed affection, and the determination of her father not to suffer her to marry the young man to whom she had been long attached, suddenly resolved to overcome the obstacle to the accomplishment of her wishes*, by the dreadful crime of taking away the life of her father, and that she was not influenced to this great crime by any malignant hatred to her father, *but as a means that occurred to her mind of enabling her to marry the person to whom she had engaged herself*.

4. That should the Queen's mercy be extended to this miserable woman, *she might prove of great use in being employed in teaching young persons in one of the schools* in any place to which she may be transported; and that she may have the means, by a life of penitential sorrow, to make a more effectual preparation to appear before her Maker, than the limited time now granted to her, if her execution take place at the time now fixed.

5. That the revolting spectacle of a young female being publicly executed might be avoided, and the inhabitants of Chester spared so shocking and painful an exhibition.

6. That the jury who tried her case recommended her to mercy.

The language of this petition has been justly and powerfully condemned by many of the newspapers, and in all that these have said of it we most cordially concur. It is, in fact, an elaborate palliation of an enormous crime, and calculated to confound all moral and religious principle. Every word of the commentary of *The Examiner* is admirable, because so *true*.

This is nothing less than an apology for murder. As in the case of the Sealys in the West, the father was in the daughter's way, and she removed him as she would have got rid of a rat. The world was horrified some years ago by Miss Blandy's murder of her father in the same circumstances; she was attached to a Captain Cranstoun, the father objected to the match, and Miss Blandy poisoned him, at the suggestion, it was believed, of her lover. No Bishop in that day made it a plea for pardon, that "being at the time in great distress of mind from disappointed affection, and the determination of her father not to suffer her to marry the young man to whom she had been long attached, she suddenly resolved to overcome the obstacle to the accomplishment of her wishes by the dreadful crime of taking away the life of her father; and that she was not influenced to this great crime by any malignant hatred to her father, but as a means that occurred to her mind of enabling her to marry the person to whom she had engaged herself."

The murder was thus purely an affair of the heart. The arsenic was only called in to smooth the course of true love. Parents have flinty hearts, no tears can move them, so poison is the compelled resource.

The French talk of marriages of convenience. According to the Bishop of Chester, this was a murder of convenience. There was not an atom of hate in the arsenic. Mary Gallop wished her father no ill, but she wished him out of the way, and put him out of the way accordingly.

And look at the circumstances treated by the Bishop as extenuating. She heard a story of murder; instead of feeling any horror at it, the idea of imitating it only strikes her mind. Then comes the calculation of safety, how the death by the means of killing rats would be attributed to the bowel complaint. The method in accomplishing the crime is in keeping with all the rest. The poison bought in pennyworth after pennyworth, attempted to be administered in a cake, but that failing, no compunction, no relenting, but another expedient, with deadly success, adopted.

The Bishop's petition states that the parricide *suddenly* resolved to overcome the obstacle to her wishes. But though the resolution may have been as sudden as the adoption of any evil purpose may be to a very depraved and evilly disposed mind, upon the first presentation of the idea of it, the means of giving effect to it were far from precipitate; they were marked with method and perseverance.

The plea that there was no malignant hatred to the father is one of the originalities of criminal sympathy.

A highwayman cuts the traveller's throat to obtain his purse; there is in this no malignant hatred to the traveller; he is killed as an obstacle to the possession of the purse.

But our present purpose is to point this singular occurrence to another moral. The document which has been so properly denounced indicates, as we believe, not so much the opinions of the memorialists upon the crime, as their aversion of the punishment. They do not justify the murder of a father by his daughter, but they feel scarcely less abhorrence for the deliberate strangulation of the criminal by society, for the purpose of teaching others to be less cruel. They are conscious of the inconsistency that seeks to deter from deeds of blood by the exhibition of a deed of blood; and of the absurdity of the logic that would prove to the public the enormity of taking life by publicly doing that which it appears to condemn.

And the lesson to be learned from the occurrence we have noted in this. If such be the aversion to capital punishments, that thinking Christian men could be induced to forget their detestation of the crime in their aversion to the penalty, it is plain that this penalty is working infinitely more of harm than of benefit to society. It has already lost whatever of utility might have mingled with its original composition; and instead of operating to deter from crime, it encourages, by the impunity which it often affords, and still more by the sympathy which it excites in favour of the criminal, who is thus made to appear in the light of a victim to a barbarous law, instead of that which he really is—a barbarian who has cruelly violated the law. If the law do not respect life, is it wonderful that life should not be respected by the subjects of the law? Example is better than precept. Vulgar minds cannot discern nice distinctions. They are told that God has forbidden the shedding of blood; but they see the law doing that which they are told is commanded not to be done. The refined distinctions of the schools, the limits between punishment for revenge and punishment for example, they cannot recognize. If the law may revenge, why may not they? if death may be inflicted merely for the sake of example, the infliction of death on those who have injured them cannot be so very terrible a crime. Such is the coarse argument of rude minds. Naturally all men shrink from the commission of murder; but the sight of death first brutalizes into endurance, and then changes endurance into a fiendish pleasure in the excitement of the spectacle. These are the reflections which have fastened upon the minds of the memorialists, and the result speaks trumpet-tongued for the abolition of the Punishment of Death.

REVIEW OF MAGISTRATES' CASES,

Michaelmas Term, 1844.

A circumstance, unforeseen when we promised to give the conclusion of our summary this week, compels us to postpone it till our next number.

The following gentlemen have recently qualified as magistrates for the county of Durham:—Wm. Standish Standish, Esq. of Cocken Hall, John Eden, Esq. of Beamish Park, and the Rev. Henry Douglas, Prebendary of Durham, of the college, Durham.

THE LAWYER.

Summary.

WE have received an early copy of the new Rules and Orders of Bankruptcy, as framed by the Commissioners, and approved by the Lord Chancellor. We hasten to submit them to our

readers. We hear that the new Orders in Chancery will very shortly be issued. Next week will, we hope, enable us to bring up all arrears, so as to begin the Term with unincumbered columns.

Court of Bankruptcy.

RULES AND ORDERS MADE UNDER THE 7TH AND 8TH VICT. C. 96, SEC. 38.

For the better carrying into execution the statute 5 & 6 Vict. c. 116, as amended by the said statute 7 & 8 Vict. c. 96. [December 21, 1844.]

It is ordered as follows; that is to say,

1. That every petition for protection from process presented to the Court of Bankruptcy or to any district Court of Bankruptcy, under the provisions of the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, shall be taken to the chief registrar of the Court of Bankruptcy in Basinghall-street, or to a registrar of the District Court of Bankruptcy in the country (as the case may be in London or in the country), between the hours of eleven o'clock in the forenoon and two o'clock in the afternoon, who shall file and number such petition, and such chief registrar or registrar shall thereupon allot such petition by ballot, or in rotation, to one of the commissioners in London, or of the District Court in the country (where there are two commissioners), and shall forthwith certify to such commissioner the filing of such petition, and such allotment to him, which certificate shall be filed with the proceedings in the matter of such petition, and such petition shall be prosecuted before such commissioner, or before the district commissioner, where there is only one commissioner: provided always, that any one commissioner in London or in the country may, in the absence of any other commissioner, act for him: provided also, that where a petition shall have been previously filed by the same petitioner, whether such petition shall have been dismissed or not, the new petition shall be allotted to the commissioner to whom the first petition was allotted.

2. That the schedule to such petition shall be annexed at the time of filing such petition, and shall be, *mutatis mutandis*, in the form in use under the 5 & 6 Vict. c. 116.

3. That in all cases in which a petitioner shall be in custody, there shall be filed, with his petition, a certificate from the gaoler of the cause or causes of the detention of the petitioner.

4. Every petitioner shall deliver with his petition, an account in writing in the form set forth in the schedule, marked (B. No. 1), annexed to these Orders, signed by the petitioner, of all his books of account and vouchers, and of all his personal estate and effects then in his possession or control, or in the possession or control of any other person by his authority, or in trust for him, and the places or place where the same then are or are believed to be, and whether the same are liable for rent or any other charge, and to whom by name and the particulars of the demand, in order that such property may be duly ascertained and given up to the official assignee, or the messenger, and that he said account shall be signed and delivered in duplicate.

5. That one copy of the estate paper mentioned in the preceding Order shall be forthwith transmitted to the broker appointed by the Court, and such broker shall forthwith proceed to appraise the personal estate and effects of such petitioner, and shall make such return as is set forth in the schedule, marked (B. No. 2), annexed to these Orders.

6. That the warrant of seizure or possession to be granted to the messenger under any petition, shall be in the same form, *mutatis mutandis*, as that now in use in matters of bankrup , and shall be issued in the same manner, but the same shall not be executed without the special direction of the commissioner, or of the assignee or assignees for the time being.

7. That every petitioner shall, immediately after an official assignee shall have been appointed to his estate, deliver over to the official assignee so appointed, all moneys, bills, notes, and securities in his possession or power, together with all books of account, papers, and writings, relating to his estate and effects.

8. That the protection from process to be given to any petitioner upon or after filing his petition shall be called the "Interim Order for Protection," and shall be prepared in duplicate in the form set forth in the Schedule, marked (C. No. 2), annexed to these Orders, one copy to be filed with the proceedings.

9. That where a petitioner for protection from process shall be a prisoner, in execution upon any judgment obtained in any action for the recovery of any debt, such petitioner shall, before the granting of the interim order for protection, give such notice to the detaining creditor under such execution, as the Court in which the petition is prosecuted shall direct, so that such creditor may be heard against the granting of the interim order, and the discharge of such petitioner out of custody.

10. That the order for discharging out of custody (under sec. 6 of 7 & 8 Vict. cap. 96), any petitioner being a prisoner in execution upon any judgment obtained in any action for the recovery of any debt mentioned in his schedule, shall be in the form set forth in the shedule, marked (C. No. 3), annexed to these Orders, and shall be prepared in duplicate, one copy to be filed with the proceedings.

11. That the time for making the final order, unless cause be shewn to the contrary, in the matter of each petition, shall be appointed by the commissioner acting in the same; of which time the commissioner shall cause notice to be given ten days, at least, before the time so appointed, which notice shall be by advertisement in the form set forth in the schedule, marked (E. No. 1), annexed to these orders.

12. That the final order shall be made in duplicate, one copy to be filed with the proceedings, and one copy to be delivered to the petitioner.

13. That previous to making any application to the Court for any order or orders, under sections 28 and 29 of the 7 & 8 Vict. c. 96, the petitioner shall give such notice of the application by advertisement, and to the creditors of the petitioner, as the Court, under the circumstances of the case, shall think fit to direct.

14. That all bills of fees and disbursements of any attorney or messenger for business done under the aforesaid Acts, shall be taxed by the Court in which the petition shall have been filed, or by the taxing master of the Court of Bankruptcy: provided always, that no charge shall be made by the messenger, for executing the warrant of seizure or possession, unless the execution thereof shall be specially directed by the Court.

15. That the fees authorized in the annexed table, and no other, shall be taken in the respective Courts.

16. That the several forms set forth in the schedule annexed to these orders, shall, *mutatis mutandis*, be used in the respective Courts.

FEES

To be received and taken by, or accounted for and paid over to the Chief Registrar of the Court of Bankruptcy, and to be paid by him as directed by the 7th & 8th Victoria, cap. 96, sect. 50.

	.	s.	d.
On filing petition	0	1	0
On swearing every affidavit	0	1	6
For filing affidavits and other documents .	0	1	0
For every search	0	1	0
On an office copy of the schedule and accounts annexed for the official assignee, unless the petitioner has delivered one at the time of filing his petition, per folio of ninety words	0	0	1½
For every sitting held in the matter of every petition, by way of charge for the use of the court	0	5	0

CHAS. FRED. WILLIAMS.
JOSHUA EVANS.
R. G. C. FANE.
EDWARD HOLROYD.
EDWARD GOULBURN.
HENRY J. STEPHEN.
EDMUND R. DANIELL.
MONTAGUE B. BERE.
} *Commissioners.*

Approved.
LYNDHURST, C.

SCHEDULE OF FORMS.

(A No. 1.)

[Petition for Protection from Process, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.]

To the COURT of BANKRUPTCY, LONDON.

The humble petition of .

Sheweth, that your petitioner is not a trader within the meaning of the statutes now in force relating to bankrupts.

[Insert at full length the name, address, and quality of the petitioner, and also the description of the trade or business or (if more than one) trades or businesses which he carries or has carried on during his twelve months' residence within the district of the Court.]

That your petitioner has resided twelve calendar months within the district of this Honourable Court; that is to say,

[If a trader, strike out the word "not," and add after the word "bankrupts" the words, "but owing debts amounting in the whole to less than 300*l*."

[Insert the places and periods of residence.]

That your petitioner has become indebted to divers creditors, whose names are inserted in the Schedule ( ) to this his petition annexed, and that he is unable to pay his debts in full.

That your petitioner has examined the said schedule, and that such schedule contains a full and true account of your petitioner's debts, and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as near as such dates can be stated, the nature of the debts and claims, and securities (if any) given for the same, and that there is reasonable ground in his belief for disputing so much of the debts as are thereby mentioned as disputed, and also a true account of the nature and amount of his property, and an inventory of the same, and of the debts owing to him, with their dates, as nearly as such dates can be stated, and the names of his debtors, and the nature of the securities (if any) which he has for such debts, and that the said schedule doth also contain a balance sheet of so much of his receipts and expenditures as is required by this honourable Court in that behalf, and doth fully and truly describe the wearing apparel, bedding, and other such necessaries of your petitioner and his family, and his working tools and implements.

That your petitioner has not parted with or charged any of his property (except for the necessary support of himself and his family, and the necessary expenses (not exceeding £) of this his petition (or in the ordinary course of trade), at any time within three months of the date of filing this his petition, or at any time with a view to this petition.

That your petitioner is desirous that his estate should be administered under the protection and the direction of this honourable Court, and that he verily believes such estate is of the value of £ at the least, unencumbered, and beyond the value of his wearing apparel, and other matter which your petitioner is authorized to except by this Act, and that the same is available for the benefit of his creditors.

That your petitioner submits to this Honourable Court the proposal for the payment of his debts contained in the said schedule. [Omit this paragraph if no special proposal.]

That your petitioner is ready and willing to be examined from time to time touching his estate and effects, and to make a full and true disclosure and discovery of the same. Your petitioner, therefore, prays such relief in the premises as by the statutes now in force for the relief of insolvent debtors may be adjudged by this honourable Court.

And your petitioner shall ever pray, &c. &c.

Signed by the said petitioner on the day of 184 , in the presence of of

Attorney or agent in the matter of the said petition.

(A No. 2.)

[Affidavit verifying Petition and Schedule, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.]

In the COURT of BANKRUPTCY, LONDON.

of

the petitioner named in the petition hereunto annexed, maketh oath and saith, [if the petitioner affirm, alter accordingly,] that the several allegations in the said petition, and the several matters contained in the schedule hereunto annexed, are true.

Sworn at
in the of
this day of
184
Before me

(B. No. 1.)

(5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.)

ESTATE PAPER TO BE DELIVERED WITH PETITION OF INSOLVENT.—(See Rule 4.)

London, day of 184

In the COURT of BANKRUPTCY.

I, late of

a petitioner under the statute 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, do hereby declare that the account hereunder written and signed by me is a true account of all my books of account and vouchers, and of all personal estate and effects (including money) now in my possession or under my control, or in the possession or control of any other person by my authority, or in trust for me, and the place or places where the same now are, to the best of my belief, and whether liable for rent or any other charge, and to whom by name, and the particulars of the demand, in order that such property may be duly ascertained, and given up to the official assignee appointed to my estate, being over and above those articles which I can except in my petition, from the operation of the said Acts, not exceeding the value of twenty pounds.

———Account.

[*Note.*—The excepted articles, with the value thereof respectively, are to be ascertained and appraised, if the commissioner shall think fit, in such manner as he shall direct, 7 & 8 Vict. c. 96, s. 9]

[*Note.*—If goods are under different heads, as "furniture," "stock," &c. state separately the value of each head.]

Dated the day of 184
Signed

Notice.—Left at the appraiser's office (address.)
on the day of 184
Signed
the appraiser to the Court.
In the matter of
last trade or profession
Insolvent debtor, petitioning for protection from process.
Attorney and his address—

I, the said petitioner, request the appraiser of the Court of Bankruptcy to value and certify according to the practice of the court.

[These blanks are to be filled up, whether the places are in London or within ten miles thereof, or at any greater distance.]

[Give such description by street, number, &c. as will enable any one to find the place—if shop, &c. so state.]

My late residence was

The present residence of my family is

There is also property for valuation at

Dated the day of 184

Signed

(B No. 2.)

RETURN TO NOTICE FOR APPRAISEMENT

(See Rule 6).

Court of Bankruptcy, Appraiser's Office, [State address.] { Notice received on the / This return ready on the / Delivered on the

In the matter of a petitioner for protection from process.

, Attorney.

I, , appraiser to the Court, hereby certify that I have acted upon the notice given in this matter, and have given attendance, and seen, examined, and valued each and every of the articles hereinafter specified at the times and places severally mentioned, and that the sum affixed to each article is the just and fair value thereof—

viz.: on the day of at | £ | s. | d.

(C. No. 1.)

(Notice of intention of Prisoner having petitioned to apply for his Interim Order, and discharge from custody, under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, sec. 6.)

In the COURT of BANKRUPTCY, LONDON.

Mr. ———

Take notice that I, the undersigned

not being a trader [if a trader, strike out the word "not," and add after the word "Bankrupts" the words, "but owing debts amounting in the whole to less than 300l."] within the meaning of the statutes now in force relating to bankrupts, having presented a petition to her Majesty's Court of Bankruptcy, under the provisions of the statutes made and passed in the 5th and 6th, and 7th and 8th years of the reign of her present Majesty, intituled respectively "An Act for the Relief of Insolvent Debtors," and "An Act to amend the Law of Insolvency, Bankruptcy, and Execution," and such petition having been filed in court, shall, on the day of , at o'clock in the , (such time having been appointed by the Court for the purpose,) or as soon after as counsel or attorney can be heard, make application at the said court in Basinghall-street, London, to

one of the commissioners of the said court, or to such other commissioner of the said court as may then be sitting, for an interim order of protection, and thereupon for an order to be discharged out of the custody of

as to the execution upon a judgment at your suit, obtained in an action for the recovery of being a debt mentioned in my schedule.

Signed

Witness

(C No. 2.)

(Interim order for protection from process, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.)

In the COURT of BANKRUPTCY,

London, the day of 184 .

In the matter of

an insolvent debtor.

Be it remembered, that the above named not being a trader withing the meaning of the statutes now in force relating to bankrupts, [If a trader, strike out the word "not," and add after the word "bankrupts" the words, "but owing debts amounting in the whole to less than 300l."] having presented a petition to this honourable Court under the provisions of the statutes made and passed in the 5th and 6th and 7th and 8th years of the reign of her present Majesty, intituled respectively, "An Act for the Relief of Insolvent Debtors," and "An Act to amend the Law of Insolvency, Bankruptcy, and Execution," and such petition having been filed in Court, [If a prisoner, add after the word "Court,"—"and the said petitioner being a prisoner in execution upon a judgment obtained in an action for the recovery of a debt, having given such notice to the detaining creditor under such execution as directed by this honourable Court under Rule 9, for better carrying into execution the said Acts,"] a protection is hereby given to the said from all process whatever, except as hereinafter mentioned, either against his person or his property of every description, which protection shall continue in force, and all process (except process for arresting or holding him to bail, under the authority of a judge's order for that purpose) be stayed until the day of at o'clock in the being the time appointed for his first examination.

Commissioner.

[Renewal of Insolvent's Protection.]

In the COURT of BANKRUPTCY,

London, the day of 184 .

I hereby renew the within order for the protection of the said until the day of 184 , at this place.

(C. No. 3.)

[Order discharging Prisoner, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, s. 6.]

In the COURT of BANKRUPTCY.

London, day of 184 .

Before Mr. Commissioner

In the matter of

an insolvent debtor, not being a trader within the meaning of the statutes now in force relating to bankrupts (*or* being a trader within the meaning of the statutes now in force relating to bankrupts, but owing debts amounting in the whole to less than three hundred pounds).

Whereas the above named has filed his petition in this honourable Court, and obtained an interim order for protection from process thereon under the provisions of the statutes made and passed in the 5th and 6th, and 7th and 8th years of the reign of her present Majesty, intituled respectively "An Act for the Relief of Insolvent Debtors," and "An Act to amend the Law of Insolvency, Bankruptcy, and Execution;" and whereas it appears that the said is detained a prisoner in in execution upon a judgment obtained in an action for the recovery of a debt mentioned in his schedule, that is to say, upon a judgment at the suit of

Now I do order and direct the keeper of aforesaid, or any officer who shall have the said in custody by virtue of such execution aforesaid, to discharge the said out of custody as to such execution, pursuant to such last mentioned statute.

Commissioner.

(D No. 1.)

[Notice to Creditors and for Gazette of First Examination, under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.]

Whereas, a petition of an insolvent debtor, having been filed in the Court of Bankruptcy, and an interim order for protection from process having been given to the said under the provisions of the statutes in that case made and provided, the said is hereby required to appear in court before the commissioner acting in the matter of the said petition, on the day of next, at o'clock in the noon precisely, at the Court of Bankruptcy, Basinghall-street, London, for his first examination touching his debts, estate, and effects, and to be further dealt with according to the provisions of the said statutes; and notice is hereby given that the choice of assignees is to take place at the time so appointed.

All persons indebted to the said or who have any of his effects, are not to pay or deliver the same but to the official assignee, nominated in that behalf by the commissioner acting in the matter of the said petition.

(D No 3).

[Affidavit of Service of Notice, under 7 & 8 Vict, cap. 96.]

In the COURT of BANKRUPTCY, London.

In the matter of an insolvent debtor.

to messenger of the Court of Bankruptcy in London, maketh oath and saith that he, this deponent, did on the day of serve each of the persons hereinafter named, being creditors or attorneys for creditors named in the schedule of the said Insolvent, and resident within the United Kingdom, and whose debts respectively amount to the sum of 5l. with a notice, of which the notice hereunto annexed, marked with the letter A, is a true copy (except as to the amount of the creditor's debt, which in each case varied according to the amount stated in the insolvent's schedule): by putting such several notices into the letter-box at the same being severally folded in the form of letters, and wafered, with the usual post office stamp affixed thereon, and directed in manner following, that is to say:

Sworn at the Court of Bankruptcy, Basinghall-street, in the city of London, this day of 184 } before me

(D. No. 3).

[Choice of assignees, 5 & 6 Vict. 116, and 7 & 8 Vict. c. 96.

In the COURT of BANKRUPTCY,

Basinghall-street, London,

day of 184 .

In the matter of

Memorandum.—This being the sitting appointed for the choice of assignees of the estate and effects of the above-named insolvent: we whose names are hereunder written, being the majority in number and value of the creditors attending by ourselves or our attorneys, duly authorized by letters of attorney in that behalf, before the commissioner at this sitting, have chosen, and do hereby nominate and choose,

to be assignee of the estate and effects of the said and we do desire that may be appointed assignee .

£ | s. | d. £ | s. | d.

accept the said trust and appointment,

I, Esq. a commissioner of the said court, do hereby approve of, and ratify and confirm the said choice.

(D No. 4.)

[Certificate of Appointment of Assignees, 5 & 6 Vict. c. 116, s. 11.]

In the COURT of BANKRUPTCY,

Basinghall-street, London,

day of 184 .

This is to certify that

this day duly chosen assignee of the estate and effects of

and the said having accepted the said trust and appointment, the said choice was approved of, and ratified by the undersigned commissioner. And this is further to certify that has been duly appointed official assignee to the estate.

Commissioner.

Registrar.

(D. No. 5.)

(Order of Remand.—5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, sec. 24.

In the COURT of BANKRUPTCY, London.

London, day of 184 .

In the Matter of

an insolvent debtor, not being a trader within the meaning of the laws relating to bankrupts (*or* being a trader within the meaning of the statutes now in force relating to bankrupts, but owing debts amounting in the whole to less than three hundred pounds) [to be altered according to the fact.]

Before Mr. Commissioner

Whereas the said did, on the day of file his petition in this honourable Court, and has obtained an interim order for protection from process under the statutes made and passed in the 5th and 6th and 7th and 8th years of the reign of her present Majesty, intituled respectively "An Act for the Relief of Insolvent Debtors," and "An Act to Amend the Law of Insolvency, Bankruptcy, and Execution:" and whereas the said insolvent being a prisoner in the an Order of this Court, bearing date the day of was made, whereby it was ordered that the keeper of or any officer who might have the said in custody by virtue of the execution for debt therein mentioned, should discharge the said out of custody, as to such execution, pursuant to the said last-mentioned statute: and whereas, this being the sitting, pursuant to notice for that purpose given, for the first examination of the said insolvent, and he having come before me, and been sworn and examined touching his debts, estate, and effects, and it appearing upon such examination that

Therefore, no day is named for making the final order, nor is the interim order renewed, but I do, in pursuance of the said last-mentioned statute, REMAND the said to his former custody as to the execution for debt upon the judgment in the said recited order mentioned. And I do order that one of the messengers of this Court, or one of his assistants, do take the said and forthwith convey him to there to be detained upon such execution as aforesaid.

Registrar. Commissioner.

(D No. 6.)

[Warrant to bring up a Prisoner, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, sec. 7.]

To the of the Prison or his Deputy.

I, the undersigned, one of the Commissioners of her Majesty's Court of Bankruptcy, authorized to act in the matter of a petition filed in the said Court by of an insolvent debtor, do hereby require you to bring the said whom you have in your custody, before me, on the day of at o'clock in the noon precisely, at the Court of Bankruptcy, Basinghall-street, London, for examination according to the directions of the Act of Parliament in that case made and provided.

Dated day of 184 .

Commissioner.

(E No. 1.)

(5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.)

Advertisement of the day fixed for the sitting of the Court for making final order.

In the matter of the petition of of

Notice is hereby given, That the commissioner acting in the matter of this petition, will proceed to make a final order thereon, at the

Court of Bankruptcy, Basinghall-street, London, on the day of at o'clock in the noon precisely, unless cause be then and there shewn to the contrary.

(E No. 2.)

(Final order for protection from process, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.)

In the COURT of BANKRUPTCY, LONDON.

In the matter of the petition of of in the of an insolvent debtor, and not being a trader within the meaning of the statutes now in force relating to bankrupts; [If a trader, strike out the word "not," and add after the word "bankrupts" the words, "but owing debts amounting in the whole to less than 300*l*."]

Be it remembered that the said having presented his petition for protection from process to this honourable Court, and such petition having been duly filed in court, and the said petitioner having duly appeared and been examined touching his debts, estate and effects, and it appearing to the undersigned commissioner that the said by virtue of the statutes in that case made and provided, is entitled to the protection of his person from being taken or detained under any process whatever, in respect of the several debts and claims hereinafter mentioned, a final order is hereby made to protect the person of the said from being taken or detained under any process whatever, in respect of the several debts and sums of money due, or claimed to be due, at the time of filing his petition from the said petitioner to the several persons named in his schedule as creditors or as claiming to be creditors for the same respectively, or for which such persons shall have given credit to the said petitioner before the time of filing his petition, and which were not then payable, and as to the claims of all other persons not known to the said petitioner at the time of making this Order, who may be endorsers, or holders of any negotiable security set forth in his said schedule: and it is hereby directed, that the proposal of the said petitioner, set forth in his petition, for the payment of his debts, be carried into effect in the following manner, that is to say,

Given under my hand, this of 184

(Signed)

Commissioner.

N.B. If after the making of the final order it be made appear, in manner pointed out by sec. 12 of 5 & 6 Vict. c. 116, that the petitioner had not before the making of the final order made a full discovery of his estate, effects, and debts, or had, since the making of the final order, not given notice to the assignees of any property after acquired by him, the Commissioner may rescind the final order, so far as relates to the protection of the petitioner's person from process, and as far as relates to the effect of such order in bar of suits and actions.

(E. No. 3.)

(Final order adjourned *sine die*, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, sec. 27.)

In the COURT of BANKRUPTCY.

London, day of 184 .

In the Matter of an Insolvent debtor.

Before Mr. Commissioner

This being the sitting appointed for making the final order for the insolvent's protection from process, and he having come before me and being sworn and examined touching his debts, estate, and effects, it is, for good cause appearing to this Court, ordered, that the consideration of such final order be and the same is hereby adjourned *sine die*.

Commissioner.

(E. No. 4.)

(Notice of Petitioner's intention to make application for orders of protection and discharge under the 28th and 29th secs. 7 & 8 Vict. 96.)

In the COURT of BANKRUPTCY, London.

To the creditors of , an insolvent debtor, or to , a creditor of , an insolvent debtor.

Take notice, that I, the undersigned, a petitioner under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, shall, on the day of at o'clock in the (such time having been appointed by the Court for the purpose), or as soon after as counsel or attorney can be heard, make application to one of the Commissioners of the said Court, or to such other Commissioner as may then be sitting, for an order for protection from process, under the provisions of the 28th section of the said last-mentioned statute, when any of my creditors may be heard by themselves, their counsel, or attorneys; and in the event of my obtaining an order under the said 28th section, I shall forthwith make application to the said Commissioner, under the 29th section of the said last-mentioned Act, for an order to be discharged from custody, as to any execution or executions upon any judgment or judgments obtained for any debt or debts, or claim or claims, in respect of which I shall be protected from process by the order so obtained, under the said 28th section.

Witness Signed

(E No 5.)

[Order for Protection from Process, under sec. 28 of 7 & 8 Vict. c. 96.]

In the COURT of BANKRUPTCY, London.

In the matter of the petition of of an insolvent debtor, and not being a trader within the meaning of the statutes now in force relating to Bankrupts;

[If a trader, strike out the word "not," and add after the word "bankrupts" the words, "but owing debts amounting in the whole to less than 300*l*."]

Be it remembered that the said having presented his petition for protection from process to this Honourable Court, and such Petition having been duly filed in Court on the day of and the sitting for the first examination of the said petitioner having been held on the day of , and

[Here state, "no day having been named for making the final order," or, "the consideration of the final order having been adjourned *sine die*," or, "the final order having been refused," (as the case may be,) and in the first case, state the cause of not naming the day, and in the second and third cases, state the day of adjournment, or refusal, (as the case may be.)]

and the said petitioner having now applied to the undersigned commissioner for the protection from process hereinafter mentioned, and such time having expired subsequent to the filing of the petition as, having regard to all the circumstances of the insolvency and the conduct of the petitioner as an insolvent debtor before and after his insolvency, the said commissioner thinks just, and having heard the said petitioner and his creditors, by themselves, their counsel, or attornies, and it appearing to the said commissioner that the said petitioner, by virtue of the statute in that case made and provided, is entitled to the protection of his person from being taken or detained under any process whatever, in respect of the several debts and claims hereinafter mentioned, an order is therefore hereby made to protect the person of the said from being taken or detained under any process whatever, in respect of the several debts and sums of money due, or claimed to be due, at the time of filing his petition, from the said petitioner to the several persons named in his schedule as creditors, or as claiming to be creditors for the same respectively, or for which such persons shall have given credit to the said petitioner before the time of filing his petition, and which were not then payable, and as to the claims of all other persons not known to the said petitioner at the time of making this order, who may be endorsers, or holders of any negotiable security set forth in his said schedule.

Given under my hand, this of 184.

(Signed)

Commissioner.

(E. No. 6.)

[Order to discharge prisoner under sec. 29 of 7 & 8 Vict. c. 96.]

In the COURT of BANKRUPTCY, London.

In the Matter of the Petition of of , an insolvent debtor, and not being a trader within the meaning of the statutes now in force relating to bankrupts.

[If a trader strike out the word "not," and add after the word "bankrupts," the words "but owing debts amounting in the whole to less than 300*l*."]

Whereas by an order made by , one of her Majesty's commissioners of the Court of Bankruptcy, bearing date the day of , after reciting that, &c. &c.

[Here set out the order for protection under sec. 28, marked E. No. 5.]

And whereas it appears that the said is detained a prisoner in , in execution upon a judgment at the suit of , in an action for the recovery of

[Here state the nature of the debt or claim, and make it appear that it is a debt or claim in respect of which the petitioner is protected from process by the recited order.]

Now I do order and direct the keeper of aforesaid, or any officer who shall have the said in custody by virtue of such execution aforesaid, to discharge the said out of custody as to such execution.

Registrar. Commissioner.

REVIEW OF DECISIONS IN THE COURTS OF EQUITY, ECCLESIASTICAL, AND BANKRUPTCY COURTS, DURING 1844.

We propose hereafter to give a review of the principal decisions of the Courts of Equity, Ecclesiastical, and Bankruptcy Courts, either every term or every other term, as may be found convenient. In our present number we have given the result of a very hurried glance at the decisions in those courts during the year 1844; but in the proposed review it is our intention to do all in our power to make it practically useful.

BANKRUPTCY.

Construction.—Notwithstanding the 5 & 6 Vict. c. 116, an apothecary may petition for protection from arrest though his debts amount to 300*l*. Not being previously within the bankrupt laws, he does not become so by the words of that statute, viz. "not being a trader within the meaning of the statutes *now* in force," &c. (*Re Barrett*, 4 Law T. 208.) The 4 & 5 Wm. 4, c. 40, s. 12, provides that the assignees of officers of a friendly society should pay money due to the society before any other debts were paid. Under this Act, the trustees of a friendly society applied to have their debt from their bankers paid out of the surplus fund of the bankers in their town agent's hands, on the ground of the bankers being officers of their society, but failed. (*Ex parte Whipham*, 2 Law T. 426.)

Fraud.—Where bankers, knowing themselves to be in difficulties, encourage deposits from their customers, such conduct is fraudulent, and the Court will refuse their certificates. (*Re Roe and Blackford*, 3 Law T. 341.)

Jurisdiction.—The Court of Review being a Court of Record constituted by Act of Parliament, has power to commit a solicitor for contempt, and to order him to pay the costs of the application. The authority existed even from the time that the authority in bankruptcy was transferred from the Lord Chancellor to that Court. (*Ex parte Turner* v. *Martin*, 2 Law T. 375.) A commissioner has no authority to order the payment of a sum of money, even by a solicitor in the bankruptcy, or to make any order as to costs. (*Ex parte Collins*, 3 Law T. 5.) Assignees have power to summon debtors to an insolvent's estate under 5 & 6 Vict. c. 116, without paying their expenses as witnesses; and the Commissioners' Court has no power to order the assignees to pay them. (*Re Ridler*, 3 Law T. 224.) Where the claim of a solicitor to a lien on a deed is disputed, a commissioner in bankruptcy has no power to decide the question, and to direct the deed to be taken from him. (*Ex parte Llewellyn*, 3 Law T. 393.)

COSTS.

Costs of recovering stock transferred to the commissioners for the reduction of the national debt.—In *ex parte Ram* (3 Mylne & Cr. 25), the costs of the Attorney-general and the commissioners were allowed on the retransfer of a sum of stock from the Commissioners to the petitioner, under the 56 Geo. 3, c. 60; and in *ex parte Laferte* (MS. 22nd April, 1837, V. C. E.), the same course was pursued. In *ex parte Holland* (2 Law T. 497), Knight Bruce, V. C. thought it unjust to pay costs out of the general fund, and the matter accordingly came before the Chancellor (3 Law T. 17), who, after making inquiry into the practice decided that the costs were so to be paid. The question is therefore set at rest.

Security from a client to his solicitor for costs.—It is a settled rule of equity that a solicitor shall not take from his client a security for future costs. This was at one time doubted, and there are several cases, chiefly of maintenance, in which a contrary doctrine is stated. In *Booth* v. *Creswicke* (2 Law T. 493), however, it is expressly laid down, and the authorities on the point are there examined.

Taxation.—The New Solicitors' Act (6 & 7 Vict. c. 73) has given occasion to an unusual quantity of applications for this purpose. In *Sayer* v. *Wagstaffe* (2 Law T. 418), it was decided that the mere delivery of a promissory note was not payment of a bill of costs, unless there be acceptance express or implied; and the answer of the Secretary of the Master of the Rolls to a petition, not the presentation thereof nor the hearing is to be considered an application within the Act. It has also in the same case, on appeal (4 Law T. 169), been decided that in order to obtain taxation of a settled bill, not only items which would have been taxed off must be shewn, but such as amount to imposition or fraud; and that if payment is made under undue pressure, the account will be opened; but that though the continuance of the relation of solicitor and client is a circumstance to be considered when pressure is complained of, it will not alone justify a reference. Charges by a solicitor, who is steward of a manor, for admission to copyholds, &c. are not taxable under the 5 & 6 Vict. c. 73 (*Allen* v. *Aldridge* (2 Law T. 438). A solicitor's bill may be taxed for business done before the passing of the

Attorneys and Solicitors Act, and this though the bill had been actually paid (*re Lees*, 2 Law T. 438, 457). The Act does not apply to a case in which a bill not previously taxable, was paid before the Act was passed. (*Ib.*) Where a solicitor comes into a suit already instituted, and gives briefs to two Queen's counsel and a junior, and in so doing only carries out the intention of the original solicitor, the taxing master, having disallowed the second Queen's counsel, was ordered to review his report. There is no rule restricting the number of counsel. (*Wastell* v. *Leslie*, 3 Law T. 117.) Where a solicitor refuses to procure the execution of a deed until his bill of costs is paid, and the party interested in the deed pays the bill under protest, that might constitute such a special circumstance, as under the 6 & 7 Vict. c. 73, would entitle him to taxation. (*Ex parte Andrews*, 3 Law T. 257.) Where costs in a suit have been awarded to a defendant, a trustee, who is a solicitor, the practice of the Court is to direct them to be taxed as between solicitor and client. (*York* v. *Brown*, 3 Law T. 210.) Petitions have been presented not unfrequently to tax bills, though an agreement existed, or what is equivalent to an agreement, that they should not be taxed, and they have been invariably refused, so long as the agreement is not impeached by bill. There is no jurisdiction to do so on petition. (*Re Whitcombe*, 4 Law T. 130; and *re Catlin*, 4 Law T. 152.)

ECCLESIASTICAL COURT.

Construction of will.—The term "apparent," in the 21st section of the 7 Wm. 4 & 1 Vict. c. 26, means apparent on the face of the instrument; and evidence *aliunde* will not be admitted to shew what the words originally were. (*Towneley* v. *Watson*, 2 Law T. 376.) It appears that the destruction of a later paper does not by law necessarily revive a former will. Each case must be left, as to the question of revival, to its own particular circumstances. (*James* v. *Cohen*, 2 Law T. 518.) A soldier stationed with his regiment in barracks in one of the colonies, or at home, but not engaged in any expedition or special duty, is not within the intent and meaning of the 21st section of Wm. 4 & 1 Vict. c. 26, which exempts "soldiers in actual military service" from the operation of that Act. (*White* v. *Repton*, 3 Law T. 322.)

Duties of a clergyman.—A very important judgment was given in the case of a clergyman who had refused to bury the corpse of a child which had been brought, after due notice and at a convenient time, to the churchyard for interment. It was held, in *Titchmarsh* v. *Chapman* (3 Law T. 353), that a child is entitled to have the burial service read over its body, though a layman, held to be heretical and schismatical, has performed the act of baptism, if he has done so in the name of the Father, Son, and Holy Ghost; as it is not therefore "unbaptized," according to the true meaning of that term in the Rubric. The judgment is very elaborate. In the case of *Nurse* v. *Henslow* (1 Law T. 195), a like decision was made as to a clergyman who refused to bury the body of a parishioner baptized by a minister of the "Primitive Methodists."

Probate.—The general rule is, that the receipt of a legacy, or other acknowledgment of a will, does not preclude the next of kin from opposing its validity; there are cases, however, in which this doctrine will not hold—as a formal admission on which a decree has been made by a court of law. (*Merryweather* v. *Turner*, 3 Law T. 6.)

Jurisdiction.—An extremely important decision has been made under the 3 & 4 Vict. c. 86 (The Church Discipline Act), involving a point of considerable importance; viz. whether, in a proceeding against a clergyman, which has for its object to deprive him of, or suspend him from, ecclesiastical preferment, and not merely to punish him *pro salute*, &c. the Ecclesiastical Court has jurisdiction over an offence indictable at common law, though no conviction in a court of common law is pleaded; and Sir H. Jenner Fust has decided, in a very long and elaborate judgment, that it has. (*Burder* v. *Hedgson*, 3 Law T. 242.)

EVIDENCE.

The Act 3 & 4 Wm. 4, which removes the objection to an interested witness in certain cases, does not apply to courts of equity.—In the case of *Wheat* v. *Graham* (7 Sim. 62), the Vice-Chancellor of England decided that the Act 3 & 4 Wm. 4 did apply to courts of equity; in *Hall* v. *Ellis* (9 Sim. 532) the same judge decided the other way. The Court of Exchequer, in *Stuart* v. *Barnes* (You. & Coll.), have expressly decided that the Act of Parliament did not apply to courts of equity; and the same decision has been made by the Chancellor in *Oliver* v. *Latham* (2 Law T. 365); consequently the point is now set at rest.

Presumption of death.—Presumption of death without issue is not always allowed, although even thirty years may have elapsed since the party was last heard of. (*Watson* v. *England*, 2 Law T. 155.)

JURISDICTION.

Appointment of receiver in the colonies.—The Court of Chancery has jurisdiction to appoint a receiver, manager, and consignee of property in the colonies. (*Bentinck* v. *Willink*, 2 Hare, 1; *Willink* v. *Bentinck*, 2 Law T. 326.)

Lunacy.—The Chancellor, in *Barfield* v. *Rogers* (2 Law T. 117), said he would determine the question of a lunatic (who had, by decree, been declared a trustee) being or not a trustee within the 1 Wm. 4, c. 60, though he had not been found a lunatic by commission, on certificates of unsoundness being presented to him.

Compensation to officers of court.—The compensation to be made to commissioners for examining witnesses in a cause are cognizable by a court of equity alone, of which they are the officers, and an injunction will be granted to stay proceedings to recover it by action at law. (*Ambrose* v. *Dunmow Union*, 3 Law T. 339.)

Vice-Chancellor.—A Vice-Chancellor, appointed under the 5 Vict. c. 5, has no power to reverse, vary, or alter any order made by another Vice-Chancellor, although the cause in which the order was made may have been transferred, with the Lord Chancellor's sanction, from the paper of the latter to that of the former. (*Willoughby* v. *Willoughby*, 2 Law T. 457.)

MARRIED WOMAN.

Separate use and restraint of anticipation.—A legacy to a married woman for her "sole use and benefit," is to be construed for her separate use. (*Bertcholdt* v. *Marquis of Hertford*, 2 Law T. 325.) The ordinary form used for restraining married women from alienating their separate property was decided, in *Barrymore* v. *Ellis* (8 Sim. 1), to be insufficient for the purpose. The like point came again before the Vice-Chancellor of England in *Brown* v. *Bamford* (11 Sim. 127), and was similarly decided; the Vice-Chancellor observing that, in his practice as a conveyancer, he used always to make the receipt clause declare "that the receipts of the married woman, to be given from time to time after the income of the property shall have become due, should be, and *that no other receipts* should be sufficient discharges to the trustees." On appeal the Chancellor confirmed the decision, (3 Law T. 69), so that the point is now settled that the restraint in such a case only applies to the exercise of the power, not to the estate in default of appointment. It makes no difference that the restraint against anticipation is first mentioned, and so far useless, and that the separate-use clause follows; they will equally take effect. (*Baggett* v. *Meux*, 3 Law T. 122.)

PATENT.

Abandoned invention—Defect in specification.—An old patent invention, substantially the same as that secured by a modern patentee, having been abandoned, and there being nothing to shew it had ever been known to the patentee, and he having denied all knowledge of it, and there being an essential, though minute, difference between the old and the modern invention, it was held that the latter was not invalid. (*Muntz* v. *Forster*, 2 Law T. 325.) And where an inventor had been some years in the enjoyment of his patent, an alleged defect in the specification forms no ground for refusing relief in a court of equity. (*Ib.*)

Injunction.—If, after injunction obtained, there appears to be any material variation between the allegations in the bill or the aid thereby sought, and the affidavits in support of the plaintiff's case, the Court will, upon application of the defendant, dissolve the injunction. (*Stocking* v *Llewellyn*, 3 Law T. 33.)

PRACTICE.

Allowing an issue.—The rule of the Court has been supposed to be, always to allow an issue *devisavit vel non* to an heir-at-law from whom the property is devised. In a late case, however, the Master of the Rolls decided that there are exceptions to the rule. (*Mann* v. *Ricketts*, 2 Law T. 456.)

Orders.—Under the 17th Order of 26th August, 1841, it is not rendered imperative on the plaintiff, when he engrosses his bill, to commence every numbered interrogatory at the margin with a fresh line, though it may have been the invariable practice with attorneys so to do ever since the promulgation of the order. (*Garcias* v. *Ricardo*, 3 Law T. 33.) Under the 1 Wm. 4, c. 36, s. 15, r. 13, an order for a *habeas corpus* to bring up a prisoner to take the bill *pro confesso* against him, to be regular, must be obtained *before* the expiration of six months *after* twenty-eight days *after* his committal. (*Walker* v. *Histed*, 2 Law T. 326.) Where, under the 24th order of August 1841, an application is made to enter a memorandum of service of a bill on a defendant, it is necessary to shew that the service was made within the jurisdiction, and that the copy served was a true copy, but not how the copy was made. (*Warren* v. *Postlethwaite*, 3 Law T. 4.) "Injunction Causes," in the fifth order of April 1828, mean, causes only in which the injunction depends on the exception; and, therefore, where an injunction is prayed by the bill, and an order for referring the exceptions is obtained before the expiration of eight days, it is irregular. (*Matthie* v. *Edwards*, 3 Law T. 339.) Where a defendant to an original bill filed a cross-bill of discovery, but before the answer was put in to it the original suit was dismissed, the defendant to the cross-bill was held to be entitled to his costs, as under the old practice, the case not being within the 41st order of August 1841. (*Barker* v. *Ford*, 3 Law T. 452.) It has been decided in *Mahon* v. *O'Grady* (4 Law T. 191) and *Muttlebury* v. *Hayward* (4 Law T. 211), that, under the 18th of the orders of 26th Oct. 1841, it is necessary to apply, in case of a father taking his son into partnership, to change the solicitor, as much as in the case of a stranger.

Plea of foreign judgment.—A plea of foreign judgment may operate as a bar to a suit in a court of equity; but where representations made by the plea are of that general nature as to leave the Court in doubt as to what were the matters in issue in the foreign court between the parties, equity will not refuse the plaintiff his right to file his bill in this court, for an account of the transactions between him and the defendant. (4 Law T. 130.)

Proceedings to discredit a witness.—In *Wood* v. *Hammerton* (9 Ves. 145), and also in *Purcell* v. *Macnamara* (8 Ves. 324), leave was given by Lord Eldon, after much consideration, to exhibit articles, and, on the same motion, to take out a commission to examine witnesses as to credit; but in many cases, both before and after these cases, the rule appears to have been to exhibit articles first, and afterwards apply for a commission. In the late case of *Harvey* v. *Mount* (3 Law T. 218), however, this rule was not observed, and the practice of Lord Eldon was followed.

Production of papers.—The production of papers proved in one cause will be ordered in another relating to the very same subject-matter, though the parties are not all the same in both. (*Grubb* v. *Perring*, 3 Law T. 199.)

The master of a ship having been employed to go to India to collect evidence with respect to the seaworthiness of a vessel which had been condemned and sold, his communications to his employers and their solicitor were held to be privileged communications, and strictly within the rule of the court as to privileged communications between solicitor and client. (*Steel* v. *Stewart*, 4 Law T. 150.)

Proof of service of copy of bill—23rd and 24th orders of Aug. 1841.—A copy of a bill was proved to have been examined with the engrossment, and forwarded by post to the solicitor in the country, who swore to his having received on the following day a paper, appearing to be a true copy of the bill, which paper he served on the defendant; it was held sufficient service. (*Lewis* v. *Thomas*, 2 Law T. 360.)

TITLE.

Mortgages and judgments.—The title of a judgment creditor, or tenant by *elegit* in actual possession, is not superior or equal to that of a prior equitable mortgagee or incumbrancer. (*Whitworth* v. *Gaugain*, 3 Law T. 34.)

Production of title-deeds.—Copies of Court roll and indentures of bargain and sale inrolled must be produced to the purchaser by a vendor, if they are in his possession, but he is not bound at his own expense to furnish new copies of them. (*Cooper* v. *Emery*, 2 Law T. 437.)

Time.—The rule was, in reference to the duration of human life, to require a sixty years' title; but

since the 3 & 4 Wm. 4, c. 37, it has been supposed that this Act had fixed, not sixty years, but a shorter period, and conveyancers have been at variance on the question. It would appear, however, that the time within which suits may be brought only has been shortened. In *Cooper* v. *Emery* (2 Law T. 437), it is expressly decided that a purchaser may require a sixty years' title.

TRUSTS.

Bankers.—The payment of money into a banker's hands is a loan to him, and does not render him a trustee, or invest him with any fiduciary character for the customer. (*Foley* v. *Hill*, 2 Law T. 513.)

WILLS.

Construction.—A devise by a testator to his brother of property subject to a charge thereon to be paid to another brother, or all or any of his children, as the devisee should appoint, gives the second brother and his children nothing in default of appointment. (*Bonnor* v. *Bonnor*, 3 Law T. 98.) A testator gave an estate for life to his wife in the rents of certain lands, and by a codicil declared that "in case the sister of his wife should, during his wife's life, reside with or dwell in the house or place of residence of his wife, or become part of her family, then, for each day she should so reside, the trustees were to pay 100*l*. out of the said rents, &c. to a dispensary." This is a condition subsequent, and is void. (*Ridgeway* v. *Woodhouse*, 3 Law T. 19.) A testator appointed by his will, his wife and his trustees executors thereof to be the guardians of his children. He afterwards, by codicil, revoked the appointment of three of the trustees and executors as such, and appointed two others in their place; it was held that the removed trustees remained the guardians. (*Ex parte Park*, 3 Law T. 158.) It was formerly the law, that a man, who was appointed an executor, and to whom a legacy had been given, must have proved the will before he could entitle himself to the legacy; and, in *Reed* v. *Devaynes* (2 Cox, 285; 3 Bro. C. C. 95), that is so decided. In a late case, however, where executors and trustees were appointed, and a bequest given to each of them, "as a mark of the testator's respect for them," and their appointment was afterwards revoked, and others appointed in their stead, with a like bequest; it was held that the originally appointed executors and trustees were entitled to their legacies. (*Burgess* v. *Burgess*, 3 Law T. 452.) A bequest of a sum of money to A. S. and to the children of her body, A. S. being then and at the testator's death unmarried, gives A. S. an absolute interest. (*Read* v. *Willis*, 2 Law T. 438.)

Cy près.—The doctrine of *cy près* was refused to be extended to a mixed fund composed of realty and personalty by Knight Bruce, V. C. in —— v. —— (2 Law T. 399).

Election.—A curious custom prevails in the manor of Taunton Dean, that a tenant's widow is his next heir. By virtue of this custom it has been decided that a widow to whom an annuity "in lieu of all dower and thirds," &c. claimable out of her husband's estate, had been bequeathed, was not obliged to elect between her legacy and the copyhold estate, but took the latter as heir to her husband. (*Norcott* v. *Gordon*, 4 Law T. 49.)

Mixed fund—Conversion—Escheat.—Though the Crown may claim the personal property of a person dying intestate, leaving no next of kin, yet the royal prerogative does not extend so far as to call upon a court of equity to convert real estates into personalty for the sake of claiming it as such. (*Taylor* v. *Haygarth*, 2 Law T. 137.)

New Wills Act.—The 33rd section of the 7 Wm. 4 & 1 Vict. c. 26, does not extend to a testamentary appointment, notwithstanding that the first section declares that the word "will" shall extend to (among other things) an *appointment by will.* (*Griffiths* v. *Gale*, 3 Law T. 17.)

LEGAL INTELLIGENCE.

Court Papers.

CHANCERY SITTINGS.

Hilary Term, 1845.

LORD CHANCELLOR.

AT WESTMINSTER.

Saturday ..Jan. 11—Appeal Motions
Monday........13—Petition Day.
Tuesday ......14 } Appeals
Wednesday ....15 }
Thursday ......16—Appeal Motions
Friday..........17 }
Saturday........18 } Appeals
Monday........20 }
Tuesday........21 }
Wednesday 22
Thursday ......23—Appeal Motions
Friday .... 24 } Petition Day. Unopposed petitions and Appeals
Saturday ......25 }
Monday........27 } Appeals
Tuesday........28 }
Wednesday ....29 }
Thursday ......30 } Petition Day. Unopposed petitions and Appeals
Friday..........31—Appeal Motions.

MASTER OF THE ROLLS.

AT WESTMINSTER.

Saturday ..Jan. 11—Motions
Monday........13 } Pleas, Demurrers, Causes, and Further Directions
Tuesday........14—Petitions, those unopposed first
Wednesday ....15 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday ......16 Motions
Friday .... 17 At the Privy Council
Saturday ......18 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday........20 }
Tuesday........21—Petitions, those unopposed first
Wednesday ....22 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday ......23—Motions
Friday ....24 }
Saturday ......25 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday........27 }
Tuesday........28—Petitions, those unopposed first
Wednesday ....29 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday ......30 }
Friday..........31—Motions.

Short Causes, and Consent Causes, will be take every Tuesday at the sitting of the Court.

Notice.—Petitions must be presented, and copies left with the secretary, preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

VICE-CHANCELLOR OF ENGLAND.

AT WESTMINSTER.

Saturday —Jan. 11—Motions.
Monday ....13—Petition Day.
Tuesday ....14 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday ....15 }
Thursday ......16—Motions.
Friday..........17 } Petition day. Unopposed Petitions, Short Causes, and Causes
Saturday ......18 }
Monday........20 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday........21 }
Wednesday ....22 }
Thursday ......23—Motions
Friday .... 24 } Petition Day. Unopposed Petitions, Short Causes, and Causes
Saturday ......25 }
Monday........27 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday........28 }
Wednesday ....29 }
Thursday ......30 } Petition Day Unopposed Petitions, Short Causes, and Causes
Friday..........31—Motions.

VICE-CHANCELLOR KNIGHT BRUCE.

AT WESTMINSTER.

Saturday ..Jan. 11—Motions and Causes
Monday ....13 } Petition Day. Causes, Petitions, and Bankrupt Petitions
Tuesday........14 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday ....15 Bankrupt Petitions and Causes
Thursday ......16—Motions and Causes
Friday ....17 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday ......18—Short Causes and Causes
Monday........20 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday........21 }
Wednesday ....22—Bankrupt Petitions and ditto
Thursday ......23—Motions and Causes
Friday ....24—Petition day. Petitions and Causes
Saturday ......25—Short Causes and Causes
Monday........27 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday........28 }
Wednesday ....29—Bankrupt Petitions and ditto
Thursday ......30 } Petition Day. Petitions, Short Causes, and Causes
Friday ....31—Motions and ditto.

VICE-CHANCELLOR WIGRAM.

AT WESTMINSTER.

Saturday ..Jan. 11—Motions and Causes
Monday........13—Petition Day. Petitions and Causes
Tuesday ......14 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday ....15 }
Thursday ......16—Motions and ditto
Friday..........17 { Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday ......18—Short Causes and ditto
Monday........20 }
Tuesday........21 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday ....22 }
Thursday ......23—Motions and ditto
Friday ....24 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday ......25 } Short Causes, Petitions (those unopposed first), and Causes
Monday........27 }
Tuesday........28 } Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday ....29 }
Thursday ......30—Petition Day. Petitions and Causes
Friday..........31—Motions and Causes.

CAUSE LISTS, HILARY TERM, 1845.

COURT OF QUEEN'S BENCH.

New Trials remaining undetermined at the end of the sittings after Michaelmas Term, 1844.

Michaelmas Term, 1844.

Middlesex—Belcher and Others *v.* Gommo
Macarthy *v.* Varty and Another
Same *v.* Same
Bennett *v.* Duncan
De Medina *v.* Grove and Others
Same *v.* Same
Reg. *v.* Waller
Reg. *v.* Baron de Bode
London—De Freis *v.* Littlewood and Another
Exley *v.* Tassell
Bodner *v.* Butterworth
Northampton—Sutton *v.* Macguire
Notts—Reg. *v.* Inhabitants of Hickley
Leicester—Wood *v.* Discie, bart.
Warwick—Cooper *v.* Harding
Same *v.* Same
Hants—Doe dem. Edney and Others *v.* Benham
Same *v.* Billett
Devon—Doe dem. Clarke *v.* Smarridge
Dovill *v.* Jeve
Schank *v.* Beard
Cornwall—Richards *v.* Symonds
Somerset—Atwood *v.* Joliffe and Another
Doe dem. Earl of Egremont *v.* Langdon
Alford *v.* Ashford
Bristol—Gale *v.* Lewis
Norfolk—Corporation of Thetford *v.* Tyler
Denbigh—Oldfield *v.* Dalrymple
Chester—Collier *v.* Clarke and Another
Oxford—Exeter College *v.* Butler and Others
Doe dem. Pulker, Wife, and Others, *v.* Walker and Others
Worcester—Doe dem. Blayney and Others *v.* Savage and Others
Bate and Another *v.* Blurton
Stafford—Hilton *v.* Earl Granville
York—Reg. *v.* Richard Chasley
Lockwood *v.* Wood
Musgrove *v.* Emerson
Durham—Elliott and Another *v.* Stobart and Others
Wilson *v.* Anderson
Westmoreland—Webster *v.* Wilson
Liverpool—Reg. *v.* The Corporation of Manchester
Wharton *v.* Wright
Reg. *v.* Liverpool and Manchester Railway Co.
Essex—Doe dem. Copland and Others *v.* Burrell
Doe dem. Cozens *v.* Cozens
Kent—Bracegirdle *v.* Peacock and Another
Doe dem. Jacobs *v.* Phillips and Others
Surrey—Queen *v.* Sewell
Glamorgan—Burgess *v.* Taff Vale Railway Company
Pembroke—Doe dem. Butler and Others *v.* Lord Kensington and Others
Radnor—Doe dem. Woodhouse *v.* Powell

Tried during Michaelmas Term, 1844.

Middlesex—Hudson *v.* Smith and Wife
Paine *v.* Guardians of Strand Union.

For Judgment.

Michaelmas Term, 1842.

Corporation of Colchester *v.* Brooke.

Easter Term, 1843.

Pritchard *v.* Powell and Others.

Michaelmas Term, 1843.

Stamp *v.* Sweetland
Leeman *v.* Lloyd
Wilkinson *v.* Lloyd
Doe dem. Angell *v.* Angell
Willoughby *v.* Willoughby.

Hilary Term, 1844.

Bird *v.* Jones
Phillips *v.* Sherville.

COURT OF EXCHEQUER.

Sittings in Hilary Term, 1845.

	Banc.	*Nisi Prius.*
Saturday Jan. 11—	Peremptory Paper, after Motions	......
Monday........13	Do. before Motions	Midd. 1st sitting.
Tuesday........14	......	......
Wednesday 15	......	......
Thursday 16	Circuits chosen....	......
Friday 17	......	London 1st Sitting
Saturday 18	Crown cases	......
Monday........20	Special Paper	Midd. 3rd sitting.
Tuesday........21	Errors............	......
Wednesday 22	Special Paper	......
Thursday 23	......	......
Friday 24	......	London 2nd sitting.
Saturday 25	......	Ditto by adjournmt.
Monday........27	Special Paper	Midd. 3rd Sitting.
Tuesday........28	......	......
Wednesday 29	......	......
Saturday 30	......	......
Friday..........31	......	......

PEREMPTORY PAPER,

To be called on the First Day of the Term after the Motions, and to be proceeded with the next day, if necessary before the Motions.

Date Rule Nisi.

11th June, 1844—Smith (qui tam) *v.* Bond. Mr. Platt, Mr. Lush
11th June, 1844—Smith *v.* Green. Mr. Platt, Mr. Lush
14th Nov. 1844—Dresser, P. O. *v.* Stansfield. Mr. Watson, Mr. Hoggins
4th Nov. 1844—Jones *v.* Evans and Another. Mr. Welsby, Mr. Townsend
19th Nov. 1844—Campbell *v.* Pownall—Mr. Cowling, Mr. Watson
19th Nov. 1844—Allen *v.* Miners, Executrix, &c. Mr. Brett, Mr. Humfrey
21st Nov. 1844—Riley *v.* Robinson. Mr. Cobbett, Mr. Charnock
21st Nov. 1844—Coats *v.* Coats, Exor. &c. Mr. Dowdeswell, Mr. Pashley

19th Nov. 1844—Empey *v.* King.—Mr. Warren, Mr. Lush.
15th Nov. 1844—Petty *v.* Walker and Others.—Mr. Pashley, defendant Ironside, in person
9th Nov. 1844—Kilburne *v.* Kilburne. Mr. Pashley, Mr. Cowling
19th Nov. 1844—Randall *v.* White. Mr. Addison.

SPECIAL PAPER.

For Judgment.

Baron *v.* Denman, esq. Demurrer. (Heard 15th Nov. 1844.)
Armani *v.* Castrigue. Demurrer. (Heard 20th Nov. 1844.)

For Argument.

Smith, secretary, and Others *v.* Hopkinson. Special case. (To stand over until similar case disposed of in the Court of Error.)
Martinez *v.* Denman, esq. Demurrer.
Jiminez *v.* Denman. Ditto.
(These two cases to stand over until judgment given in Baron *v.* Denman, esq.)
Alington *v.* Booth. Demurrer. (Stayed by injunction.)
Robertson *v.* Showler. Demurrer.
Williams *v.* Jones. Ditto.
Ackerman and Others *v.* Ehrenspoyer. Ditto.
Gore *v.* Gibson. Ditto.
Leaf *v.* Robson. Ditto.
Slade *v.* Hawley. Ditto.
Robson *v.* Luscombe. Ditto.

NEW TRIAL PAPER.

For Judgment.

Moved Easter Term, 1844.

Liverpool—Rodgers and Another *v.* Man

Moved Trinity Term, 1844.

Middlesex—Heath *v.* Unwin

For Argument.

Moved Hilary Term, 1844.

London—A. J. Acraman *v.* Cooper and Others

Moved Michaelmas Term, 1844.

Middlesex—Chappel *v.* Purday
Vesey *v.* James
Russell *v.* Ledsam and Others
Spiller *v.* Mason
Wood *v.* Leadbitter
Sinclair the younger *v.* Sinclair
Bartlett *v.* Dimond
London—Esdale and Others *v.* Lund
Acraman, W. E. *v.* Cooper and Others
Alexander *v.* Pratt and Others
McIntyre *v.* Miller and Others
Mordenstrom *v.* Pitt
Elkin *v.* Janson
Hall and Another *v.* Poysor
Redman *v.* Wilson
Redman *v.* Hay
York—Stables *v.* Tuting and Another
Clarke *v.* Royston
Durham—Collison *v.* Newcastle and Darlington Junction Railway Company
Newcastle—Chapman *v.* Annett
Lancaster—Pollitt *v.* Forrest and Others
Liverpool—Pitts *v.* Beckett

COMMON PLEAS.

Lancaster—Doe dem. Oulton and Others *v.* Oulton and Others
Liverpool—Same *v.* Same
Eccles and Another *v.* Harper
Smith *v.* Boutcher
Kirkpatrick and Another *v.* Tattersall
Cooke *v.* Reddilhan
Crellin *v.* Calvert
Crellin *v.* Brooke
Maidstone—De Bernardy *v.* Grimstone
Cooper *v.* The South Eastern Railway Company.
Lewes—Darnay *v.* Chesneau
Parry *v.* Nicholson
Buckingham—Uthwatt, esq. *v.* Elkins and Others
Liddington *v.* Palmer and Others
Huntingdon—Chowns *v.* Brown
Cambridge—Charington *v.* Johnson
Ipswich—Mills *v.* Goff
Norwich—Worth *v.* Terrington
Doe d. Dudgeon and Another *v.* Martin and Others
Cardiff—James *v.* Williams
Northampton—Watson *v.* Bodell
Ekins *v.* Hunter
Nottingham—Harrison *v.* Wright
Derby—Ashmore and Another *v.* Bramall and Another
Lister *v.* Hunt
Leicester—Lord Stamford *v.* Dunbar and Others
Warwick—Geach and Others, Assignees, &c. *v.* Ingall
Worcester—Benbow *v.* Jones
Bess *v.* Arkell
Doe dem. Woodward *v.* Deakins
Shrewsbury—Amphlett, Assignees, &c. *v.* Garbett
Gloucester—Pitt *v.* Harrison and Another
Devizes—Hayward *v.* Hayward
Frude and Another *v.* Powell
Bristol—Fargues *v.* Bradshaw
Kynaston and Another, Assignees, &c. *v.* Crouch
Doran and Another, Assignees, &c. *v.* Warboys
Newtown—Lewis *v.* Read and Others
Mold—Doe dem. Lloyd *v.* Ingleby
City of Chester—Buskey and Another *v.* Fletcher

Moved after the 4th day of Michaelmas Term, 1844.

Middlesex—Hogarth *v.* Kenny and Another
Birt *v.* Leigh

COMMON LAW SITTINGS.

QUEEN'S BENCH,

Sittings appointed to be held in Middlesex and London, before the Right Hon. THOMAS Lord DENMAN, Lord Chief Justice of Her Majesty's Court of Queen's Bench, in and after Hilary Term, 1845.

IN TERM.—MIDDLESEX.

1st sitting, Monday, January 13.
And until the jury are desired to attend at the
(Sit at eleven)
2nd sitting, Monday, January 20.
And until the jury are desired to attend at the
(Sit at eleven)
3rd sitting, Wednesday, January 29.
(At half-past nine.)

LONDON.

1st sitting, Thursday, January 30, at twelve.
Sitting for undefended and such defended Causes as produce no satisfactory affidavit of merits.

In Term in Middlesex.—The undefended remanets and new causes with proper notice will be taken first; then will follow a limited number of short causes, and such short causes of tort, as shall have been appointed in the same way as special juries are for fixed days.

AFTER TERM.—MIDDLESEX.

Saturday, February 1.
(Sit at half-past nine.)

LONDON.

Monday, February 3, to adjourn only.
Adjournment-day, Monday, Feb. 17, at half-past nine.

COMMON PLEAS.

Sittings in Middlesex and London, before Sir N. C. TINDAL, in and after Hilary Term, 1845.

IN TERM.

MIDDLESEX.	LONDON.
Wednesday, Jan. 15th.	Friday, January 17.
Wednesday, Jan. 22nd.	Friday, January 24.

AFTER TERM.

Saturday, Feb. 1st.	Monday, Feb. 3rd.

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Monday the 3rd February, in London, no causes will be tried, but the Court will adjourn to a future day.

SINECURES IN THE ECCLESIASTICAL COURTS.

(From the *Morning Chronicle.*)

The death of Mr. John Moore has caused a vacancy in two sinecure appointments, held by him in Doctors' Commons: one, the London Seat in the Prerogative Registration, worth about 700*l.* a year, in the gift of the Rev. George and Robert Moore, sons of Archbishop Moore, the sinecure registrars of that court; the other, the Registrar of the Vicar-General, in the gift of his Grace the Archbishop of Canterbury, of the value of 500*l.* a year. Rumour has already pointed to two relatives of Sir Herbert Jenner Fust, the Judge of the Prerogative Court, as the individuals to be appointed to these offices; although their appointment is not to be officially declared until Sir Robert Peel has determined who is to be Queen's Proctor. We hope the Rev. George and Robert Moore, being sinecurists themselves to the extent of 12,000*l.* a year, will consider it to be their duty, in filling up the appointment in their gift, to select the fittest man, and require him to do the duties in person; but whether they appoint a relative of the Nicholl, Jenner, Dyke, or Dynely family, solely from partiality and family influence, or, turning over a new leaf, select a man having respect of his qualifications only, we beg to remind them that in the year 1830-31 the prelates of the Church of England tendered their patronage to the Commissioners of Inquiry into the Ecclesiastical Courts, amongst whom were his Grace the Archbishop of Canterbury, the late Sir John Nicholl, Sir Herbert Jenner (now Fust), and Dr. Lushington; and on the part of the public to insist that the appointment now to be made must be provisional, and on the clear and distinct understanding that it is not to entitle the recipient to any claim for compensation, in the event of Parliament making any alteration in the constitution of the office.

The appointment of Registrar to the Vicar-general is, next after the Queen's Proctor, the most enviable and honourable appointment in Doctor's Commons. The deputy of the late Mr. Moore is out of office by the death of his principal, and if the Archbishop of Canterbury has any regard for the honour and credit of the profession, of which he is nominally the head, he will gladly avail himself of this opportunity to select as his Registrar the most honourable and the best-informed man of his day, and require him to perform the duties in person. The deputy of the late Mr. Moore is said to assert some claim to be appointed principal; but do the circumstances which attended his original appointment as deputy entitle him to make any such claim? The late George Jenner, the brother of Sir Herbert Jenner Fust, and the nephew of Sir John Nicholl, held the offices of Registrar of the Arches Court, Registrar of the Vicar-general, Registrar of the Peculiars of the Archbishop; Deputy-registrar of the Prerogative Court, worth 1,100*l.* a year; Registrar of the Dean and Chapter of St. Paul, London; Secretary to the Commissioners for Building and Enlarging Churches, worth 1,000*l*; in fact, obtained and held, through the kindness of his relatives, every office and appointment that became vacant over which they could exercise any power or control. At his death there were none of the third generation of the Nicholl-Jenner-Dynely family of a sufficient age to obtain any of the appointments thereby rendered vacant, save that Sir John Nicholl obtained for his nephew Mr. Dynely, over the heads of many older and abler men, the Deputy-Registrarship of the Prerogative Court. Mr. Bedford, by influence foreign to the Nicholl-Jenner family, became Deputy-Registrar of the Vicar-General. He enjoyed it two years, and on his death, his son, Arthur Bedford, then aged twenty-nine years, was, by the same influence, appointed his successor. Sir John Nicholl remonstrated with the late Mr. Moore, and represented that it was not right to appoint so young a man, when there were older, abler, and fitter men candidates. Sir John Nicholl and Sir Herbert Jenner, then Queen's Advocate, urged one or more of the senior proctors to write to Mr. Moore, asking for the appointment, and by this combined movement Mr. Moore was compelled to cancel the nomination of Mr. Arthur Bedford, A pause then took place of about three weeks, during which time each of the senior proctors, who had been urged to apply, made sure of being appointed, and there was amongst them a general feeling of satisfaction at the disinterested regard for the credit of the Profession evinced by the heads of it; but ultimately, by an influence beyond the control, as it was said, of Sir John Nicholl, and contrary to the wish of Sir Herbert Jenner (now Fust), Mr. Francis Hart Dyke, the nephew of the first, and son-in-law of the second, became the Deputy-Registrar of the Vicar-General. He was then thirty years of age, that is, one year older than Mr. Arthur Bedford, who was repudiated solely on the score of his age, and, saving his relationship, and this one year of age, Mr. F. H. Dyke was in no respect superior to Mr. Arthur Bedford!

We trust, in justice, the Archbishop will now select some other man.

ANOTHER WRIT OF HABEAS IN JERSEY.

(From a second edition of the *Jersey Gazette.*)

We have returned to Jersey at last; and happily, for many and various reasons, with a peremptory writ of *habeas corpus ad subjiciendum*, issued by Baron Rolfe, and returnable in the Queen's Bench, We served the writ to-day on Mr. Kandich personally, and a copy of it duly on the Viscount. The following is the order of the Court directing the issue of the writ:—

"R. M. Rolfe.—Upon hearing Mr. Peacock, for Charles Carus Wilson, and upon reading the several affidavits of William A. Langdale, and of William Russell, and the exhibits thereto annexed, I do order that a writ of *habeas corpus ad subjiciendum* issue directed to John Candich, gaoler of Jersey, and to John Le Couteur, viscount of the said island, to bring up to the Court of Queen's Bench the body of Charles Carus Wilson, returnable on the 18th day of January, 1845.

"Dated the 23rd of December, 1844."

The following is an exact copy of the writ and endorsements:—

AD. SUB.

"Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to John Kandich, keeper of our gaol of Jersey, in the Island of Jersey, and to John Le Couteur, viscount of said island, greeting: we command you that you have the body of Charles Carus Wilson, detained in our prison under your custody as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, in our court before us at Westminster, on the 18th day of January next, to undergo and receive all and singular such matters and things which our said court shall then and there consider of him in this behalf, and have there then this writ. Witness, Thomas Lord Denman, at Westminster, the twenty-third day of December, in the eighth year of our reign.

"By the Court,

"—— ROBINSON.

"Endorsed by the Judge: At the instance of Charles Carus Wilson:

(Signed) "R. M. ROLFE.

"Mr. A. Langdale, 7, Gray's-Inn-square, London, attorney for the said Charles Carus Wilson, 23rd December, 1844."

The efforts of the Viscount and his subordinates to-day to avoid service were most ludicrous. We were not *obliged* to serve a copy upon the Viscount *personally* at all, but as counsel suggested that it might be as well to endeavour to do, we proceeded about twelve o'clock to that gentleman's residence, St. Aubin's, rang the bell, and, in answer to our inquiry, were told by a middle-aged man servant, that the Viscount was at home, but too ill to see any person. We then desired him to inform his master that we were there with a peremptory writ of *habeas corpus*, to bring up the body of Charles Carus Wilson to the Queen's Bench, England; at the same time exhibiting the original writ and copy. The man departed on his errand, and presently returning, told us the Colonel could say nothing about it, finishing with "I beg your pardon, sir, but I must shut the door." Ha! ha! ha! Truly laughable was this absurd expedient to avoid the service of a writ.

Returning immediately to town we entered the Viscount's office, and served the clerks there (Messrs. Sullivan and Binet) with copies of the writ and order. Those young and sensitive gentlemen were even more alarmed than their master, and very decidedly refused to *receive* the dreaded papers. Nay, in excess of

zeal, Mr. Binet threw the copies after us as we descended the stairs. Curious this, for a *lawyer's* office. About ten minutes afterwards the writ was served upon Mr. Kandich, who took such a mere matter of course quietly and reasonably.

It may be perhaps as well to mention that the *exhibits* mentioned in the rule of court were the "rule" obtained by the Solicitor-General, and the affidavits of Mr. Wilson and the Procureur-General. It will require more than ordinary impudence, therefore, to assert on this occasion that the judge has been *surprised* into granting the writ.

IRISH LEGAL INTELLIGENCE.

Dublin, Dec. 19.

CHARITABLE BEQUESTS ACT.

The following is the opinion of the law officers of the Crown, upon the case submitted by direction of the Lord Lieutenant, in consequence of the representation made by Dr. Murray, Roman Catholic Archbishop of Dublin, who had transmitted to his Excellency the published opinion of Mr. O'Connell respecting the operation of the Charitable Bequests Act as regards the regular clergy in Ireland:—

"*Queries on the construction of the 7 & 8 Vict. c. 97 (Charitable Bequests Bill, Ireland), for the opinion of the Right Hon. the Attorney and the Solicitor-General.*

"First—Whether the provisions of 10 Geo. 4, cap. 7, which are referred to in the 15th sec. of the Charitable Donations and Bequests Act, render any donation or bequest to any member or members of any religious order or community in the said provisions mentioned unlawful?

"Secondly—Whether the Charitable Donations and Bequests Act is calculated to prejudice or raise any doubt, by implication or otherwise, as to the pre-existing rights of any member or members of such religious order or community as aforesaid? And if it be, what alterations would it be desirable to have made in the Act, for the purpose of preventing such implication or doubt?

"Thirdly—If a devise, donation, or bequest for charitable purposes be invalid, as being contrary to the policy of the law, would it be the duty of the commissioners to sue for the recovery of the same, and apply it to other charitable purposes—or how should it be recovered or disposed of?"

"OPINION.—(COPY.)

"First—There is no provision in the Roman Catholic Relief Act making devises, donations, or bequests to, or in trust for, religious orders, communities, or societies of men of the church of Rome, bound by monastic or religious vows, unlawful. But a court of equity would not enforce a trust in favour of such a religious community, as it would be against the policy of 10 Geo. IV. cap. 7.

"We are, however, of opinion that the 10 Geo. IV. cap. 7, does not, either expressly or by implication, render a devise, donation, or bequest to a member or members of such religious order unlawful. A devise, donation, or bequest to a member of such religious order, for his own use, or upon any trust not contrary to law, would, in our opinion, be valid.

"Secondly—We are of opinion that the 7 and 8 Vic. cap. 97, has not in this respect made any alteration in the law, and that it is not calculated to prejudice or raise any doubt, by implication or otherwise, as to the pre-existing rights of any member or members of such religious order or community.

"The 22nd section provides that 'nothing herein contained shall be taken to avoid or render unlawful any donation, devise, or bequest *which but for this Act would be lawful*, except as to the time within which the deed, will, or instrument containing such donation, devise, or bequests for pious or charitable uses is hereinbefore required to be executed and registered.

"This latter part of the section, as to the time within which the instrument is to be executed, refers to the 16th clause of the Act, which clause applies to members of the Established Church, to Roman Catholics, and to all Dissenters.

"Notwithstanding the enactment in the 22nd section above-mentioned, it has been suggested that the proviso at the end of the 15th section contains an express legislative declaration that a devise, donation, or bequest to a member of a religious order is illegal—we do not concur in this opinion.

The 15th section of the Act was intended to facilitate the endowment of the Roman Catholic *secular* clergy—and we are of opinion that the proviso in that section was added to prevent any question being raised that it authorized a donation, devise, or bequest to the commissioners and their successors for the benefit of any but *secular* clergy.

"The proviso does not, in our opinion, either expressly or by implication, render illegal any donation, devise, or bequest, which, but for the passing of the Act would have been lawful. The 22nd section of the Act renders this construction of the proviso quite clear. The statute confers no benefit on the regular clergy; but it created no disability, either expressly or by implication.

"Thirdly—If a charitable donation, devise, or bequest be invalid, as being contrary to the policy of the law, it belongs to the Crown to dispose of it by the sign manual for such legal charitable purposes as to the Crown may seem proper. And when it belongs to the Crown, by sign manual, to dispose of property given or devised for charitable purposes, the proceedings should be an information filed by the Attorney-General, and not a suit by, or in the name of, the Commissioners of Charitable Donations and Bequests. (*Attorney-General* v. *Matthews*, 2 Levins, 167; *Clyfford* v. *Francis*, Freeman's Equity Reports (Ed. 1823, 130); *Attorney-General* v. *Syderfin*, 1 Vernon, 224; *Moggeridge* v. *Thackwell*, 7 Vesey, 74.)

"It is to be observed, that by the former Charitable Bequests Act (40 Geo. 3, c. 75, Irish), in case it should be inexpedient, unlawful, or impracticable to apply a charitable donation, devise, or bequest, strictly according to the directions and intentions of the donor or donors, the commissioners were authorized to apply the same to such charitable and pious purposes as they should judge to be nearest and most conformable to the directions and intentions of the donor or donors.

"This enactment is omitted from the Act of last session. "T. B. C. Smith.

"Dec. 13, 1844. "Rich. W. Greene.

RAILWAYS.

(From last night's *Gazette.*)

Notice is hereby given, that the Board constituted by the minute of the Lords of the Committee of the Privy Council for Trade, of the 24th August, 1844, for the transaction of railway business, having had under consideration the following schemes for extending railway communication in the district comprising the counties of Cornwall and Devon, viz.

The Cornwall and Devon Central Railway,
The Cornwall Railway (Plymouth to Falmouth),
The Great Western and Cornwall Junction Railway,
The West Cornwall Railway,
The Saint Ives Junction Railway,
The North Devon (Crediton and Barnstaple) Railway,
The Exeter and Crediton Railway,
The Torquay and Newton Abbot Railway,

have decided on reporting to Parliament in favour of

The Cornwall Railway (Plymouth to Falmouth),
The West Cornwall Railway (up to the junction with the Cornwall Railway),
The Saint Ives Junction Railway;

against

The Cornwall and Devon Central Railway,
The Great Western and Cornwall Junction Railway;

and recommending the postponement, until a future period, of—

The North Devon (Crediton and Barnstaple) Railway),
The Exeter and Crediton Railway,
The Torquay and Newton Abbot Railway.

And the Board having further had under consideration the following schemes for extending railway communication in the districts of Berkshire, Hampshire, Wiltshire, Dorsetshire, Somersetshire, and Devon, lying intermediate between the Great Western, Bristol and Exeter, and London and South Western Railways, viz.:—

The Reading, Basingstoke, and Hungerford Railway (Great Western),
The Wilts and Somerset Railway,
The Bristol and Exeter - Durston and Yeovil Branch,
The Southampton and Dorchester Railway,
The Basingstoke and Didcot Junction Railway (London and South Western),
The London and South Western—Salisbury to Yeovil,
The London and South Western—Hook Pit Deviation,
The Salisbury, Dorchester, and Weymouth Railway,

have decided on reporting to Parliament in favour of

The Reading, Basingstoke, and Hungerford Railway (Great Western),
The Wilts and Somerset Railway—subject to a condition of applying to Parliament in a future session for an improved line of communication towards Bath and Bristol,
The Bristol and Exeter, Durston and Yeovil Branch,
The Southampton and Dorchester Railway;

and against

The Basingstoke and Didcot Junction Railway (London and South Western),
The London and South Western—Salisbury to Yeovil,
The London and South Western—Hook Pit Deviation,
The Salisbury, Dorchester, and Weymouth Railway.

Dalhousie.
S. Laing. G. R. Porter.
D. O'Brien. J. Coddington.

THE PRINCE OF WALES' COUNCIL CHAMBER.

Somerset House, Dec. 28.

Her Majesty has been pleased to direct that letters patent shall be prepared for the appointment of Edward Smirke, esq. to be Solicitor-General to his Royal Highness the Prince of Wales.

PRIVILEGE OF ROYAL PALACES.

Windsor, Friday Evening.—A short time since a gentleman, who resided not a hundred miles from the Regent's Park, took up his abode at one of the military knight's houses, for the purpose of living in quietude and retirement, only passing the proscribed boundary on *Sundays*, supposing himself then to be free from arrest.

About a fortnight ago he was visited by one of the officers of the sheriff of Berks, and arrested (notwithstanding the privilege he claimed as a resident within the royal precincts) at the suit of Mr. Lawrence, an extensive builder in London, for a judgment debt amounting to between 3,000*l.* and 4,000*l.* The officer immediately conveyed his prisoner to the county gaol at Reading. This was considered to be an exceedingly bold step on the part of the officer, and in the very teeth, too, of a rule which had been observed in similar cases for centuries before. We understand, however, that the sheriff was indemnified from all consequences which might result from it. The defendant, immediately after his arrest, acting upon the advice of his solicitor, took out a summons, calling upon the plaintiff and the sheriff to show cause before one of the barons of the Exchequer, in which court the proceedings were taken, why he should not be discharged out of custody, upon the ground of the arrest having been illegal, the defendant having been captured within the (privileged) precincts of a royal palace. The case was heard by Mr. Baron Rolfe, in chambers, on Friday, 20th instant, Mr. Carington and Mr. J. J. Williams appearing as counsel for the defendant, in support of the summons; and Mr. Taprel as counsel for the defendant. The sheriff appeared by his attorney. An immense number of authorities were cited on both sides. The arguments lasted nearly the whole day.

On Wednesday last the parties attended at Mr. Baron Rolfe's chambers, when the learned baron stated that he had examined all the authorities which had been referred to by the learned counsel for the plaintiff and defendant, and also the affidavits which had been put in, and that his decision was, that *the summons be discharged.*

The defendant (who, it is stated, intends to bring the whole matter before the full court next term) consequently still remains in Reading gaol.

Mr. Baron Rolfe's decision has caused great consternation in the minds of parties who had previously imagined that they were living in a state of "privileged" security.—*Morning Chronicle.*

NATURAL HISTORY OF THE NEW YORK BAR.

(From the *New York Herald*, Nov. 29.)

The members of the Bar in this city may be divided into three classes—first, good lawyers, who are gentlemen: secondly, good lawyers, who are not gentlemen; thirdly, pettifoggers, who are neither lawyers nor gentlemen. This division is simple and accurate, and includes every individual who is said to practice law in the city of New York. The definitions are clear and intelligible to the humblest capacity; and unlike many definitions in science and philosophy, they do actually convey a correct idea of the thing intended to be explained. Let us briefly glance at the habits and characteristics of the several classes thus indicated and defined.

The first class, which is composed of good lawyers, who are gentlemen, is a very small one. It is possible that the number exceeds that set down as the maximum of just men, whose return to the angel engaged in taking the census of the virtuous in the doomed city of Sodom, would have insured its immunity from the threatened vengeance of insulted Heaven. The Bar of this city can indeed boast of a few men whose eminent professional attainments derive additional lustre from the refined manners, the cultivated taste, the uniform urbanity, and gentlemanly demeanour which characterize their possessors. These are worthy successors of those distinguished men—the Emetts, the Wilkinses, the Wellses, and other kindred spirits, who gave such dignity and character to the Bar of New York twenty years ago. It were invidious to mention names, but few of those who are conversant with the movements of the select few who give tone to any movements in society, literature, science, or refined civilization in this city, which are really worthy of respect, can be at a loss to fill up that brief list, in which stand the names of the good lawyers of New York, who have the education, feelings, and manners of gentlemen.

We now come to the second and much more numerous class—the good lawyers who are not gentlemen. There are a great many talented and sharp-witted blackguards in society; and as the practice of

the law in the present state of the administration of justice presents peculiar facilities for the successful exercise of a combination of talent, smartness, vulgarity, and coarseness, it is not at all surprising that at the bar we find a very numerous representation of that class in society to which we have just alluded. We do think that we can in this city match any bar where the name of Blackstone is honoured, in clever lawyers, who are as free from any pretensions to the character of gentlemen as the region of the "Five Points" is to cleanliness or virtue. We have repeatedly heard these men, in their pleadings before a court and jury, indulge in a strain of coarse, vulgar, impudent, personal attack on parties not even directly implicated in the case, which could have been properly chastised only by means of a horsewhip. And then the manner in which this class of practitioners browbeat, and insult, and wound witnesses, is shameful and brutal in the extreme. Almost the first remark which every intelligent traveller makes on visiting one of our courts of law, is, "What license you do allow your lawyers!" The stranger is astounded. He can scarcely believe it possible that a court will suffer its own character to be disgraced—its dignity trampled upon—the rights of individuals to be ruthlessly violated—public decency outraged, by the toleration of such beastly language on the part of counsel in their speeches, and in their cross-examination of witnesses. Talk of the scurrility and personalities of the press! Why, we have heard lawyers abuse parties and witnesses before our courts, in terms of invective, such as we have never seen in the columns of the most reckless and violent partisan print; and Heaven knows this is indeed about the lowest standard of comparison to which, spoken or written, Billingsgate can be reduced.

But let us now pass on to the third class—those who are pettifoggers, being neither lawyers nor gentlemen. This is by far the largest class of all. It comprises the shoals of sharks about the "Tombs"—the harpies that hang about the Marine Court (one of their greatest harvest fields, by the bye)—the smaller fry that swarm around the "ward courts"—and the innumerable herds scattered all over the city. Probably one-half of the litigation in the city, and one-third of the vice and crime, owe their origin to these pettifoggers. The plots and contrivances are innumerable by which they manage to continue their loafing and disreputable existence. Their rapacity and demoralization, as exhibited around the "Tombs," are almost incredible, and must be made the subject of another article. To one of their schemes only we have space at present to advert. It is quite characteristic. It is the getting up of prosecutions against the newspapers for libel. If a trifling allusion appears in a report of criminal or any other proceedings at the courts, these pettifoggers go to work, hunt up the individual in question, and persuade him that the publication is a gross and malicious libel.

Such is a brief and cursory view of the natural history of the New York bar. The subject is ample, interesting, and important in the highest degree. We have merely glanced at it. Enough has been said, however, to shew that a great reform is wanted in the legal profession. How it can be effected we are at a loss to know, unless it be through the agency of the good lawyers who are gentlemen, on the bench and at the bar. Will we appeal in vain to them for the purification of their "order"—for the expulsion from it of those elements of vulgarity, dishonesty, and crime, which have so sadly disfigured, weakened, and degraded that profession which should be the pure, honourable, and irreproachable minister of justice, order, and morality?

WHITEHALL, Dec. 18, 1844.—The Queen has been pleased, by and with the advice of her Privy Council, to appoint the Most Reverend Father in God John George Archbishop of Armagh and Primate of all Ireland, the Most Reverend Father in God Richard Archbishop of Dublin, the Most Reverend Archbishop William Crolly, the Most Reverend Archbishop Daniel Murray, the Right Hon. John Hely Earl of Donoughmore, K.P., the Right Rev. Bishop Cornelius Denvir, the Hon. and Very Rev. Henry Pakenham, Dean of St. Patrick's, Dublin, the Right Hon. Sir Patrick Bellew, Bart., the Right Hon. Anthony Richard Blake, and the Rev. Dr. Pooley Shouldham Henry, to be Commissioners of Charitable Donations and Bequests for Ireland.

WHITEHALL, Dec. 26.—The Queen has been pleased to direct letters patent to be passed under the great Seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto Chevalier Robert Schomburgh, recently at the head of the expedition for exploring the boundaries of the colony of British Guiana.

CABINET COUNCIL.—We understand that the first Cabinet Council previous to the meeting of Parliament is appointed for the 9th instant. Sir Robert Peel is expected to come to town, from Drayton Manor, by the 7th of the month.

The Lord Chancellor has been pleased to appoint William Norris, of Newport, in the Isle of Wight, gent. and George Edward Sharlapd, of Gravesend, in the county of Kent, to be Masters Extraordinary in the Hight Court of Chancery.

The Chancellorship of the diocese of Norwich has been conferred by the bishop on Charles Evans, Esq. M.A. of Pembroke College, Cambridge, barrister-at-law.

CHANGE OF SOLICITOR IN A CHANCERY SUIT.—By the 18th order of 26th Oct. 1842, a solicitor cannot be changed without an order of court on motion or petition, and which is made as a matter of course. A question has arisen, whether on the introduction into a firm of a new partner it is requisite to obtain this order. We understand the Master of the Rolls has decided that, in the addition merely of a new partner, no order is necessary; but where the partnership is dissolved an order must be obtained. On the other hand, the Vice-Chancellor of England, as we are informed, holds that any change whatever, even the introduction of the son of the present solicitor as a partner with his father, renders an order necessary. Presuming the object of the order to be (as it is at common law) to secure the solicitor from being dismissed without notice, we conceive that the rule laid down by the Master of the Rolls is the correct one. Where a new partner joins the solicitors there can be no occasion for notice.—*Legal Observer.*

SINECURES IN THE ECCLESIASTICAL COURTS.—Here are a few more select cases of Registrars of Ecclesiastical Courts, to be added to the jobberies which we have already extracted from Dr. Elphinstone's Parliamentary returns:—

	Net Income. £	s.	d.
Consistory Court of Durham—Hon. and Rev. Lowther John Barrington, registrar	600	0	0
Archdeaconry Court of Cornwall—Right Rev. Lord Bishop of Sodor and Man, registrar	350	0	0
Archdeaconry Court of Exeter—Sir Henry Rycroft, knight, registrar . .	130	0	0
Commissary Court of London—Right Hon. W. Sturges Bourne, registrar .	39	10	3
Consistory Court of Oxford—Right Hon. W. Sturges Bourne, registrar . .	60	1	3

All sinecurists! Is it not a scandal that persons like these, and like Lord Canterbury's sons, should be receiving fees for which they do no work?—*Chronicle.*

The Attorney-General and Lady Follett and family have arrived at Rome, from a tour in Sardinia, Tuscany, &c. The hon. and learned gentleman is in rather improved health, and is not expected to return to England for five or six weeks.

OCCUPATION OF THE NEW ROYAL EXCHANGE BY THE MERCHANTS.—This interesting event occurred on Wednesday the 1st inst. and the muster on 'Change, though the day was not a post day, was very considerable. In consequence of the intended occupation all the avenues were completely opened. The only arrangement we noticed which had any novelty about it, was that by which the advertisements and announcements of the sailing of ships, which used to be affixed generally to the walls of the old Exchange, are now pasted upon neat boards, which are hung up in the recesses of the merchants' area. These boards are of one size and character, and seem calculated to prevent the disfigurement which the old system involved. The temporary exchange in the court-yard of the Excise-office will soon be dismantled of its roof and other fittings, and we perceive, by an announcement affixed to the posts supporting the roof, that the materials are to be sold, and that the proceeds will be devoted to the principal city charities. The merchants generally seemed to be perfectly satisfied with their new quarters, and quite ready to join in the general congratulations to Mr. Tite, the architect, on the very successful termination of his labours. Some of the merchants still seem to think that all the exchange ought to have been roofed, like the Bourse at Paris; but, as we have before noticed, that is a question the merchants determined for themselves by a large majority before the committee took any step in the matter, and the common opinion appears to be that the majority were right; for though a roofed hall might be convenient at this time of the year, in the summer, and particularly in wet weather, the heat and steam would be insufferable. Some of the merchants complained of draughts of cold air, an evil which, we are informed, it is intended to remedy by the introduction of inner doors, should the inconvenience be found to be important.

THE NEW METROPOLITAN BUILDINGS ACT.—On Wednesday this important Act came into operation. There are 120 clauses in the new law and 12 schedules. The various objects specified in the preamble are worked out in the numerous provisions and schedules annexed. The officers mentioned in the Act have been appointed since the 1st of September last by a special provision. There are two official referees named by the Government, and surveyors, with their districts assigned, have been nominated by the magistracy of the city and the several localities comprised in the jurisdiction of the metropolis. The act extends on the north side of the Thames from Fulham to Shadwell, and on the south side of the river from Woolwich to Wandsworth, including the other suburban districts. The Legislature by the 4th section anticipated that building speculations would be carried on beyond the prescribed limits of the statute, in order to evade the law, and therefore gave power to her Majesty in Council to extend the operation of the same to any parts within twelve miles of Charing-cross. It is required that notice of such intention to consider the limits shall be given at least one month prior in the *London Gazette*. Numerous buildings have been lately commenced to prevent the immediate operation of the law, as by the construction clause it is declared that the term "already built," used in reference to buildings, is to apply to buildings built before the 1st of January inst. or "commenced before that day," and covered in and rendered fit for use within twelve months thereafter; and the term "hereafter to be built" to apply to all buildings to be built or "commenced after that period, or which being commenced shall not be covered in within twelve months." Notice must now be given of all buildings to be commenced to the registrar-general appointed, under certain penalties; and all buildings must be erected according to the directions of the act, otherwise the workmen as well as the owners, will be subjected to penalties, and in default of payment to imprisonment. The act has reference to the future drainage of houses, and it is declared that the drainage has been so bad as to endanger the health of the inhabitants. The width of streets and alleys is to be increased, in order to obtain a proper ventilation, and to prevent the risk of fire from the close contiguity of houses opposite. Another portion of the new law relates to dwellings for the poor. After a certain period cellars, or lower rooms, are not to be used unless altered to admit proper drainage and ventilation. Ruinous and dangerous buildings can now be repaired or pulled down by parish officers, after notice to the owners, and proceedings adopted to recover the expenses incurred either from the owner or the landlord. The other portion has reference to the officers to carry the law into force, to consolidate the provisions, and to superintend the erection of buildings.

DISBARRING FOR MALPRACTICE.—The Benchers of Gray's Inn have disbarred a member, for practising both as counsel and attorney, and he has appealed to the Judges.

LEICESTER.—A petition for the repeal of the Certificate Duty has been signed by the whole of the Profession in Leicester.

THE QUEEN'S PROCTOR.—Much anxiety prevails to ascertain if the appointment of Queen's Proctor has been filled up in the room of the late Iltid Nicholl, esq. We have been informed that the delay is to be attributed to some important alterations about to be introduced in the emoluments of that office, which were of a very lucrative nature, emanating from the droits of Admiralty, and estates forfeited to the Crown. The present session of the Admiralty Courts is likely to terminate without bringing to issue the various proceedings entrusted to the Queen's Proctor, owing to Mr. Nicholl's decease.

LITIGIOUS MANIA.—ROME, Dec. 15.—The most distinguished litigant this world ever beheld died within the last week in this city—the Prince Francesco di Massino. That he should have attained the good old age of 71 years will surprise all who have known the anxiety and wear and tear of a single lawsuit, more especially if it be in Chancery, when it is known that this man of iron nerve had at the day of his death not less than 700 law processes pending in the different courts and tribunals of the Roman states, and that he had attended to all, or nearly all, of them personally, as far as he was permitted so to do by our laws, which admit no oral proceedings, but confine all to paper. As might naturally be expected, most of these lawsuits were for bagatelles and mere trifles, and in their prosecution the prince had wasted a considerable patrimony through law expenses. His heirs, who are all collateral, have with one consent resolved to renounce the whole of these numerous actions, and not to risk the sacrifice of the little left upon any prospective advantages, convinced that even should the decisions in many instances prove in their favour, the result on the aggregate must be a loss.

STAMP OFFICE REDUCTIONS.—A circular has issued from the Stamp Office to the district distributors and sub-distributors directing a reduction in the charges for all blank forms for documents to which stamps are attached, to take place from and after the 5th of Jan. 1845. These reductions will be a source of great saving to professional and commercial men. For parchment, such skins as are now charged at 8d. will henceforth be 6d.; those at 1s. 8d. 1s.; those at 2s. 1s. 6d.; those at 4s. 3s. 2d.; and the others in proportion. For paper, folio post is reduced from [illegible] to 1s. 6d. and 1s. according to quality; demy paper from 2d. to ¾d. per sheet; and bonds, bills of lading, marriage licences, transfers, and protests, from [illegible] to ¾d. and ½d per sheet.

The Vice-Chancellors' New Courts.—It will be recollected that a short time since a meeting of the leading counsel practising at the Chancery, Rolls, and Vice-Chancellors' Courts was held for the purpose of devising some plan to lessen the evil and inconvenience of the separation of the Vice-Chancellors' Courts from the other equity judges, in Westminster-hall, which has taken place since the creation of the two new Vice-Chancellors. A communication was made to the Lord Chancellor on the subject; the consequence is, that two temporary courts are being erected in Palace-yard, close to the entrance of Westminster-hall, which are in a very forward state, and will probably be finished by next term. This arrangement will get rid of a great deal of the evil, though it can hardly be a permanent one, as there will be means of communication to the other courts from these.

A Pardon in the United States.—The public ear has become familiar with reports of the exercising of the pardoning power by Governor Porter, of Pennsylvania. The latest instance in which his Excellency has interposed the executive clemency in favour of a rogue is furnished by the *Shippensburgh Weekly News*. The story is sufficiently ludicrous to excite a smile, but such gross perversions of delegated authority on the part of a high functionary are too serious a matter for laughter. It seems that one John Piper, a notorious Locofoco blackguard, who had taken a very active part in the late election, had committed an assault and battery upon the editor of the paper above-mentioned, for which he had been indicted by the grand jury. The trial is thus reported:—

Commonwealth v. *John Piper, indicted for an Assault.* Called up by the Court.

Court.—call a jury in the case of "The Commonwealth v. John Piper."

Sam Hammill.—You needn't call a jury.

Prosecuting Attorney.—Will there be a submission?

Sam Hammill (with a grinning smile and quivering lip).—No, there won't.

Prosecuting Attorney.—Well.

Sam Hammill.—If the Court please, I should like to have an opportunity to make a speech in this case, and lash the dastardly coward that brought it into court.

Court.—Mr. Hammill, we don't want to hear—

Sam Hammill.—I have here a previous pardon (unfolding the paper) from Governor Porter (handing the pardon to the Court), got on the petition of 300 good democrats of Cumberland county, and under the broad seal, too. (This was said as Sam sat down with a most hyena grin.)

The Court was astounded; the bar woke up from its slumbers; jurors, witnesses, and spectators, all were surprised at this new and speedy mode of disposing of criminal cases. And then the means by which the previous pardon had been obtained, the petition of 300 good democrats of Cumberland county! Verily, verily, democracy is not what we took it to be: we knew it to be bad enough, in all conscience, but this new movement "caps the climax."—*Boston paper.*

To Readers and Correspondents.

A Subscriber's *suggestion for publishing the Statutes in Par , similar to those of the Verulam Reports, is excelle nt, but will it be approved by our subscribers?*

A Solicitor (Taunton).—*Thanks, but the letter is too long. The case will soon be judicially decided.*

J. F. (Dursley) *approves a scale of duty graduated by profits.*

C. and F. F. (Wareham) *shall be considered.*

J. D. F. *has been forwarded to the Reporter.*

Thos. A. Davidson, Newcast' n Tyne, and Richard Caparn, Newark.—*We are obliged by the communications forwarded. They are placed in the hands of the gentleman to whom is entrusted the Review of Magisterial Law, and will receive notice at his hands in the continuation of the summary next week.*

Y. Z.—*In our next number.*

Many communications are unavoidably postponed.

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THE LAW TIMES.

SATURDAY, JANUARY 4, 1845.

TO OUR READERS.

At the commencement of this Journal we pledged ourselves to adopt every practicable improvement experience or friends might suggest. We may appeal with confidence to our successive volumes to shew how we have redeemed that pledge. In the same spirit, and desirous of making the Law Times every thing that the British Lawyer could desire, we have to announce further improvements.

The growing importance of parochial law, the changes which threaten, and the decisions which continually alter and complicate the Law of Settlement and Removal more especially, have induced us to secure such further assistance in the department of the Law Times entitled the Magistrate, as will enable us to afford to the Profession, to the Magistrates, and to Parish Officers, the benefit of early, clear, and correct expositions, such as (from the known ability of our contributors) we believe they will be unable elsewhere to obtain, of all practical points of novelty or difficulty, and of all new laws and rules as they arise in that important sphere of business. Although we shall steadily adhere to our established rule of answering no legal questions, believing the practice to be altogether unprofessional, we shall of course feel obliged by the communication of real difficulties that occur to practitioners in the application of any branch of Parochial Law, the exposition of which may be of general interest or utility.

Arrangements are in progress for a similar current commentary upon General Law.

The Reviews of Cases in the Common Law Courts, which we have given at the close of each Term, have been found so extremely useful to our readers, and have received such universal approval, that we are desirous of making them a complete summary of decisions of incalculable value to the practitioner and the student. We have therefore arranged for a similar review of the cases in Equity and Bankruptcy. In the first instance, as will be seen by the Summary in this number, we bring up arrears by a review of all the cases reported during the year 1844; afterwards we shall present a quarterly or half-yearly review, as convenience may determine.

It gives us great pleasure to learn that the costly improvement, adopted with the last Term, of publishing, within a few days after their delivery, and months before they can be procured elsewhere, *verbatim* reports of all the written judgments, has given unqualified satisfaction to the Profession.

Thus does the Law Times seek to prove its gratitude to the Profession by making itself continually more worthy of the proud position to which they have elevated it.

IMPRISONMENT FOR DEBT.

Every passing day makes more manifest the exceeding mischievousness of Lord Brougham's notable Act abolishing imprisonment for debts under 20*l.* It is operating practically as a bill of indemnity to debtors—as a confiscation of the property of creditors. It rewards fraud and ruins honesty. And the class upon whom the mischief falls the most heavily is precisely that the least able to bear it—the class of smaller tradesmen, who find themselves suddenly deprived of their property by a thoughtless act of the legislature, too easily led by a statesman whose spite is more potent than his patriotism. Upon them the measure has operated to abolish at one fell swoop all their book debts, and they find themselves reduced to poverty, while their debtors are triumphing in a law that is to them a receipt in full of all demands.

Probably there is not one of our readers who could not relate, as coming within his own experience, half a dozen instances of the noxious effects of this inconsiderate enactment. They must know how useless it is now to apply for a debt of less than 20*l.* The debtor snaps his fingers at the lawyer, and laughs at his creditor. A writ is as little regarded as a letter. It will cost some pounds to sign judgment, and then the plaintiff is not a step nearer to the recovery of his debt than before, and he has lost his costs into the bargain.

One instance that has chanced to come in a very unpleasing shape under our personal knowledge will shew the operation of Lord Brougham's Act.

A man was sued for 19*l.* 10*s.* Judgment was obtained. The defendant called upon the plaintiff's attorney and offered 10*l.* in full for debt and costs. He was known to be in receipt of a good income, and the offer was indignantly rejected. "Well," he said, "you can't hurt me. You must take that or nothing. Lord Brougham's Act *protects me!* I live in a ready furnished house, and you can't touch my person."

The defendant is the owner of a copyright from which he receives a large income. But his publishers are the *ostensible* holders of this property, and the unlucky creditor is thus wholly without the means of recovering 19*l.* from a man worth 500*l.* per annum.

Can a law that works such a wrong as this be permitted to endure for a month after Parliament meets? Will the industrious and honest silently permit themselves to be robbed of the money due to them? Will Parliament, now that the baneful operation of the law is so plainly proved, refuse to modify and amend it? We believe that there must and will be a change; and it may not be a waste of time, before the formal discussion begins, to direct the thoughts of senators and lawyers to the principle that should govern legislation, and to offer some practical suggestions, prompted by experience.

We are not opposed to the abolition of imprisonment for debt; on the contrary, we rather incline to favour it. But we are averse to any partial measure; we would abolish it entirely, or not at all.

But we would not dream of abolishing it without producing a substitute; and the mischief of Lord Brougham's Act lies in this, that it deprived the creditor of one remedy, without giving him a better one.

The principle of imprisonment for debt is essentially bad. If the debtor have property, the law is faulty which does not provide effectual means for the appropriation of that property for the benefit of his creditors. If he have no property, he should be required to render a strict account, either wherefore he had incurred a debt, wanting the means to pay it; or, having once possessed the means, what have become of them?

These principles will readily indicate what should be the law of debtor and creditor.

When a man, after judgment obtained against him for a debt, does not pay it, and no property can be found upon which it can be levied, on application to the Commissioner of Bankrupts a summons should forthwith issue, requiring him to appear and account for his non-payment. On his neglecting or refusing to appear, a warrant should issue for his apprehension, and upon his appearance or arrest, he should thenceforth be deemed in the custody of *the law*, until he shall have purged himself by payment, or by shewing good cause why he is unable to pay, or by making the best provision in his power for future payment.

Being thus in the custody, as it were, of *the law* (which contemplates only justice, instead of, as now, in that of the creditor, who may be, and frequently is, actuated by something like a feeling of revenge), the debtor should be required to render a strict account, not only of what property he has in possession or in prospect, but what property he has possessed, and how it was expended; in fact, he should be required, as the condition of his release, to shew that the debt was fairly contracted, with reasonable probability of his being able to pay it, and what were the circumstances that prevented his doing so. Upon a review of the whole case, the commissioner should be empowered to deal with it after one or the other of the following methods.

If the debtor have property of any kind in possession or reversion, it should pass by the order of the Court to the Official Assignees, to be applied for the benefit of creditors.

If there be no property, or it be insufficient to pay the debts, the Court should determine whether those debts were honestly and fairly contracted; if such should be its opinion, the Court should liberate the debtor from his existing liabilities, subject, of course, to some charge upon after-acquired property beyond a certain amount. If the Court should be of opinion that the debts had been fraudulently contracted, without reasonable prospect of payment, or that the debtor had put his creditors to unnecessary cost in defending actions for their recovery, or had practised any concealment of property, or any thing in the nature of *fraud*, the Court should have the power of imprisonment for a limited term, but to be regulated according to the degree of crime; such imprisonment not to be deemed an imprisonment for the *debt*, but imprisonment for the *fraud*.

We submit to the calm deliberation of our readers this rude outline of a scheme that has suggested itself to our mind, while considering the mischiefs of the present system, and how they might be remedied. It is the result of considerable *practical* experience in the law of debtor and creditor. We believe that it would be found to meet all the difficulties that now beset the subject. It would entirely abolish imprisonment for debt, but only by substituting for it effective remedies against the property, if any there be, and severe but just punishment of fraud in the contraction of a debt, or for unfair dealing with property after it is contracted, or for attempts to evade it when sued for. Lord Cottenham's measure was, in its main features, something like that propounded. It was incomparably superior in all its provisions to the miserable substitute which Lord Brougham prevailed upon the Legislature to accept. The mischiefs of the present system are palpable; there is an urgent necessity for some change; in that change the recommendations of the Profession cannot but have great weight. We ask its members maturely to consider the plan we have outlined, to point out its defects, to suggest improvements, to discuss it in their Law Societies, and by petitions to urge it upon the Parliament, which, after the experience of this last achievement of Lord Brougham, may not again be so ready to accept, without examination, measures framed without reflection, carried with indecent haste, and in their results proving a boon only to rogues, but a curse to the honest and industrious.

THE WINTER ASSIZE REFORM OF THE QUARTER SESSIONS.

The *Yorkshire Gazette* of Saturday, the 21st ult. thus commented upon a suggestion of the Law Times:—

We believe that we were the first journalists who advocated the establishment of a Winter Assize and Gaol Delivery. There were many difficulties to encounter in forcing this subject on the attention of the authorities, and not the least was the opposition which such a project received from the judges and the bar. To the untiring energy and perseverance of Barnard Hague, esq. Chairman of the Visiting Justices of York Castle, aided by his colleagues, we feel that the country is indebted for the winter gaol deliveries, which, we are of opinion, ought to be permanent and general throughout the United Kingdom. The Legal Profession, by whom the Winter Assizes are considered very objectionable, are continually suggesting some scheme to supersede them. Mr. Baron Alderson repeated last week at Taunton the suggestion which he threw out at Winchester for avoiding a Winter Assize by a new regulation of the terms, and appointing the regular Assizes at equal intervals. This no doubt would be an improvement on the old system so far as it goes; but we contend that a period of four months is a sufficiently lengthened term for any man to be immured in a prison on a charge for which he may be found not guilty. And on this ground we submit that any little inconvenience occasioned to the judges, by having to make three circuits in the year instead of two, ought to be cheerfully submitted to. The facilities of travelling are such that one-half the harass and fatigue of going circuits is now removed; the expense of travelling is also greatly diminished, and we had melancholy proof of the necessity of a third assize, in our own county last week, when a second judge had to be brought down to assist in the delivery of the gaol.

The Law Times, a journal we believe much under the control of members of the Bar, has for some months been advocating a reform in the Courts of Quarter Sessions, by the appointment of Stipendiary Chairmen, and then transferring to those Courts the business of our County Courts and the minor class of cases which are now tried before the judges in the Courts of Assize. This, it is contended by our contemporary, would at once relieve the crowded state of our goals and ease the judges of a large share of labour, without any injury to the public service. Now we have very great objection to this scheme, and would much rather that, if it be necessary, the number of judges should be increased. We have no notion of some sixty or seventy second-rate men being saddled on the country at salaries of 1,000*l* or 1,500*l*. each, to supersede our county magistrates. No doubt the dispensing of the patronage would be an agreeable duty for the ministry of the day—no doubt briefless barristers would gladly accept such snug appointments for life. But we are disinclined to the scheme for many reasons. We object on account of the excessive amount of patronage it would confer. We object because we consider that the justices of the peace are sufficiently qualified for the discharge of their functions without being subject to the interposition of a stipendiary. We object because of the immense annual charge, probably little short of 100,000*l*. which such appointments would impose upon the public exchequer. We object because we believe that the administration of justice before these stipendiary chairmen would not be satisfactory to the public at large. We again repeat that no personal inconvenience to the judges or to the bar ought to be held as a sufficient reason for not holding three assizes in the year. The public service requires that such should be the case—the cost of prosecutions (increased as the are by a protracted assize) requires that such should be the case—a due regard to the interests of the accused requires that such should be the case—the importance of following up crime by speedy punishment is also an important argument—and we cannot admit that these weighty public considerations should be overcome to oblige any indiduals, however high their station or exalted their profession.

A few words in reply, or rather in explanation.

In the first place, we do not contemplate "sixty or seventy second-rate men being saddled upon the country, at 1,000*l*. or 1,500*l*. a year each." We would divide the country into convenient circuits, with, as now, itinerant judges, varying the times for holding the Quarter Sessions in each county. Ten or twelve would be ample for the purpose. This at once removes the objections of cost and patronage.

Our contemporary considers that justices of the peace are sufficiently qualified for the discharge of their functions. It is certain, then, that he knows nothing of Quarter Sessions law; for if he ask any person who does know, he will find a very different and unanimous opinion upon that.

Lastly, our contemporary thinks that the decisions of lawyer judges would not be satisfactory to the public. Perhaps they might not be *so* satisfactory as a trial by the judges of the higher courts. But that is not the point. The question to be determined is, whether they would not be *more* satisfactory than the decisions of gentlemen who are *not* lawyers, and who are often swayed (unconsciously) by local feelings.

The best judges cannot by any contrivance be had, without incurring proportionate costs. But may not judges be had of *sufficient* ability and experience for the discharge of the ordinary business of an inferior court, subject to an appeal to a superior court? Upon the same principle might our contemporary object to magistrates of any kind, or to the jurisdictions of justices in petty sessions, or to local courts for the recovery of small debts, because the judges there cannot give so much satisfaction as the judges of the Queen's Bench.

And our Yorkshire contemporary may be assured, that it is not the *convenience* of judges, bar, and attornies that we are looking to in this matter, but the convenience of suitors, the legal business of the country being in fact suspended during the interregnum of the winter circuit, adding to the present accumulation of arrears, and rendering it hopeless for the Courts hereafter to keep pace with the work that crowds upon them.

We admit the necessity for more frequent trials of prisoners; we contend only that the object may be more readily accomplished by other means than by a winter circuit.

ATTORNEYS AT QUARTER SESSIONS.

A fortnight ago we copied from a newspaper a statement that the Chairman at the Quarter Sessions at Lichfield had announced, in reply to an application made at a former sessions, that he had consulted Lord Denman upon the subject, and that it was the opinion of the Chief Justice that Attorneys might practise as advocates at Quarter Sessions, but that the Bar was entitled to *pre-audience*.

We did not make it the immediate subject of a notice, for two reasons. In the first place, we hoped to receive the report in a more authentic shape; and, secondly, we were unable to satisfy ourselves of the meaning of the term *pre-audience*, as employed in the newspaper.

And, though we have instituted inquiries, we are still unable to gratify the curiosity of our readers, either as to the precise facts of the occurrence, or the sense in which the doubtful term was employed.

Of the right of Attorneys to practise as advocates where no Bar attends, there cannot be a doubt; and in Cornwall the business of the Quarter Sessions is wholly conducted by the Attorneys.

But on reference to the authorities, it appears to be still undecided whether Attorneys can be heard at Quarter Sessions if there be Barristers present. In Talfourd's edition of *Dickinson's Quarter Sessions*, the subject is thus treated:

The advocates at sessions, who, by the practice of the court, are entitled to take upon them the causes of others, and to prosecute for the Crown, are barristers and attorneys. At sessions where a sufficient number of barristers attend it is usual to give them sole audience, and the attorneys are consequently not heard in their presence. At sessions where members of the bar do not attend, as in some distant counties and many boroughs, it is usual to hear the attorneys as advocates; and though it may be doubted whether, in strictness, they are entitled to address the jury when prosecuting the indictments, it is customary, and certainly convenient, to allow them that privilege. In cases where counsel have not been accustomed to attend, but two or more barristers wish to

do so, it is usual for them to intimate their desire to the chairman or recorder, and to request that they may have pre-audience; and if this request is granted, the attorneys cannot be afterwards heard in their presence, unless all who attend should be retained on one side. How far a barrister may, merely as such, *insist*, without the sanction of the bench, on his right of pre-audience in courts of sessions where attorneys alone have been accustomed to practise, is a question of some difficulty; but it is very unlikely, it may be hoped, to be raised in practice.

But it may be a question, if they have the right, whether it would be desirable to exercise it. That not a few attorneys would be perfectly competent to the duties of advocates will certainly not be denied by any person acquainted with the Profession. But that is not the only consideration. Custom and the habits, or if it please so to term them, the prejudices of society, not only at home but in every civilised country, have distinguished the functions of the attorney and the advocate, and appropriated the duties of each to distinct classes. It must, we think, be presumed that a practice prevailing so universally, which has been adopted in ancient as in modern times, and alike under republics, monarchies, and despotisms, has in it some advantages taught by experience, or consonant with the natural good sense which in matters of business all men are wont to exhibit. It would not be difficult to point out those advantages, though their exposition would be too long for our present purposes; but they will readily suggest themselves to the experienced and reflecting. The division of labour is found to be as advantageous in intellectual as in mechanical employments, and even if all the Courts were opened to attorneys to-morrow, we believe the result would be that in a few months there would be a complete classification again; those of the attorneys, who possessed the natural and acquired capacities for the duties, would become advocates, and practically cease to be attorneys, and the rest would withdraw from a field, in which they could reap no honour, to the offices where other qualifications have fitted them, to win both honour and profit. If such were to be the effect, and we think our readers will agree with us that precisely so it would be, the attorneys as a body would benefit nothing by the change, and the individuals among them, who had become advocates, would in fact be but barristers without the responsibilities of the bar. And there is no reason why, if a competent attorney desires to become an advocate, he should not do so, through the forms which have been appointed for admission to that post,—forms which, however imperfect for their end, were wisely intended, and do in some measure subserve the very important purpose of throwing around the profession of an advocate a respect which is essential to the maintenance of that independence and influence which are the best guarantees for the liberty of the subject, and which can only be commanded by the union of the lawyer, the scholar, and the gentleman. They who combine these qualifications, and desire to become advocates, may advance to the position at which they aim in the regular course; and we presume that none who valued the reputation of either branch of the profession would desire that persons wanting these capacities should appear as advocates, whether they be attorneys or barristers.

Again, there is, from habit, it may be, a prejudice in the public in favour of the *regular* practitioners of all kinds. The dictum of an English M.D. carries with it more weight than that of a foreign purchased title, even though the holder of the latter may be in fact a more learned man than the former. And so it would be in the courts. We doubt whether clients would not prefer to be represented by a wig; or would be satisfied by the advocacy of their attorney, however able.

Moreover, an attorney could rarely do his duty in both capacities. It is his business to [illegible] the case, to look to his witnesses, to aid [illegible] his counsel with suggestions, to procure evidence or documents suddenly required. If acting as an advocate in his own cause, he must entirely neglect this portion of his duty; and, as we have said before, if he appear as advocate for another, he is, in fact, nothing more than a barrister without a wig, and there is no hardship in requiring that before he undertakes the duties of a barrister he shall be formally admitted to practise them as others have been.

For these reasons, and many more to which we may, perhaps, refer on a future opportunity, we think the dictum of Lord Denman, if correctly reported, will be of little practical importance to attorneys, unless it be to enable them to make mere motions of course, which we really see no reason why they should not be allowed so to do. It is, as in the case put by our correspondent last week, a hardship, that an application merely formal cannot be made without a fee to counsel. But beyond this we doubt the expediency of attorneys entering into competition with the Bar as Advocates; it would benefit neither branch of the Profession; probably it would injure both.

And let us assure our readers that, however they may question the disinterestedness of our judgment, it is, in truth, a candid, unbiassed opinion, based upon considerable experience and mature reflection, undertaken with no other object than to discharge faithfully the duty we owe to the Profession—to counsel that only which is for the common good, without the very slightest reference to personal, private, or selfish interests. We trust that the whole career of the Law Times has satisfied its subscribers, that, though sometimes erring in its views, it is *always* honest.

VERULAM SOCIETY.

Owing to a misunderstanding, the details of which we need not explain, we have been compelled to re-compose some pages of the second number of *Practice Cases*, which has thrown back the publication for a week. We hope it will issue before next Saturday.

The 5th number of *Magistrates' Cases* was duly published on Monday: and the 6th, completing the cases of last Term, is in the press.

The 7th number of *Real Property Cases*, the 2nd of *Registration Appeals*, and the 3rd of *Criminal Law Cases*, are ready for the press.

The following circular will be forwarded by post to the members of the society during the next week, and we shall be obliged by their prompt replies, as the works there announced should, if approved by them, be put in hand without delay.

Sir,—The following works are proposed for the next publications of the Verulam Society. As they cannot be commenced until it is ascertained if sufficient of the members will order them to meet the cost, you will oblige by setting your initials against such of them as you desire to order, signing the form and returning it by an early post. As the price of each work must be determined both by its length and the number who take it, the precise sum cannot be stated; but it will be no more than will repay the cost of writing and printing.—I am, Sir, yours faithfully,

John Crockford, Publisher.

Verulam Society Offices, 29, Essex-street, Strand, Jan. 1, 1845.

P.S. The following Practical Reports are now issued for the Society, in numbers stamped for transmission by post, at 1s. 1d. each, or in parts containing four numbers at 4s. Each Report is authenticated by the Reporter:—

Real Property and Conveyancing Cases in all the Courts—Part I. and Nos. 5 and 6.
Magistrates' Cases—Part I. and No. 6.
Practice Cases in the Courts of Common Law—No. 1.
Criminal Law Cases—Nos. 1 and 2.
Registration Appeal Cases—No. 1.

WORKS PROPOSED FOR PUBLICATION FOR THE VERULAM SOCIETY.

I. Practical Forms and Precedents, for Office use, with Notes, &c. collected from authorized sources, or contributed by the Profession from those in actual employ, comprising Common Law, Equity, Conveyancing, and Miscellaneous Forms. (To appear in numbers, stamped, precisely similar to the Practical Reports, price 1s. 1d. each.)

II. The Year Book.—An Annual Index to all the Law made and decided during the year, and a Digest of the Reports and Statutes, on a new and convenient plan (in numbers, stamped, similar to the Practical Reports, price 1s. 1d. each).

III. A Legal Cyclopædia, on a useful and comprehensive plan, to comprise all the miscellaneous information to which the practitioner and student has occasion to refer in reading and practice. Each article to be authenticated by the writer (In parts, price 2s. 6d. each.)

IV. A series of three or four small and inexpensive volumes, each to contain a collection of the cases decided during the last ten or twelve years on the most important branches of the Law, arranged under convenient headings, with practical commentary, such as *Conveyancing, Practice, Contracts, Mercantile Law, &c.* (N.B. These will appear at intervals, and the price proportioned to the size of each.)

The following new members have been enrolled since our last report:—

Church, Francis, Hungerford
Viner, Robert, Bath
Bolton, Thomas, Wolverhampton
Steggall, Frederick Charles, Weymouth
Colman, Samuel, Norwich
Horne, R. H. Staines.

PRACTICE—PLEADING—EVIDENCE.

By Professor Carey.

Delivered at University College, London.

LECTURE XV.

The action at common law now draws to a close. We have considered all the forms of action, and the cases in which each set of forms may be brought; the proceedings in personal actions, the commencement by writ of summons, and the subsequent proceedings in order to secure appearance; then, the appearance having been effected, that which ensues upon it, the mutual altercations of the parties, the pleadings, till they either agree on the facts that raise the point of law disputed, or they raise a question of controverted fact, asserted on the one hand, and denied on the other. When that is the case, the question of fact disputed is for the decision of the jury; the case is sent from the court above to the court of Nisi Prius, in order to the investigation there to be made whether the assertion on the one hand or the negation on the other is supported by fact. Upon that investigation the result of the case depends.

There are certain cases in which the investigation may be subject to the opinion of the Court above, or may be subject to any subsequent direction by the Court above. Those cases we have considered. The question is, a fact having been rested on by one or the other, what is to ensue? Thereupon ensues the judgment of the Court. If the fact is as the plaintiff has asserted, he is, in point of law, entitled to the judgment of the Court; if the fact is as the defendant has asserted, then he is entitled to the judgment of the Court. The party that succeeds at Nisi Prius is entitled to judgment; and the other party may make to the Court any of the applications under consideration in the last lecture. He may, if leave is reserved, move to enter a verdict, or move to enter a nonsuit; he may move for a new trial, or in arrest of judgment; for judgment *non obstante veredicto*, for a *venire de novo*, or a repleader, according to the circumstances of the case. If the trial was in term time, the unsuccessful party has four days from the trial; if in vacation, he has the first four days of the next term; and after the expiration of the four days without any application made, the party to whom the verdict was given may sign judgment. (*Thomas* v. *Jones*. 4 M. & W. 28.) The ancient practice was slightly different from that. If any application is made in arrest of judgment, or for a new trial, or the like, judgment cannot be signed till that application has been disposed of; if not, it may be signed either at the end of the four days after the trial, or at the end of the four days after the beginning of term; still the length of time that elapses between the day of trial and the four days of next term is such as to occasion great inconvenience. Take, for instance, the summer assizes, which take place after Trinity Term in July and August, the four days of next Term are not till the end of the first week in November; there is, therefore, from August to November, a long interval; at all events, this delays the successful party in recovering what is due to him, and in many cases enables the unsuc-

cessful party to evade the effect of the execution altogether—if he can carry away his property in the meantime, he has the long vacation to do it in. The 1 Wm. 4, c. 7, was passed to remedy this, and execution in a month is granted.

As a necessary appendage to judgment, we proceed to consider costs. At common law they were not necessarily appended to the judgment; but, by the operation of several statutes, the costs of the action are now given, as a general rule, to the successful party. The King neither gives nor pays costs, that part of the alternative being contrary to the prerogative of, or inconsistent with, the dignity of the Crown; but our Courts do not pay the same respect to the prerogative or the dignity of any monarch but our own. Thus, in a late case, in which the Emperor of Brazil brought an action on a commercial transaction in which he was engaged, it was not only admitted that he would be liable to pay the costs if he failed, but he was required to find security for costs, as a precaution on account of his residence abroad. (*Emperor of Brazil* v. *Robinson*, 6 A. & E. 801.) The statute by which costs are given to the successful party is the Statute of Gloucester; and the effect of that is, that the costs are given to the plaintiff in all cases where he recovers judgment. That was the old statute. Costs now are not given in purely real actions: they are given in all personal actions, because there are damages; and also in all mixed actions, for the same reason. The plaintiff's general right to costs has, in several instances, been limited by statute. There were several statutes, 43 Eliz., 22 & 23 Chas. 2, both repealed, 21 James 1, and the 4 & 5 Wm. and M. which have very frequently been called into practice. The 3 & 4 Vict. c. 24, is applied to actions of trespass and trespass on the case; and the provision is, that where less than 10s. shall be recovered, the plaintiff shall not be entitled to costs, except under certain circumstances; as when the judge gives a certificate, which he may do in two cases: 1st, where an action is brought to try a right: the words of the statute are, "to try a right other than the right to damages;" 2ndly, if the trespass or grievance was wilful and tortious, in such cases the certificate granted by the judge entitles the plaintiff, if he recover less than 10s. to his costs. Nor does the Act extend to actions brought against the person who commits a trespass on land after notice not to trespass. There are one or two cases that come under the Act. *Shuttleworth* v. *Cockerell* (C. P. Mich. Term, 1840). That was a case in which an action was brought for a nuisance, and the damages recovered were less than 40s. The judge certified that a right was in question, that the action was brought for a right other than the right of damages, and the question brought before the court was, whether that was the case. There are two things cognizable in that action. An action is brought against my neighbour, who exercises a right which is admitted to be a nuisance; he pleads "not guilty." Now that plea is susceptible of two defences, as far as this Act is concerned. It may be that he intends to reply that he has done nothing that is offensive; or it may be that he intends to reply that he has not done that which he is charged with doing. That would be a complete answer to the action. It may be, that though he admits he has done that which he is charged with having done; yet he contends it is no nuisance, and that it is a thing he is entitled to do. The one would be merely denying the fact with which he is charged; the other would be raising the question, whether he had a right to do that which he has done. Those are the two questions that may be raised, and it is for the judge at the trial to exercise his discretion, and to say whether the action was brought in order to try a right between the parties, or whether it was brought only for the particular act complained of. If it is merely for the particular act complained of, and a verdict is recovered for less than 40s. it will be a question, whether the judge in his discretion should not give a certificate; but if it is to try whether the defendant is or is not entitled to do that of which the plaintiff complains as being a nuisance, that is to try a right, and that is a case in which he would be justified in granting a certificate. The subsequent case of *Morrison* v. *Salmon* is very similar.

Where there are several issues we have considered the effect of a verdict for the plaintiff on some of the issues, and for the defendant on the other issues. The judgment is in favour of the defendant, if he succeeds on any one issue which goes to the whole of the action; but he is not entitled to the costs of those issues on which he fails, and which the plaintiff will be entitled to. The defendant recovers all those costs which are incurred, without reference to particular pleas, and also those costs that belong to the plea on which he has recovered: the plaintiff recovers none of the general costs of the action; but he recovers those which are occasioned by the particular issues on which he has succeeded. It sometimes happens that the plea of the defendant is not pleaded to the whole of the action; for instance, in an action for 100*l.* the defendant may plead payment as to 50*l.*; if he succeeds in proving that payment, he will be entitled to the costs of that issue, whatever may be the general result of the action.

Besides the various cases in which questions of law may be raised, there are certain proceedings in the nature of an appeal. There are four appeals enumerated by Blackstone; first, *writ of attaint*, which was the way of attacking a jury, abolished by 6 Geo. 4, c. 60; secondly, *writ of deceit*, abolished by 3 & 4 Wm. 4, c. 87; thirdly, the *writ of audita quærela*: and fourthly, the *writ of error*. An *audita quærela* is where the defendant against whom judgment has been recovered may be relieved from execution upon some matter of discharge which has arisen too late to be pleaded in bar. As, for instance, if the plaintiff has, since the verdict, given him a general release. Any thing that has been done before the verdict can be no ground of an *audita quærela*. (The law on the subject will be found in Williams's Saunders, 2, 147.) An *audita quærela* is a new proceeding, and is very much in the nature of an original writ. It is a sort of action arising out of another action,—an equitable action which lies for a person who is in execution, or in danger of so being, where there is matter to shew that such execution should not have issued, or should not issue against him. Thus, if the defendant has paid and satisfied the judgment, and is afterwards taken in execution, he may be relieved by an *audita quærela*, by proving payment. The writ of *audita quærela* is now rarely sued out, and the Court will generally, on application, grant the thing in a more summary manner. Thus, if the plaintiff has received anything in satisfaction of the demand after the verdict, and before execution, the defendant may obtain relief by having the execution limited to the time of his having paid it. (*Plerin* v. *Enshall* 10 Bing. 24.) There a man had recovered judgment against another; the goods of the defendant had been taken as a distress to pay the rent of the plaintiff; the defendant applied for an *audita quærela*, and it was held that the application might be supported. The Court said, "The plaintiff has recovered damages in an action of tort; the defendant has, in effect, satisfied them *pro tanto*, and he comes to us to allow this amount towards satisfying the judgment. The plaintiff, as assignee of Davis's estate, was liable to pay the rent in question; and what difference is there between the plaintiff himself taking and selling cattle for such rent, or the landlord's taking and selling them? the effect is the same, whether the cattle were taken from the hands of the plaintiff or of the defendant. The parties are in the same situation as if the defendant had gone to the plaintiff after the verdict, and had paid the 115*l.* the sum distrained for. It is urged there is something new in the application; but in principle it does not differ from the common case of an *audita quærela*, in which, if the plaintiff has received any thing in satisfaction of his demand after verdict, and before execution, the defendant may obtain relief from the Court, by having the execution limited to the sum remaining unpaid." See *Lord Porchester* v. *Petre*, 2 Wms. Saunders, 148 b, and also in 3 Doug. 261. Petre sued Lord Porchester for bribery connected with and arising out of a certain election at Crickley, which gave rise to certain actions for bribery and cross actions. The declaration contained one hundred counts for the bribery of fifty voters, and the verdict was for the plaintiff on four counts, verdict 2,000*l.* and costs. The defendant applied for an *audita quærela*, setting forth that he had discovered another person, one Hinton, who was guilty of bribery, and who had been convicted, and thereby Lord Porchester was indemnified from the consequences of his own act of bribery. The answer of Petre to the *audita quærela* shewed that Hinton, the person convicted by the discovery of Lord Porchester, had discovered another person named Hopkins, who was guilty of bribery, and therefore he was entitled himself to be indemnified from the action sued out. The case came at last to a demurrer; several points were raised, but the important one was, whether a man having discovered another, any exception ought to be made. Lord Mansfield held that it was no exception, unless he had discovered another man and brought him to *punishment*. Lord Porchester could not substitute any other individual in his place; Hinton was at large, and if Lord Porchester was indemnified no example would be made. The meaning of the Act was, that a man should be indemnified if he brought another to punishment, but not otherwise. These were rather curious cases, and one of the cross actions, *Benfield* v. *Petre*, is remarkable as being one in which Burke, the brother of Edmund Burke, was counsel for the plaintiff, and his junior counsel was William Pitt.

A writ of error is, in its nature, legally speaking, much like a writ of *audita quærela*. It is the commencement of fresh proceedings, and is generally a writ issuing out of Chancery in the nature of a commission to the judges of the Court in which it is tried to examine the record, and to affirm or reverse the judgment according to law. A writ of error is, in all civil actions, granted *ex debito justitiæ*; a party may obtain it as a matter of right, and not to be asked as a matter of favour or discretion. A writ of error may be brought to the same court where the judgment of the court is in fault, by a writ of *coram nobis*, if it is in the Queen's Bench; if the action is in the Common Pleas, it is termed a writ of error—*coram vobis*. In order to reverse the judgment of a court of error, the proceedings must not take place in the same court, but the record must be moved by *certiorari* into another and higher court. Formerly even a very trifling mistake on the face of the record was sufficient to reverse the judgment; but now a writ of error can only be obtained for what is deemed a defect in substance. From the superior courts in Westminster the system of appeal was till lately singularly complicated; but by the 1 Wm. 4, c. 70, it was provided that from any one of the three courts a writ of error should be made, returnable before any of the judges of the two other courts in the Exchequer Chamber; thus an action is brought in the Queen's Bench, and judgment is there given, a writ of error sued out upon that judgment goes into the Exchequer Chamber before the judges of the Common Pleas and the Exchequer; and a judgment from the Exchequer goes before the judges of the Queen's Bench and Common Pleas, and so on. From the judgment of the Court of Exchequer Chamber the final appeal lies to the House of Lords.

In every personal action, where judgment is given for the plaintiff, bail is required, unless otherwise ordered by the court. The bail is required to enter into recognizances for double the sum adjudged, or double the sum really due, and double the costs. In an action brought on a bond, where the verdict is for the plaintiff, he can only recover what he has shewn to be the damages he has sustained. The writ of error operates to expedite the proceedings from the time notice is served on the opposite party. This notice must state some ground of error, and if the ground stated is frivolous, the court will order execution to issue to prevent delay. The next step is to certify the transcript of the record. Formerly in error from almost all the courts, upon the writ of error the record was certified; that is to say, the record itself was given; but now in error from any of the three courts to the Exchequer Chamber the record is not removed, but the transcript only is given (1 Wm. 4, c. 70, s. 8), but from an inferior court the record itself is given, and it is completely in the possession of the court alone. (*Salter* v. *Slade*, 1 A. & E. 608.)

Where the record is brought before a court of error, it is for the party who complains of the judgment of the Court below to assign the error. The assignment of the error is in the nature of a declaration, setting forth the grounds on which the party objects to the proceedings. To this the defendant must put in an answer, and the common answer is, "there is no error in the record or the proceedings;" and the effect of this is to refer the matter to the judgment of the Court. Where an issue of fact is raised, it very frequently occurs that issue is joined, and the issue thus raised is argued before the Court of Error. If the Court decides that the proceedings of the Court below are correct, the judgment is affirmed; if it decides that they are erroneous, then the judgment is reversed. Where the judgment is reversed, it is not simply reversed, because it is the business of the Court of Error, [illegible]

in all cases, to give, upon the record, which is before it, the same judgment which the Court below ought to have given. (*Gilbart* v. *Gladstone*, 12 East, 668.) That was a special action of *assumpsit*, in which a special verdict was given for the plaintiff in the court in which the action was brought; the defendant sued out a writ of error, and the Court held that he was entitled not only to the judgment given for the plaintiff in the court below, but that he was to have the costs of his defence in the court below. The Court said, there "the Court are bound, *ex officio*, to give a perfect judgment upon the record before them. In this case the judgment below was given for the plaintiffs upon a special verdict, where, of course, there was an alternate finding by the jury awarding as the Court should be of opinion that the verdict and judgment ought to have been for the plaintiffs or for the defendant; if for the plaintiffs, the verdict was to be entered one way; if for the defendant, another way. This Court, then, having been of opinion that the judgment of the Common Pleas was erroneous, and ought to have been for the defendant below, which would have entitled him there to his costs on the verdict as found for him, we should not do him all the justice which he is entitled to receive upon the record now before us, if we did not, upon reversing the judgment below, give the same judgment which the Court below ought to have given; which is a judgment for the costs of his defence in the court, as well as a judgment of acquittal." There is the same principle decided in *Dempster* v. *Purnell* (3 M. & G. 375.)

From every court of record there lies a writ of error somewhere; from all inferior courts of record, with some few exceptions, it lies to the Queen's Bench. A writ of error never goes from the Cinque Ports to the Queen's Bench, but there is a special Court of Error provided. From all courts, not courts of record—county courts, courts baron, and the like—there is a writ in the nature o a writ of error—a writ of false judgment—which lies in the Court of Common Pleas; it differs from the others only technically. *Dempster* v. *Purnell* was a writ of false judgment.

Where the judgment is not simply affirmed or reversed, and in cases where the error is connected with the trial of the issue, the Court may award a *venire de novo*, as in case of a *mis-trial*: but the Court cannot award a re-pleader. (*Gwynne* v. *Burrell*, 6 Bing. N.C. 453.)

This is the ultimate point to which legislation can go. After a writ of error has been brought and decided, no other step can be taken except to obtain execution of the judgment. There are three writs of execution in practice: you may levy on a man's goods by a *fi. fa.*; you may take his person by a *capias ad satisfaciendum*; you may take his lands under an *elegit*, or a *levari facias*. This last is not in common practice. First, under a *fi. fa.* you may take all his goods. At common law this was confined to his goods and chattels; you could n t take his money, neither could you take a 5*l.* note, nor a bill of exchange. Now bank notes and other securities may be taken under a *fi. fa.* With respect to money and bank notes, this kind of property is as valuable as any goods the sheriff can take, because it does not require to be turned into money; but with regard to securities the case is not so: a bill of exchange is a document on which the money may be paid, or it may not be paid; the sheriff is entitled to hold it, and an action may be brought in the name of the sheriff against the person liable, and the money, when recovered, is the same as any other money recoverable by the sheriff, who pays it over to the judgment creditor. The sheriff is not compelled to take any step in a proceeding of this kind, unless he is indemnified for his costs. So that the property of a person, whether goods and chattels, or money, bonds, notes, and securities for money, may be taken under a *fi. fa.* not only for the debt, but for the debt and interest. The interest is calculated at 4 per cent. from the time of the judgment to the time of the levy. At common law, goods were bound from the *teste* of the writ; but by the statute, 29, Ch. 2, the goods are bound only from the time of the delivery of the writ to the sheriff. It is then the duty of the sheriff to levy as soon as he can; at all events to return the writ in due time. With respect to the *capias ad satisfaciendum*, no alteration has been made by the recent Acts. The chief alteration made, with respect to the writ of *elégit*, is, that it now extends to the whole of a man's lands instead of being confined to one-half: you can take any land belonging to him under whatever tenure it is held, and the debtor then becomes a tenant by *elegit*. There is also a mode of stopping stock. That is a proceeding by which you do not levy exactly on the stock, but you claim the dividend, and prevent the bank from paying the dividends to the person who is entitled to the stock; and the judgment creditor is entitled to receive the dividends. This power was introduced by the 1 & 2 Vict. c. 110, which at the same time abolished arrest on *mesne* process, and so far was apparently in favour of the debtor, and gave considerable facilities to the creditor to recover his demands.

THE CRITIC.

New Books.

The Law Magazine: or, Quarterly Review of Jurisprudence. No. 65 of the Old Series, No. 1 of the New Series. London: Benning and Co.

The re-appearance of an old and respected friend will be cordially welcomed by the profession, by whom the *Law Magazine* was prized as are the Quarterly Reviews by the literary world, inasmuch as their size and infrequency of publication permit the review of the most important topics of the time with a deliberation and at a length impracticable in a weekly journal. Our readers are aware that it was announced some time since that the *Law Magazine* was defunct, not from lack of support, but in consequence of some misunderstanding with its conductors. These, however, were speedily settled; a new editor was obtained, and under his auspices it appears again with more than its former power to recall old friends, and enlist a host of new ones.

And a portly number is this first of the new series. That there may be no hiatus in the record for those who possess the previous numbers, the Digest of Cases has been brought down from the period of the last publication, and without additional price; consequently so many pages are added to this number that it is to form a volume. In the arrangements another convenient plan has been adopted. The Digest is separately paged, so as to bind in distinct volumes.

This number contains eight articles, all abounding in interest, many of them teeming with information. The first is an elaborate and thoughtful review of Mr. Best's treatise on *Presumptive Evidence*, which has been noticed at such length in the columns of the *Law Times*, that we need not pause upon this essay. The second article is a powerful and conclusive commentary upon the judgment of the House of Lords in the case of *O'Connell* v. *The Queen*, in which the decision of the supreme tribunal is successfully vindicated; indeed, now that party spirit has subsided, and the question is viewed upon its merits, very few lawyers will be found to dissent from the arguments of Lord Denman, or the constitutional principles upon which he based them. We extract the concluding passages of this lawyer-like essay.

We confess we are disposed to hope that the effect of this great case will be beneficial on the whole to the administration of criminal justice. Of late years a very reprehensible practice in the framing indictments has been gradually creeping into our criminal proceedings. There being no limit to the number of counts that may be inserted in any indictment, it has latterly become the course to insert a very large number of counts in the same indictment; and this has been more especially the case in all such prosecutions as are carried on directly or indirectly under the sanction of the government. Such a practice operates in many respects very unfavourably towards defendants. In all cases of felony the prisoner has no right to a copy of the indictment; and where the indictment is so extremely long, it is impossible for the prisoner, and barely possible for the counsel, with the greatest exertion, to master its various bearings in the course of the trial. In cases, indeed, of treason and misdemeanor, the defendant is entitled to a copy of the indictment; but in the latter, the sum the defendant is obliged to pay for such copy is so great that in practice the result is that, except on very particular occasions, the defendant never procures a copy at all. But perhaps the greatest grievance arises from a practice which has prevailed of late in some cases of misdemeanor, and especially in conspiracies—after inserting some counts framed with proper care and accuracy, to insert other counts so vague and general, as to leave it very doutful whether they are sufficient in point of law. Now, if there be any possibility of such counts being holden good, the defendant dare not venture to demur, as the judgment upon demurrer in such cases is final. (*Rex* v. *Taylor*, 3 B. & C. 502.) The consequence is, the case goes to trial, and under such general counts evidence may sometimes be admitted, which would be excluded under more accurately framed counts. If a conviction takes place on all the counts, the judgment may be arrested on the general counts; and yet it is impossible to say that this places the defendant in the same position as if these general counts had not been inserted; for no one can venture to say what effect the evidence admitted on such counts may have produced on the jury with reference to the other counts.

If the decision in this case should tend to the discontinuance of such an unreasonable practice—if it should call the attention of the Legislature to the present system of criminal pleading, and cause that system to be simplified and ameliorated, every one, we believe, will rejoice. We have long been anxiously wishing to see the forms of indictment simplified, so as to make them plainly intelligible, not merely to lawyers, but to the jury and the prisoners themselves; and we trust we are not entertaining an unfounded anticipation in hoping that the result of this case may be to produce a movement in favour of such amelioration.

We cannot conclude this article without adverting to a circumstance, which, we believe, has produced universal satisfaction. We allude to the manner in which Lord Wharncliffe interposed to prevent those noble peers who had not been brought up to the profession of the law from taking any part in the determination. Whether that interference originated with the noble lord himself, or resulted from the deliberations of the Cabinet, we know not. But this we do know, that a more exemplary sacrifice of political feelings at the shrine of justice was never offered. Heartily do we rejoice to think that the determination of the momentous question raised by this great case was confided to the law lords alone; for that is the only course that can secure for the decisions of the House of Lords that reverence which ought to be paid to the judgments of the supreme court of justice in this kingdom. Dear to the bosom of every British subject is the pure and impartial administration of justice; and they who sacrifice their party feelings at her shrine, although perchance at the moment they may seem to lose some political advantage, may nevertheless rest assured that they will infallibly gain a more certain and lasting influence with their fellow-countrymen than any political triumph can bestow.

The third article is devoted to the Law of Debtor and Creditor, at present in a state of most undesirable uncertainty, operating entirely as an indemnity to the rogue, and for the ruin of the honest man. Something must be done during the next session of Parliament to amend the existing law, and as the subject must be much discussed, and practical opinions upon it will be entitled to great weight in the decisions of the Legislature, this timely essay will help the lawyers to perform their part in the work of placing the law upon a satisfactory basis.

Our readers are aware how the interests of the public were in this matter sacrificed to the party and personal spite of Lord Brougham. Lord Cottenham's Bill provided effectual remedies against the property of debtors, and severe punishments for their frauds, while it abolished imprisonment, except under certain circumstances of concealment or fraud. Lord Brougham burked this admirable measure, and substituted one of his own, in which he deprived creditors of the power over the person, without giving them a better remedy against the property of debtors. On this the reviewer remarks:—

Had the Bill passed as it was originally introduced by Lord Cottenham, by which imprisonment for debt was proposed to be abolished, and all debtors by judgment made liable to be compulsorily brought under its provisions, the law of debtor and creditor would have been placed on a distinct and intelligible basis. We have no doubt, however, that the present defective remedies which creditors possess against their debtors, who are not traders, will now become so obvious to the commercial public, that the full measure of justice to creditors, as intended by Lord Cottenham's Bill, will be urgently demanded from the Legislature.

The fourth article is on the "Growth of Crime,"—a collection of valuable statistical facts, to which are appended remarks that will afford food for serious reflection to the Christian, the statesman, and the philosopher. We shall take largely from this singularly able essay.

The following are the most important of the facts and figures from which the author draws his conclusions:—

The number of persons brought to trial during the last eight years, in England and Wales, were as follow:—

Years.	1. Offences against the Person.	2. Offences against the Property, with Violence.	3. Offences against Property, without Violence.	4. Malicious Offences against Property.	5. Forgery and Offences against the Currency.	6. Other Offences not in the above Classes.	Total Offences
1843	2208	2263	22,095	188	619	1325	28,698
1842	2127	2178	23,995	201	634	2174	31,309
1841	2140	1573	22,017	94	437	1199	27,760
1840	1881	1934	21,484	145	541	1202	27,187
1839	2009	1432	19,243	105	436	1218	24,443
1838	1859	1538	18,273	89	508	827	23,094
1837	1719	1400	18,884	114	456	1039	23,612
1836	1959	1310	16,167	168	359	1024	20,984

In the winter of 1843, there was a third assize: the commitments for trial at that assize are not included in the above table, lest they should disturb the comparison.

The safest way of ascertaining the actual progress of crime, presented in this table, is to compare the average of the four first years with that of the four last. The following is the aggregate increase of crime thus shown to have taken place between these periods, and in a floating space of four years: (a)

	p. cent.
Of offences against the person	10·6
Of offences against property, without violence	45·2
Of offences against property, with violence	23·4
Of malicious offences against property	31·9
Of forgeries and offences against the currency	27·1
Of other offences not included in the above classes	41·1
Of all offences	24·7

During this period, population has increased by four and a half per cent. only.(b)

It will be observed, that the increase has occurred chiefly in offences against property without violence, including all descriptions of theft, fraud, embezzlement, and the receipt of stolen goods. There are two important and painful facts to be noted as to this point: first, this class comprises nearly three-fourths of the whole amount of crimes; so that an increase in it shews a far wider spread of vice than an increase in any other class would do: secondly, it is a class of offence into which the bulk of the juvenile offenders fall: it therefore indicates a rising generation of criminals, far larger than its forerunner. Thefts are generally pilot crime.; the preface of adult depravity; and we shall hereafter show that poverty will account only for a small portion of the wide and systematic depredation afloat.

There are three classes of thieves: the professed thief, local and travelling; the non-professional thieves, ranging from the lowest to the highest classes; and the thieves from accident, from the overpowering force of sudden temptation or real want.

Of the first division of the first class, it was estimated by the London police that there were, in London alone, about 10,000 eight years ago. Liverpool, Bristol, and Newcastle, were found to contain upwards of 7,000 more; whilst the number of houses known as receptacles for stolen goods, amounted in London to 227, and in the other three towns to 192, and in other towns in like proportion to their facilities for the traffic. Of the itinerant thieves, who form division two of class one, it is impossible to form any estimate; the convicts who have been examined describe them as "many thousands." The career of these people is said to be about an average of six years before a second conviction sends them out of the country. We believe it to be much longer; but assuming this to be the case, what an incalculable mass of plunder does it reveal which wholly escapes detection. Many convicts own to thousands of such offences in the course of their career. The amount of property annually stolen at Liverpool was estimated, a few years ago, at upwards of 700,000*l*. Far greater is the proportion of undetected crime, though perhaps not of amount of plunder, effected by the second class of non-professional pilferers, in whose position there is often nothing to attract, and much to disarm suspicion. The moral guilt of this class is, we think, undoubtedly the greatest: they are more within the sphere of better influences. They are not incited by loss of character, or the necessity of a felon livelihood. There is more light and less excuse. Class No. 1 is criminal by birth, parentage, and education: he is a born felon, cradled in crime, and trained in profound ignorance of morals from his birth to his transportation. No good comes near him, and his sole alternative is vice. Class No. 2 has every alternative, and chooses crime as an agreeable auxiliary to his pleasures, and a make-weight to his comforts. Class No. 3 is generally the victim of Class No. 2; and though pitiable and pardonable, is often the mere embryo of the class below. Moral turpitude, however, is clearly not chargeable on this class, and their offences alone are to be deducted from the catalogue and *indicia* of popular guilt. They are but a very small proportion of the whole number of the vast band of depredators who infest this country above all others in Europe; this is the painful conclusion in which a calm and full view of the subject necessarily results. No statistics of foreign countries, where every petty police offence swells the annals of public crime, can gainsay this sad reflection upon the character of England. No traveller has ever walked through, or really acquainted himself with the character of a continental country, who does not ridicule the mere notion that property is equally insecure there as here.

Crimes appear to be increasing in enormity.

Murders, and attempts to murder and maim, have increased 38 per cent. on the average of the last four years; rapes, 57 per cent.; other horrid offences, 53 per cent. Arsons, which exhibit malice in its worst shape, have increased by 28 per cent.; and if those of the present year were taken into account, the increase would be far greater. The Police Commissioners, after a careful and diligent inquiry into the phases of crime in 1839, and speaking therefore of the exact period with which we are contrasting the increased crime of subsequent years, say, "We find that crimes of violence, whether originating in rapacity, or resorted to for the gratification of any vindictive or gross passion other than money, are generally in a course of gradual diminution."—p. 42. There has been a lamentable change in this respect since then. Not only do the "tables" prove this numerically, but the character which the graver class of crimes assumes confirms the belief that there is a real growth of the atrocities of guilt.

Some tables then shew the increase of crime in the various counties, and the results of this examination are thus stated:—

One of the first errors which the above table explodes is that of the belief that the increase of crimes can be accounted for by "the unveiling of an hitherto latent excess of delinquency by the enlargement of the police and constabulary jurisdiction, and the consequent readiness with which crime is now brought to light." A glance at the table shews that the largest increase of crime is in three counties, in two of which there has been no enlargement of police at all; and out of the twenty-two counties where it has been enlarged, in a majority of them the increase has been considerably below the average increase of crime in the whole number. If the power of detection is largely increased, so unquestionably is the skill of concealment; and the one must in great measure counterbalance the other. The police are well aware, and can amply testify, that the devices of escape are daily increasing in success and ingenuity. The rural police may certainly in some places add somewhat to the number of committals, but being at all times a costly burthen to a county, is it not evident that the real growth of crime, and the consequent insecurity of property, induced the sacrifice?

And further:—

It appears that crime is greatest in the west midland counties, extending northwards through Cheshire and Lancashire, including, in short, the chief textile and mineral manufactures, and the metropolis; the only exceptions to these are the counties of Hereford and Berks, both purely agricultural, and without large towns or vicinity to London, which accounts in some measure for the crime in Essex. The contrast is striking between the northern and southern counties. In Northumberland, Cumberland, Westmoreland, and Durham, the total committals were 743 in a population of 808,926—or 1 in 1,088; whilst in Kent, Surrey, Hants, Dorset, Sussex, Wilts, Somerset, and Devon, comprising a population of above three millions, the committals were 1 in 586! Nor is this all: the class of offences was considerably graver in the southern than in the northern counties. The murders and offences against the person were nearly double, and the offences with violence against the person more than double, in proportion to their relative populations, in the southern than in the northern counties. Of malicious offences against property there were none whatever in the northern, whilst there were sixty-three in the southern counties. Were it possible to ascertain the exact number of committals in the East and North, apart from the West Riding of Yorkshire, they might have been added to the other northern counties with a similar result. It is worthy of remark, that Cornwall even exceeds the ratio of the northern counties in freedom from crime, and forms a very remarkable exception to the neighbouring counties.

It would appear that crime does not so keep pace with poverty as some persons suppose.

To some extent, though not materially, poverty and the pressure of want may have caused a portion of the increase of crime: that increase acquired its chief advance between the years 1837 and 1842, during which time the price of wheat rose from 55s. to 70s. and during which there was severe distress amongst the people. There was, however, no diminution last year, excepting as compared with 1842, which appears to have largely exceeded all other years in the number of offences. There is no doubt that long-continued depression reduces men to a state which is eventually fatal to self-respect, and therefore to some of the strongest safeguards of moral conduct. But with every disposition to attribute the evil before us to these passing causes, we are painfully constrained to think that it has a far deeper root. In the first place, as we have seen, there has been a great increase in the crimes which indicate malice, and partake of passions for which poverty could supply no sort of motive. Again, we find that even in 1843, when unquestionably distress was greatly mitigated, although simple larcenies were diminished, there was an increase of no less than 14 per cent. in offences against the person, and nearly the same increase in violent offences against property; and owing to Rebeccaism in Wales, and "the great general increase of incendiarism," the malicious offences against property have swollen by 27.9 per cent. in one year!

Reading and writing, which silly persons call *education*, do not tend to diminish but rather to increase crime, by enabling criminals better to effect their designs. Our author observes,

The spread of a scant and barren instruction in reading and writing, and the mere implements to education, are among the number of the agencies thus perverted to evil. We hasten to extract from the Table of Crime the following synopsis of the degree of instruction possessed by the criminals whose offences are recorded in 1843:—

	Manufacturing Counties.	Agricultural Counties.
Unable to read or write	30·9	34·2
Able to read and write imperfectly	59·0	59·8
Able to read and write well	9·6	5·4
Instruction superior to reading and writing well	0·5	0·6

Thus the majority of the whole body of criminals consists not of the wholly ignorant, but of the class who have a smattering knowledge of the steps of education: enough to increase their cunning, and inflame their tendencies to vice, without an iota of the knowledge which can improve the understanding or the heart. Is this used as an argument against all education? To us the facts we have cited seem to afford the strongest reason for the vigorous furtherance of sound secular and Christian education.

We entirely concur in the justice of the following remarks upon disparity of punishments.

A bad effect, moreover, results from the strange disparity of punishments awarded in the different courts of criminal justice. At a court of quarter sessions last year, presided over by a non-professional magistrate, a young woman was tried for stealing two shillings out of a tea-cup: it having been, with more silver in it, carelessly left in her way in a kitchen by her employer. She was found guilty: a prior conviction was proved for some petty theft, which, being a felony, extends the discretionary power of the court to inflict any punishment from a day's imprisonment to *transportation for life!* She was sentenced to be transported for ten years, and was taken, with a baby in her arms, shrieking with agony from the dock. In a neighbouring county, at the same sessions, presided over by a professional chairman, a man was tried for stealing planks; a previous conviction was proved, and nine months' imprisonment awarded as his sentence!

And there is too much truth in the succeeding paragraph.

The better knowledge of the law which the proposed codification of it would secure is an object of much importance, not only as facilitating the amendment and improvement of the law itself, but because it would enhance the dread of punishment; inasmuch as its connection with specific offences would be rendered simple and distinct to the mind and comprehension of the people. The criminal code now floats like a misty apparition of vague character at a distance before the eyes of the people; it is not brought home to them as a thing in daily operation, everywhere at

(a) This is clearly the only means of arriving at the real tendency of the state of crime. Mr. Redgrave, of the Home Office, who has prefixed some valuable remarks to the "Tables," wastes some paragraphs on a comparison between the last year and the year preceding. No inference whatever can be drawn from these isolated comparisons. It were just as useful to measure the height of two succeeding waves, to ascertain if the tide is rising or falling.

(b) It increased fourteen and a half per cent. from 1831 to 1841, according to the last census.

hand. A man was warned, in a country village not long since, that in cutting a young ash sapling he was liable to be punished by law, "Nay, nay," said the man, "we dont hold by them laws in these parts." A prisoner, at the Gloucester sessions, gravely pleaded, that in taking his neighbour's stone pig-trough from a quarry, he had only done what was customary, and that this was not stealing: and the jury deliberated for a long while upon the point. An attorney in Bedfordshire lately wrote to a professional man in London, to ascertain whether it was safe to indict a man for stealing fruit from a garden, it being contrary to the custom to punish it.

The writer hints at remedies, but doubtfully, and this is a subject which might well claim the instant and serious consideration of the philosopher and the legislator.

Here we must pause for the present in our notice of *The Law Magazine*.

NECROLOGY.

P. W. MAYHEW, ESQ.

The deceased entered the Excise about the year 1804, and performed the duties of assistant solicitor up to the year 1829, when Mr. Carr, the chief solicitor, died, and Mr. Mayow was appointed his successor. Up to this period the office had been held by letters patent from the Crown, and the chief solicitor was paid by fees; but an alteration took place on Mr. Mayow's succession to the appointment, and he resigned his patent and right to take fees, in consideration of which the Lords of the Treasury allowed him a yearly intimation of 2,000*l*. with a distinct intimation to the Board of Excise that the salary would be reduced fully one-half on the discontinuance of Mr. Mayow's services by death or otherwise.

The deceased gentleman married a Creole lady, with a princely fortune, and had three sons and two daughters. One of the former studied for a short time for the Bar, but afterwards relinquished that profession. Two of them hold lucrative livings in the church of England, and the third is an officer in the dragoons. The deceased possessed large estates in Norfolk and Cumberland, and the daughter of the Bishop of Cork is united to one of the sons belonging to the church. Mrs. Mayow died about five months since. On several occasions Mr. Mayow has been known, when a needy offender against the Excise laws has been sent to gaol, in default of paying a fine imposed, to become a private donor to the family proportionably to their distress. He was much respected by the various law officers of the Crown, and a numerous and distinguished circle of friends, by whom his loss will be deeply deplored.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Boys.—On the 29th December, at Margate, the wife of J. Harvey Boys, esq. solicitor, of a son.

Eldred.—On the 31st ult. Mrs. Eldred, the wife of Edward Eldred, esq. of the Middle Temple, of a son.

Holmes.—On the 1st inst. the lady of Edward Carleton Holmes, at 31, Bedford-row, of a daughter.

Lord.—On the 29th Dec. at Lonsdale-square, the wife of James Lord, esq. of the Middle Temple, barrister-at-law, of a daughter.

MARRIAGES.

Brisley, Pierce Sweeting, esq. of Grays-inn, solicitor, to Henrietta, youngest daughter of the late James Lewis, esq. of Great Russell-street, edf rd-square on the 27th ult.

Buller, John, only son of Sir John Yardley Buller, Bart. of Lupton, Devon, to Charlotte, second daughter of E. S. Chandos Pole, esq. of Radborne-hall, Derbyshire, at Radborne, on the 1st inst.

Jackson, Charles R. M. esq. of Lincoln's-inn, barrister-at-law, to Jane, eldest daughter of Edward Armitage, esq. of Farnley-lodge, Cheltenham, and Farnley-hall, Yorkshire.

Moore, R. R. R. esq. barrister-at-law, to Rebecca, daughter of B. Fisher, esq. Limerick, on the 1st inst.

Spinks, Frederick Lowten, M.A. of Magdalen College, Cambridge, and barrister-at-law, of the Inner Temple, to Elizabeth, youngest daughter of Edward Brown, esq. of The Firs, Ashton-under-Lyne, and of Oldham, in the county of Lancaster, on the 27th ult. at Ashton-under-Lyne.

DEATHS.

Cox, Henry, esq. He resided many years in the Island of Jamaica, where he represented the parish of St. Mary, in the House of Assembly, and was Custos Rotulorum of the parish of St. Ann, on the 20th ult. aged 68.

Lord, Eleanor, the wife of James Lord, esq. of the Middle Temple, barrister-at-law, on the 30th December.

Mayow, Philip Wynell, esq. solicitor to Excise, in Guildford-street, on the 28th ult. in his 74th year.

Pedder, John, esq. of the Middle Temple, on the 1st of November, in his 83rd year.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bradwell, J. ironmonger, first and final, 4s. 9d. Fearne, Leeds.—*Brooke*, W. A. quarryman, first and final, 8d. Wakley, Newcastle.—*Carter*, T. jun. butcher, first, 2s. 0½d. Whitmore, Birmingham.—*Cay*, J. coal fitter, second and final dividend, 9d. and 1-9th of 1d. Baker, Newcastle.—*Courtney*, J. banker, second, 1s. 8d. Hutton, Bristol.—*Duffield*, C. grocer, first and final, 3s. Kynaston, Bristol.—*Dunn* and *Co.* corn factors, joint second sep. R. Dunn, 7d. 4d. Hope, Leeds.—*Gleadhill*, J. cotton spinner, interest on debts. Hobson, Manchester.—*Harding*, W. grocer, first, 7s. 8d. Green, London.—*Norman* and *Co.* ironmongers, 6s. Hutton, Bristol.—*Oxley*, E. jun. hatter, first, 3s. Groom, London.—*Pemberton*, J. soap boiler, first, 2s. 3d. Hope, Leeds.—*Rosselli*, P. merchant, second, 2½d. Green, London.—*Sedgwick*. E. scrivener, div. Feb. 12. Joh. London.—*Thomas*, G. D. grocer, final, 10d. Whitmore, Birmingham.—*Thorpe*, W. scrivener, first, 1s. 2d. Fearne, Leeds.—*Watson* and *Co.* brewers, first and final, 3s. 10d. Hope, Leeds.—*Walls*, G. S. cotton spinner, second and final, 7¼d. Hope, Leeds.—*Wilson*, J. warehousemen, second and final, 6s. 4d. Pott, Manchester.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Dec. 27.

Bloxsome, S. linen draper, Ipswich, Nov. 4. Trusts. D. Smith, gent. Wood-st. and W. Wreford, warehouseman, Aldermanbury. Sol. Stedman, Aldermanbury.—*Coe*, D. linen draper, Ipswich, Nov. 11. Trust. D. Smith, gent. Wood-st. Cheapside. Sols. Long, Ipswich, and Stedman, Aldermanbury.—*Dike*, T. tailor, Cirencester, Nov. 28. Trusts. J. and R. Puckle, wholesale drapers, Milk-st. Sols. Desborough and Young, Sise-lane.—*Hughes*, O. P. builder, Liverpool, Dec. 19. Trusts. J. M'Murdo, timber merchant, and W. H. Ogden, ironfounder, Liverpool. Sol. Hime, Liverpool.—*Sewell*, W. carrier, Bradford, Dec. 19. Deed to be signed by Jan. 21. Apply to Harrison and Singleton, timber merchants, Bradford.

Gazette, Dec. 31.

Armytage, W. innkeeper, Halifax, Dec. . Trusts. W. Wainhouse, butcher, and T. Crabtree, machine maker, Halifax. Sol. Barber, Brighouse.—*Day*, G. draper, Berkhampstead, Nov. 14. Trusts. J. Burls, Wood-st. and Milburn, Newgate-st. warehousemen. Sol. Smith, Chancery-lane.—*Snook*, W. and *Taylor*, J. drapers, Portsmouth, Nov. 16. Trusts. R. Baggally, Love-lane, and J. B. Walker, Skinner-st. warehousemen. Sols. Messrs. Sole, Aldermanbury.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Dec. 27.

King, Joseph Raymond, druggist, Bath, Jan. 6 and Feb. 7, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Mansford, Bath, sol. Date of fiat, Dec. 23. H. F. Home and H. Hodge, druggists, Blackman-st. pet. crs.

Seed, Anne, licensed victualler, Liverpool, Jan. 6 and Feb. 5, at eleven, Liverpool, Com. Phillips, Cazenove, off. ass.; Wilkin, Furnival's-inn, and Wardle, Liverpool, sols. Date of fiat, Dec. 16. Bankrupt's own petition.

Strange, Charles, gent. Baglan, Neath, and Parsons, Robert, Swansea, gentleman, merchants, coal proprietors, and general dealers in flour and other goods, Jan. 14 and Feb. 4, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Weymouth and Co. Angel-ct. sols. Date of fiat, Dec. 17. T. Strange, wholesale grocer, Houndsditch, and S. Strange, gent. Baglan, near Neath, pet. crs.

Thermans, Levi Israel, tea-dealer, 4, Sidney-place, Commercial-road, Dec. 31, at one, Feb. 6, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Bevan, Old Jewry, sol. Date of fiat, Dec. 21. E. R. Cook and W. Spavin, merchants, Old Jewry, pet. crs.

Watson, Christopher, the younger, tea dealer, Church-st. Darlington, Durham, Jan. 10, at half-past one, Feb. 12, at two, Newcastle, Com. Ellison; Wakley, off. ass., Messrs. Hamilton, Leeds, and Richardson and Glover, Leeds, sols. Date of fiat, Dec. 12. W. C. Buck, tea dealer, Leeds, pet. cr.

Gazette, Dec. 31.

Bartlett, George, manufacturers of plaster and cement ornaments, Wellington-st. Goswell-st. Middlesex, Jan. 14, at one, Feb. 11, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Oriel, Alfred-pl. Bedford-sq. sol.—Date of fiat Dec. 30. Bankrupt's own pet.

Burford, Thomas William, victualler, Brydges-st. Covent-garden, Jan. 15, at one, Feb. 7, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Henderson, Mansell-st. sol.—Date of fiat, Dec. 20. J., W., R. P., and R. Nicholson, distillers, St. John-st. Clerkenwell, pet. crs.

Dudley, Frederick, builder, Rochford, Essex, Jan. 7, at half-past twelve, Feb. 22, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Turner and Hensman, Basing-lane, sols.—Date of fiat, Dec. 27. J. Baulcott and C. Cadman, timber merchants, Limehouse. pet. crs.

Eldridge, Ralph, innkeeper, Bletchingley, Surrey, Jan. 8, at one, Feb. 11, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Russell and Mackenzie, High-st. Southwark, sols.—Date of fiat, Dec. 19. M. Selmes, Bletchingley, butcher, pet. cr.

Findlay, Emily Sarah Ann, milliner and dress maker, 4, Grafton-st. Fitzroy-sq. Jan. 15, at half-past one, Feb. 7, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Roberts, Spring-gardens, sol.—Date of fiat, Dec. 26. Bankrupt's own pet.

Gould, William Ellis, carver and gilder, Finsbury-pl. South, Jan. 7, and Feb. 11, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Venning and Co. Tokenhouse-yd. sols.—Date of fiat, Dec. 28. Bankrupt's own pet.

Taylor, John, carpenter and upholsterer, 14, Market-st. Mayfair, Jan. 7, at half-past eleven, Feb. 18, at twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Messrs. Kirk, Symond's-inn, sols.—Date of fiat, Dec. 22. Bankrupt's own pet.

Woolcott, George, and George Woolcott, jun. builders, Doughty-st. and Brownlow-mews, (Dec. 5); T. Alexander, timber merchant, Edenbridge, W. H. Tucker, High Holborn, and William Dent, Newcastle-st. Strand, trustees; Pontifex and Moginie, St. Andrew's-court, sols.

PARTNERSHIPS DISSOLVED.

Gazette, Dec. 24.

Applemans, C. and *Griefyens*, G. J. A. B. merchants, Little Litchfield-st. Dec. 20.—*Barklimore*, A. and *Simpson*, W. surgeons, High-st. Bloomsbury, June 24, 1842.—*Baraugh*, J. and *Wingrave* M. oilmen, High Holborn, June 30.—*Brown*, E. L. and *Young*, G. blacking manufacturers, Upper Thames-st. Dec. 19. Debts paid by Young.—*Cullen*, T. and C. lace manufacturers, Nottingham, Dec. 13.—*Dark*, S., *Bryant*, J. and *Cains*, G. quarrymen, Crewkhole, Dec. 20.—*Element*, W. and *Knight*, R. T. upholsterers, High Holborn, Dec. 21.—*Fell*, E. H. and *Hellen*, J. rope makers, Ulverstone, Oct. 19.—*Garrett*, J. and *Hunt*, E. hosiers and haberdashers, Bristol, Dec. 20. Debts paid by Garrett.—*Laing*, J. and J. farmers, Cornhill and Murton, Northumberland, and Fairney Flat, Berwick-upon-Tweed, Dec. 21.—*Lovel*, S. and *Cooper*, J. boot and shoe makers, St. Neots, Dec. 17. Debts paid by Cooper.—*Marshall*, W. and *Kelcey*, J. millers, Hythe, Dec. 18.—*Robbins*, J. and *Nixon*, J. P. lace manufacturers, Old Change, Nov. 21.—*Sheard*, J., *Hirst*, J. and *Graham*, J. cloth dressers, Ossett-street-side, Yorkshire, so far as regards J. Sheard, Dec. 18. Debts paid by the remaining partners.—*Sutcliffe*, W., *Ellins*, W. and *Leach*, W. worsted manufacturers, Bradford, Dec. 18. Debts paid by Sutcliffe and Leach.—*Wallace*, T. E. and *Browne*, G. F. attorneys, Diss, Norfolk, Dec. 24.—*Wood*, H., *Partington*, J. E. and *Nicholson*, W. wood carvers, Henrietta-st. Covent-garden, so far as regards Partington and Nicholson, Oct. 17.

Gazette, Dec. 27.

Adams, J. and W. farmers, Plaistow, Dec. 7.—*Cutler*, B. and J. steam boiler manufacturers, New Gravel-lane, Sept. 30.—*Fuller*, J. and *Thornhill*, W. stationers, Brewer-st. Golden-sq. Dec. 26. Debts paid by Fuller.—*Garrett*, J. and W. tailors, Welford, Northamptonshire, Dec. 19. Debts paid by W. Garrett.—*Hatfield*, W. and *Hall*, J. silversmiths, Manchester, Oct. 25. Debts paid by Hall.—*Hawkes*, H. and G. ironmongers, Reading, Dec. 18. Debts paid by either partner. *Hiles*, B. and M. and *Heald*, S. confectioners, Bolton, April 16.—*Hughes*, H. and *Galt*, A. lace rouche manufacturers, Wood-st. Dec. 23. Debts paid by Hughes.—*Loyd*, L. sen., S. J., E. L. jun., and *Tabor*, C. W. bankers, London and Manchester, so far as regards Loyd, sen. Dec. 24.—*M'Naught*, J. and F. *Alexander*, coal masters, Rainford, Lancashire, Nov. 25. Debts paid by Alexander.—*Samuels*, C. J. and *Oughton*, S. H. coal merchants, Manchester, Dec. 24. Debts paid by Samuels.—*Snook*, W. and *Taylor*, J. drapers, Portsmouth, Dec. 5.—*Wood*, J. *Lund*, M. *Shaw*, T. jun. and R. cotton spinners, Kildwick, Yorkshire, Dec. 11.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, Dec. 24.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Howman, D. grocer, Rickmansworth, Jan 10, at half-past eleven.—*Cheeseman*, F. jun. farrier, Wellington-place, Blackfriars-road, Jan. 10, at half-past one.—*Hearsy*, W. C. tailor, Greenwich, Jan. 3, at eleven.—*Hussey*, T. Jermyn-st. St James's, Dec. 31, at twelve.—*King*, D. upholsterer, Robert-st. Bedford-row, Jan. 11, at half-past eleven.—*Moore*, H. J. builder, Greenwich, Jan. 16, at half-past two.—*Shelbourne*, J. victualler, Park-st. Poplar, and Exmouth-st. Commercial-road East, Jan. 16, at two.—*Smith*, C. A. out of business, Eldon-st. Shoreditch, Jan. 23, at eleven.—*Stevens*, J. commercial agent, Ashley-ter. City-road, Jan. 17, at one.

Gazette, Dec. 27.

Brickwell, J. boot maker, Uxbridge, Jan. 18, at twelve.—*Burrows*, H. clerk, Park-lane, Chelsea, Jan. 13, at half-past twelve.—*Collinson*, R. draper's assistant, Markham-st. Chelsea, Jan. 8, at two.—*Cullen*, E. B. out of business, Old Cavendish-st. Jan. 10, at two.—*Greenham*, W. boot maker, Church-lane, Whitechapel, Jan. 13, at half-past one.—*Hance*, J. H. gent. Northumberland-st. Strand, Jan. 24, at eleven.—*Hancock*, W. civil engineer, Stratford, Jan. 13, at one.—*Mullett*, R. C. valuer, Blackfriars-road, Jan. 13, at eleven.—*Seamans*, J. carpenter, Maldon, Jan. 13, at half-past eleven.—*Whittleton*, G. rope maker, Great Yarmouth, Jan. 13, at two.—*Woollard*, H. professor of music, Goswell-st. Jan. 8, at eleven.

Country.—Gazette, Dec. 24.

Bland, W. butcher, Scarborough, Jan. 9, at eleven, Leeds.—*Cheshire*, E. engine driver, Meadow's-cottages, near Gloucester, Jan. 14, at eleven, Bristol.—*Garraway*, H. hair dresser, Bristol, Jan. 14, at one, Bristol.—*Harrison*, E. R. grocer, Pendlebury, Jan. 7, at twelve, Manchester.—*Large*, J. carman, Shrewsbury, Jan. 8, at twelve, Birmingham.—*Parrott*, J. attorney, Totnes, Jan. 7, at one, Exeter.—*Paynter*, J. M. lieutenant, Mullion, Jan. 7, at one, Exeter.—*Ramsbottom*, E. dyer, Halifax, Jan. 9, at eleven, Leeds.—*Rhodes*, J. painter, Bradford, Jan. 9, at eleven, Leeds.—*Walker*, B. farmer, Batley, Jan 9, at eleven, Leeds.—*Ward*, W. butcher, Sheffield, Jan. 9, at eleven, Leeds.

Gazette, Dec. 27.

Balmforth, G. currier, Birstall, Jan. 9, at eleven, Leeds.—*Cowton*, R. tailor, Bradford, Jan. 9, at eleven, Leeds.—*Corrie* A. cattle dealer, Hesket, at eleven, Newcastle.—*Dewhurst*, W. wool comber, Bradford, Jan. 9, at eleven, Leeds.—*Dilworth*, R. lodging-house keeper, Leamington Priors, Jan. 22, at half-past ten, Birmingham.—*Fisher*, E. innkeeper, Corsham, Jan. 15, at two, Bristol.—*Howard*, W. wool teazer, Bank, Jan. 14, at eleven, Leeds.—*Howell* H. professor of music, Bristol, Jan. 23, at eleven, Bristol.—*Macconnell*, W. S. plumber, Birkett-st. Soho, Jan. 4, at twelve, Liverpool.—*Oldham*, W. joiner and builder, Bulwell, Jan. 14, at eleven, Leeds.—*Owen*, W. plasterer, Stoke-upon-Trent, Jan. 22, at half-past ten, Birmingham.—*Pearson*, W. hay and straw dealer, Sheffield, Jan. 9, at eleven, Leeds.—*Robertson*, J. brewer's assistant, Liverpool, Jan. 7, at eleven, Liverpool.

From the Gazette of Friday, December 27.

Bankrupts.

Lanham, G. E. builder, Southampton.—*Wightman*, J. wharfinger, Northampton.—*Palmer*, B. W. coach proprietor, Daventry, Northamptonshire.—*Padbury*, A. jun. grocer, Epsom.—*Newbold*, J. tailor, Nottingham.—*Ward*, J. engineer, Manchester.—*Woodhead*, J. clogger, Todmorden, Yorkshire.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Saturday, Dec. 14.

SANDON *v.* HOOPER.

This case, which involved the important question of what outlays upon the mortgaged estate a mortgagee could charge against the mortgagor, seeking to redeem, was argued, but judgment was deferred.

Tuesday, Dec. 17.

Re LUDLOW CHARITIES.

Attorney-General—Charity—Practice.

On the opening of a petition by Sir *Charles Wetherell* and *Wray*, on the behalf of the schoolmaster and others interested in the Ludlow Charities, praying that a suggested compromise of an information for the administration might not be sanctioned.

Twiss, for the Attorney-general, objected that the petition had not received the sanction of the Attorney-general, and claimed that a petition by the relators to confirm the compromise, which had the sanction and support of the Attorney-general, ought to be first heard.

The information had been originally filed on the relation of Lord Powis against the Corporation of Ludlow, to obtain for these charities certain lands which were held by the corporation, and which had been let upon long terms of years at nominal rents. After a time the leaseholders and the corporation came to an agreement with the relators, in the absence of the Attorney-general, and without his consent or knowledge, to pay to the charities the sum of 850*l.* a year, to obtain an Act of Parliament to sanction the arrangement, and to stop all proceedings in the information. On the matter being brought under the notice of the then Attorney-General, Sir John Campbell, he thought the lands claimed to be charity lands could not be identified.

Sir Charles Wetherell's clients opposed the bill in Parliament, and procured it to be referred to a committee of the House of Lords, when it appeared that to a very considerable extent the lands could be identified. The dissolution first of Parliament, and subsequently of the Government, which occurred in 1841, put a stop to these inquiries. The same parties again applied in the following Parliament for an Act of Parliament, and again without the consent of the Attorney-general. They were then heard before the new Attorney-general, Sir Frederick Pollock, and presented to him new evidence, when he thought they might present a petition to discharge the original order of reference to the Master, and pray for a fresh reference to consider the new terms of compromise offered. Upon that reference, which was to consider the propriety of the originally proposed compromise of 850*l.* the Master recommended that an increased offer of 1,200*l.* then made by the corporation and their leaseholders should be accepted by the charity, but he had no power under the order of reference to sanction it. The parties then again attended the Attorney-General, and a further increased offer of 1,500*l.* was suggested by the Attorney-General, and assented to by the corporation. The schoolmaster and the other clients of Sir Chas. Wetherell not being satisfied, he was again heard before the Attorney-General; but before anything had been done, Sir Frederick Pollock was appointed Chief Baron of the Exchequer. Sir Charles Wetherell's clients then presented a new petition, praying that no further proceedings might be taken with respect to the compromise which had been suggested. That petition had been presented without the sanction and against the wish of those acting at present in this matter on the behalf of the Attorney-General. Another petition had also been presented by the relators, with the sanction of those acting for the Attorney-General, to confirm the compromise of 1,500*l.* a year to the charities, and to direct what Act of Parliament should be applied for.

Twiss contended that the relator's petition must be heard first, and the schoolmaster's petition could only be heard in the way of defence, especially as it received the sanction of the Attorney-General, who was the proper officer to protect the interests of the charity.

The LORD-CHANCELLOR.—Is there any suggestion that the relators are playing into the hands of the defendants? The Attorney-General appears to have accepted the aid of Sir Charles Wetherell's clients until he had made a certain use of them, and then seemed to say, I have now got enough through you and I will turn you adrift.

Sir *Charles Wetherell*.—If the proposal for the compromise even can be made out, the ground upon which it was suggested altogether fails. It was said the charity lands could not be identified; but inquiry has demonstrated the title of the charity to the greater part of the lands claimed. Neither the Attorney-General or the Court can force a compromise upon those interested in the charities. We object to make the Court a party to any compromise until it has heard what is the actual state of the title of the charity.

The LORD-CHANCELLOR.—A former compromise was suggested, and the Attorney-General sat in judgment upon that suggestion, to ascertain if it was reasonable, and afterwards the parties came to this Court to carry that compromise into effect. Then it turned out that new materials existed, and new evidence could be adduced, and the compromise was at an end. It is not for the Attorney-General to express an opinion as to the new terms of compromise now offered without hearing the parties interested in the charities who object to that compromise. The former petition stood over until after the Master had made his report. I am of opinion that Sir Charles Wetherell should begin. The petitions should be heard together. Sir Charles Wetherell should state his case, then Mr. Lloyd, for the relators, may say his clients are desirous of a compromise with the sanction of the Attorney-General. The Attorney-General will then be heard in support of the relator's petition. I shall hear what Sir Charles Wetherell's clients have to say upon the old petition, and upon the reports of the Master under the former reference; and now as they present another petition in the same direction, and their efforts have been extremely meritorious and useful to the charity, inasmuch as every objection made by them has resulted in the offer of increased benefits to the charity, I shall hear them on that petition also. They presented a former petition, and now a second petition, which is consequential on the former. I shall hear them first.

Sir *Charles Wetherell* then proceeded to open the petition, and his opening occupied the remainder of the day.

Thursday, Dec. 19.

CASH *v.* CASH.

Transfer of supplemental suits—Practice.

Walker applied for an order to transfer this cause from the Rolls to the Court of Vice-Chancellor Wigram. The decree had been made at the Rolls in 1834; and by an order dated 11th May, 1842, a supplemental suit was ordered to be transfered from the paper of the Master of the Rolls to that of Vice-Chancellor Wigram. In 1843 a fresh supplemental bill was filed and a decree in both supplemental suits was made by the Vice-Chancellor, reserving further directions. Upon making a motion before the Vice-Chancellor in the original cause, his Honour questioned whether the original cause had been transferred from the Rolls. It had been assumed that the necessary effect of the transfer of the supplemental suit was to transfer the original cause. Nothing could be now done at the Rolls. The Vice-Chancellor suggested that the matter should be mentioned to his Lordship.

Rolt, contrà. The original cause remains at the Rolls, and all the important business in the cause has been done in that Court. The notice of motion now given is entitled exclusively in the cause at the Rolls. It is only the state of the business in the different branches of the court, which causes suits to be transferred; and there is nothing in the present state of business at the Rolls to occasion a transfer from that court. It is more correct that the cause should be retained at the Rolls, as it will shortly come on there on further directions.

Walker, in reply.

The LORD CHANCELLOR.—The transfers of causes are made by the Master, though by my directions. In this case application upon the subject must be made to the Master of the Rolls, who knows all the merits of the question.

SAYER *v.* WAGSTAFF.

This cause was again in the paper to be spoken to, the effect of his lordship's judgment having been to refuse the taxation altogether, and to affirm the principle of the judgment of the Master of the Rolls; but the Master in the Rolls had, in fact, directed certain parts of the bill to be taxed, and it appearing from the judgment, as well as the short-hand writer's notes, that such reference was by consent,

His LORDSHIP thought some special direction necessary, but the counsel of both sides not being prepared, the matter again stood over.

Monday and Tuesday, Dec. 9 and 17.

SANDON *v.* HOOPER.

Mortgagee in possession—Repairs and improvements on mortgage property—Account—redemption.

A mortgagee in possession may perform the repairs necessary for the support of the mortgage property, and will be allowed to charge the expenses of such repairs against the property, before he can be redeemed, but without the consent of the mortgagor, express or implied, such a mortgagee will not be allowed sums laid out in alterations or improvements, although the value of the property may have been enhanced thereby; the rule being that the mortgagee shall not throw obstacles in the way of redemption by the mortgagor. And a mortgagee in possession will be held liable for any injury the mortgaged property may have sustained, by reason of his having pulled down cottages, and erected buildings of a different description. Where a mortgagee in possession claims as against a mortgagor, who has instituted a suit for redemption, to be allowed sums expended for lasting improvements, but adduces no proof of such expenditure, he will not be entitled to an inquiry on the subject, where the mortgagor has charged and adduced some evidence to prove that the value of the property has been depreciated by the mortgagee's alterations.

The plaintiff in this suit was the mortgagor of certain property, which, in 1830, had been mortgaged to the defendant, a solicitor, for 300*l.* In 1836, the plaintiff executed a further charge for 140*l.* which in part consisted of a bill of costs then due from the plaintiff to the defendant. The plaintiff sought to redeem, and the Master of the Rolls had decreed a redemption; but the defendant complaining that certain inquiries as to sums expended by him in permanent repairs and lasting improvements ought to have been directed by the decree, appealed to the Lord Chancellor.

It appeared that the defendant, the mortgagee, had in 1838 brought an action against the mortgagor, who was in possession of the chief part of the premises, and had obtained possession in 1839. In the same year the plaintiff gave notice of his intention to pay the principal and interest in six months, and at the expiration of that period tendered the sum of 440*l.* with interest; but the defendant claimed a further sum alleged to have been laid out by him in repairs and improvements, which swelled the debt to 882*l.* On the 18th of June, 1840, the present bill was filed. There was a charge in the bill that the defendant had improperly pulled down two houses, by which the property had been deteriorated in value; in answer to which, the defendant stated, that he had pulled down two dilapidated cottages, and had built a stable upon the site of them; that the cottages were in a ruinous condition, and totally unfit for habitation; and that with the privity of the plaintiff, he had expended a large sum of money in permanent and substantial repairs and lasting improvements. The plaintiff had examined several surveyors and other persons, some of whom stated that the property was of less value than before the defendant's alterations, and that the cottages used to be let for 10*l.* a year, whereas the stable would only let for 6*l.* The former tenants of the cottages also proved that they would have continued to occupy, had they not been turned out by the defendant. The Master of the Rolls held that the dilapidations were proved, and that the defendant was liable for any loss occasioned by the houses having been pulled down; that he had no right to "improve the mortgagor out of his estate," and that it was not a matter of course to an inquiry whether any money had been laid out in lasting improvements. The Master of the Rolls held also that the plaintiff was entitled to an inquiry as to the loss sustained in consequence of pulling down the cottages, and to the taxation of the bill of costs, which formed part of the consideration for the further charge, and that the defendant was liable to the costs of the suit.

Roupell and *Stevens*, for the appellant.

Jas. Russell and *Chandless*, for the plaintiff, the respondent.

(The following authorities were cited or referred to in the course of the argument: *Wragg* v. *Denham* (2 Young & Collyer, Ex. Rep. 117); *Miller* v. *Beatly*, in Seton on Decrees, 153); *Martin* v. *Wichelo* (1 Cr. & Phil. 257.)

Saturday, Dec. 21.

JUDGMENT.

The LORD CHANCELLOR.—This is a bill filed by the mortgagor for the redemption of a public-house and several cottages, which had been mortgaged to the defendant in 1830, for 300*l.* Afterwards, in 1836, there was a further charge. Subsequently the defendant brought an ejectment, and obtained possession of the premises. He then pulled down two cottages, and applied the materials upon property of his own, and built a stable upon the site of the cottages which had been pulled down. This was done without the consent of the mortgagor. I am of opinion that the defendant had no right to pull down the cottages; for it appears that they were not in such a state as to require to be pulled down. One of the witnesses examined by the plaintiff is a bricklayer, who was tenant of one of the cottages, and he said they might have been repaired for ten pounds. Both the tenants of the cottages state that they would have continued to occupy them if they had been permitted to do so. Several surveyors also were examined by the plaintiff, and some of them say that the property in its present state would not let for so much as it would have let for before the alterations made by the defendant. In this state of things the defendant committed an act of wrongful waste, by pulling down the two cottages and taking away the materials, and by building a stable in their place; and I am of opinion that he is chargeable with whatever loss the plaintiff has sustained in consequence of that wrongful act. How the Master of the Rolls decided was thus: he made the mortgagee chargeable with so much rent as the cottages would have let for had they not been pulled down, and he will have to pay the six pounds a year for which the stable has been let. This is not unfair, for he has so far permanently diminished the

value of the property. Mr. Romilly says the mortgagee has built a stable, and ought to be allowed to deduct so much rent as it has produced from the sum he is charged with in respect of the cottages. But I do not accede to that, for the pulling down the cottages was a wrongful act. As the decree now stands, the mortgagor has an allowance of six years' rent, which, if he had remained in possession, he would have continued to have received for the future, besides the materials which have been taken off the property. I am satisfied the mortgagee has not been made to pay so much as he might have been charged with, and that it ought not to be referred to the Master to take an account of what has been laid out by the mortgagee. It was said that the sum which has been expended in lasting repairs and improvements enters into the loss sustained by the mortgagor; that the mortgagee has employed workmen in effecting necessary repairs, and also pulls down the cottages and puts something else in their stead. But taking the whole together, the mortgagee cannot take out the repairs and demand a reference to the Master to inquire how much of the sum he has expended has been for necessary and proper repairs, and how much in respect of his wrongful act, if upon the whole taken together there has been a diminution in the value of the property by reason of his alterations. The fact of the diminution of value appears upon the evidence in the cause as heard before me, and the defendant is, therefore, not entitled to any reference. Then as to the costs; the defendant refused to account when called upon, and therefore the bill became necessary. If the bill was necessary by the defendant's misconduct, the opinion of the Master of the Rolls was right upon that point. The decree must be affirmed with costs.

Thursday, Dec. 19.

DEAN AND CHAPTER OF ELY v. BLISS.

Delay—Case for opinion of court of law—Statute of limitations—Tithes.

Lloyd asked that a case which had been directed to be sent for the opinion of the Court of Exchequer, and of which the defendant's solicitor had received a copy on the 17th of December instant, might be proceeded with forthwith. The case involved an important question on the proper construction of the Statute of Limitations with reference to tithes, but the case itself was extremely simple.

Phillips, for the defendants, asked that the matter might stand over until the first day of next term. The cause was heard in June last, when it stood over for the plaintiffs to prepare a case, which was only delivered to the defendant's solicitor two days ago. The solicitors had not had time to look at the case, and their junior counsel in the cause, Mr. Eagle, was engaged in the country on a tithe commission.

The LORD CHANCELLOR.—If the matter stood over during the long vacation for the plaintiffs to prepare a case, and they had only sent it to the other side on the 17th instant, there could be no great injury from the short delay required by the defendant. It was ultimately settled that the matter should stand over until next term.

Re BURRIDGE, a Lunatic.

Lunatic's contract for necessaries—Sale of lunatic's estate.

Kinglake mentioned this petition, which was for a sale of a part of the real estate for the lunatic's maintenance. It had stood over to search for precedents, but no authority for the order asked had been found. The petitioner was a creditor of the lunatic's to the extent of 160*l.* for maintenance since the lunacy, and it was clear that a lunatic could contract for necessaries.

The LORD CHANCELLOR.—There must be a reference to the commissioners to inquire whether there is any debt due to the petitioner; but no conditional order for sale, if any debt should be found, can now be made; but you must come back again when the commissioner has made his report.

Re BIRD, a Lunatic.

Practice—Personal estate the produce of real estate.

Wakefield supported a petition by the administratrix of the deceased lunatic to have a fund in Court, which had been produced by the rents of real estate, transferred. The heir-at-law had filed a bill claiming this fund, but his suit had been discontinued.

J. Baily, for the heir-at-law, did not now object to the transfer. *Ordered.*

Re WARRINER, a Lunatic.

Increased allowance to lunatic, on account of the sons of the next remainder-man in tail requiring to be advanced in life.

Wray supported a petition by the committee of the person and the estate of the lunatic, praying a confirmation of the commissioner's report, by which a proposal to increase the allowance for the maintenance of the lunatic from 400*l.* to 1,000*l.* a year had been approved of. The ground upon which such increase had been approved was, that the two sons of the lunatic's younger brother, who was the next remainder-man in tail of the real estate, were of an age to be sent to the University, and thereby their father would incur additional expense.

Re WATTS, an alleged Lunatic.

Practice in lunacy—Commission opposed by the mortgagee of lunatic's estate.

Practice in lunacy—Exhibits.

Wakefield and *Wright* appeared to support a petition by the wife of the lunatic for a commission. The affidavits on which they relied tended to shew that Watts had been for many years of unsound mind. He had cut off one of his fingers and destroyed one of his eyes, and justified those acts as literal fulfilments of the Scripture injunction, "If thy eye offend thee, pluck it out; and if thy hand offend thee, cut it off, and cast it from thee."

Anderdon and *Bird*, for the mortgagee of Watts's estate, opposed the application. They contended that the affidavits read did not form any real evidence of insanity. When Watts was in Reading gaol for debt in 1842, Mr. Mackay, a respectable solicitor, had advanced to him 500*l.* with the assent and at the earnest request of the present petitioner. On that occasion, in consequence of rumours of Watts's insanity, Mr. Mackay had, after much inquiry, taken a physician to visit Watts in gaol, and that physician had fully confirmed his competency. The security to Mr. Mackay was afterwards executed by Watts in the presence of the physician, the governors of the gaol, and a strange solicitor, who had been consulted on Watts's behalf, and all these persons were perfectly satisfied of his sanity. The avowed object of the petitioner and her son was to set aside securities which had many years ago been executed by Watts for the purpose of raising 8,000*l.* on a mortgage of his estate. There were affidavits of various relatives and other persons, who had long been acquainted with Watts, to shew that, though not a man of strong mind, he had always been treated as sane. He was not now under any restraint. The petition for a commission was merely got up for sinister objects. The mortgagees had been in possession since 1838, and they had recently obtained a decree of foreclosure. There was a letter from Watts to his wife upon the occasion of his receiving the subpœna in February, 1842, directing her what to do, which clearly proved him to be of sound mind. The acts of injury to his own person, adduced as proofs of insanity, were done under the influence of momentary irritations, and in consequence of the reproaches of his wife; besides they occurred many years ago.

Wakefield, in reply.

The LORD CHANCELLOR.—The petitioner will take the commission at her own risk; but before it issues, I should like Dr. Southey to see Mr. Watts. The mortgagees can attend, as creditors, the execution of the commission; the Court is at liberty to impose any terms on the person having the carriage of the commission.

On the 21st Dec. *Anderdon* again called his lordship's attention to this petition. His clients find that Dr. Southey intended to read only the medical affidavits before seeing Mr. Watts, and the only medical affidavit was that of Dr. Monro, who had deposed to Watts's insanity in support of the petition. The object of his clients was, that Dr. Southey might be instructed to read all the affidavits, and a bundle of Watts's letters which had been tied together and sealed, and one of them marked with a letter as an exhibit to an affidavit. This had been adopted to avoid the expense of making all the letters, which were very numerous, separate exhibits. At all events, that Dr. Southey might first communicate with a physician employed by those who opposed the commission, who, with Dr. Southey, might visit Watts. A question had also arisen as to the payment of Dr. Southey, who objected to move in the matter unless first paid.

The LORD CHANCELLOR.—You must allow the secretary of lunatics to select such of the affidavits as he may think necessary for the perusal of Dr. Southey. The usual course is to send all the affidavits to Dr. Southey, who, on looking at them, will exercise his own judgment as to what he may think proper to read. The mortgagees cannot object to pay Dr. Southey in the first instance, as they expressly asked that some medical gentleman might attend Mr. Watts, in order to report upon the state of his mind. Dr. Southey will see Mr. Watts alone; I leave it to his discretion when, how, and in what place to see him. He will also read such of the affidavits as he may deem material. But unless the letters are properly made exhibits, they must not be placed before Dr. Southey.

The LORD CHANCELLOR (after inspecting the letters).—The letter referred to in the affidavit is marked on one of the papers only, and there is nothing to prevent any others of these numerous letters from being removed and others substituted. Nothing can be more irregular than this. But as it is better not to exclude any evidence, let the petitioner have copies of these letters, and then they may be laid before Dr. Southey.

Nov. 21, and Dec. 1.

SHEPHERD v. SHARPE.

Principal and surety—Fraud and misrepresentation by the debtor and the creditor—Legal defence—Injunction.

Where the case made by the bill was, that an acceptance as surety had been obtained by fraud and misrepresentation on the part of the principal debtor and the creditor, and the Vice-Chancellor had granted an injunction to stay the trial of an action upon the bill until the hearing of the cause in equity, on the ground that the case was one of suspicion; it was held on appeal, that the question of fraud and misrepresentation must ultimately be tried at law, and the injunction was dissolved so far as it restrained the trial of the action; but the cause was retained, with liberty to the plaintiff in equity to apply immediately after the trial.

This was an appeal motion by the defendant to discharge an order by the Vice-Chancellor of England, continuing the common injunction to the hearing of the cause. The plaintiff was the acceptor of a bill of exchange for 600*l.* in favour of the National Provincial Bank of England, of which the defendant Sharpe was the public officer. The other defendant was Belcher, the assignee of Walton, the drawer, the person at whose instance the bill of exchange had been accepted by the plaintiff. Walton, up to September 1842, had been the superintendent of a branch of the National Provincial Bank, at Croyland in Lincolnshire, where he also carried on another business on his own account. The Croyland branch was subject to a superior branch at Peterborough; and Budwick, the manager there, having reason to be dissatisfied with the accounts of Walton, reported to the bank in London that there were inaccuracies in Walton's accounts. Atkinson, an inspector, was then sent from London, and arrived at Croyland on the 12th of September, 1842. On the following day, the 13th, Walton resigned his situation as manager, and on the 14th of September the deficiencies in Walton's accounts were partly ascertained. These deficiencies arose from Walton having received moneys from the customers of the bank, and not having given them credit in the bank books for all the sums they had paid in. As these deficiencies were discovered they were partly made good by Walton, who continued to assist Atkinson in the branch bank up to the 24th September, at which time only about 400*l.* of the deficiencies then discovered remained due from Walton. On the 26th of September Atkinson and Walton went together to Spalding fair, in order to meet several of the customers of the bank, and then other deficiencies, amounting to upwards of 900*l.* were discovered. Atkinson then pressed Walton for some further security, and Walton said that Shepherd (the plaintiff), a friend of his, would accept a bill of exchange for Walton's accommodation. Atkinson and Walton then went to Shepherd's house in a gig, when Walton got out, and had some conversation with the plaintiff in his yard, but not within the hearing of Atkinson, who remained seated in the gig. A stamp had been procured at Spalding, and the plaintiff having consented to accept a bill, Atkinson was called into the house, and requested to draw a bill of exchange for 600*l.* payable six months after date, which he did, and the plaintiff accepted it. Walton afterwards indorsed the bill to Atkinson for the bank. On the 7th of October an advertisement appeared in the local papers, stating that Walton had resigned the bank agency at Croyland, and that another person, named Lawson, had been appointed. Various other deficiencies were afterwards discovered in Walton's accounts, and in December 1842 he was declared a bankrupt. In March 1843, when the bill became due, it was dishonoured, and the bank immediately commenced an action against the plaintiff upon his acceptance.

The present bill was then filed, alleging fraud on the part of the agents of the bank in procuring the bill after they had become aware of Walton's deficiencies, and praying an injunction to restrain the action at law. The plaintiff alleged that Walton had stated that he required the bill until he had collected some money due to him; and that Atkinson did not disclose the position in which Walton stood towards the bank when he obtained the plaintiff's acceptance. The fact that Walton had resigned his bank agency was unknown to the plaintiff until the appearance of the advertisement on the 7th of October. The Vice-Chancellor of England thought the case one of great suspicion, and granted an order to extend the common injunction to the hearing.

Walker and *Toller*, for the appeal motion, contended that the question in this was the same as that at law, namely, whether there had been fraud and misrepresentation on the part of the creditor and the principal debtor towards the surety. The case was one peculiarly fitted to be sifted before a jury, and on which the court of equity could come to no satisfactory decision. If even there was misrepresentation by the principal debtor to the surety, the creditor, taking no part in the transaction, is not responsible for such misrepresentation. (*Stone* v. *Compton*, 5 Bingh. N. S. 142.) In another case in which an action had been brought by the bank against another

person who had accepted a bill for Walton, Lord Abinger, in charging the jury, said the person receiving the guarantee did enough if he was silent. If a debtor's friends like to come forward, there was no necessity for the creditor's telling them that he owes a sum of money, or is a dishonest man. There was no such law: and if there were, it would render a great many securities bad. But if there had been misrepresentation by the creditor, the security might be bad.

The LORD CHANCELLOR.—Atkinson must have known that the plaintiff was falling into a pit.

Walker.—Only two sums discovered to be due from Walton before the journey to Spalding had not been made good, and Sharpe swears that it was believed that he (Walton) would ultimately pay all his debts and deficiencies. The bank say Walton had resigned the day after Atkinson arrived at Croyland.

The LORD CHANCELLOR.—If Shepherd had been told the real circumstances, he would have required a counter-security from Walton. Read the passage in the defendant's answer.

Walker.—"That Atkinson arrived and temporarily took the conduct of the business of the bank; and that on the 13th of September Walton resigned, and his resignation was accepted by the directors, and that Lawson was appointed in his stead; denied that the directors or their agents had removed him." The bank feared to publish the facts, lest other customers should dispute their accounts.

The LORD CHANCELLOR.—Why has not the plaintiff a complete defence at law?

Walker.—He has pleaded at law—1. That he did not accept the bill; 2. That Walton did not indorse it, &c.; 3. That the bill was obtained by fraud and misrepresentation of Walton and the Banking Company; and, 4. That the bill was received by the company with notice of the fraud.

The LORD CHANCELLOR.—Nothing can be discovered of what took place on the acceptance of the bill except from Atkinson; I do not see what further discovery the plaintiff can get in this court.

Romilly and *Sandys*, for the plaintiff.—The case before Lord Abinger was at Nisi Prius. Walton appeared in the bank, and, as far as appeared to the world, continued to take part in the business there. The mere silence of Atkinson in this case was a fraud. (*Smith* v. *Bank of Scotland*, 1 Dow.)

Walker, in reply.

The LORD CHANCELLOR.—I understand that Atkinson acted in the office, and that Walton came in occasionally. Suppose I should be of opinion that the defendants should go on to trial, and not proceed further. The plaintiff in equity must call Walton on the trial at law, to state what took place upon his first requesting Shepherd to accept the bill. Assuming there to have been a false representation made by Walton, but not any collusion with Atkinson, the case ought to be tried at law. It appears that Atkinson said nothing; he did not know what Walton had said to the plaintiff. Atkinson was present at the acceptance of the bill, as a witness to the transaction. If Atkinson had been present and heard any false representation, or imperfect representation, made, and did not set it right, he would have been fixed. The Vice-Chancellor thought Atkinson appearing with Walton, without stating that he was not then in the employment of the bank, a circumstance of great suspicion. It is, however, better that the case should be tried at law. I shall dissolve the injunction, so far as it goes to restrain the trial at law, but I shall retain the cause here. I shall allow the plaintiff to go on to trial, and then see what the evidence is. The plaintiff will have liberty to apply, and I shall reserve the costs. The plaintiff may apply immediately after the trial. I don't consider justice can be done in this court alone, and that I must at last direct an issue or an action.

Thursday, Dec. 19.

Re ROBINSON, a Lunatic.

Arrear of allowance to committee of a deceased lunatic.

The property of the late lunatic had consisted of a life interest in 40,000*l.* personal, and a real estate of about 300*l.* a year. His wife had been committee of the person, and the whole of the income had been allowed for maintenance. At the time of his death there was an arrear of allowance due to the wife, who now presented a petition praying that such arrear might be paid to her without any previous reference to the Master to inquire who were the lunatic's real and personal representatives.

Wakefield supported the petition, the prayer of which was granted.

Re STUART, a Lunatic.

Practice—Default of committee to account—Interim committee.

Two committees of the estate of this lunatic had been appointed, both of whom were out of the jurisdiction, and they had rendered no account in the matter for twenty years. One of the sureties was dead, and the other could not be found. The lunatic's allowance was 2,800*l.* a year. Under these circumstances, a petition was presented, praying for the appointment of a receiver.

Romilly and *Taylor* supported the petition.

The LORD CHANCELLOR.—An interim receiver or committee must be appointed for the purpose of acting in the matter of the lunacy, and enforcing the defaulting committees to account.

VICE-CHANCELLOR OF ENGLAND'S COURT.

ST. JOHN'S COLLEGE, OXFORD, *v.* PRATT.

Practice—Contempt—5 & 6 Vict. c. 22.

The 5 & 6 Vict. c. 22, being an Act for "consolidating the Queen's Bench, Fleet, and Marshalsea Prisons," and for regulating the Queen's prison, among other things recites that the Fleet Prison was a prison for debtors and bankrupts, and for persons charged with contempt of her Majesty's Courts of Chancery, Exchequer, and Common Pleas; and that by an Act passed in the second year of the reign of her Majesty, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases; for extending the Remedies of Creditors against the Property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England," arrest on mesne process in civil actions was abolished except in certain cases, and further provision was made for the relief of insolvent debtors, by reason whereof the prison in the Court of Queen's Bench was sufficient to contain all the persons who were then imprisoned within the said several prisons, or who would thereafter be taken in execution of process of the said several courts, it was enacted, that after the passing of the Act, the prison then known as the prison of the Marshalsea of the Court of Queen's Bench should be called the Queen's Bench Prison, and should be the only prison for all debtors, bankrupts, and all other persons who, before the passing of the Act, might lawfully have been imprisoned in any of the said prisons of the Marshalsea, of the Court of Queen's Bench, the Fleet Prison, or the prison of the Marshalsea, and of the Court of the Queen's Palace of Westminster; and after the passing of the Act no person should be committed from any of the said courts to the Fleet Prison, or prison of the Marshalsea, and that the persons imprisoned in the Queen's Bench Prison shall be there in the custody of the marshal or keeper of the Queen's Prison, from whichever of the said courts they shall have been severally committed.

After an order for committing a party to the Fleet, the former practice for breach of an injunction had been in force for several years, but had become inoperative by reason of the above statute, and the defendant had not, during that time, violated the injunction. A motion for an order to commit the defendant to the Queen's Bench Prison was, under the circumstances of the case, looked upon as unnecessarily severe, and therefore refused.

This was a motion on behalf of the College of St. John, Oxford, for an order to commit the defendant to the Queen's Bench Prison. It appears that an order had been obtained for the committal of the defendant to the Fleet about five years ago for a breach of an injunction to restrain him from cutting down trees in Bagley Wood; this order had been in force during that period; and the defendant had hitherto kept out of the way to avoid being served with the order, which became inoperative by the abolition of the Fleet prison. The present application was, therefore, to revive the former order, by directing that Pratt, the defendant, should stand committed to the Queen's Bench Prison.

Bellamy, in support of the motion, submitted, that unless the Court could conceive it necessary to read effect to the former order, which had, in the case, the defendant under the circumstances of restraint, and the college would be without guarantee against his returning to would have similar waste to that for which the former committal of his committal had been allowed, but the order, effects of which he had, by absconding and keeping out of the way, hitherto contrived to elude.

Wakefield opposed the motion as wholly unnecessary and vexatious; the defendant in his affidavit had stated that he had not, except upon one occasion, for the purpose of transacting some important business, been in Oxford during the last five years; that it was not his intention to touch the trees, and that there was no reason to believe that he would again be found guilty of interfering with them. The learned counsel thought that the college had shewn a vindictive and persecuting spirit, and there was no reason whatever in again calling for the interposition of the Court.

His HONOUR the Vice-Chancellor observed, that he thought the punishment which the defendant had undergone for the last five years, in thus being driven from his home and business through a dread of the order of the Court, was quite sufficient for the present. He should certainly like to have seen a little more lenity displayed by that learned body towards the defendant, and therefore refused the application.

Saturday, Dec. 14.

WINCH *v.* BRUTTON.

Will—Precatory words—Insufficiency of such to create a trust.

W. B. the testator, having stated his intention of making a suitable provision for his wife E. B. as well as for his daughter and grandchild respectively, gave and bequeathed unto his wife E. B. all and singular whatever property and effects he might happen to die possessed of, either in possession, remainder, or expectancy, for her own use, benefit, and disposal absolutely. In a subsequent part of the will the testator says as follows:—"And whereas I have hereby manifested abundant proof of entire confidence in my said dear wife by thus giving her the sovereign control over the whole of my property for her sole use and benefit, which she will duly appreciate accordingly; but in so doing I nevertheless earnestly conjure her, under the advice of my executors, to proceed forthwith to make ample provision by deed or will for our only child and grand-daughter." The testator then gave all the rest, residue, and remainder of his estate and effects to his wife.

E. B. the wife, died in the testator's lifetime, and after her decease the testator made a codicil to his will, giving thereby a legacy to his servant, but without otherwise affecting the dispositions therein:—Held, that if E. B. the testator's wife, survived him, the effect of the different clauses in the will would have given her all his property absolutely for her own benefit, without its being fettered with any trust in favour of the daughter and grand-daughter.

The testator, William Bridges, by his will, reciting that he was desirous of making a suitable provision for his wife, Elizabeth, as well *as for his daughter and grandchild respectively*, although by the Statute of Distributions they would be *equally well taken care of*; but that in order to manifest the deep affection and unbounded confidence he had and entertained towards his wife, and believing she would be actuated by the most maternal regard towards their child, the testator then proceeded:—"I do hereby give and bequeath unto my said dear wife, E. Bridges, all and singular whatever property and effects I may happen to die possessed of, either in possession, reversion, remainder, or expectancy, to hold the same unto my said dear wife to and for *her own use, benefit, and disposition absolutely* (except the bequest to my daughter), well knowing my sentiments as she does, and *implicitly relying upon her attachment to our daughter and grandchild*, moreover, believing she will act generally under the immediate advice and judgment of my executors hereinafter named. And I do further will and direct that my executors shall and do, as soon as conveniently may be after my decease, call in, dispose of, and convert into money, whatever share in the said copartnership business of a silk manufacturer I may be entitled to under and by virtue of and subject to a certain deed of copartnership arrangement executed between us accordingly; and likewise call in all and singular other my personal estate and effects whatsoever, and shall and do, after payment thereout, in the first place, of my just debts, funeral and testamentary expenses, and of the sum of 500*l.* to my daughter Elizabeth, at present the wife of William Winch (for her separate use), lay out and invest the produce of my said effects in the public stocks or funds, or upon government or real securities in England, *in her own name*, or jointly with my said executors, as may be deemed most expedient and agreeable to my wife, with the stocks, from time to time to vary or transfer, hold the same funds, and securities respective dividends and interest arising, and every part thereof, unto my said dear wife, to the absolute use, benefit, and disposal. And forasmuch as I have hereby manifested abundant proof of entire confidence in my said dear wife, by thus giving her the sovereign control over the whole of my property for her sole use and benefit, which she will duly appreciate accordingly; but in so doing I nevertheless *earnestly conjure her*, under the advice of my executors, to proceed forthwith to make ample provision, by deed or will, *for our only child and granddaughter*, and to take special care that her present husband shall have no control over her property in any manner whatsoever, either directly or remotely. *All the rest, residue, and remainder of my estate and effects I give unto my said dear wife.* And I nominate and appoint her, with my friends Robert Brutton and Robert Harrison, executrix and executors of this my will, allowing them to retain and reimburse themselves of all costs, &c. which they shall sustain or be put to in or about the execution thereof, my executors being only responsible for each other's acts.(a) And hereby, by revoking all former wills, I declare this only to be my last will and testament."

The testator's wife died some time after the date of the will, but before the date of the codicil, which was executed 15th July, 1843, whereby he gave a legacy of 400*l.* to an old servant, and confirmed his will in all other respects.

The testator died on the 17th August following, leaving his daughter Elizabeth, the wife of William Winch, his only daughter, and her daughter, the plaintiff Elizabeth Winch, his only grand-daughter, spinster, him surviving.

The testator's daughter had been separated from

(a) This evident inaccuracy was noticed by the Court.

her husband during the testator's lifetime; and they had ceased to cohabit together. There was but one child of the marriage, the testator's grand-daughter, mentioned in the will.

The bill was filed by the grand-daughter, by her next friend, against the executors, and against her father and mother, submitting that there was a good trust raised in the will in favour of her and her mother, and it accordingly prayed that the will might be established, and the trusts thereof carried into execution, and that the rights and interests of all parties interested in the testator's estate might be declared.

The cause now came on upon a demurrer put in by Wm. Winch, for want of equity. The principal question to be argued was, therefore, whether the words of the will manifesting a desire by the testator to provide for his daughter and grandchild, coupled with the testator's confidence in his wife that she would carry out his wishes in that respect, were sufficient to raise a trust in their behalf respectively.

Bethel and *Wright* appeared in support of the demurrer, and contended that in all cases of precatory trusts, there were three things necessary in order to render them obligatory upon the Court. In the first place, the directions in the will must be much stronger than those expressions, which amount to nothing more than *a confidence* that the individual to whom the property is given will act according to the testator's wishes. Secondly, the expressions must be sufficiently intelligible to designate what the testator himself intended should form the subject of the trust; and, thirdly, that the words must in themselves be sufficiently distinct to point out the objects of the trust; that the expressions used by the testator, however they might show the great confidence he placed in his wife, extended no further, and that they imposed no restraint upon her actions, or controlled her power over the property in any way whatever.

Cases cited for the demurrer: *Curtis* v. *Rippon* (5 Madd. 434); *Thorp* v. *Owen* (2 Hare, 607); *Lechmere* v. *Lavie* (2 M. & K. 197; *Abraham* v. *Alman* (1 Russ. 509); *Sale* v. *Moore* (1 Sim. 534); *Meredith* v. *Heneage* (1 Sim. 542); *Bernsey* v. *Witham* (5 Sim. 23).

Wakefield, *Stuart*, and *Grimshaw* in support of the bill, contended that there was no better rule to go by in respect of wills than that laid down by Sir Wm. Grant in *Constantine* v. *Constantin* (6 Ves. 102), namely, that it is the duty of the Court to give effect to every word of the will, provided an effect can be given to it not inconsistent with the general intent of the whole will taken together; that in the present case, had the testator intended that his wife should have the sole benefit and control over his property, there would have been no necessity for the executors' interference with her in laying out and investing the moneys produced by the sale of his effects, in the public funds; and that the latter clause of the will directing the executors to reimburse themselves all costs, &c. sufficiently shewed the wife was not to take the property absolutely; that it is a principle of equity, where a trust is once erected it shall never fail for want of trustees; and that a further reason why the demurrer ought to be overruled was, that it assumed to be the separate demurrer of the husband of the testator's daughter.

Wood cited: *Elibank* v. *Montilieu* (5 Ves. 737); (1 Hare, 445), (1 My. & C. 401); *Raikes* v. *Ward*.

Bethel not called upon.

The VICE-CHANCELLOR.—This is, upon the whole, a simple case, although there is, upon the degree of confusion and uncertainty upon the ... some codicil. Now it is perfectly clear that the child of the mother has no interest. In this state of things the question depends on the language of the will and codicil, and here I make one general observation, namely, that there existed a confusion in the testator's mind as to what the law would be in reference to the Statute of Distributions. It is manifest, that in the first part of his will the testator gives every thing to his wife in express terms for her sole use and benefit absolutely. "Whereas I am possessed of or otherwise well entitled to," &c. [His Honour here read the whole passage.] Now it appears to me that the will would have been complete had it stopped there, for every thing except the bequest to his daughter is given to the wife; and the following words, "for her own use, benefit, and disposal absolutely," are quite consistent with that fact, that the testator was aware he had given every thing to her, expressing at the same time his entire confidence that she would act under the advice of his executors, "well knowing," he says, "my sentiments, as she does, and implicitly relying upon her attachment to our daughter and grandchild; moreover, believing she will act generally under the immediate advice of my executors." Now, it is impossible to spell out any thing in this part that shew the daughter or grand-daughter, or both, were intended to be the owners of that property which is given to the wife. The direction to the trustees to call in and convert into money his share in the business, and invest the produce in the public funds in his wife's own name, or jointly with his executors, as might be most agreeable to his wife, amounts to a complete dealing with the testator's property. Then again, to invest the same in his wife's name *only*, "to hold the same for her own absolute use, benefit, and disposal." This, and the passage immediately preceding, manifest a complete obligation upon the executors to invest the whole of the personal estate in securities in the name of his wife conjointly with their own, or in her name only, at her own option and desire, and indicate a clear intention that she should have the disposal of the whole. Then follows the clause wherein he says, "I nevertheless earnestly conjure her, with the advice of my executors, to proceed forthwith to make ample provision, by deed or will, for our only child and grand-daughter." These words give an unqualified power to his wife to make a provision in what manner she pleased. Now, can the ample provision to give by *deed* or *will* be said to pass no dominion over the property? I wish to have it made out, when such an absolute power is given to the wife, how the interposition of the word "conjure" can be construed as indicating an intention to have it settled upon a child or grandchild. Nay, the very construction of the sentence appears to me as indicating that a discretionary power was intended to be exercised by the wife as to the amplitude of the provision, but by no means tantamount to a gift of any part of the real or personal estate to the child or grandchild. But even suppose there did exist any ambiguity in the first part of the will, the latter part contains a sweeping clause, which gives every thing to the wife; so that the testator has himself provided for any ambiguity, by giving every thing to his wife. As to the clause allowing the executors to reimburse themselves, and that they shall be only responsible for each other's acts, it is very inaccurately expressed, because it makes the executors responsible only for the acts of one another; but it does not affect the clear residue of the whole of the testator's property. The codicil leaves the case just as it stood before, there being nothing more than the gift of a legacy to his servants, and a republication of his will by operation of law; but it does not affect one single word of the will. Perhaps the testator might have thought that after the death of his wife the law would make ample provision for his child. *Demurrer allowed.*

Friday, Dec. 13.

NEWBOLT *v.* PRYCE.

Will—Improper description—Misnomer.

A testatrix in her will bequeathed as follows:—"To my nephew, J. N. second son of the Rev. W. S. N. vicar of Somerton, Somerset." It appears, however, that the vicar of Somerton's name was W. R. N. and that he was brother of the testatrix's deceased husband, and that he had three sons, G. D. N. the eldest, the second son, R. H. N., and the third son, John R. N. Held, that this third son, although misdescribed by the testatrix as the second son, was nevertheless the party designed by the testatrix to take the benefit under her will, for her description of the name John made the veritas nominis overcome the error descriptionis.

The testatrix, Blanch Bridget Newbolt, widow, being possessed of considerable personal estate, by her will, dated Jan. 25th, 1837, bequeathed as follows:—"To my nephew, John Newbolt, second son of the Rev. William Strangways Newbolt, vicar of Somerton, Somerset, I leave all my funded property in the Three per Cents. of which I may die possessed." The testatrix then, having made certain other bequests, continued: "To my brother-in-law, the Rev. William *Strangways* Newbolt, vicar of Somerton, Somerset, I leave my most beloved husband's sisters, &c." The testatrix's funded property consisted of 2,800*l.* Three per Cent. Consolidated Bank Annuities. ... in the month of June, 1843, and from the Master's ... it appeared that there was no such person as William ... ways Newbolt, vicar of Somerton, Somerset, but there was a William *Robert* Newbolt, vicar of that place, who had been inducted into the vicarage in the year 1833, ... that no other person of the name of Newbolt had acted as vicar or curate of the parish of Somerton for upwards of fifty years previous to the date of the testatrix's will; that the said W. R. Newbolt was the brother of the testatrix's deceased husband, John Newbolt, under whose will she had become entitled to the above-mentioned stock, and that the said W. Robert Newbolt, at the date of the testatrix's will, had three sons, namely, George Digby Newbolt, born May 2, 1829; Robert Henry Newbolt, born April 29, 1833, and *John* Rice Newbolt, the plaintiff, who was born on the 10th June, 1836.

The bill was filed by John Rice Newbolt, through his next friend, against the executors of the will, his second brother, Robert Henry Newbolt, and the testatrix's next of kin, to carry out the trusts of the will, and that he, the plaintiff, might be declared to be entitled to the said legacy of 2,800*l.* Three per Cent. Consolidated Bank Annuities.

Bethell and *Selwyn* submitted to the Court, 1st, Whether the plaintiff being the person answering the first and most material part of the description (the name), although he did not answer the second part of the description, he being the third, and not the second son of his father, the Rev. Wm. Rt. Newbolt, could nevertheless take; or 2ndly, Whether Robert Henry Newbolt, who answered the description of second son, but not the name, would be entitled to the legacy; or 3rdly, Whether, under the circumstances of the case, the bequest be void for uncertainty. (*Doe* v. *Hiscocks*, 5 Mee. & Wel. 363.)

Stuart, for Robert Henry Newbolt, the second son, contended that with respect to him, the *veritas descriptionis* was complete, as he was the *second* son of *the Vicar of Somerton*; but that the plaintiff had no *veritas nominis*, because the bequest was to John, the second son—but of whom? of William *Strangways* Newbolt, when there was no such person; that the defendant, R. H. Newbolt, therefore, fully answered the description given by the testatrix; and as this description, which was perfect, had not been attempted to be displaced by any thing equally certain, his client was entitled to the legacy of stock. (*Doe* v. *Hathwaite*, 3 B. & Ald. 632.)

Wood, for the next of kin.—To render this a good bequest, it is necessary to strike out of the will either the name *John*, or the description *second son*, but there is nothing in the will to justify such a proceeding. In the case of *Blundell* v. *Gladstone* (11 Sim. 467; 1 Phil. 279; 7 Jur. 269(a), there was sufficient contained in the various parts of the will to enable one to collect the testator's intention, viz. "Lady Stourton, one of the sisters of the said Edward Weld," but in the present will there is nothing to enable the Court to decide upon the meaning of the testator with any degree of certainty.

The VICE-CHANCELLOR thought, that the person who was baptized John Rice Newbolt was sufficiently known and described by the name "John Newbolt," to make the *veritas nominis* to overcome the *error descriptionis*.

ROLLS COURT.

June, 3, 28, and 29, July 1, Nov. 13, and Dec. 17.

ATTORNEY-GENERAL *v.* MAYOR OF POOLE.

Municipal Corporations Act (5 & 6 Wm. 4, c. 76), construction—Removal—Corporate offices—Compensation—Time.

The appointment of a new town clerk amounts to a removal of the old, under the Act, though the old one does not offer himself for re-appointment, or take any steps for that purpose.

Any office held by a town clerk which is appendant or appurtenant to, or usually held with, the office of town clerk, though not a corporate one, is an office for the loss of which compensation is to be allowed under the Act.

The five years for which the account of profits, &c. of any office is to be taken, are the five years immediately preceding the passing of the Act (9th September, 1835), and not the five years preceding the 1st of January, 1835.

This was an information filed by the Attorney-general on the 11th November, 1837, at the relation of the Hon. Wm. Francis Spencer Ponsonby and others, rate payers of the borough of Poole, against the Mayor, &c. of Poole, and Thomas Arnold, and Robert Henning Parr; and it prayed a declaration that the defendant, R. H. Parr, having voluntarily resigned his office of town clerk to the corporation, was not entitled, under the Municipal Corporations Act, to any compensation in respect of such office; and that the town council had not, under the Act, any authority to award him any compensation in respect thereof; but in case it should appear, or the Court should be of opinion that R. H. Parr did not voluntarily resign his said office, but was removed therefrom by the corporation, then that it might be declared that, according to the true construction of the Act, he was entitled to compensation in respect of his office of town clerk only, and not in respect of any other offices held by him, and that the town council had no right to award him any compensation in respect of any other office; also that 4,500*l.* was improperly and illegally awarded to Parr, for the town clerk ... and other offices; and that a bond given to Parr for that amount should be cancelled, or else stand as a security for what he might appear to be entitled to; also that a rate made on the 2nd and 3rd January, 1837, might be declared illegal and set aside or modified; and that Parr might be directed to refund to them two instalments of the rate paid to him, and restrained from demanding the 4,500*l.*

The information stated that Parr was appointed town clerk in 1833, and also clerk of the peace, and several other offices were also held by him; that on the 1st of January, 1836, he resigned the offices of town clerk and clerk of the peace, and Thomas Arnold was elected to the former office, and on the 1st of July following, to the latter; that on the 4th of August, 1836, Parr sent in his claim for compensation, under the Act, to the amount of 4,835*l.*; and that such claim included the profits derived from the office of clerk of the peace, and other offices, besides that of town clerk, for which only he ought to claim; that on the 5th of October, 1836, one-third of the town council then present objected to the claim on

(a) See also 2 Law T. 118.

account of Parr's resignation, and the further consideration of it was adjourned from time to time, till the 23rd November; that in the meantime the burgess-roll was revised, and eighty persons previously excused were put on, their rates being paid by only the agent of Parr, and two-thirds of the town council being then on the Tory, or Mr. Parr's side, the award was made and the bond given. A rate was then made, and two instalments of it had been levied. It was now sought to get rid of the claim in whole or in part.

Various proceedings respecting the sum in question took place, which it is not necessary here to state. The money was ultimately ordered to be paid into court; and the matter now came on to be heard as to Parr's claim under the Act.

Kindersley (with him *Follett*).—The evidence as to voluntary resignation is conflicting. It is not necessary to make a formal resignation; Parr being present on the 1st of January, 1836, and taking no steps to have himself re-appointed, but tacitly assenting to the appointment of Arnold, is a resignation. [The MASTER of the ROLLS.—Your argument is, that if the town clerk is quiescent, there is an understanding or an arrangement that he is to resign; and therefore there is no compensation to be given under the Act.] Compensation implies something advantageous taken away; now this could not be of any advantage to him, for he could not, by the Act, hold the office of clerk to the magistrates and also clerk of the peace, and was obliged to elect. Parr himself admitted this before a committee of the House of Commons. [It was the Act of Parliament took away the one he could not hold; therefore, he could not *conserve* them all.] Some of the offices for which he has received the compensation are not a proper subject for compensation. Foot, his predecessor, did not hold the office of under-sheriff till some years after his appointment; and though it was the practice to hold the others, it was not a necessary consequence of being town clerk. Besides, several of the officers are not corporate officers, and the Treasury Minute drawn up on this point speaks expressly of "corporate offices." Then the whole matter was preconcerted between Parr and the corporation, and it was arranged that he was to resign and get the compensation in fraud of the rate-payers. The adjournments of the consideration of the claim were made fraudulently to get the burgess roll in such a state as to get more than two-thirds of the town council in favour of it, so as to prevent an appeal to the Lords of the Treasury under the Act.

Teed (with him *Dickinson*), for the Corporation of Poole, on the subject of compensation, cited *Rex* v. *The Mayor of Bridgwater* (1 Nev. & P. 466); *Reg.* v. *Mayor of Norwich* (8 Ad. & Ell. 633); *Reg.* v. *Mayor of Carmarthen* (3 Per. & D. 35; 11 Ad. & E. 9), &c. &c.

Turner (with him *Freeling*).—All the witnesses of the informant, except three or four, have subscribed to a fund for prosecuting this suit; and one question is, whether they are competent witnesses, or their evidence admissible. (*Nockells* v. *Crosby*, 2 Bar. & Cr. 814.) But supposing it admissible, their declarations are to facts not charged in the bill, and not in issue, and as to their understanding and belief only. One of them speaks of the general "notoriety" of the matters in reference to Parr, but nothing of the kind is in the bill. Such evidence should be rejected. (*Shepherd* v. *Morris*, 4 Beav. 252; *Hall* v. *Maltby*, 6 Price, 215; *Mulholland* v. *Kendrick*, 1 Beattie, 277, 1 Molloy, 359; *Austin* v. *Chambers*, 6 Cl. & Fin. 1.) [The MASTER of the ROLLS.—No doubt, if there be a declaration, and no charge in the bill to which it may refer, it is to be rejected; but the difficulty is, where a declaration is made and is said to be a foundation for inquiry, not of itself, but from its connection with other facts.] As to fraud, there was no such thing. The 80 persons put on the roll were in the same circumstances as other persons on it, and the magistrates had no right to strike them off. As to voluntary resignation, so far from there being any thing of the kind, Parr would not have succeeded against Arnold if he had offered himself, because Arnold had much larger family interest, &c. [The MASTER of the ROLLS.—It was imperative to elect, there was no surrender of the office by Parr, and the only resignation was the not offering himself at the election.] Just so. As to the offices not being corporate offices, that is not at all necessary; all that is required is, that they be held with or appurtenant to a corporate office, which these are, except, perhaps, as to one of them. (*Reg.* v. *Poole, re Edwards*, 7 Ad. & Ell. 730; *Reg.* v. *Mayor of Norwich*, 8 Add. & Ell. 635; *R.* v. *Mayor of Bridgewater*, 6 Ad. & Ell. 339, &c.)

Kindersley, in reply.

JUDGMENT.

Nov. 13th.—The MASTER of the ROLLS.—The information prayed a declaration that R. H. Parr had resigned the office of town clerk of the borough of Poole, and that he was not entitled to any compensation; but if it should be thought that he did not resign, but that he had been removed from office, then it asked for a declaration that he was entitled to compensation for the office of town clerk, but not the other offices which he held in the borough. It also prayed that the bond for 4,800*l.* given to Mr. P. as a compensation for loss of several offices was not binding, but fraudulent and void, and ought to be held good for such sum only as upon reference to the Master should be found due. On the 1st of September, 1835, Parr was town clerk of the borough of Poole, and he held other offices connected with it, some of which were said to be incompatible after the passing of 5 & 6 Wm. 4, c. 76. Thomas Arnold was elected town clerk, and in August following Parr sent in his claim for compensation for the offices held, which were town clerk and clerk of the peace; he also filled the offices of solicitor to the corporation, clerk to the magistrates, clerk to the corporation, solicitor to the under-sheriff, clerk to the commissioners of land and assessed taxes, clerk to the overseers and board of guardians, clerk to the commissioners for lighting and watching, solicitor to the surveyor of highways, solicitor to the quay committee, solicitor to the water-bailiff, and prothonotary of the Borough Court of Record. It was said that it had been usual to hold the offices for life, and accordingly he claimed 4,835*l.* On the 5th of October, 1836, the claim was brought before the town council, and one-third of the council present declined to receive the claim, and it was adjourned to the 14th of October, when it was considered, but not disposed of, and it was again adjourned till the 9th of November. In the meantime a revision of the burgess-list had taken place, and upon the election of town councillors, Parr's party was increased, and another adjournment took place till the 23rd of November, when the claim was admitted, and 4,500*l.* awarded in respect of all the offices. The reason for reducing the claim did not appear, but a bond was executed for the payment of the 4,500*l.* by instalments. It was said that the adjournments had been fraudulently continued to secure Parr the amount of the compensation, and relief was now asked on the ground that Parr had resigned. Admitting that there was improper conduct in the revision of the burgess-list, he (Lord Langdale) did not find that the adjournments of the town council were fraudulently continued, but he could not hear of such proceedings without disapprobation. It was not, however, proved that they had been procured by Parr for the purpose of obtaining an increase of the compensation, or to prevent the interference of a higher tribunal. The allegations of fraud also were not proved. Parr had obtained a judgment on the bond, but execution was stayed on the money being brought into court. The property of the corporation was held upon trusts, which gave this court control. There was no proof of the allegation that Parr had resigned. It was said that acquiescence in the election of Arnold was a resignation. It was clear there was no formal resignation. But it was asked that it might be inferred because of the appointment of another to the office, and because after the passing of the Act it could not be performed without a sacrifice. Mr. Parr found he could not compete with a rival candidate; but was he to be deemed to have resigned, and not entitled to compensation? No such consequence was intended by the Legislature. It was said that Parr did not propose himself, and that he had resigned by arrangement with Arnold; but four witnesses had been examined, and they shewed there was some excitement in the borough, but the allegation was not supported. Parr was entitled to compensation for the office of town clerk, regard being had to the time for which it was held, and other circumstances. He also claimed compensation as clerk to the commissioners of taxes; this he had not lost, and the amount could not be ascertained. He (Lord Langdale) would have been glad of an authority for his direction, but it did not appear whether the offices were connected and dependent on the principal office: this ought to be shewn. He, however, thought Parr was entitled to compensation for the offices of clerk to the magistrates, solicitor of the corporation, clerk of the peace, solicitor to the quay committee and water-bailiff, and prothonotary of the Borough Court of Record; but not for the offices of solicitor to the under-sheriff and coroner—they were not dependent on the office of town clerk, but were held distinct. Nor was he entitled to compensation for the offices of clerk of the overseers and board of guardians, clerk to the lamp and watch commissioners, or solicitor to the surveyor of highways, as no claim had been established. It should, therefore, be referred to the Master to take an account of the profits, &c. of the several offices for which compensation was to be given, for five years from the 9th Sept. 1835, of the value of the offices, and to state the compensation, with liberty to state special circumstances; and the bond would stand for what should ultimately be found due, reserving further directions and costs.

Dec. 17.—The case was again mentioned, to have the minutes changed as to the time from which the five years were to be reckoned; not from the 9th Sept. 1835, but from the 1st Jan. 1835, agreeably to the minute of the Lords of the Treasury; but his lordship did not think he had power under the Act, and refused.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEVENSON.)

Friday, January 3.

Re W. R. LEWIS.

Devastavit—Breach of trust by executor—Executor de son tort.

The facts of this case are shortly detailed in the report of the first hearing in p. 215, ante. The insolvent now came up for his final order.

Bachelor appeared to shew cause against it, and contended that the insolvent, acting as an executor, had committed a *devastavit* in paying a simple contract creditor out of the estate of his deceased mother, to the injury of the other creditors; that such a *devastavit* was a breach of trust towards the personal representatives of the intestate, as an executor was merely a trustee for them; and a breach of trust was included in the grounds of opposition enumerated in sec. 24 of 7 & 8 Vict. c. 96. Secondly, by acting as *executor de son tort*, the insolvent has not only rendered himself liable to the debts of the deceased, but he incurred a debt to her personal representatives to the amount of assets received, and they should have been inserted as creditors in the schedule.

Homes, in support of the insolvent, suggested that these facts did not disclose any sufficient objection to the final order. A *devastavit* was not necessarily any objection, unless it was accompanied by some circumstances of fraud, or unless it amounted to a breach of trust. Here there was no suspicion of fraud; and it could not be a breach of trust, for that necessarily supposed the existence of a *cestui que* trust, but until letters of administration were taken out, there were no legal personal representatives. As to the second objection, the liabilities of the insolvent were incurred through ignorance of the law, and without fraud; those liabilities were all inserted in the schedule.

HIS HONOUR.—With regard to the *devastavit*, which is the principal point relied on, although it may *possibly* bear the term of a breach of trust, it is not such a clear case as appears to me to have been contemplated by the legislature. Unless something very gross appeared in the conduct of the insolvent in administering his mother's estate without letters of administration, such conduct alone without fraud is not sufficient to make me refuse his final order. The legal representatives may or may not be creditors; that may depend upon their taking out administration, and there being a surplus of the estate. The insolvent has stated the circumstances under which he administered his mother's estate, and that it was insufficient to pay her debts. He has given all the information required of him, and is entitled to his final order.

Final order granted.

Re LAZARUS ALMAN.

Shewing cause against final order—Restricting opposition to matters in which the opposing creditor has an interest.

This insolvent had petitioned the Court in April last, and obtained a final order in June. On his petitioning, he tendered the key of some premises to his landlady, who refused to receive it, and he was compelled to remain her tenant. On the rent becoming due, she sued him, on which he petitioned this Court a second time for protection, and the only debt in his present schedule was this debt for rent and the costs of the action. The insolvent now came up for his final order.

Hinton, solicitor for the creditor, stated that, previous to insolvent's first petition, he had fraudulently disposed of all his effects to defeat his creditors.

Homes objected that this ground of opposition could not be entered upon by the party for whom Mr. Hinton opposed. She had forced the insolvent to incur her debt *since the first petition*, and she was not entitled to any of the property which had, as Mr. Hinton said, been so disposed of. That property would belong to the assignees under the former petition, if Mr. Hinton's statement were correct, but the present creditor had no interest whatever in it.

HIS HONOUR.—I do not think that this creditor is entitled to enter into such a ground of opposition. The facts stated by the solicitor for the opposing creditor appear to me to constitute some grounds for an application *by any of the former creditors* to rescind the former final order, but they cannot now be used by the creditor for whom Mr. Hinton appears to shew cause to-day. *Final order granted.*

THE LEGISLATOR.

Summary.

SOME other projected measures of law reform will probably engage the attention of Parliament during the coming session.

The County Courts Bill is to be renewed.

The grounds of our objection to this measure have been already stated. They resolve themselves into this: its tendency to breed a race of *pettifoggers*, by whom the Profession will be degraded, and Society plagued.

Mr. FITZROY KELLY promises to renew his Criminal Appeal Bill, and we hope with better success. The principle was freely admitted in the debate of last session; we trust that a measure, the justice of which is conceded, will not be repudiated in practice. But that it might work well, a new Court must be formed for the Crown business of the Queen's Bench; and for this purpose we must have two more judges.

Of the Ecclesiastical Courts Bill it is reported we shall hear no more. The miserable abortion of last session will not be renewed, and it will be better now to wait until there can be an entire reform, or, rather, the entire abolition of that absurd judicature.

At this moment no other subject occurs to us as threatened with experimental legislation. Something, however, may be anticipated from the labours of the Law Reform Society, which is industriously proceeding to frame well-digested and practical measures, to be submitted to the Government and the Parliament.

PARLIAMENTARY RETURNS.

TAXES ON SUCCESSION TO PROPERTY ABROAD.—Yesterday a Parliamentary paper extending to 33 pages was printed, containing the correspondence which has recently taken place relating to taxes or duties imposed on succession to property, after death, in foreign countries. In April the Earl of Aberdeen, as Foreign Secretary, addressed a circular to the British ambassadors and other diplomatic officers abroad, stating that her Majesty had been graciously pleased to comply with an address of the House of Commons, to the effect that her Majesty would procure a statement of the rate or scale of any taxes or duties imposed (either by the Government or by municipalities) on succession to property after death; stating also, whether in such taxes or duties any distinction was made in such foreign countries between real and personal property; and likewise a statement of the annual amount received from such taxes or duties. The document was ordered to be printed on the motion of Mr. Elphinstone, the member for Lewes, and affords information on the subject to which it relates. Returns have been received from Austria, Bavaria, Belgium, Denmark, France, Frankfort, Greece, Hamburgh, Hanover, Hesse Cassel, Holland, Prussia, Sardinia, Saxony, Sicily, Sweden, Switzerland, Texas, Tuscany, United States, and Wurtemburg. The last return was made as late as the 14th of August. It appears that in Texas there are no taxes or duties imposed either by the Government or by municipalities of the kind; and in the United States that the taxes mentioned do not form a part of the general revenue.

SHIPPING RETURNS.—On Saturday a further return, moved for in February last by Mr. Wawn, the member for South Shields, respecting the shipping interest, was printed. The hon. member asked for various returns connected with shipping, with certain particulars which the register of shipping could not supply. A Parliamentary paper was printed during the session, and a second document in reference to the same order of the House of Commons on Saturday last. The number of sailing vessels registered at the ports of Great Britain and Ireland, &c. on the 31st of December last, was in England, under 50 tons, 6,155, and 10,672 above that tonnage. The steam-vessels numbered in England on that day 337 under 50 tons, and 309 above that tonnage. At the ports of Scotland the sailing-vessels registered were, under 50 tons, 1,534, and above that tonnage, 2,215; of steam-vessels, 31 under 50 tons, and 97 above. At the ports of Ireland there were registered 957 vessels under 50 tons, and 964 above; of steam-vessels, only 5 under 50 tons, and 76 above that tonnage. It appears, that the vessels entered and cleared coastwise at the several ports of the United Kingdom, in the year ending the 31st of December last, were, inwards 98,295 sailing vessels, and outwards 108,105; of steam-vessels, inwards 9,294, and outwards 8,992. In Scotland the vessels inwards numbered 19,053 in the year, and outwards 19,788; of steam-vessels 2,688 inwards, and 2,311 outwards. At the parts of Ireland, 16,746 sailing-vessels inwards, and 9,976 outwards; of steam-vessels 2,651 inwards, and 2,980 outwards. In the same period there were entered and cleared to and from the colonies 5,293 British vessels from the ports of England inwards, and 5,671 outwards, and of foreign ships 43 inwards, and 36 outwards. At the ports of Scotland, 566 British vessels inwards, and 733 outwards, and of foreign vessels only 2 outwards. At the ports of Ireland 518 British vessels inwards, and 362 outwards; of steam-vessels, British, 344 inwards, and 357 outwards. There were built and registered in the year 1843, 653 sailing-vessels and 45 steamers; and there were sold, wrecked, and broken, 778 vessels. The return of Saturday relates to the number and tonnage of sailing and steam-vessels, but the numbers are not given, as in the other return, in the aggregate.

THE MAGISTRATE.

Summary.

WE have to direct the serious attention of our readers to a letter which they will find among the correspondence of this day, detailing a variety of fatal errors in Mr. LUMLEY'S Bastardy Forms, which have been in general use throughout the country. Our correspondent has sent us his name, as an assurance that his information may be relied upon. But we hope it may yet prove that the magistrates have taken an erroneous view of the question. We know how ingeniously Mr. PASHLEY can pick a hole in any form. However, it is too serious a matter to permit even a difference of opinion about it. If the forms can be questioned so as to produce a doubt, they must be amended. We have requested the gentleman, to whose learned labours this portion of the LAW TIMES is indebted for so much valuable information on Magistrates' Law, to give to this subject his immediate and particular attention, and to prepare a series of forms for the use of our readers which may be less open to objection.

We submit to our readers a very interesting report of the Committee of the Justices' Clerks Society, on the Bill for regulating their fees, introduced at the close of the last session, and we hope next week to give some account of their meeting on Wednesday.

WE commence to-day the articles on Magistrates' Law, which we promised last week.

It is the design of the gentleman, to whom this important branch of law has been intrusted, to favour us with brief articles each week, and especially after each Term, on such points of magistrates' law as may newly arise either in the decisions of Courts or the routine of practice, and on which it may be useful to throw light. We believe that there exists no other source of such information upon which dependance can be placed. We are well aware that in a sphere of practice, in itself so diversified and complex, and which both statutes and cases are constantly perplexing, it is impossible to relieve the practitioner of all doubt or difficulty in his walk; but we are confident that the aid we have hitherto striven to afford may be materially enhanced in value by the plan we have now adopted: especially as it is our desire to receive and profit by that free communication of practical suggestions with which our friends and correspondents in the country have, on many occasions, proved their willingness and competency to favour us.

EVIDENCE OF CHARGEABILITY.

The recent statute of 7 & 8 Vict. c. 101, s. 79. provides:—

> That it shall be lawful for any board of guardians or district board, at any meeting thereof, to make a certificate in the form or to the effect contained in the schedule of this Act marked (C), and that every such certificate, and every copy of a minute of any order, complaint, claim, application or authority of any such board of guardians or district board, purporting respectively to be signed by the presiding chairman of such guardians or district board, and to be sealed with their seal, and to be countersigned by their clerk, shall, unless the contrary be shewn, be taken to be sufficient proof of the truth of all the statements contained in such certificate, and of the directions respecting such order, complaint, claim, or application having been given as alleged in the copy of such minutes, and shall be received in evidence accordingly by and before all courts of justices and all justices, without any proof of the signatures or of the official characters of the persons signing the same, or of such seal, or of such meeting; *and that for the purpose of making any order of removal or other order, no further or other evidence of chargeability than such certificate shall be required, provided that every such order bear date within twenty-one days next after the day of the date of such certificate.*

This provision was expressly intended to relieve parishes from any further trouble of proving chargeability than by the mere production of the certificate itself. Doubt has however arisen whether it may not be still most prudent to prove the signatures and seal as required before the Act passed. As regards cases where the order was made previously to the 9th August, 1844 (when the statute was passed), we are of opinion that it is not only prudent but essential to do so, although the actual removal and subsequent proceedings may have taken place long since. There is nothing retrospective in the wording of the statute. As regards orders made since the 9th of August, 1844, we see no reason for proving that which the statute declares need not be proved; but we deem it otherwise with regard to the *identity* of the pauper. The certificate affords no proof of this; it is incapable of statement therein, and must, we think, be proved by any witness who can affirm that the pauper is the person to whom the certificate relates. A certificate that John Smith became chargeable on January 25, is no evidence that a John Smith before the justices in another place, on February 10, was chargeable. There may be in all likelihood half-a-dozen John Smiths chargeable to St. George's, Westminster, and other large parishes, at the same time; and, as far as we can venture to predict the view which the Court of Queen's Bench may take on this point, we think it a likely objection to prove fatal to an order of removal, that the identity is not proved. The certificate the statute provides is as follows:—

> The Board of Guardians of the Poor of the Union [or parish of] do hereby certify, that on the day of , A B, and his wife, C B, and his child, E B, became chargeable to the parish , in the said Union [or to the said Union]. In testimony whereof, the common seal of the said Guardians is hereunto affixed, at a meeting of their Board, this day of , 18 .
>
> (L. S.) (Signed) W. J.,
> Presiding Chairman of the said Board.
> (Countersigned) C. D.,
> Clerk of [or acting as Clerk to] the Board of Guardians of .

But there is another and a very strong reason why this certificate, as it stands, will, in all probability, be found to need revision by the Legislature. It merely states that on a certain day A B "became chargeable," without any averment that he then was actually chargeable at the time of the making of the certificate. True it is that the Act provides that no further evidence of chargeability than such certificate shall be required, provided that the order bear date within twenty-one days of the certificate. But could it have been the intent of the Legislature to render proof of chargeability at *any anterior* time sufficient? We think not. With the exception of the dictum of a periodical in which blunders are the rule and ignorance indigenous, we find the authorities unanimous in holding that the chargeability should be shewn to exist *at the time* of making the order, and not as the certificate "*became* chargeable on a certain day;" implying, at any past time, though the chargeability may no longer exist. The 35 Geo. 3, c. 101, s. 1, enacts that no removal shall take place "until such person *shall have become actually chargeable.*" The 6th section, in speaking of pregnant women, uses the words "shall be taken *to be* a person actually chargeable." The 4 & 5 Wm. 4, c. 76, s. 79, provides for removal "under an order of removal from any parish or workhouse, by reason of *his being chargeable* to, or relieved therein." Thus, the chargeability was clearly intended by the statutes to be a present, and not a past, chargeability.

Though no express decision appears in the books, we find ample proofs that the Courts have deemed that the chargeability must be at the time of removal.

In *Rex* v. *Angel* (Cas. Temp. Hardw. 124),

a conviction for returning, after removal therefrom, to Binfield, Berks, was held irregular, because there was "no complaint made of his *being chargeable* or likely to be," &c. In *Rex* v. *Fillongley* (2 T. R. 709), a pauper was held, after his return from a parish to which he had been removed, to a house which he had previously rented in the removing parish, to have gained a settlement by renting the said house, because he did not return *in a state of vagrancy*. These cases are referred to and confirmed in *Mann* v. *Davers* (3 Barn. & Ald. 103), which was a case of a conviction for a return after a removal; and it was again held that, though not to be presumed, it might be shewn as a defence, that the pauper had work to do in the parish. *Reg.* v. *Black Callerton* (10 Ad. & Ell. 679) was still more directly in point; for the case stated that the examinations contained no statement that the pauper was "*then* chargeable" to the removing parish; and the order was quashed for want of evidence of chargeability. The forms of the order given in *Burns' Justice of the Peace, Archbold's Poor Law, Gael's Settlements, and Symons' Parish Settlements*, all insert the word "*now*" before chargeable. Common sense equally proves that the evidence must be as to the chargeability then existing. Mr. Archbold, in his very useful work on the Poor Law, p. 560, edit. 1845, expressly states it as a "very common *defect*" in orders to state the pauper's chargeability in the *past* tense; and adds, "it must appear upon the face of the order that the pauper is chargeable *at the time of making the order*." What ground can it be for the removal of A B, that he was once a pauper? It is a great stretch to render the certificate good for 21 days after date; but on what conceivable principle is a then past chargeability to suffice? According to the form in the schedule and the words at the end of sec. 69, if a certificate, dated January 10, 1845, states that on the 10th of March, 1837 A B became chargeable to the parish of C. in the said union, not only is that to suffice for an order of removal now and until next February, but no other evidence can be required to be given. It was, we think, not the intention of the Act to leave a door open to this obvious violation of all pre-existing law. And though *Reg.* v. *Ellis* (4 Law T. 113) is a strong case for adhering to the literal construction of statutes, we think it not impossible that an appeal might be successfully maintained against an order based on a certificate such as the Act gives; and inasmuch as the Act allows any certificate to avail which is to "the effect" of that supplied in schedule C, we strongly recommend that the words "*became, and now is, actually chargeable*," be used instead of "became chargeable."

There is no doubt that other evidence of the fact of relief being received is sufficient.

J. C. S.

APPEALS AGAINST ORDERS OF BASTARDY.

The first five sections of 7 & 8 Vict. 101, which relate to bastards, and appeals against orders of maintenance, are likely to give rise to litigation on more grounds than one.

An objection was taken at the last Gloucestershire Quarter Sessions against the service of a notice of appeal. The Act provides that "if within 24 hours after the adjudication and making of any order on the putative father as aforesaid, such putative father give notice of appeal to the mother of the bastard child, and, &c. it shall be lawful, &c. to appeal, &c."

The father had at the time of the adjudication said in the justice's room that he should appeal, and he afterwards being unable to find the mother, served notice of the appeal upon the attorney who at the petty sessions had acted for the mother. The Court, subject to a case, held the service sufficient; the order, however, having been confirmed upon the merits, the case will not be argued.

It was contended for the appellant that the attorney having been present at and engaged for the mother in this very matter, service on him was service to the mother; and it is clear that were it not so the provision might be rendered nugatory by the mother's concealing herself and her abode for one day from the father. And this evil is in our judgment a defect in the Act, for it may happen that the mother may employ no attorney. On the other hand, the force of the argument is strongly against the validity in law of any such service. The words of the Act are express;—notice *to the mother*: it may well be that the attorney was retained solely for the hearing of the case in Petty Sessions, that at the making of the order he was *functus officio*; it by no means follows that because he was retained for the case he would therefore be for the appeal, or for any subsequent or consequent proceeding. Then there is the case of *Rex* v. *Kimbolton* (6 Ad. & Ell. 603, and 6 L. J. M. C. 90), where a statement of grounds of appeal was served on an attorney as the attorney of the overseers of the respondent parish who accepted the same in their behalf. It was there contended that "*assuming the attorney* to have been actually the attorney employed by the respondents in this appeal (which the respondents said they were able to disprove), still the service was insufficient" under the 81st sect. of the 4 & 5 Wm. 4, which requires the statement to be sent or delivered "to the overseers of the respondent parish," and Littledale, J. said, "I think the statement should be delivered to the overseers themselves, and that it is not enough that it should be delivered to the attorney;" and Patteson, J. said, "I think it better to adhere to the words of the Act—'Send or deliver *to the overseers*.' *That is not the same as sending or delivering to the attorney*. No intervention of an attorney seems to be contemplated here as in stat. 41 Geo. 3, c. 23." Neither is any contemplated in the Act before us. We have great respect for the opinion of Mr. Serjeant Ludlow, who presides at the session court of the county of Gloucester, but we believe the decision to have been a wrong one, and that the service was bad. If so, there is a difficulty in serving the notice of appeal in these cases inherent in the provisions of the Act, and wherever the reputed father intends to appeal, his best way is to be prepared with his notice at the hearing of the case, and serve it upon the mother as soon as the order is made.

J. C. S.

REVIEW OF MAGISTRATES' CASES,

Michaelmas Term, 1844.

(*Continued from page* 238.)

Of the practical points decided last Term, the following appear to us worthy of notice.

STATEMENT OF CASES BY THE SESSIONS.

These statements must be so made that the decision of the Court of Queen's Bench shall, whichever way it may be, finally end the proceedings. The following is an example of a case which fails to do this:—In *Reg.* v. *South Ferriby* (1 Bit. & Sym. 122), the submission was in these words:—"if the Court shall be of opinion that the said objection was not fatal, and that the sessions ought to have heard the appeal, continuances to be entered and the appeal to be heard." It was craftily suggested by counsel that here one of the alternatives was to end litigation, and very possibly the Court might so decide the case; but Lord Denman said, "We cannot take the chance of possibilities, the rule must be adhered to." The way to state cases is thus, "If the Court shall be of opinion that the order of removal is bad, the order to be quashed if not to be confirmed;" or as the case may be; but never must it be so worded as to leave any thing to be done after the decision. The object of cases is to terminate litigation by the final judgment of the superior Court.

Let care be taken not to draw the rule so that the order of the sessions is to be quashed, but the order of the justices, where the object is to quash an order which the sessions have confirmed. See *Reg.* v. *Skipton* (1 Bit. & Sym. 119, and 1 Law T. 113), in which case, moreover, the justices instead of the clerk of the peace had been made respondents in an appeal against an order for the removal of a pauper lunatic under 9 Geo. 4, c. 40, s. 54.

JURATS.

The rigour with which the Court requires every formality in a jurat to be observed, has been signally exercised in *Reg.* v. *Bloxham* (1 Bit. & Sym. M. C. 123, and 4 Law T. 132).

In that case, on the eve of the hearing of the argument on the merits of the case, it was discovered that the jurat to the affidavit of service of notice of the *certiorari*, under 13 Geo. 2, c. 18, s. 5, was defective and informal, inasmuch as the jurat did not contain the words "sworn before me," but only "sworn at Banbury." But there was written on the notice itself, "This is the notice referred to in the annexed affidavit, sworn before *me*," and both were signed by the same commissioner. It was equally clear in this case that the jurat failed to shew that the affidavit was properly taken, and that the memorandum or identification on the notice did shew it. But then came the possibility that the affidavit so "annexed" might not be the affidavit sworn, and that fraud might ensue were a bad jurat to be made good by pinning another paper to it. With great propriety of prudence, therefore, the Court condemned the jurat. "Our first impression," said Lord Denman, "was to get over the formal objection, and enter upon the merits of the question; but we must adhere to the established rules which govern jurats. It is a wholesome and proper provision that jurats should, in express terms, shew the jurisdiction and authority by which they are taken. There is no difficulty or hardship in requiring this to be done. We must not strain points of form, neither must we encourage irregularity."

BAD JURATS CANNOT BE AMENDED.

The Court will not do this. It did so in *ex parte Hall* (8 L. J. Q. B.), but has overruled that case in *Reg.* v. *Bloxham*, and deems the amendment of bad jurats an improper indulgence, tending to encourage baneful negligence.

JURISDICTION OF JUSTICES, HOW APPARENT ON THE FACE OF ORDERS.

It has always been held requisite that this should clearly appear, especially in orders of removal. It has been ruled that where the county of the examining justices is ambiguously stated, the order is bad. For instance, where *two counties* were named in the order, and the justices were described as being "of and for *the* said *county*" (*Rex* v. *Chilverscotton*, 8 T. R. 178), but where one county alone was named in the margin, and the said county in the body of an order, Lee, C.J. said, "I take it to be settled that in orders the margin is to be considered as part of the order, and a plain clear reference to it is sufficient. (*Rex* v. *Holbeck Leeds*, Burr, S. C. 198.)

The case of *Reg.* v. *Casterton* (4 Law T. 172; 8 Jur. 1093) decides nothing more. It confirms, but does not extend the principle. There can be no reason why the margin should not be deemed part of the document because the words stand on one side of the paper: and reference to it suffices, unless some other county intervenes, when doubt at once arises, and doubt vitiates the order.

STATEMENTS IN THE EXAMINATION RELIED ON BY THE APPELLANTS.

The rule is quite clear that removing parishes must send *all* the examination to the receiving parishes. In the case of *Reg.* v. *Latchworth* (4 Law T. 133; 12 L. J. M. C. 20) an examination contained not only evidence of a birth settlement but evidence of an indenture of apprenticeship, which shewed a settlement by apprenticeship to have been gained in one of two places L. or W. named in the examination. One of the grounds of appeal was, that there was a settlement in W. where the apprentice had slept the last night, and inasmuch as the indenture had been proved before the removing justices, the appellants, instead of coming to the sessions prepared with proof of the indenture, relied upon the examination as sent by the respondents as proving this essential part of their case. In fact it was contended by the appellants, that whatever was contained in the examination was of the nature of an admission, which bound the respondents as much as statements in affidavits bind the parties who make them. *Bricknell* v. *Hulse* (7 Ad. & Ell. 454), and the doctrine in *Slatterie* v. *Pooley* (6 M. & W. 664), were relied on also in the same behalf. But the Court held that the statements in the examination are the statements of

witnesses and not admissions of the parties: "It would be unreasonable," said Wightman, J. "to hold that every statement by a pauper was to be treated as an averment by the respondents." Lord Denman, C. J. however, though his lordship distinctly held that the respondents were not bound by the statement of the witnesses, felt dissatisfied with the conduct of the respondents, who ought to have informed the appellants that they did not admit the indenture of which they sent evidence. The chief ground of this judgment appears to have been the fact that the respondents are bound to send the whole of the examinations, and ought not, therefore, to be bound or prejudiced by what they cannot help sending; and that the appellants ought not to be allowed to limit the ground of the contest by their notice of appeal, and say to the respondents, "You must stand upon that." The order removing to the birth settlement was therefore confirmed. We confess that we do not feel very strongly the force of this argument. Though the respondents are bound to send the whole of the examinations to the receiving parish, they are not bound to give more evidence than they choose. In this case they gave formal proof of an indenture of apprenticeship: this was their own voluntary act, and that which no witness could have done without their consent. There is, however, a strong authority in *Reg.* v. *S. Mary Beverley* (1 B. & Ad. 201), for holding the respondents bound by such evidence, even where involuntarily given by their own witness. That was a case where, having relied on a widow's maiden settlement, one of their own witnesses proved at the hearing before the sessions that the woman's husband had a birth settlement in some parish in Ipswich, and it was held that though the precise parish was not ascertained, the order for removing to the maiden settlement ought to be quashed. In that case it is true that the statement was made at the sessions, and not as in *Reg.* v. *Latchford*, before the removing justices. But we confess our inability to perceive the distinction in point of principle. It will be hazardous for parishes to trust to appeals on the strength of this case. And it is at any rate clear that where evidence of a subsequent settlement is sent with the examination which sets up another, the respondents ought invariably to give notice that they disavow all admission of the evidence of such subsequent settlement. It is probable, in this case, that the removing parish had intended to prove the apprenticeship settlement, but found out, after going through the proof of the binding, &c. that the apprentice had, contrary to their expectation, slept the last night, and thus completed a forty days' residence last in their own parish, and then resolved on dropping that settlement and relying on the prior birth settlement.

PUBLICATION OF RATES UPON CHURCH DOORS.

The loose wording of statutes, together with the rigorously literal construction put upon them by the Courts, are indeed teeming sources of doubt and also of the pains and penalties of litigation. The 7 Wm. 4 & 1 Vict. c. 15, s. 2, enacts "that the notices shall be affixed on or near to the doors of all the churches and chapels within such parish or place." By the case of *Reg.* v. *Boyds* (8 Jur. 1096), it appears that the town of Todmorden is possessed of two churches; one new, and used for divine service; the other old, and used only for burying the dead. Notice of a rate had been posted on one door only of the new church, and on no door of the old church. The decision unfortunately turned on another point; but Lord Denman, C. J. intimated that it was prudent to affix the notice on all churches and chapels, used or not used; but that it was perhaps unnecessary to do so on more than one of the public entrances to each building.

WARRANTS OF COMMITMENT UNDER THE MASTER AND SERVANTS ACT.

The cases of *Reg.* v. *Tordoff* (13 L. J. M. C. 145), and *Reg.* v. *Lewis* (3 L. J. M. C. 46), decided that a warrant under 4 Geo. 4, c. 34, must be founded on examinations taken *on oath*: and that this must be expressly stated in the warrant. In *Ex parte Gray* (1 Bit. & Sym. M. C. 116), the only distinction was, that it appeared that the prisoner was present; but Patteson, J. held, in the Bail Court, that this made no difference, that the warrant was a conviction, and that it was bad for not shewing that it was legally made.

Entry of Appeal by Respondents.—Masters and Servants' Act.

The case of *Reg.* v. *West Riding; Sheffield* v. *Crich* (12 L. J. M. C. 148) had in some measure determined this point, that respondents must remain respondents, and cannot act the part of appellants. See also *Reg.* v. *Stoke Bliss* (13 Law J. 151; and and 1 Bit. & Sym. M.C. 61.) In the case of *Reg.* v. *The Recorder of Bolton* (1 Bit. & Sym. M.C. 126), which occurred last term, it appeared that notice of an appeal had been given against a conviction under the 17 Geo. 3, c. 56, s. 8, which provides against frauds by servants against their masters. Notice was subsequently given that the appeal was abandoned. Patteson, J. held that under these circumstances, the appeal never having been entered, the Recorder of Bolton had no right to try it at the instance of the appellants, in order that they might have their costs; the only mode was to estreat the recognizances. A *mandamus* was also refused to compel the Recorder to give costs, the power to do so, by this statute, being consequent upon hearing the appeal. The 8 & 9 Wm. 3, c. 30, was held not to apply, but to settlements only.

It further appeared that the magistrates who had originally convicted the appellant refused to issue a warrant for his committal, fancying (and we believe the fancy is prevalent in Lancashire) that their jurisdiction was terminated by the notice of appeal; but Patteson, J. said, "I entertain no doubt that the not entering of the appeal according to the recognizance came to the same thing as if there had been no notice of the appeal at all, and no recognizances had been entered into; in which case, although the party was not committed immediately by the magistrates upon conviction, I have no doubt the magistrates might do so now. The difficulty in *Rex* v. *Twyford* (5 Ad. & Ell. 430) does not arise here; because there the party was in custody under a warrant, and the difficulty arose upon the extraordinary provision in the Act of Parliament."

In the manufacturing districts this case should be noted:—men who receive work to do from their employers, being convicted under this Act, cannot evade punishment by giving notice of appeals they do not intend to prosecute.

Chargeability.—The form of certificate under the new Act is treated of elsewhere in this number of the Law Times.

REPORT

OF THE MANAGING COMMITTEE OF THE JUSTICES' CLERKS SOCIETY,

Upon the proposed Bill "To Regulate the Appointment and Payment of Clerks and other Officers of the Courts of Petty and Quarter Sessions of the Peace, Oyer and Terminer, and Gaol Delivery."

The Clerks of Petty Sessions Bill proposes a very material change in the office of justices' clerk.

Its main features are the payment of a salary in lieu of fees, and the addition of many new and highly important functions.

The objects which the Bill appears chiefly to contemplate are, to render the office of justices' clerk more responsible and independent—less obnoxious to the suspicion of unworthy motives in its exercise, and to clothe it with more of the character of a public functionary than heretofore.

The judicious course adopted by the Government in printing and circulating the draft of the bill during the recess, in order that it may be more fully considered and discussed before the next sitting of Parliament, should induce every one interested in the subject to treat any verbal inaccuracy with merely a passing notice for the purpose of correction, and to give an earnest attention to the important principles involved in the measure, with a view to make it as perfect and efficient as possible.

As to the main point of the Bill—the substitution of a salary for fees but little need be said. Payment for public services by fees possesses certain advantages: it tends to excite zeal, assiduity, and attention—forms a self-adjusting scale of remuneration—and, in its general operation, taxes those only who receive the corresponding benefit. On the other hand, it lays a public officer open to the suspicion of extortion and partiality, and in some cases presses hardly upon innocent and even injured parties; while the necessity which it often imposes upon justices of assessing a small fine for an offence on account of the fees attaching to the case, gives an undue colouring to the proceedings.

The advantages of a salary, in point of principle, outweigh those of the other system. But to render it desirable that it should in fact be substituted for fees, due provision should be made for its alteration in case of need; there would otherwise be strong reason to fear that a salary fixed without a practical knowledge of the extent of the additional labours imposed by the Bill on justices' clerks, might prove altogether inadequate; or that a salary, adequate in the first instance, might, by reason of additional labours to be thereafter imposed on the clerk, become a very insufficient source of remuneration.

The office of justices' clerk is a very ancient one, indeed, no doubt coeval with that of a justice of the peace himself, for at all times a gentleman filling the latter office must have required some one to fill up warrants and proceedings, particularly in very ancient times when a knowledge of writing was considered beneath the consideration of men of rank and property.

As population has gradually increased, and the laws have become more complicated and minute in their operation, the office of justices' clerk has become one of great responsibility, requiring considerable legal attainments, and only to be effectually performed by means of experience acquired by long practice.

The consequence has been that the office is now generally filled by the most respectable legal practitioners, who, by its forming but one, and often an inconsiderable item, in point of emolument, of their professional income, are enabled to perform its duties with greater independence, efficiency, and liberality, than if it were their sole or principal occupation.

The office is recognised in many statutes, but its title to fees (the appointment being held during the pleasure of the appointing justices) is sanctioned by the 26 Geo. 2, c. 14, which enacts that the justices' clerks shall be entitled to such fees as shall be fixed by the justices in General Quarter Sessions of the Peace for the county, confirmed by the judges of assize.

No office, whose tenure is *durante bene placito*, stands upon a surer or better established foundation.

The office of clerk to petty sessions for a division, which is variously designated in different Acts of Parliament, is comparatively of modern origin.

Formerly (as at present in many instances) every individual justice of the peace had his own clerk, although the same person might be employed by several justices.

Then, when two or more justices met together for the despatch of general business, forming what the text books call a petty session, the clerk attending them to advise upon and prepare the proceedings, became the clerk of petty sessions. Subsequently, when justices were required to meet for the transaction of certain special business relating to a particular district, such meeting constituted a special petty session of justices, and the clerk attending thereat became the clerk of special petty sessions for the division, or, as he may be more briefly termed, divisional sessions clerk; so that there may, and in many places do actually now exist, the several offices or employments of clerk to one or more justices individually,—clerk of petty sessions,—and clerk of the special petty sessions for a division.

These distinctions have gradually grown up without any definitive legislative provision for their origin, although they may be traced inferentially in many statutes; and of late years, owing to the various important functions which have been imposed upon the magistrates out of sessions, for local convenience, the divisional special petty sessions have become tribunals of considerable interest in a public point of view, and in the exercise of the magisterial functions, great inconveniences are constantly felt, and the due course of justice often impeded, owing to the absence of any legislative code for guidance and adequate protection from vexatious litigation.

The only statutes bearing immediately upon the formation and constitution of special sessions divisions, are the 9 Geo. 4, c. 43, and the 6 & 7 Wm. 4, c. 12, which regulate the formation of new districts, and the alteration of existing ones in certain cases.

In the constitution and practice of divisional sessions, there are existing anomalies which require correction. In some cases the clerks to individual justices attend the divisional special petty sessions, and divide between them, in proportion to the number of justices present for whom they respectively act, the fees for the business transacted thereat; a system manifestly objectionable in many respects, and derogatory to the office of a public functionary.

The mode of convening divisional special petty sessions varies in almost every statute which requires them to be held, whilst in some no directions whatever are given on the subject. Some general uniform provision for regulating this important preliminary step is much needed.

The Justices' Clerks Society prepared a Bill on the subject in the session of 1843, which, after being approved by a Select Committee of the Upper House, and read a third time, was brought into the Commons too late in the session to be further proceeded with. The proposed enactments of that Bill would be very usefully introduced into the present measure.

In the County-rate Act of last session, a clause was introduced at a late stage of its progress, substituting a notice from one justice for the former practice of a notice from the high constable to each justice for the convening of special sessions; but the enactment is imperfect in many points of view, particularly in applying only to the notification to the justices resident in the division, and not to that required by various statutes to be given to justices usually acting for, although not resident within, the

division, and to other parties in connection with and affected by the subject matter of the several special sessions.

After these general remarks, the mode in which the proposed Bill deals with some existing defects comes under consideration, and in doing so, it must be admitted that the subject is an important and difficult one, and only to be mastered by a thorough practical acquaintance with the existing law and usage, and the inconveniences of the present system.

In the first place, its intention appears to be to provide that the justices, who may have qualified themselves to act under the Bill by the performance of certain preliminaries (which, however, they are not thereby enjoined to perform), shall meet in general sessions, and fix the time and place for the election of clerks of petty sessions, and also fix the salaries to be paid to such clerks, and that at the time and place so fixed, the justices then present shall elect the clerks of petty sessions.

The preliminaries which must be observed to give a justice jurisdiction under the first and subsequent clauses are,—

1st. That he must be either resident within or have elected to act more especially for some division in a county.

2nd. He must also have agreed on the times and places for holding the petty sessions within such division.

3rd. He must also have notified the same (that is to say, the first two items) to the clerk of the peace.

With respect to these provisions, it is submitted that it would be better to make the preliminary matter (now merely introduced by way of recital) a substantive directory enactment, otherwise in some divisions, where justices may not choose to take the initiative, the Bill would be inoperative.

It will also be seen that there is no direction as to whether a justice resident in one division can elect to act "especially" for another division, or whether he can act "especially" for two or more divisions. It is a very common practice for justices to act for more than one division.

As to the election of the clerk.—It is by no means clear whether the place for such election is to be in the division to which the appointment specifically relates, or whether it is to take place at the general session of the peace for the county; and (if the matter is to be transacted in general session) it is still doubtful in what manner the justices are to proceed, whether to act as one body in fixing the salaries of the several divisional clerks, and the times and places for the election of each; or whether they are to divide themselves into committees, according to their respective divisions, to perform those acts with reference to each division separately. It is submitted that it should be at a special session in and for the specific division, and be decided upon by the majority of the justices for the division then present, subject to revision and confirmation by the general session.

With respect to fixing the amount of salary, it is urged that according to general usage in such cases, and particularly with reference to the mode directed for ascertaining the clerk of the peace's salary, an average of five or seven years would be a fairer mode of fixing at least a minimum, with a provision for an augmentation in respect of the new duties proposed by the Bill to be imposed on the clerk, and that the salary should be periodically revised and adjusted to altered circumstances, at intervals of about seven or ten years; or at any rate that power should be given in the Bill to revise the salary according to circumstances.

Provision should also be made for the necessary expenses of hiring rooms for holding the several divisional sessions, and of purchasing forms and books, which are absolutely indispensable, together with stationery required to be used, and for other incidental expenses in the performance of the duties of the office, in conformity to the practice at the metropolitan police courts.

The third clause enacts, that "such resolution" (this, it is presumed, means the amount of the salary) shall be submitted to the next general session, who may confirm or reduce the salary; a minute whereof is to be made by the clerk of the peace, and signed by the chairman at such session.

It will be observed that the last-mentioned general session are not empowered to increase, but only to confirm or reduce the salary.

The power should be to increase or reduce, and the proper words would be, "to confirm or alter the amount so fixed." And in case of alteration, the confirmation of a subsequent general session should be required, in order to guard against a hasty decision on a subject upon which no discussion or difference of opinion may have been expected.

The fourth clause provides that the salary shall be paid out of the county rate; and a copy of the resolutions of the said general session is to be sent by the clerk of the peace, certified under his hand, to the treasurer of the county, as his authority for paying and allowing the salary.

There is no provision as to the mode and times of payment of the salary. As the fees are to be accounted for and paid quarterly, it would be right that a stipulation should be added to the clause authorizing the treasurer to pay the clerk's salary by four equal quarterly portions at the periods fixed for rendering the accounts and balances.

The fifth section enacts that at the time and place fixed for the election, the justices then present shall elect a clerk of petty sessions, the office being limited to,—

1st. An attorney of a superior court of common law for five years before the date of the election; or

2nd. One who has acted as clerk to the justices of any division before the passing of the Act, and certified by the majority of the justices present at the election, under their hands, to be sufficiently qualified by experience and knowledge of the law to perform the duties of clerk of petty sessions.

This clause disqualifies for the office of clerk of petty sessions all persons, except clerks acting before the passing of the Act, who shall not have been admitted attorneys for five years previously to their election. It is submitted that this limitation is too stringent, and would operate to shut out those who, from their particular line of practice in a justices' clerks' office during the five years of their clerkship, and the subsequently intervening period (often a long one) before admission, may be most eminently qualified to perform the duties of the office; and would let in, or rather limit the justices in their selection to, many whose general business, however extensive and long established, may not have afforded them any practical knowledge of the peculiar duties of a justices' clerk; and in some districts a difficulty would probably occur in inducing respectable men of the standing required by the Bill, to take upon themselves public functions in which they would have all to learn, and which might interfere injuriously with their general business.

The restriction of the office to admitted attorneys (when considered with reference to the exercise of a sound discretion by the justices in selecting a properly qualified person) would be as effectual as the nature of the case will admit, to insure the exclusion of improper persons; and the new system of examination adopted previously to the admission of attornies, and which has been in force about five years, is a further guarantee for due qualification without limit of standing, and one which does not exist in the case of barristers, whose mere call to the bar carries with it no authentic assurance of qualification.

The enactment that existing clerks should not be continued except on re-election, appears to be unjust, and would give a claim to those who might be displaced to be compensated for their loss of office. It would surely be more fair that the present clerks should be continued in office, they being liable, as at present, to be removed at the pleasure of the justices; more especially as the right to compensation has been fully admitted in the instance of justices' clerks in boroughs, and in many other cases.

This clause should also be extended so as to admit of the appointment of two or more professional gentlemen (being partners in business) as joint clerk for a division, in the discretion of the justices, when there may be any local or other circumstances which may appear to the justices to render such a course expedient or desirable. And in the case of two or more persons acting as clerks in the same division, provision should be made for compensating such of them as may not be re-elected.

The sixth clause provides, that whenever a vacancy shall arise in the office of the clerk of petty sessions, the same course shall be pursued for the election of a successor, save that the salary may be altered by the majority of the justices present at any general or quarter sessions of the peace next following the occasion of such vacancy.

The seventh section declares that the clerk so elected shall hold his office during the pleasure of the justices of the peace, who shall, from time to time, act for the division for which such appointment shall be made, or the major part of them, and be subject to dismissal by the justices acting for the division, at a meeting to be called on the written request of any five or more of such justices to the clerk of the peace.

This tenure of the office is in conformity to the present state of things; but the requisition as to notice by five justices acting for any particular division, would, in some localities, render the provision nugatory, as so many acting justices may not be found in many divisions.

It should be at the request of five or more justices, or if the number of acting justices for such division be less than five, then of the majority of the justices acting for such division.

The eighth clause gives the justices the power of requiring security from the clerk "for the due discharge of his office, and payment of all moneys received, or which ought to be received, by him," in such sum, and with such number of sureties, as the justices may declare, in writing, at the time of election.

This provision is quite new, and appears to be scarcely necessary when considered with reference to the frequent accounting for the fines and fees enjoined by the Act,—the offset against the fees and fines by the clerk's current salary,—and the power of dismissal, with or without cause. Security of this kind is highly objectionable, and very harassing to parties in obliging them to apply to friends to become securities, and it is not required in the case of the borough clerks and metropolitan police-courts clerks, whose receipts must, on the average, be considerably more than those of justices' clerks in general. It is hoped that this clause will be entirely expunged, but should it be retained it will require much technical modification. It should express to whom the security is to be given—whether by bond or recognizance—whether with or without stamp—and at whose expense the same is to be given: also a form of the bond or recognizance should be given in a schedule, and the indefinite term of "due discharge of duty," should be omitted, and the security confined to the duly accounting for moneys received.

The 9th section is a very important one. It proposes to define the duties of the clerk of petty sessions, and places them under the following heads:—

1st. To do the business now done by clerks of justices as such.

2nd. To advise the justices of the county, or any of them, when required, in all matters relating to his or their office.

3rd. To transact all necessary business and duty in relation to the directions for the search for, apprehension, detention, committal, and prosecution of any offenders (for offences committed within the division for which he shall be appointed, or in any other parts of the county if he shall be so directed by any two or more of the justices of his division), at any general or special sessions of the peace, or adjournment thereof, or the assizes, on all occasions on which such prosecutions shall be conducted at the expense of the county.

4th. To prepare, engross, and present the indictments on those occasions.

5th. To assist the justices, and particularly those acting for his division, on all occasions, when his assistance shall be necessary, whether in or out of court.

6th. To attend all courts of petty sessions within his division.

7th. To attend the courts of general or quarter sessions of the peace, all special sessions of the peace, or any adjournment thereof, and the general sessions of oyer and terminer, and general gaol delivery, whenever necessary.

8th. To assist the clerk of the peace in the duties of his office, and in taxing and ascertaining the amount of costs, expenses, or charges, to be paid out of the county rate in or about the searching for, apprehension, committal, or prosecution of any offenders, or the attendance of any witness or witnesses, or any other expense to which the county rate may be liable.

9th. To attend to the recovery and collection of fees moneys instead of fees penalties, and all sums for the use of the county rate; and to keep true and correct accounts of all moneys received or paid by him in the discharge of his duties, to be always open to any justice, treasurer of the county, or clerk of the peace.

10th. To cause an entry or minute to be made of the proceedings of the justices in any session, or sitting, or on any special occasion; the same to remain in the custody of the clerk, and be a record of the proceedings of any such court, and be open to the inspection of any justice, who may make, or cause to be made, a copy of any such entry.

Of these heads the 3rd, 4th 7th, and 8th, are entirely new. With respect to the third, the duties are limited to those in relation to directions for the several matters therein enumerated. The term directions here does not appear to be very definite in its application. Are the directions to emanate solely from the justices, or from any other and what authorities, and what particular duties are intended to be included in that term?

Another limit to the prosecutions referred to in the clause is, that they be such only as shall be conducted at the expense of the county. Nearly all prosecutions are conducted to a certain extent at the expense of the county, and very few without some outlay on the part of the prosecutor. Perhaps, in any doubtful cases, it would be better to leave to the divisional justices the discretion of deciding whether the clerk should conduct the prosecution or not, unless the legislature should be of opinion that all cases, without exception, should be prosecuted by the clerk of the division to which they may respectively relate.

The 4th head would introduce some complexity and interference with reference to the duties of clerks of indictments and clerks of the peace at assize and sessions; those duties being now performed by established officers, who, if their emoluments were interfered with by this provision, would be entitled to compensation; moreover it is urged, that the important duty of wording technically in indictments the allegation of various offences necessary to put a person upon his trial and to found a valid judgment, would

be better performed by a single functionary accustomed to that peculiar branch, and whose experience, from constant practice in all classes of offences, would enable him to bring to the task superior efficiency.

The 7th head, viz. the attendance at the assizes and sessions, when necessary, may entail upon the clerks considerable expense and inconvenience; but it is consequent upon the duties involved in the 3rd head, and the only remark upon this is, that it would be a fairer mode of remunerating the clerk for this particular duty, to allow him a certain adequate sum *per diem* for his time and expenses in such attendances, independent of his ordinary salary, as the residences of many clerks will be at a considerable distance from the county town.

The first duty under the 8th head is of a very extensive and indefinite scope. The injunction to assist the clerk of the peace in his duties would throw upon every divisional clerk the task of performing the entire duties of the clerk of the peace.

It is submitted that it is inexpedient to interfere at all with the functions of the clerk of the peace or clerk of assize officers, who have long-established and recognised duties to perform, with appropriate remunerative fees, proposed by the Bill to be commuted for a fixed salary.

The 10th section provides, that if an hour shall elapse from the appointed time for holding the petty sessions, without the attendance of the clerk or his deputy, the sessions shall be thereby adjourned until the next petty sessions, and at the next petty sessions an entry of such adjournment shall be made in the minutes.

And if one hour from the appointed time shall elapse without the attendance of the justice, the sessions shall be thereby adjourned till the next petty sessions; and then, and also whenever an hour shall elapse without the attendance of two justices, the clerk shall make an entry thereof in the minutes.

And a report of such failure or irregularity in attendance is to be sent by the petty sessions clerk to the clerk of the peace, who is to lay an abstract of such reports before the justices in quarter sessions, who are to cause the clerk of the peace to send a copy of such abstract, with their remarks thereon, to the Secretary of State.

This provision, as far as it refers to the justices, is not likely to be very palatable, as it implies a suspicion of their neglecting their duty, and places upon their clerk the invidious task of recording and reporting their failures and irregularities of attendance. So far as the clerks are concerned, they have no right nor reason to object to such provisions to enforce punctuality and attendance to their own duties.

The 11th clause requires the clerk of petty sessions, at every quarter sessions, to render, on oath, to the county treasurer, an account of all fines and penalties imposed by the justices of his division, and of all sums or fees collected or received by him by virtue of his office, or which, but for his default, he might have collected and received, or which shall have become due and payable on account of such office, for the then preceding quarter, according to a form in the schedule, or as the Secretary of State shall direct; and shall produce all books and documents required to vouch for the accuracy thereof. And if the treasurer or the county justices are dissatisfied with the account, they may refer the same to the Secretary of State, who shall, by some officer of the Queen's Bench, or other person he may appoint, investigate the same, and make such allowances or disallowances therein as he shall deem just and reasonable, and finally settle and certify, in writing under his hand, the amount to be paid or allowed by the clerk thereupon. The introduction of the words "on oath," appears to have been an oversight, as the very next section requires the account to be verified by a declaration only.

The words "but for his default he might have collected and received," are somewhat vague with reference to an account, the truth of which is to be verified by a declaration. It might be required that the account should contain a statement of the reasons for the nonpayment of the fines and fees in every case, the correctness of which statements would be secured by the declaration, and the force of which would be ultimately decided, when necessary, by the Secretary of State. The words "which shall have become due and payable on account of his office," appear to be unnecessary, as there can be no sums for which he can be accountable, as clerk, beyond the fines and fees.

The 12th section provides that the account shall be verified by a declaration made before a justice of the peace, and a pecuniary penalty (the amount being at present in blank) is fixed as the punishment of falsehood in respect of such declaration.

The verification by a declaration is very proper; but it is a new and unusual mode of dealing with what amounts to the moral offence of perjury, to make it punishable by a pecuniary penalty on summary conviction before two justices; it surely would be more simple and consistent to enact that such an offence shall be deemed a misdemeanor.

The 13th clause directs that the clerk shall pay to the county treasurer the balance due on the account at the time of rendering the same; and also such sums as may be certified by the Secretary of State, as aforesaid, within 48 hours after notification thereof by the treasurer, in writing to him, to be sent by the post.

This period of 48 hours from the sending of the notice is too short; it should be within five days at the least, and provision should be made for the payment by the treasurer of any balance due to the clerk.

The 14th section enacts, that if default be made in such payment by the clerk, within 21 days after the same shall be directed to be paid as aforesaid, the treasurer shall make complaint thereof to any two justices for the county, who shall be thereupon authorized, by writing under their hands—

1st. To stay the payment of any salary to the clerk.

2nd. To issue their warrant for levying the amount due (after making due allowance for salary, or otherwise, as they may deem proper, having relation to the probable amount received by such clerk for moneys not accounted for in the meantime) by distress and sale of goods or other property of any kind or description.

3rd. And by apprehension and detention of such defaulter, and his committal to the Debtor's Prison of the county, until the sum so appearing or certified to be due, together with interest at 5*l.* per cent. per annum, and all costs in obtaining the same, shall have been fully raised and paid.

4th. And such clerk shall, by the issue of a second warrant for such purpose as aforesaid, be thereby forthwith removed from his office, and be incapable of re-election thereto.

5th. And that it shall be lawful, upon such payments to be thereupon made, for the treasurer to set-off and allow any sum then due for salary, or to require the render of an account of all moneys received, or which ought to have been received, by the clerk from the time of rendering the last account, before any allowance of such salary shall be made.

6th. Provided, that if after three days' previous notice of motion to the treasurer, for cause shewn before the magistrates of the county, at the next general session or quarter session of the peace, it shall be made to appear that such warrant was improperly or improvidently issued, such clerk may be restored to office by the magistrates there present, or the major part of them.

And the 15th section enacts, That in case the clerk shall die before the render of an account, or the next quarterly period for rendering his account, or shall resign, or be dismissed from his office, the executors or administrators of such clerk shall render such account, and be entitled to the payment of a proportionate part of the salary due; and that the account shall be enforced by summons and warrant of arrest of the person, and payment of any balance due, which may be enforced by distress and sale, or arrest and detention of the person, in manner aforesaid.

The two last sections, the 14th and 15th, are very objectionable in many respects, both as to principle and construction. A very simple and appropriate form of clause for the purpose might be taken from the Acts relating to the recovery of balances due from overseers of the poor, collectors of taxes, and other officers of public receipt. And the 15th section, making the executors of a defaulting clerk liable to imprisonment until the balance be paid, must have slipped in through inadvertence.

The stringent character of this provision, connected as it is with the previous requisition for security, and the fact of the clerk's office being held at the pleasure of the divisional justices, is very striking, and its extreme severity is manifest by the concluding proviso for the restoration to office of the clerk by the quarter session, a result which may not be accomplished until after the infliction of the full measure of punishment upon the supposed offender, and of the benefit of which he may be deprived in a few days by the fiat of the divisional justices, at whose pleasure he holds his appointment.

The 16th section provides for the election, by the divisional justices, of a crier of their court of petty sessions, to keep order in court, and perform such other duties as the justices shall appoint; or if there be any police constables, or paid constables appointed to such division, by any resolution of vestry, to order one of such constables to perform the duty of crier; the salary to be fixed by the justices at the time of the appointment, and to be paid out of the county rate, but to be subject to such order or regulation or confirmation of such appointment and salary, as the justices, at the next general or quarter sessions, shall order, after twenty-one days' notice of such appointment shall have been given, in manner therein before directed, by the clerk of the county to the justices of the county; and no moneys are to be paid out of the county rate until such order shall have been made in that behalf. And the 17th section briefly declares that the crier shall hold office during the pleasure of the justices of the division, and in case of his dismissal or death, the justices may, from time to time, proceed to the election of another in manner aforesaid, who may be paid in manner aforesaid. The wording of these clauses will require considerable alteration to render them operative and conformable to other parts of the Bill.

The sections from the 18th to the 35th, both inclusive, relate principally to clerks of the peace, and therefore, although they require attention, they are passed over at present as being subordinate in interest to those parts of the Bill which refer to the clerks of divisional sessions; and indeed it is a question whether it would not tend to simplify the measure, if the provisions relating to clerks of the peace were introduced into a separate Bill.

The 36th section declares false swearing to be perjury.

This clause will be quite unnecessary if a declaration be substituted for an oath, as suggested with respect to the clerk's accounts.

The 37th section gives to the Secretary of State the power, now possessed by the justices in quarter sessions and judges of assizes, of settling the tables of fees to be taken by clerks to justices and other officers engaged in the administration of the criminal law. As the Bill contemplates the remuneration of the clerk by a fixed stipend in lieu of fees, this provision has no bearing upon the pecuniary interests of the clerks themselves, whilst it is in conformity to the precedent established in the case of municipal town clerks.

The 38th section imposes a fine of 5*l.* for taking a fee not authorized by the table in force, such fine to be recovered by any person who will sue for the same in any of her Majesty's courts of law at Westminster. There does not seem to be any good reason why more than the amount of the fee should be recoverable, and that within a limited period, in a summary way before justices of the peace; because such unauthorized fee (having reference to the previous clause as to false declarations) can only be taken by a salaried clerk from error or inadvertence, or a desire to relieve the county rate, and not from any interested motive.

The 39th clause protects existing compensations.

The 40th section enacts, that no person shall act as clerk other than the persons appointed to the office, except in case of sickness, or other unavoidable causes, or for necessary recreation; and that no person shall act as deputy who has not been previously nominated by the principal, and approved for the particular occasion by at least three justices of the district for which he shall have been appointed.

The necessity of an approval by three justices of the division of a deputy on every occasion of the unavoidable absence of the principal, will, in many, and perhaps most instances, render the provision nugatory, as in some divisions there may not be three justices acting for the division, and the illness or engagement may occur so suddenly as to prevent the clerk from obtaining the sanction of the justices.

Surely the approval of two justices would be sufficient to give to the clerk a general power of appointing a deputy, as in the case of coroners; and the particular working of the provision might be left to the control of the divisional justices.

The 41st clause enacts, that no charges for deputy, or for any business, in the way of additional charge, shall be made on the county, by any clerk of the peace, or clerk of the petty sessions; but that all duties heretofore discharged, or which may thereby, or by authority of Parliament, or otherwise, howsoever, devolve on the clerk by authority of Parliament, besides those heretofore usually discharged by him, shall form part of the respective duties for which salary shall be given.

This clause requires modification, and should be followed by a proviso or clause enacting that it shall be lawful for the general or quarter sessions of the peace, from time to time, upon the application of any clerk of petty sessions, countersigned by two justices, to order an increase of the salaries of the clerks so as to render them adequate to the additional duties that may be imposed.

The 42nd section, providing for the delivery to a successor of the books and records of office, is untechnical and complex in its language. An intelligible and well-established form of clause may be easily obtained by reference to the statutes relating to overseers of the poor, collectors of taxes, and other public officers,

The 43rd section gives an option to municipal corporations to avail themselve of the Act as to the substitution of a salary for fees with reference to clerks to justices in boroughs. But a provision is required in the case of boroughs having a commission of the peace but without the grant of quarter session, so that they may not be taxed doubly by contributing to the county rate as well as to the borough fund. And the 44th section excludes corporations from the operation of the bill except as to the last mentioned option.

The 45th clause defines the meaning of the words county clerk of the peace, and division, and is well adapted to its object. It has been copied from the before mentioned Divisional Sessions Bill, prepared by the Justices' Clerks Society in 1843.

The 46th section excludes from the Bill, Scotland, Ireland, the City of London, and the Borough of Southwark. And the 47th provides for its amend-

ment or repeal during the same session of Parliament in which it may be passed.

The schedule, containing the form of clerks' return of fines and fees, requires alteration in several particulars; and the declaration should state the same to be an account of fines and fees imposed by the justices of the division of , to the best of the clerk's knowledge and belief, and of all sums received by him or such fines and fees and otherwise, by virtue of his office, between the day of and the day of and that the several statments therein are true.

Power should be introduced for the justices to remit fees in cases which appear to them deserving of such indulgence.

It would much tend to render the functions of the divisional special sessions more efficient and convenient in exercise, if such tribunal were declared to be a Court of Record, with all the Common Law and statutory incidents of such a court, including a general power to summon and enforce, on pain of fine and imprisonment, the attendance of of witnesses; the power of carrying out their orders, and punishing for contempt, with a comprehensive schedule of forms of information, summons, warrant, conviction, commitment, and other proceedings, without it being necessary to set out therein the evidence upon which the judgment may be founded; coupled also with an indemnity to justices against actions for *bonâ fide* proceedings.

By order,

CHARLES AUGUSTIN SMITH, Secretary.

November, 1844.

PRISON DISCIPLINE.

EIGHTH REPORT OF THE INSPECTOR OF PRISONS FOR THE NORTHEN AND EASTERN DISTRICTS.

TO THE RIGHT HON. THE SECRETARY OF STATE FOR THE HOME DEPARTMENT.

SIR,—I have the bonour to present the eighth report upon the prisons visited by me in the northern and eastern parts of England.

Upon this occasion the reports upon separate prisons appear to require but little either of prefatory comment or remark.

On the general subject of penal discipline, I have observed, with much satisfaction, during my recent visits to the provinces, both in the justices and others who are charged with the higher superintendence of establishments connected therewith, a very deeply increased sense of the responsibility attaching to their trust, and consequently a greater degree of attention to its faithful execution.

I have particular pleasure in reporting that in the very great proportion of the prisons comprised within this extensive district, the means taken for ensuring prisoners a sufficient quantity of plain and wholesome food have been attended with great success by the very general adoption of the official dietaries, or their equivalents. I am persuaded that, by a firm perseverance in the same wise course, on the part of superior authority, and enforcement on those who still withhold their concurrence in measures no less required by the Acts of the Legislature than by common humanity, this important branch of penal treatment will, in a very short time, be placed upon a basis from which it cannot be shaken while subject to watchful superintendence.

Among other evils foretold as the certain result of this interference with the food for prisoners, there is one more warmly insisted on than others, and which I advert to, rather from the strenuousness of its advocates, than its real importance. I allude to the anticipation that by the adoption of these dietaries, or their equivalents, the situation of the convict as to food, would be so superior to that of a considerable proportion of the humbler classes, that it would induce a preference for a prison, and thereby directly encourage crime. With every deference to those from whom the apprehension of such an evil proceeds, I do not hesitate to affirm that I have such a confidence in the moral feeling of the humbler classes, that even in the times of severe pressure and distress, I believe that few and but very few would break the law for the purpose of seeking an asylum in a prison. But I am prepared to show, that even if the morals of the people were as vitiated as apprehended, the quantity of food prescribed for prisoners by authority is no encouragement to crime, but directly the reverse, and that the prisoners are less likely to be satisfied with the new diets than the old. I have already found this to be the case, in one instance at Chester, where the prisoners declared they liked the quality of the new, but preferred the quantity of the old. The reason is obvious. The food prescribed in the official dietaries consists of various articles, all alimentary of the human body, and generally solid in form. The ordinary diet for prisoners previous to the recent interference of authority, was most disproportionately given in a liquid form, consisting, independently of the bread, of thin gruel, and in some cases with the addition of thin soup, well satisfying the immediate cravings of hunger by its bulk, but affording no sufficient supply to the constantly consuming elements of the human body. Hence the numerous trifling cases of dyspepsia and other ailments connected with the digestive functions which, under long imprisonments, crept into serious maladies, breaking down the constitution, or ending in death. That the new dietaries are of a sufficiently nutritive character, though less repletive than the former, I have no doubt; and I have just received the voluntary evidence of a keeper of a house of correction in an agricultural district, which had been previously remarked for its sharp discipline and spare food, where the justices had, of their own accord, adopted the official tables, upon the recommendation of the circular from the Home Office. He states, in a communication to me, dated the 1st of January, 1844, "I am happy to say that since the adoption of the present dietaries the health of the prisoners has been very much improved."

New rules.—The promulgation of the code of rules for all prisons, accompanied with the recommendation of them by superior authority, has already been productive of considerable advantages. In several of the prisons in this district they have been entirely adopted; in others the former rules have been assimilated to the new, and a great advance has been made to that desirable end—uniformity in regulation and government.

Penal treatment of children.—I deferentially abstain from adverting to or re-urging former opinions, however strengthened by maturer experience, which may provoke discussion on the subject of the separate or seclusive system of prison discipline; but I feel it incumbent on me to recommend most strongly that its danger and utter inapplicability as a penal infliction for juvenile offenders should be impressed generally on the justices, and that in the construction of new prisons such arrangements should be made as may afford the means of placing this description of prisoners in association, but under proper superintendence during the day while in labour, instruction, and at meals, and with a separate cell at night. The pernicious effects of seclusion and sedentary labour on boys has been most marked in the prisons in Scotland, and I refer to a striking instance of their injurious influence, which is recorded in my present report of the house of correction at Wakefield.

Debtors in houses of correction.—Having observed the great inconvenience and interruption to the regular discipline experienced in houses of correction under their supposed liability to receive debtors in execution from courts of request, according to the construction of clauses in certain local Acts, and having strong doubts whether these local Acts, in this particular, were not controlled by the 4th sec. of the 4th of George IV. cap. 64, I intimated my doubts to the visiting justices of the West Riding House of Correction, at Wakefield, where the inconvenience caused by the influx of such prisoners, and their visitors, was likely to prove most serious. The justices directed their solicitor to draw up a case, and lay it before the Attorney-General. This was done; and his opinion being conclusive that the keeper of the House of Correction was not bound to receive debtors under any of the local Acts, it was forthwith acted upon by the justices, who have since declined receiving such description of prisoners.

Lotteries in Public-houses.—I consider it proper to direct attention to the circumstances by which the confidential servants and clerks of men of business in commercial towns are exposed to a new temptation to crime, by the recent extension of gambling to public-houses by means of lotteries, where the sudden acquisition of a large sum of money is dependent upon the events of popular races, and where the shares, in proportion to the prizes, range from the lowest trifle to 25*l*. This description of gambling is pursued to an incredible extent in Manchester and other large towns, and is fast pervading the whole country. It seems fraught with unmitigated evil, combining the excitement for drink and idle company with the thirst for sudden and inordinate gain. I have received several communications from prisoners and others on this subject, and I refer to a very striking instance of its evil results in the report upon Lancaster Castle.

Debtors.—The want of some classification among debtor prisoners, which should effect the separation of those maintaining themselves from those receiving the prison allowance as destitute, has long been felt, not only as a great inconvenience, but tending to cast an additional expense upon the community; as debtors had simply to declare themselves destitute, and thus obtain the prison food, and still have the opportunity of procuring beer and other articles, through the means of those maintaining themselves, with whom they were associated. The suggestions made by me for their division into two classes, have been eagerly adopted, and carried out in several establishments, and with the expected beneficial results. In some prisons the classification has been extended to the formation of a third class, consisting of debtors remanded by the Commissioners of the Court for the Relief of Insolvent Debtors, on the ground of fraud, under the 77th or 78th section of the 1st and 2nd Victoria, c. 110; and debtors who neglect or refuse to file a schedule of their property, under the 36th and 39th section of the same Act; and bankrupts remanded by the Court for not answering.

I feel myself impelled again to solicit attention to the prisons for debtors from courts of requests, and to those belonging to peculiar jurisdictions, and to refer for the details of their discreditable condition to my separate reports upon those at Radford, Sheffield, Bradford, and Rothwell. In the Peverell prison, at Radford, every debtor, at the time of my visit, was either receiving or on the eve of receiving relief as paupers; and I am fully satisfied, by informations from various sources, that many of these wretched and destitute persons are thrown into prison by low practitioners in the law for the sole purpose of obtaining from the Society for the Relief of Imprisoned Debtors a sum of money in commutation of the original debt, which may satisfy the attorney for the costs of suit. It will be found, by the evidence of the keeper at Lancaster Castle, that resort was even made to the artifice of increasing the amount of the debt, in order to obtain a larger sum from the society.

With more pointed reference to prisons belonging to courts of request, observation and experience alike bring to me the conviction, that the idleness and corrupting associations which pervade them all, cannot fail of inflicting serious moral injury on the humbler class of people, who are for the most part subjected to their influence. In many of the recent Acts for the establishment of small court jurisdictions, clauses have been introduced by which the judge of the court, without the assent of the defendant, may order that the debt and costs shall be paid by instalments; by which, on default of payment of each instalment, successive executions issue, and successive improvements are undergone. I have known as many as five imprisonments for one debt to have been ocasioned by default in the payment of instalments. This practice cannot fail of considerably augmenting the fees of the officers of the courts, and likewise of increasing the number of this description of prisoners. In the year 1835 an Act was passed for abolishing in Scotland imprisonment for civil debts of small amounts. I am unable to state whether this enactment, by restricting the credit of the humbler classes at the beer-shop and with the tallyman, has made them more provident, and forced upon the small employers a more steady payment of their wages; but when I contemplate, as an Inspector of Prisons, the extent of moral injury inflicted by this kind of imprisonment, I cannot but think this proceeding, as regards Scotland, worthy of consideration here. With reference to the measures proper to be adopted for securing to such prisoners a sufficient allowance of food when destitute, and placing them under more effective superintendence, I beg to refer to the preliminary letter in my last report, and to the reports upon such prisons in this.

I have the honour to be, Sir,

Your most obedient humble servant,

WILLIAM JOHN WILLIAMS.

Strand-on-the-Green. Inspector of Prisons.

MILLBANK PRISON—TRANSPORTATION SYSTEM.

The first report of the Inspectors of Millbank Prison, under 6 & 7 Vict. c. 26, was presented to Parliament towards the close of the session; it contains so much important information respecting the long needed alterations in the system of transportation, that a long extract from it may well find a place in our columns.

"The Secretary of State has signified to the Inspectors of Millbank Prison his intention to appropriate that prison as a depôt for the reception of all convicts under sentence or order of transportation in Great Britain, in lieu of their being sent, as heretofore, to the hulks. He has directed that the inspectors shall carefully examine the convicts admitted into the prison, and the documents transmitted with them; and that the inspectors shall recommend to him, from time to time, the mode in which these prisoners are to be disposed of with reference to their ages, crimes, sentences, and previous convictions, and in accordance with the general principles of the system of convict discipline in the penal colonies which has been established by Lord Stanley, and under which there are four stages through which the convicts will have to pass before they become free—namely, 1st. Detention at Norfolk Island; 2ndly. The Probationary gang; 3rdly. Probationary passes; 4thly. Tickets of leave.

"According to these instructions, all adult male prisoners sentenced to transportation for life, and the more aggravated cases of convicts sentenced to any term not less than fifteen years, and all prisoners sentenced to transportation for any term for burglary, arson, rape, forgery, or robberies attended with personal violence, are to be sent to Norfolk Island, for terms of not less than two, nor more than four years. These will afterwards have to pass through the stages of the probationary gang, probationary passes, and tickets of leave, in Van Diemen's Land, before they obtain their freedom.

"All other adult male prisoners, who are in a fit state of health to be transported, with the exception of those selected for Pentonville Prison, are to be sent to the probationary gang in Van Diemen's Land, for terms of not less than one year, nor of more than two years, except in cases of misconduct. These prisoners have afterwards to pass through the stages of probationary passes and tickets of leave before they become free.

"Prisoners between the ages of eighteen and thirty-five, under sentence of transportation for periods not exceeding fifteen years, and (except in special cases) for first convictions, may be recommended for confinement in Pentonville Prison for about eighteen months, then to be removed to Van Diemen's Land under their original sentences, with tickets of leave, probationary passes, or to the probationary gang, dependent on their conduct and improvement in Pentonville Prison.

"Juvenile male prisoners sentenced to transportation, who are deemed fit subjects for that institution, are recommended for removal to Parkhurst Prison; and the remainder to be sent to Point Puer, an establishment in Van Diemen's Land exclusively appropriated to criminal youth.

"There is a class of transports who are considered of too advanced an age and growth to be sent to Parkhurst Prison, but who are, nevertheless, too young for confinement in Pentonville Prison; for these a juvenile class has been formed in Millbank Prison, in which they are to remain one year, during which they are placed under the special care of the chaplains. They have good school instruction, are taught a trade, and work in the grounds belonging to the prison; and it is proposed that, at the expiration of that term, those whose conduct has been good shall be recommended for removal to Van Diemen's Land, with probationary passes, and that the rest be transferred to the probationary gang.

"Those convicts who are not in a fit state of health to be transported are recommended for removal to an invalid hulk, at Woolwich; and it is proposed that these prisoners shall be periodically examined by competent medical men, in order that such as are so far recovered as to be fit to undertake the voyage, may be sent to the penal colonies, under their original sentences.

"All female convicts under sentence of transportation, who are in a fit state of health to be transported, are sent to Van Diemen's Land, where a female penitentiary, with a well-selected and efficient staff of female officers, sent from this country, has recently been established.

"In order to dispose of the convicts who are admitted to Millbank Prison, in the most prompt manner, in accordance with the system which has been described, the inspectors carefully examine the prisoners individually, and the documents received with them; and transmit to the Secretary of State every fortnight lists containing full particulars respecting the prisoners received during that time, and recommending the mode in which they should be disposed of, either to Parkhurst or Pentonville Prisons, Norfolk Island, Van Diemen's Land, or the Invalid Hulk at Woolwich. By these means the proper selection of convicts for their respective destinations is made with accuracy and facility.

"As the prisoners become sufficiently numerous to fill a transport vessel, convict ships are taken up by the Admiralty for their conveyance to the penal colonies; and from the period at which the Millbank Prison Act came into operation (in the commencement of July last) up to the present time, the convict ships have taken their departure with the greatest regularity, even throughout the whole of the winter. By these means the sentence of transportation passed by the Court has, in most instances, been almost immediately carried into execution; the general deterring influence of that mode of punishment has been increased and rendered more efficacious; while the serious evils and inconveniences which formerly arose from the letting loose of convicts after terms of imprisonment in the general penitentiary or in the hulks, are remedied to a very great extent. The value of these remedies may be estimated by a review of the evils which they are calculated to remove, which affect both the liberated convict, and society at large. The convict is no longer inevitably impelled or lured back to crime, by being again thrown among his old associates, and exposed anew to temptations to which his more depraved habits give additional force; nor does his tainted character, closing against him the path to honest employment, almost compel him, as under the former system, to seek for subsistence by renewed depredations. On the other hand, society is protected from the return of one of the most mischievous classes of its members, who are almost compelled to live by plunder, and will seek to indemnify themselves for what they consider the harshness of their penal treatment by fresh acts of violence or of fraud, committed with greater recklessness or greater dexterity, instructed as they have been in the ways of crime by their associates in punishment.

"The prompt removal to the penal colonies of convicts under sentence of transportation not only prevents their return to crime at home, but is the means of saving the expense entailed by the imprisonment and trial of those who are recommitted, and who, under the old system, constituted a very numerous class.

"Another advantage attending the speedy embarkation of the great body of convicts for the penal colonies is the suppression of the hulks, which are to be broken up, according as the convicts confined in them complete their terms of imprisonment, the Secretary of State having determined that no new prisoners shall be sent thither. The suppression of the hulk system is a most important improvement in the penal system of this country. From the necessary association of the convicts, and the impossibility of maintaining a proper superintendence over them, the most serious contamination constantly took place; while the lightness of the convicts' labour, their good clothing, ample diet, and general comfort, not only divested the discipline, to a great extent, of a salutary deterring influence, but, from the publicity of these facts, necessarily suggested to beholders an unfavourable comparison between the condition of the convict and that of the honest labourer. Moreover, the constant exposure of the convict to the public gaze, in a place to which numerous visitors are daily resorting, and by which multitudes are passing and repassing, has an inevitable tendency to harden the convict more and more, and to deaden those moral perceptions upon which the penal discipline has its strongest hold.

"Nor should the important fact be overlooked, that the labour hitherto performed in the arsenals and dockyards by persons so obviously unfit, in a moral point of view, to be so employed, will henceforth be assigned to the honest labourer—a consideration which will have its just weight at a time when the general supply of labour is so redundant, and the difficulty of finding work for our unemployed population is so great. Besides, by the suppression of the hulks a considerable saving will in the end be effected in dispensing with the entire cost of the establishment, the salaries and emoluments of its numerous officers, together with the expense attending the fittings and repairs of the ships. Such are some of the incalculable advantages attending the suppression of the hulk system, and of the establishment of that system by which it is now about to be superseded.

"There is another advantage attending the new system for the disposal of prisoners under sentence of transportation. The convict ships now, in all cases, receive the prisoners on board at Woolwich; and by the regular periodical transmission of the convicts, in one body, and at one time, to one point of embarkation, the inconvenience, delay, and expense attending their reception in small numbers from the various prisons of the country are avoided, and the convict-vessel at once proceeds on her course, without calling at any of the ports in the channel to complete her complement by drafts of prisoners from the hulks which are there stationed; by these means her voyage was formerly much delayed, the expenses were increased, and the dangers of the navigation of the channel greatly augmented.

"Whilst referring to this part of the subject, the inspectors have much satisfaction in stating that great improvements have recently been made in the fittings of convict ships. Under the old system, four and sometimes five prisoners slept together in one sleeping-berth. The prison-deck was so dark, that work and instruction were impossible; whilst the most unrestrained and demoralizing intercourse, in darkness and utter idleness, took place during the whole voyage. The sleeping-berths being fixtures, it was impossible to clear the prison-deck for the purpose of cleansing it; in consequence of this, it was not unfrequently infested with vermin before the ship had got clear of the Channel. The Lords of the Admiralty, having had their attention called to these circumstances by the Secretary of State, have taken effectual measures to obviate these evils; and, under an excellent plan which they have recently adopted, the convict-ship is now fitted up in such a manner that, during the day, there are tables and seats for the convicts, in messes of eight together; and at night, each prisoner has a separate sleeping-berth. All the births are moveable, so that the prison-deck can with ease be thoroughly cleansed. Illuminators have been introduced on each side of the deck, extending the whole length of the ship, so that sufficient light is thrown into the prison-deck to enable the prisoners to read, write, or work. These new arrangements have the further advantage of securing the ship from being over crowded, as was formerly the case. Thus health, cleanliness, order, and discipline are greatly promoted, and suitable instruction and employments are rendered practicable.

"In furtherance of these improved arrangements, the inspectors are authorized by the Secretary of State to place a select library, composed of a few useful volumes, on board each convict-ship, for the use of the prisoners during the voyage; and these books, on the arrival of the ship at Van Diemen's Land, are transferred to the convict stations to form libraries for the convicts throughout the penal colonies. Elementary lessons in reading, writing, and arithmetic are also provided, so that schools can be organized, and instruction carried on during the voyage. It may be likewise mentioned, that arrangements are in progress for supplying the convicts with work on their passage.

"The inspectors have no desire to magnify the importance of the changes which have taken place in the constitution of the late General Penitentiary, nor are they disposed to overrate the value of those arrangements which have recently been made to carry out the new system of penal discipline which the Government has adopted. The measures, however, which have been taken for the regulation and disposal of offenders sentenced to transportation are fraught with such advantages that they cannot fail to form an important era in the progress of improvements in the treatment of convicts in this country. These advantages the inspectors propose briefly to recapitulate.

"Experience has proved that the practice of commuting sentences of transportation to periods of imprisonment in England, is unsound in principle, and injurious in its effects; that the sentence of the law is thereby immeasurably impaired; and that the uncertainty which attends its execution forms one of those chances of escape from punishment on which offenders invariably calculate. The convict, too, on his liberation, unable to obtain, or unfitted to pursue, an honest employment, returns too often into society only to pollute its morals and disturb its peace.

"The failure of the discipline enforced at the late Penitentiary for the purposes of correction or reform, and the unhealthy effects of confinement for long periods in that prison, rendered its continuance as a Penitentiary, no longer desirable. The hulks notoriously vitiated the less criminal, and hardened the confirmed offender; and if the measures now under review had only effected the abolition of those establishments, the advantages resulting to society would be of no ordinary magnitude.

"Large numbers of convicts are no longer detained for lengthened periods; but vessels are despatched to the penal settlements at all seasons of the year, and thus the punishment of the offender closely follows on his sentence. The convict ship, a hitherto fitted, has afforded the utmost temptation for the commission of the grossest crimes; but, by improved arrangements, great facilities are afforded for the good order, industry, and instruction of the prisoners on their passage, and the revolting practice of placing five male convicts together in one birth at night has been superseded by a plan by which each man has a separate sleeping-place. By the adoption of other measures, transportation has not only been rendered more efficacious by the certainty of its infliction, but its penalties have been graduated and apportioned to offenders according to their several degrees of guilt. By the examination and selection of the convicts at Millbank, the better disposed are sent to a prison the most favourable to their reformation; the criminal boy is subjected to an imprisonment the best adapted to his moral welfare; and by the formation of the Millbank Juvenile Ward, youth of more advanced years—offenders for whom no due provision has hitherto been made—are admitted to a participation in the benefits of a reformatory discipline.

"These improvements in the convict system have been effected during the last twelve months; and the inspectors feel justified in stating that a reform involving benefits more unquestionable, more important as respects the moral, religious, and physical condition of the convict, more interesting to humanity, or more advantageous to the community at large, has seldom been accomplished in so short a period."

The remainder of the report is occupied with details respecting the present state of the buildings, the discipline, the religious and moral instruction, and general education, pursued in the prison; the employment, state of health, diet of the prisoners, and the conduct of the officers. Tables of the number of prisoners, of the deaths and their causes, of the pardons granted, and of the manufactory accounts are added, but these need no particular comment. The present inspectors are Mr. Crawford, Rev. Whitworth Russell, and Mr. Perry.

The *Gazette* contains a notice that the following place has been duly registered for the solemnization of marriages therein:—Calvinistic Methodist Chapel, Denbigh, Denbighshire.

THE IRISH MAGISTRACY.—The Lord Chancellor has been pleased to appoint, on the recommendation of the lord lieutenant of the county of Meath, William Walsh, esq. of Stedalt, a magistrate of the said county.

THE LAWYER.

Summary.

TERM begins to-day. We find in one of the daily papers the following account of the state of the business in the common law courts:—

Hilary Term begins on Saturday, and by the lists of the Court of Queen's Bench and the Exchequer, it appears that the rules for new trials which remained undetermined at the end of the sittings after Michaelmas term last, number in the first-mentioned court 120. The first rule was moved so long ago as Michaelmas Term, 1842. In Michaelmas Term following there were 3, which still remain undecided. In Hilary Term last 4; in Easter Term last 40, and 4 which were tried during the same term; in Trinity Term last 3, and a similar number tried in that term; in Michaelmas Term 51, and two others tried in the term. There are 9 rules standing for the judgment of the Court, the first of which, as stated, was moved in Michaelmas Term, 1842, and the last in Hilary Term, 1844. In the Court of Exchequer there are two rules for judgment, one moved in Easter Term, and the other in Trinity Term last, and, in addition, one rule for argument, moved in Hilary Term last. There are 60 rules moved in the last term, and two granted after the fourth day of the same term. The special paper exhibits one for judgment, and 11 for argument. The demurrer for judgment was heard in November last, in the case of *Baron* v. *Denman*, esq. in which an important question was raised, respecting the capture of a slave vessel by Captain Denman, and on which two other rules are pending. In the peremptory paper there are 12 rules; the earliest day of the first rule *nisi* was in June, and the latest in November last. The peremptory paper is to be called on the first day of the term after the motions, and to be proceeded with the next day, if necessary, before the motions.

To these we may add some further particulars. The arrears in the Common Pleas are 74, including 3 registration appeals for judgment. The total number of arrears in the three courts is 283. In the Court of Common Pleas 18 of the rules were moved in Michaelmas Term last for new trials.

A correspondent of the *Times* supplies the following information relative to the Masters' offices:—

Sir,—A correspondent of yours, shortly before the vacation, inquired through your journal whether the returns required by the Chancery Regulation Act were annually made as directed.

They are made, but they are so extremely bulky that no one ever looks at them; they would, I believe, now fill an ordinary-sized warehouse.

The only mode of getting any practical benefit from these returns is by moving in the House of Commons that an abstract of them be laid before the House and printed. In 1840 Mr. Blake moved for and obtained such an abstract, of which great use was made by Mr. Pemberton in his celebrated speech on the Court of Chancery, to which, perhaps, we in a great measure owe the subsequent amendments in the constitution of some of the offices.

May I be permitted to take this opportunity of correcting a misapprehension that seems to prevail in regard to the nomination of the Masters? Lord Brougham, in moving the clause giving the Crown the appointment by patent, said, in the presence of the then Prime Minister, "The effect of the difference will be, that although the patronage will still substantially be with the Chancellor" (as it is of the puisne judges), "the vesting it in the Crown will prevent him from proposing persons for these judicial functions who are unqualified to perform them, and will prevent any person from being wantonly rejected who ought to be proposed."—*Hansard*, vol. xvii. 3rd series, p. 71.

If the succeeding Chancellors have given up the patronage to the Prime Minister, it must, I presume, have been in ignorance of this fact.

I am your very obedient servant,

A. Watcher of the Court.

We shall continue the plan we have been enabled so successfully to commence, of presenting to our readers *verbatim* reports of all the written judgments.

LEGAL INTELLIGENCE.

Court Papers.

SITTINGS IN CHANCERY.

Peremptory Paper.

To be called on the first day of Term after the motions, and to be proceeded with the next day, if necessary, before the motions.

Date rule *nisi*.

June 11, 1844.—Smith (*qui tam*) v. Bond.
June 11.—Smith v. Green.
Nov. 14.—Dresser (P. O.) v. Stansfield.
Nov. 4.—Jones v. Evans and Another.
Nov. 19.—Campbell v. Pownall.
Nov. 19.—Allen v. Miners, executrix, &c.
Nov. 21.—Riley v. Robinson.
Nov. 21.—Coats v. Coats, executor, &c.
Nov. 19.—Emply v. King.
Nov. 15.—Petty v. Walker and Others.
Nov. 9.—Kilburne v. Kilburne.
Randall v. White.

COURT OF EXCHEQUER.

Special paper for ensuing Term.

For Judgment.

Baron v. Denman, esq. demurrer.
Armani v. Castrigne, demurrer.

For Argument.

Smith, Secretary, and others, v. Hopkinson, special case (to stand over until similar case is disposed of in the Court of Error).
Martinez v. Denman, esq. demurrer.
Timinez v. Denman, demurrer (these two cases to stand over until judgment given in *Baron* v. *Denman*).
Allington v. Booth, demurrer.
Robertson v. Showler, demurrer.
Williams v. Jones, demurrer.
Akerman and others v. E. Wrenspoyer, demurrer.
Gore v. Gibson, demurrer.
Slade v. Hawley, demurrer.
Robson v. Luscomb, demurrer.

THE LATE IMPORTANT SLAVERY DECISION IN THE UNITED STATES.

A Liverpool correspondent's summary of American intelligence by the last steamer briefly alluded to a decision in Boston, that a slave can only serve on board an United States national vessel while that vessel is within the slave limits of the country, and that the moment the vessel passes without those limits he can claim his discharge. The particulars of the case upon which the above decision was founded we annex.—*Times.*

(From the *Boston Post.*)

Robert T. Lucas, a coloured person, about 40 years of age, was brought before Chief Justice Shaw on Friday last by a writ of *habeas corpus*, under the following facts:—In 1841, by written consent of the Secretary of the Navy, M. Upshur, Lucas was received and entered as a landsman on board the United States' frigate *United States*, in Norfolk, Virginia. At the time he was held to service as a slave by Mr. Edward Fitzgerald, purser on board the frigate, and was entered by his consent, and also by the voluntary act of Lucas himself.

It was proved that he was entered on the muster-roll, and performed service as others did in that class, and was exclusively under the control of the commander of the frigate as a component part of the crew, and was not under the control of Mr. Fitzgerald, or in any manner subject to him, except the claim of Mr. Fitzgerald for his wages. The frigate sailed on a cruise to the Pacific, and was thence ordered to the port of Boston by the commanding officer of the squadron, where she arrived on the 3rd of October. The writ of *habeas corpus* was served upon Mr. Fitzgerald on board the frigate, without the knowledge or authority of Lucas. This case presented two points which have not not been decided by the Supreme Court of this state—first, as to the claim of the commander of the frigate to the services of the party, as a part of the crew of the vessel; and, second, whether his having involuntarily been brought within this jurisdiction, without the consent of the master, who was about to return to his domicile in Virginia, the Court here could interfere to discharge him from the claim of service which was valid in Virginia. To test this question as connected with the United States' service, Captain Stribling, the commander of the frigate *United States*, presented his claim under the shipment, and Mr. Fitzgerald, in his answer, set forth all the facts in the case, as to the relation of the party to himself. In giving his opinion, the Chief Justice said, that these gentlemen had acted honourably in the transaction, and with entire frankness disclosed all the facts in the case; Mr. Fitzgerald had also fully assented to the suggestion of his counsel before he undertook the case, that, whatever the decision of the court might be, Lucas should be left free to act his own wishes, either to return to Virginia or to remain, if Captain Stribling had no claim to retain him on board his ship.

Sewell and *Merrill* appeared for the discharge, and *Hallett*, for the respondent.

It was argued that the entry on board the vessel in Norfolk was valid by the *lex loci*, the laws of Virginia, and that the going out of the limits of that State, and an involuntary entering into this jurisdiction, did not invalidate that contract, and it must be held as binding here as in Virginia; and secondly, that if an agreement to enter on board the ship as one of the crew was not originally valid, this case was to be regarded as a case of involuntary and necessary landing in and passing through Massachusetts on the return of the master to his domicile, and therefore this Court could not interfere, under the constitution of the United States, unless the point, which had not yet been decided, was to be ruled so as to confine the rights of the master exclusively to the case of a fugitive from service. In all the cases decided in this state, the Court had only gone to the extent of decreeing a discharge where the party was voluntarily brought into this state by the act of the person claiming his service in another state; and in the leading case on this point, in the 18th of Pickering, in the matter of the slave Avis, the Court had expressly excluded from that decision the case of a slave involuntarily brought here, or landing from a vessel necessarily entering our ports, or driven in by stress of weather.

Chief Justice Shaw first made inquiry of the party apart, whether the process was instituted at his request, and ascertained that it was not, but that as it had gone so far, he now desired that it should proceed. This was deemed a sufficient authority for the parties who took out the *habeas corpus* to act for him. Lucas also desired to know what would be the effect of his discharge here, if he returned to Virginia? but the Chief Justice said he could not advise him on that point, in case he was not released by the master.

In giving his opinion, the Chief Justice regarded the first point, as to the claim of Captain Stribling, as highly important, and not without great difficulties in coming to a decision. He did not agree with the counsel for the discharge, that the United States could not contract for the services of a slave, and held that Lucas was lawfully entered and employed as a landsman on board the frigate in Norfolk; but this right could only extend to the territorial limits of slavery, and was at an end whenever the service to be performed took the slave out of these limits. Hence, though the service was valid in Virginia, and would have continued had the vessel returned to a port in that state, it terminated on entering a state where slavery did not exist. He also held that there was not an enlistment valid in law, because the slave had no power to contract for himself, nor had the master any power to contract for him to perform any service beyond the territorial limits of a slave state, and therefore it differed from the contract of a master for the services of his apprentice, nor was it competent for the United States to ship slaves in the naval service. It was also held that if a slave was employed on board a coasting vessel, and the vessel touched at a port in this state, the party would be discharged from service. On this point it was ruled that Lucas was not subject to the control of the commander of the frigate.

On the second point it was held that this was not a case of the necessary transit of a slave through this state; that by shipping him on board a vessel going out of Virginia, the master took the risk of her entering or being ordered into a free port, and therefore it could not be said that this was an involuntary coming into this state; but though beyond the control, and against the consent of the master, it was a consequence of his voluntary act in placing the party in such a service. Whether if a vessel conveying slaves from one slave state to another should be cast away on the coast of Massachusetts the slaves would thereby be free, no opinion was given; but the consent of the master that the slave should go as a passenger, or otherwise, in a vessel liable to land him in Massachusetts, under any circumstances, would be held as a voluntary bringing him into this jurisdiction, and he would be free. Lucas was accordingly discharged from custody, and being of full age, was left to return to Virginia or remain, as he might elect.

This decision greatly enlarges all the previous decisions in similar cases, and may be regarded as limiting the claim of the master strictly to the case of a fugitive. The writ in this case was issued by the Chief Justice of the Court of Common Pleas, in the absence of all the judges of the Supreme Court, and a question left open by the statute arose as to the custody of the party by the sheriff, the writ being returnable at Boston. The sheriff applied to Chief Justice Wells as to the custody, who decided that he had no power to pass any order upon it. The officer accordingly kept the party in his personal custody (having no authority to commit him, or to receive bail for his appearance) until the Chief Justice returned to the city. The counsel for the discharge contended that they had a right of access to the party, but the Chief Justice instructed the officer that it was his duty to keep him apart.

The whole proceeding was conducted in as quiet a manner as the hearing of any ordinary case before our Courts, and the object of the respondents and their counsel was solely to have the law of the case fairly settled by the proper tribunals.

The Vacant Solicitorship of Excise.—A correspondent informs us, upon good authority, that the vacancy in the law department of the Excise, occasioned by the death of Philip Wynell Mayow, Esq. will be filled up by the appointment of J. Bateman, Esq. the present assistant solicitor, a doctor of civil law, and the author of several voluminous works upon the excise law. Dr. Bateman is next in seniority to the late Mr. Mayow, and rendered essential assistance to the law officers of the Crown in the recent heavy prosecutions for the frauds committed upon the customs, in connection with the legal officers of that department of her Majesty's revenue. The reduced salary of the next chief solicitor of excise will not exceed 1000*l*. per annum, in accordance with a Treasury order, issued at the time the late Mr. Mayow gave up the fees he was entitled to under his patent in consideration of receiving a fixed yearly income.

PARLIAMENTARY RETURNS.

JUDICIAL OFFICERS, AND OFFICERS OF COURTS OF LAW AND EQUITY.

A Return to an order of the House of Commons for an Account of the Salaries, Pensions, Fees, &c. between 5th January, 1842, and 5th January, 1843 exceeding 1,000*l* and distinguishing the sources form whence they are derived

The following is from the second head of the account, comprising "Judicial Officers, and Officers of the Courts of Law and Equity"—

NAME	OFFICE, PENSION, &c.	£ s d	AMOUNT PER ANN. £ s d
	SALARIES		
Abinger, *a* Lord	Lord Chief Baron of the Court of Exchequer		7000 0 0
Alderson, Sir Edw Hall	One of the Barons of ditto		5000 0 0
Bruce, Rt Hon Sir James Lewis Knight *b*	Vice Chancellor		5000 0 0
Bosanquet, Right Hon Sir John Bernard	One of the Puisne Judges of the Court of Common Pleas salary part of the year	1144 8 11	
	Retired allowance part of the year	2186 17 8	3933 6 [illegible]
Brougham William	One of the Masters of the Court of Chancery	[illegible]00 0 0	
	Compensation under 3 & 4 Wm 4 c 94	725 0 0*d*	3225 0 0
Bicknell, *c* Hen Edgeworth	One of the Registrars of the Court of Chancery	1[illegible]00 0 0	
	Compensation	350 0 0	18[illegible]0 0 0
Baiguy John	Commissioner of Bankruptcy		1800 0 0
Bere, M B	Ditto		1800 0 0
Bedwell, *f* Francis Robert	One of the Registrars of the Court of Chancery	1500 0 0	
	Compensation	350 0 0	1850 0 0
Bunce, James	One of the Masters Civil side Court of Queen's Bench		1200 0 0
Bennett, O	One of the Masters of the Court of Exchequer		1[illegible]00 0 0
Bowen, *g* T B	Commissioner of the Insolvent Debtors Court		1240 [illegible] 9
Burton, Charles	Second Justice of Court of Queen's Bench Ireland		[illegible] 19 4
Ball, Right Hon N	Third Justice of Court of Common Pleas Ireland		3688 1 4
Brady, Rt Hon Maziere	Chief Baron of the Court of Exchequer Ireland		4612 18 8
Blake, Rt Hon Anthony R	Chief Remembrancer of ditto ditto		2769 1 8
Bushe Arthur	Prothonotary Court of Queen's Bench Ireland		14[illegible]1 11 9
Boyle, Right Hon David	Lord Justice General and President of the Court of Session Scotland		4800 0 0
Coleridge, Sir John Taylor	One of the Puisne Judges of the Court of Queen's Bench		5000 0 0
Coltman, Sir Thomas	One of the Puisne Judges of the Court of Common Pleas		5000 0 0
Cresswell, *h* Sir Cresswell	Ditto ditto		3[illegible] 11 0
Colville, *i* Edward Dod	One of the Registrars of the Court of Chancery salary	2000 0 0	
	Compensation under 3 & 4 Wm 4 c 94	1100 0 0	3100 0 0
Colville, *j* Edward Dod jun	One of the Registrars of the Court of Chancery salary	1250 0 0	
	Compensation	100 0 0	13[illegible]0 0 0
Collier, *k* [Collis] Joseph	One of the Registrars of the Court of Chancery, salary	1800 0 0	
	Compensation under 3 & 4 Wm 4 c 94	1100 0 0	2900 0 0
Croft, *l* Sir Arthur Denman	One of the Masters Civil side Court of Queen's Bench		1200 0 0
Cancellor, *m* J H	One of the Masters of the Court of Common Pleas		1200 0 0
Crampton, Philip C	Third Justice Court of Queen's Bench Ireland		[illegible]688 12 4
Curry, *n* William	Master in Chancery, Ireland		276[illegible] 4 8
Curran, William H	Commissioner of the Insolvent Debtors' Court Ireland		1846 3 4
[illegible], James	Taxing Master in Common Law Business Ireland		11[illegible] 14 0
Cockburn, Henry	One of the Lords of Session Scotland		300[illegible] 0 0
Cunninghame, John	Ditto ditto		3000 0 0
Denman, Lord	Lord Chief Justice of the Court of Queen's Bench		8000 0 0
Dowdeswell, J E	One of the Masters of the Court of Chancery	2[illegible]00 0 0*o*	
	Compensation under 3 & 4 Wm 4 c 94	[illegible]25 0 0*p*	3225 0 0
Duckworth, *q* Samuel	One of the Masters of the Court of Chancery		2[illegible]00 0 0
Davis, *r* Francis Henry	One of the Registrars of the Court of Chancery salary	1800 0 0	
	Exchequer Compensation	100 0 0	1900 0 0
Dwarris, Sir Fortunatus	One of the Masters Civil side, Court of Queen's Bench	1200 0 0*s*	
	Recorder of Newcastle under Lyne	50 0 0*t*	1250 0 0
Daniell, Edmund R	Commissioner of Bankruptcy		1800 0 0
Da[illegible] Thomas	One of the Masters of the Court of Exchequer		1400 0 0
Doherty, Right Hon John	Chief Justice of the Court of Common Pleas Ireland		4612 18 8

NAME	OFFICE, PENSION, &c.	£ s d	AMOUNT PER ANN. £ s d
	SALARIES		
Ellison Nathaniel	Commissioner of Bankruptcy		1800 0 0
Erskine, Right Hon Sir Thomas	One of the Puisne Judges of the Court of Common Pleas		5000 0 0
Evans, Joshua	Commissioner of Bankruptcy		2000 0 0
Farrer J W	One of the Masters of the Court of Chancery	2500 0 0*t*	
	Compensation under 3 & 4 Wm 4 c 94	[illegible]25 0 0*u*	3225 4 0
Fane Robert G C	Commissioner of Bankruptcy		2000 0 0
Farran, Joseph	Clerk of the Pleas Court of Exchequer Ireland		1384 12 3
Farrell Richard	Commissioner of the Insolvent Debtors Court Ireland		1846 3 4
Fonblanque J S M	Commissioner of Bankruptcy		2000 0 0
Forbes John Hay	One of the Lords of Session, Scotland		3000 0 0
Fullerton John	Ditto ditto		3000 0 0
Goulburn Edward	Commissioner of Bankruptcy		1800 0 0
Gurney, Sir John	One of the Barons of the Court of Exchequer		[illegible] 0 0
Griffith *x* Edward	One of the Masters of the Court of Common Pleas		1200 0 0
Goodrich *y* R	One of the Masters, Civil side, Court of Queen's Bench		1200 0 0
Gould Thomas	Master of Chancery Ireland		2769 4 8
Gillies *z* Adam	One of the Lords of Session Scotland	3000 0 0	
	Allowance to make up salary formerly enjoyed by him as a Judge of the Session Justiciary and Exchequer Courts	200 0 0	3200 0 0
Holroyd Edward	Commissioner of Bankruptcy		2000 0 0
Horne *a* Sir William	One of the Masters in the Court of Chancery		2[illegible]00 0 0
Hussey *b* Henry	One of the Registrars of the Court of Chancery salary	1500 0 0	
	Compensation	350 0 0	1850 0 0
Harr[illegible]	Commissioner of the Insolvent Debtors Court		1500 0 0
H[illegible]n William	Master in Chancery, Ireland salary	[illegible]76[illegible] 4 8	
	Compensation	18[illegible] 1[illegible] 4	
	Salary late Civil List	355 11 0	3309 8 0
Huls[illegible] William	Taxing Officer in Common Law Business Ireland		1107 14 0
Hope John	Lord Chief Clerk and President of the Second Division of the Court of Session Scotland		4500 0 0
Ivory James	One of the Lords of Session ditto		3000 0 0
Jones *d* W S	Master on the Crown side Court of Queen's Bench		16[illegible]2 0 0
Jemmett William Thomas	Commissioner in Bankruptcy		1800 0 0
Jackson *g* Joseph D	Fourth Justice of the Court of Common Pleas Ireland		3688 12 4
Jeffery Francis	One of the Lords of Session Scotland		3000 0 0
Lyndhurst *h* Lord	Lord High Chancellor		10000 0 0
Langdale Lord	Master of the Rolls		7000 0 0
Lushington Rt Hon Sir S	Judge of the High Court of Admiralty		4000 0 0
Lynch *i* Andrew Henry	One of the Masters of the Court of Chancery		2500 0 0
Law W J	Commissioner of the Insolvent Debtors Court		1500 0 0
Lefroy Right Hon Thomas	Fourth Baron of the Court of Exchequer Ireland		3688 12 4
Lyle *k* Acheson	Second Remembrancer ditto		2000 0 0
Ludlow F	Commissioner of Bankruptcy		2000 0 0
Maule, Sir W H	One of the Puisne Judges of the Court of Common Pleas		5000 0 0
Methold, *l* H	One of the Masters of the Court of Common Pleas		1200 0 0
Monro *m* Cecil	One of the Registrars of the Court of Chancery salary	1250 0 0	
	Compensation	100 0 0	1350 0 0
Maconochie Alexander	One of the Lords of Session, Scotland		3000 0 0
Mackenzie Joshua Henry	Ditto ditto salary	3000 0 0	
	Allowance to make up salary formerly enjoyed by him as a Judge of the Session Justiciary and Jury Courts	200 0 0	3200 0 0
Merivale J H	Commissioner of Bankruptcy		2000 0 0
Moncreiff Sir Jas Wellwood	One of the Lords of Session Scotland		3000 0 0
Murray, Sir John A	Ditto ditto		3000 0 0
Nicholl Right Hon John	Judge Advocate General		2000 0 0
O'Loughlin *n* Sir Michael	Master of the Rolls, Ireland		3964 4 8
Patteson Sir John	One of the Puisne Judges of the Court of Queen's Bench salary	5000 0 0	
	receives in addition as Second Judge of the Court, a termly allowance of 10 or 40*l* per annum, under the		

a Since deceased *b* From the Suitors' Fund *c* Ditto *d* From the Suitors Fee Fund *e* Ditto *f* Ditto *g* Since deceased *h* For part of the year only *i* From the Suitors' Fee Fund *j* Ditto *k* Ditto *l* Ditto *m* Ditto *n* Of this amount, 45[illegible]*l* 12s 5d was paid to Mr Litton who succeeded Mr Currey on 31st Oct 1842 *o* From the Suitors Fund *p* From the Suitors' Fee Fund *q* From the Suitors' Fund. *r* Ditto *s* From the Suitors Fee Fund *t* Paid by the Treasurer of the borough *t* From the Fee Fund *v* From the Suitors' Fund *w* From the Suitors' Fee Fund *x* Paid from fees *y* Paid from the Fee Fund *z* Since deceased *a* From the Suitors' Fund *b* From the Suitors' Fee Fund. *c* The compensation and salary (late Civil List) to be discontinued, on Mr Heron's ceasing to hold office *d* Paid out of Fees *g* Appointed 16th September, 1842; and only received 1,150*l* 16s. in the year *h* From the Suitor's Fund (This does not include his lordship's salary as Speaker of the House of Lords) *i* From the Suitors' Fund. *k* Derived from Fees. *l* Paid from Fees *m* From the Suitors' Fee Fund. *n* Of this amount, 664*l* 7s was paid to the Hon F Blackeney, who succeeded Sir M. O'Loughlin, 27th October, 1842

NAME.	OFFICE, PENSION, &c.	£ s. d.	AMOUNT PER ANN. £ s. d.
	SALARIES. provisions of 6 George 4, c. 84, s. 7.	40 0 0*o*	5040 0 0
Parke, Rt. Hon. Sir James	One of the Barons of the Court of Exchequer	.. ..	5000 0 0
Perry,*p* H. J.	Principal Secretary to the Lord Chancellor	.. ..	2060 6 0
Phillips, Charles	Commissioner of Bankruptcy	.. ..	1800 0 0
Park,*q* A. A.	One of the Masters of the Court of Common Pleas	.. ..	1200 0 0
Pennefather, Rt. Hon. E.	Chief Justice of the Court of Queen's Bench, Ireland	.. ..	5074 9 4
Perrin, Right Hon. L.	Fourth Justice of the Court of Queen's Bench, Ireland	.. ..	3688 12 4
Pennefather, Richard	Second Baron of the Court of Exchequer, Ireland	.. ..	3688 12 4
Plunket, Hon. David	Prothonotary of the Court of Common Pleas, Ireland	.. ..	1384 12 4
Rolfe, Sir R. M.	One of the Barons of the Court of Exchequer	.. .. ..	5000 0 0
Russell, William	Accountant-General, Court of Chancery	900 0 0*r*	
	One of the Masters of ditto	600 0 0*s*	
	From Brokerage, after deducting 150*l.* paid into Suitors' Fund, under 5 Vict. c. 5. s. 60	2314 18 2	3814 18 2
Ray,*t* H. B.	One of the Masters of the Court of Common Pleas, and late one of the Prothonotaries	.. .. ..	3160 0 0
Rose,*u* Rt. Hon. Sir George	One of the Masters of the Court of Chancery	.. .. ..	2500 0 0
Richards, Richard	Ditto	.. .. ..	2500 0 0
Reynolds,*x* H. R.	Chief Commissioner of the Insolvent Debtors' Court	.. .. ..	2000 0 0

(The remainder of this List will be given in our next Number.)

o Paid out of Fines, &c. *p* From Fees recoverable under Lord Hardwick's order, 28th November, 1743, and which are stated at length in the Report of the Commissioners in 1816. *q* Paid from Fees. *r* From Suitors' Fund. *s* From Suitors' Fund. *t* Paid from Fees. *u* From the Suitors' Fund. *x* From the Suitors' Fund.

MIDDLESEX SESSIONS, January 7th.

ALLOWANCE OF BARRISTERS' BRIEFS.

Mr. Wilde was anxious to put a question to the Court, in which not only were the members of the bar, but the public, concerned. His lordship, no doubt, was aware that at the Central Criminal Court there was a certain class of cases in which there was an allowance made for the briefs of counsel. What he was anxious to ascertain was, whether a similar allowance would be made at that court?

The Assistant Judge said he could not allow any charge for briefs, as costs, to be paid out of the county purse. If that were done, in his present view of the case, there would be a violation of the principle upon which that court had been reconstructed, that principle being a diminution in the expense to the county for criminal prosecutions. It was, however, a subject upon which there must clearly be some understanding come to. It was apparent now that a very large proportion of the business which used to be sent to the Central Criminal Court would come to that court. He was glad of it, even though it would entail much labour upon himself. But he should be most ready to perform it, and the more so because the more cases he had to try, the greater would be the saving to the county. For himself, he was bound to say—glad as he should be to see some distinct understanding upon the subject arrived at—that he could not, single-handed—entertaining, as he did, the desire to curtail the costs to the county for criminal prosecutions—make any order in reference to it. If the magistrates should think it right to make a rule or regulation in respect to it, then he would give his attention to the matter.

The cases which came on for trial did not present any feature of public interest.

PRIVILEGE FROM ARREST.—LAWRENCE *v.* CONNOP.

TO THE EDITOR OF THE TIMES.

SIR,—It was not my intention to have noticed the communications which have appeared in *The Times* on this subject, dated from Windsor, had not the statements contained inaccuracies as to certain facts, which I deem it incumbent on me to correct, and which have evidently arisen from the circumstance of your correspondent having no personal knowledge of what has transpired.

It was not the sheriff of Berks, but myself, as the plaintiff's attorney, who procured the permission of the Lord Steward, as chief officer of the Board of Green Cloth, to execute the warrant under which the capture was effected within the precincts of the palace. Such permission was promptly granted, on a representation of the circumstances of the case.

The sheriff was not indemnified in respect of his execution of the writ.

The discussion before Baron Rolfe did not last the whole day, but was concluded within two hours.

I am, Sir, yours very obediently,

4, Old Jewry. T. B. HUDSON.

THE CHANCERY COURT OF LANCASHIRE.

(Before Mr. Vice-Chancellor HORACE TWISS.)

Tuesday, Jan. 7.

The new Vice-Chancellor of the county, Mr. H. Twiss, a gentleman whose name has long been familiar to our literary readers, to the Chancery Bar, and recently as the distinguished writer of the life of Lord Eldon, sat as Vice-Chancellor of the duchy for the first time since his appointment to the office, in the spacious court-house, Preston. The attendance of the Bar, considering that the business was confined to ordinary motions, was tolerably large. We noticed Mr. T. Smith, Mr. Hare, Mr. Grimshaw, Mr. Rasch, Mr. Addison (the Recorder of Preston), Mr. Segar (the Recorder of Wigan), Mr. Blundell, Mr. Knowles, and Mr. Little. Amongst the officers of the court present were Mr. William Shaw, the registrar, and Messrs. Richard Palmer, J. Wilson, W. Hopkins, C. B. Walker, and J. B. Dickson, as clerks in Chancery.

The Vice-Chancellor took his seat at ten o'clock, and proceeded to hear motions, which were made by Mr. Grimshaw, Mr. Knowles, Mr. Segar, and Mr. Little. These, however, possessed no public interest, relating, as they did, to the confirmation of proceedings conducted by the registrar of the court, to the appointment of guardians to infant wards, to the disposition of property, &c. which confirmations and motions were disposed of by his Honour upon the usual affidavits. At the conclusion the Vice-Chancellor inquired if the Bar had any other motions to make, and being answered in the negative the Court was adjourned. It did not appear that the adjournment was made to any specific time, but we understand that the Vice-Chancellor is to sit in Liverpool at every assizes for the transaction of Chancery business, and at Preston on special occasions to be fixed by himself, whenever necessity requires it. It is reported that preliminaries have been entered into for the purpose of extending the usefulness of this court throughout the county. Hitherto its practice has been but imperfectly understood by the public. As confined to the county of Lancaster it possesses equal powers to the high Court of Chancery of England, and the expense to suitors is not greater, if so great, as in the higher court. In the event of any reduction in the expenses of this court, with a Vice-Chancellor of the legal acquirements of Mr. Horace Twiss, we look forward to a speedy increase to its practice.—*Liverpool Courier.*

The Lord Chancellor has appointed Thomas Simpson, of Yarm, in the county of Norfolk, gent., James Pashley Burbeary, of Sheffield, in the county of York, gent., and Charles Chalk, of Brighton, in the county of Sussex, gent., to be Masters Extraordinary in the High Court of Chancery.

The Lord Chancellor and Lady Lyndhurst have, during the last week, received a succession of guests at Torville-park, Bucks. The noble and learned lord is expected in town on Wednesday next.

The Right Hon. John Nicholl, M.P. returns to town next week, from his seat in Wales.

NEW RULES AND ORDERS IN BANKRUPTCY.—The new rules and orders in bankruptcy, under the Act of last session, to amend the stat. of 5th and 6th Vict. c. 146, relating to insolvent debtors, have recently been promulgated by the Commissioners, having been approved by the Lord Chancellor. There are 16 rules and orders in the list, with a table of fees annexed. According to the present practice, the costs out of pocket to complete a case in the Court of Bankruptcy amounts to about 5*l.* By one of the new rules, an estate paper, as it is termed, is now required, containing a full disclosure of all the property an insolvent holds, or which has been placed in the hands of any other person for his benefit; and of course, in the event of a concealment, all advantage is denied, and the party liable to punishment. The following is a searching provision :—"That every petitioner shall, immediately after an official assignee shall have been appointed to his estate, deliver over to the official assignee so appointed, all moneys, bills, notes, and securities in his possession or power, together with all books of account, papers, and writings relating to his estate and effects." By another rule, notice is to be given before a prisoner is discharged from custody, many having abused the provision, to escape from their creditors; and, to adopt the language of one of the Commissioners, made the Court a refuge for their dishonesty. Among the fees appears the following, for the use of the Court :—"For every sitting held in the matter of any petition, by way of charge for the use of the Court, 5s. 11d." These rules are now being put into operation, and uniformity of practice is to be expected. It is generally admitted that the law of debtor and creditor (there being at the present moment four different systems at work in England) requires the immediate consideration of the Government to form it into shape and being.—*Times.*

The Hon. James Stuart Wortley, Queen's Counsel, has been appointed Standing Counsel to the Bank of England, vacant by the elevation of Mr. Erle to the Bench.

NEWSPAPERS FOR GERMANY.—The following order has just been issued, by command of the Earl of Lonsdale, the Postmaster-General :—"Notice to the public.—General Post-office, January, 1845.—As there is reason to believe that, notwithstanding the notices which have already been issued, some misapprehension exists with respect to the transmission of letters, and especially newspapers, addressed to Germany, the Postmaster-General considers it necessary to call particular attention to the fact, that under existing regulations all letters and newspapers directed to any part of Germany (the Austrian dominions excepted) are forwarded in the mail to Hamburgh, unless specially marked *vid* Holland, *vid* Belgium, or *vid* France.

SIR WILLIAM CASEMENT, K.C.B. DECEASED.—LIMITED ADMINISTRATION, AN ATTESTATION CASE, DEC. 1844.—A limited grant of administration of the effects of the deceased, has lately issued from the Perogative Court of Canterbury. The deceased died at Cossipore on the 16th of April, 1844, having a very short time before his death made his will; which from informality in the execution, was not admitted to probate in the Supreme Court of Calcutta. The following is a careful summary of all the essential facts :—The deceased, after reading over his will, signed it in the presence of three persons, Dr. Nicholson, Mr. Hawkins, and Mr. Hamilton. Dr. Nicholson then took it to an apartment adjoining with folding doors open, and placed the will on a table a few yards from the couch whereon deceased was lying, but within view of deceased (except that the sight was partially intercepted by an open silk screen); the table was well lighted, and there Dr. Nicholson subscribed his name at the foot of the attestation. Hawkins then, thinking it better that it should be attested also by the other medical attendant, Dr. Garden, who came in shortly after the will had been signed, Hawkins asked him (Dr Garden), in the presence of Dr. Nicholson, the subscribing witness, also to subscribe to it. Dr. Garden declined, unless the testator acknowledged his signature thereto in his presence, whereupon Hawkins, with Drs. Garden and Nicholson, approached deceased, and produced the will. Hawkins stated to deceased that two witnesses being necessary, Dr. Garden was ready to become the other. The deceased looked at his will, and in the presence of Dr. Nicholson and Dr. Garden, both present at the same time, clearly and distinctly acknowledged the signature to be his, and the will to be his will. Dr. Garden and Dr. Nicholson immediately went to the table in the adjoining room, and Dr. Nicholson, having already signed, thought it unnecessary to write his name again, but acknowledged his signature to Dr. Garden and to Mr. Hawkins;

Dr. Gordon then subscribed the will in the presence of Dr. Nicholson and of Hawkins. Sir L. Peel, C.J. observed: "This case is one of great importance, as well on account of the large property, the succession to which is in dispute, as that it involves a question upon the execution of a will, which calls for a decision to govern future cases. It is painful to think that the intended will of a useful and much-valued member of the community, who had passed a long life honourably in the service of his country, should be defeated by a mere formal error. When a case of this nature and apparent hardship occurs, the blame is usually thrown upon the law, and its general working is lost sight of in the contemplation of a particular grievance which it may have occasioned. A testamentary disposition, however, cannot safely be unaccompanied by some checks on fraud, and the provisions by which these checks are maintained, will occasionally, through ignorance or carelessness, be violated."—*Historical Register*.

The Limitation Act, Ireland.—The past week at three of our public departments—namely, the Ecclesiastical Commission, the Stamp, and the Chancery Writ Offices, have (notwithstanding the holidays) been one of unusual bustle and activity, unequalled, perhaps, of late, except by what occurred during the last week of November at the railway department of the Board of Trade of London. This has arisen in consequence of the late Limitation (Church Property) Act making it incumbent on all lay patrons of advowsons in Ireland to assert their rights thereto on or before the 1st of January, 1845. We understand that the number of suits of this nature which will be in progress may occupy the Court of Common Pleas for some years, one legal firm on the north side of the city, long engaged in this peculiar branch of the profession, having alone instituted upwards of 100 suits for several lay patrons, independently of those they had already commenced on behalf of the Irish Society of London as to the advowsons on their estates in Ulster. The stamp department has reaped a golden harvest by these proceedings, upwards of 1,000*l.* duty having been paid in England and Ireland, independently of that upon the various law proceedings.—*Londonderry Sentinel.*

The Arbitration System.—The *Moniteur* of Tuesday publishes a Royal ordinance, instituting at Paris a council of *prud'hommes*, composed of 15 members and 10 substitutes, elected from among the manufacturers, foremen, or licensed operatives, engaged in all branches of the metallic industry. The latter are divided into five categories, which are each to elect two, three, or four *prud'hommes*, according to the importance of their respective branches of industry. The duty of that council will be to terminate by conciliatory means, without any judiciary forms or expense to the parties, the differences which daily arise between the manufacturers and the workmen they employ, the foremen, and the operatives and apprentices. Any appeal from their decisions is to be tried by the Tribunal of Commerce. Similar councils already exist in 66 cities and towns of France, where they have exercised the most beneficial influence. From 1830 to 1839, the number of affairs submitted to their appreciation was 135,730; of these, 128,319 were conciliated, and 3,573 abandoned by the parties. The councils pronounced 3,838 judgments, against which only 155 appeals were made.

Valuable Appointment.—The lucrative office of registrar of deeds for the North Riding of the county of York has become vacant by the death of Mr. Richard W. Christopher Pierse, of Littlethorpe, near Ripon, who expired at his residence on Friday week, having held the office of registrar of the North Riding of York for the last 15 years. The last election commenced on the 26th of May, 1829, and continued four days, creating great interest and excitement in the riding, and at the close of the poll, the numbers were—for Mr. Pierse, 646; Mr. Walton, 470. The right of voting is in persons having an estate of freehold in the riding of the annual value of 100*l.* The only candidates who have at present come forward are Mr. Richard W. Pierse, eldest son of the late registrar, and Mr. Charles Smith, of Plainville, near York. A contested election for this valuable appointment costs a very large sum of money, and, if entered upon in earnest, will sacrifice to the successful candidate the entire receipts of the office for many years.—*Globe*.

Landlord and Tenant Commission.—The Earl of Devon arrives in Dublin on the 16th. There are 30 clerks employed at the Castle in preparing for the Land Commission Report. The registrar of the Court of Chancery has issued circulars to the solicitors practising therein, and concerned in the management or receivership of properties under the court, to make a return thereof, and of the locality, extent, and amount, for the information of the Landlord and Tenant Commissioners.

Expulsion from the Bar.—It will no doubt be recollected that a few months back complaints were made against certain unprofessional practices of some members of the bar, and that eventually the subject of complaint was taken up by two or three of the inns of court. It now appears that the complaint against a barrister of the Hon. Society of Gray's Inn has been established according to the judgment of the benchers of that society, and they have not, we are informed, shrunk from performing the painful duty of expulsion—from which decision the party has appealed to the judges. A charge was also made against a member of the Hon. Society of Lincoln's Inn for circulating a table of fees, and offering a commission for business. The benchers, having instituted an inquiry into the circumstances, do not find the complaint established.—*Times*.

Will of the Duke of Grafton.—The will of the Most Noble George Henry Duke of Grafton, K.G. dated December 6, 1843, has been proved by Lord Colborne and Lord Fitzroy, the brother of the deceased; a power being reserved to Sir George Francis Seymour, G.C.B. the nephew, the other executor, to prove hereafter. The personal property was sworn under 90,000*l.* The will is of some length. The bulk of his property is bequeathed chiefly among his children, legacies of 500*l.* each to his intimate friends, and bequests to all his servants, the amount to each regulated according to the length of service. His Grace has added three codicils, each expressly made to increase the bequest given by the will to his daughter, Lady Georgiana Laura Fitzroy.—*Historical Register*.

Municipal Expenditure of Boroughs.—From a recently published Parliamentary return, we find the receipts and expenditure of the larger boroughs included therein (Manchester not being named in the return), from the 1st Sept. 1842, to 31st Aug. 1843, as follows, omitting shillings and pence:—

	Receipts.	Expenditure.
Bath	£22,040	£19,981
Birmingham	41,613	2.,716
Bristol	45,899	49,176*
Exeter	27,427	26,391
Hull	32,117	25,661
Leeds	24,583	22,465
Liverpool	408,337	349,606
Newcastle-on-Tyne	55,379	59,995*
Norwich	18,931	17,210
Nottingham	12,177	11,739
Plymouth	17,420	2 ,508*

It will be seen that the disbursements of Bristol, Newcastle, and Plymouth (all seaports), have exceeded their receipts. To these we add the smaller boroughs in this county:—

Bolton	2,871	7,508*
Clitheroe	180	105
Lancaster	1,712	1,099
Preston	8,250	10,619*
Wigan	2,724	3,082*

In Bolton, there is shewn a balance due to the treasurer of 4,637*l.*; in Preston, one of 2,369*l.*; in Wigan, one of 358*l.*—*Manchester Guardian.*

INCOME TAX RETURNS.

Property tax, or tax upon incomes arising from real and funded property, as collected for the year ending April 5, 1843.

	Income.		Tax.
Schedule A.			
Land, tenements, &c. England	£73,728,429	..	2,150,412
Ditto for Scotland	9,284,383	..	270,794
Schedule C.			
Annuities, Dividends, &c. England	£27,873,691	..	812,983
Ditto for Scotland	2,340,479	..	37,059
	£113,226,982	..	£3,271,248

Income tax, or tax upon profits, salaries, and other precarious sources of income.

	Income.		Tax.
Schedule D.			
Profits and gains, England	£50,296,615	..	£1,465,985
Ditto for Scotland	1,404,287	..	61,765
Schedule E.			
Public offices, &c. *England	8,936,831	..	260,657
Ditto for Scotland	468,095	..	12,353
Schedule B.			
Occupancy of lands and tenements, England	20,486,606	..	298,763
Ditto for Scotland	468,095	..	12,353
	£82,060,559	..	£2,111,876

Annual certificates cost the Profession about	£92,000
Admission tax, about	9,500
Article tax, about	54,000
Total tax on Solicitors, per annum	£155,500

The injustice of an Income-tax, in addition to the above, is very striking.

There are no returns yet completed for Scotland, shewing separately the amount produced under each schedule; but the gross produce of the Property-tax in Scotland was 394,394*l.* In the above tables we have divided this amount among the five schedules, following the proportions of the English returns, but of course the items for Scotland, as thus given, must be regarded but as an approximation to the correct sums. Those for England only are strictly exact. The complete returns for England and Scotland for the year ending April 1844, have been withheld by Government.

Assuming the incomes under 150*l.* to be one-fourth the amount of incomes exceeding 150*l.* (as in 1801), it follows that the total income of Great Britain from all sources is 250,000,000*l.* In 1801 the assessment for England was as follows:—

Incomes above 150*l.*	£56,571,654
" under	18,105,240
Total	£74,676,894

To Readers and Correspondents.

A. B. one, &c.—*The recommendation of a work on the Practice of Private Bills for the Verulam Society shall be adopted.*

Dawson (St. Asaph).—*We are sure that upon reflection our correspondent will see the necessity of excluding discussions upon judicial decisions on questions of fact. Therefore we think it desirable not to give a place to his letter.*

C. Wilton (Yorkshire).—*The subject of his letter has been already so much canvassed that amid so many other claims upon our columns for matters of immediate importance previous to the business of Term, we are obliged reluctantly to omit the communication, for which, however, we thank him.*

C. L. B. S. *is wholly without the scope of the* Law Times. *We have handed his communication to the editor of* The Critic, *to whom it more properly belongs.*

One, &c. *is too long for our columns at this busy season.*

A. B. (Mildenhall).—*There is such a law, and we should think it too well known to need calling special attention to it.*

F. de S.—*Thanks. We had previously noticed the error. It shall be corrected in future.*

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THE LAW TIMES.

SATURDAY, JANUARY 11, 1845.

TO OUR READERS.

The heavy business of the year being about to begin, we have endeavoured, by omitting much correspondence, and curtailing leading articles, to bring up the arrears so as to commence the Term with unincumbered columns.

All the announced improvements are now in operation, and we trust will meet with the approval of the Profession. We shall be obliged by suggestions from the experienced of any further practical amendments or additions.

MR. FARREN'S CASE.

OUR readers will see, by a paragraph extracted from one of the daily papers, for we have received no direct information on the subject, that the Benchers of Lincoln's Inn, having taken into consideration the Table of Fees which appeared in our columns, purporting to be subscribed by, and emanate from, Mr. GEORGE FARREN, Chancery Barrister, and a letter that accompanied it, have decided that the charge is not established.

While the inquiry was pending we refrained from making any comment upon it. Now that it is concluded, we have a duty to perform, both to Mr. FARREN and to ourselves, from the discharge of which we shall not shrink.

The principle that will guide us will be to do to him that which in such case we should expect and desire that he should do to us. But it is too serious a matter to be treated hastily. Having deliberated upon the course which justice and gentlemanly feeling should dictate, we shall next week act accordingly without hesitation or reserve. Throughout we *have* had—we *could* have had—no other motive than a desire faithfully to discharge a very painful duty to the Profession, of whose honour and interest the members have been pleased to constitute the LAW TIMES the public guardian. Whatever we have done has been in single-minded furtherance of that end.

ADVERTISING ATTORNEYS.

THE following disgraceful advertisement appears in *The Wesleyan and Christian Record*, of Dec. 12, 1841:—

TO DEBTORS AND CREDITORS.

A SOLICITOR, experienced in the Law of Debtor and Creditor, begs to inform Debtors who are unable to meet their engagements with Creditors, that he is enabled, under Lord Brougham's recent Act, not only to obtain the PROTECTION of the PERSON from ARREST, without Advertising or Gazetting, but also procure an order from the Court of Bankruptcy (with the concurrence of one-third of the creditors), to CARRY OUT any PROPOSAL for FUTURE PAYMENT or COMPROMISE of DEBTS, which they may have been unable to effect, through the opposition of some particular creditor. Mr. [illegible]INSLAY, Solicitor,
55, Basinghall-street.

VERULAM SOCIETY.

MANY of the members have submitted to us the propriety of publishing, during the ensuing session of Parliament, the new Statutes in numbers similar to those of the Reports, and stamped for transmission by post, so that they may be in the hands of the Profession as speedily as possible after their appearance.

We purpose, therefore, to take the opinion of the members upon the suggestion, and for this purpose the prospectus will be added to the circular announced last week, and which is delayed, that the necessary form may be inclosed in the same envelope.

As the statutes cost little more than the printing and paper, they can be supplied at a less price than the Reports. They will not, therefore, exceed 9d. per number of 32 page , and, if they should be largely taken, they may be supplied at even a lesser price; for our readers are probably aware that the cost of printing per copy depends upon the number of impressions, the expense of 50 copies being very nearly as great as that of 500. The whole cost of the statutes of the session would thus probably vary from eight to twelve shillings. We propose to add very much to their utility by subjoining useful notes upon the most important statutes, a table of repealed statutes, and an index much more copious than that appended to the other editions: in this, as in all the works of the *Verulam Society*, consulting the *practical* wants of the Profession.

The following members have been added since our last:—

Browne, A. P., Dulverton.
Mansfield, C. B., Swansea.

LECTURES ON MEDICAL JURISPRUDENCE.

BY ALFRED S. TAYLOR.

Delivered at Guy's Hospital, 1841.

LECTURE VIII.

WE have now to speak of poisoning by the alkalies and their salts; and first, of potash, soda, and their carbonates.

The symptoms produced by these substances, when taken in strong doses, are so similar, that one description will serve for all. It must be observed that cases of alkaline poisoning are extremely rare, and have been, I believe, hitherto, the result of accident. The patient experiences during the act of swallowing an acrid, caustic taste, from the alkaline liquid excoriating the mucous membrane. There is a sensation of burning heat extending down the œsophagus to the epigastrium. Vomiting is not always observed; but when it does occur, the vomited matters are sometimes mixed with blood of a dark brown colour, and detached portions of membrane, this effect depending on the degree of causticity of the liquid swallowed. The surface is cold and clammy; there is diarrhœa, with severe pain in the abdomen resembling colic. The pulse is quick and feeble. In the course of a short time, the lips, tongue, and fauces become swollen, soft, and red. On a *post mortem* examination there will be strong marks of the local action of the poison on the mucous membrane of the mouth, fauces, and œsophagus. It has been found softened, detached in pieces of a deep chocolate colour, sometimes almost black. The same appearance has been met with in the mucous membrane of the larynx and trachea. The stomach has had its mucous surface eroded in patches, and there has been partial inflammation. The earliest fatal case which I have found reported is that of a boy who died in twelve hours, after swallowing three ounces of a strong solution of carbonate of potash. In another case, which occurred at Yarmouth, in 1835, a child, three years old, took a small quantity of pearl-ash (which had deliquesced) and died in twenty-four hours. Death was caused in this instance by the inflammation induced in the larynx causing an obstruction to the process of respiration. In this respect the caustic alkalies may destroy life like the mineral acids, but death may be a slow result of the poison.

Thus, in an instance which was communicated to me:—A lady swallowed, by mistake, one ounce and a half of the common solution of potash of the shops, which contains but very little caustic alkali. She recovered from the first symptoms of irritation, but died seven weeks afterwards from pure exhaustion, becoming greatly emaciated before her death. Orfila refers to two cases of poisoning by carbonate of potash, in each of which half an ounce of that substance was taken by mistake for aperient salts. The patients, two young men, recovered from the first effects, but ultimately died, the one three months, and the other four months after the poison had been taken. The secondary fatal effects appear to be due to diarrhœa, great irritability of the stomach, loss of the functions of that organ from the destruction of the lining membrane, and structure of the œsophagus, any of which causes may prove fatal at almost any period. The quantity of any of these alkaline poisons required to destroy life is unknown.

The treatment should consist of water containing acetic acid or citric acid dissolved, lemon juice, or the juice of oranges. Demulcent drinks, as milk, gruel, or barleywater, will also be found serviceable. Oil, also, has been found useful.

The three caustic alkalies, potash, soda, and ammonia, are known from the solutions of the alkaline earths by the fact that they are not precipitated by solution of carbonate of potash. They all three possess a powerful alkaline reaction on test-paper, which in the case of ammonia is easily dissipated by heat. Ammonia is easily known from potash and soda by its odour and volatility. If the solution in water be very dilute, the odour may be scarcely perceptible. The alkali may then be discovered (provided we have first assured ourselves, by evaporating a portion of the liquid, that potash and soda are absent) by adding to the solution a mixture of arsenious acid and nitrate of silver. The well-known yellow precipitate of arsenite of silver will be instantly produced. In addition to these characters ammonia re-dissolves the brown oxide of silver, which it precipitates from the nitrate, while potash and soda do not. The sesquicarbonate of ammonia may be known from other salts by its alkaline reaction, its odour, and its entire volatility as a solid from pure ammonia. Caustic potash and soda are best known from their respective carbonates by giving a brown precipitate with a solution of nitrate of silver. The carbonates, on the other hand, yield a whitish yellow precipitate. Caustic potash is known from caustic soda by the following characters:—1. Its solution is precipitated of a canary-yellow colour, by bichloride of platina; 2. It is precipitated in granular white crystals, by the addition of an excess of a strong solution of tartaric acid. Caustic soda is not precipitated by either of these tests, which will serve equally to distinguish the salts of potash from those of soda; 3. If we neutralize the two alkalies by dilute nitric acid, and crystallize the liquid on a slip of glass, should the alkali be potash, the crystals will be in the form of long fluted prisms; if soda, of rhomboic plates; 4. A fine platina wire may be dipped into the alkaline liquid, and then dried by holding it above the flame of a spirit-lamp. In this way a thin film of solid alkali is obtained on the wire. On introducing this into the colourless part of the flame, if it be potash, the flame will acquire a lilac colour; if soda, a rich yellow colour. This test applies to the salts of the alkalies, but care must be taken that the platina wire is perfectly clean. The carbonates of potash are known from those of soda by the above tests. The carbonate is known from the bicarbonate of either alkali, by the fact that the former yields immediately a white precipitate, with a solution of sulphate of magnesia, while the latter is unaffected by that test.

If the poison be mixed with liquids containing organic matter, such liquids will possess an alkaline re-action. If the alkali be ammonia, this will be announced by the odour, and it may then be obtained by distillation, with or without the addition of a small quantity of sulphuric acid. If the alkali be in small proportion, this can afford no evidence of poisoning, since many animal fluids contain the alkali, and in those which do not contain it, it is generated either by spontaneous decomposition, or sometimes even by the heat required for distillation. Should the alkali be in large quantity, this is no evidence of poisoning by it, unless we at the same time discover obvious marks of its local action on the mouth, fauces, œsophagus, and stomach. If the organic liquid be highly alkaline, but give out no odour of ammonia, either by itself or on distilling a portion with sulphuric acid, the alkali may be either potash or soda, or their carbonates. The latter would be known by the liquid effervescing on adding a portion to an acid. The organic liquid may be evaporated to dryness, then heated to char the animal and vegetable matter, and the alkali will be recovered from it in the state of carbonate by digesting the residuary ash in distilled water. It has been also recommended to neutralize by muriatic acid, to evaporate, incinerate, and procure the alkali for analysis in the state of chloride. Traces of these alkalies furnish no evidence, since all the animal liquids and membranes yield soda, and many of them potash. In no case will the discovery of the alkalies be any proof of poisoning, unless the marks of their action be apparent in the fauces and stomach.

There are certain salts of potash to which poisonous effects have been attributed. It will be necessary, therefore, to consider these briefly. Iodide of potassium has been extensively used as a medicinal preparation; but it appears to have given rise in some instances to alarming symptoms, even when exhibited in small doses, and death has been said to follow its use. A gentleman was ordered by his physician to take three grains of iodide in a draught of peppermint water three times a day. After the third dose he felt poorly, and an hour after the fourth dose he was attacked with a violent shivering-fit, followed by head-ache, hot skin, intense thirst, quick and full pulse, vomiting, and purging. These symptoms were succeeded by great prostration of strength. In spite of treatment, the purging lasted several days. The effects of the medicine in this case were so violent, although only twelve

grains had been taken, that there is little doubt, if the patient had taken another dose, he would have been killed. In October 1841, a case was reported by Mr. Erickson to the University College Medical Society, in which very alarming symptoms resulted from the exhibition of only *five grains* of iodide of potassium. There was great difficulty of breathing, discharge from the eyes and nostrils, inflamed conjunctivæ, and most of the symptoms of violent catarrh. The iodide was discontinued, and the patient recovered. Dr. Laurie found that seven grains and a half of the iodide in three doses, produced, in an adult, dryness and irritation of the fauces, great difficulty of breathing, and other serious symptoms. In another case, thirty grains, in divided doses, caused severe head-ache and secretion of tears. In two instances, wherein he had prescribed it medicinally in small doses, it was in his opinion the cause of death. These cases, at least, shew the necessity of caution in the medicinal use of this substance. The effects may perhaps be attributed to idiosyncrasy. Still there seems to be good ground, from the results of experiments on animals, for ranking iodide of potassium among irritant poisons. It has not, so far as I know, caused death, if we except the two cases of Dr. Laurie, and another case which may perhaps be regarded as of a doubtful nature. One drachm and a half of the solution has been taken by a young female without destroying life, although it produced very serious symptoms of irritation. There is no antidote to this poison; it should be removed as speedily as possible by the stomach-pump.

Nitrate of potash is largely employed in the arts. It is an irritant, but only acts as such when taken in a large dose. It has destroyed life on several occasions. Its effects are somewhat uncertain. An ounce and even two ounces have been taken without causing very alarming symptoms. Tartra denied that it had poisonous properties even in a very large dose; but cases have occurred which now leave no doubt on the subject. In one instance quoted by Orfila, an ounce of nitre was taken by a lady in mistake for other salts. In a quarter of an hour she suffered from nausea, vomiting, and purging, and the muscles of the face were convulsed. The pulse was weak, the respiration laborious, and the extremities cold, but there was a sense of burning heat and severe pain in the epigastrium. She died in three hours after taking the dose. On dissection the stomach was found highly inflamed, and the membrane detached in various parts. Near the pylorus, the inflammation had a gangrenous character. A large quantity of liquid coloured by blood was found in the stomach. My friend, Dr. Geoghegan, of Dublin, has communicated to me the following case which is of recent occurrence. A man took from an ounce to an ounce and a half of nitre by mistake for salts. Severe pain in the abdomen followed, with violent vomiting, but no purging as far as could be ascertained. He died in about two hours after taking the salts. On examination a bloody mucus was found in the stomach, the lining membrane was of a brownish red colour, generally inflamed, and in parts detached from the coat beneath. None of the poison was detected in the stomach, but its nature was clearly established from the analysis of a portion left in the vessel which had contained the draught.

Poisoning by nitre has been hitherto the result of accident. It is never taken for the purpose of suicide, the popular opinion being that it is not poisonous; although the above cases shew that it destroys life with greater rapidity than is commonly observed in the action of arsenic and corrosive sublimate. It is never likely to be employed by a murderer, since a dose sufficient to kill could not be secretly exhibited. Two men swallowed each one ounce of nitre by mistake for Glauber's salt. They almost immediately experienced a sense of coldness in the course of the spine, trembling of the limbs, with violent vomiting and purging. The stools were bloody. They recovered in the course of a few days. Another case is reported, where an ounce of nitre killed a man in thirty-six hours.

Sulphate of potash, commonly regarded as inert, has lately given rise to some important medico-legal investigations. A lady, about a week after her delivery, took, by the prescription of her medical attendant, about ten drachms of the sulphate of potash, in divided doses, as a laxative. After the first dose, she was seized with severe pain in the stomach, nausea, vomiting, purging, and cramps in the extremities. These symptoms became augmented after each dose, and she died in two hours. It was supposed that some poison had been given by mistake, but that was not the case, and the question was, whether her death was caused by the sulphate of potash. On inspection, the mucous membrane of the stomach and intestines, was found pale, except in some parts where it was reddened. The stomach contained a large quantity of reddish coloured liquid, which, on analysis, was found to contain only sulphate of potash, and no trace of any common irritant poison. The examiners referred death to the sulphate of potash, given in an unusually large dose, whereby it had acted as an irritant poison in a person whose constitution was already much debilitated. There is no doubt that the most simple purgative salt may, under certain circumstances, destroy life. I have already related a case in which sulphate of magnesia caused death, and gave rise to a criminal charge in this country. It is said that sulphate of potash has in some cases caused vomiting and other serious symptoms, from its containing, as impurity, sulphate of zinc. This is easily discovered by adding the ferrocyanate of potash, which precipitates zinc.

With regard to the chemical analysis, sulphate of potash is easily known. It is a dry, hard salt, soluble in water, forming a neutral solution. This solution, if sufficiently concentrated, is precipitated both by tartaric acid and bichloride of platina, whereby potash is indicated, and the presence of sulphuric acid is known by the action of a salt of barytes.

Sulphate of alumina and potash, commonly known as *alum*, does not appear to have given rise to any accident, at least in this country. A singular case occurred in Paris in 1828, in which the alleged noxious properties of alum were brought into question. A lady swallowed a quantity of calcined alum dissolved in warm water, which had been supplied to her by mistake for powdered gum. The quantity taken was less than half an ounce. She immediately complained of a burning pain in the mouth, throat, and stomach. She afterwards suffered from thirst, violent vomiting, and general disturbance of the system, from which she recovered in the course of two or three days. These effects were referred to the alum, and the party who supplied it by mistake was condemned to a severe punishment. We must admit the possibility of this substance acting as an irritant, on the same principle on which we admit the irritant properties of salts of a far more innocent character. It is, however, proper to observe that this salt given in large doses to animals does not appear to affect them seriously, and that three drachms have been taken by patients at a dose, dissolved in six ounces of liquid, without any inconvenience resulting.

Common alum possesses a peculiar and astringent taste. It easily dissolves in water, forming an acid solution, which chrystallizes on evaporation in regular octohedra. Its solution is not affected by ferrocyanate of potash or sulphurretted hydrogen, whereby it is known from the true metallic saline solutions. Its sulphuric acid may be detected by a salt of barytes. On adding potash, a white precipitate of alumina falls down, which is re-dissolved by adding a larger quantity of the alkali. By this last character it is known from the alkaline earths, which are precipitated from their solutions by potash, but are not re-dissolved. On adding ammonia in excess alumina falls down. This may be separated by filtration, and on evaporating the liquid portion, and icinerating the saline residue, it will be found to be sulphate of potash. Calcined alum is a white uncrystalline substance, only partially soluble in water. The quantity dissolved is, however, sufficient to allow its nature to be determined.

Barytes and its salts are undoubtedly poisons, but very little is known concerning their action on the human subject. Pure barytes itself is a caustic alkali, which is not likely to be taken as a poison, seeing that it is rarely met with out of a chemical laboratory. The principal salts are the chloride, nitrate, acetate, and carbonate, the last of which is insoluble in water.

The only two preparations of barytes that have yet caused death are the chloride and the carbonate. The following case of poisoning by the chloride occurred some time ago. A woman swallowed, by mistake, half an ounce of powdered chloride of barium dissolved in warm water. Nausea and vomiting of a watery mucus supervened, with twitchings of the facial muscles, and convulsive motions of the hands and feet. The symptoms continued to increase in severity, and she died about two hours from the time of taking the poison, under most violent convulsions. On inspection, the stomach was perforated posteriorly, in the lesser curvature near the cardiac orifice. The aperture was of an oval form, three lines in diameter externally, and almost twice as large internally. The margin appeared swollen, and the mucous membrane, for about two inches round, was much thickened, and covered with a bloody mucus. The stomach and small intestines were highly inflamed; the cavity of the former contained mucus and coagulated blood. The pharynx and œsophagus presented slight marks of inflammation. The poison was found in the stomach by chemical analysis. The symptoms are those of irritation, combined with an affection of the brain and nervous system, since vertigo, convulsions, and paralysis have been remarked among them. In the case referred to, half an ounce proved fatal in two hours. In another instance, one ounce taken by mistake for Glauber's salt, destroyed life in an hour. In small doses even it has been found to effect the system powerfully. The carbonate of barytes is said to have destroyed life in two cases, in each of which only one drachm was taken.

THE CRITIC.

New Books.

A practical Exposition of the Statute 7 & 8 Vict. cap. 76, intituled "An Act to Simplify the Transfer of Property:" with Precedents of Deeds required by that Act. By Thomas George Western, Esq. of the Middle Temple. London, 1845. Richards.

This pamphlet is intended to be a supplement to Mr. Western's *Precedents in Conveyancing*, and it will be acceptable not only to the possessors of that work, but to others perplexed by the very dubious provisions of the new statute.

As all opinions are valuable just now, especially those of one who has profoundly studied the Act, we shall best exhibit the merits of this pamphlet by extracting some of the notes and subjoined forms. His exposition of the *second* section is as follows:—

Freehold land, as heretofore, might have been conveyed by lease and release, may now be conveyed by *deed*, without livery of seisin, or enrolment of a prior lease; and this extends to every *person*: it therefore extends to a corporation as well as an individual. And, by sec. 11, it is now no longer necessary to have such deed indented; but it may be asked what *deed* is required by this Act? Must it be signed and sealed? It is apprehended that what was considered to be a valid deed before the passing of this Act must still prevail; no part of the statute of frauds is repealed by it. A deed must, therefore, be still signed, sealed, and delivered, to render it a deed within the meaning of this section. Any *deed*, however simple, will in future have the effect of conveying freehold land; but, although the forms of deeds hitherto in use must be altered, yet all the requisites of *a deed* must be preserved. "A deed *factum*: this word (deed) in the understanding of the common law is an instrument written on parchment or paper, whereunto ten things are necessarily incident, viz. first, writing; secondly, on parchment or paper; thirdly, a person able to contract; fourthly, by a sufficient name; fifthly a person able to be contracted with; sixthly, by a sufficient name; seventhly, a thing to be contracted for; eighthly, apt words required by law; ninthly, sealing; and, tenthly, delivery. A deed cannot be written upon wood, leather, cloth, or the like, but only upon parchment or paper; for the writing upon them can be least vitiated, altered or corrupted." Co. Litt. 36. Blackstone says, "A *deed* is a writing sealed and delivered by the parties," 2 Com. 295. The reference as hitherto made to the statute, 4 Vic. c. 21, abolishing the lease for a year, need not now be made; but the duty should still be added to the duty upon the deed as heretofore; and although by this Act, the word "grant" in the operative part of the deed is not to have the effect of creating any warranty, nor of creating any covenant by implication, except so declared by any Act of Parliament, yet it should be still made use of as a word of conveyance.

This section renders unnecessary livery of seisin, enrolment, and the lease for a year.

The Act does not prevent the practitioner from making use of any of the old modes of conveyance, where he may think proper to do so.

On the *fourth* section he says:—

That no lease in writing of any freehold, copyhold, or leasehold land, or surrender in writing of any freehold or leasehold land, shall be valid, unless made by *deed*.

But any agreement in writing to let or to surrender any such land shall be valid, and operate as an agreement to execute a lease or surrender.

The person who shall be in possession of land in pursuance of any agreement to let may, from payment of rent or other circumstances, be construed to be a tenant from year to year.

This section is of importance. The statute of frauds, 29 Car. 2, c. 3, s. 1, enacts, "that all leases, estates, interests of freeholds or terms of years, or any uncertain interest of, into, or out of any messuages, manors, lands, tenements, or hereditaments, made or created by livery and seizin only, or by parole, cannot be put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parole leases or estates to the contrary notwithstanding.

Sec. 2. Except, nevertheless, all leases not exceeding the term of three years from the making thereof; whereupon the rent reserved to the landlord during such term shall amount unto two-thirds parts at the least of the value of the thing demised.

Sec. 3. That no leases, estates, or interests either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest of, into, or out of any messuages, manors, lands, tenements, or hereditaments, shall at any time hereafter be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

This section, therefore, requires attention, inasmuch as it is at variance with, and greatly alters, *these* sections of the statute of frauds, and sets at rest the long disputed question, as to whether an agreement in writing is of such a nature as to amount to a present demise, or to an agreement for a future lease.(a) Now, no *lease* in writing of any land shall be valid as a lease, unless the same shall be by *deed;* and any agreement in writing to let or to surrender any land, shall take effect as an agreement to execute a lease or surrender. All the cases hitherto have been determined upon very nice distinctions; indeed, in some instances, distinctions without differences, and the decisions have been made upon a general feeling in all the courts to continue these agreements as leases, if it could have been possible, and not what they were truly intended to be by *the parties*, agreements for leases.(a) This subject has hitherto been a very fruitful subject of litigation; a lease must now be made by *deed*, and the question, whether a writing is to operate as a lease, or an agreement for a lease, is now at an end. Any agreement in writing to let or surrender any land, shall in future take effect as an agreement to execute a lease or surrender; and, as regards surrenders, it will be seen that this Act has altered sec. 3 of the Statute of Frauds, as all surrenders must be by *deed* only.

The important *eighth* section is noted thus:—

This section requires great attention, for it is of considerable importance. After the expiration of the present year no estate in land shall be created by way of *contingent remainder*, but every estate which *heretofore* has taken effect as a contingent remainder, is to take effect as an *executory devise*. Contingent remainders existing under deeds, wills, or instruments made *before* the year 1845, are not to be destroyed or barred merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in it creation limited to determine.

This puts an end to the necessity for having a limitation to trustees to preserve contingent remainders.

An *executory devise* is defined to be a devise of a future interest in lands not to take effect at the testator's death, but limited to arise and vest upon some future contingency. (1 Eq. Ca. Abr. 186.) This is the definition commonly given of an executory devise. It comprehends, indeed, every species of an executory devise; but at the same time it is not confined to executory devises only; it includes every kind of contingent interest in lands given by devise (for every contingent interest must necessarily be future); now every contingent interest in lands limited by devise is not an executory devise(a), for some contingent interests by devise are contingent remainders.

Mr. Fearne says, an *executory devise* is strictly such a limitation of a future estate, or interest in lands or chattels (though in the case of chattels personal it is more properly an executory *bequest*), as the law admits in the case of a will, the contrary to the rules of limitation in conveyances at common law. It is only an indulgence allowed to a man's last will and testament where otherwise the words of the will would be void; for wherever a future interest is so limited by devise as to fall within the rules above laid down for the limitation of contingent remainders, such an interest is not an executory devise, but a contingent remainder. (2 Fearne 1.)

Now by this section of the Act every estate which heretofore would have taken effect as a contingent remainder, is to take effect as an executory devise. No estate in land is to take effect as a contingent remainder.

It should be observed that this section has a retrospective effect. It applies to every estate which, before the year 1845, would have taken effect as a contingent remainder.

And thus he treats of sections 9, 10, and 11:—

SECTION IX.

That when any mortgagee of freehold or copyhold land shall die, and his executor or administrator is entitled to the mortgage *money*, and the legal estate in the land shall be vested in his heir or devisee, and possession shall not have been taken under the mortgage, nor any action or suit so depending, such executor or administrator, upon payment to him of the mortgage-money and interest, may convey the legal estate vested in the heir or devisee.

This section is certainly an improvement upon the law of mortgages, *if* a purchaser will be satisfied that possession of the land has not been taken under the mortgage, and that no action or suit be depending. It will be absolutely necessary in all cases to ascertain these facts; and when there is any doubt, or the facts cannot be got at satisfactorily, then the heir or devisee should be required to join in conveying the legal estate, as would have been the case before this Act came into operation; indeed, it is a proviso fraught with so much danger, as to render this section almost of no value, and in all cases it will be better to continue the old method, where it can readily be obtained, of making the heir or de isee convey the legal estate.

It should be observed that this section of the Act is confined to *money*. Suppose a mortgage to replace stock. Stock is not money. Suppose, also, a mortgage of railway, or any other shares in a public company, these are not money.

SECTION X.

This section directs, that the receipts of trustees, or of the survivors or survivor of two or more mortgagees, or the executors or administrators of such survivor, or their or his assigns shall be sufficient discharges, unless the contrary shall be expressly declared by the instrument creating the trust or security. This puts an end to the old established rule in equity, that where land is in mortgage to two or more persons, and one of them die, the personal representatives of the deceased mortgagee are necessary parties to give a discharge for the mortgage money, although the entire legal estate be in the survivor; but a declaration may be made to the contrary by the instrument creating the trust or security.

This will also render unnecessary the old usual clause, that the receipts of trustees shall be sufficient discharges, unless where in cases the contrary shall be expressly declared by the instrument creating the trust.

The same remark upon the word *money* as that appended to section 9 may also be made here; therefore it is presumed that this clause applies to receipts for *money* alone, and that in all other cases it will be proper still to adopt the usual clause, that the trustees' receipts shall be sufficient discharges.

SECTION XI.

It shall not be necessary in any case to have a deed indented.

Any person not being a party to a deed, may take an immediate benefit under it, in the same manner as he might under a deed poll.

This removes at once the necessity for indentures, and hereafter, when this Act comes into operation, another form must be employed (*see the precedents*). Indentures were quite useless, and according to a very learned author, (Blackst. Comm. 295), "It seems at present to serve for little other purpose than to give name to the species of the deed;" and in shewing the distinction between an indenture and a deed poll, the same learned author says: "a deed made by *one party* only is not indented, but *polled* or shaved quite even, and therefore called a *deed poll* or a single deed." (Blackst. Comm. 295.) This distinction is now abolished, any person not being a party to any *deed*, may take an immediate benefit under it in the same manner as he might have done under a *deed poll*. It is not to be necessary in *any case* to have the deed indented.

The following precedent will be useful:—

Conveyance of freeholds by a vendor seised in fee to a purchaser married before the 1st January, 1834, and his Trustee to bar dower.(a)

This deed made the —— day of ——, 1845, between J. S. of —— (*absolute owner of the fee simple, and unmarried*) of the first part; W. J. of —— (*purchaser, married*) of the second part; and A. B. (*trustee to bar dower*) of the third part: Whereas, by an indenture of release, bearing date the —— day of ——, and made between C. D. of the one part, and the said J. S. of the other part, the messuages, land, and hereditaments hereinafter described were granted, released, and assured unto, and to the use of, the said J. S. his heirs and assigns for ever. And whereas the said J. S. hath contracted and agreed with the said W. J. for the absolute sale to him of the fee simple and inheritance in possession of the said messuages, land, and hereditaments hereinafter described, at the sum of ——*l*. Now this deed witnesseth, that in consideration of ——*l*. of lawful current money of England, paid upon the execution of these presents by the said W. J. to the said J. S. the receipt whereof the said J. S. doth hereby acknowledge, and from the same money doth hereby for ever discharge the said W. J. his heirs, executors, administrators, appointees, and assigns: He the said J. S. hath granted, released, and conveyed, and by this deed doth grant, release, and convey unto the said W. J. and to his heirs and assigns, all, &c. (*describe the parcels intended to be conveyed,*) and all and singular others the hereditaments and premises comprised in and released by the said recited indenture of release of the —— of —— with their and every of their appurtenances: and all the estate, right, title, interest, possession, property, claim, and demand whatsoever at law and in equity, of him the said J. S. of, in, to, or out of the same messuages, land, hereditaments, and premises, and every part thereof: To have and to hold the said herein-before described messuages, land, hereditaments, and premises, with their appurtenances, unto the said W. J. his heirs and assigns: to such uses upon such trusts, and for such intents and purposes, and subject to such powers, provisoes, declarations, and agreements as the said W. J. shall by any deed or deeds, either with or without power of revocation, from time to time direct, limit, or appoint; and in default of any such direction, limitation, and appointment, and so far as every or any such shall not extend to the use of the said W. J. and his assigns during his life, without impeachment of waste, and after the determination of that estate to the use of the said A. B. (*trustee*), his executors and administrators, during the life of the said W. J. in trust for the said W. J. and his assigns, and to prevent any wife of the said W. J. being entitled to dower out of the said hereditaments and premises, or any part thereof; and from and after the determination of that estate, to the use of the said W. J. his heirs and assigns for ever. And the said J. S. for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said W. J. his heirs, and assigns, that he the said J. S. notwithstanding his own acts and deeds to the contrary, is lawfully seized, and is well entitled to the said messuages, lands, and hereditaments, for an indefeasible estate of inheritance in fee simple, free from all incumbrances whatsoever. And that it shall for ever hereafter be lawful for the said W. J. his heirs, appointees, and assigns, peaceably and quietly to enter into and upon, and to hold, occupy, and enjoy the said messuages, land, and hereditaments, and to receive the rents and profits thereof, for his and their own use and benefit, freed and for ever discharged and kept indemnified by the said J. S. his heirs, executors, and administrators, from and against all incumbrances, estates, titles, charges, claims, or demands whatsoever, by the said J. S. or his heirs, or by any person claiming under or in trust for him or them. And that the said said J. S. and his heirs, and all persons claiming under or in trust for him or them, shall and will, at all times hereafter upon every request, and at the expense of the said W. J. his heirs, appointees, and assigns, make and execute all such further deeds, conveyances, and assurances for better releasing and conveying the said messuages, land, and hereditaments, with their appurtenances, unto the said W. J. his heirs and assigns, to the uses and in manner aforesaid, as he or they, or his or their counsel, may reasonably acquire. And lastly, the said W. J. doth hereby declare, that neither his present wife, nor any woman who may become his widow, shall be entitled to dower out of the said messuages, lands, and hereditaments, or out of any part thereof. In witness, &c.

Three other very useful precedents are appended, but we must not take too largely from pages which every conveyancer will, of course, lay upon his desk.

(a) See 3 Western's Conveyancing, pp. 113, 114, n. n. *a*, *b*.

(a) Lord Kenyon, in *Long* v. *Blackall* and *Others* (7 Term. Rep. 102), observed, that the rules respecting *Executory Devises* have conformed to the rules laid down in the construction of legal limitations, and the courts have said that the estate shall not be unalienable by executory devises for a longer time than is allowed by the limitations of a common law conveyance. In marriage settlements the estate may be limited to the first and other sons of the marriage in tail, and until the person to whom the last remainder is limited is of age, the estate is inalienable. In conformity to that rule the Courts have said, so far we will allow the executory devises to be good. To support this position, I could refer to many decisions, but it is sufficient to refer to the *Duke of Norfolk's Case* (3 Ch. Ca.), in which all the learning on this head was gone into, and from that time to the present every judge acquiesced in that decision. It is an established rule that an executory devise is good, if it must necessarily happen within a life or lives in being, and twenty-one years and the fraction of another year allowing for the time of gestation.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Bouverie.—On Friday, the 3rd inst. at Coleshill-house, Berks, the Hon. Mrs. Edward Pleydell Bouverie, of a daughter.

De Morgan.—On the 7th inst. at 13, Titchfield-terrace, Regent's-park, the wife of George De Morgan, esq. barrister-at-law, of a daughter.

Plunkett.—On the 3rd inst. at 32, Dorset-place, Dorset-square, the widow of William Plunkett, esq. barrister-at-law, of a son.

MARRIAGE.

Child, Mr. Henry, of St. Swithin's-lane, solicitor, to Miss Ruth Bates, third daughter of Joseph Bates, esq. of Cheapside and Upton, deceased, on the 7th inst. at Hoxton Academy Chapel.

DEATHS.

Armitstead, Mr. Thomas Gumersall, notary public, formerly of Clement's-lane, but late of Nag's Head-court, Gracechurch-street, on the 30th ult aged 59

Bainbridge, Charles Hardy, esq Solicitor of the Supreme Court, Registrar and Secretary to the Lord Bishop, and third son of the late George Cole Bainbridge, of Gattonside-house, Roxburghshire, esq. on the 18th Nov. at Bombay.

Daman, William Charles, esq. solicitor, on the 28th ult. at Romsey, Hants, aged 77.

Hulme, Julia, eldest daughter of the Hon John Walter Hulme, Chief Justice of Hong Kong, on the 6th Oct. at Victoria, Hong Kong, aged 14.

Impey, Miss Marian, youngest daughter of the late Sir Elijah Impey, formerly Chief Justice of Bengal, on the 26th ult. at her house, Sandford-lodge, Cheltenham, aged 65.

Ker, Edwin, youngest son of T. C. Ker, esq. of Gray's-Inn, on the 6th inst.

Paterson, Robert, late of the firm of Coe and Paterson, solicitors, Size-lane, City, on the 3rd inst. at his brother's house, 6, Portland place, Wandsworth, aged 28.

Wells, Piper, jun. esq. Kingston-upon-Hull, solicitor, on the 7th Jan. at Torquay, aged 36.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Brez, J. J. tailor, first, 10s. Morgan, Liverpool.—*Canning*, H. J. warehouseman, second, 10½d. Pennell, London —*Clarke*, J. C. wine merchant, first, 2s. 9½d Pennell, London.—*Edwards*, E. draper, first, 8½d. Pennell, London *Flersheim*, L. merchant, first, 7d. Christie, Birmingham.—*Grundy*, J. jun. woollen manufacturer, first, 6s. 8d. Stanway, Manchester.—*Hadfield*, S. file manufacturer, first, 10s. 7d. Stanway, Manchester.—*Hall* and *Co.* corn merchants, final, 2d. and 5-18ths of a penny Bittleston, Birmingham.—*Harman*, J. brewer, first, 1s 0d. Pennell, London.—*Harford* and *Co.* iron masters, second, 10d. Hutton, Bristol.—*Hedderley*, J. druggist, final, 1s. 5d. and 7-16ths of a penny. Bittleston, Birmingham.—*Hilton*, J. leather seller, second, 11d. Christie, Birmingham *Holmes*, F warehouseman, first, 3s. 8d. Pennell, London. *Kearsley* and *Kearsley*, third, 1-16th of a penny. Pennell, London—*Morton*, T. M. eating-house keeper, fourth, 5d. Pennell, London.—*Mott*, W. laceman, second, 2s. 2d. Pennell, London.—*Roberts*, R. G. timber merchant, fourth and final, 3-16ths of a penny, and 1s. 4½d and 14-16ths of a penny to new proofs. Turquand, Liverpool.—*Starie*, W carpenter, second, 6½d. Pennell, London.—*Sugden* and *Co.* cloth manufacturers, first, 10s. Fearne, Leeds. *Tisoe*, H. carpenter, first, 2s. 11d. Pennell, London.—*Waddell*, J. ship broker, first, 9d. Pennell, London. *Watson*, T. victualler, first, 2s. 4d. Pennell, London.—*Wicks*, J. clothier, first, 2d. Acraman, Bristol.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Jan. 3

Davison, T. laceman, Liverpool, Nov. 4. Trus. F. Ramsden, warehouseman, Manchester, and M. Lethem, warehouseman, Friday-st. Sols. Reed and Shaw, Friday st.—*Duhamel*, E. H. mineral water dealer, Warwick-st. Regent-st. Dec. 30. Trus. G. M. Mowbray, wholesale druggist. Paternoster-row, and P. Axmann, mineral water dealer, Mark-lane. Sol. Mount, Laurence Pountney-lane.—*Taplin*, W slop seller, Dec. 18. Trus. G. Davis, shoe manufacturer, Fish-st. Hill. Sol. Surr, Lo ard-st.

Gazette, Jan. 7.

Atkinson, R. butcher, Stratford St. Mary, Suffolk, Dec. 26. Trus. W. Back, merchant and miller, and M Smith, gent. both of Stratford St. Mary. Sols. Last and Co. Hadleigh.—*Shears*, A. draper, Albany-st. Regent's-park, Dec. 16. Trus. B. Smith, warehouseman, St. Martin s-le-Grand. Sols. Mardon and Prichard, Newgate-st.—*Tunstall*, J. P. grocer, Goswell-st. Dec. 19. Trus. E. Eagleton, tea dealer, Newgate-st. Sols. Rippingham and Rose, Great Prescott-st.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Jan. 3.

Lanham, George Edward, builder, Southampton, Jan. 15, at half-past eleven, Feb. 13, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Jones and Co. John-st. Bedford-row, sols. Date of fiat, Dec. 28. Bankrupt's own petition.

Newbold, John, tailor, draper, and hatter, Nottingham, Jan. 15, and Feb. 12, at eleven, Birmingham, Com. Daniell; Bittleston, off. ass.; Bowley, Nottingham, and Harrison and Smith, Birmingham, sols. Date of fiat, Dec. 3[illegible]. J. Ireland, maltster and victualler, Nottingham, pet. cr.

Padbury, Andrew, the younger, grocer, Epsom, Surrey, Jan. 14, at half-past one, Feb. 11, at twelve, Basinghall-st. Com. Williams; Graham, off. ass.; Cattlin, Ely-place, sol. Date of fiat, Dec. 23. R. Pledge, grocer, Croydon. pet. cr.

Palmer, Benjamin Wyment, wine and brandy merchant, innkeeper, and coach proprietor, Daventry, Northampton, Jan. 13, at one, Feb. 22, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Wimburn and Co. Chancery-lane, and Gery, Daventry, sols. Date of fiat, Dec. 31. J. Bull, farmer, Castlethorp, Bucks, pet. cr.

Ward, James, engineer and iron founder, Manchester, Jan. 17, and Feb. 6, at eleven, Manchester; Pott, off. ass.; Wathen, St. Swithin's-lane, and Johnson, Manchester, sols. Date of fiat, Dec. 28. Bankrupt's own petition.

Wrightman, John, wharfinger and sawyer, Grand Junction Wharf, Cotton-end, Northampton, Jan. 10, and Feb. 14, at one, Basinghall-st. Com. Fonblanque: Pennell, off. ass.; Weller, King's-road, and Pell, jun Northampton, sols. Date of fiat, Dec. 30. Bankrupt's own petition.

Woodhead, John, clogger and shoe dealer, Todmorden, York, Jan. 16, and Feb. 6, at eleven, Leeds, Com West, Young, off. ass.; Wigglesworth and Co. Gray's-inn, and Barwick, Leeds, sols. Date of fiat, Dec. 3 E. Stead and E. Simpson, curriers and leather sellers, Leeds, pet. crs.

Gazette, Jan. 7.

Barff, John, merchant and broker, Jan 27 and Feb. 7, at eleven Liverpool, Com. Phillips; Morgan, off. ass.; Sharpe and Co. Bedford-row, and Moss, Liverpool, sols. Date of fiat, Dec. 30 S. Leigh, spinster, Liverpool, pet. cr.

Booth, James, woollen cloth manufacturer, Brownhill, Cartworth, Yorkshire, Jan. 18 and Feb. 7, at eleven, Leeds Com. West; Fearne, off. ass.; Sudlow and Co Chancery-lane, Floyd and Booth, Huddersfield, and Battye and Clay, Huddersfield, sols Date of fiat, Jan. 2 J. Balderson and W. Coussons, woolstaplers, Huddersfield, pet. crs.

Chandler, Thomas, builder, Bow-lane, Jan. 13, at two, March 1, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass; Farrar and Lake, Godliman-st. sols. Date of fiat, Jan. 3. C. Coward, lead and oil merchant, Little Knight Rider-st. pet. cr.

Lutwyche, William, brass founder, Birmingham, Jan. 21, at half past ten, Feb. 15, at twelve, Birmingham; Valpy, off ass.; Harrison and Smith, Birmingham, sols. C. Wallbank, metal dealer, Birmingham, pet cr.

Mandeno, John, market gardener, Grove-st Hackney, market gardener, Jan 15, at two, Feb. 14, at twelve, Basinghall-st. Com. Holroyd; Croom, off. ass.; Jenkinson, Cannon-st. sol. Date of fiat, Jan. 3. Bankrupt's own petition.

Revely, Thomas, the younger, plumber and brass founder, Jan 17, at half past one, Feb 26, at two, Newcastle, Com. Ellison; Baker, off. ass., Harle, Newcastle, and Chisholme and Co. Lincoln's-inn-fields, sols. Date of fiat, Dec. 27. J. Tindall, agent Gateshead, pet cr.

Youle, William, commission agent, 10, Addle-st Wood-st. Jan. 17 at twelve, Feb. 20, at eleven, Basinghall-st. Com. Fane, Alsager, off. ass.; Langley, Bedford-row, sol. Date of fiat, Jan 3, Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Dec. 31.

Ainsworth J. and *Warp*, H. cotton spinners, Blackburn, Dec 5. Debts paid by Ainsworth.—*Boutcher*, W. *Mortimore*, W. *Bowden*, H. and *Linnington*, S. commission agents, Liverpool, so far as regards Sinnington, Dec 11.—*Canning*, C and *Evans*, B. iron merchants, Birmingham, Dec. 30. Debts paid by Canning—*Caswell*, W., *Callow*, J., and *Caswell*, W. jun. builders, Chelsea, Dec. 31.—*Fairbairn* W. and *Hetherington* J. machine makers, Manchester, Feb. 28.—*Fairbairn*, W and J. engineers, Manchester, Dec. 26.—*Gadd*, J. and *Huskinson*, H lace manufacturers, Nottingham, Dec 27. Debts paid by Huskinson.—*Gresham*, W. and *Leete*, J. attorneys, Dec. 31.—*Hayward*, J. R. and J booksellers and printers, Manchester, Dec 25. *Iredale*, J. and *Oxley*, J. tanners, Rotherham, Aug. 16—*Jones*, W. and *Heath*, A. omnibus proprietors, New-cross, Old Kent-road, Dec. 26.—*Kelly*, J. and *Law*, J H. coal proprietors, Tottington, Lancashire, Dec. 27.—*Kempson*, H. C. and *Lea*, T. S. millers, Kidderminster, Oct. 10.—*O'Brien*, F. and *Keran*, J corn merchants, Liverpool, Dec. 20. Debts paid by O'Brien.—*Pickard*, J., *Earl*, W. B., and *Dickinson*, brick manufacturers, Conside, Durham, Dec. 19. Debts paid by Earl and Dickinson.—*Ramsay*, E. and *Greenwood*, C dress makers, Bruton-st. Dec. 24 Debts paid by Greenwood.—*Spottiswoode*, A. and *Vizetelly*, H. R. as proprietors of the Pictorial Times, Dec. 28. *Stoddart*, H. and *Knight*, J. engineers Bolton, Dec. 27. Debts paid by Knight.—*Vaughan*, W and J. and *Sheldon*, F. merchants, Austin-friars, so far as regards W. Vaughan, Dec. 31—*Walmsworth*, G. and *Robinson* T silk throwsters, Congleton, Dec. 14 Debts paid by Robinson.—*Watson*, R. *Broom*, S and *Grunnold*, A. wool stapler Kidderminster so far as regards Broom, Dec. 28.—*Wright*, H. T. and *Bozaljette*, J. W. architects, Great George-st. Westminster, Dec. 25.

Gazette, Jan. 2.

Allen, T. and *Champtaloup*, E warehousemen, Lawrence-lane, Dec. 31. Debts paid by Allen—*Anderson*, H. and W. New Orleans and London, Dec. 31.—*Atkins*, G. and *Hill*, J. grocers and ironmongers, Thrapston, Bythorn, and Brington, Dec. 31. *Bainbridge*, C. and *Waddington*, P. ironmongers, Lincoln, Dec. 27.—*Baker*, J. and W. stone merchants, Wickersley, Dec. 17. Debts paid by Baker—*Barnett*, J. E., J., and R. gun makers, Minories, so far as regards P. Barnett, Dec. 31. *Biddulph*, J. jun *Webb*, G. J. *Williams*, W. *Nevill*, R. jun. and *Broom*, C. N. timber merchants, Llanelly, Sept. 21.—*Blackburn*, J. and *Bell*, C. tailors, Liverpool, Dec. 31. Debts paid by Blackburn.—*Blacker*, R. H. and *Bambrick*, H. booksellers, St. James-st. Dec. 25.—*Blannin*, J. and J. shipwrights, Bristol, Jan. 1. Debts paid by Blannin.—*Bradshaw*, D. *Scholefield*, J. jun. and *Bradshaw*, R. jun. merchants, Huddersfield and Bridge-mill, Dec. 31. Debts paid by either partner.—*Bucknill*, S and S. B. surgeons, Rugby, Dec. 31.—*Bushey*, C. and *Bassett*, D. meal men, Uxbridge, Dec. 31.—*Castle*, T. *Lurk*, F. *Castle*, H. W. *Jones*, J. and *Wortley*, J. Love-lane, so far as regards T. Castle, Jan. 1.—*Casson*, R. and F. W. and *Twining*, E. surgeons, Hull, Sept. 14, 1843.—*Chaloner*, C. and *Orbell*, J. merchants, Liverpool, Dec. 31.—*Churchill*, J. and *Spencer*, T. malt manufacturers, Eccleston, Dec. 30.—*Chorley*, H. and *Bulley*, G. surgeons, Leeds, Dec. 31. Debts paid by either partner.—*Edwards*, E. sen. and *Short*, W.C. wholesale tea-dealers, Abchurch-lane, Jan. 1. Debts paid by either partner.—*Evans*, T. and *Cox*, J. ship builders, Northam, Devonshire, April 7.—*Eversfield*, H. and [illegible], J. newspaper proprietors, Gravesend, Dec. 30.—*Flint*, H. and *Shaw*, W. brewers, Kingston-upon-Thames, Dec. 28.—*Forsyth*, T. and *Pritchard*, M. L. share brokers, Liverpool, Dec. 31.—*Gibbons*, J. and *Roan*, J. cattle salesmen, Liverpool, Dec. 30.—*Grazebrook*, H. sen. and H. jun. and *Senior*, E. iron merchants, Liverpool, Dec. 31. Debts paid by Grazebrook, sen. and jun.—*Gutch*, W. and *Fox*, L. O. surgeons, Broughton, Jan. 1.—*Headly*, F. and H. farmers and limeburners, Cherryhinton and Landbeach, Cambridgeshire, Dec. 24.—*Heath*, A. F. and *Coupland*, H. chemists, Liverpool, Dec. 31. Debts paid by Heath.—*Hoar*, C. and *Leary*, G. Dec. 31.—*Jackson*, R. W. and *Bury*, J. jun. attorneys, Stockton-upon-Tees, Oct. 28. Debts paid by Jackson.—*Jameson*, G. and *Wilson*, T. linen drapers, Newcastle, Dec. 30. Debts paid by Wilson.—*Jaulerry*, G. *Mildred*, H. and *Goyeneche*, J. V. de, so far as regards Jaulerry, Dec. 31. Debts paid by Mildred and Goyeneche.—*Jones*, G. and *Williams*, W. joiners, Liverpool, Dec. 31.—*Corlet*, W. and *Jones*, S. tailors, Liverpool, Dec. 31. Debts paid by Jones.—*Lanfbur*, W. jun. and *Locke*, S. hearth-rug manufacturers, Lant-st. Southwark, Dec. 30.—*Lees*, J. and *Lister*, T. ironmongers, Manchester, Dec. 21.—*Lloyd*, R. *Stewart*, J. and *Brandebb*, E. tea brokers, London, Liverpool, and Dublin, so far as regards Stewart, Jan. 1.—*Milner*, C. and *Boyne*, R. tobacconists, Cannon-st. Jan. 3. Debts paid by Milner.—*Neal*, S. and *Gant*, J. C. attorneys, Austin-friars, Dec. 31.—*Notman*, W. and *Young*, W. grocers, Bishopsgate-st. Without, April 15.—*Nunes*, B. P. and J. merchants, Brabant-court, Dec. 31.—*Percival*, S. O. *Parton*, J. and *Mackenzie*, R. brokers, Liverpool, Dec. 31.—*Puzey*, H. and *Stewart*, E. drapers, Lisson-grove, Jan. 1. Debts paid by Puzey.—*Puzey*, H. and *Lansdown*, F. G. drapers, High-st. Bow, Jan. 1. Debts paid by Lansdown.—*Ridgway*, W. and *Morley*, F. iron-stone manufacturers, Stoke-upon-Trent, Dec. 31. Debts paid by Morley.—*Rogers*, A. and *Thorpe*, G. merchants, Riches-court, and Calcutta, Dec. 31.—*Smith*, J. *Ouston*, R. and *Cochran*, J. general merchants, Hull, Jan. 1.—*Smith*, C. and *Whitelegge*, H. traders in white muslin, Manchester, Dec. 31.—*Sotham*, T. and *Wing*, W. auctioneers, Wootton and Steeple Aston, Dec. 31. Debts paid by either partner.—*Steele*, A. and *Hobbs*, W. cotton spinners, Dec 31.—*Sykes*, C., J., and J. card makers and tanners, Huddersfield and Almondbury, Feb. 10, 1839.—*Sykes*, W., J., and G. F. and *Naylor*, W. and J. coal masters, Birstol, so far as regards Messrs. Naylor, Dec. 24. Debts paid by the remaining partners.—*Taylor*, T. and *Hodgson*, J. printers, Liverpool, Dec. 31.—*Turner*, J. *Thompson*, W. and *Spivey*, J. woollen cloth merchants, Huddersfield, so far as regards Spivey, Dec. 26. Debts paid by the remaining partners.—*Walton*, J. C. C. and *Webber*, R. C. printers and bookbinders, Greenwich, Dec. 31. Debts paid by Walton. *White*, G. and J. and *Goulden*, T. sen. cabinet makers, Canterbury, Dec. 31.—*Wilson*, A. sen. and A. jun. and *Jones*, W. retail dealers in boots and shoes, Crawford-st. so far as regards Jones, Dec. 31.—*Woodhouse*, H. and *Ewart*, C. sharebrokers, Manchester, Dec. 24.—*Wright*, J and J. millers, Church Minshull, Dec. 28. Debts paid by Wright. *Ziffel*, A. *Ganter*, M. *Waldrogel*, M. and *Tritschler*, J. clock makers, Oldham, so far as regards Tritschler, Jan. 1.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, Dec. 31.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Barnard, J. milkman, Bowling-green-walk, Hoxton, Jan. 17, at eleven.—*Burton*, W. H. tailor, Botolph-alley, city of London, Jan. 6, at half-past eleven.—*Cook*, T. corn dealer, Greek-st Soho, Jan 14, at half-past twelve.—*Day*, J. out of business, Richmond, Jan. 18, at eleven.—*Duggan*, J. victualler, Gravesend, Jan. 6, at twelve.—*Harlow*, G. senior, assistant to a cowkeeper, Sheerness, Jan. 15, at twelve.—*Johnson*, J. bedstead maker, Long-alley, Finsbury, Jan. 6, at eleven.—*Kent*, C. butcher, Barnet, Jan. 6, at twelve.—*Maclean*, C. upholsterer, Poland-st. Jan. 6, at half-past twelve.—*Northfield*, W. victualler, Counter-st. Southwark, Jan. 17, at eleven.—*Stow*, W. T. coach herald painter, New Church-st. Edgware-rd Jan. 17, at half-past eleven.—*Weddell*, T. accountant, Bacchus-walk, Hoxton, and Coleman-st. bldgs Jan. 6, at one.—*Young*, G. L. leather dresser, Russell st Bermondsey, and Artillery-st. St. Luke's, Jan. 6, at eleven.

Gazette, Jan. 3.

Andrews, R. farmer, Brettenham, Jan. 15, at twelve.—*Harling*, G lodging-house keeper, Eaton-square, Jan. 23, at half-past twelve.—*Wheeler*, W. coach broker, White Hart-yard, Tottenham-ct.-rd. Jan. 22, at eleven.

Country.—Gazette, Dec. 31.

Bleakley, T. fruit dealer, Liverpool, Jan. 8, at twelve, Liverpool.—*Entwisle*, J. baker, Bolton-le-Moors, Jan. 11, at twelve, Manchester.—*Skillen*, W. baker, Liverpool, Jan. 9, at eleven, Liverpool.—*Yarworth*, G. farmer, Newland, Jan. 17, at eleven, Bristol.

Gazette, Jan. 3.

Altercott, C. labourer, Woolavington, Jan. 16, at eleven, Exeter.—*Buxton*, W. miller, Littlechurch, Jan. 21, at twelve, Birmingham.—*Chapman*, J. sawyer, Halifax, Jan. 14, at eleven, Leeds.—*Cheadle*, J. cabinet maker, Burslem, Jan. 25, at one, Birmingham.—*Gooding*, superintendent for a maltster, Winsford, Jan. 16, at eleven, Exeter.—*Grey*, T. schoolmaster, Newcastle, Jan. 20, at half-past one, Newcastle.—*Holt*, J. railway porter, Mitfield, Jan. 22, at eleven, Leeds.—*Hunter*, T. gardener, Hexham, Jan. 23, at half-past eleven, Newcastle.—*Jackson*, J. farmer, Hopton, Jan. 22, at eleven, Leeds.—*Lockett*, J. G. salesman, Bowden, Jan. 17, at twelve, Manchester.—*Longman*, J. cabinet maker, Wells, Jan. 22, at twelve, Bristol.—*Owens*, J. out of business, Cheltenham, Jan. 21, at twelve, Bristol.—*Peters*, S. tailor, Bristol, Jan. 22, at eleven, Bristol.—*Webster*, J. farmer, Sutton Cheney, Jan. 24, at twelve, Birmingham.—*Wickstone*, L. cordwainer, Birmingham, Jan. 24, at twelve, Birmingham.—*Young*, J. haulier, Newland, Jan. 21, at one, Bristol.

From the Gazette of Friday, January 10.

Bankrupts.

Brown, J. grocer, Regent-st. St. John's, Westminster.—*Flintoff*, G. bookseller, Plymouth.—*Vallance*, W. merchant, Liverpool.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Re WOODCOCK, a Lunatic.

Practice—Grounds on which a commission of lunacy will be issued.

L. Lowndes and *Calvert* supported a petition by Dr. Munro, who was the patient's cousin-german, for a commission.

The lunatic's only property was an annuity of 200*l.* charged on an estate now the property of Dr. Munro. He was stated to be a clergyman, and the grounds on which the application was founded were these:—The extravagance of Mr. Woodcock, who when recently in Paris, gave 160*l.* for a fiddle, and had been guilty of the greatest extravagance in expenditure at various hotels in London. He had also exhibited so much violence towards the landlord of the place in which he had lodged, when his linen and personal goods had been detained for lodging-rent and expenses, that it was necessary to take him before a magistrate. In August last he had called on Dr. Sutherland, and was then wearing mustachios, and said that perhaps Dr. Sutherland would be surprised that he, as belonging to the church, should be so ... bited, but that the fact was he belonged to the church militant. It appeared also that he had for some ... been confined in a maison de santé in France ... his mother's sanction. Certain religious ... entertained by Mr. Woodcock were also referred to in the affidavits in support of the petition as evidence of his insanity. Dr. Munro, his cousin ... petitioner.

Kinglake, for Mr. Woodcock, opposed the application. He had made an affidavit, in which he stated that he was acquainted with the Greek ... and French languages; that he knew a little Hebrew, and was capable of understanding chemistry, logic, mathematics, and science in general. That he had proposed that Dr Southey should examine him in Greek. That Dr Southey, in various conversations with him, had drawn him into a confession of his religious opinions, and that he had said that no man could understand the Scriptures without having his mind illuminated by the Holy Ghost. He asserted that no man had a right to say another was insane on account of his religious opinions. It was suggested that the petitioner was only the first cousin of the patient, and that his mother and sisters were ... that a commission should issue. Dr. Munro had instituted a suit in Chancery in respect of the annuity charged upon his estate.

Lowndes, in reply.

The LORD CHANCELLOR.—The only object of the petitioner is to protect the person and property of the alleged lunatic. Dr. Munro's conduct could only be explained by his belief that Mr. Woodcock requires protection. I think it a case for a commission; at the same time I think it not unlikely that he ... manage himself before a jury as to prevent a verdict. The saying that he is inspired by the Holy Ghost, and that he has a call from heaven, is nothing more than every clergyman declares on oath upon his ordination.

Commission ordered to issue.

Re LOCKEY, a Lunatic.

Defaulting committee—Proceedings against the surety for costs—Practice.

The committee of the estate in this matter had been found liable for a large balance, and being out of the jurisdiction, considerable costs had been incurred in attempts to enforce the performance of the duties of the committee. The bond of the sureties had been delivered up to the ... to enable them to sue upon it. The sureties had consented to pay the balance found due, but objected that under the bond, which was in the ordinary form used in such cases, they were not liable for costs.

The matter was opened by *Elmsley*, for the petitioner, and opposed by *Toller*, for the sureties.

Stand over.

Saturday, Dec. 21.

THE CORPORATION OF GLOUCESTER *v.* WOOD.

Funds in court retained pending an appeal to the House of Lords, notwithstanding the defendants, under the decree of this Court, were entitled to have the same paid out to them—Retainer on terms—3l. per cent. stock always deemed by the Court as money.

JUDGMENT.

The LORD CHANCELLOR.—I have several times thought of this case; and it seems to me that, under the circumstances, the funds ought not to be parted with by the Court pending the appeal. On looking at the judgment of the Vice-Chancellor, it is clear that he anticipated an appeal; for he assumed that neither party would be satisfied with a single judgment, and he said that it was not an improper case for an appeal.

Now the sum in question is very large, no less than 200,000*l.*; the defendants are executors, and, pending the appeal, they would not be justified in distributing it. They must, therefore, invest it. Now at present the fund is invested; and it had better continue under the control of the Court. It will not, therefore, be parted with until after the decision upon the appeal But then the defendants ought to have any part of the money out of court for the purpose of investment in securities bearing a higher interest, upon giving security for the repayment of the sum so had out and they may apply for that purpose as it may be necessary: and the plaintiffs, in the event of the appeal being decided against them, must make good any loss of interest which may be sustained by retaining the funds in court The defendants wanted ... namely, that the plaintiffs should be required to make good any loss to be occasioned by a fall in the funds. But the Court always considers the three per cents. as equivalent to money, and takes no notice of either rise or fall in the market price of stock; I cannot, therefore, accede to that suggestion. The same order as that of Vice-Chancellor Wigram must now be made. If the plaintiffs refuse to accede to the terms proposed by the Court, their application must be refused with costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, Jan. 11.

Re CARUS WILSON.

A writ of *habeas corpus* under the seal of this Court, and returnable in this court on the 13th of January, had been issued in vacation by Rolfe, B. directed to the Viscount of Jersey and the keeper of her Majesty's prison in Jersey, commanding them to have the body of Charles Carus Wilson, together with the cause and cause, &c. before this court, &c.

Thesiger, S.G. now applied for a rule to shew cause why the writ of *habeas corpus* should not be quashed ... ist The writ ... jurisdiction ... seal of this Court, ... of the Habeas Corpus Acts, the 31 Car. 2, ... and 56 Geo. 3, c. 100, because each directs that the writ shall issue under the seal of the Court of which the judge who ... it is a judge—not under the ... a *habeas corpus ad subjiciendum* ... over which any of the courts has an exclusive jurisdiction; and not under the 11 Geo. ... Wm ... 10 because this writ cannot be considered ... depending in any of the said courts." Not under the 1 & 2 Vict. c. 45, ... because Jersey ... specially named therein (1 B. Com. 107, 4 Inst. 286); and not under the 56 Geo. 3, c. 100, because there is an exception in that Act of some criminal, or supposed criminal matter, and contempt of a royal court, for which the affidavits shew that Mr. Wilson has been committed, ... criminal matter. (... *Case*, 2 R. & M. 663; *Lechmere Charlton's Case*, ... My. & C. 316.) 2nd The writ is not properly endorsed with the ascertained amount of the charges ... the suit ... required ... Security has not been taken for conveying the prisoner back, if he should not be discharged, as that statute also requires. Next, this writ is one against which an appeal properly lies to the discretion of the Court. (*R.* v. *Cowle*, 2 Burr.) *Ibid. ant.*

[This rule is to be a rule ... time for the return to be enlarged to the 23rd.]

HILL *v.* ...

Kelly, Q.C. ... setting aside ... the ground ... misdirection and ... evidence ... action was by ... against the acceptor of a bill of exchange for 3,000*l.*, the material plea was, that the bill had been given in part payment of a gambling debt of which the plaintiff had ... judge. The jury was told that ... found the plaintiff ... lost 100*l.* ... That was enough, ... that, under the circumstances, it was difficult to believe that the plaintiff had ... made inquiries that must have ... the nature of the transaction to his knowledge. The evidence of attorneys and sheriffs' officers ... admitted to shew that at the time ... consideration given by the plaintiff ... was in very embarrassed circumstances. On both points, a

Rule nisi.

...

Costs of indictment for non-repair of highway.—Road a bridle-way?

This was an indictment for the non-repair of a highway Defendants were acquitted on the ground that it was not a highway for carriages, but only a bridle-way. An application had been made to Tindal, C. J., who tried the case, for costs, under 5 & 6 Wm. 4, c 50, s. 95, which enacts that the judge "is to direct" them to be paid out of the county-rate whenever the magistrates have ordered an indictment to be preferred This, however, applies only to cases where the "liability to repair is denied." Here the road was admitted to be a bridle-way in good repair, and not a highway.

Humphrey (with whom was *Sale*) contended that the statute was imperative, and that the costs must in all cases be paid.

Whitehurst, Q. C. contra.—There is a direct decision on the point, *Reg.* v. *Paul* (2 M. & R. 308). Here there is no highway. A bridle-way is not a highway. [COLERIDGE, J.—If it is not a highway, why should parish A be made to pay more than parish B?] There is a decision in this court. (He was stopped.)

Lord DENMAN, C. J.—The Lord Chief Justice ought to have been told what had occurred in this court. It is monstrous to say that a man is to indict any path he chooses on the speculation of making out a road, and say, if I fail, the county must pay the costs. The Act applies only to cases where there is a highway, and the liability to repair is denied. The learned judge (Tindal) was misled. It was not an exercise of his discretion according to his view of the law, for he thought he had none.

Rule absolute, quashing order for costs.

Monday, Jan. 13.

BINGLEY *v.* YONGE.

Indorsement under power of attorney.

Butes, Sergt. moved pursuant to leave reserved at the trial at the last sittings before Lord Denman, C. J. to set aside the verdict for the plaintiff, and enter a nonsuit or verdict for the defendant.

It was an action on a promissory note by indorsee against drawer.

Pleas.—Denial of indorsement and no consideration. At the trial the plaintiff called the attesting witness to a power of attorney executed by the defendant to his brother J. E. Body, and proved its execution and the indorsement of the note by the attorney.

The material words of the power were authorising the attorney "to draw, accept, or indorse bills or promissory notes in the course of business."

The plaintiff rested his case on this evidence. The defendant then produced an affidavit by the plaintiff. The note in question had been indorsed by J. E. Body, the attorney, to him, for a debt due from the attorney to the plaintiff, and it was, therefore, contended that the defendant was entitled to a verdict on the first issue.

The plaintiff then proposed to call the attorney. This was objected to, but the evidence admitted without prejudice if the Court should think that it ought to have been tendered at first.

Byles, Sergt. also argued that even with his evidence the plaintiff's case failed, as the absence of consideration was proved.

Rule on both points.

... OF NEWENT.

Granting a warrant under 1 & 2 Vict. c. 74, is a judicial, not a ministerial act. Mandamus to justices to hear application made under that Act.

Keating ... cause against a rule obtained by *Newton* against justices either to grant a warrant under the above Act or to hear the application (*Supra*, p. 160). As to the first part of the rule, it is clear that the issuing the warrant is a judicial act. This is shewn by the recitals, and the facts of which the justices must be satisfied before they issue such warrant; that the relation of landlord and tenant exists; that the due notices have been served, &c. He further contended that the rule must also be dismissed as to the alternative on the ground that, in point of fact, the justices did hear the application and adjudicate upon it. It appeared that at the hearing a clerk had appeared on behalf of an alleged mortgagee of the premises, ... was produced, but had been taken, as proved, ... by the justices without it being proved. ... admitted the due notices, but claimed the ... mortgagee, and that then the attorney ... demanded the warrant.

Upon the affidavits, on both sides, *Keating* argued, ... was shewn that the case was admitted by the attorney to have been heard, and therefore it was immaterial whether improper evidence had been received, or a wrong decision come to by the justices.

Newton, in support of the rule, argued, that after the facts were proved, the justices had only a ministerial duty to perform. The Court, however, intimated their opinion against this view. He then contended that the affidavits shewed that the application to hear was made after the mortgage, and had been produced, and that it was not heard, and therefore that the rule must be made absolute to hear the application.

Lord DENMAN, C. J.—It is clear that the application was made to the justices to hear, and that they refused, in consequence of the claim on the part of the mortgagee. The admission by the mortgagee would not bind the person in possession, who did not appear, and they ought to have heard the evidence as required by the Act. This they refused to do; and although the warrant was demanded by the attorney for the applicant, he also required the case to be heard.

Rule absolute to hear the application.

KING *v.* TRESS.

Resealing record.

D. D. Keane moved to set aside the verdict for the plaintiff in this cause, which had been tried as unde-

...ment for a new trial, on the ground of irregu... It had been made a *remanet* to the sittings ... term, but the record had not been resealed as required by R. E. 32 Geo. 3, r. 1, previous to the sittings to which it had gone over.

Rule nisi not to go into the new trial paper.

Reg. v. The Printer of the Court Journal.

Criminal information.

The *Solicitor-General* moved for a criminal information against the printer and publisher of the *Court Journal*, on behalf of Lord Cardigan, for printing a certain alleged libel against him. The facts stated in the libel were positively denied by affidavits.

Rule nisi.

Hinkel v. Hockin.

New trial.

M. D. Hill, Q.C. moved in this case to enter a verdict for the defendant, or for a new trial. It appeared that the action was brought by the plaintiff, who was a commercial traveller, against Mr. Hockin, for certain wages due to him for being dismissed from Mr. Hockin's service. Verdict for the plaintiff for one month's wages.

Hill now sought to set aside this verdict on the ground that there was a variance between the contract stated in the declaration and that proved at the trial.

Rule nisi.

Wood v. Williams.

New trial.

This was an action brought against the defendant for an injury to the plaintiff's cab, alleged to have ... by being run against, by the defendant's .... The only evidence brought at the trial to shew that the cart belonged to the defendant was, ... was driven at the time of the accident by a ... who was a shopman of the defendant's, it being at the same time proved that the defendant had no cart of his own, but always hired one to take out his parcels of one Coup, who was to furnish the driver; and it was also proved that it was no part of the defendant's servants' duty to drive the cart, but only to see to the proper delivery of the parcels. The verdict was for the plaintiff.

Knowles, Q. C. now moved for a new trial, on the ground that the learned judge ought not to have let the case go to the jury, as there was no evidence to fix the defendant with a liability for the accident, as the servant was acting out of the scope of his duty, and had no authority from his master to drive.

Cases cited: *Middleton* v. —— (Sal. 282); *Quarman* v. *Bennett* (6 M. & W. 499); *Milligon* v. *Wedge* (1 A. & E. 737).

Rule nisi.

Bartlett v. Barclay.

New trial.

In this case, *Platt*, Q. C. moved for a new trial, on payment of costs, on affidavits stating that since the trial very material evidence had been obtained from witnesses who were not known to the defendant at the time of the trial, and who had come forward in consequence of hearing of the trial, and the result thereof.

Rule nisi.

***Ex parte* Farrer v. The Tithe Commissioners.**

Certiorari.

H. Hill moved for a *certiorari* to bring up the determination of the Tithe Commissioners, in an award made by them touching the boundary of the township of Ledborough, on the ground of defects on the face of the award, and also on affidavits of misconduct on the part of the commissioners.

Rule nisi.

R. v. The Mayor, Aldermen, and Councillors of Cambridge.

Where a corporation of a borough do not proceed within ten days to fill up an extraordinary vacancy in the council, caused by a judgment of ouster against a councillor, or a quo warranto, as required by 5 & 6 Wm. 4, c. 76, s. 27, the Court will, in its discretion, order the corporation to pay the costs of a mandamus, compelling them to proceed with the election. Semble, that this will not order it to be paid out of the borough fund.

This was a rule for a *mandamus* calling on the mayor, aldermen, and councillors of the borough of Cambridge to pay out of the borough fund the costs of a certain *mandamus* which had issued from this Court, commanding them to proceed to the election of a councillor for that borough.

It appeared that a *quo warranto* had been obtained by a burgess of Cambridge, calling on a Mr. Dyre to shew by what authority he exercised the office of town councillor for that borough, and on which judgment of ouster had been entered for the crown. The corporation, however, did not proceed to fill up the vacancy within ten days, as required by 5 & 6 Wm. 4, c. 76, s. 27, on which the relator obtained a *mandamus* to compel them to do so, and it was for the costs of this *mandamus* that the present application to the discretion of the Court was made.

Crompton now shewed cause against the rule, and contended that the costs of the *mandamus* were not expenses incurred by the corporation, in the election, and therefore were not payable out of the borough fund; that the corporation had acted *bonâ fide*, as they had been advised by counsel; that they could not proceed to elect without a *mandamus*: therefore the Court would not award costs against them. Further, that if they paid the costs out of the borough fund, they would be guilty of a breach of trust, as there was nothing in the Municipal Act to authorise them to do so.

Gambier, contrà.

Cases cited: *R.* v. *M'Kay* (4 B. & C. 640); *R.* v. *The Master and Fellows of Peterhouse* (1 Q. B. 314); *R.* v. *St. Saviour's, Southwark* (7 A. & E.); *Ex parte Turner* (W. W. & H. 305).

By the Court.—We think that the costs sought for are payable, but that the rule is improperly drawn up. We are of opinion that the corporation are liable, but we do not think that we are called on to direct that the money should be paid out of the borough fund. We think that this is an expense incurred in an election, and therefore that the corporation ought to pay it; we shall, therefore, make this rule absolute, striking out the words "out of the borough fund."

Rule absolute accordingly, with costs.

Reg. v. South Foreby.

Special case—Costs, when the Court will not entertain.

In this case *Archbold* applied for a rule calling on the appellants to shew cause why they should not pay certain costs. He stated that the court had refused last Term to hear this case as being in a form which the Court would not entertain, on the authority of *R.* v. *Ferry Frystone*; not that the appellants had refused to pay the costs of coming to the Court to oppose the case so granted by the sessions. The appellants had not concurred with the form of the case sent up.

Rule nisi.

Brown and Another v. Sugden and Another.

Gray moved for a rule to set aside the judgment in this case.

It appeared that judgment had not been signed until after the death of one of the defendants, but that a *fieri facias* had been issued, and the goods of the surviving defendant seized on the 12th of November, the judgment having been signed on the 11th. On the 14th, a fiat of bankruptcy issued against him, and assignees were appointed on the 7th of December. The assignees now sought to set aside this judgment and execution.

Cases cited: *Brooks* v. *Hodson* (13 Law T. 202); *Phillips* v. *Turner* (6 Bing. 236); *Roughtlege* v. *Giles* (2 Crom. & Jer. 163; 8 M. & W. 319).

Rule nisi.

Reg. v. The Justices of Surrey.

Certiorari.

Hawkins moved for a *certiorari* to bring up certain proceedings had in the matter of an appeal against a certain order of removal, or for a *mandamus* to the justices to erase the proceedings from their records.

It appeared that the order of removal was made on the 27th of March; the next sessions were held on the 9th of April; the second sessions were on the 2nd of July, continued by adjournment to the 24th of July, when an appeal against the order was entered, and respited. The appeal was heard at the third sessions on the 15th of October, when the order was quashed.

It was now contended, that if the appellants passed over the April session without entering and respiting the appeal, they were bound to try at the July sessions, and that they had no right then to enter and respite.

Case cited: *R.* v. *The West Riding* (4 M. & I. 327).

Rule nisi for the certiorari, but refused for the mandamus to erase the proceedings from the records.

Tuesday, Jan. 14.

Re John Long.

Prison relief—Mandamus return.

The *Solicitor-General* applied for a rule to set aside a *peremptory mandamus*, or to make a return to it.

This *mandamus*, which had been just refused, was afterwards granted in last Michaelmas Term. It was directed to the Governor of the Queen's Prison, directing him to allow John Long, a poor prisoner there, 3s. 6d. per week, under 5 & 6 Vict. c. 22, s. 8. The application to set aside this *mandamus* was made on these grounds:—By 53 Geo. 3, c. 113, it had been provided that no money set apart for poor prisoners out of the county funds (then under the control of the justices) should be paid to any poor debtor after the first day of the Term next following the time when he should be charged in execution. The 5 & 6 Vict. c. 22, s. 9, repealed this provision, and the 8th section orders this money to be paid to the keeper of the Queen's prison, "to be by him applied under the direction of one of his Majesty's Secretaries of State, for the relief of the prisoners confined in the prison," without distinction. The 16th and 17th sections empower the Secretary of State to make regulations. He made them accordingly. It appeared that John Long had for seventeen months received 6s. weekly as master of the racket court, and according to the regulations, was not entitled to the prison allowance beyond twelve months. Under these circumstances it was contended the Court of Queen's Bench had no jurisdiction. [Lord Denman, C.J.—That is rather too large an assertion in the matter.] No; if the Act clearly provides that the ... be ... to a ...

Reg. v. The Justices of Cumberland.

Knowles, Q. C. shewed cause ... to quash the appointment of ... township of ... St. Cuthbert, Carlisle. ... parts, and it was contended ... been separated from ... the only part within the liberty of ... and had appointed its own overseers ... 1716 and 1728. Bonds ... separate townships for the maintenance ... had been produced, dated between ... *Knowles* relied on 59 Geo. 3, c. 95, which ... the separation of towns corporate and ... ful where it appears to have separated ... years before that Act passed.

By the Court.—But this is not an entire town, but part only of a city.

Rule to frame ...

Muir v. Parrott.

Arbitrators must always find on each ... and must acquaint themselves ... with the subject-matter of the award so as to ... accurately.

A rule *nisi* had been obtained for setting aside an award in this case under these circumstances:—The plaintiff and defendant were both dyers and bleachers, having their works at the same stream, and the reference was to determine the plaintiff's right to the stream unpolluted by the defendant's works, the defendant having put lime into the stream, which obstructed its course and polluted it. ... The defendant had pleaded not guilty, ... and a denial of the plaintiff's right. The jury found for the plaintiff, damages 2,000*l.* subject to be reduced. The terms of the reference were that the arbitrator should determine the right, and should regulate the proper mode of enjoying the stream. The arbitrator awarded generally for the plaintiff, damages 40*l.* That the plaintiff had a right to the stream, subject to the defendants right of first using it for his defendant's *dying* business; he then went on to say that the defendant shall use all reasonable means of purifying the water, and that it shall be passed after it has been used by the defendant for his dying processes through filtering lodges according to the most approved method, so that it may be always used by plaintiff in his business as bleacher without injury thereto. The rule sought to set the award aside, first, because there was no distinct finding on the issues severally; and second, because the award was uncertain; and third, because it was not final.

J. S. Wortley, Q.C. (with whom was *Watson*, Q.C.) now shewed cause. The award is good. First, as to the finding, if it so awards that the inference necessarily arises that the finding, though general, is on all the issues, it suffices. (*Jackson* v. *Yabsley*, 4 B. & Al. 848; *Duckworth* v. *Harrison*, 4 M. & W. 432; *The Marquis of Anglesey* v. *Dibben and Another*, 10 Bing. 568; *Ersborne* v. *Hart*, 5 M. & W. 30; 9 A. & Ell. 235.) Here the arbitrator has found for the plaintiff; he could not have done this had he found either issue; for here both issues go to the whole cause of action. [Wightman, J.—The case of *Brook* v. *Parson* (13 Law Journal 50,) was cited before me when the rule was obtained.] Great doubt has since been thrown on that case by the strong expressions of the judges in the Exchequer on Saturday last, in the case of *Gilbert* v. *Gilbert*, though acted on in *Avelett* v. *Goddard* (11 L. J. 129, C. P. [Wightman, J.—Here the defendant has denied the right altogether. The award speaks merely of the right as to dying, and not as to bleaching. That is, nevertheless, the issue.] But the declaration says, in manner hereinafter mentioned, thus defining and qualifying the right; and on this there is a finding. [Wightman, J.—The breach is immaterial, the issue is first ... stated. Coleridge, J.—The finding strikes ... of the two trades.] It is not necessary that the arbitrator should find in the very terms of the reference or pleadings. *Allen* v. *Lowe* (4 Q. B. 66). The finding of damages for the plaintiff is equivalent to a separate finding on both issues. *Cooper* v. *Langdon* (9 M. & W. 60), [Lord Denman, C. J.—But there is the case of *Bourke* v. *Lloyd* (10 M. & W. 550), in which the Court of Exchequer seem to have departed very much from their own decision in *Cooper* v. *Langdon*.] *England* v. *Davidson* (9 Dowl. 1052) is also directly in point, and shews that there need not be a finding on each separate issue. But the Court of Exchequer entertain great doubts how as to the authority of *Bourke* v. *Lloyd*. The finding is also sufficiently certain as to the future enjoyment of the water. There are several affidavits from scientific persons, stating that they consider the award, as to filtering the water, distinct, ...

[illegible] plication, and [illegible] for the case. If the arbitrator had stopped after saying that all reasonable means ought to be [illegible] the water, it would have sufficed. It is matter of evidence what are the best means, which [illegible] perfectly understand.

[illegible], Q. C. [illegible] called upon in support of the award.

Lord DENMAN, C. J.—There are three objections taken to this award. On the first point, namely that there is no distinct finding on each issue. We are embarrassed by a multitude of decisions. My own opinion on it is that I sincerely hope it may never arise again. I hope that arbitrators will learn henceforth to enter a verdict in express terms upon each issue. In this manner I find for the plaintiff on the first issue; I find for the plaintiff on the second issue. That is the only prudent and proper course to avoid these objections. We are of opinion that the other objections to this award must prevail, and that it is uncertain and not final, neither does it sufficiently define the measures that are to be adopted with respect to purifying the water from the dyeing apparatus of the defendant. The defendant may be made subject to an attachment if he fails to do what he is desired to do by the award, and it must be, therefore, clearly and fully defined. Instead of stopping litigation, we should be encouraging it were we to hold these statements sufficient. "The most approved method" is clearly open to a different construction at different times. The affidavits state that the deponents understand the process, but not that it is ascertained which is the most approved one. An arbitrator incurs great risk if he does not make himself scientifically acquainted with the work he undertakes to award upon. He should make up his mind as to what is the proper mode of securing the right or enjoyment in question, and there state plainly and accurately what is to be done, and moreover so state it that it shall be known and understood at all times to come. The danger would be great if other persons hereafter may construe his award according to some varying and indefinite usage. With these objections before us it is impossible that we can confirm this award.

PATTESON, J.—If it be impossible to reconcile the cases of *Brook* v. *Parsons*, *Bourke* v. *Lloyd*, and *Cooper* v. *Langdon*, I should proceed on that of *Bourke* v. *Lloyd*. The Court of Exchequer says, in *Cooper* v. *Langdon*, that "a plaintiff may fail in proving an agreement for want of stamp, and that were the defendant to prove the other issues, there would be no inconsistency in finding them all for him." That seems to me the explanation. But I quite agree with my Lord, that some rule should be laid down, and that the arbitrator should in all cases expressly and distinctly find on all the issues. Mr. Watson thinks the award would be good if it stopped at "all reasonable means," and did not go on to award the particular mode of carrying out the award. If so, there would be nothing but contradictory evidence as to what reasonable means meant. It is, therefore, the duty of the arbitrator to specify with certainty the means to be taken. It is suggested that the particular words may come within the general ones. I think there is no case which says that a direction, when bad, may be struck out, and leave the rest. The award cannot be supported.

COLERIDGE, J.—I quite agree that the award is bad, on the 2nd and 3rd grounds. Strong expressions may be found in the Reports, that the Court must not be too astute or nice in the construction of awards. These expressions must not be too much relied upon. Awards determine important matters or ever; and they cannot be too carefully worded.

WIGHTMAN, J.—I concur in the great importance that arbitrators in all cases should find specifically upon each issue. This award is clearly uncertain. It ought to be so certain that the party may have no doubt or difficulty how to perform it. There is a twofold uncertainty here in the means to be used to purify the water, whether all the most approved modes are to be adopted, or whether only the particular one, and then there is a doubt what are most approved modes. *Rule absolute, for setting aside the award.*

HALE v. RHODES and OTHERS.

Negligence of attorney in investigating title.

Watson, Q.C. moved for a rule to shew cause why the verdict of nonsuit in this action should not be set aside, or a new trial had.

This was an action brought against the defendants, who were attorneys, for negligence in the investigation of a security for 600*l*. advanced by Hale to one Rose, which consisted of a conveyance of a reversionary interest in some property in Somersetshire. It appeared, however, that by the will of one Tooke in 1791, there was a power of sale of this property, which the trustees had exercised in 1799. This the defendants had failed to ascertain; and the point turned upon the words in the declaration which had been copied from 2 Chitty on Pleading, 246, edit. 6, and contained the averment that plaintiff retained the defendants "to take due and proper care that the same should be a *sufficient security* for the repayment" of the said sum of money and interest." This, it was contended on the other side, meant a sufficient security in point of value. *Rule nisi.*

BALDOCK v. MORRIS.

Hall applied to amend the rule in this reference, and that the costs should abide the event.

Rule refused.

REG. v. JUSTICES OF WORWICKSHIRE.

Notice of appeal—Mandamus.

Hayes, with whom was *Mellor*, shewed cause why a *mandamus* should not issue to compel the justices of Warwickshire to enter continuances, and hear an appeal against an order of removal by the parish of Coleshill.

The case was argued at length for the respondents, when the Court discovered that the appellants had omitted to aver that they had given notice of the appeal in sufficient time to comply with the regulations of the sessions.

I. Spooner, for the appellants. *Rule discharged.*

GASCOIGNE v. WALTER.

Ogle moved for a rule to shew cause why the demurrer in this cause should not be set aside for frivolity.

Wednesday, Jan. 15.

REG. v. OVERSEERS OF ST. OBBARD.

Mandamus to overseers to grant certificate under 3 & 4 Vict. s. 61. (Sale of Beer Act.)

The Solicitor-General moved for a rule *nisi* calling on the overseers of the parish of St. Obbard, requiring them to grant a certificate of residence to a person desirous of taking out a license to retail beer, as required by 3 & 4 Vict. c. 61, s. 2. A request had been duly made, but no reason for refusal given except they fancied they had a discretionary power, and they did not wish a retail beer shop to be opened in that locality. *Rule granted.*

NUTT v. ABRAHAM.

Evidence under replication to set off.

Crowder, Q. C. moved to set aside the verdict for the plaintiff, and for a new trial on account of the admission of improper evidence, and because the verdict was against evidence.

The plea was set off upon a bill of exchange for 23*l*. 10s. drawn by the plaintiff, and indorsed to the defendant.

Replication.—Not indebted. Proof that time had been given to the acceptor, and that drawer was thereby released. In *Chappell* v. *Durston* (1 C. & J. 1), it was decided that the Statute of Limitations must be specially replied to. Set off, which is in the nature of a cross action.

PATTESON, J.—The statute does not discharge the debt. The new rules do not apply here, and this might have been given in evidence under the general issue.

Crowder, Q. C.—Then the evidence shewed that, in fact, there was no time given.

Lord DENMAN, C. J.—We will look at the letters which passed between the parties. *Cur. adv. vult.*

STINTON v. BLOXHAM.

This was an action with two counts. The first for distraining for more than was due, the second for an excessive distress. The plaintiff had a verdict for 10*l*. on first count, and one farthing on the second.

Crowder, Q.C. now moved to set aside the verdict or to reduce the damages. It appeared that a distress had been put in for 50*l*. 10s. when the ground-rent 10*l*. had been paid the day before to the ground landlord. There was a question whether the landlord had by previous conduct authorized this payment to be made; but *Crowder* also contended that even if this was the fact, the right to distrain for it was not lost until notice of the payment had been given by the tenant to the sub-landlord, the defendant in this action.

Rule granted as to verdict being against evidence. Cur. adv. vult. on the other ground.

REG. v. MANCHESTER and PRESTON RAILWAY COMPANY.

Certiorari will not lie to remove an inquisition to assess damages under compensation clause in Railway Act, because the warrant contains the superfluous words "if any."

Baines, Q. C. shewed cause against a rule obtained by *Atherton* for a *certiorari* to remove an inquisition under the Act 7 Wm. 4, c. 22, constituting the above railway. The alleged defects were patent on the face. 1. That it did not appear that twenty-four jurors had been summoned. 2. That it did not appear that twelve had been drawn from the twenty-four. 3. That it purported to be the judgment of the sheriff when it was signed by the under-sheriff, and should, therefore, have been his judgment. 4. That the jury had no power to give a verdict as they had done that there were no damages, but were bound to give some.

Baines objected, that as the Act provided that no *certiorari* should be had in respect of proceedings in pursuance of the Act, this rule could not be made absolute. The cases shewed that where the proceedings originated properly jurisdiction attached, and subsequent irregularities were immaterial. (*Rex* v. *Cassons*, 3 D. & R. 36; *Reg.* v. *Bristol and Exeter Railway*, 1 A. & E. 563; *Reg.* v. *Sheffield Railway*, 11 A. & E. 196; *Reg.* v. *Bristol and Exeter Railway*, [illegible] 202.)

Atherton.—No jurisdiction here attached. The warrant by which the jury was assembled was void, as not being under the Act. Sect. 63 shews that they are to assess the damages, and that their only duty is to determine the quantum. That there is damage is assumed by their being assembled at all. They have here returned "no damage." The warrant was to assess the damages, "*if any*." This was contrary to the Act.

Lord DENMAN, C. J.—Are the jury precluded from saying there are no damages?

Atherton.—Sect. 63 shews they are to decide *quantum*. *Reg.* v. *Walker* (3 Q.B. 714) is a case of a jury being summoned without any result. The Court will not extend this clause, as there is no other remedy.

Lord DENMAN, C.J.—It would have been better to have omitted the words "if any," but they make no difference as to the duty of the jury. They are to inquire and assess the damages; and even supposing that the fact of some damage is assumed, by the warrant being issued, the jury would not be justified in returning any other verdict but that of "no damages," if they were satisfied that none had been sustained.

The rest of the Court concurred.

Rule refused.

REG. v. THE AUDITOR OF THE PARISH OF BURNHAM.

Certiorari to return audits.

M. D. Hill, Q. C. moved for a *certiorari* to remove the audits of certain parish accounts. Under 7 & 8 Vict. c. 101, s. 35, the auditor is required to state his reasons in writing when required by party aggrieved. By s. 37, existing auditors are continued in office; at least such, in practice, has been the construction put upon that section. The party against whom this rule is moved is auditor for two unions, in one of which the parish of Burnham is situated. He has refused to give his reasons for allowing certain charges, and these charges happen to be those paid to himself as solicitor to the union. He is not qualified to be auditor of his own accounts.

COLERIDGE, J.—Has he possession of the accounts now?

Lord DENMAN, C. J.—You must direct your rule to all parties.

M. D. Hill.—We have given notice both to the parish officers and the auditor. *Rule granted.*

DANILL v. PIDDING.

Martin, Q. C. moved for a new trial on the ground of misdirection. The points were, that as it appeared there was a bought note, the contract could not be proved without its production; that if there was none, then the requisites of the Statute of Frauds were not complied with, for the subsequent recognition of a payment made by the brokers, by way of deposit at the sale, was insufficient. *Rule granted.*

REG. v. JUSTICES OF HERTFORDSHIRE.

If a single member of a court, incapacitated from interest by being a party, interferes in the proceedings, they are void. A mortgagee of tolls cannot sit on an appeal against an order of petty sessions for payment to the surveyor of highways for repairs.

Wordsworth shewed cause against two rules obtained by *Hawkins*, one obtained June 12, 1844, for a *certiorari* to remove a certain order of petty sessions, whereby 9*l*. 5s. was ordered to be paid pursuant to the Highway Act to the surveyor of the highways, and the other obtained May 6, 1844, to remove an order of quarter sessions whereby the said order was confirmed on appeal. The *certiorari* for the order of petty sessions is clearly too late. *Reg.* v. *Martin* (2 Q. B. 1037) is distinguishable. The affidavits for the removal of the order of quarter sessions attempt to establish malversation of some of the parties. They state that Mr. Fordham and Mr. Fitzjohn, who were present at the quarter sessions, were creditors of the turnpike trust, and that Mr. Fordham was one of the magistrates who had made the original order, and was a respondent in the appeal. The affidavits on the other side deny that Mr. Fordham is a creditor, and state that although Mr. Fordham was present, he took no part in the decision. The charge that he was seen conversing with the other magistrates during the argument is too vague to call upon the magistrate to answer.

Lord DENMAN, C.J.—It makes out a probable case.

Wordsworth.—A magistrate's conduct is not to be so lightly questioned. Mr. Fitzjohn was a creditor, and he states that he took no active part in the proceedings, but voted, as he thought he had a right to do so. It was argued, that in point of fact he was not interested, for the money was to be laid out in the repair of the road, and he would be entitled to the tolls as mortgagee, whatever the state of the road was, and even if interested, as it appeared that his vote did not decide the question, as all but two out of ten magistrates affirmed the appeal. For this position, the judgment of Patteson, J. in *Reg.* v. *Cheltenham* (1 Q. B. 467) was cited.

COLERIDGE, J.—Often one magistrate, the [illegible] man, decides the appeal.

Lord Denman, C.J.—The order of quarter sessions must be brought up to be quashed. Both the magistrates were disqualified. The creditor was clearly interested, because the payment of the money for the repair of the road would be a benefit to the mortgagee. I am most decidedly of opinion that the presence of any one interested party vitiates the whole proceedings. We cannot enter into any analysis of the effect of the interest upon his judgment, or of his influence upon the others. Then Mr. Fordham was a respondent, and therefore a party in the cause. He might have been ordered to pay the costs. The affidavit as to the part he took in the proceedings was sufficient to require a specific statement on his part. We must be very jealous of allowing any interested parties to act as judges.

Patteson, J.—On further consideration, I am satisfied that the rest of the Court in *Reg.* v. *Cheltenham* were right. The question of the right constitution of the Court depends not upon the degree of influence any one member may have had upon the decision. It is an unsound and uncertain rule. The simple question is, Has he taken part in the proceedings or not? A mere surmise is not, I admit, sufficient to call for an answer, but the affidavits here contained much more. Then the interest is clear, although remote.

Coleridge, J.—I did not take part in the decision of *Reg.* v. *Cheltenham*, but I take this opportunity of saying I quite concur in it; nor do I think that, if the report is examined, my brother Patteson will be found to have differed much.

Wightman, J. concurred.

Certiorari granted.

Wordsworth, in consequence of an intimation by the Court that the removal of the order of the quarter sessions drew with it the order of the petty sessions, here applied to discharge the second rule for *certiorari*, as unnecessary. It was also out of time.

Hawkins, contrà.—The objection as to time does not apply. Pending an appeal, no *certiorari* will be granted; and cited *Reg.* v. *Justices of Middlesex* (5 A. & E. 676). *To be mentioned again.*

—— v. ——

Distringas—Two calls.

Humfrey applied for a *distringas*, stating that three calls had been made, upon which

Coleridge, J. said: We have repeated more than once that two calls are sufficient, and two only ought to be allowed. (See 9 Dowl. 728; and 1 Dowl. & Lownd. 881.)

Reg. v. Birch.

Practice—Entry of judgment of non pros. in Exchequer Chamber on the roll.

Pashley moved for a rule calling on the prosecutors in this case to shew cause why the entry of judgment of *nolle prosequi* upon the roll should not be erased with costs for irregularity. It appeared that the plaintiffs in error had exceeded the time allowed for assigning errors, and the prosecutors had signed judgment of *non pros.* Application had been made to Lord Chief Baron Pollock to set it aside, but he thought the Court of Exchequer Chamber alone had the power. The plaintiffs in error had thereupon obtained a second writ of error, but on making up the roll found that the first writ of error, and the proceedings thereon, had been entered up on the roll hereby greatly increasing the expense of the transcripts. It was now argued, that 11 Geo. 4 & 1 Wm 4, c. 70, s. 8 (see Chitty's Archb. 377) applied only to cases in which the Exchequer Chamber had "altered or affirmed" the judgment below, or at least, that leave of the Court was necessary. 2nd, That there was no *remittitur* entered.

Patteson, J.—The defendant has a right to the judgment as you admit, and it must be entered somewhere. Where else can it be entered?

Wightman, J. — Either party may enter the judgment.

By the Court.—The entry of a *remittitur* is not necessary in this case. *Rule refused.*

Hope v. Harman and Others.

Deed of gift operating as a will.

Sir *T. Wilde*, Serjt. moved for a rule *nisi* for a new trial in this case, which relates to the Hope jewels. The damages recovered were 40,000*l.* The points were as to the validity and construction of a deed purporting to be a deed of gift, which upon the face of it was ambiguous. The facts will be more fully reported hereafter.

Cases cited: *Thorold* v. *Thorold* (1 Phill. 1); *Masterman* v. *Maberley* (2 Hay, 247); also 2 Hagg, 431; Ambl. 264. *Rule granted.*

Thorowgood v. Robinson.

Effect of changing the nature of a chattel to vest the possession in a wrong-doer.

This was an action in case, but the count in trover was only material to the present motion. To this not guilty and not possessed were pleaded.

Knowles, Q.C. now moved to set it aside on the ground of misdirection and as against evidence. He said that instead of leaving it to the jury to say whether the facts amounted to a conversion, Lord Denman ought to have directed them that it was a conversion. The second point was that, admitting the chalk was wrongfully taken by the plaintiff from the defendant's land; yet the plaintiff had made it his own by turning it into lime. (2 Blackst. Com. 404.)

The Court considered that the direction was quite correct, but that probably the plaintiff was entitled to a verdict on the plea of not possessed.

On this, *Platt*, Q.C. consented that the verdict should be altered, and the rule not granted.

BUSINESS OF THE WEEK.

Saturday.

Thomas v. Seir. *Cur. adv. vult.*
Macdonald v. Carr. *Cur. adv. vult.*
Reg. v. Moseley. *Part heard.*

Monday.

Evans v. Lister.—*Whately*, Q. C. moved for a new trial, on the ground that the verdict was against evidence. *Rule refused.*

Reg. v. The Mayor, Aldermen, and Burgesses of Stafford.—*A. Stephens* moved for a *mandamus*. *Rule refused.*

Warren v. Swinburn.—*C. Lucas* moved for a rule to revive a rule for a *distringas* in this case. *Rule nisi.*

Tuesday.

Gascoigne v. Walter.—*Ogle* moved for a rule *nisi* to set aside the demurrer in this cause for frivolity. *Rule refused.*

Donaldson v. Haddon. *Rule refused.*
Simmons v. King. *Rule nisi.*
Reg. v. Gardner. *Cur. adv. vult.*

Wednesday.

Baron de Bode v. The Queen.—*Hugh Hill* applied to the Court to fix a day for this case
Monday next fixed accordingly.

Willoughby v. Willoughby.—*Cur. adv. vult.*

Dodds v. Whittam.—*Butt* moved for a new trial, on payment of costs, on the ground of surprise. *Rule nisi.*

Pitcher v. King.—*Watson*, Q.C. moved to set aside the nonsuit, on an affidavit that the defect in the evidence upon which it had proceeded ought not to have been taken advantage of by the defendant under the circumstances. *Rule refused.*

Grenfell v. Edgcumb.—*Crowder*, Q.C. moved to set aside the award in this case.
Allowed to be moved for again.

Lowe v. Penn.—*Platt*, Q. C. moved for a new trial. *To be moved for again.*

Davis v. Curling.—*Petersdorff* moved for a rule for a nonsuit, as there was no evidence to support the declaration, which was an action against a surveyor of highways, containing special averments, and because the notice required by the statute was not given. *Rule granted.*

Thompson v. Blurton.—*Knowles*, Q.C. moved to set aside the verdict for the plaintiff in this case, as against evidence. *Rule nisi.*

COURT OF COMMON PLEAS.

Saturday, Jan. 11.

Valpy v. Manby.

Voluntary payment—Execution creditor.

Talfourd, Serjt. moved for a rule *nisi* to set the verdict in this cause aside, and to enter a nonsuit, pursuant to leave at the trial. The execution had arisen out of a judgment recovered against certain parties who had become bankrupt, and of whom the plaintiff was an assignee. It was contended that no actual seizure had taken place, under the judgment, by the sheriff. The sheriff's officer had, however, remained in the neighbourhood. The assignees, before a sale of the bankrupt's effects, applied to the sheriff to ascertain whether he intended to sell under the judgment; on being answered in the affirmative, the amount of the execution creditor's debt was tendered, under protest, and received 372*l.* 6s. 9d. The question for the decision of the Court was, whether the payment made was a voluntary payment, or made under compulsion, so as to entitle the assignees to recover it back again. This payment was made with a full knowledge of all the facts, and therefore if not made under compulsion would be made in their own wrong.

Cases cited *Lindon* v. *Hooper* (Cowper, 414); *Atlee* v. *Backhouse* (3 M. & W. 633); *Parker* v. *Great Western Railway Company* (the last number of Scott's N. R. 835). *Rule nisi.*

Burgess v. Gray.

Bill of exception.

Byles, Serjt. on mentioning the case to the Court, suggested the case of *Bush* and *Steinman* (1 B. & P. 404).

Tindal, C. J.—In this case the bill of exception has fallen to the ground. It is very convenient that a bill of exception should always be accompanied by some degree of form, because it gives the judge an opportunity to set himself right with the jury where necessary.

Gann v. Knowles.

This Court has no power to bring up a defendant who is in the custody of the keeper of the Queen's Prison, for a criminal matter, in order that he may be charged in execution in a civil action. The practice in this respect has not been altered by the statute 5 & 6 Vict. c. 22.

Channell, Serjt. shewed cause against a rule obtained by *Byles*, Serjt. last term, calling on the plaintiff to shew cause why the writ of *habeas corpus* should not be set aside for irregularity.

The defendant was brought up on the last day of term by a *habeas corpus* directed to the keeper of the Queen's Prison, in order to be charged in execution with a judgment debt of 60*l.* 4s. recovered against him by the plaintiff. The return to the writ by the keeper of the prison was, that the defendant was in custody under a warrant of commitment for a misdemeanor. It now appeared that judgment in this action was signed on the 9th December, 1843, and that on the 6th Feb. 1844, the defendant was convicted on an indictment for a conspiracy, and sentenced by the Court of Queen's Bench to be imprisoned for 18 calendar months, under which the defendant was taken into custody on the 10th February.

The question was, whether the practice which used to prevail under which a defendant could not be brought up to this Court to be charged with a civil action when he was in custody on a criminal account had been altered in this respect by the stat. 5 & 6 Vict. c. 22, which had abolished the Fleet Prison, and constituted the Queen's Bench Prison under the name of the Queen's Prison, the only prison for debtors, &c. The cases cited by *Byles*, Serjt. (*Walsh* v. *Davies*, 2 N.R. 245; *Jones* v. *Danvers*, 5 M. & W. 234; and *Freeman* v. *Weston*, 1 Bing. 221) were referred to, and it was submitted, on the part of the plaintiff, that the inference to be drawn from them was, that where the party was in the custody of the sheriff or other officer of the Court, or in the custody of an officer of any other court over which the Court had jurisdiction, the defendant might have been without difficulty charged in execution in the civil action. Now, as by the Act 5 & 6 Vict. c. 22, the Queen's Prison was the only prison for debtors, and to which the defendant must have been sent if originally taken in execution in this action, and the Court had now the power of directing the writ to the officer in whose custody the defendant in fact was, the reason which formerly prevailed no longer applied, and the proceedings which had been adopted were therefore regular.

Byles, Serjt. contra, submitted that this Court was in the same situation as the civil side of the Court of Queen's Bench was before the 5 & 6 Vict. c. 22, which had no power of charging the defendant when in custody on criminal process; but the practice was in that Court, before the Act, to have had the defendant in such case brought up by a *habeas corpus* issued on the Crown side of the Court. *Re John Taylor* (3 East, 232.) That practice has not since been altered, and as it would have been irregular in the Court of Queen's Bench before the Act, so it must equally, it was submitted, be now for the Court of Common Pleas.

Maule, J.(a)—This is a writ of *habeas corpus*, which has been sued out of this court, in order that the defendant may be charged in execution at the suit of the plaintiff. The defendant is now, since the 5 & 6 Vict. c. 22, in the custody of the same officer of the court he would have been if he had been taken in execution when at large. The defendant it appears is a prisoner under a sentence of imprisonment passed by the Court of Queen's Bench for a misdemeanor, and the question is whether he has been properly brought here by the writ of *habeas corpus* out of such custody. Before the statute 5 & 6 Vict. c. 22, the practice was, when the party was in the criminal custody of the Court of Queen's Bench, for the party to be brought up by a writ issued on the crown side of that court, in which alone the criminal jurisdiction of that Court resided. This statute does not alter the practice in that respect. I think it strange if this court should have a larger power than the civil side of the Court of Queen's Bench, but in fact this Court has not a greater power, and as that Court has not the power, the issuing of the writ here is irregular.

Cresswell, J.—I am of the same opinion.

Erle, J.—I found my judgment on the analogy to the practice of the Court of Queen's Bench before the statute. It was irregular before the statute to sue in such case the writ of *habeas corpus* out of the civil side of that court, and as this has not been altered by the statute, it must therefore be taken to be irregular to sue it out now in this court. *Rule absolute.*

Gilling v. Dugan.

A letter from the defendant, tending to prove a great part of the plaintiff's case, posted in Hampshire and received in Middlesex, and written in answer to a letter posted in Middlesex, is a sufficient compliance with an undertaking by the plaintiff to give material evidence in the county of Middlesex.

(a) Tindal, C. J. was absent, being engaged in the Privy Council.

Byles, Serjt. shewed cause against a rule obtained on behalf of defendant to enter a nonsuit pursuant to leave reserved at the trial, if the Court should be of opinion that the plaintiff had not satisfied an undertaking to give material evidence in the county of Middlesex. The action was for goods sold and delivered to the defendant by one Kerrison, an agent of the plaintiff; and the evidence offered at the trial was the following letter from the defendant to Johnson, the real plaintiff in the action, he being the purchaser of Gilling's goods and debts, &c.:—"I must plainly tell you again, I have no account with Mr. Gilling or you. The account is with Kerrison, as can be proved by his own letters to me. The account with Mr. Kerrison is under 40*l.* and if he will give me an order to pay you a bill at three months, I shall have no objection." This letter was posted in Hampshire, but received in Middlesex, and was in answer to a letter from Johnson demanding payment, which was posted in Middlesex. *Linley* v. *Bates* (2 C. & J. 669) was referred to.

The COURT, saying the letter proved the whole of the plaintiff's case except the agency, called on

Shee, Serjt. in support of the rule, who referred to the case of *Collins* v. *Jenkins* (4 Bing. N. C. 225), and *Curtis* v. *Drinkwater* (2 B. & Ad. 169).

The COURT held the undertaking to be satisfied.

Rule discharged.

Re WALDRON.

The affidavit for the re-admission of an attorney must, in pursuance of the rule of Court, state the place of abode of the party applying during the last preceding year.

Byles, Serjt. applied for the re-admission of Mr. Waldron as an attorney, but as the affidavit had not, in compliance with the rule H. T. 6 W. 4, stated the place of abode, during the last preceding year.

Application was refused.

GERISH *v.* CHARTIER.

A contracted to build for the defendant some cottages, and the plaintiff supplied part of the work to complete them. In an action for the value of the work so supplied, A was called by the defendant, and proved that he the witness ordered the work of the plaintiff, and that on the balance of accounts between the defendant and himself, he had been more than paid for the work supplied. Held, that such evidence was admissible.

It appeared that the action was brought for fixing iron railing, and doing certain work to twelve cottages. The cottages were to be built by one Amos, a builder, and the defendant contended at the trial that the plaintiff's contract for the work was made with Amos, and not the defendant, and that therefore the defendant was not liable. To prove this, the defendant called Amos as a witness, who stated that he himself made the contract with the plaintiff, and that he, Amos, had received money from the defendant on account of the cottages. The witness, who had become a bankrupt after the work had been done, was then asked what was the state of the accounts between him and the defendant at the time of the bankruptcy, whether the balance was in his favour or against him? and the witness said it was against him by 150*l.* This evidence as to the state of the accounts was objected to on the part of the plaintiff, but received by the learned judge.

It was now submitted that the evidence was material and admissible, or even if not admissible, it was, though important, not indispensable, but that there was clearly sufficient evidence to support the verdict without it, and that the Court would not, therefore, grant a new trial, as, without such evidence, a verdict the other way would have been against evidence. As to this was cited *Doe dem. Lord Teynham* v. *Tyler* (6 Bing. 561), and *Crease* v. *Barrett* (1 C. M. & R. 933), where Parke, B. says, "The authority of *Doe dem. Lord Teynham* v. *Tyler* was quoted to shew that the Court have a power to refuse a new trial where evidence has been improperly rejected, if in their judgment the rejected evidence ought to have no effect, and there is enough to warrant the verdict against the party on whose behalf that evidence was offered, supposing it to have been admitted." *Doe dem. Garrod* v. *Olley*, (12 A. & E. 487), and *De Rutzen* v. *Farr* (4 A. & E. 53) were likewise referred to.

Shee, Serjt. in support of the rule, contended that the cottages were to be built for Chartier, the defendant, and that he alone gave the order to the plaintiff for the work; Amos, if present during the time the order was given, acting only as an assistant to give the defendant the benefit of his judgment. [Amos contracted to do this work for the defendant. The substance of his evidence is that he ordered it, and that the defendant has in fact paid him for it. You have to say that that evidence is not admissible.—Maule, J.]

The COURT said that they had no doubt the evidence was admissible; that although it might at first appear to a certain extent to be *res inter alios acta*, it was not in fact so; for that, as far as Amos had interfered, it was as agent for the defendant.

Rule discharged.

ELLIOTT *v.* ALLEN and OTHERS.

A local Act (5 Geo. 4, c. 125) provided for the appointment of overseers of the parish of St. Mary, Islington, and also that no action should be brought against any person "for any thing done in pursuance of that Act," before 21 days' notice of action. The 9 Geo. 4, c. 40, imposes certain duties on overseers in the case of a lunatic pauper. Held, that persons appointed overseers under the local Act, who had committed a trespass in mistakingly acting under the 9 Geo. 4, c. 40, without having pursued its directions, were not entitled to notice of action.

This was an action of trespass and false imprisonment against the overseers and other officers of the parish of St. Mary, Islington. The defendants, with the exception of Beavan, who had suffered judgment to go by default, pleaded, amongst other pleas, that the trespasses in the said declaration mentioned were acts, and each and every one thereof was an act done and committed by the said defendants, after the passing of a certain Act of Parliament made and passed in the fifth year of the reign of our Sovereign Lord King George the Fourth, entitled "An Act to Repeal several Acts for the Relief and Employment of the Poor of the Parish of St. Mary, Islington, in the county of Middlesex; for Lighting, and Watching, and preventing Nuisances and Annoyances therein; for Amending the Road from Highgate through Maiden-lane, and several other Roads in the said Parish, and for providing a Chapel of Ease and an additional Burying-ground for the same, and to make more effectual provisions in lieu thereof;" and also after the passing of a certain other Act of Parliament, made and passed in the session of Parliament held in the fifth and sixth years of the reign of our Lady the now Queen, entitled, "An Act to amend the Law relating to Double Costs, Notices of Action, Limitations of Action, and Pleas of the General Issue, under certain Acts of Parliament." And said defendants further say that the said trespasses in the said declaration mentioned were things, and each and every of the said trespasses was a thing done in pursuance of the Act of Parliament in this plea first above-mentioned, and that no notice of commencing this action was given to the clerk to the trustees in the said first Act mentioned, one calendar month before the commencing of the said action, pursuant to the statute in such case made and provided, verification, &c.

To which plea the plaintiff replied, that the said trespasses in the declaration mentioned were not, nor were any of them things, nor was either of them a thing done in pursuance of the said Act of Parliament in the said last plea first mentioned in manner and form as in that plea alleged.

At the trial, before Tindal, C. J. at the Middlesex sittings after Easter Term, it appeared that the overseers had been informed by a letter from the chief clerk to the magistrates at Clerkenwell police court, that the state of mind of the plaintiff was such that the magistrate, Mr. Greenwood, thought it was a fit case for parochial interference, and required them to act under the Act 9 Geo. 4, c. 40, which is for the providing for the care and maintenance of pauper lunatics. The 38th section of that Act authorizes a justice, upon its being made known to him that any poor person is deemed to be insane, to require the overseers to bring such person before the justices for examination. The defendants, however, instead of following the requisites of the Act, caused the plaintiff to be taken to the workhouse, from whence he was afterwards brought before the magistrates, when plaintiff then appearing to be in a sound state of mind, no further step was taken, and he was dismissed. Two of the defendants were appointed overseers of the parish of St. Mary, Islington, under a local Act, 5 Geo. 4, c. 125, intituled "An Act to repeal several Acts for the Relief and Employment of the Poor of the Parish of Saint Mary, Islington, in the County of Middlesex; for Lighting, Watching, and preventing Nuisances and Annoyances therein; for amending the Road from Highgate through Maiden-lane, and several other Roads in the said Parish; and for providing a Chapel of Ease and an additional Burial ground for the same; and to make more effectual Provisions in lieu thereof." The 98th section of this Act enacts that no action or suit shall be commenced against any person or persons for any thing done *in pursuance of this Act* until twenty-one days notice shall be thereof given in writing to the clerk to the said trustees, nor after sufficient satisfaction or tender thereof hath been made to the party or parties aggrieved, nor after six calendar months next after the fact committed for which such action or suit shall be so brought; and all such actions or suits shall be laid and tried in the county or place where the cause of action shall have arisen, and that the defendant or defendants in such action or suit and every of them, may plead the general issue and give this Act and the special matter in evidence at any trial or trials which shall be had thereupon, and that the matter or thing for or on which such action or suit shall be brought was done *in pursuance and by authority of this Act*," &c.

The defendants at the trial, objected that they were entitled to notice under this section of the local Act. The learned judge, however, overruled this, and a verdict was found for the plaintiff for 400*l.* damages. A rule having been obtained in Trinity Term to shew cause why the verdict should not be set aside, and instead thereof a nonsuit be entered, or why a new trial should not be had.

Talfourd, Serjt. now shewed cause, and contended that the defendants might and ought to have acted under the 9 Geo. 4, c. 40, but that they had not done so and were unable to justify under that Act. But that even if they had they were not entitled to notice, for the local Act had nothing whatever to do with the conduct of the defendants on the occasion in question. [ERLE, J.—How is this done in pursuance of the local Act?]

Shee and *Byles*, Serjts. (with whom was *Warren*) were then called on to support the rule.—It was urged that as the defendants were appointed overseers under the local Act, for whatever they did in discharge of their duty as overseers, whether such duty was imposed upon them by common law or statute, they were entitled to the notice required under the local Act. Here the 9 Geo. 4, c. 40, imposed certain duties upon overseers, and although it must be admitted the defendants had not pursued strictly the provisions of that Act, yet as they had acted *bonâ fide*, and honestly believing it to be in discharge of such duties which that Act had imposed, they were entitled to the protection which the local Act gave to them as overseers. It was therefore submitted that what was so done under the 9 Geo. 4, c. 40, was, in effect, done under the local Act. *Hazeldine* v. *Grove* (3 Q. B. 997) was strongly relied on. *Shatwell* v. *Hall* (2 Dowl. N. S. 567), and the opinion of Bayley, J. in *Smith* v. *Shaw* (10 B. & C. 277) were referred to.

MAULE, J.—I have no doubt that the meaning of the statute was that the defendants should be appointed and remain overseers just as overseers ordinarily were. There is nothing in the clause of the Act which makes them different from other overseers, nor could it be considered that it was intended to confer upon the overseers of St. Mary's, Islington, any privilege which did not belong to the overseers of other parishes. The case of *Hazeldine* v. *Grove* is not opposed to the case in the Exchequer of *Shatwell* v. *Hall*; what the Court of Queen's Bench decided was this; the Police Act, 2 & 3 Vict. c. 71 confers certain powers on the persons thereby appointed magistrates of the police courts, and provides that no action shall be brought against any person for any thing done in pursuance of that Act, *or in the execution of the powers or authorities* under it, unless a certain notice shall have been given; the Court decided that the latter, and not the former alternative applied, and that what the defendant did was in execution of such power and authority as was conferred on him by the Act. Such was therefore consistent with the judgment of the Court of Exchequer in *Shatwell* v. *Hall*, but the present would be inconsistent with that case were we here to hold the defendants entitled to the notice given by the local Act.

CRESSWELL, J. and ERLE, J. concurred.

The rule was afterwards argued upon the other grounds on which it had been obtained, viz. that the verdict was against evidence, and the damages were excessive, and was ultimately discharged on the plaintiff agreeing that the damages should be reduced to the sum of 200*l.* *Rule discharged accordingly.*

Wednesday, Jan. 15.

SHARPE, Public Officer, *v.* ASHBY.

Practice—Several pleas—Payment.

Channell, Serjt. moved for a rule to shew cause why an order made by Cresswell, J. should not be set aside, and why the issue should not be set aside or amended, and the defendant be at liberty to plead the 4th and 5th pleas which had been delivered.

The plaintiff sued as the public officer of the National Provisional Bank of England, on a bill of exchange, of which the defendant was the acceptor. The 4th plea was to the effect that a bill was accepted by defendant for the drawer's accommodation, and lodged with the Banking Company for securing a debt to such company from certain parties there named, and that afterwards the bill declared on was given in lieu of the first bill, and that subsequently, with the assent of the banking company, the bill so lodged as security was paid, and the banking company then held the bill without any consideration. The 5th pleas was to the effect that the full amount of the bill had, before the commencement of the suit, been paid, satisfied and discharged to the banking company, and with their assent, to wit, by Walton the drawer, and other parties at his request. On the 27th of May, 1844, the pleas were delivered with the rule to plead several matters. On the 10th of June a summons was taken out by the plaintiff to strike out the 4th plea, on the ground that it ought not to stand together with the 5th plea, and that it was not an issuable plea. The 5th plea was also objected to as not being pleaded according to the abstract of pleas annexed, which was, 5thly, payment and satisfaction of the bill. The order of Cresswell, J. was, "I make no order of the summons of the 10th instant, the defendant undertaking to amend the last plea, and make a good plea in two days, otherwise I order the 4th

plea to be struck out at the costs of the defendant." This order was dated 11th of June, and on the 13th the defendant delivered the 5th plea, amended by striking out the words "satisfied and discharged," after the word paid, and striking out also "and with their assent," and substituting an allegation that the banking company then accepted the same in full satisfaction and discharge as aforesaid. On the 18th of June the plaintiff delivered issue striking out the 4th plea, and introducing the 5th plea as amended. It was submitted, therefore, that the plaintiff had, by adopting the amended plea, treated it as satisfying the order of the learned judge, and had no right consequently to strike out the 4th plea.

The COURT said that the 5th plea ought to have been pleaded as a common plea of payment, and that if the payment was by a person whom the defendant had a right to adopt, it should have been pleaded as a payment by the defendant himself in the way of an ordinary plea of payment, according to the terms of the abstract. A rule was granted to shew cause why the fourth plea should not be restored on the fifth plea being pleaded in the terms of the abstract.

Rule nisi accordingly.

BUSINESS OF THE WEEK.

Saturday.

LYNES *v.* LYNES. *Rule nisi.*

ELLIOTT *v.* ALLEN.—Notes of trial read.

Monday.

YANDALL *v.* SAUNDERS.—*Talfourd*, Serjt. moved for a rule to shew cause why the judgment should not be arrested, or why the verdict found for the plaintiff should not be set aside, and a new trial had, on the ground of the misdirection of the under-sheriff.

Rule nisi.

RICHARDSON *v.* MORSE.—*Channell*, Serjt. shewed cause, and no counsel having been instructed to appear in support of rule, *Rule discharged.*

Tuesday.

HUNTER *v.* HUNTER.—*Channell*, Serjt. obtained, on behalf of defendant, a rule to shew cause why there should not be a new trial. *Rule nisi.*

BURGESS *v.* GRAY.—*Byles*, Serjt. moved for a rule to shew cause why the verdict which had been found for plaintiff for 45*l.* damages should not be set aside, and a nonsuit entered, or a verdict for the defendant, on the ground of misdirection of the learned judge. *Rule nisi.*

Cases cited: *Laugher* v. *Pointer* (5 B. & C. 547); *Quarman* v. *Burnett* (6 M. & W. 499); *Randleson* v. *Murray* (8 A. & E. 109); *Rapson* v. *Cubitt* (9 M. & W. 710); *Milligan* v. *Wedge* (12 A. & E. 737); *Butterfield* v. *Forrester* (11 East, 60); and *Bush* v. *Steinman* (1 B. & P. 406).

BENTLEY *v.* CARVER and OTHERS.—Sir *Thomas Wilde* moved for rule to set aside verdict which had been found for the plaintiff, on the ground of its being against evidence. *Rule nisi.*

Wednesday.

WEBB *v.* BEAVAN and OTHERS.—*Talfourd*, Serjt. moved on behalf of one of the defendants to set aside verdict found for plaintiff, and for a new trial on ground of its having been against evidence.

Rule nisi.

ENTHODEN *v.* IRVINE and OTHERS.—Sir *Thomas Wilde* applied for a rule to set aside the verdict found for defendants, and for a new trial, on the ground of misdirection and verdict being against evidence.

Cur. adv. vult.

MUMMERY *v.* PAUL.—*Talfourd*, Serj. shewed cause; *Shee*, Serj. in support of rule for new trial, on ground of verdict being against evidence.

Cur. adv. vult.

COXHEAD *v.* RICHARDS.—This case, which was argued last Easter Term, the Court said they wished to have re-argued.

REGISTRATION APPEALS.

Thursday, Jan. 16.

WEST RIDING OF YORKSHIRE.

BAXTER, Appellant *v.* NEWMAN, Respondent.

Hildyard, appeared for the appellant,

Martin, for the respondents. *Cur. adv. vult.*

BOROUGH OF TOTNESS.

TOMS, Appellant *v.* CUMMING, Respondent.

Notice of objection.

The duplicate notice of objection required by the 6 Vict. c. 18, s. 100, to be delivered to the postmaster, and stamped by him, must be signed by the objector himself; a signing by an agent, in his presence, and at his request, is not sufficient. And, semble, that all notices of objection must be signed by the objector, and a signature by an agent is not sufficient.

The facts, as set forth in the case, were these. A claimant's name was objected to. The objector signed one notice, and a copy of it was made and signed with his name by another person, in his presence, and at his request. The two notices were taken to the postmaster, who transmitted the one signed by the objector to the party objected to in due course, and returned the copy stamped to the objector, by whom it was produced at the revision. But an objection being taken that the notice was not a duplicate within the meaning of the statute, the Revising Barrister held the notice of objection not to be sufficient, and allowed the vote. Against this decision the appeal was made, and other similar cases were consolidated with this one.

Kinglake, Serjt. for the appellant, contended that all that was required by the statute was that the notice of objection delivered to the party should be signed by the objector himself; it was not necessary that the one produced in the court should be so signed or worded, as in this case it was proved that a proper notice was served upon the party.

CRESSWELL, J.—The statute says only that if you produce a certain notice stamped by the postmaster, it shall be proof of service upon the party objected to; it is not evidence of the validity of the notice itself.

Kinglake, Serjt.—I contend that the objector must prove his notice, and he does so by proof that he signed a notice and took it to the postmaster, and he brings back a paper stamped which proves such service, and then he proves that the notice so served was a good notice of objection by evidence that the paper produced was a copy of that sent. He must sign the one served, but he may prove that it was a good notice by the production of a copy. Upon the larger question, whether the objector might not sign by an agent, he cited *Schneider* v. *Norris* (2 M. & S. 286).

Cockburn, Q.C. for the respondent, contended, 1st, that it was necessary that the objector should personally sign the notice; and, 2nd, that a copy which he did not sign was not such a *duplicate* as he is required to produce. On the first point he cited *Hyde* v. *Johnson* (2 Bing. N. C.), in which it was held that a letter written by the wife at the husband's request, and sent by him, was not a *signing* of an admission of a debt by him so as to take it out of the Statute of Limitations; and the very object of introducing in the late statute the words "signed by the party objecting," which were not in the former statute, was to set at rest doubts which had arisen upon the other. On the second point he contended that the Act expressly required the production of a *duplicate* of the notice delivered to the postmaster, and this was a copy, and not a duplicate.

Kinglake, Serjt. in reply.

TINDAL, C. J.—I am of opinion that the decision of the Revising Barrister was right. There are two questions in this. First, whether a notice of objection should be signed by the objector personally? Law, reason, and good sense require that it should be so signed. The party objected to has a right to be satisfied that the objection is *bonâ fide*, and to a remedy for his costs, if it be frivolous. The case of *Hyde* v. *Johnson* has settled the question of signature. Secondly, the provisions of the 100th section have not been complied with. They require the production of a *duplicate* of the notice delivered to the postmaster; the meaning of *duplicate* is, that it shall be the same in all essential particulars.

MAULE, J. was of the same opinion. Duplicates are things having the same operation, and indistinguishable as respects their essence.

CRESSWELL, J, and ERLE, J. concurred.

Appeal dismissed.

CITY OF WESTMINSTER.

SCORE (Appellant) *v.* HAGGETT (Respondent).

Borough franchise.

Where the apartments of a house are let to lodgers, each of whom has the use of the front door, and the landlord does not reside upon or occupy the premises, such lodgers are entitled to vote.

The case stated that John Bedford claimed to vote in respect of apartments, two rooms in Leicester-street, Regent-street, for which he paid a rent of 20*l.* per annum. The house was of four stories, the apartments occupied by various tenants, each having the key of his own room and common access to the front door. *The landlord did not occupy any part of the house.* The Revising Barrister had admitted the vote.

Meriwether, for the appellant, contended that this case differed from that of chambers, were each set of chambers was a distinct dwelling-house. Here the landlord might at any moment return, and by taking possession of a room or a cellar deprive the occupiers of the franchise. He was stopped by

The COURT.—There is not the slightest doubt or difficulty in this case. It is clear that so long as the landlord does *not* occupy, the lodgers are in exclusive possession and entitled to vote.

Appeal dismissed with costs.

BOROUGH OF CAMBRIDGE.

COOPER (Appellant) *v.* HARRIS (Respondent).

AUSTIN (Appellant) *v.* —— (Respondent).

Practice.

Though the respondent does not appear the appellant must make out his case.

Gunning, for the appellant, stated that the respondent did not appear, and he prayed the judgment of the Court accordingly, under the provisions of the 6 Vict. c. 18, s. 64, which enacts that no appeal should be heard when the respondent does not appear unless notice be given. He was prepared to prove the notices.

By the COURT.—You must prove your case. It may be that the respondent considers the appeal too frivolous to require to be argued for him.

Gunning then proceeded with the case of

AUSTIN *v.* HARRIS.

The respondent was employed as a letter-carrier at Cambridge up to March 1843. By stat. 22 G. 3, c. 41, s. 1, no postmaster or person employed under him shall vote while so employed, or for twelve months afterwards. The revising barrister held that, having quitted the office before the 31st of July, the claimant was entitled to vote.

Gunning.—By 6 Vict. c. 18, s. 40, it is provided that the barrister shall expunge the name of any person not qualified on the 31st day of July, as if that were the day of election. Stat. 22 G. 3, c. 41, disqualifies a letter-carrier for one year after quitting his post: clearly, then, the respondent in this case was not entitled to be placed upon the register.

By the COURT.—We all agree that the party is not entitled.

The other case was argued, but the decision is to await the result of another case, in which the same point is raised.

COURT OF EXCHEQUER.

Saturday, Jan. 11.

HEATH *v.* UNWIN.

A patent was obtained by the plaintiff for improvements in the manufacture of iron and steel, and among others, for the use of carburet of manganese in any process for the conversion of iron into cast steel. Carburet of manganese is formed by the fusion of black oxide of manganese with carbonaceous matter. The defendant had, in the course of the manufacture of cast steel, placed black oxide of manganese and carbonaceous matter together in the crucible. It was found by the jury that those substances would form, during the process, and before union with the steel, carburet of manganese. The defendant did not know that such formation would take place.

Held, that there was no infringement of the patent.

Held also, that if a party substitutes for a part of a patent invention a well-known chemical equivalent, that is a mere colourable variation, and an infringement of the patent; but where neither the world in general nor the defendant is aware that the substances substituted are equivalent, and where the defendant had no intention of imitating the patent invention, there is no infringement of the patent, either direct or indirect.

Jervis, Q.C. shewed cause last Term against a rule obtained by *Martin*, Q.C. to enter a verdict for the defendant, or for a new trial.

Martin, Q.C. *Humfrey*, and *J. W. Smith*, appeared in support of the rule.

The facts appear fully from the judgment itself.

JUDGMENT.

Mr BARON PARKE.—This case was argued before my brothers Alderson, Gurney, Rolfe, and myself, during the last Term, on shewing cause against a rule to enter a verdict, on the plea of Not Guilty, for the defendant, or for a new trial for misdirection.—As we are all of opinion that there was no infringement of the plaintiff's patent, and, consequently, that a verdict should be entered for the defendant, it becomes immaterial to consider the other questions raised. The plaintiff, in the year 1839, obtained a patent for certain improvements in the manufacture of iron and steel; and, in his specification, he mentions several; but the question arises upon the claim to the use of *carburet of manganese*, in any process whereby iron is converted into steel. The specification, after mentioning the use of oxide of manganese, in the description of another part of his invention, proceeds to describe the part of the process alleged to have been infringed in these terms:—"Lastly, I propose to make an improved quality of cast steel, by introducing into a crucible, bars of common blistered steel, broken as usual into fragments, or a mixture of cast and malleable iron, or malleable iron and carbonaceous matter along with from one to three per cent. of their weight of carburet of manganese, and exposing the crucible to the proper heat for melting the materials, &c.; but I do not claim the use of any such mixture of cast and malleable iron or malleable iron and carbonaceous matter as any part of my invention, but only the use of carburet of manganese, in any process for the conversion of iron into cast steel." And in summing up his claims, he states one of them, the third, to be the employment of oxide of manganese alone in the puddling of cast iron; and the fourth, the one in question, the employment of carburet of manganese in preparing an improved cast steel. This substance is metallic, and formed by the fusion of black oxide of manganese with carbonaceous matter. Upon the trial it appeared that the defendant never used carburet of manganese by putting any of that substance into the crucible, but he placed the black oxide and carbonaceous matter together in the crucible; and some scientific witnesses who were examined gave their opinion that these two

substances would form, during the process of conversion, [illegible] with the [illegible] steel, [illegible] of fusion; and the jury found that [illegible], but also [illegible] quantity of carburet [illegible] would be less than 1 per cent. of the weight of the steel in the crucible. Upon these facts the question arose, whether the defendant had been guilty of an infringement of the plaintiff's patent. In order to decide this, we must first determine for what invention the patent, as explained by the specification, is taken out. It is not for the use of oxide of manganese in the melting of cast-steel, for carburet of manganese is expressly mentioned, and distinguished from oxide of manganese; nor could the patent for the use of the oxide have been supported, as that substance had been used long before in the process of melting steel. Nor is it for the use of oxide of manganese in any mode of combination with carbon generally. If it had been, it would have been liable to a similar objection, as oxide of manganese had been used in crucibles containing in their construction a quantity of carbonaceous matter, with a portion of which it would necessarily combine during the process. Nor is it for the use of the oxide with such a quantity of carbon as would deoxidise it and leave the manganese alone to operate upon the steel so that neither the quantity of the steel be altered, nor the crucibles destroyed by the oxide of manganese abstracting, as it otherwise would do, some quantity of carbon from them. The patent is obtained for the use of one peculiar combination of carbon and manganese—the metallic substance called carburet of manganese—and for the use of it in that state. The specification is expressly for the employment of carburet of manganese, and the mode of using it is by putting a certain quantity, by weight, of that substance in an unmelted state into the crucible. This being, in our opinion, the true construction of the specification, it is clear that the defendant has not directly infringed the plaintiff's patent, for he has never used that substance in the mode described in the specification. Then comes the question, whether he has indirectly infringed the patent by imitating and using the same process substantially, but making a colourable variation? Now there is no doubt, we think, if a defendant substitutes for a part of the plaintiff's invention some well-known equivalent, whether chemical or mechanical, he would probably be considered as only making a colourable variation. But he has not done so. It is quite clear, upon the evidence, that the defendant never meant to use the carburet of manganese at all; he certainly never knew, and there is no reason to suppose that prior to this investigation any one else knew, that the substance would be found in a state of fusion; and it is mere matter of speculative opinion (though after the verdict we must assume it to be a correct opinion amongst men of science) that it would; but it was clearly not ascertained, and still less was it a well-known fact. There was, therefore, no intention to imitate the patented invention, and we do not think the defendant can be considered to be guilty of any indirect infringement of it, if he did not intend to imitate at all. In this view of the case it becomes unnecessary to consider the other questions which were argued; and we all think the rule must be absolute to enter a verdict upon the first issue for the defendant.

The LORD CHIEF BARON.—As I was counsel in another cause which was similar to this, I have taken no part whatever in this in any stage.

Rule absolute.

HUBBARD *v.* PHILLIPS.

Attorney—Using plaintiff's name to bring a suit—Application by defendant that his attorney pay the costs.

Cleasby moved for a rule to shew cause why all proceedings in this case should not be stopped, and why the plaintiff's attorney should not pay all the defendant's costs.

The plaintiff's attorney had been retained by him in the suit of *Hubbard* v. *Jones*, which the plaintiff had settled by paying the whole of the defendant's costs. Nevertheless the attorney had proceeded in the action to judgment against the defendant, and had taken him in execution. Whilst the defendant Jones was thus in custody of the present defendant as sheriff, he was released by a party of Rebeccaites, and upon this the plaintiff's attorney brought an action against the sheriff, in the name of the plaintiff, as for an escape.

The plaintiff was applied to by the sheriff, and the affair explained. Hence the present application.

Rule nisi.

SMITH, *qui tam, &c. v.* BOND.

Semble, an attachment lies against one who assists another to destroy a judge's order, and it is not necessary to make the order a rule of court.

This was an action to recover penalties for gaming, which was tried in Trinity Term, 1843.

The defendant had obtained a judge's order calling on the plaintiff's attorney to deliver particulars of the plaintiff's residence; and the attorney had delivered [illegible] particulars of such residence an address with which the plaintiff furnished him. In fact, the plaintiff had taken lodgings with the very view of answering this application by referring to them as his place of abode, but he did not sleep there nor live there, though he paid rent, and had letters sent to him there.

Under these circumstances the defendant had applied to the Court for an attachment against the plaintiff for contempt of Court in contriving with his attorney to evade the judge's order for better particulars. The rule was drawn up on reading the affidavits, and on hearing the Master's report.

Lush now shewed cause against the rule upon two grounds; 1st, because the plaintiff was not the party called on by the judge's order to deliver particulars of residence; 2nd, because the judge's order had not been made a rule of Court.

Platt, Q. C. (*Butt* with him) was heard in support of the rule.

Pollock, C. B. was strongly of opinion, that attachment lies against all persons, especially parties who are suitors, for directly or indirectly interfering to prevent the process of the Court; and that there might be a contempt of Court by a disobedience to a judge's order, though that disobedience might be by mere non-feasance, and though the order had never been made a rule of Court. The rest of the Court seemed also of that opinion, but they gave no judgment upon it in this case; for the Court held, that even if they had the power to grant an attachment in this case, yet it was discretionary with them whether they would do so. And they refused, it appearing that the defendant had not been misled by the false particulars; and further, that no part of the sum due on the judgment had yet been discharged.

Rule discharged on payment of costs; to be deducted from those due to the plaintiff.

Monday, Jan. 13.

GOODLAKE *v.* FULLER.

Postponement of trial—Production of evidence.

This was an action for breach of promise of marriage, standing for trial this day.

Cockburn, Q. C. moved to postpone the trial, in order to afford an opportunity of filing a bill of discovery to compel the production of certain letters in the possession of the plaintiff.

Watson, Q.C. shewed cause.

Trial postponed until sittings after term.

DRAPER *v.* STANSFIELD.

Setting aside award.

Watson, Q. C. had obtained a rule to shew cause why an award should not be set aside, the arbitrator not having disposed of all the issues.

Hoggins shewed cause.

The question depending upon the meaning of an agreement entered into by the respective attorneys of the plaintiff and the defendant,

The COURT discharged the rule without costs, stating that they would not grant any rule for an attachment or for the payment of money, for the purpose of enforcing the award, the party to be at liberty to enforce it by action.

Case cited: *Duckworth* v. *Harrison* (4 M. & W. 432).

RANDALL *v.* WHITE.

Writ of trial—Pleading.

Addison had obtained a rule for judgment *non obstante veredicto*, on the ground that the plea was no answer to the action.

Charnock shewed cause.—This was a writ of trial before the sheriff; the rule was drawn up without any affidavit, and there was nothing before the Court to shew the issues. The plea was good after verdict.

PARKE, B.—It must be considered that the return to the writ of trial is in Court. As to the plea, the question is, whether a plea as to 3*l.* 9*s.* is an answer to an action for 20*l.*; nothing being stated as to the residue.

Rule made absolute.

PRINCE *v.* HOPEWELL.

Pleading.

This was an action against a merchant, carrying on business at St. Helena, for goods ordered by him when there, from the plaintiff residing in this country. The defendant, shortly after sending the order, and before the receipt of the goods, came to this country, when the present action was commenced. The defendant had been arrested, and was out on bail.

Humfrey moved for six months to plead; by which time information might be obtained from St. Helena as to the receipt of the goods, and whether they were according to order. [ALDERSON, B.—What you really seek to obtain is double the time now applied for; for after issue joined, you will be applying for a commission.] Such a delay was not the object sought, and the defendant would therefore consent to a commission going out before issue joined, and would undertake that no further commission should be applied for on behalf of his client.

Barstow, for plaintiff, acceded to this proposition.

It was then arranged that the defendant should have a week to plead such pleas as he might think requisite under the circumstances, pleading issuably.

PENNELL and OTHERS *v.* AUSTIN.

Pleading.

This was an action brought by assignees against defendant for money had and received to their use. Application had been made unsuccessfully at chambers for leave to plead, in addition to a plea of lien, a plea of set-off.

Humfrey having applied to the Court and obtained a rule.

Crowder, Q. C. (with whom *Ball*), now shewed cause.

PARKE, B.—Lien and set-off are quite different things.

Rule made absolute. Costs to be costs in the cause.

WILKINSON *v.* GREGS.

Writ of trial—Sealing.

Horn moved to set aside a writ of trial, and all subsequent proceedings, on the ground that the writ had not been sealed by the proper officer after it had been engrossed. (1 Chit. Ar. Pr. 294.)

PARKE, B.—The seal of "E. C." on the back of the parchment is quite sufficient.

It was then objected that the writ was directed to try the *issue*, there being three issues on the record.

Rule nisi on the latter ground.

CROWDE *v.* STUART.

Attorney—Payment of amount due on the record.

Ogle moved for a rule to shew cause why an attorney of this court should not pay the balance remaining due upon the record. The attorney had paid a part of the amount, and had promised to pay the remainder; but, having failed to do so, an application had been made to the plaintiff in the cause, for whom the attorney was supposed to have acted. An affidavit of the plaintiff was read, wherein he denied all knowledge of the transaction until the application had been made to him for payment.

Rule nisi to shew cause why the attorney should not pay the remainder of the amount and the costs of this application.

Tuesday, Jan. 14.

PETTY *v.* WALKER and IRONSIDE.

Certificate to give costs in trespass, under 3 & 4 Vict. c. 24, s. 2—Meaning of "immediate" in that section.

In this case, *Corrie*, for *Pashley*, on behalf of the plaintiff, shewed cause against a rule calling on the plaintiff to shew cause why the certificate of the under sheriff of York, given in this case, should not be set aside, and why the taxation of costs herein should not also be set aside. Defendant Ironside appeared in person.

The plaintiff had been tenant of Walker, one of the defendants, and Ironside, the other defendant, had, by direction of Walker, distrained for rent. The distress, however, was made before the rent was due, and accordingly the plaintiff brought trespass against the defendant, who suffered judgment to go by default, and the cause went before the sheriff of York, on a writ of inquiry to assess the damages. The jury gave a verdict for the defendant, damages one farthing. The under-sheriff, after receiving the verdict, was called away to attend on the judge of assize, and did not give his certificate on the instant, but afterwards, at his office, certified that the trespass was a *malicious* trespass.

The defendant obtained a rule *nisi* to set aside the certificate, on the ground that it was not given immediately after the verdict, within the words of 3 & 4 Vict. c. 24, s. 4.

Cur. adv. vult.

POLLOCK, C.B. now delivered the judgment of the Court. He said, that without interfering with any of the cases which interpret the words "immediately certify," in the stat. 3 & 4 Vict. c. 24, the Court would make the rule in this case absolute; for it was, at all events, the business of the functionary who should try questions in cases coming within that statute to certify, or to refuse to certify, or openly and publicly and clearly to state that he took time to consider, wherever in this case the affidavits on the one side assert, and those on the other do not negative, that the Master himself at first refused the certificate.

Rule absolute without costs.

BICKNELL *v.* WOOD.

New trial refused.

This case was tried at Guildhall on the 12th Dec. last, before Pollock, C.B. Verdict for plaintiff. Damages, 700*l.*

Jervis, Q.C. pursuant to leave reserved, moved to enter verdict for defendant, or for nonsuit or new trial.

The action was in *assumpsit* as a guarantee, which Jervis, Q.C. contended did not contain any sufficient statement of consideration; but the Court held it clearly did.

Rule refused.

WAIT *v.* SIMEON.

Motion on new facts to rescind a judge's order, which had been drawn up by the consent of the applicant.

Martin, Q. C. moved for a rule calling on the plaintiff to shew cause why an order of Alderson, B. made

in this cause should not be set aside on such terms as the Court would direct.

The plaintiff had brought an action against defendant on two cheques, both given in 1840.

The pleas were, gambling consideration.

The cause stood for trial on the 7th December last, and on the 6th defendant's attorney consented to an order of Alderson, B. for payment of debt and costs on the 14th December. On the 7th December, however, the defendant's attorney received information which furnished him with full evidence in support of the pleas. He would now be enabled to adduce no less than seven witnesses, who would swear to the character of the transaction. The plaintiff was merely a person put forward by one Davies, the keeper of a gambling-house, to whom the cheques had been given at a time when they were in partnership with him. In consequence of a quarrel with Davies, they would now expose the transaction. In pursuance of an order of Rolfe, B. the money had all been paid into court, and a stay of proceedings obtained.

Alderson, B.—You move on the same footing as if plaintiff had obtained a verdict. *Rule nisi.*

Surfling v. Ovingdon, Murphy, and Nurse.

This was an action of trespass for breaking and entering the apartments of the plaintiff. It had been tried before Pollock, C.B. Verdict for the plaintiff.

Chambers, on the part of the defendant Ovingdon, moved, pursuant to leave reserved, that the verdict should be entered for him, or for a new trial. He moved on the ground that Ovingdon was an officer of the Metropolitan Police force, acting in the execution of his duty, and that he had not received a months' notice of trial. He admitted that Ovingdon had committed an excess, inasmuch as he had acted without a warrant.

Authorities cited: 10 Geo. 4, c. 44, s. 41, Metropolitan Police Act; *Butler* v. *Ford* (1 Cr. & M. 652); *Hazeldine* v. *Grove* *Rule nisi.*

Attorney-General v. George Smith.
———— v. James Smith.
Trial at bar.

Thesiger, S. G. moved their lordships to name a day on which it would be convenient to them to have a trial at bar in this case.

Jervis suggested a question as to whether there could be a trial at bar on an information in this Court, 11 Geo. 4 & 1 Wm. 4, c. , s. 7.

The Court, after referring to the Act, said there was no doubt of it.

Parke, B.—You have a right to trial at bar. You apply under the Act to have it in vacation.

The Court named Thursday, 6th February.

Note.—*Kelly* moved in the same case, in a later part of the day, on the behalf of the defendants.

Playfair v. Musgrove.
New trial.

This case was tried on Friday, the 29th December last. Verdict for defendant on one issue.

Humfrey, pursuant to leave reserved, moved to enter verdict for plaintiff on that issue, for 10*l*.

The action was trespass, brought by plaintiff against the defendant, the sheriff, who had entered under a writ of *fi. fa.* and had for a long time kept possession.

There was a new assignment to a plea justifying the sheriff's entry and possession. The new assignment alleged a holding by the sheriff, after sale by him for an unreasonable time.

To this new assignment, the defendant had pleaded, denying the defendant's possession, and this was the issue in respect of which the present motion was made.

Humfrey said that the sale by the sheriff had not been followed up by any conveyance to the vendee, which was necessary to pass the property, and all plaintiff claimed was such possession as would entitle him to maintain trespass against a wrong-doer; the plea of leave and license from the alleged vendee had wholly failed. *Rule nisi.*

Belcher and Another v. Magnay and Another.
New Trial.

This was an action of trover by the assignees of a bankrupt, which had recently been tried before Pollock, C. B.

James now moved for a new trial, on the ground of the exclusion of evidence, or to reduce the damages from 100*l*. to nominal damages. No evidence had been adduced of the value of the goods alleged to have been converted. He now produced a bill of sale of the goods which had actually been sold. By some mistake, the declaration scarcely included any of these goods, and those which it did include were of very trifling value. The evidence complained of as excluded was that of Proudfoot, clerk to plaintiff's attorney. He was asked whether Mr. Belcher was the client of Lewis (the attorney on the record for the plaintiffs); he answered, "No!" *James* would then have asked him whether Mr. Belcher had not frequently protested against the action being brought? The Judge prevented the question, on the ground of public policy, the communication being one between attorney and client.

Pollock, C. B.—It was spoken with reference to the action; Belcher is a necessary party on the record. The case is one, as it were, of a dispute between partners, some insisting, others contending against bringing an action.

Alderson, B.—These are confidential communications, which are necessary to the conduct of the suit. How can this be one, when its object was to prevent a suit from being brought? Consider whether this was a confidential communication.

Parke, B.—The doubt on my mind is, whether *Lewis*, though on the record attorney for the plaintiff, is to be regarded as really the plaintiff's attorney. *Rule nisi.*

Stapleton v. Baker.
Motion to enter nominal damages.

This case was tried before Pollock, C.B. at Guildhall, on the 11th of December last; verdict for the plaintiff.

Martin, Q.C. moved to enter nominal damages for plaintiff. It was an action of *assumpsit* for having dyed a silk dress instead of cleaning it.

The jury found a verdict for the plaintiff, but would not assess any damages.

Cases cited: 1 Taunt. 121; 1 Q. B. 656, Exch. Ch. *Rule nisi.*

Shermori v. Ayliffnn.
New trial.

This case was tried before Pollock, C.B. at the sittings after last term for Middlesex; verdict for the plaintiff.

Cockburn, Q.C. moved, pursuant to leave received, to enter verdict for defendant.

It was an action of *assumpsit* on an I O U for 1,486*l*. The defendant had settled accounts between defendant's father and plaintiff, and had given this I O U for the balance. There was no evidence of consideration for the promise. *Rule nisi.*

Attorney-General v. G. Smith.
Attorney-General v. J. Smith
Information—Application for particulars setting forth times and occasions of offences charged.

This was an information for penalties alleged to have been incurred by the defendant in each suit for offences against the Distillers' Act. Each information contained six counts, five charging different modes in which the alleged penalties had been incurred, and the sixth claiming duties alleged to have been not paid.

Kelly, Q.C. applied for particulars of the times, modes, and occasions on which these penalties had been incurred, and the duties become due.

The Chief Baron interrupted Kelly in the course of his application, requiring him, in the first instance, to shew to the Court that they had power to entertain an application of this sort in the case of a suit at the instance of the Crown. It had been entertained in several cases, and rules *nisi* had been granted; but these rules had always led to compromises, and the power of the Court had never been decided on.

Cases cited: *Rex* v. *Cowl* (3 N. & E.); *Attorney-General* v. *Lambert* (5 Price, 386).

The Chief Baron admitted that *Kelly* had produced authorities enough to shew that the question should be entertained; but he inquired if application had been made to the law officers to grant what was now sought for. On learning that it had not, the Court ordered the case to stand over till the application had been made.

Case to stand over, the affidavits to be filed.

Note.—The affidavits of the defendants expressly negatived all knowledge, nay, all suspicion even, of the charge against them.

Baildon v. Walters.
New Trial—Statute of limitations.

This case had been tried before Pollock, C. B. on the 30th of November last. Verdict for the plaintiff, damages 300*l*.

Humfrey, by leave reserved, moved to enter a nonsuit, or for a new trial.

This was an action of *assumpsit* by plaintiff as executor. Promises laid to the executor.

Plea, Statute of Limitations.

The only matter to take the case out of the statute was, an answer of the defendant in Chancery, at the suit of the present plaintiff, for discovery of payments of interest in respect of the present debt, where he admitted the fact of money having passed from testator to him, and admitted payments from time to time to the testator, after the rate of interest in respect of the sum which had so passed; but alleged that the principal had been given him, and that these payments were made simply by way of annuity.

The Lord Chief Baron left it to the jury to put all these facts together, and say whether the money had not been lent, not given; and whether the payments had not been payments of interest in respect of the money which had passed, and not payments by way of annuity.

Other evidence besides this answer in Chancery was adduced at the trial, viz. evidence of an account stated between the testatrix and the defendant.

Humfrey contended there was no evidence to go to the jury. The Lord Chief Baron should himself have construed the answer, and pronounced whether it was an admission sufficient to satisfy the statute of limitations. He contended that, according to the cases, the only proof of payment of interest founded on an acknowledgment must be an acknowledgment in writing of a payment *quâ* payment of interest.—(*Willis* v. *Newal*, 3 Y. & Jer.; Chitty on Contracts, p. 819; *Baily* v. *Ashton*, 12 N. & S.; *Mager* v. *Oder*, decided in 1841; *Mills* v. *Foulkes*, 5 B. N. C.; *Benan* v. *Geethin*, 3 Q. B.)

The Court seemed disposed to question the law of those cases which decided as Humfrey laid down.

Humfrey further argued, that an answer in Chancery was not such an acknowledgment as the statute required. It must be an acknowledgment made as such.

The Court said, the answer was not used as an acknowledgment importing a promise, but as an acknowledgment of something which did so; viz. a previous payment of interest; a previous voluntary act.

Thirdly, *Humfrey* moved, on the ground that the answer in Chancery itself was not produced at the trial, but only a copy thereof.

Rule nisi on all points.

Stroud v. Cooper.
Direction by arbitrator to enter verdict for a given amount may be disregarded, if it be plainly shewn that this sum is stated by him as if in an account between the parties, independently of allowances which elsewhere appear and reduce the sum actually due to a balance also appearing upon his certificate, and stated to be all that is due.

This case was tried at Guildhall, in the Sitting after last Term, and verdict had been taken for plaintiff, subject to certificate of arbitrator.

Lush moved to set aside the certificate, on the ground that the sum for which it directed the verdict to be entered for the plaintiff was larger than the plaintiff actually claimed.

But the Court held that it was quite clear what the arbitrator had meant. He had merely therein stated what was the gross amount which at any time had been due from the plaintiff. The officer might disregard this direction, and enter verdict for what in the result, as shewn by the arbitrator after all credits given, was due to the plaintiff. The arbitrator's intention was quite clear, and he had merely shewn the process by which he had arrived at the sum by him ultimately found due to plaintiff, viz. 29*l*. *Rule discharged.*

Wednesday, Jan. 15.

Woodroff v. Fiddes.
Service of notice of trial.

In this case defendant had pleaded in person, stating in his plea that he lived at Ravenscroft Villa, Hammersmith. Notice of trial had been delivered there to a person who stated herself to be his servant; that her master did not then reside there; she did not know where he was, but she would have it forwarded to him. The notice had also been offered to his known attorney, who refused to take it; but it did not appear that any further exertion had been made to discover his present residence.

Francillon moved that this should be deemed a sufficient service.

The Court directed that notice of trial should be served upon the attorney; also at the Villa, and in addition put up in the office, as the ground for a future application.

Miller v. Mullins.
Evidence.

Cockburn, Q.C. applied for leave to reserve the right of making a motion for a new trial if the parties should not be able to effect an arrangement now in progress. The point in question was, whether, in an action brought by assignees, the evidence of the bankrupt was admissible to prove the petitioning creditor's debt. At the trial, the Lord Chief Baron had objected to receive it. *Leave granted.*

Haggis v. Baker.
Setting aside award.

The cause and all matters in dispute between the parties had been referred to arbitration.

Butt, on behalf of defendant, moved to set aside the award on the following grounds:—

1st. That the arbitrator had improperly received certain matters as evidence, knowing such evidence to be inadmissible.

2nd. As to the sum of 600*l*. that the arbitrator had refused to go into the consideration thereof, as not being one of the matters in the account before him.

An affidavit was read—"That the arbitrator had decided upon receiving the evidence objected to, stating that the strict rules of law were not applicable in cases of arbitration." It did not directly state that the said sum of 600*l*. was a matter in difference between the parties.

Rule nisi on the first ground.

DOE dem. FLIGHT v. ROE.

Affidavit of service of declartion in ejectment must distinctly state that rent was in arrear.

Yarnold moved for judgment against the casual ejector, under the 4 Geo. 2, c. 28, s. 2. The premises were abandoned by the tenant of the lessor; the lessor was dead; the rent was in arrear 39*l.*; the premises shut up and abandoned, and a copy of the declaration had been placed on the door.

PARKE, B.—Does your affidavit swear distinctly that half a year's rent was due? It does not.

By the COURT.—Then you are not entitled.

Rule refused.

PAGE *v.* CURLEWIS.

Evidence.

Charnock moved for a rule to shew cause why the verdict in this cause (tried before the sheriff) should not be set aside, and a new trial had, on the ground that the verdict was against evidence, and that evidence had been improperly rejected. An account, receipted, striking a balance, was admissible in evidence without a stamp. Two documents had been tendered, the one a bill for 5*l.* for a certain article, with an acknowledgment of payment underwritten; the other, a bill for a larger amount, with several sums of 2*l.* and one sum of 10*l.* placed to the credit of the defendant, in the hand-writing of the plaintiff. The first document the sheriff had rejected; the other he had received as to all the sums of 2*l.* but rejected as to the sum of 10*l.* (*Brooks* v. *Davis*, 2 C. & P. 186; *Wright* v. *Shawcross*, 2 B. & Al. 501.)

PARKE, B.—One of these being expressly a receipt for the amount of the bill, without reference to any antecedent matter, was properly rejected; but when an account is put in with debits on the one side and credits on the other, it is admissible. *Rule nisi.*

BUSINESS OF THE WEEK.

Saturday.

HEATH *v.* UNWIN.—PARKE, B. delivered the judgment of the Court that a verdict should be entered for plaintiff, on the issue on the first plea.

EGLINTOUN *v.* BUCK.—*Jerris*, Q.C. applied to enter a nonsuit, reserved, or verdict for defendant by leave. The Court ordered the question to be turned into a special case.

ARTHUR *v.* DARTCH.—*Lush* moved to set aside the verdict for plaintiff, and to enter a nonsuit.

Rule nisi.

BAIIDON *v.* WALKER.—*Jerris*, Q.C. moved to increase the damages by 32*l.* 17s. 7d. by leave reserved. *Rule nisi.*

After disposing of the above cases, the Court took those in the Peremptory Paper.

JONES *v.* EVANS.—Rule discharged; no one appeared to support it.

KILBURNE *v.* KILBURNE.—*Cur. adv. vult.*

Monday.

HAWLEY *v.* GILBERT.—*Hill* moved for a rule to shew cause why verdict for plaintiff should not be set aside and a new trial had, the verdict being against the weight of evidence. *Rule nisi.*

CLARENCE RAILWAY COMPANY *v.* GREAT NORTH OF ENGLAND, CLARENCE, AND HARTLEPOOL RAILWAY COMPANY.—*Tomlinson* applied to have a day named for the hearing of this cause. *To stand first on list for Monday.*

CLARK *v.* WELSH and OTHERS.—*Humfrey* moved for judgment against the casual ejector.

Rule granted.

CHAMBERS *v.* SALES.— ——— moved for a rule, calling on an attorney of this Court to shew cause why he should not pay the sum of 10*l.* 4s. costs in pursuance of an order entered into before a judge at chambers. *Rule nisi.*

ROYLE *v.* BRANDON.—*Kennedy* moved for a rule for a new trial on the grounds of misdirection and improper admission of evidence. *Rule nisi.*

SKINNER *v.* HARDEN.—*Crowder*, Q. C. moved for a rule for a new trial on the ground of misdirection, or to shew cause why the damages should not be reduced. *Rule nisi to reduce damages.*

PARNELL *v.* WILLIAMS AND ANOTHER.—*Knowles*, Q. C. moved for a rule to shew cause why the verdict for the plaintiff should not be set aside, as being against evidence, and a new trial had, on the ground of misdirection.

Rule nisi for verdict against evidence.

BELCHER *v.* MAGNAY AND OTHERS.—In this cause the defendants had severed in their pleas; a verdict had been given against all of them, and the Lord Chief Baron had reserved leave to move to enter a verdict for some of the defendants, on the ground that certain evidence given was inadmissible as against them. *Jervis*, Q. C. now moved accordingly, or for a new trial, or for judgment *non obstante veredicto.*

Rule nisi to shew cause why there should not be a new trial on the ground of the improper reception of evidence as against the sheriff (a defendant in the suit).

ATKINSON *v.* CLARK.—It was moved to set aside the verdict for plaintiff, and to enter a nonsuit, by leave of the sheriff of Middlesex, before whom the cause was tried. *Rule nisi.*

LOCKIER *v.* ENGLAND.—*Arnold* moved for a new trial, the verdict being against evidence.

Rule nisi.

ATHERLEY *v.* GREEN.—*Simon* moved to make absolute a rule for an attachment for non-payment of money under an award. No cause had been shewn.

Rule absolute.

DAVEY *v.* WARNE.—*Humfrey* moved for a rule to shew cause why the verdict for the defendant should not be set aside, and a new trial had, on the ground of misdirection, or why the plaintiff should not have judgment *non obstante veredicto.*

Rule nisi.

Wednesday.

MOADE *v.* RAPHAEL.—*Bagley* moved for a rule to shew cause why the trial had before the sheriff of Middlesex should not be set aside for irregularity.

Rule nisi.

GARBUTT *v.* BROWN AND ANOTHER.—*Corrie* moved to set aside an order of Mr. Baron Rolfe, "that upon payment of debt *without* costs all further proceedings should be stayed." *Rule nisi.*

NEWALL *v.* WEBSTER.—The *Solicitor-General* moved for a rule to shew cause why a nonsuit should not be entered, leave having been reserved for that purpose, or why there should not be a new trial on the ground of misdirection. Cases cited: *Rex* v. *Wheeler* (2 B. & Ald. 350-2); *Hall* v. *Cooke* (Webster's Pat. Cas. 100); *Brunton* v. *Hawkes* (4 B. & Ald. 541); *Lewis* v. *Davis* (3 Car. & P. 502).

Rule nisi.

RICHARDS *v.* MACEY.—At the trial of this cause before the Lord Chief Baron, a bill of exceptions had been tendered by *Jerris*, Q. C. who now waived the bill of exceptions, and moved for a rule to shew cause why the verdict should not be set aside, and a new trial had, on the ground of misdirection. The COURT took time to look over his lordship's notes; leave having been reserved to apply to amend the pleas. *Martin*, Q. C. now applied. *Leave granted.*

COOK *v.* STRATFORD.—*Crowder*, Q. C. moved for a rule to shew cause why the Master's alterations should not be set aside for irregularity, or the taxation reviewed. *Rule nisi.*

WHITMORE *v.* HIND.—*Martin*, Q. C. moved for a rule to shew cause why there should not be a new trial on the ground of misdirection. *Rule nisi.*

THE ATTORNEY-GENERAL *v.* BRYAN.—*Chambers* moved for a rule to shew cause why there should not be a new trial on the ground of the exclusion of evidence. Cited, 1 Phil. on Ev. 281, 7 edit.; *Hardy's* case, 24 St. Tr.; *Watson's* case, 1 Gur. Notes; 2 How. St. Tr. 178.

BELCHER *v.* MAGNAY and OTHERS.—*Humfrey* suggested that in case of a new trial in this cause, he should not be precluded from shewing that the verdict in favour of Savage was contrary to evidence.

Acceded to.

HANCOCK *v.* WATERS.—*Edwards* moved for a rule to shew cause why the verdict should not be set aside, and a new trial had. The cause had been tried before the sheriff of Carmarthen, in the summer of 1843, but the present application was made upon arrangement between the parties. POLLOCK, C. B.—The parties are too late; the Court cannot take notice of this arrangement between them.

CURLEWIS *v.* CORRY.—*Bull* had obtained a rule *nisi* for a special jury. *James* shewed cause.

Rule absolute, plaintiff to have judgment of the term; the costs of the rule and of this application (if any) to be paid by the plaintiff.

DOE *dem.* ROBERTS *v.* ROE.—*Welsby* moved for a rule to shew cause why an order of Mr. Baron Rolfe for setting aside a judgment against the casual ejector should not be amended as to the terms upon which it was set aside, viz. *with costs.* *Rule nisi.*

HOPKINS *v.* WEAVER.—*Carrow* moved for a rule to shew cause why a nonsuit should not be set aside, and a new trial had, and if necessary, why an amendment should not be made in the writ of trial.

Rule nisi on payment of costs.

WHITWORTH *v.* LLEWELLYN.—*Jervis*, Q. C. moved for a rule to shew cause why there should not be a new trial, on the ground of the improper admission of evidence. (*Cosh* v. *Taylor*, 8 L. J. K. B. (Old Series) 262.) *Rule refused.*

FAVRE *v.* BRUN.—*Lane* moved for a rule to shew cause why the bail should not pay a further sum of 36*l.* before an execution should be entered on the bail-piece. [ALDERSON, B.—Would not this exceed double the amount mentioned in the order for arrest?] It would. Case cited: *Van Sandau* v. *Nash* (2 Dow. P. C. 767; 10 Bing. 329; 3 M. & Scott, 834, S. C.)

Rule refused.

BAIL COURT.

Monday, Jan. 13.

(Before Mr. Justice WILLIAMS.)

Re JOHN BROWN.

Motion to quash a coroner's inquisition for defects apparent on its face.

Addison moved for a rule *nisi* to quash an inquisition taken on the view of the body of one John Brown, who met with his death by a concussion of trains on the Newcastle and Darlington Junction Railway, on the following grounds:—

1st. That the inquisition does not state that the party died of the wound received.

2nd. That it does not shew with sufficient certainty how the death arose.

3rd. That the engine upon which the deodand is assessed is stated to be the property of John Williams and others, whereas the full names of all the proprietors should have been stated. *Rule nisi.*

Tuesday, Jan. 14.

Ex parte T. CRAWFORD.

Application to compel the master of an articled clerk to make and sign the answers preliminary to the clerk's examination.

Hoggins moved on behalf of the above gentleman for a rule calling upon Mr. T. W. Lee to sign the usual answers to the questions proposed by the examiners forthwith, and that in default thereof Mr. Crawford may be permitted to present himself for examination without such questions and answers being filed, and that in the meantime he should be at liberty to go before the examiners to be examined.

This rule was moved in consequence of the master of Mr. Crawford, who is an articled clerk, refusing to make and sign the answers to the questions put by the examiners preliminary to the clerk's examination.

Rule nisi.

Wednesday, Jan. 15.

REG *v.* KNOWLES.

Ex parte STONES.

Quo warranto to a town councillor, to shew by what right he fills the office.

Cowling moved, on behalf of a Mr. Stones for a rule calling on Mr. Knowles to shew cause why a *quo warranto* should not issue, commanding him to shew by what right he fills the office of town councillor of the borough of Bolton.

It appeared on affidavits, that the borough of Bolton, which has recently had a charter of incorporation granted to it, is divided into six wards, having six councillors for each ward, two of whom are elected annually; that on the 1st of November last (on which day the municipal elections take place), there were four candidates for one of the wards of the borough, named West ward; that the names of the candidates were Slater, Knowles, Stones, and Cooper; that the alderman of the ward (with the two assessors) declared the number of votes to be as follows: Slater, 271, Knowles 258, Stones 257, and Cooper 246, whereupon the two first were declared duly elected (Knowles having a majority of *one* over Stones); that amongst the voting papers for Knowles were found those of four persons of the names of Epey, Hibbert, Hicks, and Richardson, who all made affidavits of having in fact voted on the other side (for the two last candidates), and that some persons must have voted in their names, there being no other persons of the same names and descriptions as themselves: that two persons voted for the two first candidates in the names of Thornton and Robinson, who in fact did not vote at all. (These bad votes would give Stones a majority over Knowles of several votes. *Rule nisi.*

REG. *v.* THE JUSTICES OF BUCKINGHAMSHIRE.

Certiorari to remove an order of bastardy into this court, with the view to quashing the same for defects apparent on its face.

Archbold moved for a *certiorari* to remove an order of bastardy into this court with the view to quashing the same for the following defects, viz.

1st. That the order does not shew that the application by the mother was to a justice at a petty sessions *for the division.*

2nd. That it does not state that the child was born within six months before the passing of the Act, but merely that it was born within twelve months prior to the application.

3rd. That it does not state that the original application was to a justice for the county, but merely that he was *acting* for the county.

4th. That there is no statement of any *complaint* having been made.

5th. That there is no statement of the *time* of the birth of the child.

6th. That the order states that an order was applied for, without stating for *what* the order was applied, the 2nd section providing that the mother may make *application* for *a summons* to be served, &c. and saying nothing about any order.

7th. That the order does not state the evidence of the mother, nor that in corroboration.

8th. That the order does not state that the evidence was taken upon oath. *Rule nisi.*

Thursday, Jan. 16.

REG. *v.* THE JUSTICES OF LANCASHIRE.

Re W. S. RUTTER, Esq.

Certiorari to bring up an order of sessions.

Cowling moved for a *certiorari* to remove into this court an order of sessions directing the treasurer of the county of Lancaster to pay to Mr. Rutter, one of the county coroners, the sum of 129*l.* for inquests

holden by him before the passing of the late Coroners' Act, 6 Vict. c. 12, s. 1. In this case a doubt had arisen as to whether or not the coroner for the county is entitled to the above fees which were ordered in respect of 94 inquests on persons who had received the causes of their deaths in Manchester and Bolton, but who had died within the county. (*Reg.* v. *The Great Western Railway Company*, 3 Q. B. 333.)

Rule granted.

BUSINESS OF THE WEEK.

Saturday, Jan. 11.

REG. v. THE JUSTICES OF EAST SUSSEX.—*Creasy* moved to enlarge the time for the return to the *mandamus* herein. *Enlarged for a week.*

HEMIN v. ACKERMAN.—*Cooper* moved for a new trial herein, on the ground of the verdict, which was for the defendant, being against evidence.

Rule nisi.

Monday.

REG. v. THE JUSTICES OF SURREY.—*Hawkins* moved for a rule for a *certiorari* to remove certain orders of the above justices, or for a *mandamus* to compel them to erase an entry.

Rule refused, with liberty to mention it in the full court.

WARREN v. SWINBURN.—*Lucas* moved for liberty to revive the rule herein.

Rule refused, with liberty to apply to the full court.

Tuesday.

DAVIS v. TREVENNION.—*Martin*, Q.C. moved for a rule to set aside the judgment on the warrant of attorney herein, and the *sci. fa.* thereupon, on the grounds that the warrant was not executed pursuant to the 9th section of the 1 & 2 Vict. c. 110, and that the defendant was at the time an outlaw, which precluded his appearing in court. *Rule nisi.*

LOYNES v. ROBERTSON.—*Platt*, Q.C. moved for a rule to set aside the warrant of attorney in this case, on the ground that no attorney appointed by the defendant was present at its execution. *Rule nisi.*

DOE *dem.* STONE v. ROE.—*Hoggins* moved, on the part of Mr. Adeane, the landlord, for a rule to set aside the judgment against the casual ejector, and the *sci. fa.* thereon, on the ground that the declaration in ejectment had never been served. *Rule nisi.*

REG. v. THE MAYOR AND TOWN COUNCIL OF WIGAN.—*Crompton* moved for an attachment against the Mayor and Seven of the Town Council of Wigan, for not returning a *mandamus*. *Rule nisi.*

Wednesday.

PAXTON v. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY.—*Kelley*, Q. C. (*Addison* with him), moved to set aside the award herein on the points reserved by the arbitrator on the part of the Company. *Rule nisi.* *Rew*, also, on the part of the plaintiff, moved on points reserved by the arbitrator. *Rule nisi.* (*These rules to come on together in the full court.*) (*Atty* v. *Parish*, 1 N. R. 104; *Yates* v. *Aston*, 4 Q. B. 182; —— v. *Morey*, 2 B. & C. 789.)

WAITE, Executor, v. GALE.—*Whitehurst*, Q. C. moved in this case, which was tried before the under-sheriff of Wiltshire, for a nonsuit pursuant to leave reserved. (*Jones* v. *Somers*, 7 B. & C. 542.)

Rule nisi.

JOB v. THOMPSON.—*V. Williams* moved for a rule for a new trial herein. *Cur. adv. vult.*

REG. v. THE INHABITANTS OF APPLEBY, IN CHESHIRE.—*Hildyard* moved for a rule to quash the *certiorari* issued herein, to bring up a case from the sessions, on the ground of irregularity. *Rule nisi.*

Thursday.

PERMAINE v. MACKEY.—*Bertham* moved in this case, which was tried before the Undersheriff for the town and county of Southampton, when a verdict was found for the plaintiff, for a new trial on the ground that the verdict was against evidence, and that one of the jury was a town councill and so disqualified.

Rule refused.

HIGGINS v. LEWIS.—*Phinn* moved in this case to set aside the judgment and all subsequent proceedings on affidavits detailing peculiar facts.

Rule nisi.

DAVIS v. HARRIS.—*V. Williams* moved to set aside the verdict and to enter a nonsuit in this case, which had been tried before the Undersheriff of Middlesex. *Rule nisi.*

LUGG v. LUGG.—*Willes* moved for a rule to set aside the verdict for the plaintiff herein, and enter a verdict for the defendant, or for a nonsuit, or for a new trial. The case was tried before the Recorder of Falmouth. (*Johnson* v. ——, Wills. 248.)

Rule nisi.

MORRIS v. GOODYEAR.—*Payne* moved in this case, which was tried before the Undersheriff of Hertfordshire, for a new trial on the part of the defendant.

Rule nisi.

THE LEGISLATOR.

Summary.

No news has reached us during the week relative to Legislation projected.

BILLS FOR THE ENSUING SESSION.—Towards the close of the last session a number of bills were ordered to be printed for consideration, with the view of affording business at an early period of the next session, in order to preclude the objections which have for several years been made, that many measures were delayed until the session had far advanced. There are three bills in respect to railways, joint-stock companies, and lands, which have for their object an uniformity of practice in the three matters. The bills are entitled "Railway Clauses Consolidation," "Companies Clauses Consolidation," and "Lands Clauses Consolidation." These three bills are to bring into consolidation the laws relating to the objects mentioned, so that one law may prevail, and those appointed to administer the laws on the several branches have their attention directed to the matters under consideration without, as now exists, being called upon to refer to several statutes having reference to the same subjects. The medical bill, which has been so much discussed by the profession, stands for consideration, as also the measure relating to the appointment of clerks and other officers of petty sessions. The other bills are the Mines Resgistration and the Field Gardens: the object of the former is to give to the Board of Trade a general power over all mines, which are to be registered and subjected to the superintendence of the Board, in order to prevent the useless expenditure of fortunes on reckless speculations: and the purport of the latter to obtain field gardens for labourers, with the view of benefiting their conditions. These bills, and one to consolidate parochial settlements, stand for consideration in the House of Commons, and are expected to be brought forward at an early period of the ensuing session.—*Times.*

THE MAGISTRATE.

Summary.

SOME comments on the able and interesting report on the Bill for regulating the fees of Clerks of Petty Sessions, which we published at length last week, will be found among the leading articles.

It will be seen by reference to the advertisements of new publications in to-day's LAW TIMES, that Mr. SYMONS, whose valuable commentaries upon Magistrates' Law are so well known to the readers of the LAW TIMES, is, as we intimated last week, preparing a series of *Forms in Bastardy* which shall be free from the objections that have lately proved so fatal to others.

These will appear in *three* shapes.

First, as an Appendix to Bittleston and Symons's Reports of Magistrates' Cases to be bound with the first volume of that work.

Second, as a distinct publication for the use of those who will not so receive it, and to them also it will be transmitted stamped, if desired.

Thirdly, in SHEETS, for *use*, not for reference, which may be had either by the dozen, quire, or the hundred, as ordered. But it would be convenient if orders for these were sent at once, that the publisher might regulate the printing.

The following forms are in the press and the others are almost ready, namely:—

- Informations before Birth.
- Informations after Birth.
- Summonses to the Father.
- Ditto for Witnesses to give Evidence.
- Orders.
- Notices of Appeal.

The Informations may also be had in Books.

A complete series of Magistrates' and Poor Law Forms is in preparation.

EVIDENCE ON APPEALS AGAINST ORDERS OF BASTARDY.

THE bastardy clauses of 7 & 8 Vict. c. 101, continue to give rise to great doubt and difficulty. The poor law department of legislation is peculiarly infelicitous in the art of utterance. Scarcely is there a Poor Law Act which is throughout intelligible.

It is to that part of section 3 which relates to the evidence of the mothers of bastard children that we desire to draw attention. It directs that the "*justices in such petty sessions shall hear the evidence of such woman*, and such other evidence as she may produce," &c. The 4th section then gives appeal to the putative father from the decision of the petty session: "to the *General Quarter Sessions of the Peace;*" but no provision is there made for examining the mother, as in section 3.

A correspondent, whose letter appeared in the LAW TIMES of last week, states, that the Quarter Sessions for the East-Riding of Yorkshire, at the Epiphany sessions, after a lengthened argument, decided that the mother could not be examined on the hearing of the appeal, and accordingly quashed the order! The same view has, we hear, been broached elsewhere.

This conclusion appears to proceed upon the 6 & 7 Vict. c. 85, s. 1, which, after declaring that interest in a suit, &c. or criminality on the part of a witness, shall not render the evidence of such person inadmissible, goes on to provide that the Act "*shall not render competent* any party to any suit, action, or proceeding individually named in the record." Now it was the object of this Act not to exclude, but to enlarge the admissibility of evidence; the first words of the preamble being—"Whereas the inquiry after Truth in Courts of Justice is often obstructed by Incapacities created by the present Law," &c. Most unquestionably, therefore, it cannot be the effect of the Act to exclude any evidence previously admissible: the proviso itself goes no further than to say that the Act shall not "*render competent* any party," &c. and certainly does not render any one incompetent who was competent before.

From the origin of bastardy law to this time, we find by uniform practice, no less than by express provision, the evidence of the mother has been receivable in the affiliation of a bastard child. In *Burn's Justice of the Peace*, vol. 1, p. 383, edit. 1845, it is said, under title "Bastard," "the mother's testimony, if living, is nearly always resorted to." In *Rex* v. *Reading* (2 Sess. Cases, 175), the mother, a married woman, *on the appeal* against an order of bastardy, was allowed to give evidence of facts of incontinency towards her husband. This case was in 1733. In the case of *Rex* v. *Clayton* (3 East, 58) the evidence of the mother taken before two justices was put in *after her death*, and held admissible *at the appeal* to the Quarter Sessions, and that case was based upon the authority of a similar judgment in *Rex.* v. *Ravenstone* (5 T. R. 373). The statutes have equally upheld the same doctrine. The 18 Eliz. c. 3, gives power to two or more justices not only to hear the evidence of the mother, but to compel her to give it. See *Ex parte Martin* (6 Barn. & Cr. 83, per Abbott, C. J.). The 6 Geo. 2, c 31 provides likewise that the mother's evidence be taken. The 4 & 5 Wm. 4, c. 76, s. 72, impliedly directs her evidence to be taken at the quarter sessions. According to that statute, the original order was to be made "after hearing both parties" at the General Quarter Sessions, and this was analogous(a) to the appeal clause under the new Act; and yet orders were constantly made (till the 2 & 3 Vict. c. 85, vested this power in the petty sessions) upon the examination of the mother, corroborated by other testimony in some material particular, as the section required it should be. (See *Rex* v. *Read*, 9 Ad. & Ell. 619.) Thus, whether at the original adjudication, or at the subsequent appeal, the practice has uniformly been to receive the mother's evidence under all stages of the law.

We will venture to say that had not the new Act made any express provision that the mother's evidence should be received at the petty sessions, no doubt would ever have arisen as to its admissibility on appeal.

What is the meaning of an appeal? Is it not in these cases its object to test the sufficiency of the evidence on which an order is made? If so, how can that be done without examining the same witnesses? And what witness can speak to the paternity of her own child but the mother? It is a clear

(a) Notwithstanding sec. 108 of 4 & 5 Wm. 4, c. 76.

matter of inference that the provision for taking the mother's evidence for the original order extends to the hearing of an appeal against that order. This is so, no less by law than by reason.

It is a plain and well-established rule for the construction of statutes, that nothing shall be inferred which is repugnant to the plain intention of the Legislature. (*Edmonds* v. *Lawley*, 6 M. & W. 289.) It has also been expressly ruled by the highest court in the land (the House of Lords), that "where a statute, expressive as to some points, is silent as to the others, usage may well supply the defect, if not inconsistent with express directions of the statute." (*Dunbar Magistrates* v. *Roxbury*, 3 Clark & Fin. 335.) Where also some enacting clauses are more expressive than others, the Courts will give extensive effect to them, if such, from a view of the whole statute, appear to have been its intention. (*Doe dem. Bywater* v. *Brandling*, 7 B. & Cr. 643.)

These rules are clearly applicable to this case. The usage is undoubted; the intent of the statute cannot be questioned, for the power of appeal would be nullified were the objection to prevail; nor is there any thing expressed in the statute from the beginning to the end which is in the least inconsistent with the admission of the evidence of the mother on appeal, but exactly the reverse; it would be repugnant to the obvious spirit of the Act, were it excluded.

We are only at a loss to conceive how the question ever arose. As to the report that Mr. Archbold entertains an opinion of the inadmissibility of the evidence, we regard it as a mistake. Mr. Archbold is assuredly not among the number of the quacks who are mischievously busy in misleading their dupes on this and other points of parochial law.

J. C. S.

BASTARDY FORMS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As to the bastardy orders, with reference to the communication from your correspondent from the West-Riding of York, in your's of Saturday last, I beg to state there was an appeal against an order at the last Suffolk Sessions at Ipswich, and it was quashed on the ground that it did not state that the evidence was taken on oath, and therefore that the magistrates were acting upon illegal evidence; this form was not Mr. Lumley's, but the same objection may be raised upon his also. Having to attend our magistrates' meeting this morning, and being aware that an order would be applied for, I was bold enough to draw up a form of an order, and get a few printed off, one of which I inclose.

I cannot flatter myself that the ingenuity of counsel may not find some objections to it, but it certainly states upon the face of it, the omissions mentioned by your Yorkshire correspondents, in four or five of the objections.

I have also read with interest the remarks in your paper as to chargeability under orders of removal. In all orders my plan is very simple; I take the examination of the relieving officer, and make him state the actual relief given, including some small matter of relief, on the morning the orders are made, by which means the paupers are, as they were under the old law, *actually* chargeable at the time of making the order.

I think the certificate in nine cases out of ten only misleads.

These discussions clearly shew the great use of your paper in these practical matters, and I hope all your readers who can will inform us what other objections have been taken to these bastardy orders.

I am, yours, &c.

JOHN MARRIOTT.

Stowmarket, Jan. 13, 1845.

Suffolk, to wit. } At a petty session of the peace, holden in and for the division of the hundred of Stow, in the county of Suffolk, at the King's Arms Inn, at Stowmarket, in the division of the hundred and county aforesaid, on the day of in the year of our Lord one thousand eight hundred and forty before us her Majesty's justices of the peace for the said county, and acting in and for the said division of the said hundred.

Whereas at in the said division of the hundred and county aforesaid single-woman, residing at day of within the said division of the hundred aforesaid, did on the day of one thousand eight hundred and forty go and make oath before one of her Majesty's justices of the peace in and for the said county, and usually acting in and for the said division of the hundred aforesaid, that she had been delivered of a bastard child on the day of 184 and after the passing of a certain Act of Parliament made and passed in the 7th and 8th years of the reign of her Majesty Queen Victoria, intituled "An Act for the further amendment of the Laws relating to the Poor in England," and further on her oath alleged that of was the father of the said bastard child. And the said at the time and place aforesaid, being within twelve months from the birth of the said bastard child, also made an application to the said justice for a summons to be served upon the said and the said justice thereupon issued his summons to the said to appear at a petty sessions to be holden on this day for the said division of the hundred aforesaid, to answer the complaint of the said touching the premises.

And whereas it hath been duly proved before us the said justices upon oath, that the said summons was served on the said by leaving the same at his last place of abode, six days at least before the day of the said petty session.

And whereas the said hath appeared before us the said justices in pursuance of such summons.

And whereas the said hath now applied to us the said justices at our petty sessions, held as aforesaid on this day, being within the space of forty days from the service of the summons after the birth of the said bastard child, for an order upon the said according to the form of the said statute in such case made and provided.

And whereas it is now proved before us the said justices on the oath of the said , in the presence and hearing of the said , that she was delivered of a bastard child on the day of one thousand eight hundred and forty , and since the passing of the said Act, and that the said is the father of the said bastard child.

And whereas we the said justices have (in the presence and hearing of the said) heard as well the evidence of the said , as also such other evidence upon oath as she hath produced.

And whereas we the said justices have also duly heard upon oath all the evidence tendered by and on behalf of the said

And whereas the evidence of the said the mother of the said bastard child, hath also been corroborated to the satisfaction of us the said justices in some material particular by other testimony, also taken on oath before us in the presence and hearing of the said .

Whereupon all and singular the premises, being duly considered by us the said justices, we do therefore hereby adjudge the said to be the putative father of the said bastard child, and having regard to all the circumstances of this case, We do now hereby order that the said do pay from the time of the said application unto the said , the mother of the said bastard child, so long as she shall live and is of sound mind, and is not in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of the said bastard child under the provisions of the said statute, the sum of weekly and per week; provided always that this our said order made for the maintenance and support of the said bastard child shall not (except for the purpose of recovering money due thereon) be of any force or validity after the said bastard child shall have attained the age of thirteen years, or after the marriage of the said mother of the said bastard child, or after the death of the said bastard child.

And we do hereby further order the said the sum of being the costs incurred in obtaining this order.

Given under our hands and seals at the sessions aforesaid.

MEETING OF THE JUSTICES' CLERKS' SOCIETY.

A very numerous meeting of the Justices' Clerks' Society took place at the Law Institution on Wednesday last, which was attended by about forty gentlemen from all parts of the kingdom. The special subject for consideration was the proposed Bill of Sir James Graham for regulating the office of Justices' Clerk, and the report prepared by the committee of the society on the subject, which was printed at length in our last number, was approved and adopted. The meeting was animated by the best feeling, and expressed the utmost confidence in the managing committee, whose elaborate and valuable report appeared to give universal satisfaction. A resolution was passed confirmatory of the principle of payment by a fixed salary in lieu of fees; and the committee were requested to obtain an interview with the Home Secretary, to urge on him the several points connected with the measure which required revision and amendment; and it was understood that the members would be called together again when the question shall have assumed a more decided form.

To the Editors of the Justice of the Peace.

ATTORNEYS—RIGHT TO PLEAD AT QUARTER SESSIONS, &c.

Gentlemen,—Under the above head in 8 J. P. you say (*inter alia*), "if an attorney may take upon himself the duty of a barrister, and dispense with his aid, a barrister may take upon himself the duty of an attorney, and dispense with his aid or intervention between him and the public," &c. Now, gentlemen, I beg to remind you that a barrister cannot act as an attorney without being admitted as such in the courts of law, to entitle him to which admission he must have previously served five years under articles to an attorney.

It is plain the whole article in question is written by a barrister, not by an attorney.

I subscribe myself, Gentlemen,
Your obedient servant,
AN ATTORNEY AND SUBSCRIBER.

[Our correspondent is angry without reason, and appears also to have mistaken our meaning. We did not design to say more, by the passage he has cited, than this; that if an attorney trespassed on the province of a barrister, a barrister might trespass upon his, as far as receiving briefs from the parties themselves instead of the attorneys, as we have seen indeed lately done at the Central Criminal Court, contrary to all professional etiquette; and, therefore, we recommended that each should keep strictly to his own walk in the profession, for the credit of both. We of course are aware that a barrister cannot *practise* as an attorney. We are afraid the subject is rather a sore one in places where attorneys have been in the habit of pleading at the quarter sessions, and we do not wonder at it; nevertheless, we fear we must continue to think, that barristers ought to have pre-audience in a court in which they have the leave of the court to attend. Whether the statement objected to were written by a barrister or attorney cannot matter; whether it is true must be the question. And our correspondent, we predict, will find that from the nature of things the bar must eventually carry the day; as in this country, two such conflicting claimants are seldom allowed to exist, and one must fall before the operation of public opinion, if nothing else. We may mention that the society of Gray's Inn has just disbarred a barrister for practising as an attorney also (perhaps taking a brief without the intervention of an attorney); he has appealed to the judges.—*Eds. of the Justice of the Peace.*]

PROMOTIONS IN THE CIVIL SERVICE.

Poor Law Commission.

1 April, 1844—Charles Marshall and Thomas Harries, clerks, promoted from the Fourth to the Third Class.

1 April—Charles Geer, David Jones, and William Ambrose Mason, Extra Clerks, placed on the Fourth Class of the establishment.

1 April—Henry C. Mott, appointed Clerk on the Fourth Class.

4 April—Colonel Thomas Francis Wade, C.B. appointed Assistant Commissioner, *vice* William Day, esq resigned.

Public Record Office.

23 May, 1844—Alfred Kingston, to be Clerk, *vice* Henry Roberts, resigned.

Excise Department.

17 Dec. 1844—John Jones, Supervisor, promoted to Surveying General Examiner.

POISONING IN FRANCE.—In a long statistical account, in one of our Paris contemporaries, of the number of persons in France accused of the crime of poisoning, from 1830 to 1842 inclusively, we find the following results:—The number accused is 541. Of these 251 were acquitted; 65 condemned to death, of whom 37 were executed, and 28 had their judgments commuted; 138 sentenced to hard labour at the hulks for life, and 58 for various limited terms; 29 to minor punishments. Of the total, 541, 295 were men, and 246 women; but the poisonings of husbands by their wives were more numerous than of wives by their husbands. To the total number of 541 there is to be added 6 who have been tried and condemned in default of appearance. It is necessary to add two more items to this sad account, viz. in the 10 years from 1830 to 1839 inclusively there were 200, and in the 3 years from 1840 to 1842 there were 113 ascertained acts of poisoning, the perpetrators of which have not been discovered. From the whole statement, it is proved that this crime in France has been latterly greatly on the increase.—*Galignani's Messenger.*

FEES IN POLICE-COURTS.—Some reduction is likely to take place in the course of a few days in the fees received at the metropolitan police courts. The Commissioners of police have within a few days past received instructions to that effect from the Home office, which will be soon made known to the public.—*Globe.*

The Right Hon. Henry Hobhouse has resigned the chairmanship of the Somerset Quarter Sessions, a position which he has filled with dignity for a long series of years. The right hon. gentleman's retirement has given occasion to expressions of warm regard from a large body of the county magistracy.

At the Berkshire quarter sessions, just concluded, the Earl of Falmouth took the oath, and qualified as a magistrate for the county.

The following new magistrates took the oaths, and qualified for the north riding of Yorkshire last week—viz. Dr. Whytehead, of Craike, near Easingwold; Joseph Dent, Esq. of Ribston Park; and the Rev. John Hutton Fisher, Kendrew.

The following buildings have been duly registered for the solemnization of marriages, pursuant to the Act of the 6th & 7th Wm. 4, c. 85. The Independent Chapel, situated at Richmond, in the city of York, in the district of the Richmond union. Countess of Huntingdon's Chapel, situated at Worcester, in the parishes of St. Swithin, in the city of Worcester, in the west district. The Birch-meadow Chapel, situated at Birch-meadow, in the parish of Broseley, in the county of Salop, in the district of Modeley.

THE LAWYER.

Summary.

The *Globe* of Saturday last puts forth a startling announcement of changes contemplated in the high places of the law. It affirms that the Lord Chancellor is about to retire, to be succeeded by Mr. Pemberton Leigh; that the venerable Chief Justice of the Common Pleas would give place to Sir F. Thesiger; that the Attorney-General, unable to re-enter upon the active duties of his Profession, would withdraw into private life; that Mr. Kelly is to take his place, and Mr. Wortley to be appointed Solicitor-General. Some of these promotions seem probable enough, whenever a change occurs, but others are manifestly absurd, and would be altogether inconsistent with the sound judgment which has been hitherto exhibited in its law appointments by the present Government. The *Standard*, a ministerial paper, positively contradicts the rumour, and we are inclined to put no faith in it. As for the health of Sir W. W. Follett, we are assured that it is so improved that he will be enabled shortly to return, not only to England, but to the courts of which he is so great an ornament.

The business of Term, and a variety of very interesting and important matter, compels us to be brief; so we but refer the reader to almost every column for something deserving notice.

LAWS OF FRANCE.

No. V.

COUR ROYALE OF PARIS.

However long a foreigner may have resided in France, he does not become legally domiciled, unless he has obtained the King's authorization conformably to Article XIII. of the Civil Code. Such is the interpretation of Article X''. of the law of the 17th of April, 1832, *on writs of arrest.*

Mr. Upton, allied to English families of rank, was residing a few months since at Meurice's Hotel, in Paris. On the 30th of December, 1843, he signed a bill for 9,039f. payable to the order of M. Caillé, proprietor of Meurice's Hotel, on the 1st of February following. Desirous of inspiring perfect confidence to his creditor, Mr. Upton gave him moreover his word of honour that he would not leave Paris without discharging his debt.

Shortly after subscribing to this engagement, Mr. Upton, pleading the necessity of a journey to London to obtain funds, gained M. Caillé's permission to quit France for a time, on condition that a respectable person would guarantee his return before the 1st of February, 1844.

Mr. Dremmlin, a professor at the preparatory school for the staff, persuaded by Mr. Upton's promises, generously undertook the responsibility, and engaged to pay the debt if the debtor did not return at the appointed time.

Mr. Upton has not returned to France.

The condition, the fulfilment of which would have released Mr. Dremmlin from his engagement, being unaccomplished, proceedings were taken against him by the bearer of the bill signed by Mr. Upton, and he was condemned by the Tribunal de Commerce, and by an arrest as a foreigner, to pay the sum.

Mr. Dremmlin appealed against this judgment. His counsel stated that his client, of German extraction, had resided in France upwards of fifteen years, that he had married a Frenchwoman, that he was father of seven children, destined to become French citizens; that, moreover, he was the owner of a school, and had been for ten years appointed by the Minister of War to a professorship in the preparatory school for the staff. And he maintained that all these united circumstances established in favour of Mr. Dremmlin a domicile in France, such as is required by art. 14 of the law of the 17th April, 1832, to emancipate the foreigner from an arrest.

The counsel for M. Boivin, bearer of the bill, maintained that the French law only recognized the domicile, properly so called, of a foreigner, inasmuch as he had obtained the royal authorization required by art. 13 of the Civil Code. The law of the 17th April, 1832, had not innovated upon this rule, which could neither admit of an equivalent, or be modified in this case by the circumstances insisted on by his adversary, however favourable they might be for M. Dremmlin.

The Attorney-General drew up his conclusions in favour of the defendant.

But the Court, conformably to its jurisprudence, confined the verdict of the first judges for the following motives:—

Touching the arrest claimed against Dremmlin as a foreigner.

Considering that it is acknowledged and proved in the suit that Dremmlin is a foreigner, that he has never obtained the King's permission to establish his domicile in France, conformably to art. 13 of the Civil Code.

That the long residence of Dremmlin in France, the establishment of a school which he directs, and the other reasons which he advances to obtain a release from the arrest, only prove the existence of one fact, namely, that he resides in France, but do not establish that he has a domicile in France legally authorized, which alone could free him from an arrest issued against a foreigner not domiciled in consequence of a condemnation he has incurred.

N. Treitt,
Avocat à la Cour Royale.

Paris, January 11, 1845.

LEGAL INTELLIGENCE.

DONCASTER BOROUGH SESSIONS.

Thursday, Jan. 9.

COUNSEL AND ATTORNEYS.

It was stated that there were two appeals on the paper, and *Fisher*, solicitor, rose to make a motion on the subject of one of them.

The Recorder (Sir Gregory Lewin).—Who are you?

Fisher.—I am a solicitor practising in Doncaster, and was the senior advocate in this court previous to the intrusion of counsel.

The Recorder.—I have already decided that point; and in the presence of counsel I cannot hear a solicitor.

Fisher.—But the matter has lately undergone discussion, and the opinion of Lord Denman been had.

The Recorder.—Judicially?

Fisher.—Not judicially.

The Recorder.—Then I cannot hear you.

Fisher.—I say, Sir, that this Court has not the power to make any such order as was formerly made on this subject.

The Recorder.—I have made that order, and I consider I had the power to make it; and, further, I mean to abide by it, unless you can shew me a judicial authority superior to mine, shewing that such an order was erroneous. I told you and all the attorneys that if you disputed my authority, or the law I laid down, I would afford you every facility to take a higher opinion. You have not done so, although you have had sufficient opportunities. If you have now found any new case, founded upon some authentic source, I am bound to hear any argument or motion you may be disposed to make.

Fisher.—I need scarcely say, sir, that Lord Denman is high judicial authority.

The Recorder.—What do you quote from?

Fisher.—The opinion of Lord Denman expressed to Mr. Waddington, of Lichfield, on a case arising at Lichfield sessions.

The Recorder.—Did Lord Denman express that opinion judicially?

Fisher.—He was consulted as Lord Chief Justice by the Recorder of Lichfield.

The Recorder.—From whom did you learn that?

Fisher.—From the Town Clerk of Lichfield.

The Recorder.—Then the Town Clerk of Lichfield will have no authority here. If Lord Denman had given any judicial authority on the subject, I would hear any motion; but I will hear no statements coming second-hand, as representing Lord Denman to have used certain statements. I know my duty too well to attend to any such, and it would ill become me to take notice of hearsay statements of that sort.

Fisher.—As far as the practice is concerned, it is immaterial to me. I merely stand here as representing the attorneys of the town. And I will say this, that there is but one opinion on the part of the profession, on the subject in question.

The Recorder.—I shall be happy to afford the solicitors of Doncaster every facility in my power, if they wish to obtain superior judgment. I have done what I believe was my duty; and if I did not support my decisions, I should be unworthy of the situation I have the honour to hold.

Fisher.—When you say you will render every facility in your power, I must say that at present there is no order to which we can refer and take the judgment of a superior Court, or the opinion of any Court. There is no order whatever.

The Recorder.—There is an order, because I made one; and the officers of the court are bound to take notice of the orders delivered by the judge, whatever they may be. And if an order is so delivered, if not taken down in writing, it still exists as it was originally delivered. I should be the last person in the world to take a technical objection to any application you may make; and you have the court at York close at hand, where you may try the case and get the judgment of one of the judges of the land on the subject.

Fisher.—My professional friends have applied to see an order in court, but up to this moment they have never seen it. If the officer of the court has no such order, one should now be drawn up.

The Recorder.—I have delivered *viva voce* my order on this matter.

Fisher.—Then, sir, there is no order upon which we can take the opinion of another Court.

The Recorder.—You may go to the Queen's Bench in any way you please; but I shall not allow attorneys to practise in this court when four barristers are present. That is my order. If a superior court decide that I am wrong, I shall bow to such decision.

Mr. Fisher then retired, and the Court proceeded with the ordinary business.

INSOLVENT DEBTORS' COURT.

NEW RULES AND ORDERS.

The following new rules and orders have been agreed upon and issued by the Court, with a view to shorten the period of the imprisonment of applicants, and thereby to assimilate the practice of the Court to the spirit of recent acts of the legislature:—

"The Court for Relief of Insolvent Debtors, on the 9th day of January, 1845.

"It is ordered,—That henceforth no order for hearing by a commissioner on circuit shall be issued later than the twenty-first day before the day notified in the *Gazette*.

"That personal service of a copy of the order for hearing be made fourteen days at least before the day of hearing.

"That service of such copy by post letter be made sixteen days at least before the day of hearing.

"That advertisement in the *London* or other *Gazette* be published fourteen days at least before the day of hearing.

"That advertisement in the country newspaper be published eleven days at least before the hearing.

"That notice of opposition be given two clear days instead of three.

By the Court.

"N.B.—The length of notice required on application for discharge on recognisance of sureties has been reduced from three days to two days."

THE NEW PROJECTED RAILWAYS.

(From the Gazette of last night.)

Whitehall, Jan. 14.

Notice is hereby given, that the Board constituted by the minute of the Lords of the Committee of the Privy Council for Trade, of the 24th of August, 1844, for the transaction of railway business, having had under consideration the following schemes for extending railway communication to Portsmouth, viz:—

The Brighton and Chichester—Portsmouth Extension,
The Direct London and Portsmouth,
The Guilford, Chichester, Portsmouth, and Fareham Branch,
The London and Portsmouth, with Branches to Shoreham-bridge, Fareham, and Reigate,

have decided on reporting to Parliament in favour of the

Guilford, Chichester, Portsmouth, and Fareham Branch;

and against the

* Brighton and Chichester—Portsmouth Extension,
Direct London and Portsmouth,
London and Portsmouth, with Branches to Shoreham-bridge, Fareham, and Reigate.

And the Board having further had under consideration the following schemes for extending railway communication in the metropolitan district, viz;—

The Epsom and Dorking,
The Grosvenor Railway,
The Great Western, Uxbridge, and Staines Junction,
The London and Brighton—Wandsworth Branch,
The London and Croydon—Dorking Branch,
London and Brighton—Dorking Branch,
The London and South-Western—Epsom Branch,
The Metropolitan Central Junction,
The Metropolitan Extension of the London and South-Western,
The Richmond and West-End Junction,
The South London and Windsor,
The South-Eastern Branch to Reigate and Dorking,
The Staines and Richmond,

have decided on reporting to Parliament in favour of the

Metropolitan Extension of the London and South-Western,
Richmond and West-End Junction,
Staines and Richmond;

against the

Grosvenor Railway,
Great Western, Uxbridge, and Staines Junction,
London and Brighton—Wandsworth Branch,
London and South-Western—Epsom Branch,
Metropolitan Central Junction,
South London and Windsor;

and recommending the postponement until a future period of the

Epsom and Dorking,
London and Croydon—Dorking Branch,
London and Brighton—Dorking Branch,
South-Eastern Branch—Reigate to Dorking.

DALHOUSIE. G. R. PORTER.
C. W. PASLEY. S. LAING.
D. O'BRIEN.

WHITEHALL, JAN. 7.—The Lord Chancellor has appointed James Pashley Burbeary of Sheffield, in the county of York, Gent.; and Charles Chalk of Brighton, in the county of Sussex, Gent. to be Masters Extraordinary in the High Court of Chancery.

WHITEHALL, Jan. 16.—The Right Honourable Sir Nicholas Conyngham Tindal, Knight Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Charles John Dene, of Barnstaple, in the county of Devon, attorney and solicitor, to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, under the Act passed for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, in and for the county of Devon.

MR. BARON GURNEY.—We regret to learn that Mr. Baron Gurney is labouring under severe indisposition, which prevents his lordship attending to his judicial duties. The learned baron at present is residing at Brighton. The last accounts were favourable.—*Standard.*

SIR W. FOLLETT.—It is whispered in Exeter, that we may expect an election very soon after the opening of Parliament. Sir William Follett's health will not, it is said, permit him to hold the office of Attorney-General; neither his mind nor body being at all equal to the discharge of the laborious duties attached to the responsible office which he now holds. —*Western Times.*

SIR W. FOLLETT.—(From a Correspondent.)—We have been favoured with the perusal of a letter from Naples, dated the 30th of December, from which we learn that the learned Attorney-General and Lady Follett had arrived in that capital from Rome. We are gratified to be assured, on the same authority, that the learned gentleman's health had improved. Sir William was, according to the arrangements then made, to embark at Naples on board the Government steamer ordered to convey himself and family to this country, about the 15th instant, so that he may be expected home in about three weeks at latest.

MIDDLE TEMPLE, Jan. 14.—Mr. W. J. Alexander, recently appointed one of Her Majesty's counsel, took his seat this day as a bencher of the Hon. Society of the Middle Temple.

EQUITY BUSINESS FOR HILARY TERM.—The amount of business of the Chancery Courts for the present term appears to be of an average character with that of the preceding terms of late years. Of appeal causes for hearing before the Lord Chancellor up to the present period there are 38; causes before the Master of the Rolls, about 92; of causes before the Vice-Chancellor of England, 90; before Vice-Chancellor K. Bruce there are 34; and before Vice-Chancellor Wigram, 46—making a total of 300.

Richard Spoooner, esq. M. P. has been appointed a deputy-lieutenant for the county of Worcester.

CLERKS OF MASTERS IN CHANCERY.—The death of the Chief Clerk of Master Richards having occasioned a vacancy in that office, the Master has exercised his right of appointment in favour of Mr. John Philpot, sen. of Southampton Street. This appointment of a solicitor much esteemed by his brethren and of long experience, will, no doubt, give general satisfaction to the practitioners.

ASSIZES.—It is said that the suggestion of Mr. Baron Alderson to supersede the third assizes in Yorkshire and South Lancashire, and other populous districts of England, by the establishment of assizes to commence early in the month of January, and about the usual time at Midsummer, and thus to divide the year into two equal parts, has been heard with favour in influential quarters, and that it is not improbable that this very natural arrangement may be ultimately adopted.—*Leeds Mercury.*

THE SPRING CIRCUITS.—Yesterday (Thursday) the Judges assembled in the Exchequer-room, when they chose the following circuits of the Special Assizes:—Home—Lord Denman, Baron Alderson. Midland—Lord Chief Justice Tindal, Baron Gurney. Oxford—Lord Chief Baron Pollock, Judge Maule. Norfolk—Baron Parke, Judge Patteson. North Wales—Judge Williams. South Wales—Judge Cresswell. Western—Judge Coleridge, Judge Erle. Northern—Judge Coltman, Judge Wightman. Baron Rolfe remains in town.—*Times.*

ATTORNEYS.—One hundred and twenty-four gentlemen have given the requisite notice of intending to apply during the present Term to be admitted to practise as attorneys in the Court of Queen's Bench; and there are no less than thirty-three notices for re-admission, making a total of *one hundred and fifty-seven.*

HILARY TERM EXAMINATION.—The examiners appointed for the examination of persons applying to be admitted attorneys, have appointed the candidates to attend on Thursday, the 23rd instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery-lane. The examination will commence at ten o'clock precisely. The articles of clerkship, with answers to the questions as to due service, according to the regulations approved by the judges, must be left on or before Friday, the 17th instant. Where the articles have not expired, but will expire during the Term, the candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.—*Legal Observer.*

Sir James Dowling, Chief Justice of New South Wales, has been granted leave of absence for two years, and is returning to England to recruit his health. His labours were unremitting for sixteen years; and in consequence of the removal of Mr. Justice Burton to Madras, before the arrival of his successor, the extra duties thrown on the chief justice and his only remaining coadjutor, Judge Stephens, he completely broke down. Mr. Dickenson, the new judge, was expected out in October; and Mr. A'Beckett, the Solicitor-General, has been appointed to act as third judge until the return of Sir James.—*Observer.*

THE RUMOURED LAW CHANGES.—[From a correspondent.]—On Saturday last, the *Globe* announced that Lord Lyndhurst, it was expected, retired from the woolsack to make way for Mr. Pemberton Leigh; that Sir N. C. Tindal was about to resign the High office of Chief Justice of the Common Pleas, which he had filled for many years, with so much distinction and credit, and was to be succeeded by the Solicitor-General (Sir F. Thesiger), Mr. F. Kelly to be Attorney-General, Mr. Stuart Wortley, Solicitor-General, &c. &c. As this report has been copied into some of the morning papers, we notice it for the purpose of giving the statement a positive, unqualified contradiction. No such changes have ever been in contemplation. The "rumour" did not gain credence for a single moment in Westminster Hall; it certainly caused a laugh, and was then forgotten.—*Standard.*

JERSEY LAW.—We have heard that his Excellency the Lieutenant-Governor wrote some time ago to the Home Secretary for instructions how to act, should a Writ of Rebellion, on account of the resistance to the Habeas Corpus writs, be sent to Jersey. The Secretary evaded a direct answer, but cautioned his Excellency to be "as conciliatory as possible." *Jersey Times.*

ALTERATIONS IN CONVEYANCING PRACTICE SINCE THE 1ST OF JANUARY.—It may be useful to state, that so far as we have observed ourselves, or have been informed, no material alteration has been made in the practice of conveyancing since the new act 7 & 8 Vict. c. 76, came into operation. We have heard indeed of certain instruments on parchment being in existence, commencing "*This deed,*" but we apprehend the great majority, and certainly all that we have seen, begin, as heretofore, with those apparently immortal words "This indenture." The reference to the act dispensing with the lease for a year, 4 & 5 Vict. c. 21, has, we believe, in no case been omitted in a deed intended to operate as a lease and release. But in settlements of real estate the usual limitation "to trustees to preserve contingent remainders," has in many cases been struck out.—*Legal Observer.*

BANKRUPTCY ANALYSIS FOR 1844.—Ale merchants 4, apothecaries 9, attorneys 3, auctioneers 9, bakers 9, bankers 4, booksellers 10, boot and shoe makers 10, brewers 8, brickmakers 5, brokers 8, builders 44, butchers 14, cabinet makers 11, calico printers 4, carpenters 21, carpet manufacturers 4, cattle dealers 7, cheesemongers 6, chemists and druggists 15, clothiers 5, cloth manufacturers 4, coal merchants 2, coach makers 5, coach and omnibus proprietors 5, coal merchants 11, commission agents 10, contractors (road, railway, and gas) 3, cooks and confectioners 4, corn merchants and dealers 17, cotton manufacturers 3, curriers 10, cutlers 3, dairymen 3, dealers 15, earthenware dealers 3, eating and coffee house keepers 3, engineers 6, engravers 2, farmers 7, flannel makers 2, fruit merchants 4, furriers 4, glass merchants 3, grocers 53, hatters 6, horse dealers 3, hosiers 4, innkeepers 22, ironfounders 11, ironmongers 19, jewellers 7, lacemen 3, leather sellers 3, lime burners 2, linendrapers 23, linen manufacturers 2, livery stable keepers 7, lodging house keepers 5, machinists 2, maltsters 7, market gardeners 2, mercers 2, merchants 38, millers 19, milliners 3, money scriveners 5, musical instrument makers 2, nail manufacturers 2, oil merchants 3, painters 2, paper hangers 2, paper makers, 3, pawnbrokers 3, plumbers and glaziers 13, printers 5, printsellers 2, provision merchants 4, saddlers 10, sail cloth manufacturers 3, ship brokers 3, shipowners 7, shipwrights 4, silk manufacturers 4, silk throwsters 4, silversmiths 4, soap makers 2, stationers 12, straw bonnet manufacturers 2, surgeons, 13, tailors 28, tallow chandlers 7, tanners 3, tea dealers 8, timber merchants 3, tobacconists 4, toymen 2, trimming makers 2, upholsterers 9, victuallers 47, warehousemen 10, watchmakers 4, wheelwrights 1, wine and spirit merchants 36, woollen drapers 8, woollen manufacturers 3, woolstaplers 2, worsted manufacturers 3, worsted spinners 3, various 76. Total 1,064.—*Globe.*

CASE OF MISTAKEN IDENTITY AT THE YORKSHIRE WEST-RIDING SESSIONS.—Henry Cutts, a young man who was tried at last Doncaster Sessions, for a riot and assault at the Manor, near Sheffield, connected with the colliers' strike, and sentenced to six months' imprisonment with hard labour, and who has since been liberated from prison, in consequence of evidence which had been forwarded to the Secretary of State, by the prisoner's solicitor Mr. Eyre, was called into the witness box, when Mr. Dennison, the chairman, addressed him as follows:—"Henry Cutts, you were convicted before me at the sessions at Doncaster for a riot and assault, upon the evidence of two witnesses, each of whom spoke so positively to your being the man who committed the offence for which you were then tried, that the jury found you guilty, and I must say they were upon that evidence fully justified in doing so, but being afterwards fully satisfied that those two witnesses were mistaken as to your identity, and that it was another man who committed the assault, upon my recommendation to the Secretary of State you received her Majesty's pardon, and was liberated from prison. I take this opportunity, therefore, of publicly expressing my opinion of your innocence of the offence for which you were so tried and found guilty. And I do this in justice to your character, from a full conviction of your innocence, as well as to contradict a report that has been raised that it was for other reasons you were pardoned."—*Doncaster Gazette.*

WILL OF THE LATE ROBERT FOSTER, ESQ.—This gentleman, who died at his residence in Wolvey, in the county of Warwick, on the 17th December last, in his 67th year, by his will, dated the 24th October, 1843, directed the following legacies to be paid clear of legacy duty: the Clergy Orphan Society, 1,000*l.*; Christian Knowledge Society, 1,000*l.*; the National Society for Educating the Poor, 500*l.*; Society for the Propagation of the Gospel, 1,000*l.*; Society for Building Churches, 2,000*l.*; Society for the Employment of Additional Curates, 1,000*l.*; Schools at Knighton, near Leicester, 200*l.*; General Hospital, Birmingham, 500*l.*; Leicester Infirmary, 300*l.*; total, 7,500*l.* The deceased had, for some years, been a subscriber or occasional contributor to each of the above charitable institutions. Thomas Edward Dicey, Esq. of Claybrooke hall, near Lutterworth, Leicestershire, is appointed sole executor.—*Historical Register.*

WILL OF THE LATE SIR H. HALFORD, BART. one of the physicians in ordinary to the Queen, was proved in Doctors' Commons, by his son, Sir Henry Halford, Bart. the sole executor, to whom the whole of the property, real and personal, is bequeathed—the personal estate sworn under 9,000*l.* The will, which is in the deceased's handwriting, is remarkably short, being contained on one side of letter paper; it is dated 18th September, 1833, and signed 'Henry Halford, Bart.' Witnesses, Wm. Macmichael, M.D. Thos. Turner, M.D. J. Bright, M.D. The baronet was late of Wiston hall, Leicester. and of Curzon street, May Fair, and died at the latter place March 9th, 1844.—*Ibid.*

IRELAND.

OPENING OF HILARY TERM.

This being the first day of Hilary term the courts were opened with the customary formalities.

Shortly after two o'clock the Lord Chancellor entered the Court of Chancery, when the following gentlemen, having been previously sworn before Judge Perrin, were called to the bar:—

Moses Wilson Gray, esq. son of John Gray, esq. of Claremorris, county Mayo.

Augustus Hugh Barton, esq. son of Dunbar Barton, esq. of Fitzwilliam-square, Dublin.

Henry W. Lover, esq. son of M. F. Lover, esq. Rathmines, county Dublin.

Robert William Osborne, esq. son of Jonathan Osborne, esq. of Harcourt-street.

William Annesley Mayne, esq. son of William Mayne, esq. of Freame Mount, county Monaghan.

John Davis, esq. son of Roger Green Davis, esq. of Drumdiah, Killeagh, county Cork.

George Ponder, esq. jun. son of George Ponder, esq. Upper Temple street, Dublin.

*Peter Faucett, esq. son of Peter Faucett, esq. Ballyconnell, county Cavan.

Robert St. George Rathborne, esq. son of William Rathborne, esq. of Scripplestown, county Dublin.

Richard Pennefather Going, Esq. son of Ambrose Going, esq. Ballyphilip, county Tipperary.

William Wallace Harris, esq. son of Hugh Harris, esq. late of Ashfort, county Armagh.

*Edmond W. O'Mahony, esq. son of Denis O'Mahony, esq. Bandon, county Cork.

*Francis Meagher, esq. son of Francis Meagher, esq. Nenagh, county Tipperary.

Thus marked * are Roman Catholics.

PROCEEDINGS OF LAW SOCIETIES.

THE SIXTH ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT OF THE MANCHESTER LAW ASSOCIATION.

The committee have sincere gratification in presenting the members, at their annual meeting, a short epitome of their proceedings during their period of office.

On no former occasion have the advantages of associations like the present been so strikingly apparent or so generally admitted; and the great increase of members, and the commendations of the public press, are gratifying proofs that the efforts of your committee fully to carry into effect the objects of the society have not been unsuccessful.

Several measures of great importance to the Profession were introduced into Parliament during the last session, to all of which the best consideration was given; but before alluding to them in detail, your committee have to acknowledge the courtesy of the members for the Borough, who, prior to the commencement of the session, sought an interview with your committee for the purpose of obtaining their views on the various Bills interesting to the Profession, of which notice of introduction had been given. To M. Phillips, E. Buckley, and J. Brotherton, esqrs. your committee are deeply indebted for their attention in forwarding to the Honorary Secretary the Bills as they were severally introduced, and for the consideration given by them to all communications from this society.

Among the Bills alluded to were several measures for the more speedy recovery of small debts. The one brought in by Sir James Graham was found to be by far the least objectionable, and your committee, hoping through the medium of this Bill to get rid of the Salford Hundred and Manchester Manor Courts, determined (with certain modifications) to give it all the support in their power. A petition, therefore, numerously signed, strongly setting forth the evils of the above courts, and suggesting the introduction of a clause destroying altogether their civil jurisdiction, was forwarded to Sir James Graham for presentation.

Your committee have pleasure in stating that although those courts still exist, yet through their representations, the "Bailiffs of Inferior Courts Bill" passed, which will be found to remedy many of the evils complained of. A further opportunity of endeavouring to get rid of the civil jurisdiction of those courts altogether within the borough of Manchester may present itself to the committee for next year, as it is intended to apply to Parliament for powers to bring into operation the Borough Court of Record. The Bill for that purpose will require watching by the committee, to take care that it contains no clause which will prevent any attorney in the superior courts from practising in the Borough Court of Record.

To the County Courts Bill for the county palatine of Lancaster, introduced by Lord Granville Somerset, your committee offered the most strenuous opposition, considering the measure totally unnecessary and highly objectionable, inasmuch as it created another and distinct jurisdiction, applicable only to a particular locality, with all the various offices, &c. centred in Preston, a distance of thirty miles from this town. Reasons against the Bill were prepared with great care, and a deputation of this society, consisting of such of the members as were then in London, waited upon his lordship, by appointment, and discussed at considerable length the provisions of the Bill.

The Bills introduced by Mr. Jarvis and Mr. Watson, for improving the jurisdiction of the superior courts, your committee considered equally objectionable; but as all the Bills alluded to were ultimately withdrawn, it is not considered necessary to state in detail the measures they had arranged for opposing their further progress.

The Bill introduced by the Lord Chancellor, for simplifying the transfer of real property, received the consideration so important a measure demanded; and as it was found that the alterations sought to be effected were generally great improvements upon the old system, without at the same time touching upon any important principle, a petition from the Society in favour of the measure was presented by his lordship. The Bill subsequently, with the omission of some clauses, passed into a law.

Your committee endeavoured to carry into effect the recommendation contained in last year's report, to get a clause introduced into the Ecclesiastical Courts Bill, enabling solicitors to share in the fees paid to proctors, and a petition to that effect was prepared and presented to the House; but the Bill was withdrawn before any thing could be accomplished.

Numerous points of practice have been submitted for decision during the past year, and as a uniform system is highly desirable, your committee strongly recommend that notice of the various opinions of the committee should from time to time be sent to the members.

Your committee considered it their duty to call the attention of the Incorporated Society (with whom they had been in frequent and friendly correspondence) to two persons in this town who had given notice of their intention to apply for a renewal of their certificates. They considered that in both instances the application should be opposed. The result was, that neither of the parties alluded to persisted in his application.

By far the most important object which has occupied the attention of your committee is the union of provincial law societies. At a general meeting of the Yorkshire society, held in March last, the great importance of a permanent union between the different law societies in the country was strongly urged, and Manchester was fixed upon as the proposed place of meetings.

Your committee, having received a copy of the resolutions passed at the above meetings, passed a resolution pledging themselves to render every assistance in their power in endeavouring to promote the union, and to render the meeting effective for the important objects sought to be attained. Your committee have pleasure in stating that the proposal met with the cordial concurrence of most of the principal law societies, and the following have signified their intention of joining the union; viz. Birmingham, Cumberland, East Kent, Gloucestershire, Hull, Leeds, Lincolnshire, Liverpool, Newcastle-upon-Tyne, Oxford, Plymouth, Somersetshire (Bridgewater Junior Club), West Riding of Yorkshire, and Lancaster.

The objects of the union are chiefly to protect the interests and watch over all legislative and other interference with the just rights of the Profession; to assist in obtaining all useful and practicable amendments of the law; and to adopt measures for maintaining the respectability of the Profession.

Your committee feel assured, that if these objects are fully carried out, and a means of mutual and cordial co-operation firmly established, the union will prove of incalculable advantage to the Profession, by concentrating the power and influence which they as a body possess.

Your committee, owing to the additional accommodation that would be required for the purposes of the union, strongly recommended that the premises, No. 4, Norfolk-street, should be taken for the purposes of this society, and seven of the members at once consented to become lessees for twenty-one years, at the annual rent of 200*l*.

The lessees have arranged that the rooms on the ground floor shall be used for sales, and have fitted them up accordingly. The loss of time, expense, and inconvenience of sales being held at hotels, and in the evening, have long been felt, and your committee were convinced if suitable rooms were provided in a central situation, not only the evils alluded to might be avoided, but that there would be a much greater probability (if sales were held at more convenient hours for business) of the property offered bringing its legitimate value. The experiment has been tried, and the results up to the present time have fully borne out the expectations they had formed.

The lessees have arranged with the committee of the Law Library for the letting to that society of two rooms in that building, and the remainder of the premises will be used for references, meetings of creditors, and other purposes connected with the Profession. A moderate scale of charges has been fixed for the use of the rooms, and your committee confidently trust that the members will at once see the importance of aiding the lessees in carrying out their views, by doing which your committee feel assured a considerable revenue for the purposes of the society may be relied upon.

Your committee also strongly urge the importance of the members meeting daily, whenever practicable, for a short time, in the committee-room. This arrangement will, in their opinion, tend in many ways to facilitate the transaction of a vast amount of legal business between the members, with the greatest economy of time, and prove of peculiar advantage to those residing at a distance.

Your committee, considering it highly important that law students should have the opportunity of attending lectures, have arranged, with the kind assistance of a resident barrister, to give, during the present winter, a course of 13 lectures, on different branches of the law, to which all the members and their articled clerks have free admission.

Your committee trust that should the experiment be found to answer their expectations their successors will devise some means of continuing so important an advantage.

Your committee, in concluding their report, cannot avoid congratulating the members on the high standing to which your society has attained, and expressing a hope that nothing will occur to diminish its influence or take away from its utility; and they wish forcibly to impress upon the members that at no former period were active exertion and cordial co-operation more essentially necessary for the preservation of the best interests of the Profession.

ANNIVERSARY OF THE MANCHESTER LAW ASSOCIATION.

UNION OF PROVINCIAL LAW ASSOCIATIONS.

(*Abridged from the Manchester Guardian.*)

The annual meeting and dinner of the members of the Manchester Law Association took place on the 10th inst. on which day also an important meeting of deputations from various provincial law societies was held, with a view to the formation of a general association of such societies. The gentlemen forming deputations from the different societies to which invitations had been sent were met by a sub-committee, appointed by the Manchester Association, at the Law Society's Rooms, Norfolk-street, in the forenoon, for the transaction of business. The following are the names of the gentlemen present, and the places they represented:—Mr. Thomas Eyre Lee and Mr. Arthur Ryland, Birmingham; Mr. George Hicks Seymour and Mr. Thomas Hodgson, York; Mr. John Hope Shaw, Mr. Richard E. Payne, and Mr John Sangster, Leeds; Mr. Charles Frost and Mr. C. H. Phillips, Hull; Mr. John Freeman, Huddersfield (West Riding Society); Mr. James Westell, Witney, Oxfordshire, and Mr. John Marriott Davenport, Oxford; Mr. Thomas Avison, Mr. Ambrose Lace, and Mr. J. Eden, Liverpool; Mr. Julius G. Shepherd, Faversham, Kent; Mr. Edward Knocker, Dover; Mr. John Sharp and Mr. J. H. Sherson, Lancaster; Mr. J. Bourne, Alford, Lincolnshire; Mr. E. A. Bromehead, Lincoln; Mr. Henry Abbott, Long Ashton, Somersetshire. The sub-committee of the Manchester Law Association consisted of Messrs. R. H. Wilson, J. Grave, R. M. Whitlow, Stephen Heelis, James Crossley, Charles Gibson and Thomas Taylor.

Mr. R. H. Wilson was called to the chair, and the resolutions appear among our advertisements. At the close of the meeting thanks were given to Mr. Thomas Taylor, honorary secretary; and to Mr. Thomas Hodgson, of York, for their services in the formation of the association.

The proceedings connected exclusively with the annual meeting of the Manchester Association commenced at three o'clock in the afternoon. The report was highly satisfactory as to the progress of the association, which, we understand, numbers about 200 members. Mr. R. H. Wilson was elected president for the ensuing year, in the room of Mr. John Taylor (of Mosley-street), who held the office during the past year.

THE DINNER.

The annual dinner of the members of the association took place in the New Concert Room at the Albion Hotel, Piccadilly. There were about 80 gentlemen present, including a number of gentlemen from different and distant parts of the kingdom, who had attended the morning meeting. The attendance also included several gentlemen resident in the neighbouring towns included within the limits of the association. Mr. R. H. Wilson (of Mosley-street), the president for the ensuing year, occupied the chair, and was supported on the right by Alexander Kay, Esq. Mayor of Manchester; and on the left by Mr. G. H. Seymour, of York, president of the newly-formed union of provincial law societies. Mr. Joseph Heron, Town-clerk of Manchester, and Mr. Nicholas Earle, officiated as vice-chairmen.

After the cloth had been withdrawn the usual loyal toasts were given. The Chairman then gave, "The Manchester Law Association, and prosperity to it." He

would not make any lengthened observations upon the great advantages that had, and would arise from that association and other similar associations, but would leave that to be done by their friend Mr. Heelis, upon whom he would call to respond to the toast. Mr. S. Heelis, in responding, said he should ill discharge the duty imposed upon him if he did not, on behalf of the members of the association, insist that it did not originate simply from a wish to benefit the Profession, but from a circumstance which shewed the necessity of protecting the interests of the public. (Hear, hear.) That was not the only occasion in which its services had been directed to the promotion of public interests; and although he should be sorry to affect that they did not also endeavour to look after their own, yet he hoped the day would never arrive when they should not make their own private interests subservient to those of a higher class. (Hear, hear.) He had frequently had compliments paid to him for attention to the interests of the association, but he thought the climax of their exertions had arrived, because they had that day associated themselves with other similar societies, he believed for very great public benefits, and he hoped also for their mutual special advantage. (Hear, hear.) It had been said that day, that the Manchester Law Association had on various occasions come forward, and probably they had borne a great deal of the brunt of the battle, although the original suggestion for a general union was not with them. However, they should be happy, as an association, to do all they could to carry out those objects, which were not only more particularly within their province as a local association, but also those which related to the interests of the Profession and the community in other parts of the kingdom. The Chairman next gave "The Judges of the land;" after which he proposed, in a highly complimentary speech, "The health of John Taylor, Esq., the president of the association during the past year." Mr. Taylor had practised in this town for about 55 years, and was the father of the profession here. The Chairman, in proposing the next toast, said the great advantage arising from law associations, and the absolute necessity for a general union of them, were facts so well known, that it was unnecessary to offer any remarks upon those subjects. The advantages, amongst others, which arose to the public and to the profession from law associations, were the promotion of the respectability of the profession generally; the promotion of liberal, fair, and honourable practices amongst them; the putting down of all petty practices and petty practitioners, who were alike injurious to the public and to the profession. (Hear, hear.) But there was another and still more important benefit derived by the profession. Those associations tended to bring them together as men and brethren— (hear, hear);—to create friendly feelings amongst them, and confidence in each other; and he need hardly point out the advantage the public would derive from the existence of a good understanding amongst the professional men they employed. He considered the fact of a professional gentleman being a member of one of the law associations quite sufficient to create confidence in the honour and integrity of his intentions, and that he would adopt every fair practice in his intercourse with members of the same profession. (Hear, hear.) And with respect to the necessity for forming associations, the transactions of almost every day tended to convince them of it, in order to protect their rights and interests, and to put down the encroachments which were daily practised upon the profession by such men as Lords Brougham and Campbell; who, in point of fact, had risen to their present elevated positions in society through the instrumentality, in the first instance, of those professional men whom they reviled, and at all opportunities attempted to degrade and vilify. (Hear, hear.) The members of the profession, however, were a most powerful and influential body; and if united throughout the kingdom, as they ought to be, they would soon teach Lords Brougham and Campbell, and such superficial law-tinkers, that they would not long trespass upon the rights of the profession with impunity, as they now did. (Hear.) He would now give, "The Law Associations forming the provincial union of law societies, with our best wishes for our future union and prosperity." (Applause.) He would couple with the toast the name of Mr. Seymour, of York, who had been elected president of the united association for the ensuing year. (Applause.) — Mr. H. Seymour, in responding, said, the honour which had been conferred upon him, in electing him president of the newly-formed association for the ensuing year, was entirely unlooked for on his part; and he attributed his election, not to any thing which was due to himself, but to the society which he represented, which was the parent of these societies, though now outstripped by some of her children. However, be that as it might, he considered his election a high honour; and whatever exertions might be wanted on his part, he should consider it both a duty and a privilege to render them to the best of his ability. (Hear, hear.) He had had the honour of being introduced to the respected gentleman who filled a high civic station in this town. It so happened that, in the city of York, the chief magistrate (Mr. William Gray) was also a member of the legal profession, and he (Mr. Seymour) was in office as chairman of the city commissioners. He did not mention this as a matter of pride, but as shewing that, if gentlemen of their profession would observe a respectable mode of conduct, the practice of the profession was no bar to obtaining civic honours. (Hear, hear.) — The Chairman said the toast he had to propose followed very appropriately after the observations of Mr. Seymour, and when he announced that it was "The health of their respected guest, Alexander Kay, Esq. Mayor of Manchester." Alexander Kay, Esq. the mayor, returned thanks. He knew not why he should have been selected by his fellow-townsmen to fill twice the high office of chief magistrate. He never expected, ten years ago, that it would be his fate and fortune to be placed in such a position; and the only feeling he entertained was, that during the period he had held the office, he hoped he had done no discredit to the profession to which he belonged. (Hear, hear.) His position was a very simple one; and there was not a gentleman in the room, who, by following the same course, might not attain to the same honours if he chose to set about it. He was born in Manchester, the son of a cotton merchant, and entertained greater expectations in early life than he found on attaining manhood; and he determined, therefore, when he found those expectations disappointed, to realize that which he was certain every man in his profession, with common honour and common honesty, might attain to. (Hear, hear.) He claimed for himself no particular talent; but if there was any one thing more than another to which he owed his present position, it was to a constant assiduity in his professional career, and his determination, under no circumstances, and under no views whatever that were presented to him, ever to forget the interests which were confided to him. It was sometimes difficult for a professional man to ascertain what the true interests of his clients were; but if he kept those interests steadily in view, he would not make many mistakes of an important character. But, leaving this, he would turn to a subject much more agreeable to himself, namely, the progress and prospects of the Manchester Law Association. Many gentlemen would recollect that a law association existed in Manchester some thirty years ago. It was not his fortune to be a member of that association; because, being then a young man, he had seen and heard enough to lead him to think that the association was intended by the elder members of the profession to keep down the younger ones, rather than to take the course which such a society ought to follow with reference to the profession and the community; and he was happy to think that a different course was taken by the association of the present day.— The Chairman next gave "The health of Mr. Whitlow, the treasurer," to whom the association was under great obligations for his valuable services. (Applause.) — Mr. Whitlow returned thanks, and remarked, that for any services he had rendered to the association, he had been amply repaid by the feeling exhibited that evening.—The Mayor proposed "The health of Mr. Wilson, the president of the association for the ensuing year." (Applause.)—The Chairman acknowledged the compliment, and, in the course of his speech, took occasion to reply to a remark of his friend, the mayor, in allusion to the old law association some thirty-five years ago. He (the chairman) believed he was the only person present who was a member of that association: and he thought the mayor had done them a little injustice, not intentionally, but for want of knowing what were the real motives and views of the association. He would take the present opportunity of suggesting, as a means of still further extending the usefulness of the association, that some provision should be made for the charitable support of members of the profession in advanced periods of life, who might not have been so successful as others, and also of the families of deceased members when left in a state of distress. (Applause.) He merely threw out the suggestion, thinking the association might take it into consideration at a future time.—Mr. James Crossley in proposing the next toast, "The committee of management for the past year," said, he believed there never was a period since the origin of the association in which so much valuable time and active exertion had been devoted to its interests as during the period since the last adnual meeting. When he looked back from their present position, and saw how much had been accomplished in, comparatively speaking, a short period of time, he could scarcely place any limits to their future progress. He little thought, at the meeting at which the society took its rise, and at which he had the honour to preside, that he should be present at such an assembly as the present, combining so large a proportion of the respectable solicitors of this district, with the municipal head of Manchester, and a number of friends and distinguished ornaments of the profession from various and distant parts of the kingdom. (Hear.) He little thought that he should have the future privilege of sitting an admiring auditor in a sort of legal lyceum of their own, and hearing a worthy and accomplished member of their body, whom he was glad to see present on that occasion, deliver, to a numerous class of instructed ancherites, as able a lecture as ever came from the professor's chair. (Applause.) He hailed the union of societies that day formed, having a firm conviction that all their efforts would be required, if they maintained their place as an integral and most important part of an enlightened profession; as a body of men to whom the public might look with confidence for the discharge of duties for which the highest moral qualifications, as well as the highest intellectual powers, were required. At present, he looked upon their state to be somewhat analogous to that of a beleagured citadel, assailed on all sides, and their members as the selected victims of that erratic legislation, which, seizing the subjects of its experimental philosophy rather for its own amusement than for their improvement or for the public necessity, required every vigilance in order to avert the evils of its most mischievous activity. ("Hear, hear," and applause.) From the stream and tendency of legislation, indeed, as applied to their body, it might almost be considered that the public were alarmed at their plethoric habits, and were consequently calling to the quack doctors of the state to reduce them to what Falstaff would call "reasonable dimensions" by a perpetual succession of parliamentary drastic medicines, never forgetting the lancet and the blister. (Applause and laughter.) But he did say, and it was a most singular fact, that theirs was the only body or class of public men who, in the exact proportion as they had endeavoured to merit encouragement from the legislature, in exactly the same proportion had they received systematical discouragement. (Hear, hear.) He could give, were it necessary, fifty instances to corroborate the truth of what he had asserted, but it was perfectly unnecessary to do so in the present company. To combat, however, that unwise and partial spirit by efficacious, yet by legal means, it must be admitted that a general movement of associations was necessary; and with the increased resources and energy which would be derived from the union that day cemented, he entertained no doubt that in future the fair claims of the body of solicitors would be fully maintained and upheld, in so far as they were consistent with the interests of the public; and to that extent only as a body did they require to be considered and protected. (Hear, hear.)—Mr. G. Thorley, as chairman of the committee for the past year, responded to the toast, and remarked on the important benefits which might be expected from the friendly compacts which had been formed with similar societies in different parts of the kingdom.—The Chairman then gave in highly complimentary terms, "The health of Mr. Thomas Taylor, honorary secretary to the association." — Mr. Taylor returned thanks, remarking that from the first he had been sanguine as to the success of the association; but the result had exceeded his highest expectations, and had amply rewarded him for his exertions. (Applause.)— The next toast from the chair was "The gentlemen representing the law societies who have honoured us with their company on this occasion." The toast was received with great applause, and was responded to by Mr. J. G. Shepherd, of Faversham, Kent, and by Mr. Bourne, of Alford.—The Chairman next gave, "The vice-presidents, and thanks to them for their services;" to which Mr. Joseph Heron, Town Clerk of Manchester, responded.—Mr. Cooper gave "The Incorporated Law Society."—Mr. Eyre Lee, of Birmingham, acknowledged the toast, and said that no provincial law society need hesitate to correspond with the society in the metropolis whenever they wanted assistance.—The Chairman then gave "The Corporations of Manchester and Salford." (Applause.) — Mr. Heron responded on behalf of the Corporation of Manchester. Mr. Charles Gibson, Town Clerk of Salford, returned thanks in behalf of the corporation of that borough, and proposed "The health of the gentlemen who have kindly undertaken to give lectures during the winter."—The toast was responded to by Mr. J. Grave, of Manchester, and Mr. Summerscales, of Oldham.—The remaining toasts were, "The members for the southern division of this county," proposed by Mr. N. Earle; "The members for Manchester and Salford," proposed by Mr. Grave; "The town and trade of Manchester:" "The dinner committee;" "The Lancashire Witches." — The company separated about twelve o'clock.

CORRESPONDENCE.

ATTORNEYS AT QUARTER SESSIONS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I send you (No. 1) an extract from the *Staffordshire Advertiser*, containing a report of what took place at our Lichfield Quarter Sessions in July last, and an extract (No. 2) from the same paper of the decision of the learned Recorder given at our October Sessions, confirming the right of attorneys to practise at borough sessions both for prosecutors and prisoners, even when counsel are present.

Having been professionally engaged on both occa-

sions, I can testify to the correctness of both reports.

The brief report given in your former numbers stated the decision to be that of the *Chairman* of our sessions. This is not strictly correct, for you will perceive it is the deliberate decision of our learned Recorder, Mr. Waddington, after previous communication with Lord Denman on the point in dispute.

Your Norwich correspondent should recommend Mr. Recorder Jeremy to confer with his learned brother Recorder, Waddington, on the subject.

I am, yours, &c.

ALFRED EGGINGTON.

Lichfield, Jan. 13, 1845.

(*From the Staffordshire Advertiser of the 20th July, 1844.*)

"LICHFIELD QUARTER SESSIONS.

"*Thursday, July 11.*

"(Before HORACE WADDINGTON, Esq. Recorder.)

"The magistrates present were T. G. Lomax, esq. (mayor,) John Mott, esq. the Rev. T. O. B. Floyer, Thomas Johnson, esq. and R. C. Chawner, esq.

"The proclamation against vice, immorality, &c. having been read, the Recorder briefly addressed the grand jury, of which Mr. Weldhen was foreman; when the trial of prisoners was proceeded with.

"William Arnold was indicted for stealing five pints of milk, the property of the Rev. W. Gresley, on the 19th of May last.

"Mr. Breynton, barrister, conducted the prosecution; and on Mr. Passman, solicitor, of Stafford, appearing for the defence, both Mr. Breynton and Mr. Keyser protested against attorneys appearing as advocates, when there were two barristers present who regularly attended these sessions.

"Mr. Passman insisted on his right, and produced a report from Mr. Carrington, a barrister on the Oxford circuit, of the dispute between the attorneys and barristers at the Oxford sessions, before Mr. Serjeant Manning, (the Recorder of that city,) which dispute was settled by the Recorder taking the opinion of Lord Denman upon the subject, and that learned judge gave it as his opinion that barristers had *pre*-audience, but not *sole* audience.

"The RECORDER said he should not, of course, pronounce any opinion in opposition to Lord Denman's. It was an important point, and he should, before the next session, consult his lordship, and lay down a distinct rule to be acted upon for the future. He should hear Mr. Passman and the other attorneys to-day.

"The case for the prosecution against Arnold having closed, Mr. Passman addressed the jury for the prisoner, who was acquitted."

(From the *Staffordshire Advertiser* of 26th October, 1844.)

"LICHFIELD QUARTER SESSIONS.

"The Michaelmas Quarter Sessions for the city of Lichfield were held on the 23rd instant, before Horace Waddington, esq. Recorder; T. G. Lomax, esq. Mayor; the Rev. T. O. B. Floyer; and W. H. Hewitt, esq.

"*Robbery from the person.*

"Emma Reynolds and Thomas Fletzher *alias* Fincher, were indicted, the former for stealing one sovereign, on the 28th September, from the person of Mr. Henry Vale, and the latter for receiving the same, knowing it to have been stolen.

"Mr. Kayser (barrister) appeared for the prosecution, and Mr. A. Eggington (solicitor) appeared for the prisoners.

"The evidence for the prosecution was very contradictory; and after an address from Mr. Eggington, the jury acquitted the prisoners. They were admonished by the Recorder, and discharged.

"Mr. C. B. Passman, on behalf of himself and the other attorneys in court, Mr. A. Eggington and Mr. Birch, begged to ask the learned Recorder for his decision of the question which arose at the last sessions, viz. whether attorneys would be allowed to appear as advocates in this court; in answer to which,

"The RECORDER replied, that he had since communicated with Lord Denman on the subject, and decided that attorneys would be allowed to plead both for prosecutors and prisoners. Barristers would be allowed pre-audience, but not exclusive audience."

LAW OF SETTLEMENT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am induced, by your remarks and opinion "that the present Law of Settlement will remain unaltered for some years, from the great difficulty of substituting a better in lieu of it," to call your attention to the gross defectiveness of the law as it now stands, and in doing so to state that at present no professional man, however experienced and cautious he may be, even after incurring the expense of advising with counsel, as is generally done, can enter the Court of Quarter Sessions certain of having the merits of his case relating to a pauper's place of settlement gone into. This degree of uncertainty is applicable to the appellants on their grounds of appeal, &c. &c.; and equally so to the respondent's or the pauper's examination, &c.; and if you have personally attended such courts, you cannot fail of being fully aware that the majority of these cases go off on technical points of objection, in no manner affecting the real merits of the pauper's place of settlement, and that the time of the Court is chiefly occupied in hearing arguments of counsel thereon, when the orders of removal are either confirmed or quashed on these points of objection alone, which arise and appear by the ingenuity of counsel, to the utter surprise of the parties concerned therein, in such different and various characters at almost every court of quarter sessions, that it is next to impossible to guard against them; and although they frequently present an insignificant position, yet ultimately prove fatal to the merits. Surely if Sir James Graham is aware of these defects in the law, which materially affect the rights of the poor in respect of settlement, as well as the exceeding great loss and costs sustained by parishes relating thereto, he must see the urgent necessity of amending the present law by substituting one more steady in its operation, and by so doing, insure for the parties concerned the certainty of a fair trial, and decision by the Court upon the real merits of each case, void of these frivolous objections which now constantly defeat the ends of justice.

I am, Sir, yours, &c.

P. TAYLOR.

Knaresborough, Jan. 10, 1845.

USEFUL HINTS.

TO THE EDITOR OF THE LAW TIMES AND THE VERULAM SOCIETY.

SIR,—In your LAW TIMES and your contemplated publications of a Law Dictionary and Legal Cyclopædia, I would beg to suggest a few observations, which may not be unworthy of notice by the editor of the two latter desirable books, if got up under able hands, and they may be applicable to either one or both of such books.

Let every ancient law term, whether in Latin or French, be given, and attended with an English translation.

Let extracts be judiciously chosen, and the authorities given.

Let there be at the commencement of the work, or when concluded, a table of all ancient and modern reports in chronological order, with their names, and when contemporaries marked, as also what courts they take, with their usual abbreviations, that they may be understood and referred to when necessary. The numerous reporters of late years render this indispensably necessary.

Let there be a table of precedence of the Bench, and of those who have sat on the bench from the earliest times to the present, with the periods when they so sat or were promoted.

Let there be a history of each different court given, *i. e.* as to its origin and priority, or rank, with the others.

Let an account of the different inns of court be given.

Let all the old words and ancient terms found in old deeds and law books be given and explained—law and equity maxims.

In your LAW TIMES you page the advertisements independent from the other part, which is very desirable; but, unfortunately, your list of bankrupts is sometimes partly in one division, and partly on the other, so that a day or week's list is separated when bound, and then rendered imperfect. Surely this might be altered without trouble, sacrifice, or encroachment, and it will be much more perfect and compact; because a list of bankrupts, easily referred to, is the only thing which renders the advertisement part worth keeping.

Another object much to be desired is a list of magistrates in the various counties, and their residences, which to a professional man is necessary to be known. We had occasion to get a recognizance taken the other day before a Staffordshire magistrate, but were at a loss to find out the one nearest to us without a deal of trouble and travelling further than we should have done had we had proper information at hand. Surely there should be a publication of the sort extant; and it might be in sections, so that we might have our neighbouring counties without being at the expense of purchasing the whole country.

I am sure you will excuse me troubling you with these observations, as it is only for general utility that I venture to suggest them.

I am, Sir, your very obedient servant,

Whitchurch, Salop, JOHN JESSOPP.
Jan. 11, 1845.

[We thank our correspondent for these useful suggestions. The "Legal Cyclopædia" is intended to contain the greater portion of the information desired. The Table just published at the LAW TIMES office, and advertised in another column, supplies, for a shilling, the required list of abbreviations and chronological list of the Reports, and in the much more convenient form of a sheet, which can be readily referred to by the reader. For some months past the *Gazettes* have been *invariably* contained in the inner form of the LAW TIMES, so that they are now never divided, as occasionally used to be.—ED. LAW T.]

TRANSFER OF PROPERTY ACT.—AFFIDAVIT VERIFYING CERTIFICATE OF ACKNOWLEDGMENT. — PROMISSORY NOTES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will any practical men give their opinions on the following points?

1. Section 13 of the Transfer of Property Act, 7 & 8 Vict. c. 76, enacts that the Act shall not extend to any *estate, right,* or *interest* created before the 1st of January, 1845. Suppose a contract entered into for the sale and purchase of real property before the 1st of January, 1845, would a conveyance in the proposed new form by *deed* be sufficient to pass the interest created under such contract? or will practitioners in such case revert to the recent form of release "made in pursuance, &c." and therein state when the contract was entered into? If the new *deed* be used, surely an attorney would not be justified in destroying the written contract in order to preclude the probability, on a future investigation of the title, of its revealing the fact of the estate, right, or interest having been originally created before the 1st of January, 1845.

2. In the case of *Watts and Others* v. *Smith* (4 Law T. 158), it appears that Tindal, C.J. said generally that he was not aware of any rule that the affidavit verifying the certificate of acknowledgment might not be taken before another of the commissioners who is qualified to take oaths. Now, in the common and more usual case, where there are two commissioners, and the affidavit is made by one of them, can such affidavit properly be made before the other commissioner if he be qualified to take oaths? or is the chief justice's dictum to be confined to circumstances similar to those in the case above cited?

3. A promissory note made in this form:—

14th January, 1845.

Six months after date I promise to pay to C D, his order, twenty-five pounds, *together with all lawful interest*, from the date hereof, for value received.

A B.

Could C D or his indorsee claim on the note more than 5*l.* per cent. interest under the non-usury Acts, provided he could prove *aliunde* an agreement to pay such higher rate of interest entered into by A B at the time the note was made? The above form of note appears to be still adhered to in practice, but is it quite correct since the non-usury acts have been in operation?

I am yours, &c.

THOS. L. SHUCKARD,

Wellingborough, Jan. 14, 1845.

INDENTURES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I observe that in the newly-suggested forms of conveyances, under the Transfer of Property Act, your correspondents retain the old construction of the introductory part of the deed, viz. "This indenture or this deed, made the day of , between A B and C D, &c. Whereas, &c."

Before recitals were introduced into deeds, this construction was all very well, proceeding thus, viz. "This indenture made, &c. Witnesseth, &c." But it has often appeared to me that to retain this form of introduction to a deed when recitals are interposed between it and the testatum was not only ungrammatical, but unnecessary. I, therefore, would suggest that when recitals are to be introduced, it would be better to adopt the form following, viz. "*Deed made the* day of , between A B of the one part, and C D of the other part. Whereas, &c. Now this deed witnesseth, &c."

But when there are no recitals, then the other form may be adopted, viz. "*This deed made,* &c. Witnesseth, &c. I am yours, &c.

J. L. FORSTER.

Newcastle-upon-Tyne, Jan. 13, 1845.

CLERKS OF PETTY SESSIONS BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In prosecutions for offences, even when conducted at the expense of the county, prosecutors have hitherto enjoyed the privilege of employing their own attorneys; but it would seem that by section 9 of the Bill "To Regulate the Appointment and Payment of Clerks and other Officers of the Courts of Petty and Quarter Sessions of the Peace," it is intended that all prosecutions after the passing of that Bill shall be conducted exclusively by justices' clerks. Here, then, is another nibble at the yearly-diminishing emoluments of the general practitioner. In South Wales this branch of Professional business would be taken almost entirely out of the hands of the Profession, the great majority of justices' clerks being non-professional persons. But, apart from this local consideration, it is submitted that every encroachment

on the business of the general practitioner in favour of an exclusive class of officials is a direct blow and discouragement to the Profession as a body.

I am yours, &c.

Aberayron, S. Wales, Jan. 13, 1845. J. P.

TO THE EDITOR OF THE LAW TIMES.

Dear Sir,—Whilst referring to another case, I found the one undermentioned, cited in 3rd vol. Bosanq. & Pull. 617, which I venture to send in the hope it may be of service to you.

A. delivered goods under the value of 40s. to a carrier in London, pursuant to an order from B, resident in Leicestershire, and received the goods in the latter county. Held that no action for the goods could be maintained in the County Court of Leicestershire, and that the Court of Common Pleas, therefore, could not stay proceedings in an action commenced therein. The action was commenced in the Court of Common Pleas. (*Harwood* v. *Lester*, H. 44, G. 3.)

I beg to thank you for the kindness evinced towards me in your last note.

I remain &c.

W. H. Duignan.

Walsall, Jan. 13, 1845.

To Readers and Correspondents.

Caius (Ashton) *confirms the report of Mr. Baron Gurney's refusal to permit a prisoner to cross-examine a witness.*

W. W. Kearsey (Stroud).—*We regret that the hint is too late. All are printed.*

A Clerk.—*We thank him for the information. The list was copied by a clerk in the Rule Office, and we are at a loss to conceive how the error occurred.*

Parker and Smith (Sheffield).—*Really we cannot find leisure to frame a petition against the certificate duty. It should be done by the Provincial Union of Law Societies.*

A Subscriber (Stratford).—*The case is scarcely one of sufficient general interest.*

T. E.'s *query is against our rule.*

TO SUBSCRIBERS.

The Publisher *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* Law Times *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* Law Times *for binding, to inclose any other books for the binder.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

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THE LAW TIMES.

SATURDAY, JANUARY 18, 1845.

TO READERS.

The profession is informed, that the New Rules and Orders in Bankruptcy have just been added to Mr. Home's *edition of the Insolvent Debtors' Acts*, which may now be had complete. The sheet containing the rules, folded in duodecimo, so that it may be added to that or any other edition of the Act of the same size, will be sent to any person inclosing ten postage stamps, or may be had through any bookseller.

UNION OF PROVINCIAL LAW SOCIETIES.

We refer to an advertisement of the Resolutions passed at the meeting of the deputies of the various provincial Law Associations, held at Manchester a few days since, as satisfactory proof that the members of the Profession are at length fairly roused to a sense of the necessity of *combined* efforts for the purification of their Profession and for its protection against the invasions which of late years have been unscrupulously made upon it by successive Parliaments and by all parties. Often have we endeavoured to point out to the attorneys what a power is in their hands, if they would but concentrate it and direct it wisely. Union only could accomplish this, and union is practicable only by a well-planned organization, which might link together in the common cause of their mutual interests all the practitioners resident within certain districts. For years past, Law Clubs have existed in most, if not in all, of the counties; but what were they in practice? Societies of jovial gentlemen, who met at the assizes, devoured a few good dinners, drank their wine, made some complimentary speeches, and parted. For all the purposes of association they were almost worthless, if they were not actually pernicious, by giving an aspect of business which was not performed, and thus deterring individual exertions.

Very early in the career of the Law Times, we, who had practically seen and felt the insufficiency of the existing Attorneys' Clubs, ventured to recommend a reform of the entire system, and we took upon us to frame a scheme for a formal organization of the Profession, which should involve no great change of the existing arrangements, but tend to make them more efficient for the professed purposes of their existence. Our plan was after this wise. We proposed that in each of the large towns, and in each county, or division of a county, there should be formed, where such a society did not already exist, a Law Association; that each Association should send its chairman and secretary to an annual central meeting in London, shortly after the meeting of Parliament, when measures affecting the law and lawyers were likely to be developed; that the business of the central committee should be to consult on all matters bearing upon the interests of the Profession generally, and to recommend to the provincial societies the course to be adopted on the various questions in agitation, and to *act*, by their united influence, directly upon the members of the legislature for the furtherance or defeat of measures, as they might appear to be beneficial or noxious.

Of this advice, often and earnestly urged, one portion was speedily adopted. Many new Law Societies sprung up, and all appeared to be animated with a fresh spirit, and to be resolved thenceforward to fulfil the purposes of their formation, and devote themselves to the advancement of the true interests of the Profession.

The next movement towards the accomplishment of the grand design we had put forth was suggested by Mr. Taylor, the able and active secretary of the Manchester Law Association, which, under his guidance, has become the most powerful and influential Law Society in England, second in importance only to the Incorporated Society, and more efficient, because more energetic. Mr. Taylor proposed an union of the Provincial Law Societies, and his proposition received very general approval. Deputations from a few of the Societies in the North held a meeting, and the plan was cordially adopted, with what entire success will be seen by the Resolutions which appear among our advertisements to-day.

We are still of opinion that the metropolis would be the most convenient spot for the assembly of a general union of all the Provincial Law Societies in England and Wales, and we hope the Union will, ere long, comprise them all. We are quite aware of, and fully appreciate, the feelings that dictate a meeting in the provinces. We know that there is a fear that a gathering in London might be subject to metropolitan influences, and having seen in what manner other associations, avowedly founded for the benefit of the whole Profession, have been worked for the interests of a few of the powerful in one locality, we are not surprised that there should be a dread of a similar result attending a new movement. But we are satisfied that such a fear, if it exist, is without foundation. The causes that have led to the perversion of other societies could not possibly operate upon this, which, representing exclusively the Provincial Associations, would be of necessity freed from the sway of local interests. And the advantages of a meeting here would be manifest. Here, without inconvenience, and at lesser cost, could come the deputies from every part of the country; to few of them would it be a loss even of that which is as valuable to a professional man as money—his time; for here they would have other business which would make their absence from home less inconvenient. Here, too, they would be upon the spot to apply at once, and most effectively, their united efforts for the staying of noxious legislation, pending or threatened.

However, there will be no difficulty in changing the place of meeting whenever it may be found expedient, and as the Union grows, as grow it must until it embraces all the societies in England and Wales, experience will best shew how its objects may be most efficiently carried out. It is in excellent hands, as the list of officers will prove; and nothing that activity and good sense can do will be wanting to secure its success.

MAGISTRATES' CLERKS BILL.

Last week we published at length the very interesting Report of the Committee of Magistrates' Clerks upon the pending measure for regulating the fees of Petty Sessions. It is a document very creditable to the society from which it emanates. It is conceived in a spirit of liberal concession to the demands for improvement in the administration of the extensive branch of law confided to magistrates. Every word deserves attentive perusal, and there will, we believe, be but few dissentients from the views propounded. We have noted but one portion of the commentary as exceptionable. It is the objection taken to the provision of the Bill that confines the choice of *future* magistrates' clerks to attorneys. This was a fair and just admission of the principle, that lawyers, properly educated, should be alone employed, if paid, to assist in the administration of the law. It is well known that magistrates, for the most part, being gentlemen ignorant of the law, at least not being regularly instructed in its mysteries, must rely upon their clerks for aid in all questions of law which they are called upon to decide. It is, therefore, of primary importance that the clerk should be a lawyer, or it will be a case of the blind leading the blind. The Government has done wisely in requiring that all future clerks shall be lawyers, and securing this by limiting the choice of justices to an attorney who has been subjected to a formal examination, and so proved his fitness before he is admitted to practise.

We trust that this most wholesome provi-

sion will be persevered in, and that the Law Societies will watch it well to see that it is not expunged. We cannot conceive how it came to be objected to by the magistrates' clerks committee, unless it were in deference to some existing interests, to the transmission of which to expectant relations or friends the provision in question was an impediment. But it is well to be known that it *has* opponents, that the Profession may be prepared to support it with the resolution that a proposal so complimentary to them and so important in itself will deserve.

VERULAM SOCIETY.

The second number of *Practice Cases* is just ready, and the third is in the press. These will contain the cases of last Term. They will be followed by two more numbers of *Real Property Cases*, the materials for which are already sent in by the reporters.

The circular proposing various publications for the Society, including the statutes of the coming session, has been distributed, and we hope the members will return them with as little delay as possible.

We direct the attention of the members to the suggestions thrown out in a letter which will be found among the correspondence. They will, we hope, form a new and useful feature of the proposed *Cyclopædia of Law*.

As the time is come when printers and reporters must be paid, we shall be obliged by the immediate transmission of their entrance fees and subscriptions for the *past* year, by those who have not yet paid them. As payment of the subscription in *advance* is the *rule* of the Society, it would save much trouble and expense if the members would forward their subscription for the present year at their earliest convenience.

It is, we hope, clearly understood that the subscriptions paid are credited to the member's account, and that he will be entitled to its *repayment* in any of the present or future publications of the Society. The single purpose of having a *minimum* of subscription is to ensure that each member shall not expend less than a guinea a year with the Society, without which its operations could not be conducted.

The following new members have been enrolled during the past week:—

Hurrell, R. Kingsbridge, Devon.
Brown, Fred. Llanelly.

SHAM LAWYERS.

Here is another very rich specimen of this notorious tribe.

Mr J Cogswell

I am instructed to comence leagal proceeding against you — by Mr W Bridle 47 Chapel Street, Somer's Town for the sum of twenty pounds, 12s 9d the balance of your acct. with him therefore if you do not *elucedate* and pay the above debt afore said you must abide by the concequence

Your

R. G. Maskington
167 Lincoln Inn
London
Decr 27—44

P.S Within seven days—herein fail not

MR. GEORGE FARREN.

Justice to Mr. Farren, to the Profession, and to ourselves, undoubtedly requires that the Law Times should not, now that it is decided, pass in silence a case which it had been the medium for making public.

Perhaps the fairest course to all the parties concerned will be to recal the facts as they occurred, and then to make such comments upon them as a calm review of the whole may justly claim from gentlemanly feeling.

The facts of this case, then, are shortly as follow:—

About a twelvemonth since an attorney in the country, having a large practice in conveyancing, received by the post a printed Table of Fees for drawing wills, with the name of George Farren, Chancery barrister, printed at the foot of it.

This table was accompanied by a letter, soliciting attention to the inclosed table, asking for business, and offering a commission of 5 per cent. for any business the party addressed might be the means of sending to the writer; and this letter, which was a *written* one, was subscribed, like the printed table inclosed with it, "George Farren, Chancery barrister."

The solicitor to whom it was addressed knew nothing of any Mr. Farren, and he threw the advertisement and letter into his drawer.

It was some time after this that the Law Times began to call attention to professional malpractices, and published, with due reprobation, divers advertisements by attorneys.

These recalled to the solicitor who had received it the Table of Fees subscribed "George Farren," and deeming that an advertisement by a barrister, and especially such an one as this, was at least as unprofessional as any that had been put forth by attorneys, he forthwith forwarded it to the Law Times, nothing doubting that it was the genuine production of the party whose name and address were upon the face of it.

Neither could we entertain any rational doubt of its authenticity. There appeared no probable motive for any other person taking the trouble to compile, or incurring the cost of printing, so ingenious and elaborately framed a document, for the friendly purpose of obtaining business for Mr. Farren, or with the hostile design of injuring him. We had exposed like practices among the attorneys; in fairness we could not refuse to do the same with the Bar. Accordingly, we published in the columns of the Law Times a *fac-simile* of this advertisement.

We accompanied it with severe though deserved reprobation of the document itself; but we left it open to Mr. Farren to deny its authenticity, if he could. Our words were these:—"We would fain cherish the hope that it is a fraud; that some enemy hath done it to damage Mr. Farren, and to throw discredit upon the Profession of which he is a member. We will wait for a week, that an opportunity may be given for contradiction or explanation."

Before the next publication, we received a letter from Mr. Farren upon the subject. In this letter he did *not* indignantly and explicitly deny the charge and repudiate the document; he did *not* say that it was the doing of an enemy; but he treated it evasively, and, moreover, admitted that his practice, in some particulars, was precisely that which was set forth in a portion of the advertisement.

We must confess that this letter removed any doubt we might have entertained before, and produced in our mind a feeling of absolute conviction that the document, as it purported, had really proceeded from Mr. Farren. And our conclusion was not unnatural. We might be wrong in the supposition, but, judging by what would be our own feelings and conduct in such a case, we presumed that a gentleman publicly charged with an act so unprofessional would, if he were guiltless of it, instantly have denied it upon his honour, asserted that it was a vile forgery, and called upon us to give him such aid as we could render to discover the perpetrator of an outrage so monstrous.

But the assurance produced by the manner in which Mr. Farren first met the imputation, was rendered, in our minds, doubly sure when the next post brought us, from our correspondent, the letter that accompanied the advertisement. Comparing that letter with the letter Mr. Farren had just before addressed to us, we had no hesitation in concluding that the same hand had written both. So like were they, that we still question whether, if a hundred persons who might inspect them side by side, one would be found who would hesitate to swear to his belief that the writer of the one was the writer of the other.

We confidently ask, then, whether, upon the ordinary presumptions which in human affairs men must make from circumstances, we were not *fully* justified in accepting such an accumulation of evidence as satisfactory proof?

That letter we published also. Again Mr. Farren had an opportunity of giving an explicit denial to the authenticity both of letter and advertisement.

Again he did *not* do so, although our columns were opened to him for that or for any purpose of explanation. But, instead of so doing, he addressed a letter to the *Legal Observer*, a copy of which he sent to us, in which he uses the remarkable expression, in relation to the charge of his having [illegible] the advertisement [illegible] perhaps I did not."

At this stage of the matter it was taken up by the Benchers of Lincoln's Inn, of which Society Mr. Farren is a member. At the request of the Benchers we gave to them all the information we possessed as to the manner in which the documents in question came into our hands.

Mr. Farren *then* for the first time denied upon his honour having composed or caused to be printed or circulated the Table of Fees to which his name was appended, or being in any manner cognizant of it; and the letter that accompanied it he declared to be a forgery of his handwriting and signature; and that, perfectly as it imitated his handwriting, it had *not* been written by him.

Beyond this, it was of course impossible to carry the proof. It was impossible to produce any person to prove that he saw Mr. Farren write the advertisement or the letter, or put them into the post-office. Nothing less than absolute proof would have justified conviction in the face of a solemn assertion by the accused that the documents were forgeries. So, as we understand, the benchers came to the conclusion, and it was a righteous one, that the charge was not established.

They have discharged their duty with a promptitude, a patience of investigation, and a justice of decision, which will deserve and receive the cordial thanks of the Profession whose integrity and reputation they have been so zealous to protect.

But *now* a duty devolves upon the Law Times, which it will not be slow to perform.

The Law Times was the public instrument through which the charge was preferred. That charge being held to be "*not proven*," (to employ the useful and expressive Scotch verdict), the question presents itself, what course do justice and gentlemanly feeling dictate as proper to be pursued by the Law Times?

To determine this we must first resolve the only question that can arise upon the facts we have narrated; namely, "Did the evidence justify the publication?" For there will be no difference of opinion that the severity of our comments upon the advertisement and letters, supposing them to be genuine, was amply deserved by the occasion; but were we entitled to treat them as genuine?

Upon maturest deliberation we are satisfied that we were justified in accepting them as authentic. Editors, equally with other persons, are entitled to act upon the ordinary presumptions that guide reasonable men. Among these presumptions are, 1st, That a printed paper, with a name and address subscribed, emanates from the party whose name it bears; 2nd, That a letter or paper in the handwriting of any man is *not* a forgery; 3rd, That when charged with the production of the printed paper to which his name appears, and the letter apparently in his handwriting, those documents being offences against the laws of etiquette, not instantly to disown them is tacitly to admit their authenticity. We say that these were presumptions which we were entitled to form; and that *in foro conscientiæ* we were justified in accepting them as evidence, if not conclusive, at least so strong as to put Mr. Farren upon his defence, and to call upon him for a contradiction.

We are satisfied, therefore, that the Law Times has in this matter done no more than was its duty, nor acted in aught unfairly or inconsiderately.

Mr. Farren complains that, before their publication in the Law Times, the documents were not presented to him to ascertain if they were authentic.

But we cannot admit the justice of this complaint. As we have before observed, certain presumptions are permissible, nay, necessary, in human affairs. Of these, one is that a book, an address, or an advertisement, is written by the party whose production it is on the face of it stated to be, unless there be something in its contents to indicate an imposition. Another is, that a letter in a man's handwriting, and bearing his signature, is the writing it purports to be, and not a forgery; nor, in dealing with either, is it in practice deemed necessary, before it is treated as authentic, to ask the apparent author if it was his book, or the apparent writer if it be a forgery? We readily allow that this reasonable presumption is not sufficient to justify a *conviction* and its consequences; but it is enough to put the party *upon his defence* and to require of him a contradiction.

And if Mr. Farren had, in the first instance, as *he ought to* have done, positively asserted his inno-

cence, declared the documents to be forgeries, and sought to trace the offender, instead of saying "perhaps I did—perhaps I didn't," there would have been an end of the matter; for such a contradiction would have been at once accepted by everybody as quite satisfactory. He has but himself to blame for results which he might have avoided by candidly stating at the first that which he stated at last.

Nor does the LAW TIMES owe any apology to Mr. FARREN for having brought the matter forward. It is, indeed, for him a most fortunate circumstance that it did so. But for the notice taken of it here, there would have been still circulating through the country forged advertisements and forged letters, bearing his name, in their contents most disreputable to his professional character, and he might never have known the fact, never have had the opportunity of discovering the perpetrator which has now been afforded to him.

All, therefore, that justice requires of the LAW TIMES, and most cheerfully does it perform the duty, is to spread Mr. FARREN's positive denial as widely as it circulated the charge, and to retract, which it does in the amplest manner, whatever expressions it may have applied *to him* under the impression that he *was* the author of the advertisement and letter that bore his name.

We cannot quit the subject, without expressing an opinion that Mr. FARREN *ought* to use the most strenuous exertions to discover the perpetrator of these monstrous and most unaccountable forgeries. We will readily join him in offering a handsome reward to any person who may give information that may lead to detection. We will gladly share with him the cost of having the advertisement copied and the letter lithographed and circulated, with a reward to any printer, compositor, pressman, or other person, who will give information where or when such a document was printed, or to any person who, having in possession, or having even seen, a copy of it, may enable us to trace it to its source.

Such a reward offered by Mr. FARREN would most probably bring to light the author of the forgery, for the rules of secrecy observed in printing offices would no longer stand in the way of discovery if *he* would request those who know aught about it to speak out.

Or will Mr. FARREN authorize *us* to publish such an advertisement in *his* name? We should not regard some cost to trace this imposture to its author.

We scarcely need add, that if any of our readers have received similar circulars, or have seen such, or can inform us aught about them, they will confer a very great obligation on Mr. FARREN by transmitting to us all the particulars their memories or files may enable them to furnish. It is the duty of the members of the Profession, nay of every person, to aid in the discovery of a forgery of this monstrous nature, against which no character is safe.

Since the above was written, we have learned that some misconstruction is afloat as to the manner in which the facts above stated came to the knowledge of the LAW TIMES. Our correspondent's first letter, inclosing the advertisement, was mislaid among the heavy mass of our daily correspondence. The second, inclosing Mr. FARREN's letter, was anonymous. In consequence of a request in our columns for information as to the manner in which the documents came to our correspondent, whose name we did not know, he called in person upon the editor, and stated the facts detailed above. He declined to give us his name or address, which are still unknown to us; but he quitted us with a promise that he would consult his agent, and if so advised by him, would communicate the whole of the facts, with his name in confidence to one of the Benchers of Lincoln's-inn. We are not informed whether he has done this, but if he have *not*, we must call upon him, in justice to Mr. FARREN as well as to ourselves, to do so, that we may be enabled to trace the forgery forthwith. If this be not done, we shall be compelled to take measures for identifying him by means of his handwriting in our possession. We appeal to him as a gentleman to give to the Bencher we named to him, if not already communicated, the promised particulars, which, if he pleases, he may do confidentially. We hope in a day or two to hear from him that this has been done, and he may rely upon it that he shall be subjected to no inconvenience, and that he may with perfect safety commit himself to the confidence which the LAW TIMES will never violate.

THE CRITIC.

New Works.

Table of the Abbreviations most commonly used in citing the Reports, together with a Chronological Table of the Reports. London: LAW TIMES Office.

THE most valuable contributions to the office are those which appear in the tabular form, printed upon sheets, or mounted upon boards, so that they may be suspended within range of the eye. Every lawyer must have found within his own experience how apt we are all to neglect a reference when it can be made only by rising from the seat and exploring the library. Nor is this the only mischief. No inconsiderable time is wasted in travelling through an index, and turning over pages, and not unfrequently we are unable to find on the moment the information we seek. But well-digested and well-arranged Tables require but a turn of the eye to furnish the fact sought for, without waste of time or trial of patience.

Experience of the great convenience of such tables as the Profession already possesses, and of the want of others not yet supplied, occasioned us some time since to suggest to the most industrious and ingenious of our contributors the propriety of preparing such as seemed to be most needed.

And there appeared to be no more immediate requirement than a Table of the Abbreviations commonly used in citing the Reports. Who does not find himself daily perplexed by initial letters attached to cases? And who has not felt how useful would be a Table that should present them in alphabetical order, so that the eye might immediately light upon a solution of the mystery? Accordingly we recommended the preparation of such a Table to one of our contributors, who, with the most commendable industry, succeeded in perfecting it, and it was presented to our readers in the columns of the LAW TIMES.

But if limited to the pages of a crowded volume, it was evident that its utility would be very considerably curtailed. We have, therefore, induced the compiler to add to the list many that had been there omitted, and lists of the Irish and Scotch Reports, and a still more useful and valuable chronological table of the English Reports, exhibiting the dates of each, and their order in time. The work, thus made complete, has been printed on a sheet for suspension in the office, or in chambers, and is transmitted through the post, or can be had ready mounted upon mill-board, but in this form it can only be inclosed in a parcel, or procured through booksellers.

This is, we believe, the first *complete* work of the kind ever attempted, and we trust it will be found in practice as useful as its projectors anticipated. At all events no labour has been spared in the framing of it to ensure accuracy, and the printer has performed his portion of it with great taste.

Should this first essay meet with approbation, some other works of a similar class will be attempted.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

PRIOR.—On the 15th inst. at 34, Connaught-terrace, Hyde Park, the lady of Thomas Young Prior, esq. barrister-at-law, of the Middle Temple, of a son.

MARRIAGES.

FITZCLARENCE, Rev. Lord Augustus, to Sarah Elizabeth Catherine, the eldest daughter of the Lord Henry Gordon, on the 2nd inst. at St. Mary Abbot, Kensington.

DEATHS.

CULLEN, James Power, esq. eldest son of the late Michael Cullen, of Mount Venus, in the county of Dublin, esq. barrister-at law, on the 10th inst. at Kingstown, near Dublin.

BROWN, John, esq. magistrate of the counties of Worcester, Stafford, and Salop, and a Deputy-Lieutenant of the former county, on the 11th inst. at his seat, Lee Castle, Worcestershire, aged 66.

BUCKLAND, Jeoffrey Neal, esq. chief clerk to Richard Richards, esq. Master in the High Court of Chancery, on the 3rd inst. in London, aged 51.

BROCKMAN, Anne Ellen, the wife of Ralph Thomas Brockman, esq. solicitor, on the 15th inst. at Sandgate, Kent.

PLUNKETT, Eliza Hope, the widow of William Plunkett, esq. barrister-at-law, on the 10th inst. at 32, Dorset-place, Dorset-square, aged 33.

WHEATLEY, Mrs. widow of the Rev. John Wheatley, M.A. formerly minister of Cockermouth, and rector of Kirkhampton, and eldest sister of the Rev. Christopher Benson, M.A. Master of the Temple, on the 2nd inst. at Moresby, near Whitehaven, aged 76.

BARNES, John, esq. solicitor, at Springfield-house, near St. Helen's, on Dec. 30, aged 52.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thur.	Fri.
Three per Cents. Consols	100	100	100¼	100	100¼	100¼
Three per Cents. Reduced	100	99¾	100	99¾	100	100
New Three-&-a-quarter per Cts	103¼	103¼	103¼	103¼	103¼	103¼
Long Annuities..............	12¾	12¾	12¾	12¾	12¾	12¾
Bank Stock	210	210½	210½	210½	211	211
India Stock	288½	289	289½	289	289	289½
India Bonds, prem..........	84	84	85	84½	85	85
Exchequer Bills, prem.	65	59	60	60	59	60
FOREIGN.						
Spanish Five per Cents.......	27	26½	26¾	26½	26½	26
Spanish Three per Cents.	36½	37¼	37¾	37¼	37½	37½
Russian	119	119	119½	119	120	119
Peruvian..............	28¾	27¾	28½	28½	28½	28½
Portuguese	60	59¾	59½	60	59½	60
Mexican	34	34½	34½	34½	34½	34½
——— Deferred	15½	15½	15½	15¾	15½	15½
Dutch Two-and-a-Half per Cents..............	63½	63¼	63	63¼	63¼	63¼
——— Five per Cents.	99	99½	99½	99	99½	99½
Danish	89½	89½	89½	90	90	90
Colombian	14½	14½	14¾	14½	14¾	14½
Chilian	100	101	102	102	102	102
Buenos Ayres	39	39½	39	40	40	40
Brazilian..............	89	89½	90	90	90½	90
Belgian	102	102¼	102½		102½	104½

Public Sales.

By Messrs. CAFE, SON, and REID, at Garraway's.

A leasehold property, situate in George-street, Minories, consisting of the Grapes public-house, being Nos. 5 and 6, let for a term of which 13½ years are unexpired, at 110*l.* per annum; also the house adjoining, being No. 7, let on a running lease, at 52*l.* 10s. per annum; and the warehouse and premises in the rear of the above, being No. 4, Little George-street, let at 20*l.* per annum; total rental, 182*l.* 10s.; the whole held on lease from the Corporation of the City of London, dated Nov. 20, 1844, for a term of 52 years from Midsummer, 1844, renewable for ever every 14 years from Midsummer 1835, on payment of a fine of 142*l.* 2s. 10d. at a ground-rent of 20*l.* 11s. 10d. per annum—2,600*l.*

A residence, No. 15, Bury-street, St. James's, let on lease at 182*l.* 15s per annum; held under the Crown for a term of 70 years from the 10th Oct. 1837, at a ground-rent of 37*l.* 6s. 4d per annum, and 2*l.* 15s. per annum, in lieu of land-tax —1,360*l.*

A house, situate No. 33, York-street, Portman-square, let at 84*l* per annum; held for 59¼ years at a ground-rent of 24*l.* per annum—700*l.*

Three undivided eighth parts of a freehold estate, situate in West-street, Gravesend; consisting of a house and shop, No. 57, and a private house adjoining, No. 56, together with the gateway leading to a wharf, with saw-pit, boat-house, two sail-lofts, and salt-warehouses, with three lofts above; the whole having 80 feet frontage in West-street, and 73 feet frontage to the river Thames, with a depth of 112 feet—1,040*l.*

Four houses, being No. 12, Beaumont-st. St. Marylebone; Nos. 12 and 13, Craven-place, Bayswater; and No. 42, Sloane-square; let at rents amounting to 183*l.* per annum; held for long terms, at low ground-rents—1,775*l.*

By Mr. HEDGER, at the Mart.

A residence, No. 8, Margaret's-terrace, Paddington-green, let at 68*l.* per annum; held for 92 years from Christmas last, at a ground-rent of 16*l.* per annum—490*l.*

The adjoining house, No. 7, held the same as the preceding lot—490*l.*

A ditto, No. 6, ditto—490*l.*

A house, being No. 5, with the addition of a bakehouse in the yard, let at 75*l.* per annum; held for 92 years at 16*l.* per annum—640*l.*

A house, No. 4, let at 65*l.* per annum; held the same as the preceding lots—490*l.*

A ditto, No. 3, ditto—490*l.*

A ditto, No. 2—490*l.*

A spacious house with double-fronted shop, being No. 1, Margaret's-terrace, let at 100*l.* per annum; held for 92 years at a ground-rent of 16*l.* per annum, leaving a net rental of 86*l.* per annum—750*l.*

An improved ground-rent of 26*l.* per annum, arising out of four residences of eight rooms, comprising Church-place, Margaret's-terrace, for 92½ years—660*l.*

An improved ground-rent of 32*l.* per annum, arising from ten houses in Welling's-place, in the rear of Margaret's-terrace; held for 93 years from Lady-day, 1844; the gross rental of this estate produces above 300*l.* per annum—400*l.*

An improved rent of 38*l.* per annum, arising from a house and premises, No. 1 A, Margaret's-terrace; held for 92½ years from Christmas, 1843; the gross rental of this lot produces about 100*l.* per annum—650*l.*

By Mr. GREEN.

A family residence with garden at the rear, situate on the east side, and being No. 4, Endsleigh-street, Tavistock-square; held for 78½ years from Christmas last, from Lord Southampton, at 5*l.* a year ground-rent, let on lease for 21 years, commencing at Midsummer 1841, at 145*l.* a year rent—2,140*l.*

A freehold residence, No. 4, Sidney-place, Stoke Newington, let at 70*l.* a year—1,160*l.*

A residence No. 32, Gordon-street, Gordon-square; held for an unexpired term of 78½ years at 16*l.* a year ground-rent, let at 105*l.* per annum—1,540*l.*

By Mr. QUALLETT, at the Mart.

A freehold house, with spacious shop, No. 10, South-street, Worthing; held on lease (of which 13½ years were unexpired at Christmas, 1844), by Mrs. Stubbs, confectioner and pastry-cook, at a rental of 52*l.* per annum—940*l.*

The adjoining freehold house, being No. 9; let at 40*l.* per annum—650*l.*

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Alford, T. victualler, second, ½d. first, 1s. 2d. to new proofs. Graham, London.—*Bailey*, E. upholsterer, third, 4s. 6d. Turquand, London.—*Baker*, J. grocer, first, 5s. Belcher, London.—*Balls*, J. livery stable keeper, first, 3s. Belcher, London.—*Batty*, W. currier, first, 1s. Freeman, Leeds.—*Cockburn*, J. merchant, fourth, 3½d. Turquand, London.—*Currie*, R. bookseller, first, 4s. Baker, Newcastle.—*Daintry and Co.* bankers, fourth, John Ryle, 2s. 6d. Pott, Manchester.—*Dixon*, J. linen draper, second and final, 2s. 4d. Freeman, Leeds.—*Donkin*, T. victualler, first, 2d. Turquand, London.—*Drew*, R. victualler, first, 6½d. Turquand, London.—*Dyson*, J. scythe manufacturer, first, 7s. 6d. Freeman, Leeds.—*Foster*, E. H. tanner, second, 2½d. Belcher, London.—*Hayton*, W. coal fitter, third and final, 1d. and 7-15ths of a penny. Baker, Newcastle.—*Hopper*, W. carpet warehouseman, third, 2d. Turquand, London.—*Hurley*, J. plumber, second, 4d. Turquand, London.—*Jacob*, A. merchant, first, 2½d. Fraser, Manchester.—*Kerr*, H. tailor, fifth, 2½d. Groom, London.—*Portway*, A. tea dealer, first, 3s. 6d. Belcher, London.—*Pow*, J. B. broker, second and final, 1s. 7½d. Baker, Newcastle.—*Prior and Co.* brush manufacturers, first, 2s. 6d. Freeman, Leeds.—*Pullen*, R. flax merchant, second and final, 4½d. Freeman, Leeds.—*Roberts*, E. draper, second, 2½d. Christie, Birmingham.—*Rodham*, T. grocer, first and final, 9d. and 7-10ths of a penny. Baker, Newcastle.—*Scholefield*, J. cutler, first, 4s. 1½d. Belcher, London.—*Schonswar and Co.* merchants, third, 8d. Freeman, Leeds.—*Sharp and Co.* upholsterers, final, 7d. Green, London.—*Simmons and Co.* ironfounders, final, 5s. 9½d. Green, London.—*Tregear and Co.* music sellers, first, 20s. Belcher, London.—*Tuck*, E. silversmith, first, 5d. Turquand, London.—*Ward*, J. ironfounder, second, 1s. 8d. Turquand, London.—*Wilson*, J. linen manufacturer, first and final, 1s. 8d. and 8-10ths of a penny. Baker, Newcastle.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Jan. 10.

Matthams, G. innkeeper, Great Waltham, Essex, Jan. 7. Trus. J. Robinson, farmer, Great Waltham, and G. Porter and Edward Butler, wine merchants, Chelmsford. Sol. Durrant, Chelmsford.—*Storr*, R. printer, Grantham, Dec. 31. Trus. J. Rippin, gent. and G. Kewney, gent. Grantham. Sols. White and Co. Grantham.

Gazette, Jan. 14.

Birkett, D. sugar refiner, Whitehaven, Jan. 2. Trus. R. Jefferson, merchant, and J. Dawson, merchant, Whitehaven. Sols. Armistead and Musgrave, Whitehaven.—*Cobb*, E. W. bookseller and printer, Hertford, Dec. 4. Trus. P. Thompson, army clothier, Frith-st. Soho. Sol. Wharton, Crown-court, Threadneedle-street.—*Duffield*, M. A. widow and executrix of J. Duffield, brewer, Trevethin, Monmouthshire, Dec. 4. Trus. B. Lewis, provision merchant, Pontymoile, and T. Dunn, maltster, Usk. Sol. Matthews, Pontypool.—*Newson*, R. innholder, Whestead, Suffolk, Dec. 10. Trus. W. G. Hart, maltster, Bentley, C. Eade, wine merchant, and J. H. Angier, porter merchant, Ipswich. Sols. Jackaman and Lawrance, Ipswich.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Jan. 10.

BROWN, JOSEPH, grocer and cheesemonger, Regent-st. St. John's, Westminster, Jan. 17, at one, Feb. 20, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Baylis, Basinghall-st. sol.—Date of fiat, Jan. 7. T. S. Curtees, cheesemonger, York-st. Westminster, and E. Warrington, grocer, Regent-st. pet. crs.

FLINDOFF, G. bookseller and stationer, Plymouth, Jan. 17, and Feb. 19, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Surr, Lombard-st. sol.—Date of fiat, Jan. 1. J. Townshend, T. H. Parker, and J. Townshend, paperstainers, Goswell-st. pet. crs.

VALLANCE, W. merchant, King-st. Liverpool, Jan. 24, and Feb. 25, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Gilbank, Coleman-st. and Lowndes and Co. Liverpool, sols.—Date of fiat, Dec. 28. J. A. Allen, merchant, Coleman-st. pet. cr.

Gazette, Jan. 14.

BLAKE, J. hardwareman and edge tool manufacturer, Sunderland, Durham, Jan. 22, at two, Feb. 26, at half-past two, Newcastle, Com. Ellison; Wakley, off. ass.; Price and Co. Wolverhampton; Moore, Bishopwearmouth, and Bower and Son, Chancery-lane, sols. Date of fiat, Jan. 3. J. Shaw and H. Crane, factors, Wolverhampton, pet. crs.

BRATTON, RICHARD, the elder, cabinet-maker and furniture broker, Shrewsbury, Salop, Jan. 29 and Feb. 15, at one, Birmingham; Christie, off. ass.; Motteram and Co. Birmingham, and Parkes and Co. Bedford-row, sols. Date of fiat Jan. 2. Bankrupt's own petition.

BRIDESON, ARTHUR, cheesemonger, Clare-st. Clare-market, Jan. 21, at two, Feb. 27, at eleven, Basinghall-st. Com. Williams; Graham, off. ass.; Perring and Co. Lawrance Pountney-place, sols. Date of fiat, Dec. 28. T. and W. Fannin, merchants, Liverpool, pet. crs.

CRONACH, MICHAEL, and HERSCHMANN, MARX, merchants and traders, Jan. 21, at two, Feb. 19, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Linklater, Leadenhall-st. sol. Date of fiat, Jan. 2. J. P. Bull, St. Martin's-lane, G. Smith, and W. Turquand, assignees of Watson and Byers, pet. crs.

CURWEN, JOHN, cheesemonger, Bridge-place, Vauxhall, Jan. 24 and Feb. 27, at half-past eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Deane and Dixon, St. Swithin's-lane, sols. Date of fiat, Jan. 11. Bankrupt's own petition.

GREENHOW, CONRAD HAVERKAM, ship and insurance broker, North Shields, Northumberland, Jan. 22, at eleven, March [illegible], at two, Newcastle, Com. Ellison; Wakley, off. ass.; [illegible] North Shields, and Daw and Co. St. Swithin's-lane, [illegible] of fiat, Dec. 31. S. Hewson, [illegible] pet. cr.

[illegible], THOMAS, [illegible] woollen draper, Sunderland, Jan. 22, at eleven, [illegible] at one, Newcastle, Com. Ellison; Baker, off. ass.; [illegible]ley, Southampton-st. and Brignal, Durham, sols. Date of fiat, Jan. 8. R. Nichols and M. Mawson, merchants, Manchester, pet. crs.

LEWIS, CHARLES, innkeeper and licensed victualler, Bath, Jan. 24 and Feb. 25, at eleven, Bristol, Com. Stevenson; Miller, off. ass.; Messrs. Crutwell, Bath, sols. Date of fiat, Jan. 7. J. Warren, maltster, Warminster, pet. cr.

MOYES, WILLIAM, and MOWING, THOMAS, carmen, No. 31, Camomile-st. London, Jan. 21, at twelve, March 1, at one, Basinghall-st. Com. Goulburn; Green, off. ass.; Hilleary and Co. Fenchurch-st. sols. Date of fiat, Jan. 5. J. Hinkley, corn dealer, Seething-lane, pet. cr.

STEADMAN, JOHN, engineer and smith, No. 20, Hayfield-place, Mile-end-road, Jan. 24 and Feb. 25, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Stone and Co. Moorgate-st.-chambers, sols. Date of fiat, Jan. 4. W. Kennard, iron merchant, Upper Thames-st. pet. cr.

TYDEMAN, WILLIAM, timber and coal merchant, Chelmsford, Jan. 21, at two, Feb. 25, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Hooker, Bartlett's-buildings, Holborn, sol. Date of fiat, Jan. 10. C. T. Gabriel, T. Gabriel, and T. Gabriel, jun. timber merchants, Commercial-road, Lambeth, pet. crs.

VAUDEAU, LOUIS JEAN BAPTISTE, and VAUDEAU, LOUIS ONEZIME BENJAMIN, dealers in artificial flowers, No. 104, Wood-st. Cheapside, Jan. 24, at half-past twelve, Feb. 27, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Messrs. Hodgson and Burton, Salisbury-st. Strand, sols. Date of fiat, Jan. 13. Bankrupts' own petition.

WARMAN, CHARLES FREDERICK, china and glass dealer, No. 9, Houndsditch, Jan. 24, at two, Feb. 25, at one, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Heath, Gracechurch-st. sol. Date of fiat, Jan. 11. Bankrupt's own petition.

YALLOP, JAMES PELL, carpenter and builder, Durham-st. Hackney-road, and Pritchard's-place, Hackney, Jan. 21, at eleven, March 1, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Norton and Son, New-st. Bishopsgate, sols. Date of fiat, Jan. 11. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Jan. 7.

Ayers, C. R. and *Parkinson*, R. architects, John-st. Berkeley-sq. July 9.—*Baker*, T. *Davis*, J. and *Harris*, P. coal masters, Kingswinford, Dec. 23. Debts paid by Davis, Harris, and Pearson.—*Beard*, E. and *Chitty*, C. H. brewers, Lewes, Jan. 1. Debts paid by Beard.—*Beynon*, J. *Jones*, J. and *Beynon*, R. embossers, Margaret-st. Cavendish-sq. Dec. 31.—*Blackbird*, R. and *Hunter*, W. R. ship and insurance brokers, Newcastle, Dec. 31, 1843. Debts paid by Hunter.—*Blandin*, M. and *Brown*, G. A. merchants, Liverpool, Dec. 31.—*Brown*, H. and *Marston*, W. H. pawnbrokers, Coventry, Dec. 31.—*Buckle*, W. *Smith*, J. and *Booth*, J. worsted spinners, Bradford, so far as regards Buckle, Jan. 1. Debts paid by the remaining partners.—*Budd*, W. P. *Woodward*, W. *Bletchly*, J. *Long*, W. A. and *Oliver*, W. carriers, London, Witney, Cirencester, Wootton-under-Edge, Bristol, Birmingham, and elsewhere, Dec. 31.—*Burnley*, J., A., S. and J. woollen manufacturers, Batley, so far as regards A. Burnley, Dec. 31. Debts paid by the remaining partners.—*Casson*, W. and *Withington*, G. B. attorneys, Manchester, Dec. 31. Debts paid by Withington.—*Clarkson*, E. T. and *Whitaker*, E. E. attorneys, Calne, Wilts, Dec. 31. Debts paid by Clarkson.—*Cramond*, J. and *Shuyler*, A. jun. ship agents, Lime-st. Jan. 4. Debts paid by Cramond.—*Crook*, P. sen. and jun. cotton manufacturers, Bolton-le-Moors and Manchester, Dec. 30.—*Cuffley*, A. D. and *Heighway*, J. paper hangers, Manchester, Dec. 24.—*Currie*, J. *Currie*, L. sen. (deceased), *Currie*, L. jun. and *Currie*, A. distillers, Bromley, so far as regards L. Currie, sen. Oct. 10.—*Dickson*, R. *Watson*, R. *Robinson*, R. W. and *Wood*, J. H. mercers, Stockton, and fustian manufacturers, Manchester, so far as regards Dickson, Jan. 1. Debts paid by the remaining partners.—*Eastwood*, L. *Johnson*, G. and *Tavo*, E. joiners, Manchester, Dec. 2. Debts paid by Eastwood and Tavo.—*Edleston*, R. C. *Fisher*, H. and *Edleston*, R. C. attorneys, Nantwich, Dec. 31. Debts paid by Messrs. Edleston.—*Farnden*, E. and *Farnden*, F. hatters and corn dealers, Long-acre, and James-st. Covent-garden, Oct. 21. Debts paid by E. Farnden.—*Fletcher*, D. and *Payne*, J. schoolmasters, Denmark-hill, Dec. 25.—*Forshaw*, J. A. and *Forshaw*, R. jun. merchants, Liverpool, Jan. 3, 1845.—*German*, J. *Grundy*, T. *Heywood*, T. and *Grundy*, J. machine makers and cotton spinners, Preston, Jan. 1. Debts paid by Messrs. Grundy and Heywood.—*Giles*, T. and *Foster*, G. yarn manufacturers, Leicester and Horbury, Jan. 1, 1843.—*Guy*, H. and *Burrell*, W. D. jun. booksellers, Chelmsford, Jan. 1.—*Gall*, E. and *Burnett*, J. plumbers, Lytham, Lancashire, Jan. 1. Debts paid by Burnett.—*Hannah*, J. and *Heath*, T. wine merchants, Bridge-st. Westminster, Jan. 1.—*Jackson*, W. and *Ranger*, J. auctioneers, Trowbridge and Melksham, Nov. 13.—*Lewis*, C. and *Inman*, K. J. tin plate workers, Stangate-st. Oct. 19.—*Marston*, T. sen. and jun. gold beaters, Birmingham, Dec. 31. Debts paid by Marston, sen.—*Masterman*, W., *Peters*, W., *Mildred*, D., *Masterman*, J., *Masterman*, J. jun. and *Mildred*, F. bankers, 35, Nicholas-lane, so far as regards W. Masterman, Dec. 31.—*Moore*, J. and W. millers, Sellinge, Dec. 31.—*Murphy*, P. and *Kirkland*, J. grocers, Blackman-st. and Drury-lane, Dec. 31. Debts paid by Murphy.—*Neville*, J., *Ainsworth*, J. and *Beardsworth*, J. attorneys, Blackburn, so far as regards Beardsworth, Dec. 31.—*Palian*, W. A. and *Pindar*, W. drapers, Gainsburgh, Dec. 31. Debts paid by Palian.—*Pass*, W. and *Shelmerdine*, J. attorneys, Jan. 1. Debts paid by Shelmerdine.—*Pawson*, W. and *Kenworthy*, J. woollen manufacturers, Leeds and Cheapside, Dec. 31. Debts paid by Pawson.—*Rokes*, M. and *Webster*, W. furnishing undertakers, Blackman-st. Sept. 29.—*Shaw*, H., J. T., and R. printers, Fetter-lane, so far as regards R. Shaw, Jan. 1.—*Skinner*, S. and *Cross*, S. jun. saddlers, Spring-st. Hyde-park, Camberwell-green, and Dulwich, Dec. 31 last. Debts paid by Skinner.—*White*, H. and *Baas*, R. B. attorneys, Halesworth, Dec. 31. Debts paid by Baas.—*Wilkins*, S. and H. W. stone masons, Judd-place West and Platt-terrace, St. Pancras, Dec. 31.—*Windus*, A. *Beard*, E. and *Chitty*, C. H. wine merchants, Lewes, so far as regards Chitty, Jan. 1. Debts paid by Beard.—*Woollatt*, J. and *Walton*, G. upholsterers, Derby, Jan. 4. Debts paid by Woollatt.

Gazette, Jan. 10.

Bunney, G. H. and *Lynch*, A. nurserymen, Ball's-pond, Dec. 31, 1843.—*Chambers*, W. M. and *Clayton*, E. King-st. Cheapside, and elsewhere, Jan. 9.—*Chadwick*, W., E., and J. cotton spinners, Parkhall-mills, near Ashton-under-Lyne, so far as regards Wm. Chadwick, Jan. 1. Debts paid by the remaining partners.—*Christiansen*, J. and G. and *Schier*, H. J. commission merchants, Hull, so far as regards G. Christiansen and Schier, Dec. 31. Debts paid by J. Christiansen.—*Christiansen*, J. and G. and *Schier*, H. J. merchants, Newcastle and Hartlepool, so far as regards J. Christiansen, Dec. 31. Debts paid by the remaining partners.—*Dewitt*, N. and *England*, T. ship brokers, Jan. 7. Debts paid by England.—*Faulkner*, J. and *Adams*, J. sawyers, Old Brompton, Dec. 31. Debts paid by Faulkner.—*Foster*, E. *Hall*, J. and *Haslop*, T. machine makers, Cambridge, Dec. 5.—*Foster*, E. and *Hall*, H. patent machine makers, Cambridge, Dec. 5.—*Gollop*, M. and W. carpenters, Poole, Dec. 31.—*Gatliff*, A. and *Hopps*, E. C. attorneys, Leeds, Jan. 9. Debts paid by Hopps.—*Gibson*, J. and *Pridmore*, W. fishmongers, Leicester, Jan. 6.—*Harrison*, G. and W. grocers, Banbury, Jan. 1. Debts paid by G. Harrison.—*Hayden*, H. and *Strutt*, J. linen drapers, Mile-End-road, Jan 7. Debts paid by Strutt.—*Heaps*, C. and *Milner*, W. plumbers, Leeds, Jan. 7.—*Hirst*, W., C., and, E. *Shaw*, S. *Thorp*, W. and J. and *Taylor*, A. scribbling millers, Penistone, Jan. 7. Debts paid by Messrs. Hirst and S. Shaw.—*Ireland*, T. *Davies*, A. *Tunna*, T. and *Nickson*, S. lime and coal merchants, Wem, so far as regards Ireland, Dec. 31.—*Jackson*, T. and *Hardgrave*, J. bricklayers, York, Jan. 7. Debts paid by Jackson.—*Jackson*, S. and *Knight*, W. engravers, Cheapside, Jan. 7. Debts paid by Jackson.—*Lauriere*, J. deceased, R. J., and M. jewellers, St. James's-st. so far as regards M. Lauriere, Dec. 31.—*Lauriere*, J. and R. J. jewellers, St. James's-st. Dec. 31.—*Longden*, H. sen. and jun. ironfounders, Sheffield, Dec. 31. Debts paid by Longden, jun.—*Mabson*, W. Birmingham, and *Elsam*, W. Netherthorpe, merchants, Aug. 1, 1843.—*M'George*, J. and M. drapers, Brighton, Jan. 3. Debts paid by M. M'George.—*Mead*, W. and *Pool*, G. builders, Leighton Buzzard, Aug. 19, 1843.—*Milnes*, T. and *Barry*, W. woolstaplers, Bradford, Jan. 6.—*Moens*, J. B. *Dauncey*, J. and *Latham*, J. H. merchants, London, Dec. 31.—*Pearce*, W. and *Lightbody*, J. jun. merchants, Liverpool, Debts paid by Pearce.—*Pepperdine*, L. and J. raff merchants, Lincoln, Jan. 6.—*Phillips*, P. and *Goodwin*, F. mercers, Crowland, Dec. 31.—*Phillips*, M. and *Solomons*, S. victuallers, Crown-st. Finsbury, Dec. 19.—*Pope*, R. and *Glanville*, C. F. coal merchants, Bristol, Jan. 7. Debts paid by Pope.—*Purnell*, C. H. and *Case*, R. coal merchants, Liverpool, Dec. 31. Debts paid by Purnell.—*Ray*, W. and *Barnard*, J. jun. mealmen, Eastmoon, Hants, May 9.—*Scott*, W., H., and A. Naples and London, so far as regards A. Scott, June 30.—*Shearing*, W. G. and F. chemists and tea dealers, Chester, Jan. 6. Debts paid by W. G. Shearing.—*Thorp*, G. sen. and jun. and J. glove manufacturers, Leicester, Jan. 4. Debts paid by J. and G. Thorp.—*Tilsley*, E. and *Were*, H. B. attorneys, Moreton-in-Marsh and Shipston-on-Stour, June 11.—*Wainhouse*, R. and *Emmet*, J. dyers, Halifax, July 1, 1841.—*Wainhouse*, R. and J. E. dyers, Halifax, Dec. 31.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Jan. 7.

Capel, W. victualler, Weedon Beck, Jan. 23, at one.—*Challenor*, J. grocer, White-st. Borough, Jan. 15, at one.—*Clowser*, T. H. baker, Clapham, Jan. 13, at half-past eleven.—*Coles*, C. widow, Oxford, Jan. 13, at half-past twelve.—*Colven*, T. bricklayer, Counter-st. Borough, Jan. 23, at half-past twelve.—*Freeman*, J. H. surgeon, Mile-end-terrace, Mile-end, Jan. 15, at twelve.—*Galloway*, A. clerk, Oval, Bethnal-green, Jan. 23, at half-past one.—*Garratt*, J. G. attorney, Queen-st. Cheapside, Jan. 15, at twelve.—*Gedge*, J. schoolmaster, Wellington-st. Strand, Jan. 13, at eleven.—*Grange*, S. out of business, Burton-st. Pimlico, Jan. 21, at eleven.—*Home*, J. veterinary surgeon, Hans-place, Chelsea, Jan. 22, at twelve.—*Luson*, J. B. clerk, Sheerness, Jan. 22, at twelve.—*Metcalfe*, F. stationer, Marchmont-st. Jan. 23.—*Nichols*, W. cheesemonger, John-place, Camberwell New-road, Jan. 22, at eleven.—*Pickthall*, H. S. clerk, Hatfield-st. Stamford-st. Jan. 23, at two.—*Roberts*, J. shoe manufacturer, Hoxton Old Town, Jan. 23, at half-past two.—*Sandys*, H. out of business, Upper Eaton-st. Jan. 22, at eleven.—*Smith*, J. bricklayer, Coal-yard, Drury-lane, Jan. 23, at half-past two.—*Twell*, J. printer, Fleet-st. Jan. 22, at eleven.—*Waller*, J. farmer, Stratford Saint Mary and Hooton, Jan. 23, at two.—*Waller*, R. baker, King's Lynn, Jan. 13, at twelve.

Gazette, Jan. 10.

Allen, J. mast block maker, Wapping, Jan. 22, at twelve.—*Beddall*, P. sen. clerk, Gerrard-st. Islington, Feb. 10, at eleven.—*Bickley*, G. attorney, Croydon, Feb. 6, at one.—*Bishop*, G. corn dealer, Rochester, Feb. 10, at half-past eleven.—*Gardner*, G. Barkham-ter. Lambeth-road, Feb. 10, at eleven.—*Hutten*, E. jun. innkeeper, Feb. 6, at one.—*Jacob*, J. supervisor of excise, Jan. 29, at eleven.—*James*, E. clerk, Millman-st. Bedford-row, Feb. 10, at half-past twelve.—*Owden*, W. M. tailor, Chatham, Feb. 10, at twelve.—*Stepney*, S. carver, Brighton, Jan. 30, at eleven.

Country.—Gazette, Jan. 7.

Davies, R. grocer, Swansea, Jan. 31, at eleven.—*Dewick*, J. shoe maker, Tamworth, Jan. 29, at half-past ten.—*Drinkwater*, J. porter, Harpurhey, Jan. 21, at twelve.—*Horwood*, J. out of business, Bath, Jan. 17, at half-past eleven.—*Leake*, M. innholder, Shrewsbury, Feb. 1, at half-past ten.—*Shephard*, M. J. victualler, Liverpool, Jan. 14, at eleven.—*Skeet*, J. hat manufacturer, Manchester, Jan. 21, at twelve.—*Wilkinson*, R. publican, Liverpool, Jan. 14, at eleven.

Gazette, Jan. 10.

Daniels, J. window blind manufacturer, Manchester, Jan. 18, at twelve.—*Davies*, W. builder, Marford, Jan. 24, at half-past eleven.—*Ellithorn*, A. attorney, Lancaster, Jan. 18, at twelve.—*Farmer*, T. beer shop-keeper, Bedworth, Jan. 25, at twelve.—*Ferguson*, J. out of business, Ruabon, Jan. 17, at eleven.—*Priddy*, G. M. grocer, Ellesmere, Feb. 3, at half-past ten.—*Stainton*, R. boot maker, Cleethorpes, Jan. 22, at eleven.

From the Gazette of Friday, January 17.

Bankrupts.

Aldred, W. builder, New Kent-road.—*Armani*, A. N. merchant, Bush-lane, City.—*Browning*, T. innkeeper, Old Bailey.—*Donald*, A. bookseller, St. Albans, Hertfordshire.—*Tedman*, J. G. licensed victualler, Gray's Inn-lane.—*Stutchbury*, H. R. bookseller, Theobald's-road.—*Withers*, T. R. brewer, Eling, Southampton.—*Dickinson*, G. farrier, South Portman-mews, Portman-square.—*Robertson*, W. coffee-house keeper, Eagle-terrace, City-road.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Saturday, Jan. 11.

TOLEDO *v.* VIETA.

Revivor—Guardian or curator of incapacitated person—Executor—Costs.

Where a bill had been filed by a person appointed by a foreign court of competent jurisdiction to be the curator or guardian of a person, a native of that foreign country, found to be of unsound mind, and by the lunatic, against a trustee in whose name funds had been invested by the lunatic for the benefit of third parties, and the suit had abated by the death of the lunatic, when the trustee of the fund obtained probate of his will, it was held that such defendant could not call upon the guardian to revive the suit in order to obtain the dismissal of the bill with costs.

This was a motion to discharge an order made by the Vice-Chancellor of England upon a motion by the defendant Vieta, that the bill might be dismissed as against that defendant, unless Don Emanuel Toledo, the survivor, should within two weeks revive the suit. The suit had been originally commenced by Toledo and the Duke del Infantado, to set aside a trust which had been created by the duke in favour of Madame Montenagro and her infant children, on the ground of fraud and the incompetency of the duke. The trust fund consisted of about 10,000*l.* Consols, standing in the name of Vieta, a Spanish physician, as trustee for Madame Montenagro and her children. This lady had lived with the duke as his mistress for many years, and the children were the duke's. The duke was a very old man at the time of the creation of the trust. Having been found, in 1839, by the proper tribunal at Madrid, to be of unsound mind, and incompetent to manage his property, the plaintiff Toledo was appointed his curator, or guardian. In that character Toledo, in his own name and that of the duke, commenced a suit in equity against Vieta, the trustee, and against Madame Montenagro and her children, to set aside the trust, and compel the transfer of the fund to the plaintiff Toledo, as the duke's curator.

Before the cause came to a hearing the duke died, in November 1841, and after some contest in the Ecclesiastical Court, the defendant Vieta obtained probate of his will, by which he, Vieta, was appointed executor. This will was dated prior to the date of the finding of the duke's insanity by the Spanish tribunal, and was limited to the disposal of this trust-fund. The duke had died in Paris, where he and Madame Montenagro were domiciled, and the question as to the validity of the trust was contested between the duke's heirs and Madame Montenagro in the French courts, and there, after several appeals, declared to be a good and subsisting trust. Vieta had alone appeared in this suit, the other defendants being out of the jurisdiction.

After the duke's death, and pending the contest of his probate in the Ecclesiastical Court, the Vice-Chancellor of England directed Toledo, the curator, as surviving plaintiff, to file a bill for the preservation of the trust-fund, in which suit the defendant Vieta was enjoined from transferring it. Probate was granted to the defendant in Nov. 1842, when he obtained an *ex parte* order for dissolving the injunction, on payment of the costs of Toledo out of the fund. But upon an appeal to the Lord Chancellor that part of the order which directed the costs of the plaintiff Toledo to be paid out of the fund was discharged.

The object of the present motion was, that the plaintiff might revive the original bill, that it might be dismissed with costs. The sole question was, whether on the death of a lunatic co-plaintiff the defendant can compel the committee to revive or have the bill dismissed with costs.

Rolt, for the motion, cited *Chowick* v. *Dimes* (7 Beav. 290), and *Canham* v. *Vincent* (in a note to that case).

Lloyd and *Bennet* contrà.—It was like the case of the death of a sole plaintiff, where it is held by the Master of the Rolls and the Vice-Chancellor of England the defendant can move against the personal representative to revive. Still the Vice-Chancellor Knight Bruce and Wigram held the contrary.

The LORD CHANCELLOR.—The defendant now represents the Duke del Infantado, for whose benefit the surviving plaintiff, Toledo, commenced the suit. He fills both characters, plaintiff and defendant. He alone can revive the suit. The estate is now out of the plaintiff, and how can he go on with the suit? The event by which the suit has been determined was the act of God. Here the surviving plaintiff cannot revive, and the defendant must take the consequences. The plaintiff cannot go on with the suit; he cannot proceed with the cause by reason of the act of Heaven. I cannot say to the plaintiff, you must revive or pay the costs; for in effect an order to revive would be an order for costs, occasioned by the death of the person the surviving plaintiff represents. It is from an act of Providence that he cannot proceed in the suit. Vieta will not let him proceed, for he fills two characters. He represents the duke and Madame Montenagro. This has the effect of a *stet processus*. The plaintiff is prevented by a superior power. Each party must remain in his actual position.

Motion refused, with costs of the appeal.

Saturday, Jan. 11.

NEEDHAM *v.* NEEDHAM.

BRISTOW *v.* NEEDHAM.

Non-payment of costs of former application—Second rehearing—Practice.

Though a defendant who is in contempt for non-payment of costs is entitled to be heard on an application to discharge the very order in respect of which he is in contempt, that does not entitle him to apply for a second re-hearing until the costs awarded against him on the first have been paid.

The defendant in these suits having given notice of a motion to get rid of the effect of certain orders which have been made upon him,

Cooper was proceeding to open the motion in the first cause, when

Calvert, for the plaintiffs, objected that the question raised by the present motion was substantially the same as that which his lordship had decided upon the former motion, of which the costs awarded against the defendant were still unpaid. The defendant was, therefore, in contempt, and could not be heard.

Cooper contended that the present motion was to get rid of the order by which the defendant was in contempt, and therefore that he had a right to move for its discharge without first paying the costs.

The LORD CHANCELLOR.—The defendant is coming here to ask for a second re-hearing without having paid the costs he was ordered to pay upon the first re-hearing. He is in contempt by my order of the 11th of January, 1843, whereby he was directed to pay certain costs, and you are not now moving to discharge that order; and you cannot apply to discharge that order, because it would be a second re-hearing. He cannot renew the motion without having paid the costs of the first. A defendant can move to discharge the very order by which he is in contempt, but he cannot apply for a second re-hearing without having paid the costs upon the first. The defendant cannot go on.

The motions in the two causes refused with costs.

HILLS *v.* CROLL.

A case involving the principles upon which the Court will interfere by injunction to enforce an agreement was partly opened by *Wakefield, James Parker*, and *Torriano*, for the plaintiff.

Bethell, Romilly, and *Welford*, for the defendant.

ROLLS COURT.

Saturday, Nov 9, 1844, *and Jan.* 11, 1845.

Ex parte JOLLIFFE.

Construction of the statute 56 Geo. 3, c. 60—Forgery—Personation—Transfer of stock—Commissioners for the Reduction of the National Debt.

Executors by accident overlook stock standing in the name of their testator, and the dividends being unclaimed thereon for ten years, the stock is transferred to the Commissioners for the Reduction of the National Debt, pursuant to stat. 56 Geo. 3, c. 60. A person falsely pretending to be the grandson, executor, and sole residuary legatee of the testator, obtains from the Ecclesiastical Court probate of a paper writing, purporting to be the will of the testator, but of a later date than the real will; and on production of the probate at the bank, obtains a transfer of the stock in question, pursuant to the Act. The forgery being discovered, the pretended executor is transported, and so unable to refund. Held, that the executors of the real will were entitled to a transfer from the commissioners.

This was an application to the Court under the 56 Geo. 3, c. 60, for an order to re-transfer a sum of stock which had been transferred to the Commissioners for the Reduction of the National Debt, under and by virtue of the said Act, which enacts that if stock, the dividends on which shall remain unclaimed for ten years, shall be transferred to the commissioners, and that the dividends shall accumulate, &c. The Act also indemnifies the bank for making the transfer, and authorizes a re-transfer to any claimant, upon his establishing his title thereto. It also directs that a second claimant proving his right to the stock, and unable to obtain the transfer or payment thereof from the first claimant, may obtain an order from the Court of Chancery, &c. upon petition, presented in a summary way, to the commissioners, to transfer so much as shall be sufficient to meet his claim. The Act also directs a list to be kept at the bank for the entry of the particulars of transfers, and to be open for public inspection.

This application arose out of the proceedings in the case of the notorious Barber, Fletcher, and Saunders, and was as follows:—Mary Hunt, of Bristol, widow, died so long ago as the year 1806, possessed of (among other sums of stock) 1,210*l.* Three per Cent. Consols, and having by her will duly appointed Peter William Jolliffe, Cornwall Jolliffe, and William Burgess, her executors and trustees, who proved the will and got in all the property but the 1,210*l.* Consols. The way this happened was this. Messrs. Grote and Co. of London, received the dividends on the several stocks, under a power of attorney, and transmitted them to Messrs. Bayley and Co. (formerly Messrs. Tyndal & Co.), their correspondents in Bristol, but who were not the bankers of Mary Hunt. Messrs. Bayley and Co. were in the habit of entering the dividends received, not under the name of the person entitled to them, but under the particular stock (as a head of account) for which they had been received. On the death of Mrs. Hunt, the executors, by their solicitors, the Messrs. Maltby, applied at the bank of Messrs. Bayley and Co. and an account of the other stocks was obtained, but unfortunately the 1,210*l.* Consols were overlooked. The executors, on presenting probate of the will at the Bank of England, got the transfer of the other stocks; but Messrs. Grote, who knew nothing of Mary Hunt, continued, from 1807 to 1830, to receive the dividends on the 1,210*l.* Consols, and to transmit them to Messrs. Bayley. In 1830 the survivor of the partners of the firm, to whom the power of attorney had been given, died, and no dividends being claimed afterwards, and down to 1840, the stock in question was transferred into the names of the Commissioners for the Reduction of the National Debt. In 1842, William Saunders, representing himself to be Thomas Hunt, grandson and executor and sole residuary legatee of Mary Hunt, formerly of Bristol, but late of Marylebone, in the county of Middlesex, under her will, bearing date the 11th of December, 1829, of which he duly took out probate, obtained a re-transfer of the stock, and payment of the dividends thereon. This will being discovered, in the proceedings alluded to, to be a fabrication, and Saunders being convicted and transported, the Messrs. Jolliffe, the surviving executors of the real will of Mrs. Hunt, now applied for an order for the transfer by the commissioners of such sum of stock as they should think right, Saunders being, of course, unable to satisfy their claim.

Kindersley and *Hetherington*, for the petition.

Tuiss (with him *Wray*), contrà.—The true construction of the Act (s. 7) is, that if, under the circumstances, there should not have been a transfer, and the bank would have had no defence for making it, neither would the commissioners, and *vice versâ*. In this case there is no just claim, for the bank were quite justified. [The MASTER of the ROLLS.—Your proposition is this, if the bank would have been justified in making the transfer, so are the commissioners?] Yes; the Legislature put their agents, the commissioners, in the place of the bank, indemnifying them where the bank would be indemnified; and leaving them liable where the bank would have been liable. Here the payment has been made to a lawful probate, and the debt is gone on the part of the bank, and therefore of the commissioners. (*Allen* v. *Dundas*, 3 T. R. 823; *Woolley* v. *Clark*, 5 B. & Ald. 744; *Digby and Hollis* v. *Wray*, Bac. Ab. tit. Ex. & Ad. E. 13.) But next, the executors are guilty of laches, because, first, they did not search the papers of Mary Hunt, where they would have found information; secondly, they did not give correct particulars at the bank to the clerk, who stated there were many Mary Hunts; and, thirdly, they permitted the power of attorney to be exercised after her death. The bankers at Bristol were negligent certainly, but that is the negligence of the executors, whose agents they were. The authority of the probate was good to the bank as long as it stood, and they could not resist payment. As to costs, they came out of the fund recovered in the absence of special circumstances; here there are none. (*Ex parte Ram*, 3 My. & Cr. 25; *Ex parte Loferti*, V. C. 22 April, 1837; *Re Holland*, 1 Phil. 379.)

Kindersley, in reply.—I admit the general practice is so as to costs. It is admitted the executors had the right, and have lost it by payment to a lawful probate, *i. e.* the probate of the Ecclesiastical Court to an executor of a Mary Hunt, who died in 1829. I am supposing a real Thomas Hunt as represented, and a real Mary Hunt, who died in 1829. If Saunders had represented him, and got payment, would not the right Thomas Hunt have got the transfer?

The MASTER of the ROLLS.—I will read the Act; but I cannot think there is much doubt about the case.

JUDGMENT.

Saturday, Nov. 11.—The MASTER of the ROLLS.—[His lordship stated the facts.] The surviving executors having become aware that Mary Hunt was entitled to the 1,210*l.* Consols, applied to the Governor and Company of the Bank of England, asking for a transfer, but they were told that in 1842 the stock had been transferred to Thomas Hunt. They therefore, by this petition, asked that the Commissioners for the Reduction of the National Debt might re-transfer the stock to them. From the evidence which has been brought forward, it appears that the stock was the property of Mary Hunt, and that the petitioners, as her executors, were entitled to it, and

they might have had it any time before the 5th of January, 1840, and also before the transfer made to Thomas Hunt. But in 1842, a paper writing, purporting to be the will of Mary Hunt, formerly of Bristol, but late of Marylebone, and bearing date the 14th day of December, 1829, was forged, and by that will, after stating that Mary Hunt was possessed of a sum of about 1,210*l.* Consols, it bequeathed the stock to Thomas Hunt. This supposed legatee was personated by William Saunders, who, by fraud and perjury, obtained probate of the forged will, and got the 1,210*l.* transferred to him. Under the circumstances, therefore, it must be considered that the Governor and Company of the Bank of England were indemnified under the provision of the 5 & 6 Geo. 3, c. 60, but it did not extend further. The executors had now established their right, but they were unable to recover the stock from the person to whom it had been transferred, and under section 7 of the Act, it was said the commissioners were not bound to transfer the stock, as they had been induced to make an erroneous transfer. It could not be considered that the commissioners had a right to that protection which the bank might have had. They had no authority to consider William Saunders as Thomas Hunt, or that he should be treated as Thomas Hunt. It was also argued that the executors had been guilty of laches, and that they might have discovered the stock from the papers of the deceased, as also from her agents; but the mode in which the bankers kept their accounts gave no information that Mary Hunt had the stock in question. I do not, therefore, think the executors have forfeited their right; on the contrary, they have a right to the order, but in deference to precedents, the costs must come out of the fraud.

Tuesday, Jan. 14.
Re ELDERTON.

The 6 & 7 Vict. c. 73, gives no jurisdiction to adjudicate on petition as to the taxation of a bill of costs where there is a special agreement as to the payment thereof.

Mr. Elderton was employed by Mr. Winkworth, the petitioner in this case, as his solicitor, in several transactions down to 1840; and four several bills of costs, amounting in all to 125*l.* 6*s.* 7*d.* were delivered to the petitioner. It was then agreed that Mr. Elderton should accept 100*l.* in full for all demands, which accordingly, on the 27th February, 1840, he did, in two bills of exchange amounting together to that sum. There was business afterwards transacted by him for the petitioner, and a bill of costs, amounting to about 29*l.* was delivered; but it was stated that one of the items of it was an item included in one of the former bills, and upon Mr. Elderton's attention being drawn to that circumstance, he said it did appear singular, but he would waive that item, and so the bill would only amount to about 25*l.* This being refused, Mr. Elderton brought his action at law. The petitioner now wished to make out that by including the item in question in the last bill the agreement was annulled by Mr. Elderton, and on that footing sought to have taxation of all the bills.

Turner, for the petition.

Elderton, contra.

The MASTER of the ROLLS stated the facts, and said he could not grant the petition, as he could not, under the Act, adjudicate upon the agreement. Taxation of the last bill must be allowed, but the part waived by *Elderton* must not be included. There must also be costs.

Re WOOD.

Taxation of a bill of costs—Payment within the year under 6 & 7 Vict. c. 78.

This case is reported in 4 Law T. 100, and it stood over for an affidavit as to the specific payment there mentioned. It now appeared from the affidavit of Wood that the bill was not fully paid, as stated, by mistake on the 27th of August, 1842, but on the 3rd Nov. 1842, 5*l.* was paid, and that 3*s.* 1*d.* the balance, was allowed by him (Wood) to Shillito, the bankrupt. This was also sworn to by Shillito, but there was no entry of the 5*l.* in his books.

Wright contended that this was payment of the first bill one year before the petition for taxation. As to the second bill, there was only a sum of 5*l.* on a bill of 21*l.* 12*s.* 10*d.* objected to, and that two guineas for a draft of a statement of evidence to lay before counsel, one of the items, was not too much; nor was two guineas for engrossing it on parchment, and two sums of 6*s.* 8*d.* for attendance, extravagant.

Turner, contra, said there was an item in the second bill corresponding to the 3*s.* 1*d.* allowed in the first, and so there was no payment of the first till the date of payment of the second, and therefore it was taxable, being in time.

The MASTER of the ROLLS.—I cannot presume either of the two guineas in the second bill an improper charge—it seems reasonable; and if those are the only items objected to, I ought not, in mercy to the petitioner, to grant the petition. I must take the first bill to have been paid, but the evidence is very unsatisfactory. I dismiss the petition without costs.

Re CAREW.

The Vice-Chancellors have jurisdiction to make orders for the taxation of bills of costs as well as the Master of the Rolls, though the latter and the Lord Chancellor only are mentioned in the Solicitors Act.

In this case, which is reported in 4 Law T. 231, costs were asked to be taxed as between solicitor and client by a third party who was liable to pay them, though in the first instance incurred by a trustee to his solicitor.

The MASTER of the ROLLS allowed the same taxation as the trustee might himself have had against the solicitor, and took occasion to observe that he was astonished all petitions for taxation were set down at the Rolls, though if presented to the Lord Chancellor, he had jurisdiction, by the Solicitors Act, to hear them, and could transfer that jurisdiction to any of the Vice-Chancellors, who could, of course, then hear them.

Thursday, Jan. 16.
CASH *v.* CASH.

Transfer of supplemental suits—Practice.

This was an application for an order respecting the removal of this cause to Vice-Chancellor Wigram's paper. A decree had been made so long ago as 1834 at the Rolls, and a supplemental suit having been instituted, an order was made on the 11th of May, 1842, to transfer it from the Rolls to Vice-Chancellor Wigram's Court. In 1843 a fresh supplemental bill was filed, and in both supplemental suits a decree was made, reserving further directions. A motion being made in the original cause, a question arose whether it had been transferred from the Rolls, and on its appearing that it had not, the Vice-Chancellor suggested that the case should be mentioned to the Lord Chancellor, who directed application to be made to the Master of the Rolls, who knew the merits of the question. Accordingly,

Piggott now applied for an order to transfer, and mentioned what had taken place. It had been assumed, he said, that the necessary effect of the transfer of the supplemental suit was to transfer the original cause. Nothing could now be done at the Rolls.

Rolt, contra, said his client had instructed him to oppose the application, as it would be very inconvenient.

The MASTER of the ROLLS.—Mere inconvenience is not a sufficient objection. The motion must be granted; the only difficulty is the form of the order. The supplemental cause was in the paper, and therefore a fit subject of transfer; but the original cause is not in the paper, and is, therefore, not a fit subject of transfer. The order must be to carry the cause to Vice-Chancellor Wigram's paper, with directions that all proceedings taken therein shall be considered as taken at the Rolls. I will think of the form.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Saturday, January 11.
GARMSTONE *v.* GAUNT.

Vendor and purchaser—Renewal fines.

A gift by will to trustees of leaseholds for lives in trust during the life of A. B. by and out of the rents and profits, or otherwise, to keep the premises in repair and full lived, and to pay the fines and expenses attending any renewals and repairs thereof, does not authorize the sale of the whole lease in order to meet the expenses of renewal.

A decree having been made for the purpose of raising money for the renewal of a lease for lives vested in trustees whose trusts did not authorize a sale of the whole, the Court, upon the motion of a purchaser of the whole, to be discharged from the payment of his purchase-money, suggested that a good title might be made by a reference to the Master upon this motion, and upon one which might be made for a sale by a party who had already advanced money to pay the fines, and who claimed a lien on account thereof, and upon the second motion being made accordingly, the Court directed a reference for the purpose of curing the defect of title.

William Weaver, of Glaines, in the county of Worcester, gentleman, by his will dated the 29th of May, 1838, gave certain leaseholds for lives to trustees, "in trust during the life of his daughter, Mary Weaver, by and out of the rents and profits, or otherwise to keep the premises in repair and full lived, and to pay the fines and expenses attending any renewals and repairs thereof, and subject thereto to permit his daughter Mary Weaver to receive the rents and profits thereof for her life, and after her death, in trust for all and every her children." The testator then proceeded to give to trustees other premises, also leaseholds for lives, for the benefit of Jane Hammond, William Weaver, and Ezekiel Gummery respectively, and in each of these cases the trusts were expressed in similar terms, except that the words "or otherwise," were omitted. The testator then gave to trustees other premises, leasehold for lives, "in trust during the life of his daughter Emma, to keep the same full lived and in tenantable repair, and to pay the fines and expenses attending the renewal and repairs, and subject thereto, in trust, &c.," as in the first case.

The whole of the property was held under one lease, and the bill filed was for the general administration of the testator's estate, and also for provision to be made for the keeping up the lease by renewal of the lives. A reference having been made to the Master, he found that on account of the poverty of the family, and other circumstances mentioned in his report, it would be proper that the whole of the property should be sold. A decree was made according to the Master's report, but the special circumstances of the case were not then brought under the attention of the Court. To prevent the lease from falling in, a Mr. Williams advanced the money for the renewal. A sale having afterwards been made of the property under the decree,

Shapter now, on behalf of the purchaser, moved that he might be discharged from payment of the purchase-money, the Court not having jurisdiction to order the sale of the whole lease. He cited *Pelo* v. *Gardner* (2 Y. & Coll. C. C. 312), and *Calvert* v. *Godfrey* (6 Bea. 97), to shew that however beneficial a sale might be for infants, the Court could not order it under such circumstances as the present. The cases of *Stone* v. *Theed* (2 Bro. Ch. Ca. 243), and *Reeves* v. *Creswick* (3 Y. & Coll. 315), were also cited.

Terrell, for the plaintiffs, opposed the application, and contended that a sale was the only mode by which the trust estate could be made available for the *cestuique trust*, and that the words of the will authorized a sale. He cited *Allen* v. *Backhouse* (2 Ves. & Bea. 65), and *Mondey* v. *Mondey* (1 Ves. & Bea. 223).

Temple, for one of the defendants, in the same interest as the plaintiffs, urged that it was impossible that the purchaser's title could ever be placed in jeopardy.

K. Parker, for other defendants.

The VICE-CHANCELLOR said that it appeared to him that, considering what had been done in *Allen* v. *Backhouse*, and the principle applicable to such a case, if Mr. Williams had applied to the Court, stating that he had advanced the money, &c. then, upon his motion and Mr. Shapter's, a reference being made to the Master, a good title might be made upon the Master's report. In the case of *Allen* v. *Backhouse* the only reference was to inquire as to the raising money by sale or mortgage. But the learned judge who decided that case did not think of going beyond the sale of part. If the present application had been that of a person substantially a mortgagee, the case might be different. His Honour considered this title to be too doubtful to force upon a purchaser, but if the purchaser were willing to take, and Mr. Williams's counsel were to move in the way His Honour mentioned, a good title might perhaps be made.

Temple then moved on behalf of Mr. Williams.

Shapter argued that there was no title in the trustees even to mortgage, and cited *Wilson* v. *Halliley* (1 R. & Myl. 590); *Ridout* v. *Earl of Plymouth* (2 Atk. 104); and *Henneage* v. *Lord Andover* (3 Y. & J. 360).

The VICE-CHANCELLOR said that he should make an order on the two motions, all the parties to the suit appearing on Mr. Williams's motion and not opposing. Mr. Williams's motion would be, that since the order of the Court Mr. Williams having advanced the moneys necessary for renewal on behalf of the parties interested therein, and that the amount so paid was the sum of £—, and that he was desirous that the same should be raised by sale or mortgage, he moves that the property included in the lease may be sold or otherwise made applicable for the purpose of discharging his lien, he submitting to the jurisdiction of the Court; whereupon the Court refers it to the Master to inquire whether he has paid the sum, and when, and whether the same was a proper payment; and if the Master shall find that the same was so made as alleged by him, and was properly so made, then let the Master inquire whether, having regard to that circumstance and to the rights of all parties interested, it will be for the benefit of the parties interested or to be interested under the testator's will, that the sale made to Mr. Shapter's client be carried into effect. His Honour added, that he was of opinion that the title had been properly questioned by the purchaser's counsel, but he thought that this order would remedy it.

January 14.—*Shapter* this morning mentioned that he was willing to take the order suggested by the Court without a reference to the Master, and accordingly it was arranged between the parties that the proposed order should be made upon Mr. Williams's affidavit as to the sum advanced by him.

MURRAY *v.* VIBART.

Service of subpœna to appear and answer.

Quære, whether, where a party is resident abroad, a subpœna to appear and answer a bill may be served on a solicitor who has a general power to act for that party in all matters connected with the subject of the suit?

Anderson moved *ex parte* for an injunction to restrain the transfer of certain stock standing in the

name of one of the defendants in the books of the Bank of England. The defendant was resident at Boulogne, and it was asked that the Court would order that the service of the subpœna to appear and answer might be made upon the solicitor who was acting for the defendant in all the matters connected with the suit. The case of *Hobhouse* v. *Courtney* (12 Sim. 140) was cited.

The VICE-CHANCELLOR granted the injunction, but said that he should prefer the question as to the service to be brought before the Lord Chancellor.

Monday, January 13.
SAMUEL *v.* GIBBS.
Trustees—Composition of debt.

Trustees are not justified, without an express authority, to compound debts, however expedient and beneficial such composition may be shewn to be.

This cause came on on further directions. The defendants were trustees under a deed of the 2nd of November, 1833, and they had compromised a debt of one Captain Coode under an indenture of the 20th of August, 1835. The Master had reported in favour of the arrangement, though no power was given to the trustees to compromise. The question now raised by the plaintiff was, as to the right of the defendants to compromise the debt.

R. Parker and *Wilcock*, for the plaintiff.

Simpkinson and *S. Miller*, for the defendants.

The VICE-CHANCELLOR.—I think that the plaintiff was entitled to reject the arrangement of 1835, however expedient and beneficial. He has exercised that right, and receiving no damage he can claim no benefit under it. It has been suggested that the inquiry as to the expediency and beneficial nature of the arrangement implied or intimated an opinion on the part of the Court that the arrangement, if expedient and beneficial, would bind the plaintiff. I am not, and was not at the time, of that opinion. But there were other material purposes to be answered by that inquiry apart from any notion that if the arrangement were expedient and beneficial, it would not have been in the power of the plaintiff, if he desired, to reject it. As the case stands, all the creditors have been satisfied and have released except the plaintiff and another creditor named Blencoe. Upon the footing of rejecting the arrangement of 1835, the trustees have now in their hands the sum of 74*l*. 4s. 2d. I think upon that sum there can be no claim except those of the plaintiff and Blencoe, and that that sum should be divided between them in proportion to the amount of their debts. The trustees must pay the plaintiff his share, and they must retain another portion for Blencoe. It was then said that a case existed for impeaching the trustees, which could be made out either directly or by instituting an inquiry into their conduct, which would fix them with wilful default. I do not see sufficient materials to warrant me in this stage of the cause in directing such an inquiry. I do not give a positive opinion, for very probably the arrangement of 1835 did not amount to a release of the covenant in the former deed; but whether it does or not, it is not so put in issue before me, or made matter of complaint. With regard to the circumstances of Coode we have information that the sale of his commission was expedient and beneficial to the creditors under the deed of 1833: such was the finding of the Master. It must not be supposed that more could have been produced. It is then said that Coode's personal representative has received assets. That may be so. If the plaintiff is desirous of ascertaining what can be done under the covenant or otherwise, he may proceed against the executrix of Coode, using the names of the covenantees in the deed of 1833, indemnifying them and undertaking to deal with the produce of the action, if there should be any, as the Court shall direct. Then come the costs. *Primâ facie* trustees are entitled to deduct their costs out of the trust fund. But these trustees—though with the best intentions—have acted in a manner not strictly regular. They have sought to bind the plaintiff by a transaction which was not capable of binding him, and they have dealt with his interests in a manner which they were not authorized to do. From these circumstances, in a great measure, have arisen the costs of this suit. On the whole, though I impute no intentions, except good intentions, to these trustees, I think that I cannot allow their costs. Honestly, and with the best intentions, they made an arrangement which the Master finds was expedient and beneficial for all the creditors, under the circumstances of the case, and considering if the plaintiff had desired to have such payment as he was entitled to under the deed of 1833, he might have had it, I think I am acting with sufficient strictness in merely refusing costs. I give no costs on either side.

VICE-CHANCELLOR WIGRAM'S COURT.

Wednesday, Jan. 22.
JUDGMENT.
WILSON *v.* GOODMAN.
Contribution—Liability of bankrupt after obtaining their certificates.

The bill in this cause was filed for obtaining contribution from such of the trustees of certain turnpike roads as were not immediately liable, on the ground of their having attended the meetings of the trustees, and taken part in certain transactions alleged in the bill. One of the trustees (a defendant) had, subsequently to the time the liabilities were incurred, become a bankrupt, and obtained his certificate.

His HONOUR said that it was quite clear that if trustees for making a turnpike road under an Act of Parliament, similar to the one in the present case, acted strictly according as the Act directed, they would not incur any personal liability. Such a liability could only arise from a contract, express or implied; and when such existed, it must always depend upon the acts of each trustee whether as against him any liability could attach; and each trustee who by any act made himself liable to a creditor, would, as between himself and other persons, be liable only to his proportion of the debt; and that if any one were compelled by the creditor to pay the whole debt, such person might enforce contribution as against the others who had not paid, but who really were jointly liable. One of the parties who had so made himself liable to contribute his proportion of the debt paid by the plaintiff, had, since his liability was incurred, become a bankrupt, and the question therefore arose, whether he was by his certificate discharged, or was still liable to contribute. He thought he was, in law, discharged by his certificate. The question, however, could not be finally determined, as the assignees had not been made parties to the record. The bill must, therefore, be dismissed as against the bankrupt, but without costs, and the case may stand over, in order to allow the plaintiff time to consider the question of parties.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Thursday, Jan. 17.
LOWE *v.* PENN.
Patent—New Trial.

Platt, Q. C., moved for a rule to shew cause why there should not be a new trial, or a nonsuit in this action, on the grounds of misdirection, improper rejection of evidence, and verdict against the evidence. There were five pleas pleaded, of which the chief were, that it was not a new invention, but had been publicly used before, and that the description was insufficient. Notice of the objection was given according to the statute, that the specification did not sufficiently specify the invention, which related to a new mode of propelling vessels by a screw and revolving blades. The description was, that the vessel was propelled by "curved blades set or affixed below the water-line of the vessel, and running from stem to stern." These were further described to run on an axis parallel to the keel. The defendant had proved various patents by Shorter, Mellington, and others, on precisely the same principle as that he had used. If this were not the same, then there was no infringement. Nevertheless there was a verdict for the plaintiff. *Rule nisi.*

GRENFELL *v.* EDGCOMBE.
To set aside an award.

Crowder, Q. C. moved for a rule to shew cause why this award should not be set aside. This was an action upon the case by a reversioner for a nuisance, for continuing a mill that had been erected on the plaintiff's land. It was a condition that the Bishop of Exeter should be a party. The award was moved to be set aside on the ground that it was not final, and the entry on the issues inconsistent. On one of the issues the finding was, I award that nothing shall be done. This was clearly bad. (*Ross* v. *Clifton*, 9 Dowl. 356.) *Angus* v. *Redford* (11 M. & W. 69) is distinguishable. *Francom* v. *Falmouth* (6 Car. P. 529) was also cited. *Rule nisi.*

Re CARUS WILSON.
Prerogative writs run, but judicial writs do not run, to the Channel Islands.

A writ of *habeas corpus cum causâ* having been obtained in the Bail Court before Patteson, J, directed to the Keeper of the Royal Prison of Jersey, the *Solicitor-General* subsequently obtained a rule to shew cause why this writ should not be quashed, on the ground that it was improvidently made; 1st, because writs of *habeas corpus* do not lie to the islands of Guernsey and Jersey; 2ndly, if they do lie, that it is matter of discretion with the Court to issue them, and that the discretion was in this case badly exercised.

Kelly, Q. C. now shewed cause. Writs of *habeas corpus* run to the Channel Islands by express enactment. The 31 Chas. 2, c. s. 11, enacts "That an *habeas corpus*, according to the true intent and meaning of this Act, may be directed and run into any County Palatine, the Cinque Ports, or other privileged places within the kingdom of England, dominion of Wales, or Town of Berwick upon Tweed, *and the Islands of Jersey or Guernsey*, any law or usage to the contrary notwithstanding." Provision is also made in the same Act for marking, serving the writs, and for levying fines of 100*l*. and upwards upon all such gaolers and others, as shall neglect to deliver up the body in pursuance of the writ. But the 8th sec. expressly limits the writ to criminal cases, and exempts all prisoners charged with debt on civil process from its operation. But the 56 Geo. 3, c. 100, was passed to extend the statute of Charles to civil as well as criminal cases, and sec. 1 enacts, that where any person shall be confined or restrained of his or her liberty, otherwise than for some criminal or supposed criminal matter, except persons imprisoned for debt, and if it shall appear, whether by affidavit or affirmation, that there is a probable and reasonable ground for such complaint, for any judge of the superior courts, to award in vacation time a writ of *habeas corpus ad subjiciendum*. Section 5, expressly enacts that such writ "may be directed and run into any County Palatine &c. and the Isles of Jersey, Guernsey, and Man;" and sect. 6, provides that process of contempt may be awarded against persons who disobey the writ. Thus the language of the Legislature is clear and unequivocal, that the writ may run to Jersey. In applying for this rule, doubts were thrown out whether the writ lay. No opinion was hazarded that at common law the writ would not lie also. Hale, C. J., lays it down in his History of the Common Law of England, p. 186-7, that in cases of Quare impedit, Quo warranto, and Information for a riot, "suits have been maintained by the king in his court of B. R. here, though for matters arising within these Islands." *Paschæ* 16 *E.* 2 *Coram Rege Rol.* 82;—*Mich.* 18 *E.* 2 *Rol.* 123 *&c.*; and *Pas.* 1 *E.* 3 *Rol.* 59. And Hale also says, "A writ of *habeas corpus* lies into those islands for one imprisoned there, for the king may demand, and must have an account of the cause of any of his subjects' loss of liberty * * * for no liberty, whether of a County Palatine or other, holds place against those *brevia mandatoria*." A writ of error will not lie, because we have no judicial authority over an island in which the laws of Normandy prevail; there may, however, be appeal from a sentence of its Courts to the Queen in Council. (*Hale Hist. C. L.* 187). But in this case the Queen's prerogative is involved, and the writ goes as a writ of prerogative, and the statute law of England declares that to it a return *shall be made*. It is the Queen's writ, issued out of the first court in the kingdom to a place where the Sovereign h[illegible] jurisdiction. There are two instances in the books where the writ actually issued: the first is that of *Roy* v. *Overton* (Siderfin, 386), thus reported:—"La fuit un *habeas corpus* grant direct al Governour de Jersey p. porter icy le corps del O. le Proch Ter, quel ad le prisoner la several ans." See also *Anonymous* (Ventris, 357), where a writ of *habeas corpus* was sent to Ireland, because writs mandatory ran to Jersey, Calais, &c. These cases shew that in point of fact these writs have run to Jersey. In the case of *Rex* v. *Cowle* (2 Burr. 834), a writ of *certiorari* was held to lie to Berwick-on-Tweed, and Lord Mansfield held that though judicial writs would not run, prerogative writs did run to Berwick; and he added:—"Upon a proper case they may issue to every dominion of the Crown of England. There is no doubt as to the power of this Court where the place is under the subjection of the Crown of England; the only question is as to the propriety." These islands are part of the empire. [The *Solicitor-General*.—They have been conquered and reconquered.] They came to England with the Conqueror, and were not dissevered from it when King John was deprived of his duchy, for he kept these islands; and when, afterwards, they were taken forcibly from him, he, by force, regained them; and Hale says, "they have ever since continued in the possession of the Crown of England." p. 184, (edit. 1716.) This is not a writ which it is in the discretion of this Court to give or withhold. It is a writ of right, though not a writ of course. It is not even a question for this Court what jurisdiction England has to issue writs to Jersey. The statute has expressly enacted that the judges shall award them to run there, and I presume that if an Act of Parliament order your lordships to issue a *latitat* to Berlin, though it might be a breach of the law of nations to do so, this Court would have no option in the matter, and so it is with regard to writs of *habeas corpus* into Jersey. Whatever the people of Jersey may think on the subject, your lordships might indeed resign your offices if against your consciences to award this writ; but while you hold your office you have no power to refuse this writ. It is also objected that the writ running to Jersey, the discretion was ill exercised in awarding it. It is not possible to commit a greater perversion of the truth than to say so. The law is, that the moment it appears on affidavit that a subject of England is ill used by his imprisonment, there is no discretion left, if reasonable and probable cause be stated. Such are the terms of the statute. There is discretion only as to the existence of that probable cause, and when that is found to exist, there ends the discretion of this Court, and it is compelled to issue the writ. (*Hobhouse's* case,

2 Chit. Rep. 207; 3 B. & Ald. 420.) True it is that Abbott, C.J. there said that it seemed to him the Court was not bound *as of course*, and *without cause shewn*, to grant this writ in the first instance, overruling a dictum of Lord Kenyon in *Rex* v. *Flower* (8 T. R. 324). If malefactors could have this writ, of course sentence might always be delayed; but it is there held that, on probable cause shewn, though not a writ of course, it is a writ of right and not of grace or favour. (Wilmot's Opinions and Judgments, 81.) All that *Hobhouse's* case decides is that the writ shall not be granted simply because it is asked for; but the moment ground is shewn, it is matter of right on the part of the prisoner to have it, and of duty on the part of the Court to grant it. Cause must be shewn even before a judge in chambers. [PATTESON, J.—The words of the Act direct that the writ be granted upon view of copy of commitment, and a request in writing, and does not seem to require an affidavit of the circumstances.] I need not say even that; I am making a concession; we must shew some cause. [COLERIDGE, J.—Suppose the party applying was a lunatic, he would not be within the statute: should the writ issue?] That would depend upon the ground shewn. *Rex* v. *Schiever*, 2 Burr. 765, is cited as a case in which this writ was refused, but it was on the ground that the prisoner shewed himself that he was a prisoner of war. *Habeas corpus* is the most celebrated writ known to the law of England. (3 Blackstone's Com. 131.) It is a matter of vast importance to uphold the prerogatives of the crown in the Channel Islands. Mr. Wilson was seized at Jersey on 23rd September last, and imprisoned, and applied frequently for the warrant of his committal. The keeper of the prison declared he had nothing of the kind to shew the prisoner. On the 29th, a paper was given to him to this effect—"Carus Wilson condemned, Sept. 23rd, 1844, to pay a fine of 10*l.* to her Majesty, and make an apology to the Court, in default of which he is condemned to remain in the gaol until this is done.—P. Lecouteur, Viscompte." Mr. Wilson swears he does not know for what he is committed. Here alone is ground for the writ; probable cause is shewn, and Jersey and Hampshire or Surrey are on the same footing as to the right of the writ to issue there. The paper writing is a nullity. The presumption is, it is no warrant, for the gaoler said he had none when asked by Mr. Wilson. Neither does it state what gaol, nor in what mode Mr. Wilson can make the apology. No jailer is named; no officer is named; no means are afforded of ever obtaining his liberty. Mr. Wilson believes that the cause was an alleged contempt of Court, because he had said it was illegally constituted. If this were an entirely legal proceeding, according to the laws and usages of Jersey, let that be shewn on the return to the writ; that question cannot be properly argued upon affidavit. We have, however, shewn probable cause of illegality, and that the judge rightly issued a writ which, upon reasonable cause shewn, and satisfactory *primâ facie* case made out, it was his bounden duty to issue.

Peacock, on the same side, assured the Court he had kept back no information he ought to have given, in obtaining the writ before the learned judge. [PATTESON, J.—I never meant to say that at all; what I said was, that if I had had any doubt about the propriety of granting this writ, which I had not, I should have made it a rule *nisi* for further information. I, however, thought the right to the writ too clear, according to the statute, to do so.] The other side have no right to oppose this writ by going into matter now on motion, which they may do on the return of the writ. Where is the precedent that the party having an interest may come by affidavits to oppose the issue of a writ of *habeas corpus* once granted? (*Leonard Watson's* case, 9 Ad. & Ell. 94, per Lord Denman.) We might be amused by an antiquarian discussion, but should we not be tampering with the privilege of the writ? Who makes this opposing affidavit? The Procureur-General. Why is he to come here by affidavit? When the writ is returned he may shew cause against the discharge; but he has no right to follow this unprecedented course. It is said, we ought to have gone to her Majesty in Council for redress; so that there is another remedy. If we had done so, the Privy Council would have told us to come here. It would have said, whilst you have a usual remedy expressly provided for this case by Act of Parliament, empowering you to issue a writ of *habeas corpus*, avail yourself first of that. We have a right to this writ, no less by the common law than the statute law of the land. We have shewn probable ground of illegal imprisonment. If a legal judgment appeared by the return, we should not ask your lordships to decide as a court of error; but here there is no judgment at all. What, therefore, are we to appeal from? There is no discretion in the Court to refuse this writ; its only discretion is to act according to law—the law commands the Court to issue it. *Scire per legem quid sit justum* (10 Coke, Rep. 604). Here is an unlawful confinement. [COLERIDGE, J.—The statute does not say unlawfully confined.] So much the stronger for our argument; for we need shew still less cause than under the common law. The statute of Charles was passed to get rid of such cases as that of the pirate (*Rex* v. *March*, 3 Bulstr. 27), in the reign of James I. where the writ was refused, because it was supposed the prisoners were felons. Hallam states that it was difficult in the reign of Charles I. to obtain a writ of the judges. (2 Hallam, Cons. Hist. 497.) And in 2 Rol. 138, there is another case of refusal. In the case of *the Spanish sailors* (2 Wm. Bl. 1324), the writ was refused, because they were believed to be alien enemies. The Solicitor general, omitting to notice the 11th sec. of 31 Chas. 2, dwelt on the 12th sec. which provides against illegal transportation. Clarendon had caused persons to be imprisoned in remote islands, and this was guarded against; but has nothing to do with the 11th sec. which comes first, and enacts that the writ shall run. Hallam (3 Const. Hist. 15) explains the object of the two sections, which are perfectly distinct. If any person is aggrieved by imprisonment they always have had a right to be brought, *devant le roi*, due cause shewn, as early as Edward II. (2 Pet. Parl. 486.) In 1831 an order in Council was issued in the case of Mr. John Gapes, an overseer, who went to Jersey with some paupers who had been born there. I have an affidavit of this order.—[*Solicitor-General.*—I have seen no such affidavit; it cannot be used.] I will cite it then as matter of public notoriety. [Lord DENMAN, C. J.—What book are you reading from, Mr. Peacock?] [*Solicitor-General.*—A little book written by an editor of a Jersey newspaper, my Lord.] Enough has been already shewn without this last case to prove that Mr. Wilson has a right to this writ both by common and statute law, and that the writ has actually run to Jersey.

The *Solicitor-General.*—There has been a very unfair suppression from the knowledge of the learned judge, who granted this writ, of the facts of the case. This is a matter of the greatest importance to the island of Jersey. This is the first writ issued there since the reign of Charles. This writ has issued at common law, and not under the statute. The 16 Chas. I. c. 10 was the first statute on the subject. If the writ issued under the statute it would be wrong, for it is not signed by the person who awards the same as the statute directs. The statutes did not extend the power to issue writs. [COLERIDGE, J.—Does that apply to vacation?] This was a rule of the full Court, given in the Bail Court, which is the same thing. [COLERIDGE, J.—The 4th section provides that like proceeding may be had with respect to any writ, although awarded by the Court itself.] I read that as applying to the writ at common law: the judge may direct the return to be made to the full Court. The terms of the statute do not apply to writs issued at common law by the full Court. [COLERIDGE, J.—The words are *although*, not "as if," as you imply.] [PATTESON, J.—If you were right, we should be in this singular position that one judge might be compelled to grant a writ in vacation on a mere application, which the full Court had refused during Term.] A discretion is clearly vested in the Court (*Blake's* case, 2 M. & Sel. 426) where the Court refused to make a rule absolute for the writ. [WIGHTMAN, J.—There might then have been a discussion on making the rule absolute.] *Peacock.*—I did not argue that point; if I had I should have contended that a rule *nisi* could not go to Jersey.] The facts were suppressed. I do not know if your lordships are bound to take official notice that the laws of Jersey are different from our own. They have but one court at Jersey, where they try every thing, whether civil or criminal, so that Mr. Wilson must have known to what court to apologise. There is no necessity to have any warrant. The Procureur-General swears that warrants are not the law in Jersey according to the custom of its courts; they only enter an order authorising any person to be imprisoned in the royal goal, which suffices there. The commitment is the warrant, and it ought to have been brought before the Court. [COLERIDGE, J.—By whom?] The party who applies for the writ. If a man is a prisoner for felony, he must satisfy the court he is unjustly imprisoned, and contrary to the law of the country in which he lives. The laws of Jersey are those of Normandy, and Acts of Parliament have no effect there unless specially named. It appeared that just as judgment was about to be passed upon Mr. Wilson in the Royal Court, he cried that the court was only a couple of sub-bailiffs, and was incompetent to give judgment at all; for which gross contempt of the Court it had by royal ordonnance compelled him to pay a fine of 10*l.* and in default to be committed to the gaol. The Procureur-General is the only personage who maintains the authority of the Court, and he, therefore, makes affidavits of these facts. [WIGHTMAN, J.—But the gaoler to whom the writ is directed may return very different facts.] But why should the Court assume he will state untruths? The Procureur-General happened to be here: so we obtained this affidavit from him, to save time. Overton, for whom the writ was sent, named in the case in Siderfin, was one of the regicides, and it is not very likely that he went there of his own accord. There is a case in Carter Rep. 221. There is a great doubt whether Jersey ever was reconquered from England. It is held by the treaty of Brittany, of which the sixth article conceded regal supremacy to the King of England over Calais and all the islands, "qu'il tient." It is a question well worthy of the consideration of the Court how this writ is to be enforced if it does go, and the authorities of Jersey refuse to comply with it. But this is a judicial writ, and none but mandatory writs can run to Jersey under any circumstances.

Wortley, Q. C. on the same side.—This is a writ *cum causa*, not a *habeas corpus ad subjiciendum*, which is a prerogative writ, and can alone run to Jersey. This is *ad faciendum et respondendum.* [Lord DENMAN, C. J.—Mr. Peacock, you do not contend that judicial writs can run to Jersey?]

Peacock assented; but a great question was at stake, and in the absence of Mr. Kelly he did not undertake that no fresh writ should be issued.

The *Solicitor-General.* If Mr. Wilson is not very much enamoured of gaol, he will find easy egress.

W. H. Smith, on the same side, was not heard.

Lord DENMAN, C. J.—The Solicitor-general does not contend, and I do not see how it is possible to contend, that prerogative writs do not run to the Channel Islands. Is it, therefore, worth while to contest the matter further? It is a question for the discretion of the counsel for the prisoner whether to press us to give a judgment. Let the matter stand over till Monday, when Mr. Peacock will have consulted with Mr. Kelly.

Tuesday, Jan. 21.

EDDY *v.* BROWN.

New trial.

This was an action brought against Mr. Brown, for certain clothes supplied to his son by the plaintiff, who is a tailor. The son being a minor the defendant pleaded *non assumpsit*, except as to 20*l.* and as to that sum payment into court. The amount claimed was for a much larger sum.

The defence was, that the credit had been given to the son, and that the clothes were not necessary, but in summing up the case to the jury, Mr. Justice Williams told them that as the defendant had paid 20*l.* into court he had admitted his liability generally, and, therefore, the only question for them was to say the amount due to the plaintiff. The jury found a verdict for the plaintiff for the whole amount claimed.

Platt, Q. C. now moved for a new trial, on the ground of misdirection, citing *Kington* v. *Robins* (5 M. & W. 94); *Stapleton* v. *Nowell* (6 M. & W. 8); *Archer* v. *English* (9 Dowl. 21; 1 Scott N. R. 156).

Rule nisi.

BAKER *v.* BEDELL.

A replication to a plea of set-off which amounts to nil debet must tender issue.

Debt, by the administratrix of Thomas Baker, for work and labour and money expended.

The material plea was one of set-off of debts alleged to have been due from Thomas Baker to the defendant, at the time of Thomas Baker's death. Verification.

Replication.—That T. C. Baker was not indebted in respect of the debts and other causes of set-off, &c. no conclusion, and the Statute of Limitations, concluding with prayer of judgment.

Demurrer.—Because that part of the replication which amounts to *nil debet* does not tender issue.

Ogle, in support of the demurrer.—The conclusion of the replication of the Statute of Limitations is correct; for there is nothing to verify, it not having been alleged that the debts did accrue within six years. (*Bodenham* v. *Hill*, 7 M. & W. 274.) But the prayer of judgment did not cover the replication of *nil debet*, and on that an issue must be tendered.

Peacock, contrà.—The replication is sufficient; it is one and entire. (*Bristow* v. *Hill*, 10 M. & W. 735.)

By the COURT.—*Solomons* v. *Lyon* (1 East, 369). The plaintiff had better amend; the defendant undertaking not to demur, otherwise

Judgment for the defendant.

Wednesday, Jan. 22.

REG. *v.* THE INHABITANTS OF YELVERTOFT.

A pauper may be removed to the mother's maiden settlement without inquiring as to the father's settlement, although the father states that he believes he was born in London. The onus probandi of the father's settlement is on the appellants.

This was an appeal from an order of the Leicestershire Sessions, removing paupers to the maiden settlement of their mother. The father's examination stated that he believed he was born in London, but in what parish, he had never heard, and that he was 59 years old. By a comparison of the age of the witness with a register of baptism, it appeared that some material facts to which he had given evidence must have occurred when he was only three years and three-quarters old.

The objections were—1. That this was improper evidence. 2. That the same witnesses should have been called at the sessions as before the removing magistrates. 3. That before the paupers could be removed to their mother's maiden settlement, inquiries should

have been made as to the father's. This was the point of importance in the case.

E. Macaulay and *Simpson*, in support of the order. —It is not necessary to make such inquiries. It would have been absurd in this case for the parish officers to have instituted inquiries in London to discover the settlement of a man born more than half a century before in *some* parish in London. But there was no evidence of his being born in London. It was only hearsay. If necessary at all, it was a question for the Sessions, and they have decided that sufficient inquiries were made. It lies upon the other side to prove the settlement. We shew a good birth settlement, and are not bound to exhaust all others.

Coleridge, J.—Suppose, after a birth settlement is proved, it appears there was a subsequent hiring and service, but the parish is forgotten, would the birth settlement remain?

Macaulay.—I apprehend it would, until the subsequent settlement was *proved*. If not known, it cannot be proved. It may or may not have existed. (*Rex* v. *Westerham*, Bott. 108; *Rex* v. *Ryton*, Cald. 89; 2 Bott. 114; *Rex* v. *St. Mary's, Leicester*, 3 A. & E. 644; *Rex* v. *Eddisore*, Cald. 371; *Rex* v. *Woodford*, Cal l. 236; see Burn's Just. 4, 457, last edit.) In *Rex* v. *Harberton* (13 E. 311) the Court said—"That the evidence of the wife's maiden settlement was *primâ facie* sufficient, and it lay upon the appellants to rebut it by giving evidence of the husband's settlement in a different parish."

Coleridge, J.—That is a strong case.

Macaulay.—There is no duty to negative the husband's settlement until *primâ facie* proof of its existence. You may remove wife and child on *primâ facie* proof of the wife's maiden settlement without inquiry as to the husband's settlement. (*R.* v. *St. Mary's, Leicester*, 3 A. & E. 644.) It is not a condition precedent to exhaust the settlement *ex parte paternâ* before you go to the settlement *ex parte maternâ*. The rule relied upon by the other side in *R.* v. *St. Matthew's, Bethnal Green* (Burr. S. C. 465), cannot be taken literally. It means, where the father's settlement appears. He may have been born in an extra-parochial place, and useless and expensive inquiries cannot be necessary. The Sessions are the judges of the requisite particularity. (*Reg.* v. *Bridgewater*, 10 A. & E. 693; *Reg.* v. *Pontefract*, 2 Q. B. 548.)

Hildyard, contrà.—The evidence of facts when he was three years and a half old cannot be received.

Coleridge, J.—Is that a ground of objection now?

Patteson, J.—There is no evidence of his age. He swears positively as to facts within his remembrance, and you cannot infer that his statement of belief as to the time of his birth disproves such evidence.

Hildyard.—The necessity of such reasonable search as contended for here is shewn by the old authorities, *R.* v. *St. Matthew's, Bethnal Green* (Burr. Sess. C. 465), and recognized in *R.* v. *Leeds* (2 Carr. Ham. & Al.; 1 Bitt. & Sym. 52). The "last legal settlement" is required by statute. By marriage, the birth settlement is *primâ facie* merged. There was no proof of due diligence.

Lord Denman, C.J.—*R.* v. *Harberton* (13 E. 311) ought to govern our decision. There have been no decisions against it. In *R.* v. *Leeds* it was taken for granted that some search had been made, but it does not appear what. In *St. Mary's, Leicester* (3 A. & E. 644) the maiden settlement prevailed because it displaced the birth settlement; so in *St. Mary's, Beverley*, the husband was proved to have a settlement. Here there was no evidence of this, and therefore nothing to compel the removing parish to inquire. It was mere hearsay. "I was born in London" is nothing at all. It may be often desirable to make such inquiries, but not in such a case as this.

Patteson, J.—The *onus probandi* is on the other side. If the settlement appears on cross-examination, then they must go on and prove it.

Coleridge, J.—The objections here are to the order upon an alleged defect in the examination. I do not think that this lets in the question of the propriety of the decision; but if it did, there is nothing in it. It is mere hearsay as to the father's birth.

Order of sessions confirmed.

BUSINESS OF THE WEEK.

Friday.

Adams v. Adams.—This was a special case, turning on the construction of a will.

Cur. adv. vult.

Fletcher v. Calthorp.—A demurrer to plea involving the right construction of the Night Poaching Act, and the validity of a warrant of commitment.

Cur. adv. vult.

Saturday.

Reg. v. Badcock and Others.—*Moody* shewed cause against a rule nisi to quash an order of Sessions confirming a rate, subject to the opinion of this Court upon a case. The question was as to the rateability of the trustees of Taunton market, in respect of a public butchery in the market. *Cockburn*, Q.C. contrà.

Argument adjourned.

Monday.

The Court did not sit until eleven, the judges being engaged in hearing the conclusion of an argument on a Crown case reserved.

Reg. v. The Commissioners of Excise.—This case, involving the construction of various Acts of Parliament relating to the customs and excise, occupied the whole day. It was argued by the *Solicitor-General*, *Jervis*, Q.C. and *Waddington*, for the Commissioners; and *M. D. Hill*, Q.C. and *R. Gurney*, in support of the application. *Cur. adv. vult.*

Re Carus Wilson.—At the motion of the *Solicitor-General*, Wednesday, the 29th, was fixed for the return of the *habeas corpus* in this case.

Rogers v. Brenton.—Fixed for Thursday.

Short v. Stone.—*Peacock* moved to set aside an award. *Motion to be renewed.*

Tuesday.

Van Sandau v. Turner.—*Kelly*, Q.C. (with whom was *Cleasby*) in support of the demurrer.—The *Solicitor-General* (*Simonds* with him), contrà.

Cur. adv. vult.

Planché v. Hooper.—*Platt*, Q.C. moved for judgment in this case; and no one appearing for the defendant, *Judgment for the plaintiff.*

Hill v. Kendall.—*Watson*, Q.C. moved for a new trial. *Cur. adv. vult.*

Wood v. Eliots.—*Crowder*, Q.C. moved for leave to add certain pleas. *Rule nisi.*

Lane v. Hooper.—*Bramwell*, in support of the demurrer.—*Dawson*, contrà. (To be reported next week.) *Judgment for plaintiff.*

Thursday.

Rogers v. Brenton. Part heard; to be resumed on Feb. 3rd.

Wednesday.

Reg. v. Badcock.—*Moody* replied.

Cur. adv. vult.

Reg. v. Wilcock.—Struck out, because the paper books were not to be delivered. Subsequently it appeared that the paper books had been delivered, and the case was to be entered in the paper for Saturday.

Reg. v. Hull Dock Company.—This was a case on the rateability of the Hull Dock Company. It was argued in favour of the rate by *M. D. Hill*, Q.C. *Raines*, and *Archbold*. *Kelly*, Q.C. and *Wortley*, Q. C. contrà. To be heard on Saturday.

Argument adjourned.

COURT OF COMMON PLEAS.

Wednesday, Jan. 15.

Pontifex v. Wilkinson.

New trial—Verdict against evidence.

The rule in this case was argued at some length in Easter Term last by *Sir T. Wilde*, for the plaintiff, and *Byles*, Serjt. (with whom was *Peacock*) for the defendant.

As the Court in their judgment have not expressed any opinion on the several points of law raised in the argument, but have made the rule absolute for a new trial solely on account of the verdict being against evidence, all notice of the arguments is omitted. The written judgment of the Court, which was this day delivered, is however given.

JUDGMENT.

Tindal, C. J.—The question in this case has been raised before us upon a rule obtained by the defendant either to reduce the damages by the amount of those found on the special count—that is, in substance, to enter a verdict for the defendant on that count, according to leave given at the trial, or for a new trial generally upon the whole cause of action. The declaration contained a special count upon a contract that the plaintiff should manufacture, make, fix, and complete, except bricklayer's work, &c. for the defendant certain coppers and other utensils necessary for the fitting up of a brewhouse, according to a specification, for the price of 535*l.* 10s. and that the defendant should permit the plaintiff to put up the work and pay for the same upon the delivery and fixing of the work. The breach assigned was that the defendant would not permit the plaintiff further to proceed with it, and complete it, but absolutely discharged him from the proceeding therewith and completing thereof. There are counts for goods sold and delivered, and for work, labour, and materials. There are also two further counts which apply to other and different demands, but as the jury found the verdict for the plaintiff as to the whole of the demand, though with divided damages, as the defendant contends, on the first ground, the rule granted will not apply to this state of the case. The real question is, whether there should be a new trial. The case was argued on the part of the defendant upon the ground of misdirection at the trial. The questions, as to the special count, were in point of fact two; first, whether the plaintiff was ready and willing to manufacture all the goods and chattels, and fix them, according to the terms of the contract; and secondly whether the defendant discharged the plaintiff from proceeding with and completing the manufacture of the said goods and chattels; which two questions amounted to no more than one, namely, whether the non-completion of the contract proceeded from the wrongful act of the plaintiff in refusing to finish, or the defendant in not permitting the plaintiff to finish the goods according to the contract. The mode in which these questions were left by the judge was this; which party was in fault in occasioning the contract not to be carried into effect. We see no objection in point of law to this mode of leaving the question to the jury, the more especially as the defendant's counsel in his reply to the jury had himself stated this to be the proper question for their consideration. And if in commenting upon the evidence given at the trial, with a view to the explanation of the meaning of these questions, and of the grounds of the decision proper for the jury, the judge made some observations which, my brother Byles contended, appeared to give a different sense from what he himself intended, we think he should have suggested that fact at the time for the consideration of the judge, and not brought this objection now for the first time before us. Even supposing the observations to have been made in the unqualified manner now stated, we think the making of such observations cannot support a rule for a new trial upon the ground of misdirection, when the substantial question was in fact left for the consideration of the jury. The question, however, whether the plaintiff wrongfully withdrew from the completion of the work on his part, or whether he was discharged therefrom by the conduct of the defendant, is a question of facts, and depends upon the construction the jury put, as well upon the acts of the parties as upon the correspondence. Upon these questions of fact, we are not satisfied they have come to a proper conclusion, or that justice can be done between the parties without submitting the case to another trial. We therefore give the defendant an opportunity of having the question reconsidered by granting a new trial, on the usual terms. It becomes unnecessary, at present, to give any opinion upon the other points which have been argued with respect to the other counts of the declaration.

Rule absolute for a new trial, upon payment of the costs.

Grant and Others v. Hunt, Public Officer.

A promise to accept a foreign bill made to a person by whose direction and on whose account the drawers drew the bill, is a valid acceptance, and cannot be cancelled by such person after he has communicated such promise to the drawers.

This case was argued last Easter Term by *Manning*, Serjt. for the plaintiffs, and *Channell*, Serjt. (with him *M. Smith*) for the defendant. The facts of the case sufficiently appear from the judgment of the Court, which was now delivered by

Tindal, C. J.—This case was argued last Easter Term before my brothers Coltman, Erskine, and myself. It was an action by the plaintiffs, the drawers, against Hunt, as acceptor of two bills of exchange drawn at Genoa; the defendants pleaded that they did not accept. At the trial before me a verdict was taken for the plaintiffs, subject to the opinion of the Court, upon a case which stated that the plaintiffs having made a purchase at Genoa for one Baker, a corn-merchant in London, drew the bills in question upon the defendants for the purchase money, that being the mode in which Baker had directed them to obtain payment for the goods bought for him on other occasions. And the plaintiffs sent to the defendants a letter bearing date in Genoa the 3rd of August, 1842, in which they stated that they had drawn upon them for account of Henry Baker 579*l.* 16s. 5d. as per note at foot, which they doubted not would meet their kind protection. On the 10th of August, 1842, Baker, who had become acquainted with the defendants, wrote to them as follows:—"Messrs. Grant, Balfour, and Co. unexpectedly to me, have drawn upon you for 579*l.* 16s. 5d.; this please accept to the debit of my account. Please return me also the bill of lading of the *Flora*. Enclosed is the bill on King, Melville, and Co. for 2,560*l.* to the credit of my account." Upon the following day Drew, the manager of the bank, wrote him an answer, "We beg to acknowledge the receipt of your favour of yesterday, enclosing a bill on King, Melville, and Co. at four months, for 2,560*l.* for the credit of No. 3 account. Against these receipts we send you, as requested, the bill of lading of the *Flora*, upon which there is an advance of 2,000*l.* and will accept Messrs. Grant, Balfour, and Co.'s bill for 579*l.* 16s. 5d. leaving 19*l.* 6s. 5d. due upon this transaction." This letter was received by Baker on the 12th of August, and shewn by him to Balfour, one of the plaintiffs, on the 13th. On the 12th of August, about one o'clock in the afternoon, after the receipt of the letter written the day before, Drew, the manager of the bank, saw Baker upon the part of the defendants, and informed him that the bill would not be accepted; that they countermanded the consent given in their letter of the 11th, to which Baker assented; but, notwithstanding, he afterwards communicated the letter of the 11th, but not the countermand to Balfour. Upon the argument before us, it was not disputed by counsel for the defendant, that a foreign bill might be accepted verbally or by writing, not upon the face of the bill, and that such a promise to accept or pay has the effect of an acceptance. Nor was it disputed that such acceptance might be given to the drawer, or any

[illegible] other party to the bill, after it had been endorsed over, or even after it had become due, [illegible] v. Mountier (1 Atkins, 611), [illegible] v. [illegible] (2 East, 554), being distinct authorities to that effect. But it was contended that such promise to accept or pay not being upon the face of the bill must, in order to bind the party making it, be communicated to some party to the bill, as the holder, or some agent for such party or holder; and that in this case no such communication was made to Balfour at all after the manager had withdrawn the promise to accept, with the assent of the party to whom that promise had been given. On the other hand it is contended, that Baker was not a stranger to the bill, and that, having admitted the act of the drawers, he was in the same position as if he had drawn the bill himself. It having been suggested that the bill was drawn in pursuance of authority previously given, the case stood over in order that such fact might be stated. Accordingly, since the end of the last term, the cause has been amended, and it appears that Messrs. Grant, Balfour, and Co. acted under the given authority from Baker, to make purchases of corn, for the purpose of which bills were to be drawn, and that they were drawn by the direction of King, Melville, and Co. acting as agents for Baker, and a promise, therefore, to accept was given to the party by whose direction and on whose account the bill was drawn. In *Fairlee* v. *Herring* (3 Bing. 625), it was held that such promise given by the drawee to the party by whose direction the bill was drawn, operated as an acceptance, and enured to the benefit of the endorsee, to whom the bill had been previously endorsed. In the present case it appears that when Baker, by whose direction and on whose account the bill was drawn, obtained from the defendant a written promise of acceptance, it amounted to an acceptance, and enured to the benefit of the drawers, and that Baker could not afterwards cancel the acceptance and release the defendants from their engagements by consenting to a countermand, as it is called, by *Drew* upon the 12th of Aug. We are, therefore, of opinion that the issue upon the acceptance was properly found by the jury for the plaintiffs, and the *postea* must be delivered to them.

Judgment for the plaintiffs.

THE FISHMONGERS' COMPANY v. ROBERTSON.

New trial—Terms on which granted.

TINDAL, C. J. delivering judgment, said,—This case went down to trial upon the several questions of fact raised by the pleadings on the part of the respective defendants, amongst which one issue was upon the plea of *non-assumpsit*, and another on the plea denying that the promise was made upon the consideration alleged in the special count. That consideration was stated to be the making of the articles of agreement of the 17th of March, 1838, and the memorandum endorsed thereon of the same date, and the undertaking by plaintiffs that they would perform every thing in the articles of agreement and memorandum contained on their part and behalf to be performed. And as the whole question before us turns upon the evidence offered as to these issues and the finding of the jury thereon, it will be unnecessary to advert to any other questions raised upon the record. The plaintiffs, in order to prove the affirmative of the two issues above referred to, first tendered in evidence the part of the agreement of the 17th of March, 1838, which was in their own possession, and was signed by the seven defendants, and wh' h had also a memorandum on the back, signed by Towse, clerl of the Fishmongers' Company, by Kensit, the agent of Ogilvie, and by Pierce (as solicitor of the within-named parties of the third part); both the agreement and memorandum so tendered in evidence were stamped, but as it appeared that the signature of the agreements by the several defendants was attested by different witnesses, and as the witness who attested the signature of the defendants Booth, Steadman, and Edge, wa. not produced, nor his absence accounted for, an objection was taken that *that* part of the agreement could not be received in evidence. The plaintiffs had called for the part of the same agreement and memorandum which was in the possession of the defendants, as well for the purpose of proving the consideration stated in the declaration, as also of meeting the objection raised against the admissibility of the former part of the agreement. The defendants accordingly produced the part in their possession, such part of the agreement being signed by Towse, on behalf of the Fishmongers' Company, and by Kensit, on behalf of Mr. Ogilvie, the parties to the agreement of the first and second part; and the memorandum being signed by the same parties, Towse and Kensit. But with respect to this part of the agreement and memorandum, it appeared that although the agreement was stamped, the *memorandum was not*; the objection, therefore, made against the admissibility of this document was, that the memorandum had no stamp. After the argument at the trial, the Chief Justice held the objection to be valid, and the verdict on these two issues was thereupon found for the defendant, with liberty to the plaintiffs to move to enter the verdict for themselves, if the Court should think the rejection of this evidence was wrong; and at the same time the Chief Justice requested the jury (with the consent of the parties) to find what damages the plaintiffs would have sustained by the breach of this agreement (supposing the plaintiffs entitled to recover); and the jury found the sum of one shilling only. But as the plaintiffs contend they are entitled upon the proper construction of the agreement to the sum of 1,000*l*. damages ascertained by the agreement and memorandum, the cause must, in any point of view, go down to a new trial; for the defendants insist that there was no understanding on their part that the rule should empower the Court to enter any verdict for the plaintiffs, except for the nominal verdict of one shilling; and that they should never have assented to such a construction of the agreement as that 1,000*l*. was the stipulated amount of damages between the parties; but, on the contrary, would have tendered a bill of exceptions to such direction, if any such had been given. The only question, therefore, is upon what terms the new trial should be had. If the cause went to a new trial simply on the ground of the improper rejection of evidence, the plaintiffs would undoubtedly have been entitled to such new trial without the payment of costs. But the plaintiffs had a further object in obtaining a new trial, namely, the object of increasing the damages beyond the nominal sum at which the jury had assessed them. Even supposing the verdict to have been improperly found for the defendant, the plaintiffs would still ask for a new trial, in order that they might remove the difficulty which had occurred on the former occasion by proving the proper stamp upon the memorandum, and by accounting for the absence of the attesting witness. We do not therefore feel ourselves called upon to give any opinion upon the points that have been argued before us, which, as far as can be foreseen, will not occur upon the second occasion; or, if they should occur, may be made the ground of a bill of exceptions; and on looking at the case as one in which the new trial is granted substantially for the benefit of the plaintiffs, to enable them to increase the damages, we think the justice of the case requires there should be a new trial on payment of costs by the plaintiffs.

Friday, Jan. 17.

ROBERTS v. TAYLOR and OTHERS.

In an action of trespass for breaking and entering a dwelling-house, removing fixtures and goods, and assaulting and beating the plaintiff, a plea pleaded to the whole cause of action, alleged the dwelling-house to be the dwelling-house, soil, and freehold of one J. W. and justified the various trespasses as his servants. Held bad, for not shewing any title of J. W. to the dwelling-house which could justify the personal assault.

Trespass for breaking and entering the dwelling-house of the plaintiff, for removing therefrom the fixtures of the plaintiff, for ejecting the plaintiff from her dwelling-house, assaulting and beating the plaintiff, and for seizing and taking certain goods and chattels of the plaintiff.

The defendants pleaded, fourthly, to the whole of the declaration, that the said dwelling-house in which, &c. at the said times, when, &c. was and now is the dwelling-house, soil, and freehold of one Josiah Wilson, wherefore the defendants, as the servants of the said Josiah Wilson, and by his command in that behalf, at the said times when, &c. in the said declaration mentioned, broke and entered the said dwelling-house in which, &c. and committed therein the said several supposed trespasses in the said first count mentioned, and the said fixtures and things, in the said 2nd count mentioned, were at the said times when, &c. part and parcel of the said dwelling-house, and of the said Josiah Wilson's said freehold therein, and the plaintiff just before, and at the said times when, &c. in the said 3rd and 4th counts mentioned, to wit, on, &c. was unlawfully in possession and occupation of the said dwelling-house, and with force and arms making a great noise and disturbance therein, without the leave and licence, and against the will of the said Josiah Wilson, the defendants thereupon, as the servants of the said Josiah Wilson, and by his command in that behalf, then requested the plaintiff to cease making her said noise and disturbance, and to go and depart from and out of the said dwelling-house, which the plaintiff then wholly refused to do, whereupon the defendants, as the servants of the said Josiah Wilson, and by his command, in the defence of his possession of the said dwelling-house, gently laid their hands on the plaintiff, in order to eject, expel, put out, and amove, and did then eject, expel, put out and remove her from her possession and occupation of and from and out of the said dwelling-house; and because she the plaintiff then resisted the defendants, and used violent and menacing language and gestures towards the defendant, and would then and there have beaten, bruised, wounded, and ill-treated them, if they had not defended themselves against the plaintiff, they the defendants at the said times when, &c. did defend themselves against the plaintiff, and in so doing did necessarily and unavoidably assault the plaintiff, and then a little beat, bruise, wound, hit, and ill-treat her, doing no unnecessary damage to the plaintiff on the occasions aforesaid; and because the said goods and chattels in the said last count mentioned, before and at the said time when, &c. in that count mentioned, had been wrongfully put and placed, and then were wrongfully in and upon the said dwelling-house in which, &c. encumbering the same and doing damage there to the said Josiah Wilson, the defendants, as the servants of the said Josiah Wilson, and by his command in that behalf, at the time when, &c. in that count mentioned, seized the said goods and chattels, and took and removed them from the said dwelling-house in which, &c. to a small and convenient distance, and there left the same for the plaintiff's use, and whereof the plaintiff then had notice; which are the said several supposed trespasses in the declaration mentioned. Verification.

The plaintiff replied to so much of this 4th plea as related to the first count, that at the said times when, &c. in the said first count mentioned, the plaintiff was lawfully possessed of the said dwelling-house in which, &c. and was lawfully entitled to her possession thereof as against the defendant without this, that the plaintiff was unlawfully in possession or occupation of the said dwelling-house in which, &c. in manner and form as in the said 4th plea, so far as relates to the said first count in that behalf is alleged. Conclusion to the country.

There were separate replications to the other parts of the 4th plea as related respectively to what was called the other counts of the declaration; but it is unnecessary to set them out.

Demurrer to the replication to so much of the plea of the defendants by them fourthly pleaded as related to the first count of the declaration, alleging, amongst other grounds of demurrer, that the replication should have traversed that the said dwelling-house, in which, &c. was the dwelling-house, soil, and freehold of the said Josiah Wilson, or should have set forth and shewn what right and title the plaintiff had therein, shewing the facts under which she derived such right or title.

Channell, Serjt. in support of demurrer.—The plea is substantially a plea of *liberum tenementum*, and the replication is therefore bad, for not either denying the dwelling-house to be that of Wilson, or setting up a title consistent with its being the dwelling-house and soil of Wilson. [TINDAL, C. J.—Supposing this to be a plea of *liberum tenementum*, yet, instead of pleading it to the trespass *quare clausum fregit* only, you have gone on in the plea to justify every thing in the declaration.] *Liberum tenementum* is a good answer to the trespass to the house and fixtures and turning the plaintiff out. [MAULE, J.—Provided only there was no personal violence. TINDAL, C. J.—The plea is bad; it admits an assault. MAULE, J.—Strike out all that is in the plea, except that which relates to the assault, and then it is in effect that certain land is the soil and freehold of the defendant, and because the plaintiff was there making a disturbance the defendant justifies assaulting him; but that will not do, as the plea does not state any title of the defendant to the land. The plea may be good as to the land, but bad as to the assault. I think both the replication and plea are bad.] If the plea is bad, there is no occasion to consider the replication.

TINDAL, C. J.—If the plea is bad in part, it is bad altogether. The plea of *liberum tenementum* is bad as to that which relates to the assault. It is the first time I ever saw such a plea set up in an action for an assault. The ordinary plea is, for the defendant to justify in defence of his possession of the premises.

CRESSWELL, J.—I think the plea is bad. In trespass *quare clausum fregit* possession is the foundation of the action, and the plea of *liberum tenementum* has been held sufficient to deny that right, and to put the plaintiff to shew a title consistent with its being the soil of the defendant. But in an action for a personal injury the defendant has to set up a possession, which is to found an answer to the assault.

ERLE, J. concurred. *Judgment for the plaintiff.*

LEGGE v. BOYD.

Foreign goods were imported into this country in an unmanufactured state, duly warehoused; they were then shipped for another part of the United Kingdom, in the course of the voyage to which the vessel, whilst at anchor, was run foul of by another vessel and seriously damaged, so that the master and crew left her. The vessel drifted ashore, where she was afterwards found lying on the rocks, the sea making a complete breach over her. The [illegible], who were about fifty yards from her, could not go on board until the tide fell. The master afterwards succeeded in getting the goods out of the vessel, but the same were much damaged by the sea, and sold for less than the duty thereon.—Held, that they were not goods jetsam flotsam, or wreck, within the meaning of the statute 4 & 5 Wm. 4, c. 62, s. 50, and therefore not entitled to be charged with only an ad valorem duty as unenumerated goods.

Case.—The declaration in this action stated that the plaintiff was the owner of certain goods, to wit, twenty-five hogsheads, three bags, and two [illegible] of tobacco, and other goods, in certain warehouses, subject to the payment of the duties of customs, and to the control of the defendant, the collector of customs at the port of London. The declaration then alleged that the plaintiff tendered to the defendant, as such

collector, a bill of entry of the goods, containing the several matters required in that behalf by the statute in that case made and provided, and then offered to pay to the defendant the sum of 25l. 1s. 6d. being the amount of duties of custom payable for such goods, and then tendered and offered to the defendant two duplicates of the said bill, and offered to deliver such number of duplicates as he and the controller of the customs required, in such form as required by the statute, and then requested the defendant to sign the said bill, so as to be a warrant for the delivery of the goods, and to enable the plaintiff to receive possession of the same. The declaration then alleged that it thereupon became the duty of the defendant to accept such bill, and to sign the same.

Breach—That the defendant did not nor would, when the duties were so tendered as aforesaid, receive the same, but wholly refused so to do, and also wholly refused to sign such bill of entry as aforesaid, or to cause the goods to be delivered to the plaintiff.

Plea—Not guilty by statute. The cause was turned into a special verdict, by which the following facts appeared. The tobacco was, in 1835, imported into this country in an unmanufactured state, and duly warehoused at the London Docks, and was not imported from any British possession. Upon application to the commissioners for that purpose the tobacco was removed from the London Docks, and shipped on board the *Sarah* for the port of Londonderry. The *Sarah* sailed with her cargo in the year 1836, and in the course of her voyage to Londonderry arrived at Torbay, in Devonshire, in the month of March of that year. Whilst she was riding at anchor there, and during a gale of wind, another vessel drove foul of her, and did her serious damage, carrying away her bowsprits and masts; upon which the master and crew believing the sea was making a breach over her, left her, and got on board the other vessel. The *Sarah* afterwards drifted towards the shore. The master and crew having landed, the former went in about four hours after the accident, accompanied by an agent of Lloyds, to the spot where the *Sarah* had gone ashore, and found her lying on her side upon the rocks, and the sea making a complete breach over her. The coast-guard and a number of other people were standing about fifty yards from the vessel, but could not get on board until the tide fell. The master, with the assistance of others, succeeded afterwards in saving a quantity of the tobacco, which they took out of the vessel, and which also it was necessary for them so to do in order to get her off. The tobacco was damaged by the sea water, and when sold by public auction, produced less than the amount of duty of 3s. a pound charged thereon.

Channell, Serjt. for the plaintiff.—The question is, whether a proper amount of duty has been tendered. It is said by the Commissioners of the Customs that the tobacco was liable to the duty of 3s. a pound under 3 & 4 Wm. 4, c. 56, as goods imported into this country. The plaintiff, however, contends that the tobacco was liable only to an *ad valorem* duty, by reason of the 50th section of the 3 & 4 Wm. 4, c. 52, which statute received the Royal assent on the same day as that of c. 56. By the 50th section, all foreign goods *derelict jetsam flotsam*, and wreck brought or coming to the United Kingdom, are made subject to the same duties as goods of the kind imported to the United Kingdom respectively are subject. And it is by that section provided that all such goods as cannot be sold for the amount of duty thereon are to be deemed unenumerated goods, and are to be liable and charged with duty accordingly; the effect of which would be to subject them to the payment of only an *ad valorem* duty. Therefore, although when the article first arrived here it might have become liable to the duty imposed on it as an enumerated article; yet as it has by subsequent matter become altered in its nature and character, and has since arrived as a wreck it has, by this 50th section, become liable only to the *ad valorem* duty. The question is whether, under the circumstances, the goods are not to be considered in the same situation as they would have been had they so come to this country in the first instance without having been previously warehoused. Goods bonded are not liable to duty in the first instance, and here, before possession of them has been obtained, they are not worth 3s. in the pound. As to the goods being a wreck within the meaning of the 50th section of the Customs' Act, the word "wreck" is said by Lord Hale (*de jure maris*, c. 37) to be of two kinds; 1st. Such as is called properly so; the goods cast upon land or shore; 2nd. Improper for goods that are a kind of sea waifs or stray, flotsam, jetsam, and lagon. It is according to this definition, although in its popular sense, that the 50th section speaks. *Barry* v. *Arnaud* (10 Ad. & Ell. 646) shews the meaning to be given to the word "wreck" with reference to this section of the Act, and that it is not necessarily limited to goods which become forfeited to the Crown. [The question is whether, upon the arrival of the goods in the warehouse, the duty attaches, or whether they are as free there as when they remain on board the vessel.—Erle, J.] [Sir *T. Wilde* mentioned *The Attorney-General* v. *Ansted* (12 M. & W. 520).] That case was, only whether any duty at all was to be paid which is not here denied. The word "wreck" in the Act is cumulative, it occurs after jetsam and flotsam, and must not be construed strictly, but must mean goods cast ashore, or in a vessel ashore, or so near that bystanders may take them out.

Sir *Thomas Wilde*, for the defendant, was not called on.

Tindal, C. J.—This is a case whether certain foreign goods coming into the United Kingdom are within the meaning of the Act 3 & 4 Wm. 4, c. 52, if that is decided against the plaintiff, it will be unnecessary to consider any other point. I think that this tobacco does not come within any of the descriptions given by the 50th section. There has here been no wreck of the vessel, for she never perished, nor indeed was she ever out of sight; though the vessel may have been in distress, and all the crew have deserted her, still she was not a wreck according to the cases which have been decided. I admit that there may be a wreck of the goods distinct from that of the vessel. But what is considered to have been a wreck is where the goods have been abandoned and given up by the owner. Goods jetsam and flotsam, &c. is where the goods have been cast away, or are floating on the waves; this was not the case here with these goods; then was it a wreck? I think not. The goods remain all the time in the vessel, and are not washed ashore; they are afterwards, it appears, brought out considerably damaged, but, in consequence of its being brought out, a salvage would be due, and therefore they are not wrecked; otherwise there would be no distinction between goods wrecked and damaged. The Act contemplates the goods being damaged, though not jetsam, flotsam, or wreck, and the present seems to me to be the case of goods damaged, but not wrecked, and therefore the verdict ought to be for the defendant.

Maule, J.—To entitle the plaintiff to recover, the goods must have been wrecked. The question is, whether the goods have been wrecked in consequence of the wreck of the vessel. The facts are, that the master and crew thought it expedient to leave the vessel, expecting that she would drift ashore. They accordingly did so, and having afterwards proceeded to the spot where they thought she would be, they find her lying on her side on the rocks. Certain repairs were necessary; it appears she was repaired, and became again fit for the sea, and might have continued her voyage. That seems not to be a wreck of the vessel, nor of the goods independent of the vessel; there is therefore no wreck at all.

Cresswell, J.—The question is, whether the plaintiff is entitled to this tobacco on payment of the ad valorem duty of 5l. per cent.; that depends on the 5th section of 3 & 4 Wm. 4, c. 52. The early part of that section makes all foreign goods jetsam, flotsam, and wreck, brought into this kingdom liable to the same duty as goods of the kind imported are; then there is a proviso that all such goods as cannot be sold for the amount of duty thereon are to be treated as unenumerated goods, but that can only apply to such goods as before mentioned, and this tobacco is not of that description—it is neither jetsam nor flotsam; then is it wreck? "Wreck" in this section may be used as embracing all these; it need not be confined to wreck proper. But here the tobacco was actually brought ashore from the vessel; it is therefore quite clear that it is not within the protection of this clause of the Act.

Erle, J.—I am of the same opinion. The vessel drifted ashore, and she does not appear to have been wrecked; afterwards her cargo is taken out, and there is no authority for saying that under such circumstances there has been any wreck, and without it there is no pretence for the action.

Verdict to be for the defendant.

Saturday, Jan. 18.

Hemsworth v. Brian.

Reference of a cause and all other matters in difference, the costs of the cause, and of the reference and award, to abide the result of the award. The arbitrator directed the issue on the first count to be found for the defendant, and on the others for the plaintiff, finding that in the action the defendant was indebted to the plaintiff in 68l. 9s. 7d.: but that on the taking of all the accounts the plaintiff was indebted to the defendant in 17l. 7s. which sum he ordered the plaintiff to pay.—Held, that the result sufficiently appeared.—Held, also, that the bankruptcy of the plaintiff before the making of the award did not operate as a revocation.

It is no objection to the jurat of an affidavit that it states the affidavit to be sworn at the judge's chambers, in the county of Middlesex, without there is an affidavit that there is no place in Middlesex called the judge's chambers.

Channell, Serjt. shewed cause against a rule obtained by *Talfourd*, Serjt. calling on the plaintiff to shew cause why an attachment should not issue against him for contempt in non-payment of a sum of money, and the not delivering to the defendant certain wine-warrants, pursuant to an award. A preliminary objection was made that the affidavit on which the rule had been obtained was defective in the jurat. The jurat stated the affidavit to be sworn at the judge's chambers, in the county of Middlesex. Now, in fact, the judge's chambers were situate in London, and not Middlesex. [Maule, J.—You ought to produce an affidavit that there is no place in Middlesex called the judge's chambers.] Then, as to the award; there are several objections thereto. The reference was by a judge's order, in a cause in which issue had been joined, but no verdict taken, and was a reference of the cause and all other matters in difference between the parties, the costs of the cause, and of the reference and award to abide the result of the said award. The arbitrator, by his award, found that at the time of the commencement of the suit the plaintiff had no cause of action in respect of the matters alleged in first count of the declaration, and that the issue joined thereon should be for the defendant. He also found that the defendant, at the time of the commencement of the suit, was indebted to the plaintiff in 68l. 9s. 7d. and that the issues joined on the 2nd, 3rd, and 4th counts should be for the plaintiff; but he stated that on the taking of all the accounts between the parties, the plaintiff was indebted to the defendant in the sum of 17l. 7s. which sum he ordered the plaintiff to pay to the defendant. The first objection to the award was, that there had not been a disposal with reference to the matters referred. The arbitrator has not given any directions as to the costs. [Maule, J.—He was not called on by the reference to do so.] The costs are to follow the result. [Maule, J.—The result here means only one result, and that depends on which way the balance of the accounts was; that sufficiently appears by the award.] The second objection is, that it is shewn by affidavit that the award was made after a fiat in bankruptcy had issued against the plaintiff; and it is submitted that the bankruptcy operated as a revocation of the submission; at all events, it appears from the affidavits that when the defendant attended to prove the amount of the award under the bankruptcy, it was mutually agreed that the commissioner should investigate the accounts, and that the commissioner, having done so, refused to allow the defendant to prove. The defendant has, therefore, assented to abandon the award, and to the opening of the accounts between the parties. [Maule, J.—Did that which took place before the commissioner amount to more than this, that there should be an examination of the accounts to see whether the defendant should or not be allowed to prove any debt, and not for the purpose of setting aside the award?] *Marsh* v. *Wood* (9 B. & C. 659), and *Taylor* v. *Shuttleworth* (6 Bing. N. C. 277), were cited as to the bankruptcy operating as a revocation of the submission. [Maule, J.—My general impression is that the bankruptcy does not operate as a revocation of the arbitrator's authority. I do not see why the law should impose thereby any such revocation, when neither of the parties referring or their assignees wish it.] The last objection is, that the award orders certain wine warrants to be delivered up; a demand was properly made of several of them; but as to one the demand was as follows:—"One hogshead of port wine, No. 2260, now or late lying at the East India Docks, mark B No. 2." Here the demand was for the wine, instead of the warrant.

Talfourd, Serjt. on behalf of defendant, consenting to give up this portion of the wine,

The Court said the attachment should go for non-performance of the award as to all except such one hogshead. *Rule absolute accordingly.*

Wednesday, Jan. 22.

Stocker v. Warner.

A plea to an infringement of a patent which justifies on the ground of a license under a patent taken out for the same invention during the interval which ensues between the original grant of the patent and the disclaimer on the part of the plaintiff which it is alleged renders the patent void, must distinctly allege that the plaintiff's patent is void.

Action brought for infringement of patent.

Declaration—after setting out the formal matter of the patent, went on to state that a disclaimer had been entered under the 5 & 6 Wm. 4, c. 83, s. 1, and that afterwards the defendant had sold articles to which the patent applied. The defendant pleaded that, before the making of the letters patent and enrolling the same, letters patent were granted to one William Beatson for an improvement in fixed and lift pumps, and that the said Beatson had granted to the defendant a license to make and sell pumps under the patent.

Special demurrer—showing for cause that it was no answer to an infringement of the plaintiff's patent; that the defendant worked under another patent; that the plea amounted, in fact, to an argumentative plea of not guilty.

Sir *T. Wilde*, Serjt.—In this case the plea is bad. There was no averment that the second patent was the same as the first except as to title. The question will arise whether the disclaimer is retrospective, except as to actions then pending, or whether the patent is brought down to the date of the disclaimer, and only good from that time; and then the question will arise as to the effect of the intermediate patent. The

infringement in this case is after entry of disclaimer. In this case, if the plaintiff's patent was void, it should have been averred; the plaintiff's patent should have been traversed with Beatson's patent as special inducement; instead of which it was only averred that Beatsom's patent was good, without averring it was the same thing as the plaintiff's. The license is not material, except for the purpose of confession and avoidance. The plea is also bad for uncertainty; and although there may be a good confession, the plea does not shew an avoidance.

Byles, contrà.—The plea is good in substance (*Perry* v. *Skinner*, 2 M. & W. 471), and falls within the reason and the terms of that decision. Here the declaration does not state the plaintiff was the true and original inventor, which ought to have been done. The *onus probandi* is on the plaintiff to show that the patent was good. It was not for the defendant to shew the patent was bad. When, as in this case, the patent is bad originally, the disclaimer does not set it up. If there has been a public use and exercise of the invention between the taking out of Beatson's patent and the disclaimer, that would be sufficient. The plea is good in substance.

Wilde, Serjt. in reply, stopped by the Court.

Tindal, C. J.—This plea is a bad plea. In order to make it a good plea of confession and avoidance, there must be both, and admitting that there is a good confession, then there is no avoidance of the plaintiff's right of action. It ought to have shewn that the plaintiff's patent is void, and there is no allegation to shew that it is void, unless it arises from the disclaimer under the statute, or the subsequent grant of Beatson's patent. The privilege of this disclaiming appears to be given to patentees to set themselves right, as also to remove any doubts and difficulties when such may arise, and also for the sake of caution and security, the grantee of the patent is allowed to disclaim part of the specification. Then is the patent void on account of the subsequent grant to Beatson? The plaintiff's patent was granted in 1836, that of Beatson's in 1840, and the plaintiff's disclaimer in 1844; now does it necessarily appear that the grant to Beatson made the precedent grant to the plaintiff void in point of law? It appears to me, that as the latter is stated upon the whole record, no such inference arises, because the patent having been granted to the plaintiff in 1836, and the specification of the invention having been made within six months following, it is necessary to say that the registered specification of that invention having been made what Beatson has himself entered his patent for in 1840, must be of the same subject-matter; otherwise the plea is altogether bad, inasmuch as it admits the infringement in respect of the invention, which it alleges is covered by the patent of Beatson. It is not necessary to hold that Beatson's patent is void, but it cannot be held to be a good patent. And although the plea has confessed an invasion of the plaintiff's privilege, the defendant has not set up any matter of avoidance.

The rest of the Court concurred.

Judgment for the plaintiff.

Rankin v. Medin.

A replication to a plea justifying a trespass under a writ of testatum fi. fa, which writ had been set aside as irregular by an order of a judge is not bad on demurrer, although it does not state the nature and cause of the irregularity.

This was an action of trespass for breaking and entering a dwelling-house, and taking goods therein. The defendant pleaded a justification under a *testatum fi. fa.* The plaintiff replied that the said writ of *testatum fi. fa.* in the said plea mentioned, and under which the defendant attempted to justify the said trespasses, was on the 5th day of Feb. A.D. 1844, irregularly sued and prosecuted out of this Court, and afterwards on the 1st d of April, A.D. 1844, by a certain order then duly made in the said cause by Erskine, J., which order was afterwards made a rule of Court; it was ordered that the writ and proceedings thereon should be set aside. Verification.

Special demurrer, shewing among other causes that the replication was bad, inasmuch as it did not set out the nature and cause of the irregularity in the writ. Joinder in demurrer.

Channell, Serjt. in support of the demurrer.

Riddell v. *Pakeman* (2 C. M. & R. 30), and (1 *Davison* and *Merivale*, part 1, 20), are sound law. The plaintiff does not shew whether the writ was set aside either for irregularity or being erroneous. It was the duty of the plaintiff to make the matter clear, which alone could afford an answer to the plea on the record.

Byles, Serjt. contrà.—Referring to the language of the plea, it appears *primâ facie* that the writ was set aside for irregularity, and unless it appears to be irregular, it must be taken to be a regular writ.

Tindal, C. J.—The case comes within the reported decisions. Here is a distinct allegation, that a writ having been irregularly sued out, an order setting it aside was made a rule of Court. We cannot assume that it was set aside for any other cause than a sufficient cause. *Judgment for plaintiff.*

Jacobs v. Fisher.

Special demurrer—Plea bad as amounting to the general issue—Account stated—I O U.

Channell, Serjt., for the plaintiff in demurrer.—In this case the plaintiff declares that the defendant is indebted to the plaintiff in the sum of 18*l.* on an account stated. There was a special plea upon the record, setting forth that the plaintiff, being agent to one Elizabeth English, undertook as her agent to sell to the defendant the good-will of a certain public-house; and it was agreed between them that a deposit of 20*l.*, made up of 2*l.* in money and an I O U for 18*l.*, should be made by the defendant, which was accordingly done, and the question would be whether the defendant stated an account due from the defendant to the plaintiff. On this state of facts the I O U is not a statement but merely evidence, and must be given in evidence under the plea of *nunquam indebitatus*. In the case of a bill of exchange, as between the first indorsee and the drawer, the bill would be evidence on an account stated. The plea is open to another objection. It is uncertain whether the defendant means to deny an account stated between him and the plaintiff at any time, or admitting an I O U to be given, that it cannot be sued on by means of subsequent circumstances.

Byles, Serjt., contrà.—The only question on this plea is, whether it gives sufficient colour, or whether the facts can be specially pleaded, and that depends upon whether this plea gives a good cause of action, and then proceeds to avoid it. (*Carr* v. *Hinchliff*, 4 B. & C. 551.) It is there laid down that such a plea gives sufficient colour, and it is submitted that the expression in this case gives colour.

Tindal, C. J.—In this case it is nothing more than evidence under the general issue.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Friday.

Bittleston v. Timmis.—*Channell*, Serjt. for plaintiff, and *Talfourd*, Serjt. (*T. W. Smith* with him) for defendant, argued this demurrer.

Cur. adv. vult.

Saturday.

Walton v. Chandler.—*Channell*, Serjt. moved for a rule to shew cause why the warrant of attorney given by the defendant, and the judgment and execution thereon, should not be set aside, on the ground that the warrant of attorney had not been properly attested within the 1 & 2 Vict. c. 110, s. 9.

Rule nisi.

Gould v. Coombs.—*Byles*, Serjt. applied for a rule to shew cause why the verdict found for the plaintiff should not be set aside and a nonsuit entered, or why a verdict should not be entered for the defendant, or if necessary, a new trial had, on the ground that the promissory note on which the action was brought had, by a material alteration, been rendered inadmissible without a fresh stamp, and that there was no debt from the defendant to support a verdict on the account stated.

Cases cited: *Clerk* v. *Blackstock* (Holt, 474); *Catton* v. *Simpson* (8 A. & E. 136). *Rule nisi.*

Johnston and Others v. Nichols.

Part heard.

Tuesday.

Swaine v. Stevens.—*Talfourd*, Serjt. shewed cause. *Dowling*, Serjt. admitted he had been answered by the affidavits.

Rule discharged with costs.

Wednesday.

Manning v. Irving.—Special case on a policy of insurance, argued by Sir T. Wilde, Serjt., for the plaintiff, and Channell, Serjt., for the defendant.

Cur. adv. vult.

REGISTRATION APPEALS.

Thursday, Jan. 16.

CITY OF WESTMINSTER.

Pitts, Appellant; Smedley, Respondent.

Where rooms are let to a tenant who has the keys of and exclusive control over them, but who has only a latch, and not the other key to the street door of the house, and the landlord resides on the premises, such tenant has not an occupation sufficient to confer a vote.

In this case it appeared Pitts, the appellant, rented the second and third floors of a house and shop, No. 17, Catherine-st. Strand, at a weekly rent amounting to 26*l.* a year. The appellant had the keys of and exercised exclusive control over these rooms; he also had, as well as the other lodgers, a latch key to the street door; but there was another key to such door which was not in his possession, and when the street door was locked, he was in the habit of entering the house through the shop, which, together with some other part of the house, was occupied by the landlord, Charles Marshall, who resided there with his family. The Revising Barrister had refused to allow the vote.

Cockburn, Q. C. submitted that this was such an occupation of a building within the 27th sec. of the stat. 2 Wm. 4, c. 5 as to confer the franchise. *Wright* v. *Town-clerk of Stockport* (1 Barron and Arnold, 39) the only difference between which and the present case was that here the landlord occupied the house himself. If once it is conceded that a portion of a house constitutes a "building" within the meaning of the Act, what does it matter whether the landlord resides in the house or not?

Merewether, for the respondent, was stopped by the Court.

Tindal, C. J. said that this appeared to be a case free from doubt. The question did not turn on the description of the building, but on the nature of the occupation. Here all that the landlord had done was to give a limited enjoyment of the rooms which the appellant occupied. It appeared that the tenant had not the key to the outer door, but that when it was locked, he was in the habit of going into the house through the shop door; this was not therefore such an occupation as to confer a vote.

Decision affirmed with costs.

Monday, Jan. 20.

BOROUGH OF NORTHAMPTON.

Jeffery, Appellant; Kitchener, Respondent.

Parties claiming to vote for a city or borough under the reserved rights contained in the 33rd section of the 2 Wm. 4, c. 45, by virtue of being inhabitant householders of the city or borough, lose that right by ceasing to reside in the borough for however short a period. Should they become, subsequent to such ceasing to reside, inhabitant householders of the same city or borough, they must claim as 10l. householders.

This was an appeal from the decision of the Revising Barrister for the borough of Northampton.

The respondent was an inhabitant householder of the borough of Northampton, and at the period of the passing of the Reform Act was entitled to vote for that borough. Before the 2 Wm. 4, c. 45, every person who had been an inhabitant householder within the borough of Northampton for six calendar months next before the day of election, and who had not received parochial relief or other alms for the space of twelve calendar months then last, was entitled to vote at such election. In Oct. 1832, the respondent ceased to be an inhabitant householder at Northampton, and went with his family to Bedford, in which place he resided fourteen weeks, after which he came back to Northampton, becoming a householder, and residing there from that period to the present. He had in every year since the passing of the Reform Act been duly qualified, according to the usages and customs of the borough of Northampton, on the last day of July in each year. The Revising Barrister thought that the respondent came within the saving of the 33rd sec. of the 2 Wm. 4, c. 45, and disallowed the objection to the name being retained on the register on the ground that the respondent's absence from Northampton occurred during a period which was not necessary to qualify him as an inhabitant householder, and he was therefore entitled to retain his reserved right of voting.

Humfrey, for the appellant.—The object of the Legislature was to assimilate all rights of voting to one uniform standard; but as that could not be done on account of the parties whose rights it was thought advisable to retain, those reserved rights were made the subject of restriction and gradual extinction. Now, if the Reform Act had not passed, there would in this case have been no right to vote until six months after the expiration of the fourteen weeks during which he was absent. At that time the respondent had lost the vote, and having once lost it, it was clearly the intention of the Legislature that when he returned, he should come in among the household voters under the 10*l.* clause of the Reform Act. In this case the Revising Barrister was wrong, and the voter's name should be struck out of the register.

Waddington, contra.—The rights of this class of reserved votes is not of such a transient and ephemeral character as it is attempted to be made out. The excluding words of the 33rd section of the Reform Act does not affect the voter by the mere continuity of the right being broken for a short period, but the right continues so long as he shall be qualified under the terms contained in the section. The Legislature did not mean that a temporary absence should disfranchise. The permanent disqualification would only take place where the voter's name had been off the register for two years.

Tindal, C. J. (without calling on *Humfrey* to reply.)—It is impossible to read the 33rd section of the Reform Act without perceiving that the intention of the Legislature was that after the passing of the 2 Wm. 4, c. 45, there should be but one right of voting in cities and boroughs, namely, in the 10*l.* householders. But as it was thought extremely hard that a large body of existing voters should be deprived of their franchise, there was an exception engrafted on the Act that every person then having a right to vote in virtue of any other qualification than as a burgess or freeman, or as a freeman or liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgess tenant, should retain such right of voting so long as he should be qualified as an elector according to the usages and customs of such city or

borough, or according to the law then in force. And the qualification here set up is, that the voter was qualified to vote on the 7th June, 1832, the day when the Reform Act received the royal assent, as an inhabitant householder of the borough of Northampton. Therefore the proviso must be read and interpreted as if the Act had said, "he shall retain the right of voting so long as he is an inhabitant householder of the borough of Southampton." On the part of the claimant it is contended that this is too stringent a mode of interpreting the clause, but that the construction should be either "so long as he continues to be an inhabitant householder of the borough of Southampton, or acquires afterwards, having ceased in the meanwhile to be an inhabitant householder, a new right to vote as a 10*l*. householder." It seems to me that that would be in effect giving not only the reserved right but the new qualification. Had the Reform Act never passed, and a person had ceased to reside and went and took up his residence in another place, it could not be contended that if he came back to the borough and took a new house, that would be his old qualification. In the first place, the requirement of a residence in the borough for six months shewed that it was not his old qualification; then if it was not his old, it must be a new qualification. I cannot understand what object would be gained by holding that a man once an inhabitant householder should have the privilege for his life, not having been omitted from the list of voters for two years, or acquiring a second qualification by again becoming an inhabitant householder. Why should he have a right to vote which was refused to every other subject of the kingdom? I think the party's name ought not to be on the list.

The other judges delivered similar judgments.

Decision reversed.

STANTON, Appellant: JEFFEREY, Respondent.

This case involved the same facts as the preceding; the revising barrister had, however, decided against the claim. *Decision affirmed.*

BOROUGH OF WESTBURY.

DYER, Appellant; GOUGH, Respondent.

Collectors of assessed taxes appointed by the Commissioners of Land Tax are within the second section of the 22 Geo. 3, c. 41, although it does not appear upon the appointment that the commissioners are Commissioners of the Land Tax.

Upon an appeal from the decision of the revising barrister of the borough of Westbury, it was proved that the appellant was a person employed in collecting the duties on windows, and that he was appointed such collector by a warrant under the hands and seals of two of the Commissioners of Assessed Taxes. It was admitted that these two commissioners were also Commissioners of the Land Tax; but this fact did not appear in any way recited or otherwise upon the said appointment. The revising barrister considered that the appellant was a person employed in collecting the duties on windows, within the meaning of the 22 Geo. 3, c. 41, s. 1, and expunged the name.

Shee, Serjt. for the appellant.—The vote ought to have been retained on the list. This case clearly falls within the exception of the 2nd sect. of the 22 Geo. 3, c. 41, which provides that the disfranchising operation of the Act shall not extend to Commissioners of the Land Tax, or those appointed by or acting under them. Here the case shews that the appointment was made by parties who were Land Tax Commissioners.

Cockburn, contrà.—The first clause of the 22 Geo. 3 is distinct and positive in disfranchising parties placed in the situation of the appellant. Supposing the 2nd section to apply, the 43 Geo. 3, c. 99, takes away the effect of the exceptions contained in that proviso. Here also the warrant of appointment was made by the Commissioners of Assessed Taxes, and not by Commissioners of the Land Tax. In *Collins* v. *Gwyne* (7 Bing. 426), it was assumed in argument that the two bodies of Land Tax Commissioners and Commissioners of Assessed Taxes are distinct, by virtue of the 43 Geo. 3, c. 99. In this case the appointment was clearly made by the Commissioners of the Assessed Taxes.

Shee, Serjt. in reply, stopped by the Court.

TINDAL, C. J.—This question arises on the 22 Geo. 3, c. 41. Had the first section been the only one in the Act, there would have been no doubt whatever that the appellant would have been disqualified, because he would have been a person appointed a collector of the window duties—that is, one of the description of persons mentioned in the section. Then comes the second section, which gave to certain parties an exemption from the disqualifying effect of the first section; and the question is, has the person now claiming a right to vote, or does he bring himself within the second section? It appears to me he does; because, after the general words in the first section comes the second section, which says—"that nothing in the Act shall extend, or be construed to extend, to any person or persons, by reason of his or their being Commissioners of the Land Tax, or acting under the appointment of the Commissioners of the Land Tax." If it had rested there, the proper construction would have been that the appellant was not exempted out of the general terms of the first section, unless employed by the Land Tax Commissioners; but the second section goes on to state, "for the purpose of assessing, levying, collecting, receiving, or managing the land-tax, or any other rates or duties already granted or imposed, or which shall hereafter be granted or imposed by authority of Parliament." Then, looking at the Acts of Parliament which have imposed other duties upon the Commissioners of Land Tax, one being raising and collecting the assessed taxes, under the 41 Geo. 3, c. 99, coupled with subsequent Acts, it appears, therefore, to me, the case having been stated, that the appointment of Dyer, the appellant, was under the hands and seals of two of the Commissioners of the Land Tax; that, although it was an appointment for raising and collecting duties different from those which the Land Tax Commissioners originally had control over, yet, as it was for the purpose of raising those duties subsequently thrown upon the Land Tax Commissioners to collect, the disqualification never existed at all. To decide otherwise would be to put a very constrained construction on the two sections, which we ought not to do.

The rest of the Court concurred.

Decision reversed.

CITY OF BRISTOL.

DANIEL, Appellant; CAMPLIN, Respondent.—Partly heard.

COURT OF EXCHEQUER.

Friday, Jan. 17.

—— r. ——

Flood moved for a rule absolute, to rescind an order of Mr. Baron Gurney, for the discharge of the defendant under the stat. 7 & 8 Vict. c. 96, s. 58. This was an action on a bill of exchange against the acceptor, wherein judgment had been signed for 60*l*. (amount of bill and costs) in pursuance of a judge's order on a day therein named. The Court has no authority when the judgment recovered is above 20*l*.; here, as evidenced by the judgment roll, the sum recovered is 54*l*. The defendant was not in custody at the time the Act passed, and therefore the learned judge had no power. The defendant was discharged on the 2d Sept. and as the discharge was *ex parte*, there could be no harm in taking him again upon this application *ex parte* also. Moneys had been paid since judgment, reducing the amount due to less than 20*l*

The COURT.—We might have agreed to the rule absolute had you come directly; but as you have left it so long, it must be a rule *nisi*, with liberty to serve it at the defendant's last residence, and on his attorney.

Rule nisi, why the order should not be rescinded, and why the plaintiff should not be at liberty to retake the defendant.

Saturday, Jan. 18.

WHITE *v.* SEPTTIGUE.

Trover lies against the purchaser of stolen property, even though the owner has taken no steps against the thief.

Mereweather moved for a new trial in this case, on the ground of misdirection; verdict for the plaintiff. The case was tried at the present sittings by Rolfe, B. It was an action of trover for certain books; plea, not possessed.

The evidence was that the defendant had bought certain books, which were identified as books belonging to the plaintiff, which he had from time to time lost. There was no evidence at the trial that these books had been stolen, but this was taken for granted.

Mereweather at the trial contended that the plaintiff could not recover without shewing that he had prosecuted the thief. Rolfe, B. directed the jury to the contrary. *Mereweather* said it was laid down in *Gibson* v. *Woodfall* that till the loser has prosecuted he cannot recover. (*Grimson* v. *Woodfall*, 2 C. & P. 41; *Peere* v. *Humfrey*, 2 N. & E. 495.)

PARKE, B.—How does this defence arise on the plea of not possessed? You should have pleaded specially.

ROLFE, B.—This evidence, under plea of not possessed, would have taken the plaintiff by surprise. It might be there was no evidence against the thief.

POLLOCK, C.B.—He might be dead, or out of the country. In *Stone* v. *Marsh* (6 B. & C. 561) I argued with you, and the Court, after time taken to consider, decided against me.

ROLFE, B.—The civil remedy against the felon is suspended till prosecution, not against other parties. (*Marsh* v. *Kealing* in the House of Lords.)

PARKE, B.—The pleadings and the law are against you; there is no foundation for the motion.

ALDERSON, B.—The question cannot be raised on the pleadings, nor if raised would you succeed.

Rule refused.

HARRISON *v.* BILLING.

New trial—Pleading.

Hill, Q. C. moved for a new trial in this case on the ground of misdirection and verdict against evidence.

The case was tried before Rolfe, B. on Tuesday, Jan. 14.

It was an action on a promissory note made by the defendant in favour of one Potts, and indorsed to the plaintiff. The plea was, that the note was made for the joint accommodation of the defendant and Potts, and that Potts had indorsed it to the plaintiff in consideration of a promise that he would discount it for them, that he never did discount it, and that there was no consideration for the indorsement save as above. *Replication de injuria.*

Potts gave full evidence in support of the plea. A clerk of the plaintiff Harrison was called, who contradicted him.

PARKE, B.—What is the misdirection?

Hill, Q.C.—Potts admitted a debt due to Harrison at the time the note was given him.

PARKE, B.—But for which it was not given him. He might have had 100,000*l*. owing to him, but if the note was not given on account of that debt it would constitute no consideration.

Hill, Q. C.—Was your lordship satisfied with the verdict?

ROLFE, B.—I was neither satisfied nor dissatisfied. *Rule refused.*

PARKINSON, Executor of Limbird, *v.* WESTBROOK, Executor of Limbird.

Covenant—Matter proper to be pleaded need not be negatived in the declaration.

Bramwell moved in arrest of judgment.

This was an action of covenant to pay money.

Breach—That neither the testator nor the defendant had paid, and that the money still remained unpaid.

Bramwell objected that no cause of action appeared on the declaration, for *non constat* but the debt might have been released.

By the COURT.—That is matter to be pleaded; there is a good *primâ facie* cause of action set out.

Rule refused.

BAMBUCK *v.* XYMENES.

Evidence—Representations which do not operate by estoppel are not exclusively binding.

Petersdorf moved for a new trial, on the ground of misdirection, and of the improper admission of evidence.

This was an action for use and occupation of apartments. They had been let to the defendant by the plaintiff. Subsequently the plaintiff gave notice to the defendant that he had assigned his interest, and that defendant should pay all future rent to the assignee.

The assignee distrained for a quarter's rent, and plaintiff now sued for a subsequent quarter's rent.

The plaintiff met this evidence by further evidence, which shewed that the assignment was merely one for better enforcing the rent from the defendant, and that the plaintiff was now the party entitled to have it.

PARKE, B.—The representations were only evidence against the defendant. These were not conclusive, unless he is estopped. The action is now by the right party. *Rule refused.*

LEVI *v.* HAMER.

Outlawry—Proceedings to set aside outlawry of indorsee of bill of exchange.

Lush moved to set aside proceedings to outlawry in this case.

The defendant was indorsee of a bill of exchange. The plaintiff had taken the drawer and acceptor in execution, and had let them out. (*English* v. *Darley*, 2 B. & P. 62). *Rule nisi.*

CROWN CASE.

REG. *v.* WM. HOWELL, WALTER HOWELL, and ISRAEL SHIPLEY.

Admissibility of dying declarations.

Circumstances in which the statements of deceased are receivable as dying declarations.

It is not necessary that the deceased should have thought himself in articulo mortis. It is enough if he thinks he shall die of the sickness under which he labours.

This case was tried at Ipswich by Williams, J. at the last winter assizes, and the prisoners were convicted of murdering McFadden, a police constable of that district.

The question for the consideration of the judges was, whether certain declarations of the deceased had been properly received in the evidence. The deceased was shot in the thigh on the morning of Monday the 29th July, between twelve or one o'clock. He had lingered till Tuesday evening, when he died. His wound was dressed by Mr. Prentice, a surgeon, between four and five o'clock on the Monday morning. Before dressing the wound the surgeon said, "Mac. I hope we shall see you about again." The deceased shook his head, and said, "I shall never get over this." Mr. Prentice collected from his demeanour that the impression was that he should never recover.

The deceased continued in this state till Tuesday evening. He was several times seen by the surgeon, but evinced no change of mind.

The conversation, on which the question arises, took

place on the Tuesday evening. He was a Catholic; he was asked if he would see a priest; he said, no. He was asked whether he would make a deposition, and was told that a magistrate was in the next room. He said, not yet.

Prendergast (*Dasent* with him) appeared for the prisoners.

Gurdon (*O'Malley* with him) appeared for the Crown.

The case submitted by the learned judge having been read,

Prendergast addressed their lordships in an able speech, when every tittle of evidence and every circumstance that could reduce the evidence of the condition of the deceased's mind to one of mere despondency, and not settled conviction of death, was caught hold of. He said, ordinary rules are broken in upon by the reception of dying declarations. It is a relic of the looseness with which evidence used to be admitted. Dying declarations are now received rather for the sake of enforcing the law, than from any well-grounded opinion of their value as evidence. The evidence of one habitually in collision with a prisoner should especially be distrusted when not exposed to the test of cross-examination. The oath is dispensed with on account of the solemnity of the position of the dying man (2 Russ on Crimes, last ed., 1 Phillips on Evid 275 4th ed.) not the mere apprehension of death or the near approach of death suffices, many die apprehending death yet not in a condition to make dying declarations which shall be receivable in evidence. *All* hope of recovery must have been given up: no hope of recovery must remain. And this is not to be inferred from declarations alone, but from circumstances, for example, from the nature of the wound. In this case it was in the fleshy part of the thigh, a place not regarded a mortal even by medical men. They attribute the death to the shock on the nervous system. It is to be gathered that they thought that from the nature of the wound, the deceased would have hope. No medical man told him that recovery was hopeless. In *R.* v. *Christie* (2 Russ, 7[illegible]) the medical man told his patient his recovery was *just* possible. This shews the importance of a surgeon's declaration. A man is inclined to cling to hope. In *R.* v. *Fairbutchel* (3 C. & P. (2), 2 Russ 7[illegible]5) the patient said "I have such an injury I shall never recover; the surgeon cheered him. He was notwithstanding satisfied he should never recover, yet the declaration here were rejected. No acts shew he had belief in his approaching death, but his acts, on the contrary, negative this. He refused to send for a priest—he would not see the magistrate "*yet*." He made no disposition of his property—he bade no one farewell. *The Catholic Christian Instructed* is a book of authority among Catholics. There it is said extreme unction remits venial sins—it removes the debt of punishment due to past sins. In the evidence at the trial it was said by the Catholic priest that no Catholic would avoid availing himself of its uses in his last moments. A dying declaration should not be received, unless given by one as the last account that he shall give.

The COURT thought the case clear, and that the evidence had been properly received.

ALDERSON, B. said it was not necessary that the deceased should be *in articulo mortis*, or even that he should think so. It is enough if he thinks he shall die of the sickness under which he labours.

The JUDGES held the conviction to be right.

Monday, Jan. 20.

GREAT NORTH OF ENGLAND RAILWAY COMPANY *v.* CLARENCE AND HARTLEPOOL RAILWAY COMPANY.

The Court was occupied during the greater part of the day with this case, which was sent by the Vice Chancellor Knight Bruce for the opinion of the Court. It turned entirely upon the construction of several clauses in the above Railway Acts.

M. Hill, for the plaintiffs.

Tomlinson and *Wood*, for the defendants.

The COURT certified in favour of defendants.

ROBERTSON *v.* SHOWLER.

Special demurrer to plea.

Gray, for plaintiff.

Peacock, for defendant. *Judgment for plaintiff.*

The judges were occupied during the greater part of the morning in hearing a Crown case reserved for the opinion of all the judges, which had been left unfinished on Saturday.

Tuesday, Jan. 21.

DOE *dem.* GILBERT AND OTHERS *v.* ROSS AND OTHERS.

Changing attorney—Application by the attorney to rescind the order for taxing his costs.

Hill, Q.C., on behalf of Mr. Baxter, the attorney for the defendants in this cause, applied for a rule calling on [illegible] to shew cause why so much of an order of Rolfe, B. made in this cause as decided [illegible] Mr. Baxter's costs in that action should not be discharged. Mr. Baxter had acted as attorney in the action, and, in another action which had been brought against the defendant to recover possession of certain property that had been devised to him by Mrs. Scoly, deceased. The title was very confused, and it had been agreed between the parties to compromise the action, and divide the property between them in certain proportions. All the costs were to be secured on the property, and the whole matter to carry their arrangements into effect was to be submitted to Mr. Humfrey on the application of the defendants. Mr. Baron Rolfe had made an order that Messrs. Power and Miller should be appointed attorneys in the place of Mr. Baxter on payment of his costs. Messrs. Power and Miller had then appeared before Mr. Humfrey, and had acted as attorneys *de facto* for the defendants in spite of the process of Mr. Baxter; for Mr. Humfrey refused to go into the question of who was the attorney *de jure* for the defendants. Thus the order of Mr. Baron Rolfe was deprived of its sting. Further Mr. Baxter had other costs besides those included in Mr. Baron Rolfe's order, and it would be desirable there should be one taxation of all.

Rule nisi.

JACOBS *v.* BRIDGES.

Judgment by default in the Palace Court—Application to remove the cause must be supported by affidavit that there is good defence on the merits.

Knowles, Q.C. shewed cause.

This action was brought in the Palace Court and the defendant suffered judgment by default. Upon being served with the notice of the writ of inquiry, defendant had applied for a *habeas corpus cum causa*. Upon this the plaintiff had obtained an order to set aside the writ and for a *procedendo*. Defendant then obtained a rule nisi to set aside this order.

And *Knowles, Q.C.* for the plaintiff now shewed cause.—Though the affidavit of the attorney for the defendant goes no further than that he had received instructions to plead to the action, in case it should be removed. The practice is universally to require an affidavit that he has a good defence on the merits.

Best.—The affidavit goes far enough, it promises a plea.

ALDERSON, B.—You must pledge your oath to the merits.

Best.—Will your lordship grant me time?

ALDERSON, B.—No. We must not solicit affidavits, it would induce you to make one.

Rule discharged with costs.

EADON *v.* BLAKE.

Evidence may be given of declaration by an auctioneer at the time of the sale in correction of the printed particulars, if it was made in the hearing of the defendant, and there was no written contract.

Martin, Q.C. shewed cause.

This was an action on the common counts for goods sold and delivered. It was tried before the assessor for the Sheriff of Yorkshire.

Chambers obtained a rule to set aside the verdict on the ground of the improper admission of evidence.

The action was brought for a dressing-case, sold at an auction. In the printed catalogue the dressing case was described as having silver fittings; at the auction the auctioneer had verbally corrected this, in the hearing of the defendant saying that the fittings were silver *plated*. The amount sought to be recovered was less than 10*l*. At the trial the assessor admitted evidence of this parol declaration, and the jury found a verdict for the plaintiff. There was no written contract between the parties.

Martin, Q.C. contended that the evidence was properly received. It was proper evidence of a verbal contract.

Chambers, in support of the rule. What this contract was must be gathered from the printed particulars. The sale took place of the things contained in the particulars and upon the terms therein mentioned. The parties contract on those terms. If we admit evidence to vary terms thus ostensibly held out, we shall contradict several cases; especially the case of *Shelton* v. *Linus* (2 Cr. & J. 411), where it is laid down that the printed particulars cannot be varied by parol evidence of what took place at the time of the sale.

ALDERSON, B.—In that case the catalogue was signed by the auctioneer, and constituted a written contract between the parties.

Chambers.—I submit it makes no difference whether the catalogue be signed or not.

ALDERSON, B.—The cases are collected in Phillips on Evidence. There you will find the whole turns on whether there was a written agreement or not. The difficulty you have is that here no such contract existed. The printed particulars are evidence, but not the only evidence. It is a first principle that when parties have contracted in writing, that is what they must be bound by, but here there was none.

Chambers.—The auctioneer's clerk was produced as a witness, and he gave evidence of the contract from his book and from the particulars of sale. He was then asked if the particulars had not been altered by parol at the time of sale. This was objected to, but the objection was overruled. The particulars of the sale were the best evidence.

ALDERSON, B.—There is no rule more misunderstood. If there had been a contract in writing the writing would have been the best evidence of the contract; but you beg the question to say the particulars were the best evidence. The best evidence was the parol evidence.

By the COURT.—The question is what was the agreement. Had it been in writing the parties would have been bound by the written terms, but it was not in writing. So the parol statement, it having been made in the hearing of the defendant, was well admitted.

Rule discharged.

WILKINSON *v.* GRIGGS.

Writ of trial—Whether it must not be signed by the Court—Amendment of postea by sheriff.

Barstow shewed cause. This case was tried before the sheriff. Verdict for the plaintiff. Damages, 17*l*. A rule nisi had been obtained to set aside the verdict and all subsequent proceedings, with costs. The grounds were, that the writ of trial had not properly passed the Court of Exchequer, it had never been signed, the common printed form had been bought, sealed, but not signed; it had then merely been filled up. Secondly, that the *postea*, though several issues were to be tried, was in the singular "issue" throughout.

Horne appeared in support of the rule, but the Court granted *Barstow* a rule *nisi* to amend the writ of trial, and enlarged *Horne's* rule, that *Barstow* might apply to the sheriff, and get the *postea* amended.

To stand over.

JONES *v.* FEARNSTONE.

Quære time within which to apply to set aside proceedings in an action on the score of defendant not having been served with process or declaration?

Butt moved the Court under the following circumstances.—The defendant had been proceeded against to execution in this action. The levy was made on the 14th November. Defendant swore he had not been served with process or declaration or any subsequent matter in the course of the action, till the levy was made. He begged the opinion of the Court whether the plaintiff's proceedings were null, or only irregular? If irregular only, he feared defendant had laid by too long. (*Holmes* v. *Russell*, 9 Dow. 487.)

The COURT would give no opinion till they heard the other side, but would grant *Butt* a rule *nisi* to set the proceedings aside, if he chose to take it.

Butt did not signify whether he made the election.

ASHENHEIM *v.* COLEFAIR.

Affidavit to hold an officer to bail who is about to leave England with his regiment.

D. D. Keane applied to set aside an order of Rolfe, B. made in this cause to hold to bail, and to stay all proceedings on the bail-bond, on the ground of the insufficiency of the affidavit to hold to bail.

The defendant was an officer in the army. The affidavit stated that his regiment was under orders for India, and deponent believed that defendant was about to leave England for India with his regiment.

Keane contended that the affidavit was insufficient on the face of it, it should have shewn grounds for the belief expressed. It contained no matter on which an indictment for perjury could be sustained.

By the COURT.—It states positively that the regiment is under orders for India; this is a fact which, if false, may be contradicted; and for which, if false, to the knowledge of the defendant, he may be indicted.

Rule refused.

RICHARD *v.* POILE.

Middlesex Court of Requests Act.

Application to enter suggestion, and for plaintiff to pay defendant's costs, will not succeed, unless verdict was given for a cause of action which arose in Middlesex.

This action was tried under the Middlesex Court of Requests Act, before the assessor for the sheriff. Verdict for plaintiff, damages 1*l.* 1*s.*

Charnock had obtained a rule *nisi* for plaintiff to bring in the roll, that a suggestion might be entered pursuant to the Middlesex Court of Request Act; that plaintiff pay defendant double costs, the verdict being less than 2*l*.

Bayley shewed cause against the rule.—The Act does not apply, unless the whole cause of action arises in Middlesex. Here the bulk of the action was for matters arising in Surrey; and though the defendant contends that the verdict was only for an amount which arose in Middlesex, yet at the trial no evidence whatever was given of that amount having become due at all.

Charnock, in support of the rule.—The amount given by the verdict must be applied to an item in the particulars for one guinea, which, though there was not strict evidence of it, the jury must be deemed to have found for the plaintiff.

ALDERSON, B.—There is ground for you to apply to have the verdict set aside, on the score of its having been given without evidence of any debt in Middlesex, but we cannot hold that the verdict was for an amount of which no evidence was given.

Rule discharged.

Wednesday, Jan. 22.

WILLIAMS *v.* JONES.

*Debt will lie upon the judgment of a County Court or a court not of record.—A declaration upon such a judgment need not shew that the defendant resided

within the jurisdiction of the Court, or that he was duly summoned. Such defence ought to come from the defendant.

Action of debt—Declaration on a judgment of an inferior court, not of record, alleging that the debt arose within the jurisdiction of the Court, but not alleging that the defendant resided within such jurisdiction, or that he was duly summoned.

Demurrer, assigning for cause that debt will not lie on the judgment of a court not of record, and that it ought to appear upon the declaration that the defendant resided within the jurisdiction of the Court, and that he had been duly summoned, and such other proceedings had, as gave the inferior court jurisdiction to pronounce the judgment it gave.

Welsby, for the plaintiff.

Pearson, for defendant.

Cases cited: *Emerson v. Leshley* (2 H. Bl. 248; 1 Saund. 92, note c); *Reed v. Pope* (1 C. M. & R. 302); *Coore v. Kennedy* (3 Esp. 290); *Jones v. Jones* (5 M. & W. 523); *Briscoe v. Stephens* (2 Bing. 213); *Herbert v. Cook* (3 Doug. 101; Willes, 37 n); *Pritchard v. Macgill* (5 Dowl. P. C. 731).

POLLOCK, C.B.—The questions which have been raised appear to be, first, whether an action of debt will lie on a judgment of an inferior court; and, secondly, whether there is enough stated in the declaration, assuming that debt will lie, to shew that the Court had jurisdiction. With respect to the question whether debt will lie—as assumpsit will lie, I can see no reason why debt should not lie also. There are many cases in which debt has been brought, and where this objection has not been taken, and though such cases may not give any very great authority to the view which I take, they are certainly in accordance with it. With respect to the second objection, that it does not sufficiently appear that the Court had jurisdiction, it does not appear to me that those averments were necessary. If the defendant was never summoned, that is a defence of which he may certainly avail himself, but which ought to proceed from himself.

PARKE, B.—I am of opinion, that whenever a Court of competent jurisdiction has decided that a defendant owes money to a plaintiff, debt will lie. The decision of the Court creates an obligation upon which debt may be maintained. I take that to be the principle upon which the judgment of a foreign court is sustained. Several cases have been cited in which the objection would have been probably taken if well founded. *Coore v. Kennedy* is one of those cases. There seems to be no reason why debt should not lie upon the judgment of a Court of competent jurisdiction, whether of record or not of record. The only other question is, whether it is necessary to state in the declaration any thing more than that the cause of action arose within the jurisdiction. It appears to me that there is sufficient stated upon this record to enable us to give judgment for the plaintiff.

ALDERSON, B. concurred.

GORE *v.* GIBSON.

To an action by indorsee against indorser of a bill of exchange, it is a good plea that defendant at the time of the indorsement was so drunk, &c. as to be unable to comprehend the meaning of the indorsement, of which the plaintiff at the time had notice.

Assumpsit by indorsee of a bill of exchange against prior indorser.

Plea—That before and at the time when he, the defendant, indorsed the said bill of exchange, he, the defendant, was so drunk, intoxicated, inebriated, and under the influence of liquor, and thereby so entirely deprived of sense, understanding, and the use of his reason, as to be unable to understand or comprehend the meaning, object, nature, or effect of the said indorsement, or to contract or promise thereby, or in that behalf, of all which premises in the plea mentioned the plaintiff before and at the time when he so indorsed the said bill of exchange, and always since, had full knowledge and notice. Verification.

Demurrer.

Horn, for plaintiff, contended that, according to all the cases, a man could not be allowed to stultify himself; and that, as it was not alleged that the plaintiff was guilty of fraud or took advantage of the condition of the defendant in any way to obtain the indorsement, the defendant could not set up his own crime as a defence to an action. This defence would avail nothing in a criminal proceeding, and, *a fortiori*, it must be bad in a civil one. The averment of the knowledge of the plaintiff does not necessarily imply fraud on his part. It is only evidence of fraud. He cited [illegible] Institute, 247; *Murston v. Allen* (8 M.& W. 494); Newland on Contracts, 365; Kent's Commentaries.

Pearson, contra, was stopped by the Court.

POLLOCK, C. B.—It is true that there are old authorities in favour of the plaintiff, but the modern cases are all the other way. The plaintiff may have leave to amend.

The rest of the Court concurred.

LEA *v.* ROBSON.

A plea setting up a petition and final order under 5 & 6 Vict. c. [illegible] ought to shew that the defendant was a person within the meaning of that statute, and had complied with all its requirements before presenting his petition.

Assumpsit by indorsee against acceptor of a bill of exchange.

Plea—That heretofore, to wit, on the 12th February, A.D. 1844, the defendant, in pursuance of an Act of Parliament made and passed in the session of Parliament holden in the 5th and 6th years of the reign of her present Majesty, entitled "An Act for the Relief of Insolvent Debtors," presented her petition to the commissioners of the Leeds District Court of Bankruptcy, in which district she, the defendant, had resided twelve calendar months, praying to be protected from all process whatever either against her person or property of any description, and that the said defendant might have such other and further relief as by the said statute is provided, and as the said Court should think fit, and such proceedings were thereupon had, that afterwards, to wit, on the 16th April, in the year last aforesaid, a certain order was made by Montague Baker Bere, esq. then being one of her Majesty's Commissioners of Bankruptcy for the Leeds district, and acting in the matter of the said petition, for the protection of the person of the said defendant from all process, and the vesting her estate and effects in Charles Fearns, official assignee named by the said Court, whereby and by reason of the premises aforesaid, and by force of the said statute, the said defendant was then discharged of and from the premises and causes of action in the declaration mentioned, and the said order and discharge still remain in full force. Verification.

Special demurrer—assigning for causes that the said plea does not set forth or allege in form the presenting of the said petition for such protection in that plea mentioned, neither is it recited or set forth that the said period of twelve months therein mentioned was twelve months next before the presenting of such petition or next before the making of the said order or otherwise; and for that the said plea should have shewn whether the defendant was a trader or not, and, if a trader, whether her debts amounted to less than 300*l.*; and that the said plea did not allege that the defendant gave such notice as in the said Act is mentioned, or caused the same to be advertised in manner therein mentioned; and for that the mode of pleading adopted in the said plea by a *taliter processum est* is insufficient and improper, and that the said proceedings should have been set forth.

Joinder in demurrer.

Humfrey, for plaintiff.

H. Hill, for defendant.

The COURT thought the plea did not sufficiently shew that the requirements of the statute had been complied with before presenting the petition.

The defendant had leave to amend. There was also another plea specially demurred to, upon which the defendant also had leave to amend upon the usual terms; otherwise, *Judgment for plaintiff.*

BUSINESS OF THE WEEK.

Thursday.

VESCY *v.* JAMES.—It may be remembered that this action had been brought by direction of the Vice-Chancellor Knight Bruce, to try the question of whether the plaintiff was a joint trader with one Henderson on the 25th of March last. There was some difficulty in ascertaining whether a joint or a sole trading was the point to be ascertained; but the Court held that it was quite clear a joint trading was the thing intended. *Jervis*, Q. C. admitted then that he had no ground to stand on. *Rule discharged.*

ESDAILE *v.* LUND.—*Hugh Hill* and *Rew* shewed cause against the rule in this case. In one event this case might have determined the important question of whether the discharge of one shareholder of a joint-stock bank, who had been taken in execution on a *sci. fa.* would be a bar to farther proceedings against the rest; but inasmuch as the Court held it to be clear that the discharge in this case had not been made with the authority of the plaintiff, the rule to enter verdict for plaintiff on the second issue was ordered to be made absolute. *Rule absolute.*

ACRAMAN *v.* COOPER.—*Jervis*, Q. C. *Martin*, Q. C. and *Gurney*, Q. C. heard for defendant. *Kelly*, Q. C. in part heard for plaintiff.

Friday.

HALL *v.* BOYSER.—*Jervis*, Q.C. and *Cardwell* shewed cause against a rule obtained by *Whitehurst*, Q.C. for a new trial, on the ground of a verdict against evidence. *Rule discharged.*

WOOD *v.* LEADBITTER.—This case was partly heard.

TURNER and OTHERS *v.* LAMB.—*Ogle* moved for a rule to shew cause why a demurrer filed should not be set aside as frivolous.—ALDERSON, B. objected, that there was no instance of such an application in this Court during Term; that the demurrer papers must be delivered in the regular way to afford the Court an opportunity of looking at them.—The COURT set it down for Wednesday.

TURNER *v.* WILLIAMS.—*H. J. Williams* moved for a rule to shew cause why the verdict for the plaintiff should not be set aside and a new trial had on the ground of the verdict being perverse. *Rule nisi.*

PETRY *v.* WALKER.—*Pashley* moved for liberty to amend a rule absolute for the payment of money by which an attorney in the cause was made personally liable. *Rule refused.*

Saturday.

EX PARTE JOHN PHILPOTTS, an Attorney.—*Barstow* moved, on behalf of Mr. John Philpotts, an attorney, that his name might be struck off the roll of attorneys, he having been appointed clerk to one of the Masters in Chancery. *Rule granted.*

GABRIEL *v.* COUCH.—*Wood* applied for a rule for defendant to shew cause why plaintiff should not be at liberty to take 111*l.* 6s. 6d. out of Court, where it had been deposited in lieu of bail. *Rule nisi.*

WOOD *v.* LEDBITTER.—In part heard.

Crown Case.—REG. *v.* DOWNING.—Part heard. *Huddlestone*, for prisoner. *Yardley*, for prosecution.

Tuesday.

HERBERT *v.* GRAND JUNCTION RAILWAY COMPANY.—*Crompton* obtained an extension of the time for pleading until Thursday.

SILK *v.* CURLEWIS.—*Selfe* applied for a rule nisi to set aside the issue and notice of trial delivered in this cause. No issue was found on two pleas; this issue did not correspond with the pleadings. *Rule nisi.*

WOOD *v.* LEADBITTER.—The arguments in this case were this day concluded by a very learned argument from *Petersdorff*. *Cur. adv. vult.*

Wednesday.

ACKERMAN *v.* EHRENPERGER.—*Demurrer to declaration.*—*Crompton*, for the plaintiff. *Warren*, for the defendant. *Warren* had leave to amend.

SLADE *v.* HAWLEY.—*Demurrer to declaration.*—*Peacock*, for plaintiff.—*Kennedy*, for defendant. *Cur. adv. vult.*

PEEL *v.* WEATHERLEY.—*Peacock*, for a rule to shew cause why Wood, the claimant under the interpleader rule, should not pay the costs of the trial. *Rule nisi.*

PENN *v.* TAYLOR.—*Heaton*, for a rule to shew cause why notice of declaration should not be set aside for irregularity. *Rule nisi.*

BAIL COURT.

Friday, Jan. 17.

(Before Mr. Justice WILLIAMS.)

REG. *v.* GRIFFITH.

Application for an order commanding a gaoler, who has possession of a sum of money belonging to a prisoner committed for trial, to deliver same up to the defendant.

F. Edwards moved, on behalf of the defendant, for a rule calling upon the gaoler of the gaol of Haverfordwest to pay over to him the sum of 20*l.* under the following circumstances. The defendant had been tenant of two adjoining farms, and had become indebted to some bankers to a considerable amount; and to avoid having his stock taken in execution by them, he agreed with the agent of his landlady that a sham distress should be levied on his stock. This was done, and a nominal sale took place to one Harvey, the agent, who put a man into possession; subsequently this man was withdrawn, and Griffith was restored. Hearing that Harvey was about to put in a real distress, he drove off the land some of his live stock, leaving, as it was alleged, sufficient property to answer the distress. On the 9th of last September he was taken into custody on the charge of stealing this stock (the driving off being the felony charged). At the time he was taken he had 20*l.* in his possession, of which the gaoler took charge, and refuses to give up without the authority of this Court. The defendant had been admitted to bail. It was now submitted that the gaoler had no right to detain this sum of money.

WILLIAMS, J.—I do not see how I can interfere. The gaoler is not an officer of this Court.

Edwards.—The gaoler only wants the authority of this court.

WILLIAMS, J.—If you desire a speculative opinion, I should say that if the 20*l.* have nothing to do with the alleged offence, the money ought not to be withheld from the prisoner. It is every day's practice, where money is found in possession of a prisoner which has nothing to do with the case, for judges at assizes or magistrates to direct it to be given up; for he may require it for his defence; it is of course otherwise where the money is connected with the offence. I can, however, make no order upon the gaoler. *No rule.*

Saturday, Jan. 18.

SPARDING and ANOTHER *v.* THE HON. ROBERT FULKE GREVILLE.

Motion to set aside the allowance of a writ of error and the assignment of errors for irregularity.

Martin, Q.C. and *Bevan* [illegible] cause against a rule obtained by *F. V. Lee* to set aside the allowance of the writ of error coram nobis, and the subsequent assignment of errors for irregularity, with costs.

The defendant had been sued by the plaintiffs for a

debt, and had been proceeded against to outlawry. In the writ of summons the parties were described as Henry Sparding and Henry Mortimer Hummel, plaintiffs, against Robert Fulke Greville, esq. commonly called the Honourable Fulke Greville. The allowance of the writ of error was as follows:—

"*In the Queen's Bench.*—Sparding and Another *v.* The Honourable R. F. Greville.

"Take notice that a writ of error *coram nobis* has been allowed by the Court in the above cause. Dated the 12th day of Nov. 1844.

"THOS. F. WALTERS."

The heading of the assignment of errors was:—

"*In the Queen's Bench.*—Henry Sparding and Another *v.* The Honourable Robert Fulke Greville."

The præcipe for the writ was this:—

"Writ of error to reverse outlawry for the Honourable Robert Fulke Greville; ats. Henry Sparding and Henry Mortimer Hummell, Middlesex. Debt."

This rule was moved on the ground of the variances in the names in the above documents.

In support of the writ of error it was contended that the variations were immaterial, since it was clear that the same persons were meant; in support of which *Hunt* v. *Lawson* (1 Ld. Raym. 347) was cited. It was further argued that this application should have been made to the Court of Chancery, out of which the writ issued, and not to this Court, which has no discretion in allowing the writ, and that the rule in this case, which was entitled, as in the original action, "Sparding and Another *v.* Greville, esq." should have been entitled according to the case in error, by reversing the parties. (*Gandell* v. *Rozier*, 4 B. & C. 862; *Jones* v. *De Lisle*, 3 Bing. 125; *Boreman* v. *Brown*, 1 Dowl. N. S. 281; *Holmes* v. *Newlands*, 2 Dowl. N. S.)

F. V. Lee, contrà, contended that the variances in the manner of stating and spelling the names of the parties were fatal. That the rule was well entitled, and that although it might be proper to go to the Court of Chancery to set aside the *writ* of error, that as this rule was only to set aside the allowance of the writ, and the assignment of errors, it was properly drawn up in this court. *Cur. adv. vult.*

REG. at the instance of JOBSON *v.* THE MASTER AND FELLOWS OF GONVILLE AND CAIUS COLLEGE, CAMBRIDGE.

Mandamus to lords of a manor to admit heir-at-law to a copyhold.

Worlledge and *Tozer* shewed cause against a rule obtained last Term by *Ball* for a *mandamus* to the above parties, commanding them to admit William Jobson to some copyhold tenements within their manor. Against the rule it was contended, that the property in question is already in the possession of two parties who were admitted by virtue of a surrender to the use of her will of the mother of Jobson (whose heir-at-law he was); that the will had been supported by an award under an arbitration, to which Jobson had been a party, and which remains in force; and that as heir-at-law it is not necessary that he should be admitted in order to bring ejectment. (*Reg.* v. *Wilson*, 10 B. & C. 87; *Reg.* v. *The Lord of the Manor of Agardsley*, 5 Dowl. 19; *Doe dem.* ——, 8 Ad. & Ell. 779; *Doe dem. Rosser* v. ——, 3 East; *Williamson* v. *Harrison*, 1 Jacob & W. 533; *Doe dem. Nethercote* v. *Roe*, 5 B. & Ald. 502; *Rex* v. *Rennett*, 2 T. R. 198.)

Ball, contrà, argued that Jobson, who was heir-at-law of the devisee, was clearly entitled to be admitted, the testator being a married woman, and therefore incapable of making a will. (*Reg.* v. *The Brewer's Company*, 3 B. & C. 172.) *Cur. adv. vult.*

Monday, Jan. 20.

(Before Mr. Justice WILLIAMS.)

REG. *v.* BLUNDELL.

Motion to quash a coroner's inquisition.

Cowling moved to quash an inquisition taken on the body of one Ashcroft. (See 4 Law T. 120.)

Rule nisi.

REG. *v.* GEORGE BUCHANAN.

Quære, whether it is an indictable misdemeanour for an unqualified person to conduct legal proceedings in the character of an attorney.

Horn moved for a *certiorari*, to be directed to the Right Hon. Baron Parke and Baron Gurney, to certify into this Court an indictment found against the defendant, at the summer assizes at Maidstone, in 1844, and the recognizances entered into by the defendant, in order that the same may be quashed.

The indictment in question had been preferred against the defendant for acting as an attorney, he, in fact not being one, in contravention of the 6 & 7 Vict. c. 73; and it was submitted that the indictment charged no legal offence, inasmuch as it is not an indictable misdemeanour falsely to pretend and act as an attorney, the above enactment clearly pointing out the appropriate penalty for such conduct, section 35 declaring that any person so offending shall be incapable of recovering any fees, and that such offences shall be deemed a contempt of Court, &c. (Hawkins's Pleas of the Crown, b. 1, c. 25, ss. 4, 35 & 36; Cutler's case (Cro. Jac.), 1 Sid. 151; *Matthews* v. *Hoyle* (8 B. Moore, 96). *Cur. adv. vult.*

Tuesday, Jan. 21.

COLE *v.* RAYMOND.

Motion to compel a defendant who has wrongfully possessed himself of the writ of summons, to give it up, or that an appearance may be entered for him by the plaintiff.

F. V. Lee moved for a rule calling upon the defendant to shew cause why he should not deliver up the writ of summons, and why the time of appearing to the writ should not be computed from the time when the defendant so got possession of it, and why, if defendant should not deliver it up, the plaintiff should not be at liberty to enter an appearance without any indorsement on the writ as required by the Act; and why the defendant should not pay the costs of the application. It appeared, that, on the defendant being served with the copy of the writ of summons herein, he demanded to look at the original, which, on being shewn to him, he snatched from the party's hand, and refused to return. (*Brook* v. *Edridge* (2 Dowl. 647.) *Rule nisi.*

DOE *dem.* BALL *v.* ROE.

Judgment against the casual ejector where the declaration was wrongly entitled "In the Exchequer of Pleas," but the notice was to appear in this court.

Gray moved for judgment against the casual ejector. In this case the declaration was headed "In the Exchequer of Pleas," but the notice was to appear in the Queen's Bench. In all other respects the declaration was regular. It was now submitted, on the authority of *Doe dem. Knowles* v. *Roe* (13 L. J. Ex. 129), that this was sufficient for a rule *nisi*.

Rule nisi.

SEALEY *v.* BROWNE.

An illustrated plea!

Fitzherbert moved to strike out certain pictures in a plea, and certain pleas.

WILLIAMS, J.—Are the pleas illuminated?

Fitzherbert.—I don't know whether to describe the pleas as illuminated, shaded, or otherwise.

WILLIAMS, J.—The action is for the infringement of a patent? Perhaps they mean to say that they cannot make the plea intelligible without the designs.

Fitzherbert.—They must not set out evidence in their plea; they must, however great the difficulty, describe in words what they mean; as in the case of a libel, where the offence is that of representing a man with ass's ears. There are besides too many pleas, in contravention of the new rules.

Rule nisi.

Wednesday, Jan. 22.

DAVIS and ANOTHER *v.* LORD SUFFIELD.

Warrant of attorney—Motion to set aside judgment thereon.

Ogle moved, on behalf of the defendant, to set aside a judgment on a warrant of attorney, and that the warrant itself may be given up to be cancelled. The objections were, 1st, That no attorney nominated by the defendant was present at the time of the execution; 2nd, that the defendant was not informed of its purport; 3rd, that it was not executed in due form; and, 4th, that it was obtained from the defendant by fraud. The warrant of attorney was given by the defendant whilst at Brussels, to secure the sum of 2,000*l.*; and the affidavits upon which the motion was made disclosed facts of great fraud and misrepresentation.

Rule nisi.

Thursday, Jan. 23.

THE QUEEN *v.* THE COMMISSIONERS OF EXCISE.

Re PHILIP HAWARD.

The Court will not grant a rule for a mandamus to Commissioners of Excise, commanding them to give their assent in writing to the appropriation of a portion of an excise officer's pension to the discharge of his debts under the 1 & 2 Vict. c. 110, s. 56.

Cooke moved for a rule calling upon the Commissioners of Excise to shew cause why a *mandamus* should not issue, commanding them to give their assent in writing that the sum of 40*l.* per annum should be paid out of the pension or superannuated allowance of Philip Haward to his assignee, to be divided amongst his creditors.

It appeared that Philip Hayward, who is in the receipt of a pension or superannuated allowance from the excise, became insolvent, and was brought up before a commissioner on circuit for his discharge under the 1 & 2 Vict. c. 110; that on that occasion the commissioner made an order that out of the insolvent's pension a sum of 40*l.* should be yearly paid over to the assignee for the benefit of the creditors. The 1 and 2 Vict. c. 110, s. 56, exempts the pensions of certain parties, amongst others, of excise officers, from the operation of the Act; but with the proviso, that the Insolvent Court may order such portion of the pension of such prisoner as, on communication *from the said Court* to the Commissioners of Excise, they may respectively, under their hands, consent to in writing, to be paid to the assignee, in order that the same may be applied in payment of the debts of such prisoner.

In conformity with the order of the Insolvent's Commissioner, application had been made to the Commissioners of Excise for their assent to the arrangement; but the commissioners replied, that they conceived that they had no power to consent to such an order, and refused therefore to comply with the application.

It was now contended that the commissioners had taken an erroneous view of the case, and that although they had a discretion as to the amount to be allowed out of the pension, and might, therefore, have declined assenting to the appropriation of so large a sum; that they clearly had power to assent, and ought to have assented, to some appropriation. It was further stated that the Commissioners of Customs and the authorities at the East India-house are constantly in the habit of consenting to such appropriations under the Act.

Mr. Justice WILLIAMS thought that the commissioners had a complete discretion whether or not to assent to the order of the Insolvents' Commissioner, and that, in the absence of any authority the other way, he should not grant the rule. *Rule refused.*

BURTON *v.* THE EARL OF CHESTERFIELD.

The Court will not grant a rule in the alternative to strike an attorney off the roll, and to answer the matter of affidavits.

Charnock moved for a rule calling upon an attorney to shew cause why he should not be struck off the roll, or why he should not answer the matters of the affidavits.

WILLIAMS, J.—You must not take a rule in the alternative. You may have your rule for either, but not for both.

Rule nisi, to answer the matters of the affidavits.

BUSINESS OF THE WEEK.

Friday.

BLACKWELL *v.* BUTLER.—*V. Williams* moved for a rule to set aside the nonsuit herein, and for a new trial. *Rule nisi.*

REG. *v.* THE INHABITANTS OF SEVENOAKS.—*Pashley* moved to set aside the *certiorari* herein (obtained to bring up an order of sessions) on the ground of the affidavit on which it was obtained being insufficient. The points were the same as those raised in *Reg.* v. *The Inhabitants of Cartworth* (2 Law T. 105): *Reg.* v. *Cartwell* (2 Law T. 119). *Rule nisi.*

SELWAY *v.* NORMAN.—*Thomas* moved for a new trial herein. *Rule nisi.*

Ex parte THOMAS MORRIS.—*Gray* moved that the applicant might be at liberty to enrol his articles of clerkship *nunc pro tunc*, and that his service under them should date from the 26th of last January. This motion was made in consequence of the agent's clerk, to whom the articles were entrusted to get enrolled, having wilfully omitted to do so.

Application granted.

Saturday.

BLOTT *v.* ELLWOOD.—*Martin*, Q.C. moved for a rule to strike out two pleas in this action as being frivolous. *Rule nisi.*

Ex parte COLLINS.—*Platt*, Q.C. moved for a rule calling upon an attorney to answer the matters of an affidavit. *Rule nisi.*

Monday.

Re GILBERT and ANOTHER.—*Thesiger*, S. G. moved for a writ of *habeas corpus* to bring up the bodies of Francis Schwenk Gilbert and Joshua Gilbert, two infants, of the respective ages of seven and five years. The application was made on behalf of the mother of the infants, who was executrix and coguardian of the children under her late husband's will. The children were detained either by Wm. Gilbert, their uncle, or by a person named Schwenk, acting in collusion with him. *Rule granted.*

WRIGHT *v.* SMITH.—*Martin*, Q. C. moved to change the venue. *Rule nisi.*

DOE *dem.* DEACON *v.* PERRY.—*Willes* moved for a rule to set aside, with costs, an order of a learned judge at chambers, allowing the introduction of a fresh demise by a person of the name of Towers. It was not mentioned to the learned judge that there was an ejectment already pending at the demise of Towers. Besides which, Towers being neither trustee nor mortgagee, the consent rule, which was entered into before the order, was not applicable to such new demise. *Rule nisi.*

Tuesday.

WOOD *v.* ELLIOTSON.—*Crowder*, Q.C. moved for leave to add certain pleas.

Referred to the full Court.

Re MAUNDER.—*V. Williams*, to refer an attorney's bill to taxation. *Rule nisi.*

REG. *v.* THE JUSTICES OF EAST SUSSEX.—*Fitzherbert* moved to amend the *mandamus* herein by consent.—*Creasy*, contrà. *Rule granted.*

Wednesday.

Crompton moved that an attorney should pay over a sum of money, pursuant to his undertaking.

Rule nisi.

Thursday.

WILLIAMSON *v.* LOCK.—*Martin*, Q.C. moved that the Master shall proceed to tax the costs herein.

Rule nisi.

REG. *v.* WILLIAMS.—*F. Edwards* moved for a *habeas corpus* to bring up a prisoner who had been tried and convicted at the last Somerset sessions, the Attorney-General's fiat for a writ of error having been

obtained, and it being necessary that the prisoner should be present to assign errors. *Writ granted.*

POTTER *v.* JENKINSON.—*Atherton* moved for a rule calling upon the defendant to give a better particular of his objections. The action was for the infringement of a patent. (*Russell* v. *Ledsom*, 11 M. & W. 645; *Jones* v. *Burcher*, Webster's Patent Cases; *Heath* v. *Unwin*, 10 M. & W. 684). *Rule nisi.*

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Wednesday, Jan. 22.

Ex parte BRUTTON, *re* FISHER.

Costs—Statute of Limitations.

The bill of a solicitor for fees and disbursements after the choice of assignees was, upon petition, ordered to be paid, although no item of the bill was within six years, the estate not being completely wound up and distributed.

This was the petition of Mr. Brutton, a solicitor, residing at Exeter, for the payment, by the official assignee, of a sum in his hands of 88*l.* 19s. 1d. the amount of the petitioner's bill of costs in respect of business done in this bankruptcy since the choice of assignees. The commission was dated the 4th of December, 1828, and on the 23rd of December, 1828, Robert Taylor was chosen assignee. The petitioner acted as solicitor up to the choice of assignees, and his bill of costs up to that time had been paid. After the choice of assignees the petitioner continued to act as solicitor. Some part of the bankrupt's estate was sold by the assignee to John Risdon, who had been the petitioning creditor, for 210*l.* 10s. for the payment of which sum the assignee took four bills of exchange at six, eight, ten, and twelve months respectively. The first of these bills was dishonoured, the second was paid, and the other two were dishonoured; and on the 16th of April, 1831, John Risdon became bankrupt. Mr. Serjt. Goulburn having held that the assignee was responsible for the debt due from Risdon, on the 27th of May, 1844, an order was made for the payment of the sum to the official assignee. The petitioner then presented his bill of costs, which was taxed at 88*l.* 19s. 1d. To the payment of this bill an objection was raised, as there was no item of the bill within six years, and that it was therefore barred by the Statute of Limitations. This objection Mr. Commissioner Bere held to be valid, and consequently this petition was presented.

Swanston and *Bacon*, for the petitioner, cited *Ex parte Bryant* (1 Mad. 49); and *Higgins* v. *Scott* (2 Barn. & Adol. 413).

Russell and *Shapter*, for the respondents, cited *Hodgens* v. *Kelly* (1 Hogan's Reports, 388), and *Irving* v. —— (2 Y. & Jerv. 70).

The CHIEF JUDGE.—The 14th section of the 6 Geo. 4, c. 16, provides that all bills of costs of an attorney employed under any commission, for business done after the choice of assignees, shall be settled by the commissioners; and the same, so settled, shall be paid by the assignees to such attorney. This is a direction by an Act of Parliament as to the duty of the assignees; and if this is not performed, the solicitor has a right to come here and enforce the performance of that duty. Supposing that I am at liberty to act on my own opinion, what are the merits of this case? It is impossible I can infer that a single shilling has been lost to this estate. The assignee has paid that which the commissioner has charged. What would have been the case if this state of things had not existed it is not necessary for me to say. The only sufferer by the delay in payment has been the solicitor, who, to use a colloquial expression, has been kept out of his money for so many years. A case may exist of such delay as that the Court might refuse to assist the solicitor. The delay, however, in this case has been explained to my satisfaction, and I do not think there is any imputation upon the solicitor. If any thing, it is, under the particular circumstances of the case, rather creditable to his views and feelings than otherwise. I consider that the Statute of Limitations does apply to a case of this description, whatever might have been the case if an action had been brought against the assignee. Unless, therefore, it is desired that this bill shall be further taxed, I shall order payment of it.

Declare that the estate is liable to pay the amount of the bill. Order payment of costs, without prejudice to any question of further taxation, out of the estate. Costs of the petitioner and respondents to be paid out of the estate.

Ex parte ROWE, *re* ROWE.

Choice of assignees—Trustees.

Where the bankrupt was one of five trustees, and had received and misapplied a portion of the trust money, and an order of the Court of Review was obtained by the other four trustees for liberty to go in under the fiat and tender a proof for the amount, this was held not to be such a debt as to entitle them to vote in the choice of assignees.

This was the petition of the bankrupt to set aside the choice of assignees, under the following circumstances. The fiat was dated the 7th of Oct. 1844, and the first meeting for the choice of assignees was appointed for the 23rd Oct. 1844. At that meeting a proof of a debt was tendered by the treasurer of a charity; this proof was refused by the commissioner, and the meeting was adjourned to the 22nd of the following month. It appeared that the bankrupt was one of five trustees, in whose names the sum of 2,000*l.* Consols was standing, and that he had received the dividends of that sum, but had neglected to invest or account for them. On the 20th of November, 1844, the other four trustees obtained an order of this Court for liberty to go in under the fiat, and tender and make such an amount of proof or proofs as they could establish, &c. Proof was accordingly tendered by these trustees for the two sums of 188*l.* 18s. 2d. and 120*l.* 7s. 8d. and the proof for the first sum was admitted. One of these trustees was then proposed as assignee, and as there was only one other debt of a smaller amount proved, he was chosen.

Anderdon, for the petitioner, argued that this was not a debt which would entitle these trustees to vote in the choice of assignees under the 61st section of 6 Geo. 4, c. 16. He cited *Ex parte Shaw* (1 Glyn. & Jam. 149).

Rolt, for the respondents, contended that this was a clear equitable debt, and that the order was only necessary to remove a technical difficulty. The debt did not originate in the order of the Court.

The CHIEF JUDGE.—Mr. Anderdon, my opinion is that this choice cannot stand. *Quoad ultra* I will hear you.

Anderdon, in reply.

The CHIEF JUDGE.—Upon the question whether the order of the 20th of Nov. 1844, is formally or informally expressed, I give no opinion. I am silent upon that subject. As I understand the law, the appointment of the creditors' assignees still rests on the 61st section of 6 Geo. 4, c. 16, which describes the persons entitled to vote as "creditors who have proved debts under the commission to the amount of 10*l.* and upwards." This might have led to a state of things in which no person could be assignee, as a bankrupt might have had only creditors who could prove by order of this Court. I apprehend, then, that the persons entitled to vote must be creditors. A mortgagee who comes here for an order to prove is always a creditor for the difference between the value of his security and his debt. Mr. *Rolt* argues that these are creditors. The bankrupt does not, however, cease to be a trustee by his bankruptcy, but until he is discharged he remains a trustee. I cannot, then, say that within the meaning of this section these persons are creditors of the bankrupt; and as no persons have voted but these, I must set aside this choice.

Declare, that these persons being the only persons who have voted in the choice, and they being, in the judgment of the Court, not entitled to vote, the choice cannot stand, and refer it to the Commissioner to make a new choice; these parties to be at liberty to attend the Commissioner upon the occasion of that choice, and to lay before him the affidavits now used. The petition in all other respects to stand over, with liberty to apply.

THE LEGISLATOR.

Summary.

ALTHOUGH the meeting of Parliament is so near there is not a rumour of legislation contemplated. It is positively asserted, in quarters likely to be well informed, that Sir JAMES GRAHAM abandons his Settlement Bill, and that the Medical Reform Bill will be materially modified to meet a sort of compromise to which the College of Surgeons has consented.

THE MAGISTRATE.

Summary.

THE Game Laws continue to attract attention among the two classes most affected by them. Many landlords have announced their intention of giving to their tenants the property in the game they feed. Poachers appear to be on the increase, and in divers parts of the country the gaols are crowded with them. We have already indicated the principles that should guide legislation upon this subject, which is expected to occupy the attention of Parliament during the coming session.

It will be seen by the advertisement that seven of the most important of the *Forms in Bastardy*, which have been prepared by Mr. SYMONS to meet the recent decisions, are now ready. We trust they will be found useful; every pains has been taken to avoid objections; but we shall be obliged by our readers informing us of any alterations that might make them more convenient for use, as the publisher will keep no more printed than are required to meet the current demands, so that amendment may be made without difficulty.

We have another request to prefer. It is that our readers will inform us what other of the forms it would be useful *to print*, for in these matters the experience of practical men is the best guide.

And will they do the same with Magistrates' Forms generally.

CHARGEABILITY.

THE following note has been sent to the Editor of the LAW TIMES on the subject of a letter from Mr. MARRIOTT, inserted last week.

SIR,—I have read Mr. Marriott's letter in your paper of the 18th inst. His plan of proving chargeability is incomplete, because the relieving officer can prove only the fact of *relief*, and cannot trace such relief to the particular parish complaining. I am at a loss to understand how the certificate, provided for by 7 & 8 Vict. c. 101, s. 69, can "mislead" in any case, and should be glad to be enlightened.

Mr. Marriott's form of Bastardy Order is incorrect in alleging the application of the woman, after the birth of the child, to have been accompanied by a deposition on oath, which course would be illegal.

Your obedient servant,

Jan. 22, 1845. W. P. P.

We agree with W. P. P. The certificate is plain enough; but we are confident that it is erroneous to state a past and not a present chargeability. If other evidence be relied on, the facts of relief, with time and place, should be very distinctly stated. We have noticed the other very important point of W. P. P.'s communication elsewhere.

THE BASTARDY CLAUSES

of 7 & 8 Vict. c. 101.

ONE of the great defects of this new enactment is that which relates to the application before birth. The 3rd section, which provides for the hearing of the case at petty sessions, begins with these words: "And be it enacted, That AFTER the birth of such bastard child," &c. This overrides the whole of the subsequent provisions for obtaining and making the order. So that no hearing can take place before birth; but the application may be made either before or after birth; and the proceedings after application are all framed without reference to applications before birth. The woman may apply during any period of her pregnancy; but the petty sessions at which the case is to be heard, according to sec. 4, must take place "within the space of forty days of *the service of the summons after the birth.*" Now, by the second clause of sec. 2, the justice, upon the application of the mother, is ordered "*thereupon*" to issue the summons.

Therefore, it seems to have been the intention of the legislature that no time should elapse between application and summons, and only forty days before the order is made. Now let us see how this affects pregnant women. If they apply more than forty days before their confinement, and the summons be thereupon served, the case cannot be heard at all, for the child will not *have been born* according to the requirements of section 4. If she applies less than forty days before her confinement, there must be a somewhat nice calculation, in order that the mother may be able to *apply* before birth, be *delivered*, and sufficiently *recovered* to attend the petty sessions afterwards.

It almost comes, therefore, to this; that notwithstanding the latitude apparently given to pregnant women at all times to "apply," they can do so only for a few days prior to their confinement. This very case arose, we

are informed, at Hereford. Mr. Pritchard and Mr. Gwillim, the attorneys concerned for the parties, agreed to write, for the information of the magistrates, to the Secretary of State, for information how far they were precluded by section 3 from having the appeal heard *before* the birth. Here is the reply :—

SIR,—I am directed by Secretary Sir James Graham to acknowledge the receipt of your letter of the 10th inst. requesting advice with reference to the construction of the 2nd and 3rd sections of the Act 7 & 8 Vict. c. 101, in a case of bastardy; and I am to acquaint you, for the information of the magistrates, it appears to Sir James Graham that, before the birth of the child, as well as after, the magistrates are authorized to summon the man charged as the father.

I am, Sir, your obedient servant,
S. M. PHILLIPS.

This, of course, leaves the magistrates precisely as wise as they were before. No one doubts that the summons may be issued before the birth; but is the birth a condition precedent to the hearing of the case at petty sessions? It appears to be so; and we confess we see some advantage in rendering it so. The case could not be heard as satisfactorily before as after birth, for the exact period of the birth, which would not be ascertainable in the former case, might be a very material point in the inquiry.

We do not exactly see the object of applications before birth; but where they exist, and matters cannot be so arranged as to fall in with all the requirements of the Act, it may, perhaps, be the safest way to obtain the summons at any moderate time before the birth, and not to serve it till afterwards. The word "thereupon" in section 2, though its inference as to the intent is clear, can scarcely be so very rigidly applied as to be held to require immediate service, and it is from the *service* of the summons that the forty days run.

A correspondent calls attention to the fact that the mother is required only to make oath, on application, of the paternity of her child when *pregnant*, not when *delivered*. It is so; but why it is so we confess ourselves quite unable to fathom.

Another and a much more perplexing solecism is that of the omission of any mention in the whole of the first sections of what the man is to be summoned for. There is power enough given to summon him "to appear at a petty session," but none whatever to summon him for any stated purpose. It would be absurd to issue a summons without some mention of the matter he was summoned to answer; but, though absurd, it would be perfectly legal.

We could name other flaws in the Act. We hear already of an amendment of this "further amendment." It is certainly required. The puzzle will be in a title: "Further further Amendment," &c. will not read nicely. We suggest the adoption of the style of the reigns: —"Poor Law Amendment the Sixth," or as the case may be. This removes all difficulty in entitling future experiments.

J. C. S.

EVIDENCE ON APPEALS AGAINST ORDERS IN BASTARDY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I observe in your last publication an article under the initials "J. C. S." with reference to the admissibility of the evidence of the mother on the trial of appeals against orders in bastardy, in which the writer regards the report, that Mr. Archbold entertains an opinion against the admissibility of the evidence, as a mistake.

Such is not the fact; as that gentleman expressed his opinion in the court where the point arose, and in addition stated that the very point was noticed in a work of his then in the press.

I have thought it right to trouble you with this communication, in order that there may be no mistake as to the correctness of the remarks contained in my letter in the LAW TIMES of the 11th inst.

I am, Sir, your obedient servant,
WM. F. CLARK.

Bewdley, Jan. 21, 1845.

[Independently of the grounds we gave last week why the mother's evidence is receivable, it is so *ex necessitate rei*, and so Mr. Archbold will find.]

We readily insert the following letter. We certainly understood the Report to object to the provision limiting the appointment to attorneys, and not merely to the adjunct of "*the five years' standing*," and the arguments seemed to apply more to the former than the latter. We are very glad, however, that no such objection is entertained by the Society, and we hasten to apprise our readers of the mistake :—

JUSTICES' CLERKS' SOCIETY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Admiring as I do the ability, zeal, and independence with which your paper is conducted, I regret being obliged, as a member of the managing committee of this society, and as chairman of the special general meeting of the members, held on the 15th inst. to call to your notice an extraordinary error into which you have inadvertently fallen with reference to the report lately presented by the committee to the general body, and contained in the leading article on this subject in your paper of the 18th inst. under the head "Magistrates' Clerks Bill."

After speaking in favourable terms of the Report, you say, "We have noted but one portion of the commentary as exceptionable; it is the objection taken to the provision of the Bill that confines the choice of *future* magistrates' clerks to attorneys."

This inaccuracy I, as one of the committee, should not have noticed (because the report on a perusal of it will speak for itself), had it not been followed by some rather severe (and I may add, most unmerited) strictures, imputing unworthy motives to the committee.

You will find, on a re-perusal of the Report, that the only objection offered by the committee to the 5th section of the Bill, was to that portion of it *limiting* the appointment *to attornies of five years' standing*: this the committee considered "too stringent," for the reasons fully set forth in the Report; thereby evincing their desire to open the door and extend the provisions of the Bill to the junior branches of the Profession. But upon looking to the language of the Report, as to the security afforded by the examination of professional men, previously to admission, it will be seen at once that the committee never thought for a moment of recommending the introduction of non-professional gentlemen to so important and responsible an office as that contemplated by the Bill.

From the readiness with which you have on former occasions made the *amende honorable*, I trust to your doing the committee (and through them the society at large, who have unanimously adopted their report) that justice which I feel they are entitled to, after so severe a reproof in so influential an organ of the Profession as the LAW TIMES.—I am, Sir, your very obedient servant,
J. G. SHEPHERD.

FOREIGN-OFFICE, JAN. 15.—The Queen has been pleased to approve of Mr. James Thomson, as Consul at Gibraltar for the Free Hanseatic cities of Hamburgh and Lubeck.

The Queen has also been pleased to approve of Mr. John Fergusson as Consul at Belfast for the republic of Venezuela.

PAROCHIAL SETTLEMENTS.—The Government measure to consolidate and amend the laws relating to parochial settlement, and to the removal of the poor, which has been printed for consideration during the present recess, contains 38 sections and one schedule. The object of the bill is to repeal so much of former acts as relates to settlements in parishes, and to the removal of the poor, whether English, Scotch, or Irish, or of the Isles of Man, Scilly, Jersey, or Guernsey. It is proposed by the bill that settlements which before the act had been ascertained by warrants of removal or by admissions in writing are to be retained, but warrants of removal made before the passing of the present bill may be appealed against, as if the act had not been passed. There are other settlements declared, namely, birth settlement, or father's settlement, or mother's settlement. Children born in union workhouses to be settled where their mothers are chargeable; children born in hospitals, prisons, or while their mothers are under orders of removal, are not to have a birth settlement, but to take their parents' settlement. With respect to persons chargeable on parishes, it is declared that unsettled persons are to be relieved at the charge of the parish where they are destitute, as if they were settled there, until they are lawfully removed, or their destitution there is lawfully at an end. Under the head of removal, it is declared that persons chargeable to a parish in which they are not settled, are liable to be removed to the parishes of their settlements, with a salvo for married women and others. Married women are not to be removed from their husbands. Legitimate children are not to be removed from their father's parish, nor legitimate and bastard children from their mother's. Widows and their families are not to be removed for a year after the husband's death. Widows are not to be removed from the place of their husband's settlement and death. Persons chargeable through sickness are not to be removed until recovered 40 days, and labourers and others, who have maintained themselves by their labour in the place for five years are not to be removeable. There are other provisions with respect to appeals, the maintenance of paupers under warrants of removal, the removal of poor persons born in Ireland and other places. Guardians are to be invested with powers for removal, and the act, which is to be limited to England and Wales, is to be construed as one with the Poor Law Amendment Acts.

THE INEFFICACY OF THE GALLOWS.—Mary Gallop has been hanged, and Mary Sheming, for aught that appears to the contrary, will be hanged; and two men have been hanged at Liverpool; and two men are to be hanged at Ipswich. Human beings have died for crime, and are about to die for crime: the dead speak with certainty the consequences of crime, the living with still more oppressive uncertainty the risks which criminals incur. And yet crime is not abated.

Look at the week's annals of crime under the head of murder alone—that offence which so many averse to death-punishment in all other cases would still visit by the infliction of death.

The poisoning of a woman at Salt-hill, for which an ex-member of the Society of Friends has been committed on suspicion, occupies a large space in the papers of the week. In addition to this case, the papers of Monday contained an "attempted murder of a wife by her husband;" those of Tuesday, "the Yarmouth murder," and "the suspected murder at Twig Folly;" those of Wednesday, a "murderous assault and highway robbery" near Liverpool, and "revelations concerning a murder committed eight years ago, near Ruislip in Middlesex;" those of Thursday, "an alleged attempt to poison a wife and family," and "the Croom poaching and murder." The newspapers of the week read like a reprint of "God's revenge against murder."

Faster than the condemned criminals can be turned off, candidates for the vacant halter press forward. Irregular volunteer deeds of death multiply faster than those of the hangman: murder by Act of Parliament has no chance against the active rivalry of the illicit dealer. Every class of society contributes its recruits to the trade of murder: it is carried on briskly everywhere. The grave starched sectarian, with a scientific education, and the poaching clown rude and untaught as the savage of the backwoods, are equally adepts in it: the highway and the domestic hearth afford equally fitting fields for its exercise. In vain the gibbet rears its black form to deter the murderers: its presence appears only to awaken in them a spirit of defiance and emulation.

"Experience teaches fools," says the proverb; then legislators must be more unteachable than fools, for the experience of this week differs in no respect from the experience of all other weeks. Surely it is time that they should desist from the miserable rivalry of saying to the murderer "we too can extinguish life," and try to devise some really effective means of deterring him from crime, or of alluring him.—*Spectator.*

CORONERSHIP FOR THE COUNTY OF BERKS.—In consequence of the death of James May, esq., who expired at his residence, at Reading, on Tuesday last, a vacancy has been occasioned in the coronership for that division of the county. Although the emoluments of the office have not exceeded 150*l.* per annum during the last 10 years, there are no less than seven candidates for the vacant appointment in the field, independently of several others who are expected to announce themselves early in the week. Considerable interest, as to the result of the election, has been created in consequence of Mr. A. G. Field, *surgeon*, of Reading, having addressed the freeholders, and solicited their votes at the election, which will take place in a few days at Abingdon. The other candidates who have announced their intention of coming forward to fill the ancient office of coroner are the following gentlemen, the whole of whom are highly respectable solicitors, of extensive practice and connections:—Mr. R. Clarke, Mr. J. Richards, jun. Mr. J. Whatley, and Mr. T. Lovegrove, Reading; Mr. C. Cave, Bracknell; and Mr. C. Cooper, Maidenhead. At the last contested election for the coronership of Berks, now about 20 years since, upwards of 4000*l.* were expended by the two candidates, Messrs. Nash and Deadman. From the situation of Abingdon many freeholders will have to travel a distance of upwards of 30 miles to record their votes.

THE LAWYER.

Summary.

The legal event of the week is the resignation of Mr. Baron GURNEY, and the elevation to the Bench of Mr. PLATT. It is rumoured in Westminster Hall, that there is

to be some shifting of seats among the judicial corps. It is said that Mr. Justice ERLE will be transferred to the Queen's Bench, Mr. Justice PATTESON to the Exchequer, and that the new Judge will take the Common Pleas. The objects of this movement are not very intelligible.

As yet the Term has been singularly unproductive of cases interesting to the Lawyer; but there are many judgments suspended of great importance, the reports of which will doubtless claim a large portion of our columns after the Term has ended.

COURT PAPERS.

TRANSFER OF CHANCERY CAUSES.

The Lord Chancellor has directed that the following causes, which have been transferred from the Master of the Rolls' book to that of the Lord Chancellor, should be placed in the paper of his Honour the Vice-Chancellor Knight Bruce:—

Wynn v. Haveningham	Barton v. Chambers
Fernyhough v. Grinders	Gosling v. Carter
Rogers v. Vasey	Johnson v. North
Hammet v. Ledsam	Agers v. Nicholson
Collins v. Reece	Weakley v. Bunn
Montresor v. Montresor	Lloyd v. Jenkins
Watson v. Parker	Harrison v. Ruston
Johnson v. Rowland	Sabine v. Williams.
Lewis v. Lewis	

Notice.—His Honour the Vice-Chancellor Knight Bruce will proceed on the above causes on Saturday, the 25th inst.

Exchequer Chamber, Tuesday.

WRITS OF ERROR.

The judges assembled this morning in the Exchequer Chamber, in pursuance with the custom of the Court, for the purpose of fixing the days upon which the Court would sit "in error" after the present term.

The Court intimated that they would take the "errors" from the Court of Queen's Bench on Feb. 1st and 2nd; those from the Court of Common Pleas on the 4th and 5th; and those from the Court of Exchequer on the 6th and 7th.

There are from the Court of Queen's Bench four cases "in error," for judgment and argument; from the Court of Common Pleas one case for judgment (but a second day is appointed lest any other cases should arise); and from the Court of Exchequer six cases for judgment.

COURT OF QUEEN'S BENCH.

Hilary Term.—Eighth Victoria.

January 23, 1845.

This Court will, on Saturday, the 1st, and on Monday, the 3rd, Tuesday, the 4th, Wednesday, the 5th, and Saturday, the 8th days of February next, and also on Monday, the 10th day of February next, and the two next following days, hold sittings, and will proceed in disposing of the business in the Crown, Special, and New Trial Papers, and giving judgment in cases then pending; a selection will be made from the special paper, and notice given.

BY THE COURT.

ADMISSION OF SOLICITORS.

NOTICE.

The Master of the Rolls has appointed Tuesday the 28th of January instant, at half after three in the afternoon, at the Rolls Court, Cancery Lane, for swearing in solicitors.

Every person desirous of being sworn, on the above day, must leave his Common Law Admission at the Secretary's Office, Rolls Yard Chancery Lane, on or before Monday the 27th January instant, at three o'clock.

Secretary's Office, Rolls,
15th January, 1845.

LEGAL INTELLIGENCE.

THE POOR KNIGHTS OF WINDSOR.

A very important document connected with the endowment of this ancient order has recently been discovered among the archives of the Court of Wards and Liveries, which promises to become the subject of legal controversy, involving, as it does, the right of the Poor Knights of Windsor to the distribution among them of a large and hitherto unappropriated income. The document in question is a verified copy (signed by Cecil, Lord Burleigh) of the charter, under the sign manual of Queen Elizabeth, instituting the above order, and bears date the 20th of August, 1559. The following is extracted from the indenture prefixed thereto:—"And whereas divers manors, lands, tenements, and hereditaments mentioned and contained in the schedule hereunto annexed, of the clear yearly value of 600*l*. and above, are given and assigned unto the dean and canons of Windsor, and their successors, to and for the intent and purpose that *all and singular the premises*, the revenue, and profits of the same shall for ever be employed and bestowed in the maintenance and support of thirteen poor knights within our Castle of Windsor, in such manner and form as in a book hereunto annexed, and signed with our sign manual, is set forth and declared." Following this is a covenant, on the part of the dean and canons, "to employ the rents, revenues, and profits of the same, in such manner and form as is therein set forth and appointed." The charter then goes on to state that the annual sum of 231*l*. 6s. 8d. shall be applied out of the same towards paying the vicar's and serving priest's wages, officers' fees, and in the repairing of the lands. The book annexed to the indenture contains a description of the services to be performed, a schedule of the lands, and an account of the privileges to be enjoyed by the knights.

The present value of the endowment is upwards of 11,000*l*. per annum, although the stipend hitherto paid to the knights has never exceeded 40*l*. a year. Until the discovery of this interesting and valuable relic, which appears to confirm the right of the knights to the full appropriation of the endowment of their order, it was concluded that the charter of Elizabeth, and all copies thereof, were in the possession of the dean and canons of Windsor, and no access thereto has ever been permitted to the knights.

The opinion of counsel has been taken upon the subject, which is stated to be favourable to the knights, and proceedings will be immediately instituted to recover their rights.

The schedule of the lands is interesting, as shewing their value in the time of Elizabeth. The following are some of the principal extracts from the charter, with the annual rentals annexed:—

"Cornwall—St. German's Parsonage, 48*l*.; Plympton St. Mary's, 46*l*.; Plumstock Chapel, 41*l*.; Bradwynck Rectory, 36*l*.; Wimbum Chapel, 30*l*.

"Devonshire—Iple Penn Rectory, 30*l*.; Southmoulton Rectory, 45*l*.; Ottery St. Mary's, 37*l*.; Islington, 16*l*.

"Wiltshire—Ambroseshire Parsonage, 23*l*. 13s. 4d.; Prebend Tithes of Bedwynde, 56*l*.; Stapelford Parsonage, 18*l*.

"Carmarthen—Abbergwille Rectory, 20*l*.

"Brecknock—Talgarthen and Mawe, 35*l*.

"Middlesex — Isleworth and Twickenham, 26*l*. 13s. 4d.

"London—Blossoms Inn, 16*l*.

&c. &c. forming a total of 661*l*. 6s. 8d.

The copy of the charter is deposited in the Record-office, and remains in an excellent state of preservation. It is engrossed on vellum, and amongst other attractions, not forgetting the autograph of the celebrated Cecil, is a likeness of the royal founder of the order of the Poor Knights, which is ascribed to Holbein.

WHITEHALL, Jan. 17.—The Lord Chancellor has appointed Samuel Richard Parr Shilton, of Nottingham, Gent., and Edmund Thomas, of the city of Worcester, Gent., to be Masters Extraordinary in the High Court of Chancery.

WHITEHALL, JAN. 23.—The Lord Chancellor has appointed William Smith, jun. of Sheffield, in the county of York, Gent. to be a Master Extraordinary in the High Court of Chancery.

WHITEHALL, JAN. 7.—The Right Honourable Sir Nicholas Conyngham Tindal, Knt., has appointed Lawrence Smith, of Hurstperpoint, in the county of Sussex, Gent., to be one of the perpetual commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Sussex.

The Right Honourable Sir Nicholas Conyngham Tindal, Knt., has appointed James Whitham, of Wakefield, in the county of York, Gent., to be one of the perpetual commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the West Riding of the county of York.

The Right Honourable Sir Nicholas Conyngham Tindal, Knt., has appointed Henry Powell, of Pocklington, attorney-at-law, one of the perpetual commissioners for taking the acknowledgment of deeds by married women, in and for the East Riding of the county of York.

The Right Honourable Sir Nicholas Conyngham Tindal, Knt., has appointed W. C. Turner, of Otley, in the county of York, Gent., to be one of the perpetual commissioners for taking the acknowledgments of deeds to be executed by married women.

The Right Honourable Sir Nicholas Conyngham Tindal, Knt., has appointed Mr. Jacob Phillips, of Chippenham, in the county of Wilts, solicitor, to be one of the perpetual commissioners for taking the acknowledgment of deeds to be executed by married women, in and for the county of Wilts.

MR. BARON GURNEY.—We are enabled to state, upon authority, that this learned Judge, who has been labouring under severe indisposition at Brighton, is rapidly recovering from the severity of the attack. He will not, however, resume his seat on the bench during the present Term, but it is fully expected that he will be enabled to proceed upon the Midland Circuit at the ensuing spring assizes, which commence at the latter end of February.

MR. BARON GURNEY.—The following appeared yesterday in the evening organ of the Treasury:—"Mr. Baron Gurney, in consequence of continued ill-health and increasing weakness, has sent to the Lord Chancellor his resignation of the high office of one of the Barons of the Exchequer, which the learned Baron had filled for some years with great ability and satisfaction to the bar and the public. The general opinion in Westminster-hall is, that Mr. Platt, Queen's counsel, will succeed to the vacant seat on the Exchequer Bench, but, of course, no arrangement has at present been made."

INDISPOSITION OF MR. COMMISSIONER BULLOCK.—Yesterday information was received at the Sheriffs' Court office of the severe indisposition of Mr. Commissioner Bullock, the judge of the Sheriffs' Court. In consequence, the trials appointed to have taken place this day (Thursday) are postponed until the next court day, in February.

THE VACANT COMMISSIONERSHIP IN BANKRUPTCY.—Rumour gives the appointment to Mr. Serjeant Atcherley, who has several times gone the circuit for Judges, or to Mr. Whateley, the Queen's Counsel; but report adds, that some of the country commissioners have promises of being advanced to London as vacancies might occur.

CALLS TO THE BAR, MIDDLE TEMPLE.—On Friday, the 17th inst. the undermentioned gentlemen were called to the degree of barrister-at-law by the benchers of this honourable society; and on Saturday last the customary oaths were administered to them in the dining-hall:—Mr. John Pulman, the eldest son of Thomas Pulman, late of Sainford Brett, in the county of Somerset, esq.; Mr. William Crofts, the eldest son of the late Rev. William Crofts, D.D. vicar of North Grimston, in the county of York; Mr. Richard Paternoster, the youngest son of John Paternoster, of Norfolk-street, Strand, London, esq.; Mr. Sidney Milnes Hawkes, B.L. the second son of Robert Hawkes, of Bishop's Stortford, in the county of Hertford, esq.

ADMISSION OF SOLICITORS.—The appointment of examiners of persons applying to be admitted solicitors of the High Court of Chancery has been made by an order of the Right Hon. the Master of the Rolls, which order is preceded by the recital of that of the 13th of January, 1844, whereby it was (amongst other things) ordered—"That every person who had not previously been admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the statute 6 and 7 Victoria, cap. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching his fitness to act as a solicitor of the said Court of Chancery. And that twelve solicitors of the same court, to be appointed by the Master of the Rolls in each year, be examiners, for the purpose of examining and inquiring touching the fitness and capacity of every such applicant for admission as a solicitor, and that any five of the said examiners should be competent to conduct the examination of such application." In furtherance of the above, the Right Hon the Master of the Rolls has ordered and appointed "that Samuel Amory, Benjamin Austin, Michael Clayton, W. L. Farrer, Richard Harrison, Bryan Holmes, Robert Wheatley Lumley, Edward Rowland Pickering, Charles Ranken, Charles Shadwell, William Tooke and Edward Archer Wilde, solicitors, be examiners, until the 31st of December, 1845, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them) who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said Court: and the Master of the Rolls doth direct that the said examiners shall conduct the examination of every such applicant as aforesaid, and to the extent pointed out by the said order of the 13th day of January, 1844, and the regulations approved by his Lordship in reference thereto, and to no other manner, and to no further extent."—Signed, Langdale, M.R.

ABOLITION OF IMPRISONMENT FOR DEBT.—The ninth report of the Inspectors of Prisons, comprising the northern and eastern district of England, has been issued, from which it appears that the total number of prisoners discharged under the act abolishing imprisonment for debts not exceeding 20*l*. (7 & 8 Victoria, c. 96) was in the district mentioned 386, and that the number of debtors in custody on the 1st of November last, in the various prisons in the same district, was only 190. The inspector (Mr. Williams) in his report states, "that a very considerable portion of the plaints in the small debt courts are for public-house scores, transactions with tally-men, some few for rent and for small articles for domestic consumption. In the two first items, any abridgement of credit must be a positive benefit, and enable the parties better to meet the demands of

the two last. Although the observations here offered have reference chiefly to the condition of debtors when in prison, yet, from its intimate connexion with the subject, I thought it might not be improper to extend my inquiries to the working of the new act while on my recent tour of inspection in the provinces, and from the information thus procured, I am satisfied that no further restriction in the granting of credit to the humbler classes may be apprehended beyond the withdrawal of temptations to incur debts which honest prudence would never have held out to them, and that independent of its rescuing a number of the people from the pollution of a debtors' gaol, it will make the small master more scrupulously exact in the payment of weekly wages; will tend by money payments to lessen the prices of the necessaries of life to those most in want of them; and that although it may abridge the profits of the publican and tally-man, it will afford protection to the honest tradesman by its increasing lien upon all accruing property in satisfaction of debt, and will deter the fraudulent by the wholesome severity of its penal clauses."

We understand Sir Robert Peel has recommended for the appointment of Queen's Proctor, Francis Hart Dyke, Esq. a son of Sir Percival Hart Dyke, Bart. a gentleman of twenty years experience, and extensive practice in the profession.

Ancient Document.—The extraordinary talent displayed in the caligraphy, as well as the emblazonment of ancient deeds, far exceeded any productions of the kind of the present day. A document of this description, which was laid on the table of the Society of Antiquaries, on Thursday, the 19th ult. (accompanying the reading of a paper from Thomas Lott, esq. F.S.A. upon the subject of some hitherto unnoticed architectural remains, of a monastic character, beneath the houses in Bees Church-yard), excited much interest. It was a grant by letters patent from King Henry the Eighth, with impressions of the great seal attached, of lands formerly belonging to one of the suppressed monasteries. This document was interesting, as being a grant by virtue of the royal commission to Queen Catherine (Parr) as Regent during Henry's last absence from the realm during the wars in France, and bearing date between the surrender of Boulogne to Henry (who had besieged it in person) and his return to England. In the illuminated margin of this deed is a beautifully executed painting in colours, being a portrait of the King, and from its resemblance to the heads on the coinage of the period, may probably be a good likeness of the absolute monarch. It certainly appears more like a human face than some of the portraits extant by Holbein and others. The engrossed portion of this deed was also beautifully executed; probably equal talent may exist in the present day, if called into requisition; but all modern deeds fall far short of this ancient specimen.

Railway Statistics.—Some statistical information respecting railways, equally curious and important, has been published by Mr. Hall, an eminent sharebroker, at Liverpool. It appears from Mr. Hall's statement, that the total amount expended in the construction of thirty of the oldest and most important railways in the kingdom, as shewn by their last reports, is 56,858,602*l.* Their market value on the 31st December 1844, was 67,639,106*l.* The excess of value over the cost of construction has been added to the national capital—property to that amount has been created; and that property is the means of diminishing the expenses and increasing the comfort of the whole community. It is an unexceptionable warrant of the substantial character of railway property, that only two railways have fallen in value in the course of last year, while six have risen more than fifty per cent. One of these (the Newcastle and Darlington) has risen 490,000*l.*; the cost of construction being under 450,000*l.* The Great Western shews the enormous rise in value of 2,145,000*l.* within the year.

Will of Her late Royal Highness the Princess Sophia Matilda, dated 29th July, 1843, was proved on Wednesday last by the executors, the Honourable and Rev. Henry Legge, vicar of Lewisham, Kent, George Bankes, of East Sheen, Surrey, esq. the Right Honourable Lady Alicia Gordon, the Lady of the Bedchamber to her late Royal Highness, and Miss Charlotte Cotes, the Woman of the Bedchamber. To the two former she leaves 100 guineas, and to the two latter, 1,000 guineas. By various codicils (fourteen in number) she disposes of numerous pictures and paintings (being presents to her Royal Highness's family) to several distinguished branches of the family of her Royal Highness and her friends. She bequeaths to her Majesty the portrait of her father the late Duke of Gloucester; to the Queen Dowager and Prince Albert, portraits of other members of the Royal Family; to the National Gallery and Trinity College, Cambridge, valuable pictures; and appoints the Honourable Captain William Waldegrave, R.N, (uncle of the Earl of Waldegrave, see 'Historical Register,' No. 1), residuary legatee. The will and codicils are of some length, and contain many bequests. Leaves annuities and legacies to all her servants. Effects sworn under 25,000*l.*—*Historical Register.*

Will of the late Lady Mary Hill.—Special letters of administration with the will, and two codicils thereto annexed, of Lady Hill (wife of Sir Dudley St. Leger Hill) of Turnwood in the county of Dorset, have just been granted by the Perogative Court of Canterbury, to John Walker and Percival North Bastard, esqrs. the executors, with the consent of Sir Dudley. The will is dated 28th September, 1844, and is of some length, reciting marriage settlements, and describing her separate property. She leaves to Sir Dudley 1000*l.* a year for his life. The freehold estates she devises as follows:—Her estate at Turnwood, to Edward Protheroe, esq. who in future is to use her late husband's name of Davis, before or after his own, and to quarter the arms of Davis with those of his family, and to obtain a licence for that purpose, to be duly registered in the College of Heralds; Mr. Protheroe to allow out of the estate 400*l.* a year to Sir Dudley. Her estate at Shorehampton, she devises to Laura Protheroe. Her estate at Bristol to John Walker, esq. one of her executors.] Several legacies of large amounts, varying from 1,000*l.* to 2,000*l.* she leaves to her relations and acquaintance, and legacies of smaller amount to others of 100*l.* 200*l.* and 300*l.* She particularly desires her executors to continue to pay the annuities to such of the old servants named in the will and codicils of her late husband, Mark Davis, Esq. as shall be living, during their lives. The residue of her real and personal estate (not disposed of by her will and codicils), including money, rents, carriages, horses, cattle, furniture, and every other description of property, she gives to her executors for their own use. By a codicil, executed the same day as her will, she has remembered those charitable institutions in her own and adjoining counties, to which she had so liberally subscribed in her life-time by leaving to the treasurers the following legacies: — To the Dorset County Hospital, 800*l.* To the Bristol Infirmary, 500*l.* To the Bristol Blind Asylum, 200*l.* To the Salisbury Infirmary, 200*l.* Her ladyship has very handsomely provided for her old and faithful servants by bequeathing to them the following annuities for their lives:—To her butler, 100*l.* a year; to her gardener, 40*l.* a year; to her housemaid, 30*l.* a year; to her cook, 20*l.* a year; to another servant she gives a legacy of 100*l.* and to a labourer on her estate, 30*l.* By the other codicil, made a few days after her will, she disposes of some jewellery and trinkets, and gives pecuniary legacies of various amounts to personal friends. Her ladyship's personal estate is sworn under 90,000*l.*—*Ibid.*

Munificent Bequests.—Mr. James Waterhouse Smith, who died at his house in the Regent's-park on the 5th inst. has by his will bequeathed the following sums in the Three per Cent. Consols to the undermentioned charities:—To the British and Foreign Bible Society, 2,000*l.*; to the Society for Promoting Christian Knowledge, 2,000*l.*; to the Metropolis Church Building Fund, 2,000*l.*; to the Middlesex Hospital, 2,000*l.*; to the National Society for Promoting the Education of the Poor in the Principles of the Established Church, 1,000*l.*; to the Society for the Propagation of the Gospel, 2,000*l.*; and has directed the whole to be paid, free of duty, within three months after his decease.

Dr. Cotgrave, who recently died at his residence, Greg's-green, near Henley-on-Thames, has left 2,000*l.* to the Chester Infirmary, 1,000*l.* to the Westminster Hospital, and 500*l.* to the Berkshire Hospital. The deceased was surgeon to her Majesty's forces, and served thirty years in the 35th regiment, and accompanied that fine corps to Holland, Malta, Calabria, and Egypt.—*Historical Register.*

Iltid Nicholl, Esq. her Majesty's Procurator-General.—The executors under the will of this gentleman have just obtained probate in Doctors' Commons. The amount of effects have been sworn under 160,000*l.* He had held the office of Proctor to the Crown for a period of thirty years. (The appointment is still vacant.)

IRISH LEGAL INTELLIGENCE.

Dublin, Wednesday evening, Jan. 23.

JUDGES' COUNCIL CHAMBER.

IMPORTANT MEETING.

A meeting of the Benchers of the Hon. Society of King's Inns was held yesterday at one o'clock, in the Judges' Council Chamber, Four Courts, for the purpose of investigating, at his own request, certain charges made against James Josiah Hardy, barrister-at-law, relating to the fabrication of various documents in the cause of *Foster* v. *Gould*, at present pending in the Court of Chancery. The attendance of benchers was very large, and included the Right Hon. the Lord Chancellor, the Right Hon. the Master of the Rolls, the Right Hon. the Lord Chief Justice of the Queen's Bench, the Right Hon. the Lord Chief Justice of the Common Pleas, the Right Hon. the Lord Chief Baron, the Hon. Mr. Justice Burton, the Hon. Baron Pennefather, the Right Hon. Baron Richards, the Hon. Baron Lefroy, the Hon. Mr. Justice Ball, the Hon. Mr. Justice Jackson, the Right Hon. Judge Keatinge, Mr. Commissioner Macan, Mr. Commissioner Farrell, Mr. Commissioner Plunkett, the Right Hon. D. R. Pigot, Q.C.; Master Henn, Master Townsend, Master Goold, Sir T. Staples, bart. Q.C.; the Solicitor-General; Dr. Stock, Q.C.; A. Lyle, Chief Remembrancer; Mr. Brooke, Q.C.; Serjeant Warren, Mr. Richard Moore, Q. C.; Mr. Henn, Q.C.; Mr. Bennett, Q.C.; Mr. Holmes, and Mr. Gilmore, Q.C. They were, in fact, all present, with the exception of the Right. Hon. Mr. Justice Perrin, and the Hon. Mr. Justice Crampton, who were engaged hearing law arguments in the Court of Queen's Bench; the Right Hon. the Recorder, who was presiding in his own court; Hon. Mr. Justice Torrens, Sir Henry Meredyth, bart.; Master Litton, and the Attorney-General.

Mr. Hardy was sent for as soon as their lordships met, and entered the chamber, accompanied by his counsel, Mr. Whiteside, Q. C. and Mr. L. Smith, from which the public were excluded. There was also an order made against the admission of the press, which prevents the possibility of laying the particulars of the charges, or the defence made to them, before your readers.

We understand that the several charges having been read in the usual manner upon such occasions, Mr. Whiteside was heard upon behalf of Mr. Hardy, for upwards of four hours, until past five o'clock, when their lordships adjourned until Tuesday next, at one o'clock.

The Magistracy.—The Lord Lieutenant has appointed Thomas Bailey, esq. J.P. of Mulladuff, county Fermanagh, a stipendiary magistrate, to fill the vacancy created by the promotion of Major Priestley, who has been appointed Deputy Inspector general of Constabulary, in room of Major Galway, deceased.

Joseph Tabiteau, esq. R.M. has been appointed superintending magistrate in Tipperary, in the room of E. J. Priestley, Esq.

John Smyth, esq. White Park, Ballyclare, has been appointed magistrate for the county Antrim.

Dawson French, esq. of Tullamore, has been appointed a magistrate of the King's County.

Spring Assizes, 1845.—The following are the circuits which the judges have selected to go at the next assizes:—

Leinster Circuit—The Right Hon. the Lord Chief Justice, the Right Hon. Baron Lefroy.

North-West—The Right Hon. Lord Chief Justice Doherty, the Right Hon. Baron Pennefather.

North-East—The Hon. Judge Torrens, the Hon. Judge Crampton.

Home—The Right Hon. the Lord Chief Baron, the Hon. Judge Burton.

Connaught—The Right Hon. Judge Perrin, the Right Hon. Baron Richards.

Munster—The Right Hon. Judge Ball, the Hon. Judge Jackson.

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

PETITION AGAINST THE CERTIFICATE DUTY.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled:

The humble Petition of the undersigned Attorneys and Solicitors practising in England and Wales,

Sheweth,

That, by an Act of Parliament passed in the 55th year of the reign of his late Majesty King George the Third, c. 184, the following Annual Duties were imposed upon every Attorney, Solicitor, and Proctor:—

On those practising within the limits of the two-penny post, who have been admitted for three years or upwards	£12
On those not admitted so long	6
On those residing elsewhere who have been admitted three years	8
On those not admitted so long	4

That by the same Act a Stamp Duty of 120*l.* is also charged upon all Articles of Clerkship to an Attorney, Solicitor, or Proctor, and a further duty of 25*l.* upon his admission, and which, with the fees paid the officers of the different courts thereon, amounts in the whole to the sum of 150*l.*

That the duty on Articles of Clerkship and Admissions affords of itself a large revenue, which, with the Certificate duty, is exclusively levied on your petitioners, no other profession, nor even the higher branch of your petitioners' profession, being burthened with a similar tax.

That the duties on Articles of Clerkship, on [illegible]

rage of the ten years ending July 1835, since which time no return has been made, amounted annually to £60,950
and on Admissions to 8,330

That your petitioners do not complain of the duty on Articles of Clerkship, because it tends in their judgment to maintain the respectability of the profession, but the Certificate Duty was imposed by the Parliament of 1785, as a War Tax, objectionable in principle, but rendered necessary by the exigencies of the times; that it was not even proposed by the minister of the day, but was a suggestion of an individual member of Parliament, to relieve the Government from the unpopularity of imposing a tax upon shopkeepers and servants.

That its amount, then fixed at 5*l.* has been more than doubled by the first-mentioned Act of Parliament.

That your petitioners' profession is the only profession or trade in which an individual is restrained by law from estimating the value of his own time and services.

That the Certificate duty was originally imposed, and subsequently increased, on the assumption that the profits of a professional man were sufficiently ample to justify the imposition of a personal and extraordinary tax; such principle of taxation is manifestly unsound, but if the fact were so, the alterations made in the practice of the law by successive Governments have now reduced the emoluments of an Attorney even below the limits of a fair remuneration for his services and responsibilities.

That your petitioners pay their equal share of all the taxes imposed on the community at large, and feel particularly that the Certificate duty peculiarly levied on their branch of the profession is not founded on any just principle, but is a personal and partial tax.

Your petitioners, therefore, most humbly pray your Honourable House that the annual Duty on Certificates of Attorneys, Solicitors, and Proctors, may be wholly repealed.

And your petitioners shall ever pray, &c.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

SIR,—I am directed by the Council of Inquiry and Direction of the Metropolitan and Provincial Legal Association to forward you the annexed Petition, and to beg that you will have the kindness to obtain as many signatures of Attorneys in your town, on the lined leaf, as you possibly can, their names being written on the left side of the line, and their addresses on the right, and return the same to me in the course of next week. The signatures will be joined to the foot of a copy of the Petition now sent, which is lying for signature in London.

I am, Sir, your obedient servant,
GEO. FITCH, Secretary.
15, New Bridge-street, Blackfriars, London,
16th Jan. 1845.

The objects of the Metropolitan and Provincial Legal Association are—

1. To promote and support the general interests of the profession.
2. To prosecute all unqualified persons who may usurp either the duties or privileges of the profession.
3. To originate and assist in obtaining all useful and practical reforms and amendments of the law.
4. To expose and punish all persons guilty of any acts of malpractice, whether they be Members of the Bar, Attorneys, or Solicitors.
5. To maintain the respectability of the profession by an honourable and liberal mode of practice.
6. To adopt measures for obtaining a co-operation with all Law Societies (Provincial or Local) having similar objects in view.

Every Attorney and Solicitor is admissible as a Member on payment of the Annual Subscription of One Guinea, subject to the approbation of the Council.

CORRESPONDENCE.

LEASE FOR A YEAR STAMP.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It is universally admitted that the stamp-duty imposed on the old lease for a year, operates very cruelly upon small conveyancing transactions; but now that that instrument, both in form and effect, is totally abolished, the cruelty, absurdity, and injustice of continuing the stamp, are equally manifest; and if the subject were taken up by the different Law Societies, aided by your powerful influence, surely we may hope to have that trifling portion of the revenue made the subject of "repeal" in the ensuing session, particularly as there is good ground for believing that the Government will be able to effect a very considerable reduction in the general taxation of the country.

While on this subject I will take the liberty of adding a few words respecting the attorneys, "certificate" duty. In my humble judgment the Profession has not sufficient strength and influence in the House of Commons to procure a total repeal of that duty, and I think an endeavour to get it *reduced one half*, would be much more likely to be successful. As a body I fear we are quite unable to enlist public sympathy in our favour, and a cry of "class-legislation" will be powerfully raised against us. Moreover, if, as is pretty generally thought (though perhaps without any good reason), the tax upon incomes derived from trades and professions should happen to be discontinued, it is pretty certain that an application for a repeal of our certificate duty in the same session will not be listened to for one moment. At least such is the humble opinion of, yours obediently,

EDWARD ARGLES.
Biggleswade, Jan. 21, 1845.

ASSIGNMENT OF ARTICLES OF CLERKSHIP.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg, in reply to the question of E. L. inserted in your paper of the 11th inst. to state that *my* strong impression is, the assignment by B to C was wrong, the term created by the original articles having expired, and so there being in fact nothing to assign. (See *ex parte Rowle*, 2 Chitty's Rep. 61.) There should, I think, have been fresh articles of clerkship entered into, whereto A and C, not B and C, without A, as E. L. suggests, should have been parties.

If my view be correct, the course for A to pursue now is, to enter into new articles with C, or some other master, for *five years*, with a proviso to enable him at the expiration of *half-a-year* to apply for his admission as an attorney, and a covenant by B to suffer him afterwards to practise on his own account.

Thus would the law requiring a five years' service under a contract for five years, be satisfied; which it could not be by a service for four years and a half under such a contract, and a subsequent service of six months under an assignment of a residue, which, in fact, was at the time an actual nonentity.

The stamp duty on the old articles can be yet allowed, if A delivers them up at the Stamp-office within six months after the new articles are executed.

I am, &c.
Chippenham, Wilts, E. F. SLACK.
Jan. 17th, 1845.

CORPORATION OF GLOUCESTER *v.* WOOD.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your report of this judgment in the LAW TIMES of yesterday, you close the judgment in these words, "If the plaintiffs refuse to accede to the terms proposed by the Court, their application must be refused with costs." The case before the Chancellor was an appeal from the order of the Vice-Chancellor, made by the Corporation, and their appeal was dismissed with costs, and the order of the Vice-Chancellor Wigram confirmed.

Yours, &c.,
Cheltenham, J. S. COX.
Jan. 19th, 1845.

SELECTIONS FROM CORRESPONDENCE.

"J. R." (Warrington) thus comments on the proposed alterations in the form of deeds:—

At a time when the new forms under the 7 & 8 Vict. c. 76, are subjected to much scrutiny and criticism, I trust the following few observations will not be considered irrelevant. The new, like the old precedents, contain one very glaring error, which has more than once been the subject of sarcastic ridicule. The error I allude to is the use of a nominative case and the total omission of a verb to agree with it at the commencement of a deed when recitals are introduced before the testatum. The old precedents began—"This indenture, made, &c. between, &c. whereas, &c.;" and in the new we say —"This deed, made, &c. between, &c. whereas, &c." This indenture, or this deed, does what? The only answer that can be given is, *whereas*, which is sheer nonsense, and for which even a schoolboy would be soundly thrashed, were he stupid enough to write it. It is surprising that lawyers should allow themselves to be taunted with so gross a violation of one of the very simplest rules of grammar, and still more surprising that they should continue to be guilty of it after having had their attention on many occasions called to it. When recitals are used before the testatum, why cannot deeds begin thus:—"This indenture," or "This deed, *is* made, &c.?" The introduction of the word *is* seems to me far more preferable than that of the indefinite article. The *is* may be inserted or omitted to suit circumstances; it may be inserted (and it *ought* to be) when recitals come before the testatum, as above; and it may be omitted when recitals are not so used. In the latter case, *witnesseth* becomes the verb to the nominative. "Deed made the day of , between," &c. (as suggested by your correspondent, John Forster, last week), or, "A deed made, &c." or, "A deed is made, &c." will not answer the purpose so well as "this" before deed or indenture. The sound only of any of the last three forms is quite enough; and more than that, if we used them we should but leave off one bad habit and acquire another. To be satisfied of this, we need only ask, What deed is made? or What deed witnesseth? and the answer is, *a deed*, and this, to my mind, appears to be simply nothing more than a bare assertion, or at most something in the shape of a recital. We must retain the old word, and say, "*This* deed is made," or, "This deed, made, &c. between, &c. witnesseth."

I shall feel obliged by your inserting this in your next, or when most convenient, as I have frequently wished to direct the attention of the Profession to the subject, and the preceding remarks *may* be of some service now that conveyancing precedents are undergoing revision.

To Readers and Correspondents.

J. M. (Oxford.)—*They will not, except by courtesy.*

J. E. R. (Delph).—*The suggestion is impracticable. We cannot, as it is, find room for all. We have to cater for many different wants.*

LEX.—*Undecided cases are always classed under "Business of the Week." A rule nisi is a decision, and often a final one in fact. The* LAW TIMES *is rather a record than a report.*

Erratum: STONEHEWER *v.* PARFIT.—*This case, owing to an accidental oversight at the printing office, was headed, in the Q. B. report of the last* LAW TIMES, *as Mair v.* Parrot.

WILLOUGHBY *v.* WILLOUGHBY.—*In our last number it was reported with a* cur. adv. vult. *It has since been ascertained, what no one at the time seemed to understand, that the rule was discharged; but this was discovered too late in the week to admit of the argument being reported. It will appear next week.*

TO SUBSCRIBERS.

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

An Alphabetical Index to the Cases in the current Volume of the LAW TIMES *always lies at the Office for the purpose of reference.*

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at 5s. 6d. each, if forwarded to the Office.*

THE LAW TIMES.

SATURDAY, JANUARY 25, 1845.

LORD BROUGHAM'S ACT.

THE following paragraph appears in the daily papers:—

DECLINE OF BUSINESS IN THE INFERIOR LAW COURTS.—Since the passing of Lord Brougham's Act abolishing imprisonment for debt, there has been a very material decline of business in the Sheriffs' and Secondaries' Courts, plaintiffs not feeling very desirous to enter actions, when, if they obtain a verdict, they are not very likely to recover, after the heavy expenses they have been at in taking out writs. At the Secondaries' Court there are seldom more than two or three cases; at the last sitting there was not one case for trial, and at the Sheriffs' Court most of the trials are now undefended.

The decrease of lawsuits may, at first sight, appear to be a matter rather for congratulation than regret; and unreflecting persons might

be inclined to thank Lord BROUGHAM for having cleared the small-debt courts of business. But how has this result been produced? By giving the litigant parties a more simple and less costly remedy? By enabling the honest creditor to recover his due from his dishonest debtor, without resorting to a judge and a jury? Far from it. The result has been reached by the process of depriving the creditor of all remedy, by an absolute denial of redress to the wronged, and by giving an indemnity to the dishonest. The courts are clear of suitors, because it is useless to obtain a judgment which cannot be enforced; litigation has decreased, because an appeal to the law has been rendered worthless; creditors do not sue, because Lord BROUGHAM has taken away from them their remedy—and they are compelled to submit to be robbed by any rascal who owes them less than 20*l.* because for robbery in this shape the law has provided no new punishment in lieu of that which the legislature so thoughtlessly abrogated.

If any proof were wanting, beyond the painful experience of every man who has a debtor, of the mischievous operation of Lord BROUGHAM'S Act, it is provided by the paragraph quoted above. Courts of justice have been by that cruel enactment rendered altogether nugatory. What a mockery is the machinery that labours to no result! Lord BROUGHAM should have added to his statute a clause for the abolition of all courts for the recovery of debts under 20*l.* Having made their judgments worthless, it would have been but fair to the public, by whom the expenses of courts of justice are borne, to dismiss their judges, close the rusty hinges of their doors, and convert their empty benches to some useful purpose.

POOR PRISONERS.

IT is always pleasant to us to be enabled, amid the severer duties of a professional publication, to find or make an opportunity for advancing the cause of humanity, and the very novelty of such themes, scattered here and there among the sober discussions of legal topics, make them, perhaps, more effective than when they appear where they are looked for almost as a matter of course.

In this manner has the LAW TIMES enjoyed, on several occasions, the satisfaction of directing the attention of its many readers to wrongs which the administration of the law unwittingly inflicts upon the poor and friendless, and still more of finding its appeals to the reason and right feeling of its readers promptly met by exertion on their parts to remove the evils complained of. And here let us perform a simple act of justice in declaring that there is not in this land of charity a more benevolent body of men than the lawyers, nor any who more distinguish themselves, not only by direct charity, but by active support of all institutions having for their object the relief of the woes or the amelioration of the condition of the poor, and in the exercise of their profession by the mildness with which they employ the power intrusted to them, the forbearance they exercise towards those whom they believe to be treating them with good faith, and the readiness with which they support every amelioration of the law that may tend to relieve the burdens of the poor or to speed the course of justice, however apparently disadvantageous may be the change to their personal interests. And in this estimate of the character of the Profession, as a body, we believe we shall have the cordial concurrence of all who take the trouble to note who are the men everywhere foremost to advocate the cause of humanity and justice.

We know, therefore, that when it has a real grievance to complain of the LAW TIMES never appeals in vain to the Profession, and we felt assured when, some months since, shocked at a sad case we had just beheld, we seized the pen and drew up a plea for the poor prisoner, that somewhere it would be heard and answered, and that it would be the means of providing redress for some and relieving a portion at least of the woes of a class who have more advocates than friends, about whom every body declaims in generals, while nobody descends to point out the particular evils and prescribe a cure for them.

Nor was our expectation disappointed. At the Leicestershire Quarter Sessions the subject has been mooted and discussed, and excited warm sympathy, and will no doubt lead to the devising of some practical measure by the magistracy. In the town of Leicester some benevolent persons have taken up the subject in another form, and founded a society to provide a refuge for poor prisoners acquitted. But the report of the proceedings in the county newspaper, and a letter of one of its correspondents, exhibit what has been done or is doing in that locality, and in hope that the examples there set may be followed in other parts of the country, and that the subject might attract the notice of some benevolent member of Parliament, who might provide a legislative remedy for a palpable mischief, we cite a portion of the report and letter, including the article that instigated both.

The Report of the Visiting Magistrates of the gaol having been produced, Mr. HODGSON, one of the Visiting Magistrates, read the following article from the LAW TIMES:—

"There is an evil that cries aloud for remedy.

"A prisoner is acquitted and discharged. If he have a home to return to, and friends to help him on the way, he suffers no other mischief than the anxiety of a trial, the imprisonment that precedes it, and the cost of his defence, and his family the loss of their little furniture, and their dinners for a few weeks.

"But if the prisoner, who has been prosecuted by the Crown, and pronounced "Not guilty" of the crime with which he has been charged, be unfortunate enough to have no home, no friends, he is, by our beneficent law, turned loose upon the world without a penny in his pocket, and no means of earning one, to starve or become in reality the criminal he was before only suspected to be.

"A striking illustration of this defect in the administration of criminal law has just occurred, and which suggested this commentary.

"A little boy, twelve years old, was tried at the Exeter Assizes on a charge of arson, and acquitted. The child was much agonized during the trial, and excited the interest of many of the spectators. Some of them addressed the gaoler, and hoped that the little fellow would be delivered to the care of his friends. It then appeared that he had no friends. He was an orphan, and had wandered from London in company with his fellow prisoner, who had been convicted of the crime with which they were jointly charged. He was obviously too young to earn a livelihood. How, then, was he, turned out penniless into the streets of Exeter, to find food even for the day? Still it was nobody's *duty* to see to this, there was no fund wherewith to help poor prisoners to the procuring of an honest livelihood. Another case was called on, that of the child was forgotten.

"Where he is now, God knows. The probability is, that to save himself from starving he has violated the law from whose grasp he has been so recently delivered. Who can wonder if the next assize sees him again at the bar—a criminal? The wonder will be, if he escape from his terrible temptation unstained and honest.

"What is this but manufacturing criminals! How melancholy this process of first making thieves, and then punishing them. What a mockery to command people to be honest, and then to throw them into situations in which honesty is almost impossible.

"Nor is the case we have narrated a singular one. At every assize and sessions it happens that prisoners are brought to the assize town from distant parts of the county, acquitted, discharged, and left to find their way back again as best they may. The consequences of this may be anticipated.

"Is it expedient that such a state of things should continue? But we go further, and ask if it be just? Should a man who has been wrongly accused, and upon that charge dragged to a distant part to take his trial, be thus treated? Has he not a fair claim upon his accuser, the public represented by the Crown, at least to return him to the place from whence it wrongly took him?

"It is worthy of note, that there is a fund from which the convicted criminal receives relief on his quitting the gaol, after the expiration of his sentence. It is only the innocent, or the man pronounced innocent, to whom aid is refused."

Mr. Hodgson then said, the subject thus introduced was an important one as related to those persons who had left the gaol. Formerly passes were issued, but they were never properly returned, and there was no encouragement felt for continuing that practice. It had also been spoken of by certain parties, and Mr. Bracebridge had brought before the Court the subject of establishing a refuge for prisoners.

The Chairman said, the refuge in Warwickshire was only intended for convicted juvenile offenders.

Mr. Hodgson said he mentioned the subject in order that the magistrates might give their best consideration to it.

A lengthened discussion ensued, evidencing the strong interest taken in the subject by the magistrates.

A correspondent of the *Leicester Journal* enters into some further particulars of the movement which the LAW TIMES had thus suggested. He says:—

In the autumn of 1843, two men were indicted at Leicester for stealing a piece of bacon from their companions, while carousing in a public-house. The defence was that it was taken in a joke, and had the theft been of a silk umbrella, a snuff-box, a walking-stick, a pen-knife, or the like, and the prisoners been gentlemen, it is certain that the jury would have taken that view of the case. As, however, the practical jokes of labouring men are not so well understood, the person who actually took the bacon was convicted; his companion, whose innocence was in truth proved, by the very witnesses for the prosecution, was acquitted. A gentleman present at the trial was passing through the hall at the time when the convicted prisoner was being removed to the cells beneath the Castle, and was attracted by the sympathy which the man who was acquitted manifested towards his less fortunate companion, and the grief which he felt at seeing him led away to punishment. Some inquiries were made of the *lucky one* as to his home and the state of his pocket; the first was 18 miles distant, and the last was empty! Think of this,—a labouring man confined all day in those dreadful cells, brought to trial, and discharged late in an October evening, 18 miles away from home, without a penny and without a friend!

The injustice and cruelty to the individual, the mischief which society itself was likely to sustain by this, its culpable neglect of one of its members, made a deep impression on the minds of those who had seen or heard of the case; and when the same subject was taken up by the LAW TIMES, and commented upon in the article read by Mr. Hodgson, it was determined that that article should *be reprinted, and circulated amongst those who, acquiescing in the existence of the evil, might attempt to afford some remedy.* In October, last year, a few gentlemen in this town having accidentally met together (and amongst them the Rev. *Vicar of St. Mary's*)—a St. Vincent, a John Howard, a Jonas Hanway—the circular in question was read, and a society instituted then and there, having for its object the relief of such cases as I have mentioned, and it was from this society that the circular was sent to Mr. Hodgson.

Now, then, Mr. Editor, if the evil be such as calls aloud for a remedy, here is an attempt to supply one; and if the society be but supported (and it needs but little support) that remedy will be effectual. It needs but little support, because the cases to which it applies are few in number, and the relief needed (though it may snatch a man from destruction, though it may save him from despair) can be afforded at a little cost. For this reason the society makes no fuss, it will print neither report nor subscription list; it has apprized the governor of the gaol of its existence, and requested that he will intimate to the destitute who pass from his custody where they may find aid and sympathy; and while the finances of the society permit it, that aid and sympathy will be supplied. All that is required to keep the supply from failing, is an occasional donation; and this, I trust, some of your readers may be disposed to offer on behalf of the society, for the relief of acquitted and destitute prisoners.

ADVERTISING ATTORNEYS.

THE following Advertisement appeared in the *Salisbury Journal* of the 18th inst. We have seldom recorded a more disgraceful one. Can any reader help us to discover the author, that he may be exposed to the reprobation he deserves? The LAW TIMES has, it seems, deterred from open advertisement, and now resort is had to the system of anonymous advertising, of which, in another article, we have published another shameless specimen; but their masks shall not shield the perpetrators, if we can find any clue to their persons.

MR. FARREN'S CASE.

We give a prominent place to the following Letter, addressed to us by Mr. Farren.

20th January, 1845.

Mr. Editor,—As you profess that your columns are at present open to me, this letter is sent to you for insertion in preference to any other newspaper, because it is your due, and it must be inserted somewhere.

Your article concerning myself in the Law Times of last week is considered, I am told, an extremely clever and yet sufficiently ample apology: the question naturally arises now, what do I intend to do? My answer is, to do nothing more than this, namely, to leave you and your readers to enjoy that confidence in each other which you have hitherto been pleased to flatter each other with; and to request, in the politest manner, both you and them to take fewer liberties with my name for the future.

Your obedient servant,
George Farren,
Chancery Barrister.

1, Symonds Inn, Chancery-lane.

Let not Mr. Farren mistake our meaning. We *retract* the animadversions we passed upon *him* in the belief that he was the author of the letter and advertisement that bore his name; but we make no *apology* for having employed them, because the evidence, as it stood, justified the belief, and because, so believing, the severity did not exceed the desert. Were the same circumstances again to occur, we should act in precisely the same manner.

It remains now but to state that the correspondent from whom we received the memorable documents instantly responded to the call made upon him in the article of last week, and by the next post forwarded to one of the Benchers of Lincoln's Inn his name and address, and all particulars of the manner in which the documents came into his possession, thereby kindly relieving us from the only difficulty of the case, our inability to produce the hand that received and transmitted the advertisement.

PROFESSIONAL MALPRACTICES.

It was to be hoped that the recent efforts so promptly made by the Benchers of some of the Inns of Court to vindicate the honour of the Bar, and to purge it from those who by malpractices have been bringing upon the Profession a disrepute calculated materially to lower its influence in public estimation, and thereby to inflict a serious mischief upon society, to whom the existence of a dignified and independent bar is of vital importance;—we say, that hopes might have been entertained that the searching investigations and summary punishment where the proof was brought home to the party accused, which have been proceeding for some months past,—would have served at least to deter others from plunging into similar malpractices.

Greatly are we grieved to see, by some papers now before us, that the warning has, in one instance at least, failed of effect. As the offending party is, we believe, yet young, we withhold his name; but we publish the facts, to apprize him that his proceedings are known, to warn him at once to pause before he is further committed, and as an example to such as might be tempted to do the like, that they cannot hope to escape discovery, for there are eyes upon them which will pierce even the anonymous.

The documents were transmitted to us with the following letter, which will appropriately introduce them:—

TO THE EDITOR OF THE LAW TIMES.

Sir,—The inclosed letters have been sent to a gentleman who has entered his name for examination at the next Easter Term, and I understand similar communications are addressed to all gentlemen as soon as they give notice of their intention to apply for examination.

Do you consider such conduct to be in accordance with professional and honourable practice? Is there any difference between applications for pupils, and applications for practice? and if "Alpha" may render his fee for teaching *contingent* on success, why should he not equally render his fee for conducting a cause *contingent* on success? Does Mr. —— offer to transact legal business for a moderate remuneration from attorneys? If not, why does he *offer* to *cram*, for a moderate remuneration from articled clerks?

I trust that your powerful aid will be lent to destroy this system, which tends to degrade not only those who are the chief promoters of it, but the whole body of our Profession.

I am, &c.
A Member of Lincoln's Inn.

The first of these documents is a circular, which appears to be addressed to the Articled Clerks who give notice of application for admission. It runs thus:—

London, 15th Jan. 1845.

A gentleman at the Bar of some years' standing, who has read with and prepared upwards of two hundred and sixty gentlemen for their examination, prior to their admission as attorneys and solicitors, none of whom have been rejected, continues to receive pupils on moderate terms.

For particulars, or an interview, apply by letter (pre-paid), addressed to "Mr. J. care of Messrs. Benning and Co. Law Booksellers, 43, Fleet-street."

And to bait with two hooks, the following, which is lithographed, is also sent:—

London, 1st Jan. 1845.

Having devoted a considerable portion of my time to the studies requisite for passing the usual examination at the hall of the Law Institution, and having directed my attention more particularly to the Principles and Practice of the Courts of Common Law and Equity, and having guided the studies of a great number of gentlemen with unfailing success, I am induced to offer assistance to such candidates as may be desirous of availing themselves of the services of a tutor in preparing for the examination of the ensuing Easter Term.

The course of study I pursue is such as cannot fail, with proper attention on the part of the student, to ensure his admission into the Profession of the Law, as well as a due qualification for the performance of its various duties.

My terms are such as will meet the views of all to whom economy may be a consideration, and should a personal interview be desirable, I shall be happy to make an appointment, on receiving a line addressed to C. D. care of Mr. Duke, Law Stationer, No. 99, Chancery-lane.

I am, Sir, your most obedient servant,
Alpha.

P. S. Most satisfactory references can be given, and the fee for preparing students for examination is very moderate, and can be made contingent on the student's success.

Upon application being made to Mr. J. at Benning and Co.'s, or to C. D. care of Mr. Duke, law stationer, the following letter, with the advertiser's name and address, which in mercy to him we withhold, was received by the articled clerk:—

Sir,—Permit me to inform you that I systematically read (both privately and in class) with gentlemen *before* their examination and *after*, so as to prepare them for actual practice.

My method of study (developed in my public lectures, and approved of by the Profession) having *in no instance* failed, justifies me in offering my assistance to you for a moderate remuneration.

Yours very obediently,

Jan. 6, 1845.

We understand that the gentleman who thus "does good by stealth" is not yet called to the Bar, but that he has been proposed. If so, he is not yet amenable to the laws of Professional etiquette, and we hope he will take this friendly warning in good part, and seeing that he is known to others as well as to ourselves, that he will resolve, from the moment he takes the honourable degree he is about to assume, to eschew such practices as we have recorded, and employ his abilities in the advancement, instead of for the degradation of, the noble Profession he is about to join.

Should he offend in like manner after this warning, he must not hope again to have his name withheld from his letters.

VERULAM SOCIETY.

The second number of *Practice Cases* is ready for delivery, but it is not transmitted to country members, waiting for the sixth number of *Magistrates' Cases* to be inclosed with it.

The seventh and eighth numbers of *Real Property and Conveyancing Cases*, and the third number of *Practice Cases*, are in the press.

The returns from the circular sent to the members last week, containing a new list of books proposed for publication, are not yet completed, so it cannot be stated which of them are adopted. May we ask those who have not yet returned the circular to do so forthwith, even if they order none of the works proposed for. Until all are received the estimate cannot be made.

It appears, from the remarks appended to many of the orders, that there is a general desire that the first volume of the *Year-Book* should carry on the Digest of the Reports and Statutes from the point where the last edition of Harrison closes, and that afterwards it be continued yearly, with a quinquennial index. We are quite of this opinion, and most probably the suggestion will be adopted.

Many inquire if they will be compelled to continue the serial publications, whether liked or not. We answer, certainly not. If not approved, they will not be proceeded with.

The following members have been enrolled since our last report:—

Brown, Fred. L. Llanelly.
James, E. W. Greenwich.
Chambers, W. Llanelly.
Burrup, J. Gloucester.
Haywood, Bramley, and Gainsford, Sheffield.
Tennant, John, Kirkby Lonsdale.
Hanslip and Palmer, 20, Thavies'-Inn.
Knight, Fred. A. Special Pleader, 1, Mitre-court-buildings.

NECROLOGY.

SIR C. F. WILLIAMS.

On Saturday morning, at 2 o'clock, Sir C. F. Williams expired at his residence in Hyde Park-square of an affection of the heart. The deceased knight was a commissioner of bankrupts and a bencher of Lincoln's-inn.—*Observer.*

THE EARL OF ST. GERMAINS.

We have to record the death of the Earl of St. Germains, intelligence of whose demise reached town on Monday morning from Port Eliot, St. Germains, Cornwall. We are informed, on the authority of a letter bearing the melancholy news to a near relative, that the noble Earl was seized with a spasmodic attack in the early part of the week, a complaint his lordship was subject to, but at first no positive alarm was created. However, at half-past 12 A.M. on Sunday morning, the noble earl expired. The deceased William Eliot, Earl of St. Germains, and Baron Eliot of St. Germains, county of Cornwall, in the peerage of the united kingdom, was third son of Edward, first Lord Eliot, by Catherine, only daughter and heiress of Mr. Edward Elliston. He was born on the 1st of April, 1767; so he was at his death within a few months of attaining his 78th year. The deceased earl was married no less than four times; namely, first, to Lady Georgiana Augusta Leveson Gower, fourth daughter of Granville, first Marquis of Stafford, and sister of the late Duke of Sutherland, on the 1st of November, 1797, who died on the 24th March, 1806; secondly, on the 13th of February

1809, Letitia, eldest daughter of the late Sir William Pierce Ashe A'Court, Bart., and sister of Lord Heytesbury, the present Lord-Lieutenant of Ireland, who died the 20th of January, 1810; thirdly, on the 7th of March, 1812, Charlotte, eldest daughter of the late Lieutenant-General John Robinson, and granddaughter of the late Earl of Powys, and she dying the 3d of July, 1813, the earl married fourthly, on the 30th of August, 1814, Susan, sixth daughter of the late Sir John Mordaunt, Bart., and aunt of the present baronet, who died on the 5th of February, 1830. The noble deceased had only issue by his first marriage, namely, Edward Granville, Lord Eliot, M.P., Chief Secretary for Ireland; Lady Caroline Georgiana Eliot, born July 27, 1799, unmarried; Lady Susan Caroline, born April 12, 1801, and married in July 1824 to the Hon. Lieutenant-General H. Lygon, but who died in January 1835; and Lady Charlotte Sophia, married to the Rev. G. Martin, Chancellor of the diocese of Exeter, who was born 28th of May, 1802, and died in July, 1839. The late Earl succeeded to the family honours and estates on the death of his brother John, first Earl of St. Germains, the 17th November, 1823. The Earl was as a politician a Conservative, and possessed considerable election interest in the county, having, previous to the Reform Bill, returned four members to the House of Commons, but of late years his lordship had not interfered in the opinions of his tenantry, nor indeed at any time did he exercise his political sentiments in a way oppressive to his dependants. He is succeeded by his only son, Lord Eliot. He was born 29th August, 1798, and married September 2, 1824, Lady Jemima Cornwallis, third daughter of Charles, second Marquis Cornwallis, by whom he has a family of seven children, his eldest son, Edward, now Lord Eliot, having been born the 2nd of April, 1827. The present Earl will, of course, relinquish his office as Chief Secretary for Ireland, an appointment he has held since Sir Robert Peel was summoned to direct the affairs of the Government. His lordship, then member for Liskeard, from 1827 to 1830 was a junior Lord of the Treasury. In 1835 he was selected by Sir Robert Peel to proceed to Spain as a mediator between the armies of the reigning Queen of Spain and Don Carlos, when his lordship concluded that well known convention which bore his name. He was elected to represent Liskeard in 1824, and sat in the House of Commons for that borough eight years. In 1837, at the general election, he was returned for the eastern division of the county of Cornwall by a considerable majority, and has since had the honour to sit for that county. The families of the Duke and Duchess of Sutherland, Earl and Countess Granville, the Earl of Harrowby, Dowager Duchess of Beaufort, Lord and Lady Blantyre, the Marquis and Marchioness of Lorne, Lord and Lady Francis Egerton, Archbishop of York, Viscount and Lady Frances Sandon, the Hon. Lieutenant-General H. Lygon, the Duke and Duchess of Norfolk, and many other families of the highest rank, are placed in mourning by the noble Earl's demise.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Atkinson, R. ironmonger, first, 3s. 4d. to new proofs, second, 3s. to old proofs. Wakley, Newcastle.—*Banks*, J. tallow chandler, second, 4d. Bird, Liverpool.—*Broome*, W. draper, second and final, 3¼d. Groom, London.—*Buckton*, J. grocer, first, 3s. 4d. to new proofs. Baker, Newcastle.—*Butterworth*, T. W. draper, first, 1s. 10½d. Hobson, Manchester.—*Fairclough* and *Co.* merchants, second, 7d. Bird, Liverpool.—*Mills*, W. F. merchant, second, 6s. 6d. Groom, London.—*Noel* and *Co.* boot makers, first, 3s. 6d. Belcher, London.—*Oliver* and coal masters, second, 8s. Whitmore, London.—*Palmer*, R. saddler, first, 5d. Groom, London.—*Perkins*, W. ship builder, second, 1d. Acraman, Bristol.—*Reynolds*, E. silk printer, first, 2s. 11½d. Whitmore, London.—*Storm*, D. builder, first, 1s. Acraman, Bristol.—*Walker*, W. dealer and chapman, first, 10½d. Hobson, Manchester.—*Whitmarsh*, T. hotel keeper, second, 3d. Groom, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Jan. 17.

Bowyer, B. butcher, Great Yeldham, Essex, Jan. 9. Trusts. W. F. Goodchild, farmer, Little Yeldham, and B. Smith, farmer, Great Yeldham. Sol. Arden, Halstead.—*Jones*, E. publican, Ruabon, Denbighshire, Jan. 9. Trust. R. Akers, wine merchant, Wrexham. Sol. Hughes, Wrexham.—*Deakin*, P. miller, Stanton-on-Hine-heath, Salop, Jan. 11. Trust. T. Pidduck, baker, Shrewsbury, and J. Elkes, farmer, Wem. Sols. Barker and Co. Wem.—*Greenwood*, R. stationer, Bradford, Yorkshire, Dec. 21. Trusts. J. Town, paper manufacturer, Leeds, A. Brumfit, pawnbroker, Bradford, and P. Lerse, merchant, Leeds. Sol. Foster, Manchester.

Gazette, Jan. 21.

Bunson, R. news agent, Parliament-st. Newbury. Trusts. J. Hannah, wine merchant, Bridge-st. Westminster, and [illegible]on, news agent, Mortimer-st. Sol. Howlet, Bart[illegible].—*Bryson*, J. commission agent, Sambrook-[illegible], Basinghall-st. Jan. 18. Trusts. J. Whitaker, Batley, [illegible] and J. Jubb, manufacturers, Batley. Sols. Dickson and Co. Frederick's-place.—*Clowes*, J. A. stationer and printer, Wolverhampton, Dec. 20. Trusts. E. Griffiths, wholesale druggists, Wolverhampton, R. C. Tomkinson, jun. wholesale stationer, Birmingham, W. Wilkinson, engraver, Birmingham, G. Corns, Birmingham, R. M. Wood and S. Sharwood, type founders, Aldersgate-st. and R. Besley, letter founder, Fann-st. Sol. Parker, St. Paul's Churchyard.—*Waller*, T. victualler, Ernest-st. Hampstead-road, Oct. 18. Trust. G. Wheelhouse, distiller, Deptford. Sol. Yonge, Tokenhouse-yard.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Jan. 17.

ALDRED, WILLIAM, builder, 3, George-st. New Kent-road, Jan. 21, at twelve, Feb. 25, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Beart, Bouverie-st. sol. Date of fiat, Jan. 11. Bankrupt's own petition.

ARMANI, ANTONIO NICHOLAS, merchant, 3, Scott's-yard, Bush-lane, City, Jan. 28, at twelve, Feb. 26, at two, Basinghall-st. Com. Evans; Johnson, off. ass.; Crofts, Scott's-yard, sol. Date of fiat, Jan. 14. J. Rawlings, gent. Gray's-ter. Great Dover-road, pet. cr.

BROWNING, THOMAS, innkeeper and victualler, New-inn, Old Bailey, Jan. 29, at twelve, Feb. 26, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Lambe, Bucklersbury, sol. Date of fiat, Jan. 14. Bankrupt's own petition.

DICKINSON, GEORGE, farrier and blacksmith, No. 5, South Portman-mews, Portman-sq. Jan. 24 and Feb. 28, at two, Basinghall-st. Com. Holroyd; Groom, off ass.; Buchanan and Grainger, Basinghall-st. sols. Date of fiat, Jan. 15. Bankrupt's own petition.

DONALD, ANDREW, lodging-house keeper, bookseller, and dealer in stationery, St. Peter's-st. St Alban's, Jan. 22, at half-past two, Feb. 26, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Buchanan and Grainger, Basinghall-st. sols. Date of fiat, Jan. 11. Bankrupt's own petition.

ROBERTSON, WILLIAM, coffee-shop keeper and dealer in tobacco, late of the Eagle Coffee-house, Eagle-terrace, City-road, Jan. 21, at eleven, March 1, at half-past eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Buchanan and Grainger, Basinghall-st. sols. Date of fiat, Jan. 14. Bankrupt's own petition.

STUTCHBURY, HENRY ROWE, bookseller and dealer in curiosities, No. 17, Theobald's-road, Bedford-row, Jan. 24, at half-past one, Feb. 25, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Webber, Caroline-st. Bedford-sq. sol. Date of fiat, Jan. 13. Bankrupt's own petition.

TODMAN, JOSEPH GEORGE, licensed victualler, No. 91, Gray's-inn-lane, Jan. 28 and Feb. 25, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass., Dimes, Bread-st. sol. Date of fiat, Dec. 2. T. Dimes, Bread-st. pet. cr.

WITHERS, THOMAS RICHARD, brewer, Rumbridge, near Ealing, Southampton, Jan. 31, at two, Feb. 28, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Sowton, Great James-st. and Coxwell and Harefield, Southampton, sols. Date of fiat Jan. 13. Bankrupt's own petition.

Gazette, Jan. 21.

BULLOUGH, JOHN, cabinet maker, Huddersfield, Feb. 7 and 28, at eleven, Leeds, Com. Boteler; Hope, off. ass.; Lewis and Co. Ely-place, and Fenton and Jones, Huddersfield, sols. Date of fiat, Dec. 21. R. Loader, upholsterer, Finsbury-pavement, pet. cr.

CHAPMAN, EDWARD JOHN, civil engineer and contractor, Bradford, Yorkshire, and Birkenhead, Chester, Feb. 5 and 24, at eleven, *Leeds*, Com. Boteler; Hope, off. ass.; Tebbs, Essex-st. Strand, sol. Date of fiat, Jan. 15. Bankrupt's own petition.

FISHER, THOMAS, linen draper, Selby, Yorkshire, Feb. 4 and 25, at eleven, Leeds, Com. West; Freeman, off. ass.; Pushworth and Co. Staples-inn, and Sanderson, Leeds, sols. Date of fiat, Jan. 16. Bankrupt's own petition.

JACKSON, GEORGE, jun. upholsterer, Hertford, Jan. 31, at half-past twelve, Feb. 28, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Stevens and Co. Queen-st. sols. Date of fiat, Jan. 13. J M'Rae, J. Steward, J. Hay, H. M. Kempshead, T R. Williams, F. Norvillar, G. Knox, S. Phillips, R. Gardner, R. I. Grant, G. L. G. Allen, M. Rimmington, R. Roy, F. Atkinson, C. Purvis, A. Ross, R Roy, and S. R. Cattley, wollen cloth manufacturers, Love-lane, pet. crs.

KEMPE, NICHOLAS JOHN, ship owner, Liverpool, Feb. 11 and 26, at twelve, Liverpool, Com. Ludlow; Turner, off. ass., Vincent and Co. Temple, and Minshull, Liverpool, sols. Date of fiat, Jan. 15. S. Minshull, executor of J. Smith, merchant, deceased, Liverpool, pet. cr.

KIMBER, HENRY, and KIMBER, WILLIAM, wine and cider merchants, Old Trinity House, Water-lane, Jan. 30, at one, March 8, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass; Justin and Barlow, New Bridge-st. sols. Date of fiat, Jan. 16. F. Iveson, wine merchant, Crutched-friars, pet. cr.

LUPTON, GEORGE HENRY, flax spinner, Leeds, Yorkshire, Feb. 4 and 25, at eleven, Leeds, Com. West; Young, off. ass.; Cox, Sise-lane, and Lee, Leeds, sols. Date of fiat, Jan. 14. T. Flight, Bond-ct.-house, Walbrook, pet. cr.

SCHOTT, JOHN GEORGE, Manchester, and LAVATER, JOHN CASPER, Aldermanbury Postern, merchants, Feb. 3 and March 3, at eleven, Manchester; Stanway, off. ass.; Atkinson and Co. Manchester, and Makinson and Co. Temple, sols. Date of fiat, Jan. 11. J., B., and E. Platt, cotton spinners, Yorkshire, pet. crs.

SCHOTTLAENDER, WILLIAM EDWARD, merchant, Poplar-row, Surrey, Jan. 28, at half-past eleven, March 4, at twelve, Basinghall-street, Com. Fonblanque; Belcher, off. ass.; Beart, Bouverie-st. sol. Date of fiat, Jan. 20. Bankrupt's own petition.

STURLA, HENRY CHARLES, glass and china dealer, Seymour-st. Euston-sq. Jan. 31, at one, Feb. 28, at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Strut, Buckingham-st. sol. Date of fiat, Jan. 17. Bankrupt's own petition.

WALLER, THOMAS BUTTERMERE and JOHN, grocers, Ipswich, Jan. 30, at twelve, March 4, at eleven, Basinghall-st. Com. Goulburn; Turquand, off. ass.; Russell and Mackenzie, High-st. Southwark, sols. Date of fiat, Jan. 16. C. Humble, hop merchant, Southwark, pet. cr.

WARD, JOHN, dealer in glass and earthenware, Ely, Cambridgeshire, Jan. 30, at one, Feb. 27, at twelve, Basinghall-st. Com. Goulburn; Graham, off. ass.; Crosby and Co. Old Jewry, sols. Date of fiat, Jan. 6. R. Shotbridge, G. E. Sawyer, and C. H. Cook, glass manufacturers, South Shields, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Jan. 14.

Andrews, W. and *Andrews*, C. wine merchants, Cardiff, Jan. 1. Debts paid by W. Andrews.—*Ashwell*, J. and *Cooper*, C. earthenware manufacturers, Stoke-upon-Trent, Jan. 9. Debts paid by Ashwell.—*Barber*, J. and J. hatters, late of the Royal Exchange and Cornhill, Dec. 31, 1841. Debts paid by J. Barber.—*Barker*, F. and *Smith*, S. glove manufacturers, Norwich. Jan. 6. Debts paid by Barker.—*Barnett*, J. and *Ryder*, E. bakers, Plymouth, Jan. 9. Debts paid by Barnett.—*Bird*, C. and *Thoburn*, J. rope makers, Blyth, Jan. 9.—*Huddleston*, G. *Petty*, T. *Kennedy*, C. S. *Smith*, R. *Kennedy*, H. and *Park*, J. (now deceased) miners, Lindal Cote, Barrow, Ulverstone, and elsewhere, so far as regards Huddleston, Jan 11, 1841.—*Hunter*, A. and *M'Kerrow*, G. drapers, Gravesend, Dec. 25.—*Kirkham*, J. and *Taylor*, P. veterinary surgeons, Birkenhead, Dec. 30.—*Lapham*, G. *Brine*, T. and *Lapham*, F. A. drapers, Trowbridge, Jan. 6. Debts paid by Brine.—*Mole*, J. and R. sword manufacturers, Birmingham, Dec. 26.—*Parkinson*, T. and *Halliday*, P. shoe binding manufacturers, Liverpool, Jan. 2.—*Piper*, J. and *Wordsall*, E. painters, Hull, April 8.—*Rawson*, E. and *Henderson*, R. F. warehousemen, Wood-st. Jan. 10. Debts paid by Henderson.—*Rhodes*, W. B. and *Hickes*, G. machine makers, Huddersfield, Dec. 4. Debts paid by Rhodes.—*Sales*, D. W. and *Vause*, J. painters, Hull, Jan. 9.—*Smith*, J. and *Hatton*, F. A. grocers, Chesterfield, Jan. 11. Debts paid by Hatton.—*Smith*, J. *Tetley*, R. *Glover*, J. and *Farish*, J. worsted spinners, Bradford, so far as regards Smith, Jan. 11.—*Smith*, W. sen. and jun. *Smith*, J., L., G., and P. machine makers, Keighley, so far as regards L. Smith, Dec. 31.—*Style*, T. and F. schoolmasters, Thames Ditton, Dec. 31.—*Thompson*, W. and *Thompson*, W. smiths, Hull, Jan. 11.—*Tomes*, F. and *Bennett*, J. farmers, Wolstone, Dec. 1. Debs paid by Bennett.

Gazette, Jan. 17.

Bateson, J. *Horsfall*, R. and *Bateson*, J. brokers, Liverpool, Dec. 31.—*Booth*, W. *Wroe*, W. *Lord*, J. and *Barraclough*, J. iron founders, Barnsley, Jan. 10.—*Bury*, T. and *Slater*, W. cotton dyers, Salford, Dec. 31. Debts paid by Slater.—*Constable*, J. and *Foster*, C. bone merchants, Hull, Dec. 16.—*Esberger*, F. *Norton*, J. and *Mason*, R. coach makers, Louth, Jan. 7.—*Evans*, J. G. and *Gould*, R. P. pencil manufacturers, Upper Rosoman-st. Jan. 14.—*Fisher*, W. sen. and jun. and *Harland*, T. W. painters, Blackman-st. Jan. 17, so far as regards Fisher, sen.—*Hampson*, R. *Joynson*, E. and *Hampson*, R. cotton dealers, Manchester, Dec. 31. Debts paid by R. and R. Hampson.—*Hanson*, J. *Wilson*, J. and *Dougill*, J. lead pipe manufacturers, Rashcliffe, near Huddersfield, Jan. 11. Debts paid by Dougill.—*Lambe*, A. B. and *Gardner*, G. wine merchants, New Bond-st. Jan. 14.—*Miller*, D. and *Butler*, T. brush makers, Houndsditch, Sept. 30, last.—*Mungeam*, G. and W. maltsters, Meopham, Kent, Dec. 18.—*Nalborough*, W. B. and J. H. linen drapers, Harwich, Dec. 10.—*Nosworthy*, T. L. and *Sandell*, W. curriers, Newton-st. Holborn.—*Philpot*, J. and J. jun. attorneys, Southampton-st. Jan. 13. *Radford*, J. and *Loftus*, W. K. mail contractors, Newcastle-upon-Tyne, Jan. 1. Debts paid by Loftus.—*Russell*, T. and *Sharpley*, M. silk dyers, Rainow, Cheshire, Jan. 13. Debts paid by Sharpley.—*Ryle*, A. and *Paul*, J. H. printers, Monmouth-court, Monmouth-st. Jan. 1. Debts paid by Ryle.—*Samuels*, J. *King*, J. and *Samuels*, C. J. merchants, Manchester, Dec. 31, so far as regards King. Debts paid by remaining partners.—*Sharp*, R. H. and S. architects, York and Leeds, Jan. 1.—*Tolson*, J. and *Hare*, T. fancy woollen manufacturers, Huddersfield, Jan. 15. Debts paid by Hare.—*West*, G. G., J. R. and H. W. mast makers, Lower Thames-st. Rotherhithe, and Mill-lane, Tooley-st. Jan. , so far as regards G. G. West.—*Wetherhead*, T. and *Palethorpe*, T. surgeons, Upper Baker-st. Dec. 31. Debts paid by Wetherhead.—*Whitelegg*, W., W., and J. and G. T. *Knowles*, cotton spinners, Jan. 1.

Insolvents.

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Jan. 14.

Donald, A. bookseller, St. Alban's, Jan. 23, at half-past one.—*Farlow*, S. E. lodging-house keeper, Brighton, Jan. 18, at eleven.—*Gardner*, W. fish merchant, Great Yarmouth, Jan. 18, at half-past eleven.—*Halden*, J. L. coal dealer, Hoxton, Jan. 18, at eleven.—*Hampton*, J. coal dealer, Charles-lane, Portland-town, Jan. 29, at half-past eleven.—*Joseph*, A. A. manufacturer of fancy baskets, Princes-st. Barbican, and Wood-st. Jan. 18, at half-past eleven.—*Nathan*, S. clothes dealer, Cock-hill, Bishopsgate-st. Within, Jan. 30, at twelve.—*Payne*, H. sen. general dealer, Hunter-st. Old Kent-road, Jan. 28, at half-past twelve.—*Savage*, T. timber surveyor, Rotherhithe, Jan. 30, at half-past eleven.

Gazette, Jan. 17.

Clark, T. G. wheelwright, Sumner-st. Southwark-bridge-road, Jan. 30, at half-past two.

Country.—Gazette, Jan. 14.

Collins, J. victualler, West Bromwich, Feb. 7, at twelve.—*Fox*, D. drysalter, Manchester, Jan. 25, at twelve.—*Greenhalgh*, G. auctioneer, Little Bolton, Jan. 28, at twelve.—*Hawksley*, J. farmer, Whittington, Jan. 28, at twelve.—*Moorhouse*, W. salt dealer, Burnley, Jan. 27, at twelve.—*Mould*, B. publican, Warkworth, Jan. 28, at twelve.—*Shaw*, B. attorney, Dudley, Feb. 10, at half-past ten.

Gazette, Jan. 17.

Bucknell I. maltster, Stoke Canon, Jan. 30, at eleven.—*Hesketh*, R. victualler, Liverpool, Jan. 24, at one.—*Punchard*, J. farmer, Totnes, Jan. 30, at eleven.

From the Gazette of Friday, January 24.

Bankrupts.

Dettmer, W. pianoforte manufacturer, Upper Marylebone-st.—*Isaacs*, H. woollen draper, Yarmouth.—*Hawkins*, G. clothier, Colchester.—*W[illegible]*, L. butcher, Gilbert-st. Hanover-square.—*S[illegible]*, [illegible] cattle salesman, Sibbertoft, Northampton.—*Evans*, J. innkeeper, Bourton-on-the-Hill.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

January 17, 20, 21.

FULTON *v.* GILMOUR.

Supplemental answer—Mistake—Correction of answer—Replication—Practice—Costs.

Where a defendant, speaking in his answer to the best of his belief, has made a mistake in the date of an important document, he will be allowed to correct that mistake by a supplemental answer, even after replication, and when the cause has for some time stood in the paper for hearing; and that notwithstanding the effect of the alteration of date may be entirely to displace the plaintiff's claim.

And if the defence made by the answer is one according to strict law, the Court will not entertain any consideration, any question, with regard to the unrighteousness of the defence.

Whatever inconvenience may be occasioned by the late discovery of the mistake, as for instance, after replication, must be provided for at the expense of the defendant seeking the indulgence.

This was a motion to discharge an order made by the Master of the Rolls in this cause, by which he allowed the defendant to file a supplemental answer

The plaintiff was one of the reputed daughters of Mr. Fulton, who died in the East Indies, having by his will devised and bequeathed all his property to the defendant and another person named Smith, upon trusts to convert the whole into money and divide it amongst his legatees. The trustees were also appointed executors. At the time of the testator's death the plaintiff was only seven years old. Gilmour alone proved the will, possessed the testator's assets, and settled with the other persons entitled The defendant was a partner in the Calcutta agency house of Fergusson and Company, and the testator's funds remaining in his hands were invested in the mercantile speculations of that house. In Nov. 1833, that house failed; no payment having been made to the plaintiff, who was at that time still an infant.

By the 9th of Geo. 3, c. 73, an insolvent debtor in India was enabled, by a petition to the Court for the Relief of Insolvent Debtors in Calcutta, to obtain a discharge from his debts due to persons resident in India; but such a discharge did not bar debts due to persons living out of the jurisdiction of the East-India Company. The insolvency of Fergusson and Co. happened on the 26th of Nov. 1833; the defendant filed his schedule in the Insolvent Court at Calcutta in April 1834, and obtained a discharge from his debts. On the 17th of January, 1835, all the creditors who had not come in were, by the provisions of the above Act, excluded from a dividend. The plaintiff was, at the time of the insolvency, resident in Scotland, and, consequently, the discharge of the insolvent in India would not under that Act bar her claim against the defendant. But in August 1834, a new Indian Insolvent Debtors Act (3 & 4 Wm. 4, c. 79) received the royal assent, and by that Act it was provided that an insolvent in India might bar his debts due to persons out of the jurisdiction of the East India Company, by presenting a petition to the Calcutta Insolvent Court, not less than three months after his insolvency, praying such a general discharge; notice of that petition was then to be transmitted to the directors of the East-India Company in England, who were to cause it to be advertised in the *London Gazette*: and all the insolvent's debtors, who should not, within fourteen months from the date of the petition, be able successfully to resist such discharge, were absolutely barred. The defendant, being then in India, presented his petition in September, 1835, which was duly published in the *London Gazette*, and no opposition having been offered by the plaintiff, the defendant obtained his final discharge in the year 1830.

The bill was filed in 1843 against Gilmour, who had then returned to England, to make him liable for the amount of the testator's assets in his hands at the time of the failure of the house of Fergusson and Co. The first answer of the defendant was evasive; he refused to admit the plaintiff's identity or that she was the reputed daughter and one of the legatees named in his will; and thirty-three exceptions to his answer for insufficiency were allowed. By his first answer the defendant stated that he became insolvent in Nov. 1833, and that he was duly discharged under the Acts for the relief of insolvent debtors then in force in India; and by his second answer he states that he was duly discharged under the beforementioned Acts, according to the best of his belief, in April 1835. The answer stated also that he had no documents to which he could refer. On this the plaintiff filed a replication, and the cause was set down for hearing before the Master of the Rolls; but a few days before it would have been heard, defendant obtained leave to file a supplemental answer, to correct the date of his discharge, by altering it from April 1835 to April 1836, upon an affidavit stating that he had accidentally discovered, from a conversation with the solicitor of one of his late partners, that his discharge was in fact in 1836, and not in 1835, as stated in his answer. The Master of the Rolls allowed the supplemental answer to be filed. From that decision the plaintiff appealed.

Wakefield and *Toller*, for the plaintiff, contended that by the supplemental answer an entirely new case would be made, which was never allowed; and that this was such an unrighteous defence that the Court would not assist the defendant to correct his mistake.

They cited *Wells* v. *Wood* (10 Vesey, 401); *Carling* v. *Marquis of Townsend* (19 Vesey, 627); *Edwards* v. *M'Leay* (2 Vesey & Beames, 256); *MacDougal* v. *Spencer* (4 Russell, 486); *Greenwood* v. *Atkinson* (4 Simons, 54); *Livesey* v. *Wilson* (1 Vesey & Beames, 149).

The result of the cases is, that the Court has great difficulty in admitting a supplemental answer at all, and in such a case as this would grant no indulgence to the defendant.

Roupell and *Tennant*, for the defendant, contended that the supplemental answer merely corrected an erroneous date.

They cited *Patterson* v. *Slaughter* (1 Ambler, 292); *Wharton* v. *Wharton* (2 Atkyns, 295); *Jackson* v. *Parish* (1 Simons, 505); *Nail* v. *Punter* (4 Simons, 474); *White* v. *Sayer* (5 Simons, 567). *French* v. *Myles* (4 Maddock, 404).

Wakefield in reply.

At the conclusion of the reply, the LORD CHANCELLOR said that in *Patterson* v. *Slaughter*, Lord Hardwicke would not allow a defendant to do more than state more accurately a pedigree which he had discovered since his previous answer; but would not allow him to set up an additional title as mortgagee The defendant here says, in his answer, he was discharged, as he believes, in 1835; but he was, in fact, and he now swears, that he was discharged in 1836. His intention, his object, was to set up that discharge, and he means to insist upon it as a bar to the plaintiff's claim But he made a mistake as to the date, as to which he spoke from belief, and on better information he finds he has stated a wrong date, and wishes to correct it. He intended to insist on this particular discharge

Wakefield. The replication is filed to the two first answers only, and the order should have extended to give leave to apply it to the supplemental answer.

The LORD CHANCELLOR.—There must be either a replication to the last answer, or the replication must be made to apply to that answer The defendant must pay all the costs arising out of his own error

JUDGMENT

Jan. 21. The LORD CHANCELLOR I have read the bill and answers, and the case made by the plaintiff upon the appeal is stated in two ways. First, it is said, that if this were an ordinary case the defendant ought not to be allowed to file a supplemental answer. In the second place, that, even if it would be allowed in ordinary cases, this being an unrighteous defence, the Court ought not to aid the defendant in placing it upon the record. As to the first point, the defendant states, in his first answer, that he was duly declared an insolvent by the Court for the Relief of Insolvent Debtors in Calcutta, in November, 1833, under the Acts for the relief of insolvent debtors in India then in force, and that he was subsequently discharged by an order of the said Insolvent Court in pursuance of aforesaid Acts. In his further answer he states that in November, 1833, he was adjudged an insolvent by the Insolvent Debtors Court in Calcutta, and afterwards, namely, as he believes, in April 1835, he was duly discharged under the provisions of the said Acts. That he had no documents from which he could state the date more precisely. The defendant afterwards accidentally discovered that he had made a mistake in the time at which his discharge by the Insolvent Debtors Court at Calcutta took place; that it was not in April 1835, as he had stated in his answer, but in 1836. He states by his affidavit that it was a mistake; that he had no documents at the time of putting in his answer, and that he then believed his discharge had taken place in 1835 But the discharge on which he insists is that which occurred in 1836. He is not in a different discharge, and all he seeks to do by a supplemental answer is to correct an error in a date. The question is, whether in such a case the correction will be refused. It certainly is rather staggering to be told that a court of justice has not the power to correct such a mistake as that. He says he had documents, and that is confirmed by the answer itself, in which he says that he was duly discharged by the Insolvent Debtors Court in India, as he believes in April 1835. He says now, that he learned accidentally in a conversation with the solicitor of Mr. Clarke, one of his late partners in the house of Fergusson and Company, that his, Mr. Clarke's, discharge took place in 1836, and that the defendant knew that his own discharge was given at the same time; that he did not know that his petition had been advertised in the *London Gazette*, or that it was necessary to do so; but having referred to the *Gazette*, he found that his application to the Court in Calcutta was made in 1835, and he says, from these circumstances he is satisfied that his discharge was in 1836, and not in 1835. He was in error when he stated his discharge to have been in 1835; he was not in possession of his discharge or any document from which he could precisely ascertain its date, and he stated the date in the answer according to the best of his belief. It is extremely difficult to say that, under such circumstances, a slip of this sort should not be corrected. Various authorities were mentioned, and many cases referred to, in some of which leave to amend the answer had been granted, in others refused. In *Patterson* v. *Slaughter*, before Lord Hardwicke, the defendant was allowed to correct his mistake. I was requested not to rely on the report in the other case cited, and I therefore directed a copy of the order made in that case to be laid before me. I have looked into that order, and the case is of this description: The defendant claimed certain estates of Sir Geo. Warburton, and in making out his title stated the pedigree of a Mr. Ralph Egerton; he subsequently discovered that he had also some title as a mortgagee, and he likewise discovered that he had in some respects stated the pedigree incorrectly. He applied for leave to amend his answer, by stating his title as mortgagee, and, on further information to correct mistakes he had made in the statement of the pedigree. Lord Hardwicke gave him leave to correct his answer, so far as it went to state the pedigree accurately, confining the amendment to that point and that point alone. That case is a strong authority for the amendment of the answer asked for in this case. The defendant stated in his answer that he was not certain as to the date of his discharge, but spoke only to the best of his belief. If this, then, be an ordinary case, the defendant is entitled to leave to file a supplemental answer to correct the error in date. Then it is said that the defence set up by the defendant is an unrighteous one, and that it is so unjust that the Court ought not to afford any indulgence for correcting the error contained in his answer. It appears that Mr. Fulton, the testator, devised and bequeathed all his real and personal estate to trustees, to be sold and divided between his four children and his sister. The property, therefore, was divisible into five parts. The defendant Gilmour was appointed a trustee and executor of the will, and he was then a partner in the house of Fergusson and Company. The testator's assets having been converted into money, part of the property remained in Gilmour's hands, and in 1826 a part of it remained invested in the house of Fergusson and Company That was, undoubtedly, a breach of trust. The share payable to the testator's sister was paid immediately, and the shares of two of the children were paid to them when they became of age. But before the two younger children attained twenty-one, the house of Fergusson and Company failed. The plaintiff is one of such children. It is said that the defendant Gilmour is now rich, well able to pay the sum due to the plaintiff, and that he ought not to receive the indulgence of the Court to enable him to set up his discharge by the Insolvent Court in India as a defence against the plaintiff's claim But the law allows such a defence to be made, and there is nothing before me to lead me to any conclusion that this is an improper defence. And if I should attempt to decide on any such grounds, I should probably fail to do justice between the parties. I think, therefore, the defendant should be allowed to file a supplemental answer. The application is late, having been made after replication, and any inconvenience which may happen from that cause must be removed at the defendant's expense. The decision of the Master of the Rolls must be affirmed with costs.

ROLLS COURT.

Thursday, January 23.

BARTON *v.* MILLS.

Practice—Habeas corpus to take a bill pro confesso—Order.

John Loftus, a defendant in the cause, had been committed for contempt of Court for want of an answer, and having been brought up on the 6th November last to have the bill taken *pro confesso* against him, he then swore he was unable from poverty to put in his answer He was sent back, and an order made that the Master should see him, to ascertain that his statement was true; which, it was alleged, the Master accordingly did, but the defendant did not shew any reason. On the 7th December he was again brought up, and after addressing the Court in a very rambling and excited manner, he stated that the Master had not visited him, which, on examination, was found by some mistake to be so. He was again sent back to prison, and being now brought up a third time, his answer not being put in,

Lloyd, for the plaintiff, said that the Master had seen the defendant now, and found that he had no means of putting in an answer, and that he was, in fact, living upon the prison allowance. He was now, however, quite willing to put in his answer, but had not the means of even paying the costs of being brought up to have counsel and solicitor assigned to him. The plaintiff, therefore, who was desirous of acting with every possible leniency, now asked for a

habeas corpus, returnable on the 29th, to bring him up to take the bill *pro confesso* against him, and then a solicitor and counsel might be assigned to him on his own application to the Court, not on the plaintiff's, according to the rule laid down by Lord Cottenham. [The MASTER of the ROLLS.—He is in the condition of an ordinary pauper.] - Yes; but he has not the means of coming here to apply for a solicitor and counsel, and we thought this the best course we could take.

The MASTER of the ROLLS.—I am very much obliged to you, Mr. Lloyd, for the care you have taken in this matter. The defendant was clearly not in a fit state of mind to attend to his duty; but as you state that his feelings are now in a right state, and that he is willing, I think it better to say to him you will get him a solicitor and counsel. All the roundabout and expensive process of a *habeas corpus* may be prevented by his simple application for professional assistance. Let him present his petition, and it will be granted. Take the order now, in case the other course may not succeed; but, of course, you will not use it if unnecessary.

PEMBERTON *v.* NUNN.

Practice – 23rd and 24th Orders of 26th August, 1841, do not apply to the case of a bill of revivor and supplement to be served on a person of unsound mind and his guardian, such being within the same reason as excepts an infant from their operation.

Rogers applied, under the 23rd and 24th of the Orders of August, 1841, for leave to substitute service of a bill of revivor and supplement on a person of unsound mind and his guardian, and referred to *Gibson* v. *Lane* (Rolls, 20th Dec. 1841), in which service of entry of appearance had been ordered to be made on the solicitor of a sick woman, instead of herself.

The MASTER of the ROLLS refused the application, saying that the only exception in the Orders was that of an infant, and a person of unsound mind was clearly within the reason of the exception, and he could not distinguish the two cases; and, on its being more distinctly pointed out to him that the bill was a bill of revivor, he seemed to think that such bills did not come within the operation of the Orders, and refused the motion, saying, "You must revive and amend in the ordinary way."

Wednesday, Jan. 29.

RE THOMPSON.

Taxation under 6 & 7 Vict. c. 73.

The particular items of a bill of costs are not the only subject-matter of consideration when taxation is asked for (after payment of the bill within the year) on special circumstances, but there must be one or more objectionable items stated, either alone or along with other special circumstances, to render the bill taxable under the 6 & 7 Vict. c. 73, s. 38.

The true construction of sect. 38 of the 6 & 7 Vict. c. 73, is, that a third party, liable to pay costs originally payable by a client to his solicitor, stands, on a reference to tax, in the same situation as the client himself, and the costs must be taxed as between solicitor and client.

If there be no conflict between the parties as to the terms of an agreement to tax in a particular way, an order on petition may be made for taxation, notwithstanding the agreement.

This was a petition for taxation of a bill of costs for 45*l.* 3*s.* 2*d.*, which had been delivered on the 26th Oct. 1843, and paid under protest on the 13th Nov. following. The petition was presented on the 12th Nov. 1844, just in time, and came on to be heard on the 19th of the same month, when it stood over for the purpose of affidavits being filed. It then stood over again for the like purpose to the 21st Dec., and was again postponed in order to put in affidavits. It now came on again.

The suit was instituted by Elizabeth Harris, the widow of Henry Harris, the son, for the administration of the estate of Henry Harris, the father. Henry Harris, the son, and his two sisters, the petitioners, were the legal personal representatives and residuary legatees under the will of their father. After the death of her husband, Mrs. Harris repeatedly applied to the surviving representatives of the testator for an account, which was refused, on the ground that all the property went to the survivor. She then took out administration to her husband, and filed her bill for an account, and an appearance was entered on behalf of the petitioners. Applying to Mr. Allsop, their solicitor, he advised them to take steps to stay the proceedings and settle that suit, which accordingly they did, and agreed with the plaintiff on the amount to be paid her. While the communications were going on, the time for answering had expired; and there being on the part of Mr. Beavan, solicitor of the plaintiff, great delay in coming to an arrangement, Messrs. Thompson and Co., the agents of Mr. Allsop, took out an attachment for want of answer, and put it in the hands of the officer, with directions not to execute it, but to give the petitioners notice thereof. At last, on the 18th July, terms were arranged between the solicitors on both sides that the sum agreed upon should be paid, and that the costs of the petitioners, the defendants in the suit, should be also paid, and that the plaintiff should remove the *distringas* placed upon the stock. In pursuance of this arrangement, a bill of costs was delivered by Messrs. Thompson and Co., amounting to 45*l.* 3*s.* 2*d.*, some charges in which the solicitors of petitioners thought improper, and to which they were not liable, as they were only to pay costs as between party and party. Much correspondence ensued, and Messrs. Thompson proposed to refer the matter to any solicitor, and, on the other side refusing, threatened to put the attachment in force; and, under the pressure of this threat, the petitioners paid 207*l.* 3*s.* 10*d.*, the amount of claim agreed upon, and the costs, but under protest. They now applied for taxation.

Lloyd, for petitioners, stated the facts at great length, and contended that the pressure alone was a sufficient ground to obtain taxation. [The MASTER of the ROLLS.—What are the items complained of?] They are not set out. [The MASTER of the ROLLS.—You have to get over that difficulty first.] In *Ex parte Andrews* (13 Law J., N.S. 222) it is decided by the Lord Chancellor, that the special circumstances to be shewn need not be in the bill itself. [The MASTER of the ROLLS.—Did the Lord Chancellor say that, after payment, you can come to a Court of Equity for taxation without stating objectionable items?] Yes; the Act gave the parties a new right, and pressure is a very special circumstance. Various items would be taxed off, for the other side require to be paid all the costs they were put to by reason of the suit, and that is more than the costs of the suit. The question, it appears from the affidavits of Mr. Beavan and his clerk, was, whether the defendants in the cause were to pay any costs of suit to the plaintiff, as the bill had been filed the day after administration was taken out by her, without any application to the defendants.

Kindersley, contrà, was not heard.

The MASTER of the ROLLS.—I cannot make the order asked. If the Lord Chancellor had made any such decision as is alleged, I would with great satisfaction have made the order; but I think he has not. The Act (sec. 38) says, where a third party is liable to pay the costs to the party originally chargeable, or his executor, &c., "it shall be lawful for such person, his executor, &c. to make such application for a reference for the taxation of such bill as the party *might himself make*, and the same reference shall be made," &c. Now I do not think one or more specific items objected to are the only special circumstances to be taken into consideration, but a specified item must form part of the circumstances; and although pressure is a strong circumstance, I cannot make the order on that alone. The Act makes no difference in this respect in the old rule. But even if that objection were out of the way, the circumstances of this case involve the construction of the contract, which, over and over again, I have decided the Act does not empower me to make. There is a conflict as to the arrangement, and therefore my jurisdiction is at an end. As to the costs, Mr. Kindersley is at liberty to address me, as at present I incline to dismiss without costs.

Kindersley.—So far from pressure, my client has used great forbearance, and used the attachment merely as a last resource. Administration was taken out by Mrs. Harris merely with a view to filing the bill, and during all the previous applications to the petitioners, they never alluded to the administration, or intimated their willingness to pay after it had been taken out. It was delayed to the last, because Mrs. Harris could only guess at the amount of the property. Besides, the agreement here is not between solicitor and client, but between the parties themselves or their solicitors for them. But, moreover, they have quite misconstrued the Act. The 38th section is that which applies here. Suppose a bill delivered and paid, how (by sect. 38) is it to be taxed? Just as if Mrs. Harris herself had applied to tax it. What is this petition for? To let third parties have the bill taxed a different way from that in which it would if the immediate client herself had petitioned for taxation. The case of *Re Carew* (4 Law T. 310) is in point. [The MASTER of the ROLLS.—The person chargeable, that is, the person out of whose fund the costs are ultimately to come, is to stand in the place of the client of the solicitor—that is the construction.] Then as to items, there are none objected to. The agreement precludes them from asking taxation also. [The MASTER of the ROLLS.—If there is an agreement, the terms of which are not disputed, I may order taxation; it is only where there is a conflict as to the terms that I am not empowered.]

Lloyd, in reply.—The argument was first not in reference to an agreement, and now it is the reason for dismissal. [The MASTER of the ROLLS.—It is one objection—not the only.] The agreement makes the costs of a given amount only payable.

The MASTER of the ROLLS.—The rule, it appears to me, is *primâ facie* to give costs on dismissal; but in some situations, and under peculiar circumstances, the case is different. On the opening of the petition, there appeared such marks of pressure as to induce me to dismiss without costs, and therefore I wished the discussion to be prolonged. I am not altogether satisfied with the language or the pressure used by the respondent; but I must consider not only that, but the relations occasioned by the transactions then going. The Messrs. Thompson were placed in a difficulty, and were therefore obliged to act in a peremptory manner, in opposition to the contrivances and shifts of the other side. Though I do not approve of the pressure, yet it is not sufficient to take the case out of the general rule. I dismiss the petition with costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Friday, Jan. 24.

WILLOUGHBY *v.* WILLOUGHBY.

(Argued Jan. 15.)

A repleader will not be granted on an immaterial issue where other material issues going to the whole cause of action have been disposed of.

Judgment non obstante veredicto will not be given merely for costs.

Cowling (with whom was *Montagu Smith*) shewed cause against a rule obtained by *Watson*, Q. C. to enter judgment for the plaintiff, *non obstante veredicto*, or for a repleader. The declaration was in debt for a rent-charge in lieu of tithes.

It appeared that a Mr. Atherley had been appointed commissioner under a local Act to apportion the tithes, and on his alleged neglect to make an award, Mr. Herbert had been appointed by the Bishop of Oxford, and upon his award the action was brought. There were five pleas; the first set out the Act of Parliament and that Mr. Atherley had made his award. On this issue there was a verdict for the plaintiff, but a motion had been made for a new trial on the ground that it was against evidence. The 2nd and 3rd pleas were immaterial to the present question. The 4th denied that Willoughby, the defendant, ever possessed lands in respect of which the rent-charge was claimed. On demurrer to this plea the Court had given judgment for defendant, and held also the declaration bad, as the remedy was by distress, and not by action. The 5th plea set out the award of Herbert *verbatim*, that the Act recited that Sir H. Willoughby was a lay impropriator of the lands mentioned in the statute, and that the tithes to which the defendant was entitled were different from those in the statute, and which were tithe free, and different from those belonging to Queen's College. The verdict on this plea was for the defendant, and against it the present rule had been obtained. The plea was, for the purposes of the present argument, admitted to be immaterial, but the rule was opposed as to the judgment *non obstante*, because the Court having held the declaration bad, it would be absurd to say that the plaintiff should have judgment. As to the motion for a repleader, it was argued—1. That a repleader was never granted where the Court can see by the record that final judgment ought to be given for one party.

In support of this were cited—*Parnham* v. *Pusey* (Willes, 532), and *Sargent* v. *Fairfax* (1 Lev. 32); *Goodburner* v. *Bowman* (9 Bing. 532); *Negeien* v. *Mitchell* (7 M. & W. 612), in which *Plummer* v. *Lee* (2 M. & W. 495) was said to be overruled.

2. That a repleader is not granted in favour of the party who has made the first fault, and that here the declaration was bad. In a repleader no error prior to the pleading, on account of which the repleader is sought, ought to be left on the record. (1 Lord Raym. 167.)

Watson, Q. C. (with whom was *Hugh Hill*) supported the rule as to the judgment *non obstante*. The declaration and the pleas, except this one, are material, and all the issues, in fact, on these material pleas, are found for the plaintiff. The judgment upon the demurrer is in form that the plea is a good bar. If the declaration had been good, plaintiff would have been entitled to judgment *non obstante*. By statute 4 & 5 Anne, c. 16, ss. 4 & 5, and the new rules, costs follow each issue, but if the issue be immaterial, the defendant is not entitled to costs. As it stands, the defendant will be entitled to the general costs, which is clearly unjust.

PATTESON, J.—How can we give a judgment merely for costs? If the issue be immaterial, it ought to have been demurred to.

Watson.—The judgment on demurrer will give the defendant costs therein; as to the material issues, judgment for the plaintiff and costs therein; then, as to the immaterial issue, no costs on either side, "that, notwithstanding the verdict, the plaintiff do recover."

PATTESON, J.—What?

Watson.—There is certainly a difficulty. There ought to be no costs. But the Court will prevent, if possible, the injustice caused by the present finding. 2nd. As to repleader. The rule as to the first fault means the first fault which occasioned the repleader. Here the plea is the first fault. The case from Willes is inapplicable. There has not been sufficient attention to the distinction between cases before and since the statute. The rule which formerly applied to the single plea ought now to be applied to each set of pleadings, regarding them almost as distinct actions.

A writ of error cannot award a judgment *non obstante*, and if the declaration be subsequently held good, and plea bad, yet the defendant will have gained his costs by the immaterial issue.

PATTESON, J.—The difficulty is, to make our own record consistent. Why order a repleader, when the declaration is bad? *Rule discharged.*

GRAHAM *v.* JACKSON.

A married woman cannot, either by herself or with her husband, appoint an attorney to execute a surrender of land held by tenant right. Where by the custom land thus held is aliened by bargain and sale, and subsequent surrender and admittance, the surrender and admittance are essential to pass the estate, and consequently a power of attorney contained in such deed cannot be acted upon after the death of the bargainor. Semble, in such case only one stamp is necessary.

This was a special case. An action for rent had been brought by the heir of a Mrs. Moses, upon a lease of land in Cheshire, of the nature of tenant right, against the lessee. It appeared that Mrs. Moses had, prior to her coverture, been customary tenant of the land, and had leased the same to the defendant. She then married Mr. Moses. In 1841, the day before her death, she had been separately examined by the steward of the manor, prior to a surrender to a Mr. Moses. After the examination a deed of bargain and sale had been duly executed and attested by herself and her husband. It contained a power of attorney to a Mr. James to appear at the court and surrender in due form, according to the custom of the manor. A court was held the next day, and the power was acted upon, but during the previous night Mrs. Moses had died. The case found that surrenders were made by attorney, but no instance was to be found of a married woman having done so. If the bargainee took the land, judgment to be given for the defendant; if not, for the plaintiff.

Addison, for the heir, said that there were three objections to the claim of the bargainee. 1st. The power of attorney to surrender was void in its inception, because made by a married woman. 2nd. If good, it became useless on the death of Mrs. Moses. 3rd. If good at all, it was not so, because against the custom, and nothing passed by the bargain and sale. 1st. A married woman cannot appoint an attorney. In civil actions, *e. g.* to plead her coverture; she must appear in person (*Oulds* v. *Sansom*, 3 Taunt. 261; 2 Williams' Saund. 209); although in personal actions she can do so with her husband, she cannot to alienate property. In personal actions there is a joint act done; here the surrender is in point of fact by the wife alone. The husband had no interest. (*Crompton* v. *Collinson*, 1 H. Bl. 334, 2nd. But if the warrant was valid in its inception, it ceased at her death. So it is in warrants of attorney even if they contain a clause that death shall not be a revocation of the power. (*Short* v. *Coglin*, 1 Anst. 225; *Heath* v. *Brindley*, 2 A. & E. 365; *Watson* v. *King* (4 Campb. 272.) 3rd. There is no instance of a married woman surrendering by attorney. Custom is the life and soul of copyhold. These estates by tenant right are a species of copyhold. The freehold is in the lord. (Blackst. Law Tracts, I. 105, 144; Co. Litt. by Hargr. 59 b.; *Doe* v. *Danvers*, 7 E. 298.) The estate could not pass by the bargain and sale. There was no freehold conveyed, because it was in the lord; there was no release, for there was no prior interest. It was a mere declaration of trusts of an intended surrender. It contains a power for the purpose. Surrender and admittance are necessary. (*Pain* v. *Baker*, O. Bridg. 23; *Doe* v. *Tofield*, 11 E. 246; Watkins on Copyholds, 67; *Doe* v. *Hall*, 16 E. 208.) Then, at her death, the estate vested in the heir, and judgment must be given for the plaintiff. No subsequent surrender by the attorney could operate.

Cowling, contrà.—Every thing was done that was necessary. The power of attorney was not a nullity. It is found that generally surrender may be by attorney. The custom is not *against* a married woman appointing an attorney.

Lord DENMAN, C. J.—Do not you require a custom in favour of it?

Cowling then endeavoured to shew that in fact the appointment of the attorney was by the husband in this case, and that if it was acted upon during his life, the appointment would be good, and tried to liken this case to a personal action.

He then cited *Doe* v. *Towns* (2 B. & Ad. 585), to shew that the bargain and sale was sufficient. The surrender was only to notify to the lord, and then the tenant was enrolled. The surrender and admittance are mere form.

PATTESON, J.—There is some inconsistency in the bargain of sale. "Surrender" appears among the operative words, and then there is a power of attorney to surrender. I see, also, that the argument as to the attorney being appointed by the husband is contrary to the deed. The power is by the husband and wife "severally and respectively" to a Mr. James, "as their and each of their several and respective attorney."

Cowling.—The word surrender is in *Doe* v. *Towns*. (See also Scriven on Copyholds.) There is no regrant. The jury in this manor present "C D, tenant by alienation of A B," and he is then enrolled.

PATTESON, J.—By the old deeds set out in the case, it appears that the surrender was made in court.

Cowling.—The enrolment is mere matter of form. So under the Statute of Enrolments, 27 Hen. 3, c. 16, the enrolment may be made after the death. (*Dymok's* case, Hob. 136; Bac. Abr. Bargain and Sale.) If any surrender is necessary, it is made by the deed.

PATTESON, J.—How can a surrender be made to a mere stranger?

Cowling.—The Court will look at what is the essence of the tenure. (*Burrell* v. *Dodd*, 3 B. & P. 378.)

PATTESON, J. cited *Bingham* v. *Woodgate* (1 Russ. & Mylne), shewing that a surrender was necessary.

Cowling.—The case states that the surrender may be by or to the parties themselves.

Addison, in reply.—*Doe* v. *Towns* is distinguishable, because there the case found that there was, in fact, no surrender necessary, and that the land passed by bargain and sale. Each tenant right tenure is different. The words "by or to the parties themselves," must be qualified by the latter part of the case, and the question which shews that a surrender is necessary. The question really is, whether the surrender here is good.

Lord DENMAN, C. J.—At last it is more a question of fact than of law. There is some uncertainty in the case stated, but it is on the whole clear that a surrender and admittance are necessary. Then I have no doubt whatever that the warrant of attorney is insufficient. A married woman cannot appoint an attorney. Even if she could, the warrant would have been revoked by her death.

PATTESON, J.—I am of the same opinion. The question is simply, whether by execution of the bargain and sale the estate passed? It is not found in terms that surrender was necessary, but it is so in substance; the old entries from 1692 shew it. *Bingham* v. *Woodgate* (1 Russ. & Mylne, 33) proves that there may be custom requiring both bargain and sale and surrender. *Doe* v. *Towns* (2 B. & Ad. 585) is different. The mode of conveyance was there expressly found. There some doubt arose as to the necessity of two stamps. There is no occasion to decide it, but I apprehend that one would suffice. The power of attorney is void. A husband cannot, except where he acts for both, appoint an attorney for his wife. But he has not done it, or professed so to do. No custom supports the appointment; even if good, it was revoked by death. Her interest is gone, and her husband never had any.

COLERIDGE, J. and WIGHTMAN, J. concurred.
Judgment for plaintiff.

Saturday, Jan. 25.

REG. *v.* ST. LAWRENCE APPLEBY.

The occupation of land need not be distinct and separate, like that of houses, to give a tenement settlement under 6 Geo. 4, c. 57.

On appeal against an order for the removal of George Liddell and wife, which the Sessions had confirmed, subject to a case on the sufficiency of a tenement settlement set up by the respondents, it appeared that the pauper had joint occupancy of a farm, with land, which, apart from the dwelling-house, was rented at 60*l.* per annum.

Watson, Q. C. for the respondents.—This case turns on the construction of 59 Geo. 3, c. 50, and 6 Geo. 4, c. 57, which provide that no person shall gain a tenement settlement "unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both." There need not be a distinct occupancy of land.

The COURT called on the other side.

Archbold.—The Court will not put a strict construction on these words. There must not be joint occupation of land or of house; the words, "or of both, rented *bonâ fide*," refer to the manner of holding before mentioned, and the words may mean that both must be distinct and separate. [Lord DENMAN, C. J.—Mr. Archbold, is there really any doubt in your favour on the point?] To give the Act this construction would be to advance the remedy intended by 59 Geo. 4, c. 50, to prevent joint occupancies, that being the mischief. [Lord DENMAN, C. J.—The mischief is that doubts had been entertained.] But the Court will extend the meaning of a remedial Act, so as to advance the remedy. (*Rex* v. *Threlkeld*, 4 B. & A. 229.) Here, if the words "or of" were struck out, the meaning would be quite plain. There is no case of joint occupation of land in the books.

Lord DENMAN, C. J.—Mr. Archbold had better have given this case up handsomely at first. The Act has studiously avoided doing the very thing we are asked to imply in construing it.

COLERIDGE, J.—Nothing can be clearer than that the occupation of land need not, according to the statute, be either distinct or separate.

Order confirmed.

PITCHER *v.* VICKERS.

New trial—Post-nuptial settlement—Bankruptcy.

Crowder, Q. C. moved for a new trial to set aside the verdict for the defendant in this action, for misdirection, and as against evidence. Pitcher was trustee of Mrs. Bramwell, a widow, under an assignment of furniture, &c. to her after her marriage in 1827; the purchase-money having been previously hers. Her husband, Mr. Bramwell, became bankrupt in 1839, and the defendant was the assignee by whom these goods had been sold. It was contended that the deed was fraudulent, as against creditors; but it had not been shewn that at the time the deed was made there were any creditors at all, and if not, and if the husband was not at the time in insolvent circumstances, the deed was valid (*Holcroft's* case, Dyer, 294; *Twine's* case, 1 Smith's Leading Cases, 1; *Shears* v. *Rogers*, 3 B. & Ad. 362); therefore the goods were not in the order and disposition of the bankrupt at the bankruptcy. *Rule nisi.*

NEWTON *v.* HOLFORD.

The defendant is bound to shew the plaintiff in error the postea; and if he refuses, the plaintiff having first brought in the roll, may have a rule to compel the defendant to complete it.

Alexander, Q. C. shewed cause against a rule obtained by *Newton* to set aside an order made by Patteson, J. to set aside a summons with costs, to bring in the roll for assignment of error, served by *Newton* on the 29th November, which he had obtained a rule for on the 25th November. In the interim the defendant had obtained the rule to set aside Mr. Newton's rule with costs, of which it appeared that the service did not take place till after the taxation of the costs of the rule of the defendants, and they had been put to expense by the delay.

Newton.—Their rule was obtained on the ground that the writ of error was frivolous and unreasonable. This is no reason at all. An application was made for the *postea*, which they refused on that ground. [PATTESON, J.—You should then have moved to compel them to shew it; but you moved for another thing.] But why was not the last rule modified without discharging my rule with costs? had I been before Mr. Justice Patteson in chambers when he gave their rule, this would have been done. My application was proper, it arose from their vexatious refusal. If I had not obtained my rule on the last day of Term, I could not have obtained the *postea* during vacation, and should have been too late to have assigned error. It was designed to prevent the merits being heard. They acted on the rule so far as to bring in the roll themselves. [Lord DENMAN, C.J.—We think your application proper.]

Lord DENMAN, C. J.—This was a rule to shew cause why an order should not be rescinded which was made by my brother Patteson to dismiss with costs an order to compel the defendant to complete the roll. Mr. Newton says my brother Patteson might have modified the order, and would have done so if he (Mr. Newton) had been there, but he could not have done so without an application. He had to deal with the rule before him; the summons had not been served, and he could not volunteer to modify the rule unasked to do so.

PATTESON, J.—My order was almost a matter of course to dismiss the summons with costs. The plaintiff says that he called on the defendants to shew the *postea*, which they refused, because his writ of error was frivolous. I by no means think their conduct proper, but far otherwise. The plaintiff might, however, have had a rule to compel the defendant to let him have access to the *postea*, in order to complete the roll; or he might have brought in the roll, and had a rule to compel them to complete it; but to lay a foundation for this request, the roll must be brought in, for you cannot ask them to complete what is not in existence. If I had been asked to modify my order thus, I should have had no hesitation in doing so.

COLERIDGE, J. concurred. *Rule discharged.*

Ex parte BATEMAN.

A barrister who, without being disbarred, serves under articles to an attorney, cannot avail himself of such service to be afterwards admitted an attorney.

Knowles, Q. C. applied for a direction from the Court to the Examiner of Attorneys to examine and admit Mr. Bateman.

This is a case of a novel nature. Mr. Bateman was articled to Mr. Hughes, of Northampton, for five years on 2nd Sept. 1826, and served for three years. He then went to Cambridge, graduated in 1833, entered as a student-at-law at the Middle Temple in 1831, was called to the Bar in May 1836, went to an eminent conveyancer's chambers, and remained there till 1842, and practised at the Bar. Being then desirous of becoming an attorney, he, without being disbarred, articled himself to a London attorney on these terms, viz. for five years, unless it was found that his former service would count, and in that case for two years, to make up the five years. He has served regularly under these articles ever since. On the 17th of January, 1845, he caused himself to be disbarred, and sought to be

examined for an attorney. Under these circumstances, the examiners declined to examine and admit without the direction of the Court. He now states, that he did not cause himself to be sooner disbarred through mere inadvertence.

The *Solicitor-General* (with whom was *Robinson*), contrà.—The examiners have no personal bias in this matter; but feeling the difficulty of the case, seek the guidance of the Court. He has not laid a proper foundation for his admission. By a rule of 1762, no person can be admitted a student at law, unless his articles have been previously cancelled. Neither can any one, having been an attorney and afterwards a barrister, be re-admitted an attorney. (*Ex parte Cole*, 1 Doug. 114.) I assume that Mr. Bateman's first articles were cancelled; for he was admitted and called. The articles in the alternative are not valid. The two services cannot be coupled, and it was clearly not the intent of Mr. Bateman that they should, for he pays the stamp-duty in the second instance of fresh articles, viz. 120*l*. under 55 Geo. 3. It is inconsistent with the character of both branches of the Profession, that a man should thus hold himself ready for either, as may prove most advantageous, and with this view, to be a barrister and an articled clerk at the same time. True, he did not practise as a barrister during the time he was articled, but the position he assumes is a most dangerous one to the respectability of both branches of the Profession. In the strongest manner all shadow of imputation on Mr. Bateman is disclaimed; but where is the security that such a position may not be abused hereafter? Does it not afford tempting opportunity to sign pleas, and do all the minor and chamber business of the attorney? It is clear, from the alternative in the articles, that Mr. Bateman's attention was directed to the difficulty that might arise from this two-fold character, and if so, why was he not then at once disbarred? This is wholly unexplained.

Knowles, in reply.—I trust the respectability of the Profession will not suffer: for the life of me I cannot see how the profession of an attorney can be injured by the entrance into it of a gentleman so well prepared to adorn it. The 2 Geo. 2, c. 23, requires five years' service, and objections have always gone on the ground that the time has not been wholly devoted to the service. (Chitt. Prac. Questions prior to admission.) *Ex parte Carter* (2 W. & Bl. 957), is referred to in *Re Taylor*, also in *Re Fletcher* it was so held. The cancelling of the former articles does not do away with the former service. *Ex parte Cole* merely shews that he ought to apply to be disbarred; he has done so. The case is not likely to recur, and great injury will be done to Mr. Bateman's prospects if he does not succeed.

Lord DENMAN, C. J.—The examiners have done very properly in referring this to our decision; it appears to be a perfectly new case. It is no answer to the argument advanced by the Solicitor-General that the statutes require nothing beyond exclusive service. It is distinctly understood that there is no sort of imputation thrown upon the character of Mr. Bateman; but much as the Court may lament the injury which may result to this gentleman's prospects, we must act entirely upon the view we take of our duty, under the circumstances of the case itself. The only inquiry we have to make is, whether this is a course which ought to be allowed to exist. I think it ought not. I think the danger of it to the character and honour of the Profession great and manifest. We must take great care that there arise no malversation which it is in our power to prevent; and the danger of it would be extreme, if the practice were allowed of articled clerks continuing to be barristers whilst in the office and service of attorneys. It is clear that this might lead, not only to the evils pointed out by the Solicitor-General, but likewise to most unfair advantage afterwards. The authorities cited by Mr. Knowles do not apply in any degree to this case, and *Ex parte Cole* is against his application. It was there held, that where an attorney, struck off the roll on his own application, was afterwards called to the bar, the Court refused to give him leave to be again put upon the roll of attorneys. Is it to be said that a gentleman is to have an advantage from his former articles, which he could not have had were he previously an attorney? We think it, therefore, right to declare that no one who serves under articles to an attorney at the time he is a barrister can avail himself of such service to be admitted as an attorney. *Direction refused.*

REG. v. KENSINGTON and OTHERS.

Mandamus to overseers to certify for excise license.

Jervis, Q. C. shewed cause why a *mandamus* should not issue to compel the overseers of a metropolitan parish to give a certificate to a Mr. Hamper of his occupancy of No. 19, Eastcheap, in order to a license, under 3 & 4 Vict. c. 61. That he is jointly rated with one Day they had already certified; but as Hamper's name nowhere appeared on the house, they refused to do so, not wishing to incur the penalty for falsely certifying, under s. 5.

The *Solicitor-General*, contrà.—The question is, whether the Act intended to make it discretional with overseers to give or withhold licenses. They did not put their refusal at the time on want of evidence, but on there being no law to compel them. No other remedy is open to the complainant.

Lord DENMAN, C. J.—This is a very important question. Let there be a rule, in order to its being argued on the return being made. *Rule absolute.*

CLEWES v. MIDDLETON.

Award set aside for improper reception of evidence.

Pashley shewed cause why the award should not be set aside. It appeared that the arbitrators had heard the evidence, not on oath, and separately gone to examine an interested witness behind the arbitrator's back. It was contended that this was not incorrect, inasmuch as the other party had been in and out of the room while the arrangement thus to take the evidence had been made, and that there was no undue means used by the arbitrators, because there was no *mala fides* to bring it within the scope of 9 & 10 Wm. 3, c. 15. (*Matson* v. *Trower*, Ry. & Moo. 17; *Atkinson* v. *Abraham*, 1 Bos. & Pul. 175; *Hewlett* v. *Laycock*, 2 C. & P. 574; *Bignald* v. *Gale*, 2 M. & Gr. 364, 830; where it was held that an objection to an award, on the ground of improper conduct in an arbitrator, was held to be waived by the knowledge of this misconduct, by the party interested previously to the award being made.) [Lord DENMAN, C.J.—We find Lord Eldon laying down a very different rule,(*a*) and we think that case no authority.] *Chace* v. *Westmere* (13 East, 357). [Lord DENMAN, C.J.—Are you going to any other point, Mr. Pashley?] The Roman law held a similar power was vested in the arbitrators.

Lord DENMAN, C. J.—It may be very inconvenient to set aside an award for so small a sum as this, but the arbitrators here have clearly used undue means by departing from the ordinary and natural course of justice for the conduct of this inquiry, and privately examining a lady who was absent, and who was interested in the suit. It is not pretended here that the other party gave assent or had any notice of the proceeding.

PATTESON, J.—If we are to countenance this, I know not to what length we are to go, or what arbitrators may not do.

COLERIDGE, J. I entirely concur with my lord that the arbitrators have departed from the natural course of justice, and that there is no ground whatever for maintaining this award. *Rule absolute.*

Tuesday, Jan. 28.

INGLISS v. MORGAN and ANOTHER.

Merivale moved for a rule *nisi*, calling on the defendants to shew cause why a rule made upon an order of Williams, J. allowing several pleas, should not be rescinded.

The action was in *assumpsit*. The pleas were—1st, *non assumpsit*. 2nd, payment; 3rd, that by the authority and request of the plaintiff, the defendant applied a sum of money equal to the debt, and for and on account of it, by lending and advancing the said sum to a certain person, and that the plaintiff then accepted the said loan and advance in satisfaction of the said debt; 4th, a similar plea, stating that the money was applied in purchase of Exchequer bills; 5th, to the account stated, that in the account delivered, there were mistakes. It was objected that the 3rd and 4th clearly amounted to payment, and the 5th to the general issue.(*a*)

Rule nisi; cause to be shewn at chambers, or the defendants to undertake not to demur specially to the replication.

REG. v. CHAPMAN.

A special application and refusal are conditions precedent to a mandamus to compel the performance of a duty. No general declaration of the party supersedes the necessity of such application.

C. Evans applied for a peremptory *mandamus* to compel the Rev. Mr. Chapman, vicar of Basingbourne, to bury one of his parishioners, stating that he had refused twice, on the ground that the child had been baptized by a dissenting clergyman. The Court will interfere in a case of this kind, as burial is a common law right, although there may also be a remedy in the Ecclesiastical Court. (*Rex* v. *Coleridge*, 2 B. & Al. 806; *Ex parte Blackmore*, 1 B. & Ad. 122.)

COLERIDGE, J.—Is the application to read the burial service?

C. Evans.—It is to "bury," and that will bring up the question whether the reading of the burial service is not included in the term "bury." The learned counsel observed that the child had lain unburied since Feb. 17, 1840, and that upon two occasions a refusal had been given. The case had not been brought into this Court before, as proceedings in the Ecclesiastical Court had been commenced, but were not proceeded with pending the decision on Mr. Escott's case, and when the Privy Council had decided in favour of baptism by a layman, the prosecution against Mr. Chapman in the Court of Arches was continued. It had there been decided that there was not sufficient evidence of a proper notice to Mr. Chapman. Any objections may be raised by Mr. Chapman on motion for attachment, as in the case of a peremptory *mandamus* to a gaoler to deliver up a body. (*Reg.* v. *Fox*, 2 Q. B. 246.)

Lord DENMAN, C. J.—Has there been any distinct refusal since that decision?

Evans.—No; but Mr. Chapman has repeatedly declared that he will not bury the child.

Lord DENMAN, C. J.—That will not do. You must make a special demand, and, in case of refusal, then apply for a rule *nisi*. *Rule refused.*

REG. v. PAYNE.

Pashley applied to the Court to order a return to be made before the last day of Term. It had been returnable on the 16th, but had been enlarged; a long time had elapsed before it had been moved for.

Application refused.

Thursday, Jan. 30.

Re CHARLES CARUS WILSON.

Kelly, Q. C. and *Peacock* shewed cause against a rule obtained by the Solicitor-General for quashing a writ of *habeas corpus ad subjiciendum* to bring up the body of Charles Carus Wilson, now a prisoner in her Majesty's goal in Jersey. The writ had issued in pursuance of an order made by Mr. Baron Rolfe, and was issued under the seal of and returnable in this Court. The main question was, whether the learned judge had, under 1 & 2 Vict. c. 45, authority to grant that order; but it was also objected to the issuing of the writ, that the learned judge had been kept in ignorance of the real facts, and that the affidavit upon which the order had been obtained could not be used in this Court, because it was entitled in the Exchequer.

The *Solicitor-General*, *Wortley*, Q.C. and *J. W. Smith*, were heard in support of the rule.

Cur. adv. vult.

Friday, Jan. 31.

Re CHARLES CARUS WILSON.

Lord DENMAN to-day delivered the judgment of the Court, which in effect was, that none of the objections taken were sufficient to justify the Court in quashing a writ which had already issued; and that, therefore, the rule must be discharged and a return made to the writ. *Rule discharged.*

The return is to be made on the 13th of February.

[A more detailed report of this case will be given next week.]

BUSINESS OF THE WEEK.

Friday.

GRAHAM v. WETHERBY.—A special case, turning upon the 6 Geo. 4, c. 16, s. 108, and the correctness of the decision in *Goldschmidt* v. *Hamlet* (1 Dowl. & Lownd. 501). *Atherton* supported the decision; *Willes* (with whom was *Kelly*, Q.C.) contrà.

Cur. adv. vult.

Saturday.

DOCK COMPANY OF HULL.—*Wortley*, Q. C. *Martin*, Q. C. and *Bain* were heard for the Company.

Cur. adv. vult.

REG. v. WILLCOCK. *Cur. adv. vult.*

Monday.

BARON DE BODE v. THE QUEEN.—A rule had been obtained by the Solicitor-General to enter judgment for the Crown *non obstante veredicto* for the plaintiff on three of the issues. A cross rule had been obtained on the part of the Baron de Bode. After some discussion, the Court decided that the rule on the part of the Crown was to be disposed of first. The argument occupied the whole day. For the Baron de Bode *M. D. Hill*, Q. C., *Manning*, Serjt., *Mellor*, *G. A. Young*, and *Anstey*. For the Crown, the *Solicitor-General*, *Kelly*, Q. C. and *Waddington*. *Adjourned.*

Tuesday.

BARON DE BODE v. THE QUEEN.—This case was resumed. *Adjourned until Monday, the 10th.*

Mr. Baron Platt was sworn in as a Baron of the Exchequer.

Wednesday.

HILL v. KENDALL.—Motion for new trial.

Rule nisi.

PARNELL v. SMITH. *Cur. adv. vult.*

DAVIS v. LOCK. *Stet processus.*

REG. v. FRANCIS CARTER. *Cur. adv. vult.*

REG. v. ACKERLEY.

Leave given to amend the return to the mandamus.

PRICE v. CARTER and OTHERS. *Cur. adv. vult.*

COURT OF COMMON PLEAS.

Tuesday, Jan. 21.

NEWTON v. HOLFORD and OTHERS.

Where the issue on a plea of the general issue to the whole cause of action was found for the defendant, and the issue on a special plea of justification for the plaintiff, the defendant was entitled to the general costs of the cause, though the evidence at the trial related chiefly to the issue on the special plea.

(*a*) *Featherston* v. *Cooper* (9 Ves. jun. 68) was probably alluded to.

(*a*) This point was decided in *Thomas* v. *Hawkes* (8 M. & W. 140).

The plaintiff, in person, shewed cause against a rule calling upon him to shew cause why the Master should not review his taxation of the defendant Healy's costs.

This was an action of trespass for assault and false imprisonment against the defendant Healy, who had obtained a judgment in the original action against the now plaintiff, and the sheriff and his officers, who had committed the trespass in putting in force the writ of execution on such judgment. The defendants severed in their pleas, the defendant Healy pleading not guilty, and a plea of justification, founded on his judgment debt against the plaintiff. The plaintiff replied to the special plea of justification that the outer door of his, the plaintiff's, dwelling-house was, at the time of the trespass, closed and fastened, and that the defendant had wrongfully forced open the same, and by that breaking and entry had entered the dwelling-house and arrested the plaintiff, under colour of the writ of execution. The defendant Healy, by his rejoinder, traversed the forcing open the outer door.

The jury found for the defendant Healy on the issue taken on not guilty, and for the plaintiff, on the plea of justification. The Master taxed the defendant Healy's costs at only 1*l.* on the ground that there was no evidence he had incurred any more cost exclusively applicable to the plea of not guilty.

It was now insisted on that the Master was right, as all the briefs and evidence related to the matter contained in the plea of justification.

TINDAL, C. J.—Why should the defendant's position be altered because he has injudiciously added a plea of justification? If he had pleaded only not guilty, he clearly would have been entitled to the costs of the cause. The case of *Spencer* v. *Hamerton* (4 A. & E. 413) seems very much in point.

Talfourd, Serjt. contrà, was not called on.

The COURT said that they felt no doubt but that the rule ought to be made absolute. Each plea was to be taken separately, and the plaintiff had, therefore, no right to pray in aid contradictory matter apparent on the record. What the defendant Healy admitted under the plea of justification was only for the purpose of the issue taken on that plea; having failed on that issue, he was bound to pay to the plaintiff the costs applicable thereto, but having succeeded on the issue on the plea of not guilty, which went to the entire cause of action, he was entitled to the general costs of the cause. *Rule absolute.*

NEWTON *v.* ROWE and ANOTHER.

Where in an action on the case for libel there are issues on pleas of the general issue, and also of justification, and the plaintiff obtains a verdict on all the issues, with only a farthing damages, he is, under the stat. of 3 & 4 *Vict. c.* 24, *s.* 2, *not entitled to costs on any of the issues.*

Sir *Thomas Wilde* applied in behalf of the plaintiff for the Master to tax the costs of the plaintiff. The action was on case for a libel; there was a plea of the general issue, and several pleas of justification. On the issues joined on these pleas a verdict had been entered for the plaintiff, damages one farthing.

It was admitted that in consequence of the stat. 3 & 4 Vict. c. 24, s. 2, the plaintiff was not entitled to the costs on the general issue, but it was sought for him to be allowed the costs on the other issues, which had been found for him. If the verdict had been for the defendant on the plea of the general issue, then the plaintiff would have been entitled to his costs on such of the issues as might be found for him, and it would be a singular thing if the plaintiff should now be in a worse situation because the verdict on the general issue, instead of being found against him, has been found for him. *Taylor* v. *Rolfe* (8 Jur. 35—Q.B.) shews how strictly this stat. of 3 & 4 Vict. is construed, and that it does not apply to costs on a writ of inquiry, after judgment for the plaintiff on demurrer.

TINDAL, C. J.—The question must depend entirely on the words of the statute. The words of the statute are, that if the plaintiff in any action of trespass on the case shall recover by the verdict of a jury less damages than 40s. such plaintiff shall not be entitled to recover or obtain from the defendant in respect of such verdict any costs whatever. Stopping here, the words are general that in any action on the case, the present action is within the description given by the Legislature, and the plaintiff having recovered therein less than 40s. damages, he is by the Act not to be entitled to obtain from the defendant any costs whatever. By this statute the same result is to follow, "whether the verdict shall be given upon any issue or issues tried," which shews that the statute contemplates several issues being joined, but that no difference is to be made on that account, if the plaintiff recover a verdict for less than 40s.

The other judges concurred. *Rule refused.*

Friday, Jan. 24.

BOYD *v.* LETT.

In a declaration on a breach of contract to purchase certain goods of the plaintiff, it is sufficient to allege that the plaintiff was ready and willing to deliver the goods to the defendant according to the contract, without averring a tender and offer to deliver.

Assumpsit on a contract by which the plaintiff agreed to sell to the defendant, and the defendant to purchase of the plaintiff, certain goods, the price for which was to be paid at the expiration of fourteen days therefrom, at which time the goods were to be delivered, but the defendant was to be entitled to receive the goods before that time upon his paying the purchase-money. The declaration contained an averment that the plaintiff was ready and willing to deliver the goods to the defendant according to the terms of the contract, and assigned as a breach, that the defendant would not accept the goods or pay the price of the same.

There was a *demurrer* to the declaration, on the ground that the plaintiff had not averred a tender of the goods, and that the allegation of ready and willing to deliver was not sufficient.

Channell, in support of the *demurrer*, stated that the defendant was not bound to accept the goods without an opportunity of seeing that the goods were such as contracted for, both as regarded quantity and quality, and that there ought therefore to be such an allegation in the declaration as would enable him to put the same in issue. (*Isherwood* v. *Whitmore*, 10 M. & W. 757, and 11 M. & W. 347.) It was doubted whether, under a traverse of ready and willing, the defendant would in this respect have the same advantage as under a traverse of a tender and offer to deliver.

Byles, Serjt. contrà, cited *Rawson* v. *Johnson* (1 East, 203, *Jackson* v. *Allaway* (8 Jur. 63, and 13 Law J. C. P. 84), and *Pickford* v. *Grand Junction Railway Company* (8 M. & W. 372), and contended that "ready and willing" imported an ability to deliver the goods contracted for, and that therefore an averment of tender was superfluous, and

The COURT being also of that opinion,

Channell, Serjt. applied for and obtained leave to amend, on payment of costs, by pleading *non assumpsit* and a traverse of ready and willing, otherwise

Judgment for the plaintiff.

THOMAS *v.* STANDISH.

Practice—Setting aside rule to plead several matters—Issuable pleas.

Dowling, Serjt. moved for a rule to shew cause why the rule of court and judge's order to plead several matters should not be discharged. The defendant, who was under terms to plead issuably, had obtained a judge's order to plead several pleas, some of which, it was now said, were not issuable pleas, and the question was, whether the plaintiff must sign judgment, in order to take advantage of this, or might apply to have the order to plead, and rule of court which had been made thereon, set aside.

Rule nisi.

BONZI *v.* STEWART.—*Shee*, Serjt. for the defendant, in support of the demurrer to the plaintiff's replication. *James*, contrà, was not called on. Leave to amend, otherwise *Judgment for plaintiff.*

BARNES *v.* WHITE and ANOTHER.

A local Act (53 *Geo.* 3, *c.* 92) *for amending the roads and highways in the Isle of Wight, empowered certain commissioners to take certain tolls at the several turnpikes or toll gates which might be erected on the roads by virtue of the Act. The Act authorized the commissioners to borrow money for the purposes of the Act, and to mortgage the tolls for any term during the continuance of the Act, as a security for the repayment of such money. The time limited by the Act for its continuance had expired, unless it was continued by the statute* 4 & 5 *Wm.* 4, *c.* 10, *for continuing the Acts for making turnpike-roads in Great Britain.*

Held, that the local Act, though not exclusively a turnpike-road Act, was within the spirit of, and continued by, the 4 & 5 *Wm.* 4, *c.* 10.

The plaintiff was convicted under the general turnpike statute, 3 *Geo.* 4, *c.* 126, *for forcibly passing through a toll-gate situate on a turnpike-road made under the authority of the local Act,* 53 *Geo.* 3, *c.* 92, *and thereby avoiding the toll due. The plaintiff refused to pay the sum in which he was convicted, and a warrant of distress against his goods was issued. The conviction contained no adjudication of the payment of the penalty.*

Held, that it was not therefore bad, since it followed the form given in the schedule to 3 *Geo.* 4, *c.* 126.

The conviction stated the toll-gate to be situate on a turnpike-road; the warrant stated only the toll-gate to be situate in the particular parish and county, omitting the turnpike-road.—Held, no variance.

Held also, that the warrant was not void for not stating that the toll-gate was situate on a turnpike-road.

The warrant ordered a moiety of the penalty to be paid to the treasurer of the commissioners for amending the roads and highways in the Isle of Wight.—Held, not to be a misappropriation of the penalty.

Held also, that no demand of the penalty was requisite previously to issuing the warrant of distress under the 3 *Geo.* 4, *c.* 126, *s.* 141.

This was an action of trespass for breaking and entering the plaintiff's close, in the parish of Carisbrooke, in the Isle of Wight, called "the timber-yard," and seizing and taking certain of his goods and chattels. The defendants pleaded not guilty by statute, upon which plea issue was joined. The cause came on for trial at the last Summer Assizes for the county of Southampton, on the 15th day of July, before Patteson, J. and a special jury, when a verdict was found for the plaintiff with 2*l.* 9*s.* 6*d.* damages, subject to the opinion of this Hon. Court upon the following

CASE.

The defendants are, and at the respective times of the making by them of the conviction and of the signing by them of the warrant of distress and of the committing of the trespass hereinafter mentioned were, two of her Majesty's justices of the peace for the county of Southampton, acting in and for the division of the Isle of Wight, in the said county.

On the 3rd of June, A.D. 1843, the plaintiff having been duly summoned to answer an information in respect of the subject-matter of his conviction hereinafter mentioned, appeared before the defendants with his attorney and objected that the local Act hereinafter mentioned had expired, and therefore that the defendants had no jurisdiction to hear the complaint. The defendants overruled the objection, and proceeded to hear the cause as set out in the conviction hereinafter mentioned, and thereupon the plaintiff was convicted before the defendants, acting as such justices; and of such conviction, under the hands and seals of the defendants, the following is a copy:—

Isle of Wight, in the County of Southampton. } Be it remembered that on the 3rd day of June, in the sixth year of the reign of her Majesty Queen Victoria, and the year of our Lord 1843, James Barnes, of the parish of Carisbrooke, in the Isle of Wight, in the county of Southampton, builder, is convicted on the oath of Charles Newnham, a credible witness, before us, two of her Majesty's justices of the peace acting in and for the said county of Southampton, and for the division of the Isle of Wight, in the said county, for that he, the said James Barnes, on the 30th day of May last, in the parish of Carisbrooke aforesaid, in the isle and county aforesaid, on the turnpike-road before then made and then being under the authority of an Act of Parliament, made and passed in the 53rd year of the reign of his late Majesty King George the Third, for amending the roads and highways in the Isle of Wight, with a certain carriage, to wit, a cart drawn by one horse, did unlawfully, fraudulently, and forcibly pass through a certain toll-gate, then and there legally situate and being under the authority of the said Act, by reason whereof the payment of a certain toll, to wit, the sum of threepence, then and there legally due, demanded, and payable under the authority of the said Act, by and from the said James Barnes, for and in respect of the said carriage so drawn as aforesaid, was avoided, contrary to the form of a statute made in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the general Laws now in being for regulating Turnpike-roads in that part of Great Britain called England." And we do hereby declare and adjudge that the said James Barnes hath forfeited for the said offence the sum of two pounds and two shillings.

Given under our hands and seals the day and year first above written.

R. WALTON WHITE. (L. S.)
THOMAS COOKE. (L. S.)

The plaintiff refused to pay the said sum of 2*l.* 2*s.* which, by the conviction, he was adjudged to have forfeited, and accordingly, on the 5th day of June, 1843, caused the defendants to be served with a notice of such refusal (of which a copy was set out in the case, but the same is here omitted, as nothing turned on it).

Notwithstanding this notice, the defendants afterwards, on the 10th day of the same month of June, issued a distress warrant under their hands and seals, of which warrant the following is a copy:—

Isle of Wight, in the county of Southampton. } To the constables of the hundred of the West Medene, in the Isle of Wight, in the county of Southampton, and all other constables whom it doth or may concern, and especially to Thomas Hayter Chase.

Whereas James Barnes, of the parish of Carisbrooke, in the Isle of Wight, in the county of Southampton, builder, was on the third day of June, now instant, convicted before and by us, the undersigned, two of the justices of our Lady the Queen, assigned to keep the peace of our said Lady the Queen within the same county, and also to hear and determine divers felonies, trespasses, and other misdeeds within the same county done and committed, on the oath of Charles Newnham, a credible witness, for that he, the said James Barnes, on the 30th day of May now last past, at the parish of Carisbrooke aforesaid, in the isle and county aforesaid, with a certain carriage, to wit, a cart drawn by one horse, the said cart then and there having two wheels, and the fellies of such wheels being then and there of less breadth than three inches, to wit, of the width of two inches, did unlawfully, fraudulently, and forcibly pass through a certain toll-gate, then and there situate and being, by means whereof the payment of a certain toll, to wit, the sum of threepence, then and there legally due and payable by and from the said James Barnes, for

and in respect of the said carriage so drawn as aforesaid, was avoided, contrary to the statutes in such case made and provided, by reason whereof the said James Barnes hath forfeited and become liable to pay, and we adjudge that he, the said James Barnes, shall forfeit and pay, the sum of two pounds and two shillings, to be distributed as hereinafter mentioned, which said sum he, the said James Barnes, hath refused to pay; these are, therefore, in her Majesty's name, to charge and command you to levy the said sum of two pounds and two shillings by distress of the goods and chattels of the said James Barnes; and if within four days after such distress by you taken, the said sum, together with the reasonable costs and charges of taking and keeping the same, shall not be paid, that then you do sell the goods and chattels so by you distrained, and out of the money arising by and from such sale you do pay one moiety of the said sum of two pounds and two shillings to Marle Morgan, of Newport, in the said isle, who informed us of the said offence, and the other moiety thereof to the treasurer of the commissioners for amending the roads and highways in the Isle of Wight, being the place where the said offence was committed, returning the overplus, on demand, to him the, said James Barnes (the reasonable charges of taking, keeping, and selling the said distress being deducted); and if sufficient distress cannot be found of the goods and chattels of the said James Barnes whereon to levy the said sum of two pounds and two shillings, that then you certify the same to us, together with this our warrant. Given under our hands and seals at the Guildhall in Newport, in the Isle of Wight, this 10th day of June, 1843.

R. W. White. (L. S.)
Thos. Cooke. (L. S.)

	£	s.	d.
Levy fine	2	2	0
Costs	0	5	0
	£2	7	0

In pursuance and under the authority of this warrant, the trespasses complained of in the declaration were committed by the defendants. The plaintiff, disputing the jurisdiction of the defendants to make such conviction, or to issue such warrant, and objecting also to the form both of the said conviction and warrant on the 30th day of the same month of June, caused same to be served with a notice of action (a copy of such notice was given in the case, but the same being in the usual form is here omitted).

This action was commenced on the 4th day of August, 1843.

The pleadings in this action, and also an Act passed in the 53rd year of the reign of his late Majesty King George the Third, intituled "An Act for Amending the Roads and Highways in the Isle of Wight," copies of which accompany this case, are to be deemed and taken as part thereof, and may be referred to if necessary.

If the Court shall be of opinion that the plaintiff is entitled to recover in this action, then the verdict found for him is to stand; but if the Court shall be of a contrary opinion, then judgment of nonsuit is to be entered.

Channell, Serjt. for plaintiff (*Bull* with him).—The conviction was under the General Turnpike Act, 3 Geo. 4. c. 126, but the question whether any toll was due or not will depend on the Local Act 53 Geo. 3 c. 92, having or not been continued and kept alive by the statute 4 & 5 Wm. 4, c. 10. It is submitted that the Local Act has not been so kept alive. Its title is "An Act for Amending the Roads and Highways in the Isle of Wight," but highways are not necessarily turnpike roads, and the statute 4 & 5 Wm. 4, c. 10, is only for the continuing of Acts for making and amending and repairing turnpike roads. This local Act is not for making as well as amending roads, nor is it exclusively a turnpike Act. The 20th section gives a powe 'o the commissioners to erect turnpikes and toll-houses in or upon the several roads within the parishes mentioned in the Act, and the 23rd section enumerates the tolls which may be taken, but it is contended that the continuing Act of 4 & 5 Wm. 4, c. 10 was not intended to revive parts only of an Act where the Act itself would have died, and does not, therefore, apply to Acts which, like this local Act, are not exclusively turnpike Acts. [Tindal, C. J.—Is there not in the local Act any clause by which the commissioners are empowered to borrow money upon the security of "he tolls, because that may have an important bearing on the question of the Act being continued?] By the 39th section, the commissioners are empowered to borrow money, and to mortgage the tolls as a security for the same; but the mortgage is to be only for a term *during the continuance of the* Act. Then as to the conviction, there is no clause in the local Act applicable, and the same is not warranted by the 3 Geo. 4, c. 126, under which it is made; the 41st section of that Act, which imposes a penalty for forcibly passing through any toll-gate, declares that every such person shall for every such offence *forfeit and pay* any sum, &c. Now in this conviction there is no adjudication of payment, but it simply states that "James Barnes hath forfeited for the said offence," &c. The conviction is, therefore, uncertain in not ascertaining to whom the penalty is to be paid. As to this *Rex* v. *Seale* (8 East, 568) is in point. [Tindal, C. J.—That was a conviction under the 42 Geo. 3, c. 119; is any form given by that Act, because there is by the present Act? Cresswell, J.—By the 148th section of this Act it is declared that the forms in the schedule are to be used, and that no objection shall be made for want of form.] It is submitted that this is not an objection of form, but of substance. There must be a forfeiture by a neglect to pay before any distress can issue under the 141st section of the Act. Another objection is, that there are variances between the warrant and conviction. The warrant states the offence to be forcibly passing through a certain toll-gate "then and there situate and being," and does not state, as the conviction does, that the toll-gate is situate on the turnpike-road. [Tindal, C. J.—Is it a variance, or is it any thing more than this, that the warrant does not state so much as the conviction?] It is apprehended that it is a variance: at all events, the warrant is void, as there is no offence, unless the toll-gate is on a turnpike-road, and there is nothing in the warrant from which it can be necessarily inferred that it is so situated. The stating that the toll was avoided "contrary to the statutes in such case made and provided" is too general, when the language before was not sufficient for any such implication. (*Wickes* v. *Clutterbuck*, 10 Moore, 63.) The General Turnpike Act, 3 Geo. 4, c. 126, gives no right to the toll, but creates the offence of forcibly passing the toll-gate; it is under the local Act; that the right to tolls is given, and by that it is to be a toll on a turnpike-road; it must, therefore, be shewn to be a toll-gate in connection with a turnpike-road, or the warrant does not disclose any offence. Another objection is, that the warrant contains a misappropriation of the penalty. The 141st section of 3 Geo. 4, c. 126, directs one moiety to be paid "to the treasurer to the commissioners for repairing and maintaining the road on which the offence shall have been committed;" but the warrant directs one moiety to be paid to the treasurer of the commissioners for amending the roads and highways in the Isle of Wight. It is not in the warrant shewn that it is the road on which the offence w s committed. There has also not been a sufficient adjudication as to the costs. At the end of the warrant it is stated, "Costs, five shillings." There are two sets of costs: there are those attending the information and conviction, and the costs of taking and keeping the distress; but there is no adjudication as to the former. Lastly, there does not appear a sufficient demand of the penalty to have been made before the distress. [Cresswell, J.—The 141st section of the Act seems strong against you on that point; the penalty, it is there stated, is to be levied upon proof and conviction of the offence, and not upon demand.]

Byles, Serjt. (with him *Barstow*), contra, was directed to confine himself to the third objection, viz. as to the warrant being void for not stating the toll-gate to be on a turnpike-road. It clearly appears, from the warrant, that the offence was committed on a road in the Isle of Wight; and the 20th section of the local Act gives power to the commissioners to erect toll-gates on every road in that isle, therefore it was a road on which the toll-gate might be erected. A warrant ought not to be construed so strictly as a conviction, as there is more time given for drawing the latter than the former. The 41st section of 3 Geo. 4, c. 126, describes the offence to be forcibly passing through any *such* toll-gate; the difficulty is as to the word "such;" if, as it would appear, there is no antecedent to it, it may be struck out, and then it becomes a toll-gate absolute. Besides, no objection should be made that the warrant does not follow the precise words of this 41st section, as defects in form are cured by the 148th section. The forms given by the Act are not peremptorily required to be used, but the 148th section says only that such forms "may be used;" the difference in this respect between "may" and "shall" is shewn in *Davison* v. *Gill* (1 East, 72). It also appears by the warrant that the plaintiff passed through a toll-gate, by means whereof the payment of a toll then legally due was avoided. [Cresswell, J.—The question is, whether there may not be a gate for collecting tolls other than turnpike tolls.] The word toll-gate has in the Act a certain definite sense.

Channell, Serjt. replied.

Tindal, C.J.—It appears to me that the defendants are entitled to the judgment of the Court in their favour. There have been several objections taken on the part of the plaintiff. The first was that the local statute of 53 Geo. 3 has not been continued by the general Act 4 & 5 Wm. 4, c. 10, but I think that when the object and intention of the former Act are looked at, it is manifest that it has been continued. One of the objects must have been that persons who had lent money for the purposes of such local Act should not, at the expiration of that Act, be without any security for the money they may have so advanced. By the 39th section of 53 Geo. 3, power is given to mortgage the tolls as a security for the repayment of such moneys; and it would, therefore, be of most mischievous consequences if we were not to look at the spirit of the enlarging Act, and to say that this local Act is not included therein. The 4 & 5 Wm. 4, c. 10, recites that it is expedient that the several Acts for making, amending, and repairing the turnpike-roads in Great Britain should be continued; and then proceeds to enact that they shall accordingly be continued. Now, although it may be true that the local Act, 53 Geo. 3, is not limited to making turnpike-roads, but is for amending roads and highways in the Isle of Wight, still it certainly falls within the spirit of the 4 & 5 Wm. 4, c. 10. The excepted Acts, which are specified in the second section of that statute, and which are for widening certain streets, shew what was meant by the general words Turnpike-road Acts; and that it was supposed necessary to expressly except them, although they did not come strictly within the meaning of Turnpike Acts. The second objection was as to the form of the conviction, in not adjudicating the payment of the penalty. The answer to that is, that this conviction precisely follows the form given in the schedule to the statute 3 Geo. 4, c. 126; and the 148th section states that no objection shall be taken for want of form. The third objection was, that there was a variance between the warrant and the conviction. The answer is, that there is no such variance; that the conviction only states the offence more fully than the warrant, but that in effect the warrant and conviction agree. It was then objected that the warrant was void, in not stating the toll-gate where the offence was committed to have been on a turnpike-road; but it appears to me that there is no ground for this objection. If we look at the warrant, it is true it does not state the toll-gate to be on a turnpike-road, but it states what is equivalent; it states a toll-gate "then and there situate and being, by means whereof the payment of a certain toll then and there legally due was avoided." I agree that you are to consider the local Act as incorporated with the 3 Geo. 4, c. 126, by the 41st section of which the penalty is incurred "if any person shall fraudulently or forcibly pass through any such toll gate." Now it is an answer to this objection, that the warrant follows the words of this Act, and is therefore sufficient. Besides, if we consider the local Act to be incorporated with the General Turnpike Act, then the toll is equivalent with a turnpike toll. The 22nd section of 53 Geo. 3 gives the commissioners power to take the several tolls there enumerated "at each and every of the several and respective turnpikes or toll-gates;" by which it appears that that Act treats toll-gates and turnpikes as equivalent. For these reasons this objection, therefore, seems to be answered. The fourth objection is, that the warrant does not shew a proper appropriation of the penalty; but it is sufficient to say that it is in the form given in the schedule to the 3 Geo. 4, c. 126. It is true that the warrant does not follow the very terms of the form, as in the schedule it is stated that one-half is to be paid to the person who informed, and the other half to the surveyor of the turnpike-road, whilst in the warrant it is stated that the other moiety is to be paid to the treasurer of the commissioners for amending the roads and highways in the Isle of Wight; but this makes no real difference, because it may be impossible to follow the precise words of the form in this respect, and the 148th sect. provides that the forms may be used "with such additions and variations only as may be necessary to adapt them to the particular exigencies of the case." The fifth objection was, that there had not been an adjudication as to the costs, but that has been properly abandoned. And the sixth and last objection was, that there has been no demand of the penalty; but that has been already answered by the 141st clause, which makes the power to levy depend on the conviction, and not upon the demand. Therefore I think not any of the objections can be supported.

The other judges delivered similar judgments.

Judgment of nonsuit.

Wednesday, Jan. 29.

Jackson and Another v. Galloway.

Where, after reference to the judge who tried the cause, a verdict has been entered for the plaintiffs on one count, and for the defendant on the other, and on error brought on the judgment of this Court by the defendant, the Court of Error has reversed such judgment, this Court refused an application by the plaintiffs made two years after judgment had been given by the Court of Error to allow the postea to be amended by entering the verdict for the plaintiffs on a different count.

Semble, this Court has not the power to alter the entry of the verdict on the postea after the judgment thereon of a Court of Error has been given.

Talfourd and *Byles*, Serjts. shewed cause against a rule obtained by Sir *T. Wilde* last Michaelmas Term, calling on the defendant to shew cause why the *postea* in this cause should not be amended by entering a verdict for the plaintiffs on the 4th count of the declaration in this cause, and by entering a verdict for the defendant on the issues joined on the first count of the said declaration, and why the judgment-roll should not be amended by making the same conformable thereto, and why there should not be a new

taxation of costs with reference to such amendments. This cause has been several times before the Court, and is to be found reported in 6 Scott, 766, and 3 Scott N.R. 753.

The declaration was in *assumpsit* on a charter-party, by which the plaintiff's ship the *City of Rochester* was to proceed from Pembroke to Cardiff, and there load certain quantities of iron and coal, and proceed therewith to Alexandria, and deliver the same on payment of freight, forty running days to be allowed for loading at Cardiff, and for unloading at Alexandria, to commence on the 16th December, 1834, and ten days on demurrage over and above the said lay-days, at 7*l.* per day. It appeared that the contract had afterwards, with the mutual consent of the parties, been varied by loading the vessel at Pembroke instead of Cardiff.

The declaration contained several counts, but the only two which it is necessary to notice were the first, which was a special one on the charter-party for detaining the vessel over and above the lay days and the days of demurrage; and the fourth count, which was *indebitatus*, for the use and hire of ships retained and kept on demurrage. The defendant conceiving that the first and fourth counts involved the same cause of action, took out a summons before the judge to compel the plaintiffs to elect which they would have struck out, but the plaintiffs contending that they had a *bonâ fide* intention of establishing under each a distinct cause of action, the learned judge accordingly indorsed the summons with a certificate that he was satisfied, on cause shewn, that a distinct matter of complaint was intended to be established on each of the counts.

The question at the trial, which took place at the sittings after Hilary Term 1838, was as to the defendant having or not consented to the loading at Pembroke instead of Cardiff. The jury found for the plaintiffs on this point, and assessed the damages generally at 170*l.*

There was afterwards considerable difficulty in entering the verdict, many months having elapsed before the *postea* was finally settled. The defendant offered to consent to the verdict being entered for the plaintiffs on the fourth count if they would allow the verdict to be for the defendant on the first count; this the plaintiffs refused, and the parties having attended before Tindal, C. J., who had tried the cause, that learned judge decided that the plaintiffs were entitled to have the verdict entered for them on the first count, and for the defendant on the fourth count, and the *postea* was accordingly so made out in April 1840. Judgment having been afterwards entered up, the defendant brought a writ of error thereon, which was argued in Trinity Term 1841. After time taken, in Hilary Vacation 1842, the Court of Error gave judgment, reversing the judgment of this Court, on the ground that the first count was bad for want of a sufficient consideration for the defendant's promise.

It was now urged, on behalf of the defendant, that the present application, if granted, would have the effect of making void the judgment of the Court of Error, and that it went beyond every other case, and was altogether without precedent. That the case of *Mellish* v. *Richardson* (7 B. & C. 819) was the making the amendment before the Court of Error had pronounced judgment, and differed therefore essentially from the present. It was also questioned whether this Court had the power to make the amendments, and that, at all events, it ought not to do so after the great lapse of time and laches on the part of the plaintiffs in not coming sooner; citing *Sutter* v. *Slade* (1 A. & E. 608), and *Harrison* v. *King* (1 B. & A. 161).

Sir *Thomas Wilde* (*Greenwood* with him), in support of the rule, contended that the objection which had been made to the first count was of a technical nature, and that it was only in accordance with the principle on which the Courts always acted, to allow such amendments to be made, in order that justice might not be defeated; that it was no objection that the amendment nullified the judgment of the Court of Error (*Rex* v. *Carlile*, 2 B. & Ad. 362); and that the Court would not take into consideration the effect the amendment might have on the judgment of another Court, if the amendment was one proper to be made; neither would the lapse of time prevent the amendment being made, when the Court had that before them which would enable them satisfactorily to do justice. The following cases were cited: *Henley* v. *The Mayor of Lyme Regis* (6 Bing. 100); *Doe* v. *Perkins* (3 T. R. 749); and *Petrie* v. *Hannay* (3 T. R. 659).

TINDAL, C.J.—It appears to me that this amendment ought not to be allowed. I doubt whether we have the power of authorizing the amendment to be made, and no principle or case has been shewn where, after judgment delivered, the Court has made the amendment. In *Petrie* v. *Hannay* the amendment was made before argument in the Court of Error, and in *Mellish* v. *Richardson* the *postea* was amended before the judgment in error had been given. Here time is taken by the Court of Error to consider their judgment, during which time the plaintiffs might have come and asked for this amendment to be made, but they did not do so; judgment of reversal is pronounced, and two years are allowed afterwards to elapse before the plaintiffs make this application. Unless some authority were shewn us to the contrary, the Court below has no jurisdiction, I think, in such a case. But, supposing we have jurisdiction, I think the present is one in which we ought not in the exercise of our discretion to use it. The amendment sought is to enter a verdict for the plaintiffs on the fourth count, and for the defendant on the issues joined on the first count. Now, this does not appear to be one of purely a technical character. If the application to make this amendment had been made at the trial of the cause, and the plaintiffs had then insisted on their right to recover alone on the fourth count, the defendant might then have raised an objection, which it would not now be in his power to do; he might have raised a question as to the proper form of action, not being in *indebitatus assumpsit* to recover such demurrage, but I do not of course say what would have been the effect of such an objection. The circumstance also, of so long a time having elapsed, is a strong circumstance against the granting of the present application. The plaintiffs might have applied whilst the Court of Exchequer Chamber was considering its judgment, but instead of so doing, they stop to take the chance of that judgment being in their favour. Although this Court cannot but be sorry, that after the plaintiffs have recovered a verdict in the cause, this should be the result, yet this case must be decided on principle, and I therefore think the present application must be refused.

MAULE, J.—I am of the same opinion. This is something more than an amendment which is now sought for, it is an alteration of the record after the judgment of the Court of Error has been given. It seems a strong thing to say that this Court has this power, and I do not think it has, but it is not necessary now to decide this. The question is, which way the verdict should be entered. The proper tribunal for determining that is the judge who tried the cause, and, in the present case, this question has been brought before that learned judge. It appears the parties went before him and he then decided this very matter, namely, that the verdict should be entered for the plaintiffs on the first count, and for the defendant on the fourth. We are now asked to reverse that judgment of the Chief Justice, but we have no jurisdiction to do so. My lord, indeed, may request our assistance as assessors in determining the correctness of that decision; but I am of opinion we cannot advise him, after the length of time which has been allowed to elapse, to alter the judgment he had previously given. I think that, after the interval of two or three years, people should be allowed to consider that there has been an end of the matter, and that a final settlement has taken place. Here, when this cause is before the Court of Exchequer Chamber, the plaintiffs do not apply to postpone it, but they argue the point raised. Time is taken by the Court to consider their judgment, during all which time there is a chance of the judgment being in favour of the plaintiffs, and it is not until afterwards, when it is found to be against them, that they make this application. Suppose this objection, which was taken before the Court of Error, had been made on a motion in arrest of judgment, and that that motion had been argued, would the Court, after they had given judgment, have allowed this amendment to have been made? I apprehend not. It often occurs in practice, while the case is pending, and before the judgment has been pronounced, for an amendment to be allowed on payment of costs, but it would be beyond all analogy to allow such an amendment as this after the judgment of a Court of Error has been given.

CRESSWELL, J.—I fully concur in the doubt which has been expressed as to our having the authority to make this alteration. No case has been cited where the amendment has been made after the judgment of the Court had been given, with the exception of the case of *Rex* v. *Carlile*; but there the Court who had pronounced judgment gave its consent to have the alteration made, and the Attorney-General, on the part of the Crown, also consented; it is, therefore, no authority for allowing an amendment after the Court of Error has given judgment. Then as to the question of our exercising our discretion, supposing us to have the authority, I think it would be of very mischievous consequence if we were to entertain this application. It is quite contrary to practice to allow amendments to be made after argument, unless the matter has come upon either of the parties by surprise. There is no ground for our now interfering after this lapse of time.

ERLE, J. expressed a similar opinion.

Rule discharged with costs.

Saturday, Jan. 25.

DENNING *v.* HAMMOND and ANOTHER.

An affidavit.

Where attempts have proved fruitless to serve a rule by the parties keeping the street-door closed, the affidavit must state that the defendants have been seen to come out of the house, or contain a statement from the deponent's own knowledge that they are living there, before the Court will interfere.

Byles, Serjt. moved for a rule absolute on an affidavit of service of a rule to compute principal and interest on a bill of exchange. Copies of the rule had been sent by post; the usual calls had been made, but the street-door had been kept closed. Copies were then put under, and others nailed upon the door. The deponents swore, in addition, that they believed the defendants lived in the house, although the door was always kept closed. [CRESSWELL, J. —You, in fact, swear you *believe* you have served the rule.] There is a difficulty. If we had an affidavit that they lived in the house, or the statement of any person who had seen them come out of the house, there would have been no occasion to apply to the Court.

COLTMAN, J.—Why do you not proceed in the usual course, by sticking up a notice in the office? You would then shew the parties had some notice of the proceedings, and the rule would be granted as a matter of course.

Byles, Serjt.—I must make a different application, on better materials. *Rule refused.*

BURTON *v.* KNIGHT.

Nonsuit—Wrongful dismissal.

Byles, Serjt. shewed cause against a rule obtained by *Shee*, Serjt. to enter a nonsuit, pursuant to leave reserved at the time, on the ground that there was no evidence to shew a wrongful dismissal of the plaintiff from the defendant's service.

Shee, Serjt. contra. *Rule discharged.*

GOODAL *v.* POLHILL.

A party who pays a bill of exchange for the honour of another becomes the indorsee of that party, and has the usual time for giving notice.

Channell, Serjt. (*Byles*, Serjt. with him), opposing the rule.—The notice in this case was in sufficient time. The defendant is the drawer of the bill, which had several indorsements upon it; among others, that of De vos Rylandt, with a reference to the plaintiff in case of need. The bill was paid at maturity by the plaintiff, and notice sent by him to De vos Rylandt at Bruges on the very day; notice was then given to the defendant by the next practicable post. When notice is given of dishonour by the holder to an indorser, the indorsee has reasonable time for notice. In this case the plaintiff became indorsee of the bill. There is no objection to an agent giving notice as agent. (*Woodthorpe* v. *Lawes*, 2 M. & W. 109; *Frith* v. *Thrush*, 8 B. & C. 387.) A person paying a bill for honour has the same right as an agent acting for his principal, or an attorney for his client. A letter is sent by the plaintiff to De vos Rylandt on the earliest opportunity, and an answer is returned by the earliest mail, and it cannot be denied that the plaintiff had a right to communicate with the person on whose account he paid the bill; and if a right to communicate at all, there must be sufficient time allowed. It is also submitted on another ground the notice was sufficient; by the plaintiff striking out all subsequent indorsements to De vos Rylandt, he became a holder entitled to sue upon the bill. [CRESSWELL, J.—When did he become indorsee?] The plaintiff could elect. By the authorities he would be entitled to become an indorsee, and have his remedy against the parties to the bill. The facts here shew no negligence.

Shee, Serjt. contra.—This notice will not suffice. It is not necessary to contend that a notice may not be given by an agent of the holder. Was the Court clearly satisfied the plaintiff was an agent at all of De vos Rylandt? Even supposing he was, he must use reasonable diligence. (*Beveridge* v. *Burgis*, 3 Camp. 262.) The question always was, whether, under all the circumstances, the holder is excused from giving regular notice. Here, if it is admitted the plaintiff was agent to De vos Rylandt for the whole transaction, still he was bound to give immediate notice. Then, again, if the plaintiff was acting as sole agent of De vos Rylandt, was he justified in giving notice to them in the first instance? The plaintiff was bound to go through all the forms which a party to the bill would be bound to observe, and should have given notice at once. Having paid for honour, he becomes by that fact an indorsee. (*Mertens* v. *Winnington*, 1 Esp. 111.) And although the case does not go on to say he is bound by all the forms, it is a fair inference. Here, if the party acquires all the rights, he is subject to all the duties, or otherwise the parties liable would be subject to great inconvenience. The foreign authorities are conclusive (*Code de Commerce*, art. 159), that the plaintiff, as indorsee, should have given immediate notice.

By the COURT.—The only question in this case was, whether the party received notice in due time. The plaintiff by taking up the bill for the honour of De vos Rylandt has all the rights of an indorsee; and having given them notice, the plaintiff was afterwards apprised of their notice to the defendant as a good notice in his behalf. The notice was quite sufficient, and gave a right to sue upon it. *Rule discharged.*

Monday, Jan. 27.

MAYLAM *v.* MORRIS.

Special demurrer—Payment on demand—Condition precedent.

Action brought on an agreement for the sale of the good-will and fixtures of a public-house, either party to pay on default 30*l.*

Special demurrer—That it appears by the declaration the plaintiff seeks to recover damages for the non performance of an agreement, and that it appears by the declaration that it was specially stipulated that the money was payable on demand for damages; that it does not appear any such demand was made; and that such a demand was a condition precedent.

Byles, Serjt. (*Ogle* with him), in support of the demurrer, citing *Wallace* v. *Scott* (1 Strange, 88); *Carter* v. *King* (3 Campbell, 459); *Nicholl* v. *Bromley* (2 B. & B. 464); *Simpson* v. *Routh* (2 B. & C. 682).

Channell, Serjt. contrà. *Judgment for plaintiff.*

JOHNSTON *v.* NICHOLLS.

Arrest of judgment—Variance—Sufficient consideration.

(Partly argued on a former day.)

Channell, Serjt. in support of the rule.—The rule was obtained in the alternative for a nonsuit or in arrest of judgment. The guarantee given in this case must shew the consideration. The words in the guarantee were, "As you are about to enter into business transactions with Claridge and Co., in consideration of their doing so, I hereby guarantee any sum of money not to exceed the sum of 2,000*l.*" Although the consideration need not appear in distinct terms on the face of the declaration, it must yet be distinct by implication. (*Stadt* v. *Lill*, 9 East, 348; *Jarvis* v. *Wilkinson*, 7 M. & W. 410; *Newberry* v. *Armstrong*, 6 Bing. 201; *Hawes* v. *Armstrong*, 1 Bing. N.C. 761; *Russell* v. *Moseley*, 3 B. & B. 211.) The consideration must be co extensive with the promise. If the defendant had said, "In consideration that you will forbear the past debt, and will supply goods for the future," the case would have been different with respect to the alleged variance. The plaintiff has not set out the guarantee, but has made some part of the consideration to relate to a continuance of prior dealings; this gives to the consideration a different character than that which could be drawn from it in the original.

By the COURT.—The declaration is sufficient, and judgment ought not to be arrested. The guarantee refers to prior dealings, and refers also to future transactions. It in fact says, I will guarantee not only whatever m y become due, but that which is due, not exceeding 2,000*l.* There is a sufficient consideration disclosed both for the past and for the future; and in consequence of the consideration being corresponding in value and amount for the promise, there is a sufficient consideration for the whole promise alleged. In the second place, there is no variance between this promise and that charged in the declaration, which is only an expansion of that contained in the guarantee. There was a legal and binding promise rightly alleged in the declaration.

Rule discharged.

BUSINESS OF THE WEEK.

Friday.

BARNES *v.* PRICE.—*Talfourd*, Serjt. for the defendant, and *Manning*, Serjt. for the plaintiff, argued the *demurrer*, which was to a replication of *de injuriâ*. The replication was bad, as the plea amounted to a plea of accord and satisfaction, but leave was given to amend on payment of costs, otherwise

Judgment for the defendant.

Saturday.

MAKEPEACE *v.* LORRAINE. *Rule nisi.*
HOGDEN *v.* HODGES. *Rule nisi.*
JOSEPH *v.* BUCKSTONE. *Application withdrawn.*
THOMPSON *v.* BAYLE. *Rule nisi.*
SPRINGALL *v.* BAYLE. *Rule nisi.*
DUTTON *v.* WILSON. *Rule nisi.*
DOE *dem.* DURBERLEY *v.* ROE. *Rule nisi.*
SADGROVE *v.* MACARTHY. *Rule nisi.*
BURN *v.* COGGS. *Rule nisi.*
ROSS *v.* MOSES.—*les*, Serjt. against the rule; *Channell*, Serjt. in support. *Rule discharged.*
VANCE *v.* LUCAS. *Rule nisi.*
HART *v.* TOMLYN. *Rule nisi.*

Monday.

GANDELL *v.* SAUNDERS.—*Byles*, Serjt. in opposition to the rule. *Talfourd*, Serjt. in support.

Rule discharged.

LYDE *v.* SAINTHILL. *Rule nisi.*
STYLES *v.* MEEK. *Rule nisi.*

Tuesday.

THOMAS *v.* DUNN.—*Shee* and *Byles*, Serjts. appeared to shew cause against the rule for a new trial.—[Part heard.]

CUTHBERT *v.* DOBBIN. *Rule nisi.*
DUNN *v.* THOMAS. *Rule discharged.*
WOOD *v.* WEDGWOOD.—*Talfourd*, Serjt. in support of the rule. *Shee*. Serjt contrà.—Stopped by the Court. *Rule absolute.*
BLACKADER *v.* SHIRES.
To make further inquiries. Application to be renewed.
DAVIS *v.* GOSLIN. *Rule nisi.*

Wednesday.

CATTLIN *v.* BROOKS.—*Byles*, Serjt. shewed cause against a rule obtained by Sir *T. Wilde*, for an attachment against a witness of the name of James Banting, for not obeying a writ of *subpœna duces tecum.*

To stand over till next term, for further affidavits to be made.

ABBOTT *v.* DOUGLAS.—*Manning*, Serjt. shewed cause against a rule calling on the executors of the plaintiff to shew cause why warrant of attorney and judgment signed thereon, and an annuity-deed, should not be set aside.—*Talfourd* and *Byles*, Serjts. in support of the rule. *Cur. adv. vult.*

REGISTRATION APPEALS.

Thursday, Jan. 23.

ECKERSLEY, Appellant, and BARKER, Respondent.

Where, on the list of county voters, the qualification is described to be "an undivided moiety of two freehold cottages in Tinker-lane, Hollingwood," and it was found in the case neither of the cottages had a number, nor known by any particular name.

Held, that the name of the occupying tenant was not required to be inserted on the register.

This appeal was argued on Monday, Nov. 18, by *Cockburn*, for the appellant, and *Cardwell*, for the respondent. The facts and arguments will be found fully d tailed in the following reserved judgment, which is given *verbatim*:—

JUDGMENT.

TINDAL, C. J. on delivering judgment, said:—The objection in this case was, that the description in the list of voters of the property in respect of which the respondent claimed a right to vote, was insufficient, inasmuch as it omitted to state the name of the occupying tenant. The qualification is described to be in respect of an undivided moiety of two freehold cottages in Tinker-lane, in Hollingwood, and it is stated as a fact in the case that none of the cottages in Tinker-lane are numbered, nor is either of the two cottages known by any particular name; the question, therefore, is, whether, under the circumstances of this case, the name of the occupying tenant is required to be inserted? and we think that, upon the proper construction of the Act, it is not. The 4th section of the statute 6 Vict. requires a notice of claim to be delivered or sent to the overseer, according to the form of notice set forth in Schedule A, No. 2, or to that effect. The form No. 2 requires the "street, lane, or other like place; the number of the house, if any, where the property is situated; the name of the property if known by any, *or*, the name of the occupying tenant, to be inserted;" and we think the word "or" in this form is distinctive; it states three different descriptions, and it is sufficient if the qualification is brought within any one of them; namely, either the street or lane and number, if any; or, the name of the property, if any; or the name of the occupying tenant, if any; and although it is contended that the 5th section of the Act requires the overseers to make out, according the form No. 3 in Schedule A, an alphabetical list of the claimants, containing, amongst other things, "the nature of the qualification and the local or other description of the property, and the name of the occupying tenant thereof," and that consequently the name of the occupying tenant must be inserted in each case; yet it appears a sufficient answer that this direction is qualified and restricted by the words that immediately follow; namely, that the same shall be "written as they are stated in the claim." The direction at the head of the form No. 2 appears to us to intend that if the house is in a street lane, or other like place in the parish, the street or lane should be mentioned; and if the houses are numbered, their numbers also should be given; but that if the house or premises be *not* in a street or lane or other like place, but in a road or a common, or the like, then the name of the property shall be given if known by any, or the name of the occupying tenant. If, however, the two latter requisites are held to apply necessarily to a house or premises, if situate in a street or lane, then this inconvenience will follow, that there is not the description required by the Act to be given of a house or premises *not* situate in a street or lane, or other such like road. The direction given by the Legislature to the overseers in the statute 2 Wm. 4, c. 45, s. 37 for the framing of their notice according to the form No. 1 in Schedule H, annexed to the Act, which is a duty precisely for the same object and purpose as that required by section four of 6 Vict. c. 18, is so plainly expressed as to leave no possible doubt that the requisition to give the name of the property or the name of the occupying tenant, only holds where the house is not situate in a street, lane, or other like place; and as the statute 6 Vict. is made *in pari materiâ* with the former Act, it may be properly inferred that no more is required by the latter Act than the former. We therefore think that the decision of the Revising Barrister, that the qualification of the respondent in the overseers' list was sufficient, was a proper decision, and must therefore be affirmed.

Decision affirmed.

CITY OF BRISTOL.

DANIEL, Appellant, and COULSTON, Repondent.

The word "house" is a sufficient description of the qualification within the meaning of the 27th section of 2 Wm. 4, c. 45, and the term "dwelling" is not required to distinguish it.

The voter claimed as occupier of a house, No. 4, Clare street, Bristol. It was objected that the description was insufficient, and that the description of the qualification should be "as occupier of a dwelling-house." The vote was allowed by the Revising Barrister.

Kinglake, Serjt. for the appellant.—The Legislature has, in the 27th section of 2 Wm. 4, c. 45, defined the specific sort of premises which entitle the voter to be placed on the register, and it is the duty of the party claiming to select one of the appropriate terms.

The COURT, without calling on *Cockburn*, Q. C. for the respondent, gave judgment.—The qualification was properly described. The only question was whether the building stated in the case did or did not constitute a house. The words in the Act were, "house, warehouse, counting-house, shop, or other building." All that is required is occupation, and the description sufficiently complies with the requirements of the Act.

Decision of Revising Barrister affirmed, with costs.

CITY OF LONDON.

WANDSEY, Appellant, and PERKINS, Respondent.

The notice of objection delivered to the voter in a city or borough need not specify the particular parish in the list of which the voter's name is objected to.

The objection in this case was, that the notice of objection to the voter did not specify the particular parish in which the voter's qualification was situated.

M. D. Hill, Q.C. for the appellant.—The intention of the Legislature was that the party objecting should have complete information respecting the parish in which the voter's qualification was situated. When that information is not given, if the voter has ten qualifications in ten different parishes, he would have to go to ten church doors to see if he was objected to. [TINDAL, C. J.—When a person is objected to, he must not sit still with his hands before him.] It is more reasonable the party should give the parish to which the objection refers. [TINDAL, C. J.—Then comes the question, does the Act require it?] In the notices to freemen and liverymen the names of the companies are inserted. The party would not know in what list he was objected to unless the name of the parish was inserted.

Humfrey, contrà.—Your lordships will take judicial notice that in the city of London there is only one right of voting in respect of occupation, namely, the 10*l.* householders. So that the overseers in each parish have only one list to make out. The notice of objection received by the voter is sufficient to put him on inquiry. The name of the parish is not required by the Act. In the case decided last Term it was said there might be two parishes of "Didsbury," but the Court said that fact must be shewn. The objector here has given a notice strictly in conformity with the Act.

M. D. Hill, in reply.

The COURT, in delivering judgment, said the objection in this case was, that the notice of objection which had been served upon the party himself claiming the right to vote was not a sufficient compliance with the requisites of the Act of Parliament. It appeared to them, however, upon looking at the Act and the notice, that it was sufficient. The difficulty complained of was, that inasmuch as the notice did not specify the particular parish in which the qualification objected to was situated, and inasmuch as the party claiming to vote might have various qualifications within the city in the different parishes, it imposed upon him the difficulty of discovering in respect of which particular qualification the objection was made. Some difficulty was certainly thrown upon him in that respect; and, perhaps, if the Legislature had carried out the form of the notice in the way which had been proposed, it might have removed such difficulty; but the question which the Court had to determine was, whether it had so carried it out or not. That objection could not occur at all in respect of the notice that was delivered to the overseers, because the notice could apply to the qualification only situate in that parish of which the parties were the overseers. This notice was in strict conformity with the form No. 11, given in the Act. It had, however, been contended that the form No. 10, which required, that where several lists were made out by the overseers, the notice should specify to which list the objections applied, should be virtually applied to the form No. 11, but no court of law had power to draw any analogy from the notice appended to the first form, and apply it to the second. The notice, therefore, being in strict compliance with the form required by the Act, the decision of the Revising Barrister was right and must be upheld. *Decision affirmed.*

WANDSEY, Appellant, and PERKINS, Respondent.

Where the overseer omits to put a claimant who has claimed to be rated on the rate for the time being, and the party omits to claim to be placed on the subsequent rates, the omission is fatal, and is not cured by the first claim.

The question raised in this case was as to the effect of a claim to be rated to the poor-rate. On the 26th

of July, 1837, the claimant was in the occupation of a warehouse, as tenant, in the parish of St. Michael, Wood-street, and on that day duly claimed to be rated to the relief of the poor in respect of the same premises, there being then a rate for the time being, but not for the said premises. The overseers neglected to put the name of the claimant on the rate for the time being, nor did they put his name on any subsequent rate, nor did he make any subsequent claim.

It was contended that, under the 2 Wm. 4, c. 45, s. 30, the claimant must be deemed to be sufficiently rated for the purposes of registration, and that so long as he was in the occupation of the same premises, he need not repeat the claim.

M. D. Hill, Q. C. for the appellant.—The claim to be rated is good and continuous. [TINDAL, C. J.—The interpretation you put on the Act is, that it is for a period for ever. The Act means that he should not only be rated, but also pay the rates and the arrears also.] Yes; he is to pay the rates; but in some places as many as twelve rates are made: is he to make twelve claims? [TINDAL, C. J.—Certainly; if he is not inserted.] Is this claim to be repeated every time? [TINDAL, C. J.—Yes; and the payment of the new rate made.] The payment of the rate is no objection; the landlord is liable. [TINDAL, C. J.—Yes; he must pay the rates. It was never intended by the Legislature that all he was to do was to be rated.] If he is not put upon the rate, what is he to do? [TINDAL, C. J.—If he is not put upon the rate, he is to be heard before the Barrister, and he will insert his name. He must be continually claiming.]

Decision of Revising Barrister affirmed, with costs.

WANDSEY, Appellant, and PERKINS, Respondent.

Lodgers are not entitled to vote where the landlord resides on the premises.

The voter claimed to be placed upon the list for three rooms, No. 16, Budge-row. The rooms constituted the whole of one floor, and were in the exclusive occupation of the claimant as a dwelling-house and printing-office. He rented the rooms from a person who resided on the premises. Both parties had keys of the street-door. The Revising Barrister decided against the claim.

M. D. Hill, Q. C. for the appellant.—This case differs from the Westminster case in this, the lodger here has control over the street-door. This occupation is similar to that of a set of chambers.

Humfreys, contrà.—The key of the street-door does not give exclusive occupation of the house. In this case the claimant may only have the street-door key by permission. In the case of chambers there is a distinct and separate holding. Lodgers are not entitled to vote where the landlord resides on the premises.

By the COURT, delivering judgment.—A house may certainly be so completely divided into several and distinct tenements, that if the landlord gives up all possession and dominion over it, these separate tenements may, for the purposes of the Act, be construed separate house. But that is not the case here; the house belongs to —— Knight, the landlord, who, having the whole of the house, lets into the possession of the second floor the present claimant, he, the landlord, still retaining the possession of the other part of the house. This, therefore, is not a separate occupation of the rooms within the meaning of the Act, but puts the claimant in the situation of a lodger or inmate, the landlord still retaining the possession of the house, for the statute refers to a person who occupies, either as landlord or owner, "a house, shop, warehouse, or other like building."

Decision of Revising Barrister affirmed with costs.

BOROUGH OF TAUNTON.

ALLEN, Appellant, and HOUSE, Respondent.

A notice of objection which contains words not contained in the forms of objection given by the statute, is nevertheless good, as the words will be construed to fall within the maxim utile per inutile non vitiatur.

The case disclosed that the general right of voting in the borough was in persons qualified under the Reform Act. A certain number of persons fell within the reserved rights of that statute residing in the parish of St. Mary Magdalen, who qualified as "Potwallers." At the revision the overseers of this parish produced a list duly published of parties qualified under the 2 Wm. 4, c. 45, and another, also duly published, of parties qualified under the reserved right. In the latter list the names, places of abode, and qualifications of the voters, the qualification being described by the words "A Potwaller, &c." The appellant's name was entered in the list of occupiers, and was not in the potwallers' list. The notice of objection described the appellant as being in the list of householders, the latter word being an interlineation. It was contended that the introduction of this word vitiated the notice. The Revising Barrister held the notice of objection sufficient, and on the qualification not being proved, expunged the name.

Kinglake, Serjt. for the appellant.—The description here is not in conformity with the directions contained in the statute, but is ambiguous and uncertain, and applicable to no list at all.

Cockburn, Q.C. (*E. W. Cox* with him), for the respondent, stopped by the Court.

TINDAL, C. J.—It appears to me this notice is a sufficiently good notice. Although the word "householder" is in it, that word could not by possibility have misled any one; and although undoubtedly not in strict conformity with the form of notice given in the schedule, and if there was no necessity to insert the words, I do not see why they should not be rejected (*utile per inutile non vitiatur*), unless, indeed, the word was calculated to mislead the party, and put him to expense.

The rest of the Court concurred.

Decision affirmed.

In this case the Court said that where only one side was heard, the case would be considered clear, and costs would be allowed of course.

BOROUGH OF WENLOCK.

HINTON, Appellant, and HINTON, Respondent.

The Court will not entertain a case raised on a question of misnomer, but will treat it as a question of fact, upon which the Barrister's decision is final.

In this case the name of the voter objecting was "Nickless;" the overseers had put the name on the list "Nicholas;" the Revising Barrister held the notice of objection was good, notwithstanding the variance in the name.

Keating, for the appellant.—In this case the statute has not been complied with, and the variance is calculated to mislead. The question is not between the overseers and the objector, but between the objector and the voter. The party objected to would not, on going to the church-door, find the name of "Nickless," but that of "Nicholas," a name common to a great number of persons in the same parish.

Gray, contrà.—All that is required is, that the name shall be so stated as to be commonly understood. This is not a question of law, but of fact. This case was for the decision of the Revising Barrister; and, when decided by him, his decision was final.

Keating, in reply.

By the COURT.—The answer is conclusive—that this is a question of fact, and not of law. The statement of the name is a mere misnomer; and this being a question of fact, the Court has nothing to decide.

Decision of Revising Barrister affirmed.

CITY OF BRISTOL.

Monday, Jan. 27.

DANIEL, Appellant, and CAMPLIN, Respondent.

The incidents of a qualification for a voter in a borough need not be stated. Where the party is a joint tenant, it is not necessary to state the nature or amount of the interest the party has in the premises.

In this case the voter occupied a house and shop jointly with another. The question was raised as to value. The only objection was that the voter should have been described on the list as occupying jointly.

Kinglake, Serjt. for the appellant.—The present question arises upon sections 27 and 29 of 2 Wm 4, c. 45. In the 27th section the franchise is conferred upon the sole occupier of a house, &c. In the 29th section the occupation is conferred upon a joint occupier. The proper construction of the franchise is to be found in the 27th section, which gives the vote to the sole occupier; and then comes the 29th section, which gives to the joint occupier the vote in distinct terms; and being an exception engrafted upon the general right of voting, should be so described on the register. The grounds of the decision in *Bartlett* v. *Gibbs* (5 M. & G. 81, and Lutwyche's Reg. Cases, Part I.) must govern this case. The description here is not certain, and affords no information to the objector as to the sufficiency of the qualification. There should be something to shew that the party does not claim for the whole. The Revising Barrister has no power to amend in this case; he can only amend certain matters of description, such as the name of a street; this is matter of substance in the qualification itself.

Butt, contrà.—This is a good description. There is nothing in the schedules to the Act which requires any other description than that given. It is a matter of evidence for the Revising Barrister when objected to, and the question will be whether the interest amounts to 10*l.* In this case joint occupancy is evidence of joint tenancy. The case of *Bartlett* v. *Gibbs* does not apply. The successive occupation there was a claim arising out of two houses; the voter's interest in each was distinct, and the successive occupation was the essence of the right. In the second instance, this is a case of amendment under the 6 Vict. c. 18, s. 40. The decision of the Barrister in this case is right.

By the COURT.—The qualification is sufficiently described. This case, although of the same kind as that of the successive occupation case, differs materially in quantity and degree. In that case there was a total absence of a portion of one part of the qualifying premises during a part of the time the voter must occupy in order to obtain the right of voting. The objector there was perfectly in the dark. Here, there is sufficient information, and if a party wishes to object, he must go, as in any other case, and acquire the knowledge requisite to support his objection.

Decision affirmed.

BOROUGH OF BLACKBURN.

DEWHURST, Appellant, and FIELDEN, Respondent.

Premises which separately will not make up the required value to qualify the voter, cannot be united for that purpose, unless they are contiguous to each other.

In this case the voter had claimed for a "joiner's shop, warehouse, and land in Thunder and Back-lane, in the said borough." The voter occupied, with another, the joiner's shop in Back-lane, which, by itself, was worth less than 20*l.* a year, and the warehouse in Thunder was worth 11*l.* a year, the two yards being of the value of 5*l.* a year: the warehouses and land are 300 yards distant from the joiner's shop. The Revising Barrister decided that the property could be joined to make up the value.

Cockburn, for the appellant.—The property not being contiguous cannot be united for the purpose of making up the value. (*Webb* v. *Overseers of Aston*, Lutwyche's Reg. Ca. Part I.; *Sweetman's* case, Alcock's Reg. Ca. 27.) The result of the cases goes that extent.

Kinglake, contrà, citing *Reg.* v. *Macclesfield* (2 B. & Ad. 870); *Reg.* v. *Tadcaster* (4 B. & Ad. 703).

Cockburn, in reply, stopped by the Court.

TINDAL, C.J. delivering judgment.—I am of opinion that the Revising Barrister has come to a wrong decision. The 27th section of the statute gives the right to vote to occupiers: it goes on to specify that he occupies either as owner or tenant; then, when it describes the subject-matter, that which he is to occupy, it says, occupy "as owner or tenant any house, warehouse, counting-house, shop, or other building." Now the first observation upon the very surface of it is this, that all these words are in the singular number, and it would have been just as easy, if the Legislature had intended that when several of these distinct subject-matters might together make a sufficient qualification, to have used the plural number, as houses, warehouses, counting-houses, shops, or other buildings; but the section does not stop there, but it goes on to state that when the subject-matter of a shop, warehouse, or other building should not amount to the sum of 10*l.* yearly, it may be made up by the occupation of land in conjunction with it. Now it seems to me that the ordinary construction of the very Act of the Legislature is *expressio unius est exclusio alterius*. In this case we cannot see why they should have mentioned the joint occupation of land unless there had been an exclusion of another house, another warehouse, another counting-house, another shop, or another building. The argument b[illegible] from the form, No. 3, in which the list is to be made out. It is evident the description of the property—street, lane, and number of the house, and other things—points more to a single and definite subject-matter than that which is composed of several things. After all, we think, on consideration of the case, that construction is just and proper, for it may very well be that the Legislature intended that a man who occupied a house worth 10*l.* might be in a proper condition of life to give his vote on these occasions; whereas, if this were made up of a very large number of small and worthless tenements, he should not be allowed to add and eke them to make up the 10*l.* On the whole we think the claimant had no right to vote.

The other judges concurred.

Decision reversed.

COURT OF EXCHEQUER.

Thursday, Jan. 23.

WATSON *v.* BOYS.

Taxation of costs.

W. H. Watson moved for a rule to set aside an order for the taxation of the plaintiff's costs. There had already been one taxation of costs more than a year since on certain issues found for the defendant, at which the plaintiff did not make any effort to tax his costs on certain other issues which had been found in his favour. The new rule speaks clearly of one taxation only, and the plaintiff having neglected to tax his costs on the former occasion, cannot now be let in. The defendant had been paid his costs by the plaintiff.

By the COURT.—The plaintiff has no doubt a right to his costs on these issues, if they exceed those of the defendant on the others. That right must be ascertained by taxation, and though a question may arise as to the means now open to the plaintiff to enforce payment, it would be an act of great injustice to deprive him of the means of trying that question, by preventing him from ascertaining the amount on taxation.

Rule refused.

DAVIS *v.* ANKRAM.

Attorney.

M. Chambers shewed cause against a rule calling on the plaintiff and his attorney to shew cause why certain sums of money, amounting to 5*l.* 1s. should not be refunded to the defendant, the same being alleged

to have been extorted from him by the fraudulent misrepresentation of the latter, that judgment had been signed against him. In answer to this, the plaintiff's attorney, and his clerk deposed that no such misrepresentation had been made, but that the true state of things had been explained to the defendant, as appeared by the memorandum signed by him on the occasion in question, by which, in consideration of the plaintiff's attorney refraining from levying on his goods on the judgment *now due* against him, he, the defendant, undertook to pay, and did pay, the sum of 13*l.*; that sum being composed of various items. Among these was 2*l.* 10*s.* for the costs of signing judgment; 1*l.* 7*s.* 6*d.* for interlocutory costs paid by the plaintiff to the defendant, and which the plaintiff's attorney alleged had been extorted from him by the sharp practice of the defendant's attorney.

Jervis, contrà, contended that the other items were not properly chargeable against his client, *e. g.* 1*l.* 3*s.* for a *fi. fa.* which was never issued, and which, therefore, the defendant ought not to have been called on to pay. As to the fraud, it was admitted that the defendant's rule was answered on that point; but he was entitled, at all events, to the sum of 3*l.* 13*s.* 6*d.*

Pollock, C. B.—As the defendant agreed to pay the 1*l.* 7*s.* 6*d.* he ought to do so, but he cannot be compelled to pay costs for debts never taken. The rule must, therefore, be absolute, with costs to the extent of 3*l.* 13*s.* 6*d.* *Rule absolute accordingly.*

Tiley *v.* Hodgson.

Irregularity—Notice of rule.

M. Chambers shewed cause against a rule to set aside the service and copy of the writ of summons, with costs, on the ground of irregularity. It was admitted that the irregularity complained of existed; but it was contended that the defendant had not come in time. The service had taken place on the 6th of January, and on the 13th this rule was obtained, notice of which was given on the same evening; but the rule itself was not served till the afternoon of the 14th. On the opening of the office, as he might by the strict rules of practice, the plaintiff took a fresh step in the cause by entering an appearance for the defendant and filing his declaration. If the rule had been served on the 13th, as it might have been, the defendant would have been in time, but the plaintiff was not bound to pay attention to the mere notice of such a rule having been that day obtained.

T. W. Saunders, contrà, was stopped by

The Court.—There was distinct notice of this rule given to the plaintiff before he took this step, and he must be held to have taken it in his own wrong. The rule must be made absolute, with costs.

Rule absolute accordingly.

NEW TRIAL PAPER.

Spiller *v.* Mason.

Landlord and tenant—Fixtures—Pleading.

Covenant on demise of a messuage, dwelling-house, and premises, with the appurtenances. *Breach* — That the defendant, after the making of the said demise, and while he was so possessed as aforesaid, suffered and permitted to be removed from the said premises divers fixtures of the plaintiff, of and belonging to, and being then and at the *time of making the said demise, part and parcel of the said demised premises.*

Plea—That the defendant did not suffer and permit the said fixtures in the declaration mentioned to be removed.

At the trial before Rolfe, B. the plaintiff proved that the defendant had removed certain fixtures during the demise, but he did not shew that they had been on the premises at the making of the demise. On a rule to increase the verdict of the jury by the value of the fixtures so removed,

Jervis and *Ball* shewed cause.—It was necessary for the plaintiff to prove the description laid in the declaration, for he thereby confined his claim to a particular class of fixtures, and failing this, he was not entitled to recover in respect of the articles actually proved to have been removed. (*Beeston* v. *Wright*, 2 Doug. 655; 1 Stark Evid. 411; *Thresher* v. *London Water-works*, 2 B. & C. 608.)

Crowder and *Lush*, in support of the rule.—This is not matter of description which binds the plaintiff to the proof of particular class of fixtures, but is surplusage, which may be rejected from the record; and as some fixtures were proved to have been removed during the tenancy, the plaintiff is entitled to recover for them under this issue.

By the Court.—The question is, whether the words in the declaration by which the fixtures are described are binding on the plaintiff, or are superfluous and may be rejected. We think that they are clearly words of description, and that the plaintiff was bound to shew that the fixtures removed by the defendant had been on the demised premises at the time the demise was granted. *Rule discharged.*

Sinclair *v.* Sinclair.

Evidence.

A prochein amy is admissible as a witness for an infant plaintiff under the provisions of Lord Denman's Act, 6 & 7 Vict. c. 85.

At the trial of this cause, the wife of the *prochein amy* was tendered, and received under an objection, as a witness on behalf of the plaintiff, a minor. A rule having been obtained on this ground,

Horn shewed cause.—A *prochein amy* is a good witness under Lord Denman's Act, 6 & 7 Vict. c. 85, for he is not a party to the suit, though individually named on the record. He is something more than an attorney, and something less than a party. Before the late Act he was inadmissible, because he was interested in the suit, but not because he was a party. (*Worrall* v. *Jones*, 7 Bing. 399; *James* v. *Hatfield*, 1 Str. 548; *Cowling* v. *Ely*, 2 Stark. 366; *Webb* v. *Smith*, R. & M. 106; *Slaughter* v. *Caldwell*, Willes, 190; *Percival* v. *Percival*, Barnes's Notes, 187; *Maldon* v. *Eden*, 1 B. & P. 130.)

Jervis, contrà.—A *prochein amy* is liable for costs, and he is, therefore, not admissible before Lord Denman's Act. He is so much a party, that the suit cannot be stopped without his consent. Under the Act, however, he is inadmissible as one individually named on the record. (*Dennison* v. *Sparling*, 1 Str. 506; *Clutterbuck* v. *Lord Huntingtower*, Ibid.)

Pollock, C. B.—A *prochein amy* can be called under Lord Denman's Act, notwithstanding his being a party to the suit. He is correctly described by Parke, B. in *Morgan* v. *Thom* (7 M. & W. 415), as "an officer of the Court specially appointed by them to look after the interests of the infant," and carry on the suit for him. As this Act removes all the objections which formerly existed on the score of interest, it is clear that a *prochein amy* is now a good witness, and so is his wife too.

Parke, B.—The word "parties" means the plaintiff and the defendant only. *Rule discharged.*

Saturday, Jan. 25.

Curlewis *v.* Payne.

James moved for a new trial on the ground of surprise, and on affidavits contradicting the statements of a witness called for the defendant at the close of his case, who swore that the goods, to recover which this action was brought in the form of detinue, to which there was a plea denying the property, had been given away by the plaintiff before the commencement of his proceedings against the defendant.

The Court granted a rule *nisi*, subject to some doubt which arose as to whether the motion was within the time limited by its rules for moving new trials. *Rule nisi accordingly.*

Wade *v.* Simeon.

Practice—Power of Court over order obtained by consent.

This was an action brought by the plaintiff as the holder of two checks for 1,000*l.* each, drawn by the defendant in 1840. The defendant pleaded that they were given to secure payment of 2,000*l.* he lost at fraudulent play with one Davis, and that the plaintiff became the holder with notice thereof. The cause stood for trial on the 7th December, but the defendant being unprovided with proof of the plea, took out a summons to withdraw it, and for a stay of proceedings, on payment of the debt and costs. On the 14th December, an order being made to that effect by Alderson, B., the defendant's costs were forthwith taxed; but on the 17th the defendant intimated his intention to repudiate the order, and paying the sum of 2,500*l.* into court, obtained this rule early in this Term to set aside the order and for liberty to go to trial, on the ground that he had discovered the means of proving his plea after the order and before the 14th of December.

Watson now shewed cause.—The rule was without precedent, and beyond the power of the Court to pronounce, as the parties had by consent put an end to the action. If the proceedings had been *in invitum*, the Court had power to control the parties and their process; but this order was drawn up on consent, and was, therefore, irrecoverable, there being no allegation that the contract had been obtained from the defendant by the fraud of the plaintiff.

F. V. Lee followed on the same side.

Cases cited: *Bligh* v. *Brewer* (3 D. P. C. 266), and *Mills* v. *Barber* (5 D. P. C.)

Martin and *Barstow*, contrà.—The Court has power over its own orders at all times, and the consent of the parties makes no difference, so long as the judgment has not been signed and the arrangement is *in fieri*. *Cur. adv. vult.*

By the Court.—There is no doubt whatever that we have the power to discharge our own order, though obtained by agreement between the parties; and the only question here is, whether the case is one which calls for the exercise of that discretion. We will look into the affidavits before we decide that matter.

Afterwards (Jan. 27th),

Pollock, C. B.—We have looked over the affidavits, and we think that the rule ought to be made absolute on payment of costs, and on condition that the money paid into court bear interest at five per cent. if the result should be favourable to the plaintiff. *Rule absolute.*

McIntyre *v.* Miller.

Plea—Payment—Proof—Partnership.

Debt for money lent and advanced, and on an account stated.

Plea—That before the commencement of the suit the said debt was paid to the plaintiff, to wit, by the defendant, and that the plaintiff accepted the same in full discharge and satisfaction of the damages in the declaration, on which issue was joined.

At the trial, before Pollock, C. B. it appeared that the defendant was a shareholder in the Marylebone Bank, with which the plaintiff had a deposit account, with a balance of 1000*l.* due at the time of its stopping. Mr. Walker, who was a director of the bank, advanced 10,000*l.* to Mr. Richards, in order that he might take assignment on his behalf from various creditors of the bank, so as to keep alive their claims, and enable him, Mr. Walker, by suing in the names of the several creditors, to enforce contribution towards the losses of the Bank on the part of certain of its members. The balance of the plaintiff's account was accordingly paid by Mr. Richards out of this fund, and an assignment of the debt made to him, at the same time that the plaintiff undertook to allow his name to be used in any action to be brought by Mr. Richards against any of the shareholders. It further appearing that the plaintiff had expressly disclaimed having any demand upon the bank, as his balance had been paid, it was contended for the defendant, at the trial, that the plea was proved by the above facts. The Chief Baron directed a verdict for the plaintiff, subject to a motion; and a rule to enter a verdict for the defendant having been obtained,

Jervis and *Butt* now shewed cause.—The facts proved at the trial do not substantiate the plea of payment, for the debt of the plaintiff was not extinguished by Mr. Richards, who only bought it from him for the express purpose of keeping it alive. For this purpose it was formally assigned to him, and is now capable of being enforced against the defendant in the name of the plaintiff. Neither is it any objection that the action is brought for the benefit of Mr. Walker, on the ground of his being a partner of the defendant, for that is only open to the defendant in the Court of Chancery. Case cited: *Copeis* v. *Middleton* (Turn. & Russ. 234).

Sir *Thos. Wilde*, Serjt., *Martin*, and *Barstow*, contrà.—The facts of the case constitute a payment of this debt within the meaning of this issue; for Richards being the agent of Walker, and Walker the partner of the defendant, it follows that the payment was made on account of the bank generally, and therefore of the defendant. The assignment to Richards amounts to nothing, and can have no effect, for it is in fact to Walker, who is a member of the bank.

By the Court.—The facts in this case do not support the plea of payment, unless we are to give a meaning and intention to the acts of Mr. Richards and the plaintiff directly contradictory to their avowed and expressed object as set forth in the assignment. If the conduct of Mr. Walker be called in question in the character of a partner, that is a subject of inquiry in a court of equity, and cannot be entered into here. The plaintiff, therefore, is entitled to retain his verdict. *Rule discharged.*

Nordenstrom *v.* Pitt.

This case involving the same point, the same judgment was given. *Rule discharged.*

Monday, Jan. 27.

Green, Executor, *v.* Price.

Demurrer to declaration.

A contract not to carry on business in London or Westminster, or within 600 miles of either of them, is not void as being in restraint of trade.

Cowling, for plaintiff.

Martin, for defendant.

The declaration was founded upon a contract entered into by the defendant with the plaintiff, not to carry on the trade of a perfumer in London or Westminster, or within 600 miles of either of them.

Demurrer, upon the ground that the contract set out in the declaration was bad, as being in restraint of trade.

The Court said that the recent case of *Mallan* v. *May* (the judgment in which was reported *verbatim* in the Law T.) was precisely in point, and in favour of the contract. *Judgment for plaintiff.*

Tuesday, Jan. 28.

Harvey *v.* Pritchard.

Guarantee—Consideration—Judgment non obstante veredicto.

Guarantee as follows:—"Messrs. Harvey—All goods purchased of your firm by W. B. of L. I hereby agree to pay for when due:"—Held, that it was incumbent on the plaintiff to prove that it was given for future supplies.

Judgment non obstante cannot be had unless the party is entitled to judgment on the whole record.

This was an action on a guarantee for goods supplied to one W. B. in the usual form, to which the defendant pleaded *non assumpsit*; and, secondly, as to the sum of 185*l.* parcel, &c. that after the sale of the goods, and before this action, the said W. B. was ready and willing to pay, and offered to pay the said sum of 185*l.* to the plaintiff, but that the plaintiff refused to take it, and that the said W. B. at the

time of the supply, and after credit expired, was ready and willing, and is now ready and willing, to pay the said sum of money. At the trial before Rolfe, B. at the London Sittings, on the 24th inst. the jury found for the defendant on both pleas.

Jervis, Q.C. now moved, by leave, to enter a verdict for the plaintiff for 185*l*. on the first plea, and for judgment *non obstante veredicto* on the second plea. The guarantee on which the action was founded was in the following terms:—"Messrs. Harvey,—All goods purchased of your firm by W. B. of Ludgate-hill, I hereby agree to pay for when due;" and besides that, it appeared that a lease was deposited by W. B. with the plaintiff as a security for goods not exceeding 210*l*. His lordship thought that the guarantee applied to goods already purchased, and therefore directed the jury to find on the first plea for the defendant. It is submitted that the proper construction of this guarantee is, that it was meant to be a security for future supplies, though it may certainly apply to past supplies.

By the COURT.—It is incumbent on the plaintiff to make out that the consideration for which this agreement was given was for future supplies by necessary implication expressed on the face of the document. This guarantee may mean any thing, and it is enough to say that you did not produce at the trial any instrument which, on receiving a fair and reasonable construction, corresponded with the contract set out in the declaration. There can be no rule, therefore, on this point.

Jervis.—The second question arises on the plea, which is bad, and the plaintiff is entitled to judgment *non obstante*, in order that he may have his costs thereon.

By the COURT.—You cannot have judgment *non obstante* except where you are entitled to judgment on the whole record. Your proper remedy would be to move to arrest the judgment on the second plea. If you choose to go down to trial on a bad plea instead of demurring to it, and lose the verdict on it, you must pay the costs of that issue, when the verdict goes against you on the whole case. *Rule refused.*

PAGE *v.* CURLEWIS.
Evidence—Admission.

Wordsworth shewed cause against a rule for a new trial on the ground of the improper rejection of an entry in a certain paper offered in evidence by the defendant in support of a plea of set-off, as being subject to the Stamp Act, whereas it was alleged that the document in question was merely an admission, and not a receipt. In answer to this rule it was contended that the rejection of the item by the under-sheriff proceeded on the ground of its being an entry of a payment to the late husband of the defendant, and not to herself, though in her own handwriting, the whole cause of action having originated since the death of Mr. Page.

Charnock, in support of the rule.—No such objection as that was made at the trial, for the rejection was then put on the stamp laws, and the plaintiff having acknowledged the receipt of such a sum when furnishing her account to the defendant, ought not now to be permitted to contradict herself.

By the COURT.—This rule must be discharged. On looking into the notes, and the particulars of demand, and on inspecting this document on which the question arises, we think that the full item of 10*l*. was properly rejected, as being an admission only applicable to the estate of Mr. Page, after whose death alone the plaintiff's cause of action arose. It does not appear that the rejection proceeded on the stamp laws, which do not apply to this case.

Rule discharged.

JOHNSON *v.* MORLEY.
Affidavit.

Horne moved for a rule on the plaintiff's attorney to file the affidavit of increase of which a copy had been served on the defendant, and to pay the costs of the application, which proceeded on the affidavit of the defendant that certain witnesses mentioned in the said affidavit as having been paid certain sums by the attorney, had not been so paid. Upon this fact being discovered, the defendant's attorney searched the office, but being unable to discover any such affidavit of increase, gave notice of that fact to the plaintiff's attorney. On a subsequent day an affidavit was found in the office varying materially from the copy supplied to the defendant, and containing no mention of the two witnesses. This had, therefore, been filed as a substitute for that which had been stated to be filed, and of which a copy had been delivered. The object, therefore, of the present application was to compel the attorney to file the original affidavit.

Rule nisi.

BROWN *v.* SHORT.
Practice—The Court will not sanction any attempt to evade justice by taking advantage of Lord Brougham's Act.

Hindmarsh **shewed cause against a rule to withdraw the plea of the general issue, and substitute in lieu thereof—the general issue, except as to 20*l*.—payment into court of 20*l*. and a set-off as to the residue of the plaintiff's demand. This was a scheme to reduce the** plaintiff's verdict below 20*l*., which the Court would not sanction.

By the COURT.—The defendant may make his rule absolute if he will bring into court, in four days, the balance of the plaintiff's demand, after the payment into court of 20*l*. This appears to be a plan to evade justice by taking advantage of Lord Brougham's Act, and we will not sanction any such attempt.

Thomas, for the defendant, consented to these terms. *Rule absolute, accordingly.*

Wednesday, Jan. 29.

WOODBRIDGE *v.* COOPER.
I O U—Stamp—Evidence.

Lush moved in this case, which was tried before Rolfe, B. at the last sittings, for a new trial, upon the ground that the evidence had been improperly rejected, or to enter a verdict pursuant to leave reserved.

Declaration, containing common counts.

Pleas.—Nunquam indebitatus, payment, and set-off.

The rule was moved for on the ground that certain I O U's, which were all in nearly the same words as the following, had been held by the learned Judge to require a stamp.

"I O U, Mr. Cooper, 4*l*. until Saturday, the 20th. 30th April, 1842."

It was now contended that the documents did not require promissory note stamps, and were not of sufficient value to require to be stamped as agreements.

Cases cited: *Brooks* v. *Elkins* (2 M. & W. 74); 1 Selwyn's Nisi Prius, 391; *Melanotte* v. *Teasdale* (1 Ver. Rep. Practice Cases, 47). *Rul nisi.*

KING *v.* HOPKINS.

A writ of summons directed to T. H. of Wilson-street, Finsbury, in the City of London, Wilson-street being in Middlesex, is irregular, and will be set aside with costs. A person at whose house a writ of summons has been left for the purpose of founding an application for a distringas is entitled to treat that as a service upon him, and to apply to set it aside as irregular.

T. W. Saunders had obtained a rule to set aside a writ of summons as irregular with costs. The writ was addressed to Thomas Hopkins, of Wilson-street, Finsbury, *in the city of London*. It was sworn that Wilson-street, Finsbury, was not in the city of London, but in the county of Middlesex.

Bramwell now shewed cause; citing on the point of irregularity, *Jelks* v. *Fry* (3 Dowl. 37); *Lewis* v. *Newton* (4 Dowl. 355); *Norman* v. *Winter* (5 Bing. N.C. 279; 7 Dowl. 304); *Launceston and Victoria Railway Company* v. *Brennan* (3 Jur. 196; C. P.); 2 Wm. 4, c. 39, s. 12. He also contended that, under the circumstances of this case, the defendant was not entitled to make this application, as the writ had never been served upon him, but had only been left at his house for the purpose of obtaining a writ of *distringas* against him.

T. W. Saunders, contrà.

POLLOCK, C. B.—We are all of opinion that this rule must be made absolute. The statute expressly requires that the county be stated. Here it clearly appears that the wrong county is stated. *Lewis* v *Newton* is the most like this case in its circumstances. In that case the rule was discharged on account of the looseness of the affidavit, from which it only appeared indistinctly that Gray's inn, which was the place there mentioned, was not in the city of London. Here it does distinctly appear that the place in question is not in the city. As the writ would be irregular if it left out the county altogether, it is *à fortiori* irregular if it mention a wrong one.

Rule absolute, with costs.

ARTHUR *v.* DARTCH.

Thomas shewed cause against a rule obtained by *Lush* for a new trial. The case was tried before the Secondary.

Lush, contrà. *Rule absolute.*

GUY *v.* WRIGHT.

Newton shewed cause against a rule to compute obtained by *Willes*, upon the ground that it did not appear in the affidavit that judgment had been signed at the time when the rule was obtained.

Rule absolute.

BUSINESS OF THE WEEK.
Friday.

ACRAMAN *v.* COOPER.—In this case the Court did not give any judgment, but they said that the point was of such importance that they would grant a new trial, and the parties might, if they pleased, take the opinion of the Court of Error.

ALEXANDER *v.* PRATT.—*Crowder*, Q.C. and *Goldsmid* shewed cause against a rule obtained by *Kelly*, Q. C. to enter a verdict or for a new trial. *Kelly* and *M. Smith*, contrà. The case was argued at considerable length upon the merits, but turned at last upon a point of pleading, and the Court being of opinion that the really important questions between the parties were not raised by the pleadings as they stood, they granted a new trial upon payment of costs by the defendant, with leave to him to amend his pleadings or to add two additional pleas.

M'INTYRE *v.* MILLER.—*Jervis*, Q.C. and *Butt* shewed cause against a rule obtained by *Martin*, Q.C. for a new trial. Sir *T. Wilde*, *Martin*, Q.C. and *Barstow*, contrà. The arguments were not concluded when the Court rose.

Monday.

DOE *dem.* SAMS *v.* GARLICK.—This was a special case, stated upon admissions on each side, and for the purpose of obtaining the opinion of the Court upon a real property question. *Chilton*, Q.C. having been heard, the remainder of the argument was postponed until the sittings after Term.

HIERONS *v.* NICHOLSON.—— moved for a rule to shew cause why certain attorneys, whose names were not mentioned, should not answer the matters of an affidavit, and deliver up certain bills. The rule was granted for the latter purpose only.

Rule accordingly.

TURNER *v.* LAMB.—*Ogle*, for plaintiff. *Pearson*, for defendant. *Both parties had leave to amend.*

ROBSON *v.* LUSCOMBE.—*Martin*, Q. C. for plaintiff. *Kennedy*, for defendant.

Defendant had leave to amend.

RUSSELL *v.* POWELL.—*Bovill*, for plaintiff. *Badeley*, for defendant. *Judgment for plaintiff.*

MALLISON *v.* BRAYSHAW.—*Cowling*, for plaintiff. *Crompton*, for defendant. *Judgment for defendant.*

Tuesday.

MORGAN *v.* THORN.—This was a rule to set aside an award, on the ground of the arbitrator not having decided all the issues in the cause, which alone was referred. *E. V. Williams* shewed cause, and urged that the arbitrator need not decide all the issues expressly. It was enough if he did so inferentially.

POLLOCK, C. B.—We have decided this question recently, and I have considered it so much that I have determined to insert a clause in all the orders at Nisi Prius, empowering arbitrators to make their awards generally. This rule, however, must be made absolute. *Rule absolute.*

WILKSON *v.* GRIGGS.—This was a rule to amend certain admitted defects in the proceedings herein. *Barstow* for the rule. *Horn*, contrà, assented to the rule being made absolute on terms.

Rule absolute, with costs.

DOE *dem.* FARRAR *v.* ROE.—*Butt* moved for a rule to strike out the names of certain of the lessors of the plaintiff in this action, on the ground that it was really brought by their assignees of a mortgage in their names, without their consent and sanction. *Rule nisi.*

POOLE *v.* BIDDULPH.—*Otter* moved for judgment as in case of a nonsuit. *Rule nisi.*

WILKS *v.* VANFOSSER.—*James* moved to set aside an order of Parke, B. on the ground that it had been granted under an alleged misconception of the facts.

Rule nisi.

DOE *dem.* —— *v.* ROE.—*Hayes* moved to set aside the replication of the lessor of the plaintiff herein for irregularity, as the consent rule had not been joined in by him. *Rule nisi.*

DOE *dem.* FARR *v.* ROE.—*Ball* moved for judgment as in case of a nonsuit. *Rule granted.*

NEW TRIAL PAPER.

ATKINSON *v.* CLARKE.—*Gunning* shewed cause against a rule to set aside the verdict for the plaintiff, and to enter a nonsuit. *Miller*, contrà.

Rule absolute.

ELKIN *v.* JANSON.—*Martin* and *Barstow* shewed cause against a rule to enter a verdict for the defendant. *Watson* and *Greenwood*, contrà.

Rule absolute for a new trial.

Wednesday.

COOPER *v.* HURST.—*Jervis*, Q. C. moved for a rule for a new trial in this cause, which was tried before Rolfe, B. at the late sittings in Middlesex. It stood over, to be mentioned again when certain affidavits were sworn.

PACIFIC STEAM NAVIGATION COMPANY *v.* LEWIS.—*Brown* shewed cause against a rule obtained by *Cleasby* for judgment as in case of a nonsuit.

Rule discharged upon the plaintiff's giving a peremptory undertaking to try at the sittings after Trinity Term, if a certain commission to examine witnesses abroad was by that time returned. If not, the matter to be mentioned again.

AMLOTT *v.* SIMONS.—*Lush* moved to enter a nonsuit pursuant to leave reserved, the Court to have the same power as the judge at Nisi Prius, to amend. The case stood over, with leave to *Lush* to apply again upon an affidavit.

DICKINSON *v.* ALSOP and ANOTHER.—*Willis* shewed cause against a rule obtained by *Warren* for an attachment for non-payment of costs pursuant to an award. *Warren*, contrà. The COURT said that the objections taken to the award were too serious to dispose of upon motion; and though they would pronounce no decision upon them, they would leave the party to his action. *Rule discharged.*

Thursday.

THE ATTORNEY-GENERAL *v.* REILLY.—Sir *F. Thesiger*, S. G. moved for a rule for an order to exa-

mine a witness now lying ill in St. George's Hospital, whom it was impossible to move, and whose evidence was material and necessary for the Crown in an information for penalties. Case cited: *Jenkins*, q. t. v. *Harwood* (Bunb. 12). *Rule nisi granted.*

Moody v. Leeds, Bart.—*Gale* moved for a rule to compute, and prayed that service thereof might be effected at the last known residence of the defendant, where he was served with the writ of summons. *Rule nisi.*

NEW TRIAL PAPER.

Chapple v. Purdy.—*Crompton* shewed cause against a rule *nisi* for a new trial. *Cur. adv. vult.*

Bartlett v. Dimond.—*Jerris* was part heard in opposition to a similar rule. *Adjourned.*

Saturday.

Toplis v. Glendinning.—*Mellor* moved for a *distringas.* *Rule granted.*

Harley v. Ward.—Ditto v. Ditto.—*Rew* moved for a rule calling on Mr. John Griffiths, the attorney of the plaintiff in these cases, to shew cause why he should not pay over certain sums received by him from the defendant in these actions, and which, as he alleged, he had omitted to account for to his client. *Rule nisi.*

Newbold v. Fourdrinier.—*Riddell* moved for a commission to examine witnesses on interrogatories in Russia. *Rule nisi.*

Flight v. Barnett.—*Pollock* moved for a *distringas.* *Rule refused.*

Davis v. ——.—*Jerris* shewed cause against a rule to set aside an attachment against the sheriff of Carmarthenshire for a false return of *nulla bona* in this cause, on payment of costs. *Watson* supported the rule. *Rule absolute.*

Egbier v. Price.—This was a rule to discharge one which had been obtained by the defendant to change the *venue* from Middlesex to Hants. *Jerris* shewed cause.—The question raised was, whether the defendant was entitled to change the *venue* on the usual affidavit, after he had been allowed time to plead, on terms of accepting short notice of trial at the second sittings in the present Term. By the Court.—No doubt of it. The rule must be made absolute. *Horn*, contrà. *Rule absolute.*

Wade v. Simeon.—*Watson* and *F. V. Lee* shewed cause against a rule to set aside an order of Alderson, B. and *Martin* and *Barstow* were heard in support thereof. *Cur. adv. vult.*

Guthrie v. Bowman.—*Jerris* shewed cause against a rule to set aside an award, on the ground of irregularity in the proceedings of the arbitrators. *Whately*, contrà. *Rule absolute.*

Cook v. Stratford.—*Jerris* shewed cause against a rule for a review of taxation of the defendant's costs in this case. On a motion after verdict before the Court, the defendant had been allowed to amend a plea which went to the whole action, but by misapprehension two pleas had been amended and verdicts entered thereon for the defendant in the *postea*. The Master having taxed the defendant's costs on both pleas, the question was, whether the plaintiff was entitled to review that taxation. *Crowder* and *Udall*, for the plaintiff, were stopped. *Rule absolute.*

The Attorney-General v. Reilly.

Cockburn and *Barstow* shewed cause against this rule, which was supported by *Jerris*, for the Crown. *Cur. adv. vult.*

BAIL COURT.

Friday, Jan. 24.

Keening v. Ackerman.

When a new trial of a cause tried before the sheriff is applied for on the ground that the verdict is contrary to evidence, it is not necessary to file an affidavit stating the grounds on which the motion is made—Where the plaintiff had a verdict, and the evidence in support of the verdict was satisfactory except as to an amount less than 5l., the Court refused a new trial.

F. Edwards shewed cause against a rule obtained by *Cooper* for a new trial. He objected that the rule must be discharged, as the resolution of the judges, reported in 4 Moore & Scott, 484, had not been complied with. That resolution required not merely that the sheriff's notes should be verified, but that they should also be accompanied by an affidavit stating the grounds upon which it was desired to apply for a new trial. No such affidavit had been filed by his learned friend's client in the present instance.

Williams, J.—It cannot be necessary where the sheriff's notes alone are relied upon. What could he say, Sir, but "I swear that I am dissatisfied with the verdict;" and what additional information would that give me?

Edwards then contended, on the merits, that the verdict ought not to be disturbed. The action was for a trifling sum, little above six pounds, for the price of two barrels of beer, and some porter. There was satisfactory evidence that the beer was good for nothing; and evidence on both sides with respect to the porter, which was, moreover, of very little value.

Cooper, contrà.

Williams, J.—If the goods are worth nothing, this forms a defence under the general issue. There was abundant evidence to shew this with regard to one of the casks of beer, and I think also with regard to the other; but supposing it to be otherwise with regard to one of the casks of beer and to the porter, the value of both together is under 5l.; and as the new trial could only be on payment of costs, I do not think I ought to interfere. *Rule discharged.*

Davies v. Vernon and Another.

Alexander, Q. C. moved to stay the execution herein, until payment by the plaintiff of 400l. to the defendants, the defendants undertaking to give up the documents which were the subject of the action, upon payment of that sum.

The action was in trover for the recovery of certain title-deeds and documents belonging to the plaintiff, and the defendants, who were attorneys, had resisted the action on the ground that they had a right to retain them, not merely for a lien of 100l. to which a client of theirs, of the name of Edward Vernon, was entitled, but also for the lien which they claimed themselves. The plaintiff had admitted Mr. Edward Vernon's right, and tendered the sum of 400l. before action. Judgment had eventually been given against the defendants, on the ground that they had no lien on the documents for their own claim. The defendants were quite willing to give up the documents upon payment of the 400l. to which their client was entitled. *Rule nisi.*

Gibbs and Others v. ——

Fortescue moved to enter up judgment on a warrant of attorney. It was not a year old, but the party who gave it had since married, and it was, therefore, necessary to apply for the leave of the Court. He should further state that the warrant of attorney was not set out in the attestation clause, but it was stated that it was attested by an attorney, which it was submitted was sufficient.

Williams, J.—Well, I think that will do. *Rule granted.*

Pitcher v. King.

This was a rule for an attachment against a witness for disobedience to a *subpœna*.

Platt, Q. C. shewed cause.

Watson, Q. C. contra. *Cur. adv. vult.*

Reg. v. The Masters and Fellows of Caius College, Cambridge.

Williams, J. gave judgment.—Nothing was said in the rule as to the right in which Jobson claimed to be admitted tenant, but it was clear from his affidavit that he claimed as heir-at-law to his mother, Martha Jobson, afterwards Martha Betts, and yet he did not venture to swear that his mother died intestate; indeed, he could not safely do so, as it appeared that he had already commenced a suit in Chancery for the purpose of upsetting his mother's will, which was referred to an arbitrator, who found in favour of the will. The affidavit was apparently framed for the purpose of deceiving the Court with respect to the will, and at the same time avoiding the penalties of perjury. The heir-at-law could maintain ejectment without admission, and did not require that the rule should be made absolute for that purpose, and as he had evidently attempted to commit a gross fraud upon the Court, this rule must be discharged with costs. *Rule discharged with costs.*

Reg. v. The Guardians of the Kingsbridge Union.

Mandamus to poor-law guardians to elect a chaplain.

Tomlinson moved for a rule *nisi* for a *mandamus* requiring the above guardians to appoint a chaplain, pursuant to an order of the poor-law guardians, dated June 1841, for the union. *Rule nisi.*

Saturday, Jan. 25.

Reg. v. The Recorder of the City of Chester.

Certiorari to bring up orders in bastardy, with the view to quashing same.

Townsend moved for a *certiorari* to remove into this court an order in bastardy, made at petty sessions, and also an order of sessions confirming the same, to the end that they may be quashed. The grounds of objection were:

1st. That the order was signed by the clerk to the justices, and not by the justices themselves.

2nd. That this order merely says, that having heard the applicant and other corroborative evidence, &c. not averring, according to the terms of the 7 & 8 Vict. c. 101, s. 3, that the corroboration was in some material particular.

There were many other minor objections. *Rule nisi.*

Ex parte William Allison.

Motion for a criminal information against overseers of the poor.

Pashley moved for a rule calling upon two persons of the names of Robert Jennings and William Paxton, overseers of the parish of Storwood, in the east riding of Yorkshire, to shew cause why a criminal information should not be filed against them for gross misconduct, in endeavouring to force the applicant, his wife, and family, who were paupers, from the parish.

Williams, J. however, thought that as the conduct of the overseers is not likely to provoke a breach of the peace, and as proceeding against the parties by indictment would be as efficient and as little expensive a remedy as that by information, he was not called upon to interfere. *Rule refused.*

Schlesinger v. Flersheim.

The Court will not grant a rule nisi for an attachment against a party in a civil suit for endeavouring to influence a witness not to attend the trial.

R. Allen moved for a rule calling upon the defendant to shew cause why an attachment should not issue against him for a contempt, in endeavouring to obstruct the process of the Court.

It appeared that before the commencement of this action the defendant had written a letter to a Mr. Rose, in which imputations were made on the character of the plaintiff. This letter having come to the knowledge and possession of the plaintiff, he brought an action of libel upon it. It being necessary to *subpœna* Mr. Rose, he was sought for, and after some difficulty he was met with, when he admitted that, upon the importunities of the defendant, he had endeavoured to avoid being made a witness. It further appeared that the defendant had written Mr. Rose several letters, urging him to endeavour to re-possess himself of the letter before-mentioned, and to abstain from giving evidence, as without him and the letter the action must fail. The action stands for trial at the sittings after term.

It was now submitted that such conduct amounts to a contempt of Court, inasmuch as it is an attempt to divert the due course of justice, and that if the proceedings had been of a criminal instead of a civil nature, the defendant would have been liable to have been indicted. (2 Scott, 614; 2 East, 262; *Smith* v. *Bond, Jurist*, 18th Jan. inst. p. 20.)

Williams, J.—A criminal case is different from a civil suit, for there the public are concerned, and it is highly important that the course of public justice should flow clear and undisturbed. The case cited from *The Jurist* was where a party was kept in confinement, which is not the case here. If the witness will not attend, notwithstanding he is subpœnaed, you have your remedy. I do not think that I am called upon to interfere. *Rule refused.*

Hawkins v. Benton.

Award—Motion calling upon the defendant to pay the amount of the Master's allocatur.

Gray shewed cause against a rule obtained herein last Term by *Best*, calling upon the defendant to shew cause why he should not pay a sum of money due on an award and *allocatur*, and contended,

1st. That as the award and *allocatur* had not been personally served, there was no ground for this motion.

2nd. That the award was bad on its face, as the arbitrator had awarded that further proceedings between the parties should be stayed, he having no authority for that purpose.

3rd. That the submission or order of the judge being, that all matters in difference between the parties, and between William Cole and the defendant, should be referred, and that the costs should abide the event; the arbitrator had assessed the damages to be paid to the plaintiffs, Sarah Hawkins and William Cole, who had consented to become a party to the reference (he having a similar cause of action—trespass against the defendant), at 40s. by which it was rendered uncertain whether any costs were legally payable, inasmuch as if less than 40s. damages were recovered by any *one* plaintiff, he would not be entitled to costs in this action, and here only 40s. were given to the *two* plaintiffs.

4th. That the finding was uncertain, inasmuch as it does not shew to what costs the parties are respectively entitled, the plaintiff, William Cole, having come into the case only on the reference, and having, therefore, incurred no general costs in the cause.

Best, contrà, argued that the Court had already intimated that, under special circumstances, personal service may be dispensed with.

Gray waived this objection.

Best then took the several objections in their order. *Cur. adv. vult.*

Monday, Jan. 27.

(Before Mr. Justice Wightman.)

Doe dem. Simons v. Rice.

The Act 48 Geo. 3, c. 123, for the discharge of prisoners who have lain in gaol twelve months for debts or damages under 20l. applies to prisoners taken in execution for the nominal damages in ejectment.

Barstow shewed cause against an application made by *Giffard* for a rule for the discharge of the defendant out of the custody of the keeper of the Queen's Prison, pursuant to the 48 Geo. 3, c. 123, the amount being under 20l. and the defendant having been in gaol more than a twelvemonth; and he contended, as the defendant was in gaol for the costs and nominal damages under a judgment in ejectment, that the Act did not apply. He admitted that there were the two cases of *Doe dem. Daffey* v. *Sinclair* (4 Scott, 477), and

Doe dem. Threlfall v. *Ward* (2 M. & W. 65), which were decisions the other way, but thought that the case of *Doe dem.* —— v. *Reynolds* (10 B. & C. 481), which was in his favour, the sounder law.

Giffard, contrà.

WIGHTMAN, J. thought that the wording of the Act was quite free from doubt, and that it included cases of this sort. *Prisoner discharged.*

HARDING *v.* HOWARD.

An application to enter a suggestion on the roll to deprive a plaintiff of costs under a Court of Requests Act may be made at any time before final judgment is signed.

To entitle a defendant to enter a suggestion under the Middlesex County Court Act (23 Geo. 2, c. 33), not only must the defendant reside, but the entire cause of action must arise within the county.

T. W. Saunders shewed cause against the rule obtained herein by *M. Chambers*, calling upon the plaintiff to shew cause why a suggestion should not be entered upon the roll to deprive the plaintiff of his costs, and give the defendant double costs, under the provisions of the Middlesex County Court Act (23 Geo. 2, c. 33, s. 119).

This action had been brought to recover a balance of a sum of money, and was, by a judge's order, directed to be tried before one of the Secondaries. On the 23rd of November last it came on for trial, when a verdict was returned for the plaintiff for 1*l.* 9*s.* 5*d.* Subsequently the plaintiff's attorney gave notice of taxing, but in consequence of the representation of the defendant, the Master postponed the taxation for a week. A judge's order was afterwards obtained, staying the proceedings, in order that the defendant might apply to this Court for leave to enter a suggestion. A rule was accordingly moved for and obtained on the 18th instant, being the eighth day of Term. Against this rule it was urged, as a preliminary objection, that the defendant had come to the court too late, and that he should have moved within the time limited for moving for a new trial. (*Garratt* v. *Babington*, 1 Dowl. & Lown. 820.)

WIGHTMAN, J.—I think as final judgment has not, in fact, been signed, and the costs taxed, that the defendant is in time.

Saunders.—There is then a complete answer to the rule in the fact that the cause of action did not arise within the jurisdiction of the Court of Requests. The Secondary's notes shew that the action was for work and labour and money laid out for the defendant in the borough of Southwark; and the cases of *Bailey* v. *Chitty* (2 M. & W. 28), and *Thom* v. *Chinnock* (8 Dowl. 585) are conclusive upon this point.

Chambers, contrà, admitted that he could not distinguish those cases from the present.

Rule discharged.

Tuesday, Jan. 28.

REG. *v.* THE TOWN COUNCIL OF ALDBOROUGH.

Quo warranto to members of a corporation.

Schomberg moved for a rule *nisi* for a *quo warranto* against Henry Mother and Christopher Churchill, for holding the offices of capital burgesses of the above town, they not having been duly elected. *Rule nisi.*

DAVIS *v.* TREVANION.

The 1 & 2 Vict. c. 110, s. 9, prescribing the form and requisites of attestations to warrants of attorney, applies to all instruments of that nature, though executed abroad.

An outlaw may come to the superior courts to set aside an illegal warrant of attorney.

Humfrey shewed cause against a rule obtained by *Martin*, Q.C. calling upon the plaintiff to shew cause why the judgment signed on the 16th of August, 1841, on a warrant of attorney, and the *sci. fa.* issued to revive the same and all subsequent proceedings, should not be set aside, with costs, on the ground of the warrant of attorney not having been executed by the defendant in the presence of an attorney, pursuant to the 1 & 2 Vict. c. 110, s. 9, and he contended,

1st. That as the warrant of attorney was executed by the defendant in France, the Act does not apply, for that the Legislature could not have contemplated a warrant of attorney executed abroad, where, perhaps, there were no attorneys.

2nd. That as the defendant is an outlaw he cannot be permitted to make this motion, the rule being that an outlaw shall not be permitted to take any step in a court of justice for his own advantage, until he has reversed his outlawry. (*Walker* v. *Theluson*, 1 Dowl. N.S. 277, 579; *Hawkins* v. ——, 1 Beavan, 73.)

Martin, Q. C. contrà, was stopped on the first point, the Court being with him, and argued on the second, that all the late cases have gone the length of holding that although an outlaw cannot commence proceedings for his own advantage, he may, nevertheless, come to the court to defend himself against an unjust or illegal demand.

WIGHTMAN, J. thought that the terms of the Act 1 & 2 Vict. c. 110, s. 9, were general and imperative, and applied to all warrants of attorney whatsoever and wheresoever; and that, notwithstanding the defendant was an outlaw, he was entitled to come to the court in this case, inasmuch as he was not instituting proceedings, but merely seeking to protect himself from an illegal demand.

Rule absolute, without costs.

Wednesday, Jan. 29.

REG. *v.* THE REGISTRAR OF DEEDS FOR THE COUNTY OF MIDDLESEX.

Mandamus to Registrar of Deeds to enrol a memorial.

Crowder, Q.C. moved for a *mandamus* commanding the Registrar of Deeds for the county of Middlesex to enrol the memorial of a deed creating a rent-charge according to the provisions of the statute of Anne. The memorial of the deed was lithographed, and no doubt the object of the rent-charge was to confer a vote for the county. The objection relied upon was, that the memorial was lithographed, whereas it was required by the statute to be in writing. *Rule nisi.*

WILDER *v.* BRYANT.

Motion to set aside interlocutory judgment.

V. Lee applied for leave to set aside the interlocutory judgment, which had been signed by the plaintiff herein, upon payment of costs, the defendant undertaking to withdraw all his pleas except the first and second. The defendant being under terms of pleading issuably, had delivered, in addition to the first and second pleas, to which no objection could be made, certain other pleas, which were not issuable, and the defendant had thereupon signed judgment as for want of a plea. He moved upon an affidavit of merits. *Rule nisi.*

Ex parte WILLIAM CAPP.

Prohibition—Court of Requests.

Charnock mentioned this case, which was an application for a prohibition to the Southwark Court of Requests, to prohibit them from enforcing a judgment against the applicant, awarding the payment by him of a certain sum of money to the mother of a bastard child, of which he was said to be the father, for expenses incurred by her in support of the child. The applicant had never promised to pay the money, but the assessors of the court nevertheless insisted that they had an equitable jurisdiction over the matter. The case was originally moved before Wightman, J. and stood over to enable *Charnock* to refer to a case in which prohibition had been granted to a court of request. He now cited *Roberts* v. *Humby* (3 M. & W. 120). *Rule nisi.*

REG. *v.* THE MAYOR, ALDERMEN, AND BURGESSES OF LITCHFIELD.

Mandamus to a corporation to award compensation for loss of office.

Cole applied for a *mandamus* to the above defendants, commanding them to award compensation to a gentleman of the name of Simpson for the loss of the offices of town clerk and attorney and solicitor of the corporation of the borough of Litchfield. Mr. Simpson had been town clerk and attorney and solicitor of the borough for many years before the passing of the Municipal Corporations Reform Act, and was re-elected after the passing of that Act. He had, however, recently been dismissed from these offices, as the Town Council alleged, for misconduct on his part, but, as the applicant and two of the Town Council swore, for political reasons only. *Rule nisi.*

REG. *v.* GOMPERTZ and OTHERS.

Semble, it is sufficient to allege a county as venue in an indictment, without other parish or place.

Peacock moved to quash this indictment. The objection was that the allegation of *venue* was not sufficiently definite. The offence was alleged to have been committed at Gray's Inn, in the county of Middlesex. Now there was no such place as Gray's Inn, at least it was not such a place as a jury could come from, and was only a collection of buildings where students were called to the Bar. In *R.* v. *Harris* (2 Leach) an allegation at Guildhall, in the city of London, was held bad after verdict.

WILLIAMS, J.—Formerly, no doubt, it was necessary to allege some parish or place as *venue* from which the jury might be summoned, but I do not think that can be necessary now, as the jury come not *de vicinatu*, but *de corpore comitatus*. I think it is sufficient to allege a county as *venue*.

Ex parte LORD GIFFORD and TWO OTHERS.

Certiorari to remove recognizances of the peace entered into by a peer before a magistrate, refused, because not necessary, if the recognizances void.

J. W. Smith applied for a *certiorari* to bring up the recognizances of Lord Gifford and his two sureties into this Court. The applicants had been bound over to keep the peace by two magistrates of the county of Berks, and he objected—first, that justices of the peace have no jurisdiction to bind over a peer of the realm to keep the peace; citing 4 Blac. Com. 253, 254; Dalton, 68, Lambert, Book 2, C. 2, fol. 21; 1 Hawkins's Pleas of the Crown; *R.* v. *Dunn* (12 A. & E. 599; Corner's Crown Practice).

Pashley shewed cause in the first instance; citing Lambard, 82; 2 Hawkins, 429; Brooke; Corner's Crown Practice, 18.

WILLIAMS, J.—Without deciding the question, whether or not a peer can be bound over by a justice of the peace to keep the peace, I think I ought not to interfere on this application; for if the law be, as contended by Mr. Smith, that the recognizances are void, they of course are nothing worth, and Lord Gifford may take advantage of this circumstance in any proceedings that may be taken against him, without bringing them up into this Court to have them quashed.

Rule refused.

Thursday, Jan. 30.

REG. *v.* THE JUSTICES OF BUCKINGHAMSHIRE.

A bastardy order under the 3rd sect. of 7 & 8 Vict. c. 101, must expressly state that the evidence upon which the order was made was taken upon oath, although it be not expressly required to be so taken in the Act.

Archbold had obtained a rule to shew cause why an order in bastardy, made by two justices of Bucks, under the 7 & 8 Vict. c. 101, which had been brought up by *certiorari*, should not be quashed. The order was as follows:—

"At a petty session of her Majesty's justices of the peace for the county of Buckingham, holden in and for the Ivinghoe division of the three hundreds of Cottesloe, in the county of Buckingham, at the Town-hall at Ivinghoe, in the said division and county, on the fourth day of November, in the year of our Lord one thousand eight hundred and forty-four, before us, the Rev. William Bruton Wroth, clerk, and the Rev. John Rich, clerk, two of her Majesty's justices of the peace for the said county.

WHEREAS one Mary Stilton, single woman, residing at the parish of Wingrove within this division and county, did, on the seventh day of October, in the year of our Lord one thousand eight hundred and forty-four, having been delivered of a male bastard child within twelve calendar months prior thereto, make application to William Jenney, esq. one of her Majesty's justices of the peace usually acting for this division and county, for a summons to be served upon one Thurston Earthrowl, of No. 13, Elizabeth-terrace, Liverpool-road, Islington, in the county of Middlesex, carpenter and joiner, whom she alleged to be the father of the said child, and the said justice thereupon issued his summons to the said Thurston Earthrowl to appear at a petty sessions to be holden on this day for this division and county to answer her complaint touching the premises; and whereas the said Mary Stilton hath been lately delivered of a male bastard child; and whereas the said Thurston Earthrowl, having been duly served with the said summons within forty days from the present time, *and being now present*, and the said Mary Stilton having now applied to us the justices in petty sessions assembled, for an order upon the said Thurston Earthrowl, according to the form of the statute in such case made and provided; and it now being proved to us, *in the presence and hearing of the said* Thurston Earthrowl, that the said child was, within six calendar months before the passing of an Act passed in the eighth year of the reign of her present Majesty, intituled 'An Act for the further Amendment of the Laws relating to the Poor in England,' that is to say on the thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-four, born a bastard of the body of the said Mary Stilton.

AND we having, *in the presence and hearing of the said* Thurston Earthrowl, heard the evidence of such woman upon oath,(*a*) and such other evidence as she hath produced, *and having also heard the said* Thurston Earthrowl, by his attorney, and the evidence of the said Mary Stilton, the mother of the said child, having been corroborated in some material particular by other testimony to our satisfaction, do hereby adjudge, &c."

[*Nothing turned upon the adjudication.*]

The grounds upon which it was sought to quash this order were these:—1st, That it did not shew that the application was made by the mother to a justice of the petty sessional division in which she resided, as required by the third section of the Act, but simply a justice of the division, without saying of the petty sessional division. 2ndly, That it did not state that the child was born within six months before the passing of the Act, but merely that it was born within twelve months prior to the application. 3dly, That it did not appear that the justice before whom the original application was made was a justice *of* the county, but merely that he was a justice acting *for* the county. 4thly. That it was not stated that any complaint had been made to the justice. 5thly, That it did not shew at what time the mother was delivered of the said bastard child. 6thly, That the order recited an application for an order of bastardy, whereas it should have shewn not an application for an order, but an application that the evidence might be heard. 7thly, That it did not say that the evidence was heard upon oath. And, lastly, That it was not shewn in what material particular the evidence of the mother was corroborated.

Keane now shewed cause.—There are a variety of objections to this order, in which it is submitted there is nothing, and that this rule ought to be discharged.

(*a*) The words "upon oath" here were written, and not in the printed form.

The first objection is, that the application is not made to a justice then acting for the petty sessional division in which the mother resided. This turns on the clause of the 7 & 8 Vict. c. 101, s. 2, which directs "application to be made to any one Justice of the Peace acting for the Petty Sessional Division of the County, &c. in which she (the mother) may reside, for a Summons," &c. These words are directory only. It has been so held in construing statutes which mention justices of a certain division; and it is laid down in Paley on Convictions, p. 24, ed. 1838, that if any thing be directed to be done "in the division by the magistrates acting for the division, any magistrate of the county present at a meeting in the division is competent for that purpose." This is upheld also in 2 Keble, 559; 3 Keble, 383; 1 Sau. 263; *Ashley's* case, 2 Salk. 480; Ib. 473; *Anon.* 12 Mod. Rep. 546. It is necessary to obviate the inference which will be attempted to be drawn from *Reg.* v. *Martin* (2 Q. B. 1037, n.), which was an application under the ss. 94 & 95 of 5 & 6 Wm. 4, c. 50, which provides that a bill of indictment may be ordered to be prepared for the non repair of a highway by the justices at a special sessions "to be held within the division in which the said highway may be situate." There the jurisdiction was held not to appear, where the sessions were not stated to be within such division. But a distinction may be well drawn between these cases; for *Reg.* v. *Martin* was on a statute in which the jurisdiction was exercised to prefer an indictment, but here only to make an order of maintenance. Previously to a recent case, it was held that the costs of such indictment must always fall on the parish, and the importance was great of having the proceeding in the neighbourhood of the *locus in quo*; but it is a very different thing in affiliating a child, where local knowledge is needless, neither have the overseers an interest in the order. [Wightman, J.—What are your other points, Mr. Archbold?] *Archbold.*—There are several, my lord. *Keane.*—My lord, it is extremely important to have the decision of the Court on this point. [Wightman, J.—What is meant by a petty sessional division?] *Keane.*—There is no such thing, my lord. Neither in *Burn's Justice of the Peace* nor in *Archbold's Poor Law* can I find any such term once named. *Archbold.*—It is named in 9 Geo. 4, c. 43, s. 6. *Keane.*—Indeed there is not a word about it in the whole Act; the only mention is of a "lawful division for holding *special* sessions." [Wightman, J. State some of your other material objections.] *Archbold.*—The whole of the first part of the order is bad, as shewing no jurisdiction. (He referred to the second ground.) It may have been that the woman was delivered more than six months before the Act passed. *Keane.*—The very words of the order are within six calendar months since, and the date of the birth is stated. *Archbold.*—That is under a *videlicet*. But there is no statement that the woman was residing in the petty sessional division at the time of the application, which is the groundwork of the jurisdiction. It is very well to say there is a distinction between this case and that in *Reg.* v. *Martin*, but it is a distinction without a difference. [Wightman, J.—In that case it was important that it should be in the neighbourhood. Then there is the case in Salkeld.] *Archbold.*—That had nothing to do with this case at all, and referred to 2 & 3 Chas. 2. [Wightman, J.—We ought to have it, to see what the words were. What other objection have you?] *Archbold.*—The evidence of the corroborating witnesses does not appear on the order to have been taken on oath. *Keane.*—There is nothing in the statute which requires it to be taken upon oath. Section 3 merely directs the justices "to hear the evidence of," &c. Not a word does it contain about being taken on oath. [Wightman, J.—Then you mean that it is unnecessary for the justices to take evidence on oath?] *Keane.*—No; they will be presumed to have done rightly. Either the language of the statute includes and imports that the evidence was taken on oath, or it does not do so. If it does, then, as it follows the express words of the statute, the order includes and imports that it was so taken. If the statute does not include and import that the evidence was on oath, then it is not requisite that it should be so taken or so stated. Orders of removal have been held valid though not founded on examination taken upon oath. (*Hunger Munger* v. *Warden*, 2 Sess. Ca. 40; 2 Bott, 817.) The order in *Reg.* v. *Lewis* (8 Ad. & Ell. 881) does not allege that the evidence was on oath, neither do the forms settled by Mr. Archbold's *New Poor Law Act*, 5th ed. p. 28. We have followed the statute, and shewed that we have done all the preliminary acts essential to the jurisdiction. *Archbold.*—The order must expressly state the evidence to have been on oath, though the statute states nothing about it. (*Reg.* v. *Jones*, New Sess. Cases, pt. 2; *Ex parte Gray*, 1 Bit. & Sym. 116), which was on the Masters and Servants Act, the 4 Geo. 4, c. 34; and there it was held that the jurisdiction was not sufficiently shewn, for it was not stated that the justices took the evidence on oath. *Keane.*—The statute requires the complaint to be on oath there. [Wightman, J.—Let me see the Act; it states that the complaint must be on oath.] *Archbold.*—But afterwards there is no such direction. [Wightman, J.—The words are simply to empower the justice to issue his warrant for apprehending such labourer, &c. and *to examine into* the nature of the complaint; "and if it appear, &c. it shall be lawful," &c. What are the other objections?] *Archbold.*—To state that a justice acts for the county is not enough; it should state he is *of* the county, for otherwise he may be a justice of Cornwall acting, without any right to do so, for Berkshire. The authority to make it must appear on the face of the order; the Court will intend nothing in favour of the jurisdiction, but only in favour of that which follows the jurisdiction. (*Reg.* v. *Spackman*, 2 Q. B. 301.) Acting may mean playing. The most rigid observance is required of the preliminaries of jurisdiction. (*Reg.* v. *Cartworth*, 3 G. & Dav. 163.) *Keane.*—*Rex* v. *Dobbyn* (1 Salk. 474) decides that a statement of the justices in the county would be wrong, but a statement of justices for the county is sufficient; and the case of *Rex* v. *Andover* (Cald. 373) also decides that justices acting for the division must imply that they were justices acting for the county.

Wightman, J.—This rule must be made absolute. The objection upon the ground that part of the material evidence is not stated to have been taken on oath by the justices at the petty sessions is an important one. It certainly does not appear here that the evidence was so taken. The cases of *Reg.* v. *Jones* and *Ex parte Gray* are decidedly authorities in this case, for they were upon a statute which does not expressly state that the evidence should be upon oath, and neither does this; and yet it was held in those cases that the order was fatally defective on that ground.

Rule absolute.

BUSINESS OF THE WEEK.

Friday.

Alcock v. Forshall.—*Symons* moved for a *distringas* to compel an appearance. The calls and appointments, however, being deemed insufficient, the rule was *Refused.*

Mott v. Philips.—*Nash* moved for a rule calling upon the plaintiff, who is the captain of a ship, to give security for costs. *Rule nisi.*

Smith v. Bleazeley.—*Rew* moved for a rule calling upon the defendant to pay 30*l.* pursuant to an award. *Rule nisi.*

Saturday.

Billing v. Railton.—*Hoggins* moved for a rule calling on the plaintiff to shew cause why the officer of the judge of the Sheriff's Court should not return the record in this cause into this court. The action had been tried before Mr. Commissioner Bullock, when a verdict was returned for the defendant. *Rule nisi.*

Coxhead v. Solomon.—*Miller* shewed cause against a rule obtained by *Charnock* herein to set aside a *testatum fi. fa.* with costs.

Rule discharged, with costs.

Williams v. Pritchard.—*Wightman* shewed cause against a rule obtained herein by *Cooke*, to set aside an award. *Rule absolute.*

Monday.

Salt v. Tar.—*Whitehurst*, Q. C. moved for a rule *nisi* to set aside the verdict in this case, which was tried before the Under-sheriff of Derbyshire (when a verdict was returned for the plaintiff), and to enter a nonsuit, or for a new trial.

Rule nisi for a new trial.

Hall v. Bainbridge and Another.—*Cowling* moved for a rule calling upon the defendants to produce a letter, in order that the same may be stamped. *Rule nisi.*

Bowker v. Tebbutt.—*Knowles*, Q. C. shewed cause against a rule obtained herein by *Cowling* for an attachment for not performing the terms of an award.

Rule absolute, not to be enforced for a fortnight.

Smith v. Lord.—*Atherton* shewed cause against a rule obtained by *Cobbett* to set aside a nonsuit, and enter a verdict for the plaintiff. (2 Camp. 307, 308; *Pulling* v. *Seymour*, 5 Dowl. 161; *Becks* v. *Dutton*, 7 M. & W. 157.) *Cur. adv. vult.*

Dommes v. Macadam.—*Rawlinson* moved to set aside the interlocutory judgment signed herein, with costs, for irregularity in having been signed too soon. *Rule nisi.*

Short v. Stone.—*Peacock* moved to rescind a judge's order, setting aside the judgment signed herein as for want of a plea. *Rule nisi.*

Tuesday.

Reg. v. The Town Council of Godalming.—*Rawlinson* moved for a rule calling upon the above corporation to elect two aldermen to fill up the vacancy occasioned by two aldermen having gone out of office on the 9th November last. *Rule absolute.*

Pontifex v. Duffield.—*Worlledge* moved for a new trial in this case, which was tried before the Judge of the Palace Court, when a verdict was returned for the defendant, on the grounds of the finding being inconsistent, and the verdict perverse. *Rule nisi.*

Reg. v. Williams.—*F. Edwards* moved to assign errors in this case. *Application granted.*

Holt v. The Queen.—*In error.*—*Hill*, Q. C. moved that the plaintiff in error be discharged from the custody of the keeper of the Queen's Prison, by virtue of the judgment in error in his favour.

Application granted.

Ford v. Lady Darnbacher.—*Jervis*, Q. C. moved that the Master should review his taxation herein, the defendant having succeeded on a plea of coverture, and the Master having allowed her only her costs out of pocket. (*Wortley* v. *Rayner*, 1 Doug. 637; 1 Dowl. & Lown, 137; *Turner* v. *Rook*, 10 Ad. & Ell.) *Rule nisi.*

Tunley v. Hodgson.—*Humfrey* shewed cause against a rule obtained herein by *L. sh*, to set aside the verdict and for a new trial. *Cur. adv. vult.*

Higgins v. Lewis.—*Crowder*, Q. C. shewed cause against a rule obtained herein to set aside the judgment and all subsequent proceedings.—*Kinglake*, Serjt. and *Phinn*, contrà.

Rule discharged with costs.

Wednesday.

Reg. v. John and Thomas Baker.—*Unthank* shewed cause against a rule obtained herein by *Whitehurst*, Q.C. to set aside the attachment and all subsequent proceedings, and to discharge the defendants out of custody. *Cur. adv. vult.*

Reg. v. William Henry King.—*Borill* moved for a *habeas corpus* to bring up the defendant, who is now a prisoner in the Queen's Prison on a sentence of this Court, in order that he may be charged in execution on a judgment obtained against him in the Court of Common Pleas. *Habeas granted.*

Doe dem. ——— v. ———.—*Simon* shewed cause against a rule obtained by *Prendergast*, calling upon the defendant to give security for costs under the 1 Geo. 4, c. 87, s. 1. *Rule absolute.*

Morris v. Goodyear.—*Borill* shewed cause against a rule obtained herein by *Payne* for a new trial. *Dowling*, Serjt. and *Payne*, contrà.

Rule absolute, costs in the cause, to be tried at the next Hertford Assizes.

Bankrupt and Insolvent Courts.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner Stevenson.)

Wednesday, Jan. 8.

Re Drury.

An insolvent will not be allowed to amend his schedule by inserting debts wilfully omitted, unless the creditors do not object.

Cole, in shewing cause against the final order, stated, that the insolvent had wilfully omitted several debts in his schedule, and fraudulently removed property.

The omission of debts was clearly established by *Cole's* examination of the insolvent.

Homes, in support of the insolvent, asked leave to amend.

His Honour.—This petition must be dismissed. It is impossible to shut out from my mind the conviction that the omission of these debts was *wilful*; and as the opposing creditor prays for a dismissal of the petition, I will not, in such a case, allow the debts *wilfully* omitted to be inserted.

Petition dismissed.

THE LEGISLATOR.

Summary.

Parliament meets on Tuesday. As the facts will so soon be known, it would be idle to waste words upon rumours and conjectures.

THE MAGISTRATE.

Summary.

It will be seen by the Report, that the much disputed Bastardy Order of Mr. Lumley has been formally upset by a decision of the Queen's Bench; one of the many objections being held fatal, the rest were not adjudicated.

We trust that the Forms just issued at the Law Times Office will be found better to endure scrutiny. The utmost care has been taken in their preparation; they have been submitted to some of the most experienced members of both branches of the Profession, and whatever caution and skill could do to perfect them has been done.

As yet only the eight Forms most in request have been issued. A list of them will be found in the Advertisements, and orders are requested to be given with the description in that list.

Some misunderstanding appears to exist as to the publication of these Forms in a collected shape. It is, therefore, necessary to explain, that it is intended to add to the practical utility both of the *Magistrates' Cases* and the *Criminal Law Cases* published for the *Verulam Society*, by the addition of *Forms* relating to their subjects, which will be bound as an Appendix to each Volume. These sheets will also be printed and supplied as a distinct issue, for the use of such as may not take the Reports; but some time must elapse before a sheet of these Forms will be collected.

At present, therefore, be it understood, Mr. SYMONS'S Forms in Bastardy can only be had in quires for *use*, but one copy of each will be sent to any person observing the directions in the advertisement.

BASTARDY FORMS.

THE rule obtained by Mr. ARCHBOLD for quashing one of Mr. LUMLEY'S orders for the maintenance of a bastard child was argued in the Bail Court on Thursday, and quashed. A full report of the case will be found under the head of the Bail Court Reports in this day's LAW TIMES. Mr. ARCHBOLD had very judiciously selected eight of the chief objections to these forms. But Mr. Justice WIGHTMAN seemed, from the first, more inclined to dismiss the matter in the shortest time, than to afford a guide to the Profession as to the validity of the various objections raised, and on which so much doubt prevails. His lordship accordingly, after a cross fire between the counsel on each side, as the points were rapidly passed in review for his lordship's selection, decided the case upon the omission of an averment that the corroborating testimony was given on oath. We do not suppose that any question could ever have existed as to this gross defect in the mind of competent lawyers from the time of Dalton downwards, where it is laid down (we fancied with sufficient clearness) that in all cases where justices may take examinations, or rather accusations, or proof, *though the statute does not expressly set down* that it shall be on oath, yet it shall be intended that it shall be on oath (Dalt. c. 115); and so it has been held in other cases besides those cited in the argument by Mr. ARCHBOLD.

As far as the anxiety of the judge to find out and decide on th worst point permitted, the Lumley cause was valiantly fought, and very ably argued by Mr. KEANE. The decision is, to our minds, unsatisfactory. It needed not to put the Queen's Bench in motion to assure us that the forms in question were bad; on that point no doubt existed. Mr. ARCHBOLD had, however, raised some points on which doubt *could* exist, and in default of any decision on Thursday upon them, *still* exists. With very great deference to the learned and amiable judge who presided in the Bail Court on this occasion, we must say that his lordship has lost an opportunity of doing an essential service to the Profession, and especially to country practitioners. His lordship was especially pressed by Mr. KEANE to allow him to go fully into the question of a statement of jurisdiction. The few arguments and cases which were shot forth in the running fire kept up, as his lordship turned from point to point, have been preserved in our report. We have no room for further comment this week.

PERPLEXITY BY ACT OF PARLIAMENT.

IF the LAW TIMES did no other service to the commonweal than by recording the perplexities of her Majesty's subjects under the manifold inflictions of legislation, we should deserve well of the State. We do not speak of bad laws in a political sense, that being a matter far beyond our province, but of overmuch legislation—vexing, teasing, meddlesome, troublesome changes. Parishes, and parish-officers, and all within their sphere, seem to have been especially selected as a favourite field for the freaks of experimental law-making. It seems to be the delight of the powers that be, for refreshment after their sterner pursuits, to play at parish law. We give additional proofs, in the letters below, of the difficulties which encompass men of business, whose time and talents deserve better treatment for them, than to be thus harassed by incompetent legislation:—

THE BASTARDY FORMS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Mr. Lumley's forms are certainly very deficient; but if the objection is good that the evidence of the mother cannot be taken on appeal, no form will be of any avail; and I cannot help thinking the objection is fatal. It is true that under the old bastardy law the mother was always a witness, but the orders were *always made* upon the application of the parish-officers, who were always the respondents and the interested party; but, under the present law, the woman is the real defendant, and to whom the money is to be paid, and therefore in truth she is the only party who is interested, *and also the party whose name is on the record.* J. M.

We are much obliged to our respected correspondent for his frank statement, and are at all times favoured by any endeavours to advance discussion, even if opposed to our own views. We have already given, at some length, our grounds for the belief that by inference, based on the obvious intent of the statute as well as *ex necessitate rei*, the mother's evidence is receivable before the Quarter Sessions, on appeal against a bastardy order, and to this opinion we adhere. In fact, we find that, at present, no one has been sufficiently enterprising to bring the question before the Queen's Bench. Until this occur, we and our correspondent J. M. must agree to differ. To admit the objection nullifies the entire provisions for appeal in the Act, but the authorities are abundant that Acts are not to be so construed as to nullify themselves; and furthermore, that a provision in one clause is to be extended to another rather than that the latter should be void.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In answer to your correspondent "W. P. P." that my plan of proving chargeability is incomplete, I did not think it necessary to trouble you or your readers with what, of course, all are aware of, viz. that it is always part of the proof by the relieving officer to state "for and on account of" which parish the relief is given; and this the officer is enabled *from his own knowledge to do; at least in this union.* The proof of chargeability by the certificate alone frequently fails, or at any rate gives rise to discussions by counsel for hours together. It was only the other day, at the Suffolk Sessions at Woodbridge, an appeal lasted two days, and one of the points was the certificate, which the Sessions pronounced bad. It was with the idea of avoiding these technical difficulties which made me mention what I still consider the best method of proving a simple fact.

I think "W. P. P." is wrong in his opinion that the bastardy order is incorrect in stating the deposition of the woman after birth was, in the first instance, taken by a justice on oath. What objection is there to this course? From the well-known authority of Paley, there can be no doubt of the jurisdiction of the justice to administer an oath; nor is it at all contrary to the common practice in justiciary proceedings to attach a request or application to a deposition, as every magistrate's clerk is aware.(a)

Section 2 of the late Act, as far as relates to an application after birth, and also section 3 in proceedings before the justices at the special sessions, are silent in both instances as to taking the evidence on oath; and the consequence has been, that an objection has been taken to the orders omitting the statement of the evidence being taken on oath.

Surely, then, Mr. Editor, if the magistrate can legally administer the oath in the first instance, the most prudent course must be to do so, the omission of which may, some time or other, form one of those technical objections which are now always raised.

I sincerely hope no other objection may be taken to the order. Yours, &c.

Stowmarket, Jan. 29, 1845. J. M.

(a) [But never to an *information*, unless expressly required by statute (1 Burn's Just. Peace, 963, edit. 1845). Why the 7 & 8 Vict. c. 101, should require the oath when the woman is pregnant, and not when she is delivered, we should be glad to learn.—ED. LAW T.]

EVIDENCE OF CHARGEABILITY.

THE following may serve as a useful Form. The correspondent who favours us with it broadly condemns the Certificate; but has he read the 69th sec. of 7 & 8 Vict. c. 101, which removes some of his objections?

County of Wilts, to wit. { The Information, &c. of John Smith, &c. who saith, I am one of the relieving officers of Union, situate in the counties of Wilts and Berks, and of and for the parish of , in the said county of Wilts, and within the said Union,—on the day of last, John Stiles, and Ann his wife, and their four children, &c. became chargeable to the said parish of , and I relieved them for and on the behalf of the overseers of the said parish of , by giving to the said John Stiles the sum of one shilling, and weekly and every week the sum of four shillings —(or gallons of bread) for relief; and the said John Stiles has, since the said day of last, continued weekly and every week to receive the like relief. And I do now relieve him with the same relief, and he is, with his said wife and children, now actually chargeable to the said parish of .

If paupers are in Union House, the chargeability might be thus stated:—

The said John Stiles, &c. were on the day of last admitted as inmates of the workhouse of the said Union, situate in the parish of aforesaid, as paupers chargeable to the said parish of , and they are now actually chargeable to and relieved by the said parish of , by their being maintained in the said workhouse at the expense of ten shillings weekly and every week, which said cost of relief and maintenance is charged to and is paid by the said parish of .

THE RIGHT OF VOTING IN PARISHES.—The following circular, addressed to the overseers of the poor, has been issued from the Poor Law Commission-office, Somerset-house. It is dated Jan. 24, 1845:—"Gentlemen,—I am directed by the Poor Law Commissioners to state, that having ascertained that in your parish the amount of the population, according to the last census, exceeds 2,000 persons, they deem it right to refer you to the provisions contained in the 15th section of the Act of the last session of Parliament for the amendment of the Poor Laws (7 & 8 Vict. c. 101), which require that you should, on or before the 5th of February next, enter in the proper book the names and addresses of all persons who, before the first day of February next, shall have given to you the statements of their claims to vote as owners of property or proxies; and that you shall allow any person to peruse such book, without payment of any fee, at all reasonable hours, between the said 5th day and the 10th day of February next. The Commissioners trust that you will not neglect these provisions, as the consequence of any neglect may be serious to the persons entitled to vote in the election of guardians. The Commissioners think it, moreover, right to inform you, that the wilful omission of this duty by the overseers would render them liable to an indictment. I am, gentlemen, your most obedient servant, W. G. LUMLEY, Assistant Secretary."

From Mr. Charles Willick's Annual Supplement to the Tithe commutation Tables for 1845, we gather the following general results. The average prices for last year were:—

51s. 3d. per imperial quarter, for wheat,
33s. 8d. ,, ,, barley,
20s. 7d. ,, ,, oats.

The average prices for seven years to Christmas last, amount to

7s.7d. per imp. bush. or 60s.8d. per imp. qr. for wheat,
4s. 1¼d ,, ,, 32s. 10d. ,, ,, barley,
2s. 9d. ,, ,, 32s. 0d. ,, ,, oats.

Each 100*l*. of rent-charge in 1845 will amount to 103*l*. 17s. 11¼d. or 5. 6d. per cent. less than the amount of last year.

The following buildings have been duly registered for the solemnization of marriages, pursuant to the Act of the 6 & 7 Wm. 4, c. 85. The Baptist Chapel, situated in the parish of Wattisham, Suffolk, in the district of Cosford; Ebenezer Chapel, South Brent, Somersetshire; Orange-street Chapel, Orange-street, St. Martin's-in-the-Fields; Baptist Chapel, Bingley, Yorkshire.

THE LAWYER.

Summary.

THE business of the Term has been so protracted by long arguments in two or three cases, that it is doubtful if even the sittings after Term will not leave a heavy arrear. A vast number of cases are standing over for judgment, and for three weeks, at least, we expect to have our columns deluged with them. But it is the most valuable and the most interesting

matter we could present to our readers, for they can nowhere beside procure it. There can be no difference of opinion as to the importance of *verbatim* copies of the written judgments, containing the results of the mature deliberations of the judges. We believe the LAW TIMES is the only record in which *all* these are to be found. It will be seen that Mr. Baron PLATT has taken his seat in the Exchequer, and the talked-of exchanges have not been made.

A discussion has been proceeding in the daily papers upon the inconvenience attending the acceptance of briefs by counsel, who often, when the cause comes on for hearing, are engaged in another court. We have made some comments on this subject in a leading article, but we are compelled by an influx of reports to postpone the correspondence until next week.

COURT PAPERS.

EXCHEQUER OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, Knt. Lord Chief Baron of Her Majesty's Court of Exchequer, after Hilary Term, 1845.

MIDDLESEX.

Saturday	Feb. 1	Common Juries.
Monday	3	Customs and Common Juries.
Tuesday	4	
Wednesday	5	
Thursday	6	Common Juries.
Friday	7	
Saturday	8	Stamps and Common Juries.
Monday	10	Customs and Common Juries.
Tuesday	11	
Wednesday	12	Special Juries.
Thursday	13	
Friday	14	
Saturday	15	

LONDON.

Monday	Feb. 3	To adjourn only.
Monday	17	Adj.-day, Common Juries.
Tuesday	18	Common Juries.
Wednesday	19	
Thursday	20	
Friday	21	
Saturday	22	Special Juries.
Monday	24	
Tuesday	25	
Wednesday	26	
Thursday	27	
Friday	28.	

The Court will sit at Ten o'clock.

SPRING ASSIZES, 1845.

OXFORD CIRCUIT.

The following days and places have been appointed for holding the ensuing Lent Assizes on the Oxford Circuit, before Sir F. POLLOCK, Lord Chief Baron, and Sir Thomas Joshua PLATT, Esq. one of the Barons of Her Majesty's Court of Exchequer:—

Berkshire—Saturday, March 1, at Reading.
Oxfordshire—Wednesday, March 5, at Oxford.
Worcestershire—Saturday, March 8, at Worcester.
City of Worcester, same day and place.
Staffordshire—Thursday, March 13, at Stafford.
Shropshire, Saturday, March 22, at Shrewsbury.
Herefordshire—Thursday, March 27, at Hereford.
Monmouthshire—Saturday, March 29, at Monmouth.
Gloucestershire—Wednesday, April 2, at Gloucester.
City of Gloucester, same day and place.

WESTERN CIRCUIT.

(Before Mr Justice COLERIDGE and Mr. Justice ERLE.)
Southampton.—Thursday, Feb. 27, at the Castle, Winchester.
Wilts—Wednesday, March 5, at Salisbury.
Dorsetshire—Wednesday, March 12, at Dorchester.
Devonshire—Monday, March 17, at Exeter.
City of Exeter, same day and place.
Cornwall—Monday, March 24, at Bodmin.
Somersetshire—Monday, March 31, at Taunton.

MIDLAND CIRCUIT.

(Before the Right Hon. Sir N. C. TINDAL, Knt. Lord Chief Justice of the Common Pleas, and Mr. Justice MAULE.)
Northamptonshire—Monday, March 3, at Northampton.
Rutlandshire—Friday, March 7, at Oakham.
Lincolnshire—Saturday, March 8, at Lincoln.
City of Lincoln, same day.
Nottinghamshire—Thursday, March 13, at Nottingham.
Town of Nottingham, same day.
Derbyshire—Monday, March 17, at Derby.
Leicestershire—Saturday, March 22, at Leicester.
Borough of Leicester, same day.

WARWICKSHIRE.

Coventry Division—Wednesday, March 26, at Coventry.
Warwick Division—Saturday, March 29, at Warwick.

NORTH WALES CIRCUIT.

(Before Mr. Justice WILLIAMS, who will join Mr. Justice CRESSWELL at Chester on the 29th of March.)
Montgomeryshire—Saturday, March 8, at Welshpool.
Merionethshire—Thursday, March 13, at Bala.
Carnarvonshire—Saturday, March 15, at Carnarvon.
Anglesea—Wednesday, March 19, at Beaumaris.
Denbighshire—Saturday, March 22, at Ruthin.
Flintshire—Friday, March 28, at Mold.
Cheshire—Saturday, March 29, at Chester.
City of Chester, on same day.

SOUTH WALES.

(Before Mr. Justice CRESSWELL, to meet Mr. Justice WILLIAMS at Chester.)
Glamorganshire—Feb. 27, at Swansea.
Pembrokeshire—March 8, at Haverfordwest.
Cardiganshire—March 12, at Cardigan.
Carmarthenshire—March 15, at Carmarthen.
Brecknockshire—March 22, at Brecon.
Radnorshire—March 26, at Presteign.
Cheshire and City of Chester, March 29, at Chester.

NORFOLK CIRCUIT.

(Before Mr. Justice PATTESON and Mr. Baron PARKE.)
Buckinghamshire—March 10, at Aylesbury.
Bedfordshire—March 15, at Bedford.
Huntingdonshire—March 19, at Huntingdon.
Cambridgeshire—March 20, at the County Courts, Cambridge.
(On account of Good Friday falling on the 21st, no business will be done either on Crown or Civil side until the 22nd.)
Suffolk—March 27, at Bury St. Edmund's.
Norfolk—April 2, at the Castle of Norwich.
City of Norwich, same day, at the Guildhall.

NORTHERN CIRCUIT.

(Before Mr. Justice COLTMAN and Mr. Justice WIGHTMAN.)
Lancashire (northern division)—Feb. 17, at Lancaster.
Westmoreland—Feb. 20, at Appleby.
Cumberland—Feb. 22, at Carlisle.
Northumberland—Feb. 26, at Newcastle.
Durham—March 3, at Durham.
Yorkshire—March 8, at York.
City of York, same day.
Lancashire (southern division)—March 22, at Liverpool.

HOME CIRCUIT.

(Before the Right Hon. Lord DENMAN and the Right Hon. Mr. Baron ALDERSON.)
The days for holding the assizes on this circuit have not yet been finally appointed.

COURT OF QUEEN'S BENCH.

Hilary Term—Eighth Victoria.

The Court will, on Saturday, the 1st, and on Monday, the 3rd, Tuesday, the 4th, Wednesday, the 5th, and Saturday, the 8th days of February, and also on Monday, the 10th day of February, and the two next following days, hold sittings, and will proceed in disposing of the business in the Crown, Special, and New Trial Papers, and giving judgment in cases then pending; a selection will be made from the Special Paper, and notice given.

BY THE COURT.

IN THE EXCHEQUER OF PLEAS.

Hilary Term, Eighth Victoria.

This Court will, on Monday, the 10th day of February next, and on the following days, namely, Tuesday the 11th, Wednesday the 12th, Thursday the 13th, Friday the 14th, Saturday the 15th, Monday the 17th, Tuesday the 18th, Wednesday the 19th, Thursday the 20th, Friday the 21st, and on Saturday the 22nd days of the said month, hold sittings, and will proceed in disposing of the business then pending in the New Trial and Special Papers.

Read in Court, BY THE COURT.
Samuel Dare, Master.

COURT OF COMMON PLEAS.

Hilary Term, Eighth Victoria.

Wednesday, the 29th day of January, 1845.

The Court will, on Thursday, the 13th day of February next, hold a sitting, and will proceed to give judgment in certain of the matters standing over for the consideration of the Court.

N. C. TINDAL.

COMMON LAW EXAMINERS.

Hilary Term, Eighth Victoria.

It is ordered that the several Masters for the time being of the Court of Queen's Bench, Common Pleas, and Exchequer, respectively, together with Samuel Amory, Benjamin Austen, Michael Clayton, William Loxham Farrer, Richard Harrison, Bryan Holme, Robert Wheatley Lumley, Edward Rowland Pickering, Charles Ranken, Charles Shadwell, William Tooke, and Edward Archer Wilde, gentlemen, attorneys, &c, and the same are hereby appointed, examiners for the present year, to examine all such persons as shall desire to be admitted attorneys of all or either of the said Courts; and that any five of the said examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of and subject to the provisions of the rule of all the Courts made in this behalf in Hilary Term, 1836.

Approved by the Judges of the Court of Queen's Bench, 16th January, 1845.

By the Court, C. R. TURNER.

Approved by the Judges of the Court of Common Pleas, 17th January, 1845.

By the Court, GRIFFITH.

Approved by the Barons of the Court of Exchequer.

By the Court, SAMUEL DARE.

PROMOTIONS, APPOINTMENTS, ETC.

WHITEHALL, Jan. 25.—The Queen has been pleased to appoint Francis Hart Dyke, Esq., to be her Majesty's Procurator in all causes and matters Maritime, Foreign, Civil, and Ecclesiastical, in the room of Iltid Nicholl, Esq., deceased.

The Queen has been pleased to grant unto William Prior Johnson Richardson, of Bridgend-cottage, near Bexley, in the county of Kent, esquire, eldest son and heir of James Richardson (afterwards James Richardson William Prior Johnson), of Stockhouse, in the parish of Stock, in the county of Essex, gentleman, deceased, and grandson of Thomas Richardson, of Lambeth, in the county of Surrey, gentleman, by Hannah, his wife, daughter and coheir of William Prior Johnson, of Stock aforesaid, esq., also deceased, her Majesty's royal license and authority, that he and his issue already born, and hereafter to be born, may take and use the surname of William Prior Johnson, in lieu of that of Richardson, in compliance with an injunction contained in the last will and testament of the said William Prior Johnson, deceased; and also to command that the said Royal concession and declaration be recorded in her Majesty's College of Arms.

CROWN-OFFICE, Jan. 28.—The Queen has been pleased to appoint Henry John Shepherd, Esq., one of her Majesty's Counsel learned in the law, to be one of the Commissioners of the Court of Bankruptcy, in the place of Sir Charles Frederick Williams, deceased.

The Queen has been pleased to appoint Edmund Murray Dodd, esq. to be her Majesty's Solicitor-General for the province of Nova Scotia.

The Lord Chancellor has appointed Charles Wyatt Estcourt, of Newport, in the Isle of Wight, gent.; Richard Harvey, of Dover, in the county of Kent, gent.; Josias Bull York, of Foleshill, in the county of Warwick, gent.; Richard Grave Hindson, of Penrith, in the county of Cumberland, gent., to be Masters Extraordinary in the High Court of Chancery.

THE NEW JUDGE.—It affords us great pleasure to state, that the vacancy occasioned by the resignation of Mr. Baron Gurney has been filled up by the appointment of Mr. Thomas Platt, Queen's Counsel. The zeal and ability by which his professional career has been distinguished fully entitle him to the honourable promotion he has received. It is peculiarly gratifying to us who took an early interest in his success, and who have for a long series of years profited by his advice and assistance, to be able to congratulate him sincerely on his receiving the only reward that can compensate in any degree for the laborious duties of the Profession. We wish others had been spared to experience the satisfaction we now feel at his success. Mr. Shepherd, Queen's Counsel, has been appointed Commissioner of Bankrupts, in the place of Sir C. F. Williams. Mr. Shepherd was entitled to compensation exceeding 1,200*l.* per annum as Clerk of the Custodies, upon the abolition of that office in 1842, and this sum will therefore be saved by the appointment. Mr. Shepherd is the son of the late Mr. Samuel Shepherd, formerly Attorney-General, and afterwards Chief Baron of Scotland.—*Times.*—*Monday.*

WHITEHALL, JAN. 7. The Right Hon. Sir Nicolas Conyngham Tindal, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Edward Handscomb, of Ampthill, in the county of Bedford, to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Bedford.

NEW QUEEN'S COUNSEL.—It was generally rumoured in Westminster Hall yesterday morning, that the following gentlemen of the bar, in the course of a few days, will be raised to the dignity of Queen's counsel, viz. Mr. Humfrey, Mr. Montague Chambers, Mr. Russell Gurney, and Mr. Butt.

GRAY'S-INN. January 29.—George Baker Ballachey, Esq., and William Redfern, Esq. were this day called to the degree of barrister-at-law by the Hon. Society of Gray's-Inn.

CALLS TO THE BAR.—Lincoln's-Inn, Jan. 29.—The undermentioned gentlemen having kept their full number of terms as members of this hon. society, they were this evening sworn in, in the usual manner, before several of the benchers, and admitted to the degree of barrister-at-law;—Mr. Augustus Robinson, of Balliol College, Oxford, the only son of Mr. Mathew Robinson; Mr. Thomas Yate Lee, of University College, London, the only son of Mr. Thomas Eyre Lee; Mr. William Sidney Gibson, of Newcastle-upon-Tyne, only son of the late Mr. Benjamin Gibson, merchant; Mr. Edward Buckle, of Great Marlborough-street, the eldest son of Mr. John Buckle; Mr. John Colpitts Dean, of Christ College, Cambridge, M.A. the only son of Mr. John Dean; Mr. James Lea, of Worcester College, Oxford, M.A. the only son of Mr. James Lea; Mr. Cornwall Simeon, of Christ Church, Oxford, M.A. the third son of Sir Richard Simeon; Mr. Alexander Perceval, of Trinity College, Dublin, M.A. the third son of Mr. Alexander Perceval; and Mr. James Shank, of ——, Oxford, M.A. the second son of Mr. Henry Shank.

NEW MAGISTRATES AT NORWICH.—It is understood that Dr. Lynn, W. Martin, J. G. Johnson, and J. H. Barnard, esqrs. have been added to the commission of the peace for Norwich. These gentlemen are all Conservatives, and occupy, deservedly, a high place in public estimation.

QUEEN'S COUNSEL.—We understand that previous to the ensuing spring assizes several gentlemen at the bar will be raised to the dignity of Queen's counsel.—*Standard.*

LEGAL INTELLIGENCE.

OPINION OF SIR JOHN DODSON AND MR. BETHELL, Q. C., on the power of the House of Convocation at Oxford to degrade Mr. Ward from his degree.—A case was submitted to Sir John Dodson, the Queen's Advocate, and Mr. Bethell, Queen's Counsel, to elicit their opinion whether the House of Convocation has the power to degrade Mr. Ward for a theological offence such as that imputed to him; and whether it has the power to pass the proposed new "test?" Sir John and Mr. Bethell delivered an opinion against the competency of the University on both points, as follows:—

"We are of opinion that the House of Convocation has not the power of depriving Mr. Ward of his degrees, in the manner or on the grounds proposed.

"A degree is a certain dignity or title of honour which the University derives its right to confer by grant from the Crown; and to the rank or status thus conferred the law has annexed many privileges, both ecclesiastical and civil. The University can have no power of taking away this dignity and the franchises with which it is accompanied, unless such power be derived from the same source,—namely, royal grant,- or has been created by some statute or law which has received the sanction of the Crown, or been confirmed by Act of Parliament.

"But, upon an examination of the statutes of the University, we do not find any statute which confers upon or recognizes in the House of Convocation a jurisdiction or authority to deprive any one of its members of his University franchise, except only in the subordinate office of publicly executing the antecedent decree of a court of competent jurisdiction; and we are therefore of opinion, that the proposed act of degradation will, if it passes, be illegal; and inasmuch as by its consequences it would deprive Mr. Ward of certain legal rights, we think it may be properly made the subject of application to the Court of Queen's Bench; and that such Court would by *mandamus* compel the University to restore Mr. Ward to his degrees, and to the status and privileges which he now holds in respect of them.

"We desire to observe, that we give no opinion on the question whether Mr. Ward, by the publication of the doctrines contained in his book, has or has not committed an offence against ecclesiastical law, which might be made the subject of a proper judicial proceeding before a competent tribunal; but simply, that in our view of the case the House of Convocation is not such a tribunal, and that the notion that it can degrade by virtue of some general or legislative power appears to us to be erroneous.

"Should the resolution pass, Mr. Ward may have another remedy, namely, an appeal to the Crown as Visitor of the University; and this may be resorted to even if the Court of Queen's Bench should, on an application for a *mandamus* decline to interfere.

"With respect to the second statute, which in effect proposes to annex a new sense to subscription, we are of opinion that it is contrary to law. The law requires the clerical subscriber to take the Articles in their literal and grammatical sense; but the proposed statute requires him to take them in that sense in which he believes them to have been originally framed and promulgated, and also in the sense in which he believes them to be now accepted and taken by that body which at the time of his subscription constitutes the University. Thus the belief or conjecture of the subscriber upon these two difficult subjects of inquiry is substituted for the legal interpretation. Should this statute pass, protesting members of Convocation might perhaps appeal to the Queen in her capacity of Visitor of the University; but a shorter remedy will be to apply for a prohibition, in case the Vice-Chancellor shall proceed to require any member to subscribe the Articles with the proposed declaration.

"JOHN DODSON.

"RICHARD BETHELL.

"Doctors' Commons, 17th January, 1845."

SIR W. FOLLETT.—We have more than ordinary pleasure in being enabled to state, on the best authority, that very favourable accounts have been received of Sir William Follett's health, and that there is every hope of his immediate return to this country, and of his being sufficiently re-established to undertake the discharge of his duties in Parliament at the commencement of the session.—*Western Luminary.*

IRISH LEGAL INTELLIGENCE.

Dublin, Wednesday evening, January 29th.

JUDGES' COUNCIL CHAMBER.

MEETING OF THE BENCHERS—MR. HARDY'S CASE.

Yesterday, at two o'clock, the Benchers of the Hon. Society of the King's Inns met in the Judges' Council Chamber, pursuant to adjournment, for the purpose of further considering the charges made against Mr. J. J. Hardy on the preceding Tuesday. As on the previous day, the public were excluded, and accordingly, as may be supposed, the general curiosity to know the probable result was rather increased than diminished by the circumstance of the inquiry being conducted with so much privacy. I have every reason, however, to believe that the Benchers have not yet come to any determination upon the subject, but have merely appointed a committee of three of their number to investigate the entire matter, and report thereon to their brethren. It would be improper, at the present stage of the proceedings, and amid such a scarcity of accurate information, to venture any prediction as to the conclusion at which the members of the Bench may ultimately arrive, or to say more than that the impression seems to gain ground that the result will be satisfactory to the high character of the profession, and tend rather to increase than diminish the confidence so generally reposed in its members by the public.

The Queen's Bench have deferred until next term giving judgment in the very important case of *Conway and Lynch in error* v. *The Queen.* The point involved is, whether a jury can, without any fatality occurring to any of them, and without the consent of the prisoner, be discharged without giving a verdict (see the circuit report of this case in 3 Law T. p. 23). It is much to be regretted, that the opinion of the Court will not be made known before the spring circuits go out, as a similar discharge of jurors has been hitherto by no means of unfrequent occurrence. The prisoners have been further respited.

CORRESPONDENCE.

CERTIFICATE DUTY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Much has been said for and against professional gowns for attorneys. To that much I wish to add but little. I desire to offer no objection to the wearing of gowns by those who would like to appear in them, but I, for one, amongst others with whom I have talked on the matter, should be extremely sorry were any compulsory order made in any quarter for their adoption, as I have no fancy for being encumbered with any thing of the kind.

One reason—the main one, I think—advanced for the gown is the want of some professional distinction for the attorney as a ready passport into the public courts. If, for the convenience of professional men, it is necessary that they should be armed with something of an official character, I take leave to suggest that, in lieu of gowns, they shall each on their admission be provided with a neat medal, about the size of a penny-piece, bearing some appropriate device on each side of it, which could not readily be counterfeited; as, for instance, the royal arms on one side, and on the reverse side the words, "Attorneys' and Solicitors' Admission Ticket to the Courts of Law and Equity in England;" to which might be added the year when the medal was struck off, and a small ring should be affixed to the medal, for attaching a piece of ribbon. This ticket would at once give uniformity of admission to all the Courts throughout the country, whilst the issuing of admission tickets by the several under-sheriffs or other authorities of the different counties, as suggested by one of your correspondents, would most likely be subject to a variety of regulations, according to the views of those in office, never to be learnt by the profession.

It is not likely, I think, that on the subject of gowns the profession will pull together; but there is one question, at present above all others, on which they ought to unite as one man, and make a vigorous and determined effort,—that for the repeal of the unjust and galling certificate duty. How such a tax ever got imposed upon the legal profession, all other professions and businesses going free, I cannot for my life discern. Perhaps, because its members always maintained a respectable appearance and standing, it was concluded that their occupation afforded them the means of a superabundant revenue. If the profession were a lucrative one at that time, it is certainly no longer so. We hear of tradesmen retiring from business with ample competencies, and also of merchants and commercial men realizing splendid fortunes; and this from businesses which interfere but little, if at all, with either body or mind. Do these gentlemen pay any thing in the shape of a certificate duty?—Not a farthing. How stands the attorney? With the exception of a few of the older members, attached to the larger houses and firms, it is now utterly impossible for the general body of professional men to do more than maintain themselves and families in respectability, and that only by hard plodding from day to day, the mind being generally at the utmost stretch, in an arduous profession. Ample competencies and splendid fortunes for them are out of the question. Their wives and children must be provided for, if possible, by life policies, and such precautionary provisions; whilst, in too many cases, the widows of professional men have no other resource but that of an application for the limited bounty of some law society. Such is the position of those who have to pay an annual certificate duty. Surely the State, in exacting the willingly-paid stamp duties upon the articles and admission of attorneys, gets enough, without also wringing from them a yearly bonus. But the question is one which, in my opinion, only wants clearly and calmly explaining to and discussing with Government. The Metropolitan Legal Association can do much in this matter, but they must be backed by petitions, numerously signed, from all parts of the country. Every member, too, of the House of Commons ought to be written to on the subject, ere Parliament meets, by some attorney connected with his election.

Thanking you for your past efforts on behalf of the profession, I am, Sir, yours very respectfully,

Yorkshire. CHAS. WILTON.

ARTICLES OF CLERKSHIP.

SIR,—The case of "E. L.," stated in his letter, inserted in the LAW TIMES of January 11th, being precisely my own case in 1832, he will, perhaps, be glad to know how *I* acted under the same circumstances.

Not having served the last six months of my original term, which had then expired, I laid a statement of my case before Master Le Blanc, and I have no doubt that I could find among my papers the advice he kindly gave me, and on which I acted.

I entered into a *fresh contract* with another solicitor to serve him for *six months.* The circumstances of the case were recited. The gentleman to whom I was originally articled was not a party; and the contract was on a 1*l.* 15*s.* stamp.

I should advise "E. L." however, to apply for admission without a fresh service, for I apprehend that the latter deed, which he describes, operated as a fresh contract, "E. L." having *covenanted* to serve C. for six months. I am, Sir, yours, &c.

WILLIAM GILES.

Shepton Mallet, January 27th, 1845.

SELECTIONS FROM CORRESPONDENCE.

A transmits the following powerfully written letter on the evils of the profession generally. There is too much truth in some of his sarcastic hints. We shall be delighted to have the frequent aid of so able a correspondent in the good work he advocates.

No sane man denies that the law is an honourable profession, and you and others are nobly seeking to have it honourably pursued.

But the cultivation of conventionality is, after all, only rather sorry intellectual husbandry.

Bear with me, when I remind you that there are graver evils than advertising for business; grosser and more startling iniquities than unprofessionally asking leave to toil, at some sacrifice of toil's fair and accustomed recompence.

Advertising barristers and attorneys merely exhibit misguided industry and execrable taste; but "sham attorneys" are impudent vagabonds, and ought not to be classed with those guilty only of a foolish fussiness, which must eventually be its own punishment.

And shall you or I pronounce that these advertisements are not wrong from poverty? Shall we adjudge that they do not babble of the somewhat needful adjuncts of bread and breeches?

"Nevertheless they are wrong," you say; and echo, like a sycophant, softly says "they are wrong."

True; let us first crush the camel, and then crack the gnat.

Let us make people more like the excellent Mrs. Kenwigs, who was on all occasions "severely proper," *after* we have made them less like Ralph Nickleby.

Silly or excusable selfishness may be safely enough left to that knowing abstraction, called by puffing tradesmen "the discerning public;" but sinful selfishness—the making a merchandise of misery—is a very vicious bull, and should be taken firmly by the horns.

Therefore, I respectfully suggest that you give stiff battle to some of the mightier grievances.

Knavery flourishes, Sir; fraud thrives; the law is oftentimes wrested to feed fat ancient grudges; and, worse than all, because least remediable, to pander to what Virgil and collegians delicately call "*auri sacra fames,*" but what a purer poetry and more practical philosophy emphatically terms "filthy lucre."

Set yourself, Sir, against the monstrous practice that gives lawyers a direct interest in perpetuating quarrels.

Agitate, I pray you, that the high principle of amicable arrangement may be rewarded with the highest fees, and that the low practice of unnecessary litigation may be requited with fees correspondingly low.

Struggle, I beseech you, to abolish the absurd distinction between civil and criminal fraud.

Assuredly there is no greater stain upon our law than that the educated and accomplished knave can easily escape, whilst his clumsier brother-criminal, whose wits are more abroad, soon gets his person sent abroad after them, doubtless to preserve the mystic connection between the body and the mind;—

the body atoning in suffering for what the mind has lacked in cunning.

It is impossible to imagine any thing more subversive of national honesty than this nonsensical distinction of fraud from felony. The only difference between scientific and simple knavery is that the scientific is infinitely the more base.

Enduring laurels must crown the editor who boldly exposes all bad laws and bad men; who fights against all manner of scoundrelism, polished or rude, sentimental or sneaking.

Honour to you, Sir, for the spirit of your exertions to purify the legal profession.

But so long as lying pleas can lawfully give opportunity to effectuate swindling bills of sale; so long as dishonest or partial executors can lawfully give preferences to favoured creditors; so long as reckless trading and extravagance seem to differ in nothing from misfortune at the Bankruptcy Courts; so long as Chancery is practically closed where might happens not to be associated with right; so long as law and lay rascality can prosper on clever management, and fail only by bungling; so long, above all, as to the lawyer litigation is gain, and peace poverty: so long, Mr. Editor, as this frightful mass of moral disease taints "Our Glorious Constitution," you have, in all conscience, enough to counteract and cure, before blistering briefless barristers, and physicking sham attorneys.

All I ask you to do is to direct your powerful energies to the professional heart, and afterwards, if necessary, to cut the corns.

To Readers and Correspondents.

H. E. B.—*This is a query prohibited by our rule.*

H. W. H.—*The Court would certainly remedy such a defect on affidavit and motion, even if it were in itself a fatal error in the articles, which we much doubt.*

An Attorney.—*We have no doubt that the advertising Barrister is a very good teacher, and that many can testify to his services. Our complaint against him is, that we deem it unprofessional to solicit pupils by personal application. We may be wrong in this; but the best proof that the advertisers in question have some doubt of the propriety of their own proceedings, is the fact that they solicit by* anonymous *letters. If they deem themselves entitled to solicit pupils, why do they not append their names to their applications? Why address initials, or subscribe* Alpha? *The* manner *of doing it is even worse than the act itself.*

TO SUBSCRIBERS.

The Publisher *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* Law Times *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* Law Times *for binding, to inclose any other books for the binder.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

An Alphabetical Index to the Cases in the current Volume of the Law Times *always lies at the Office for the purpose of reference.*

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THE LAW TIMES.

SATURDAY, FEBRUARY 1, 1845.

TO READERS.

In reply to some inquiries as to the *Table of Abbreviations* used in citing the Reports, it is necessary to explain that in its completed form, mounted upon mill-board, it is too large and heavy for the post. Persons desirous of having it in that shape are therefore requested either to order it through their country booksellers, or direct the Publisher in what manner it shall be conveyed to them by parcel.

THE CERTIFICATE DUTY.

Last week we published the circular issued by the *Legal Association*, with a form of petition for the repeal of the Certificate Duty. We learn that a very large proportion of these petitions have been already returned, signed by every attorney resident in their several localities. It is desirable that such as may have had no opportunity of signing them, through absence or otherwise, should forward their names to the secretary.

We trust that the London solicitors will follow the example so promptly set by their brethren in the country. To them it is a matter of even greater moment, inasmuch as the duty levied upon them is higher than that imposed upon the country practitioners. An annuity of 12*l.* per annum at this time, when the rate of interest is so low, is a consideration worth a little trouble and effort. The petition lies with the secretary; let our metropolitan readers lose no time in signing it.

BRIEFS TO COUNSEL.

From a correspondence in the daily papers, we have extracted into the summary of Legal Intelligence three letters upon a subject which we know to be privately the theme of a great deal of indignant commentary among the attorneys, who not unfrequently have substantial cause for the complaint, inasmuch as they are the parties on whom the wrath of disappointed clients is visited, while the party really at fault escapes all the blame, and pockets all the profit.

We allude to the practice, which is undoubtedly in strict accordance with the established etiquette of the Profession, of counsel accepting briefs with heavy fees, and then, in consequence of their being engaged in other causes in other courts, being absent at the hearing, the entire conduct of the case is consigned to the junior, who cannot be expected to be so competent to the work of a leader as a man whose knowledge is aided by experience.

At this time, when the Profession is making glorious efforts for its purification, and for the exaltation of its social position, by proving itself worthy of public respect, it behoves us no more to shrink from the investigation of alleged grievances which have been established than from the exposure and redress of abuses not recognized. Any practice which may be proved unjust or inconvenient ought to be abolished without hesitation, however sanctioned by time and use. The question now occurs, is the alleged practice a grievance? Let us look it fairly in the face.

The legal fiction of the counsel's fee being mere *honorarium*, which he condescends to accept, but for which he has no equitable or legal claim, we lay aside as one of the few tamperings with the truth that yet linger in our legal system. We have to deal with *the fact*, and, disguise it as we will under fine names, *the fact* is, that the dealing between the counsel and the client is precisely similar to that of every other hiring for reward: there is an implied contract that, in consideration of certain fees received, certain skill and labour shall be given. True it is that the law will not help counsel to the recovery of his fee; but it is not the less a contract on that account, for it is presumed that the fee is always paid before the labour is bestowed.

Now such being the contract between the parties, and presuming, as we are bound to presume, that the employer has fulfilled his part of it by the payment of his fee, what is the duty of the counsel accepting it? that is to say, what is it that he thereby and therefore undertakes to perform—what is his moral, if not his legal, obligation?

The brief is committed to him, if a senior, with an understanding that he shall devote to the cause all his skill and learning; that he shall conduct it at the hearing, and shall not quit it during the period of the contract.

Can the moral obligation be said to be fulfilled, if he omit to do this, even if that omission be the consequence of his engagement in another court?

Certainly not. There can be no hesitation by the mind of any conscientious man in pronouncing the omission of a counsel to conduct a case he has undertaken, by reason of any excuse less than physical impossibility, a breach of a moral obligation.

And if to this be added the pocketing of the fee, when the work for which it was paid is not done, the transaction is little short of downright dishonesty.

But it will be said that counsel cannot be in two places at once. If he have a cause in another court, he cannot quit that without an equal wrong on the other side; it is for him a choice of evils, which can be determined only by the accident of which cause may be first called on.

This answer is a fallacy. Plainly a man has no right to undertake to do a thing and then *put himself in a situation* which might prevent his fulfilment of his engagement. He has no right, after having accepted a brief in one court, to accept for another court a brief that might prevent his keeping his word with the first client. Nay, so obvious is all this when it is plainly set forth, that one starts with surprise to reflect that the force of custom should ever have prevailed to blind an honourable Profession to the moral offence it sanction[s].

But, once recognized, it should not be permitted to remain to blot the otherwise unsullied reputation of the Bar. A remedy should be applied forthwith, and that remedy might be somewhat after this fashion.

Let it, in a conference of all the Benchers of all the Inns, or by the Judges, be promulgated as the rule of professional etiquette, that counsel, having accepted a brief, should be deemed bound to conduct the case in person, unless absent from unavoidable circumstances, or by the consent of the attorney. If afterwards there be tendered another brief, in another court, or aught which the brief already received *might* prevent him from attending to in person, he should be bound to reject it, or to inform the attorney of the acceptance of such prior brief, leaving it then to the option of the attorney if, with knowledge of such a probability, he would choose to take the chance. If the attorney, knowing this, leave the brief, he will have to blame himself only for any unpleasant consequences. And in all cases, if a counsel be unable to perform his engagement, and conduct his cause, unless passed into other hands *with the full consent of the attorney*, he should be required to return the fee.

Such a regulation would remove a very serious, and certainly a very well-founded, cause of offence in the Profession; it would add much to the dignity and repute of the Bar, and be a source of satisfaction to many who feel acutely the moral wrong of the existing practice, but who dare not depart from it while it is the practice. It is the system that is to be blamed, not the men; the greatest among us could not depart from it if he would.

But if the attorneys pleased, they might do much to suppress it; this branch of the subject, however, we must reserve for another article.

ADVERTISING ATTORNEYS.

The Secretary of the *Metropolitan and Provincial Legal Association* has forwarded to us the following circular. Upon deliberation, we deem it best to withhold the name of the advertiser, lest we should be helping his de-

signs. We copy the document to exhort those of our readers who may receive it from the advertiser to treat it with the contempt it deserves. We can assure them that not the slightest confidence is to be placed in the writer.

SIR,—In soliciting the agency of country attorneys and solicitors, I beg to call your attention to the losses sustained by the Profession generally in consequence of the present mode in which agency business is conducted in London; and at the same time to submit to you the following terms upon which I propose to transact business; the advantages and nature of which will, I trust, appear obvious and satisfactory to you, and prevent London agents taking all the benefit to themselves.

The losses to which I more particularly allude are principally the effect of incompetency or inattention of the clerks, to whom principals too frequently leave the conduct of their business, and those occasioned by defendants availing themselves of one of the Insolvent Debtors Acts, or friendly fiat in bankruptcy; thereby evading a judgment, or the costs of an unsuccessful defence. Hence the attorney is left to the disagreeable alternative of losing his or their costs; or, by applying to his client for payment, thereby losing his future business.

To remedy this as far as practicable, I beg to propose to the country practitioner the following advantages:—

1st. To personally superintend all agency business entrusted to me.

2nd. In unsuccessful cases (excepting friendly suits) to receive such costs only as are actually expended out of pocket. And in the event of dividends or compromises being accepted, to share proportionately.

I feel convinced that agency conducted upon these terms will be of infinite service to the Profession and the public. To the professional man it will enable him, in unsuccessful cases, to so arrange with his client, without risking his loss, as well as being confident a proper degree of attention is bestowed to his client's interest.

I am, Sir,
Yours very obediently,
———, Solicitor.

December 18, 1844.

VERULAM SOCIETY.

THE *third* number of *Practice Cases* will be ready on Tuesday, and the *fourth*, completing the first part, and commencing the cases of the present Term, is in rapid progress. It has been deemed desirable to add to the Practice Cases of the Common Law Courts the cases in Equity relating to the Taxation of Solicitors' Bills, and the Law of Solicitors generally.

It is, perhaps, right to state that the *Practice Cases* will comprise only such as are properly so called, the test being, if it be a case to be noted up in *Chitty's Archbold*. The only exceptions to this are Cases on *Evidence*, which, though not strictly *Practice* Cases, are so important to *all* practitioners as to form a desirable addition.

The 7th number of *Magistrates' Cases* will be ready in the course of next week.

The 3rd and 4th numbers of *Criminal Law Cases*, completing the first part, will be published previously to the commencement of the Circuit, so as to be of service at the Assizes.

The 7th and 8th numbers of *Real Property and Conveyancing Cases*, completing the second part of this unique series of Reports, will be sent to the press next week.

We are unable as yet to inform the members what is the result of the circular lately issued. Not half of them are yet returned, and nothing can be done till the members have declared their choice. We hope that those who may yet have delayed will forthwith inform us what is their purpose, even though they should decline to order any of the works named in the list sent.

NECROLOGY.

SIR C. F. WILLIAMS.

The late Sir Charles Frederick Williams was senior Commissioner of the Court of Bankruptcy, and many years have elapsed since he entered upon the profession of the law. It has been supposed that he was a person of humble origin; at least so little knowledge was ever current in society with respect to his descent, that it was assumed he could not boast of very dignified ancestry; for most men take pains to make such advantages well known, and Sir Charles Williams was the least likely person in the world to omit the publication of anything that could redound to his own honour. Nevertheless, the subject of this memoir was a man of respectable parentage. His father was Richard Williams, esq. of Dursley, in Gloucestershire, of which place it may be presumed that Sir Charles was a native. He did not possess the advantages of a university education, and he came to the bar not very eminently qualified for the duties of the legal profession; he managed, however, in one way or another, to attain a certain degree of success; but the practice which he did enjoy was principally as a provincial counsel, his business at Westminster Hall being of moderate extent. He went the Western circuit, and for many years practised at the Somerset and Bristol Sessions. That he displayed unbounded zeal in the support of every client's interests is universally acknowledged, and that if perseverance and laborious care could command success, no client of his would ever have been defeated.

Sir Charles had passed the mature age of forty before he found it prudent to incur the responsibilities of married life, but he thought that the time had arrived when such a step could no longer be advantageously delayed. On the 22nd of April, 1822, he married Elizabeth, the fourth daughter of Ralph Broune Wylde Broune, esq. of Glazely, in the county of Salop, by Mary Anne Whitmore, sister of Thomas Whitmore, esq. of Apley park, in the same county. This event had of course a tendency rather to increase than diminish his professional zeal; his business increased, and in the year 1828 it had reached so respectable an amount, that by the Government of that day he was deemed worthy to be invested with the dignity of "one of his Majesty's counsel learned in the law;" but as a leader at *Nisi Prius* he was not much distinguished. For one peculiarity he was however noted; a solicitor might prevail on him to name the junior counsel with whom he liked to be associated. With high professional delicacy he always shrunk from the appearance of making any such suggestion; but even twenty years ago he was accustomed to say to his clients that there could be no better junior counsel in any cause than young Follett. Even then Mr. Williams had the sagacity to discern the great powers of the present Attorney-General.

For four years after he obtained a silk gown Mr. Williams continued at the bar; but at the end of that period he was appointed one of the Commissioners of the Court of Bankruptcy under Lord Brougham's bill. It discharging the functions of that office, he evinced great quickness of apprehension; but was rather ostentatious in displaying it. His judgments were therefore often hasty; and his manners were by no means distinguished for the dignity, or even the decorum, which ought to be observed by every man who occupies a judicial seat. So eager was he to shew that he saw at a glance the tendency of questions put to a witness, that he would often spoil a piece of evidence by taking an examination out of a solicitor's or counsel's hands, as well as by putting ill-considered questions, and making extra-judicial observations; but he was perhaps one of the most obliging public functionaries that ever lived. If stopped in the street—if called away from an agreeable party,—nay, if called out of bed,—he would kindly and cheerfully transact any business that might be required. He once met with an accident, when riding on horseback, which confined him for some weeks, and so anxious was he to avoid encroaching upon the time of his brother commissioners, that his bedchamber was converted into a court of bankruptcy. He scarcely ever omitted an opportunity of making a civil observation or paying a personal compliment:—

"He brow-beat none, nor bore a being odium;
But fairly blazoned every man's eulogium."

He received the honour of knighthood on the 18th of July, 1838; and was for some years Recorder of Ipswich, but resigned that office in 1842. Sir Charles attained to a good old age, but of the precise year in which he was born we have not met with any authentic trace; it is believed, however, that he could not have been less than seventy-five or seventy-six years of age. The further he advanced in life the greater was the interest which he seemed to take in the causes and the influence of longevity. No elderly witness ever escaped him, and the most important proceedings were often delayed in order that Sir Charles might have an opportunity of inquiring into the habits of life and the constitutional peculiarities of any curious specimen of the last age who might happen to enter the witness-box. In this respect the columns of the *Historical Register* would have been a great source of consolation to him. He was a magistrate for Hampshire, and for some years had a residence near Havant, in that county.—*Historical Register.*

SIR J. GEERS COTTERELL, BART.—We have to record the death of Sir J. Geers Cotterell, bart. at the advanced age of 88 years. The venerable baronet expired on Sunday last, the 26th ult. at the family seat in Herefordshire. Sir J. was son of Sir J. Cotterell, knt. by the only daughter and heir of Mr. J. Geers, of Garnons, Herefordshire. He married in 1791, Miss Frances Isabella Evans, only daughter of Mr. H. Michael Evans, who died in 1813. The deceased was created a baronet in 1805, in which he is succeeded by his grandson, now Sir J. Cotterell, who inherits the extensive family property in Herefordshire and the adjoining county of Worcester.

THE CRITIC.

New Books.

New Commentaries on the Laws of England (partly founded on Blackstone). By HENRY JOHN STEPHEN, Serjeant-at-law. Vols. I. and II. London, Butterworth.

THE receipt of the two first volumes of this valuable work enables us to inform our readers more particularly than we were able to do when noticing the third volume, a few weeks since, what was the author's design, as developed in his preface. An examination of these earlier portions of the works confirms the justice of the commendations elicited by the review of the later volume, and all that we said of it then is amply justified by the further acquaintance we have now made with its learned pages.

We felt some doubt in our former notice whether these were properly called the *Commentaries* of STEPHEN; whether they should not have been termed *Stephen's Blackstone.* That doubt has been entirely removed by the explanations of the preface, and a closer examination of the text. Mr. Serjeant STEPHEN is something more than editor; he has not merely revised and corrected and annotated his master, he has remodelled him. His idea doubtless was to make *Blackstone* such as it would have been had the author lived and written the *Commentaries* at this day; and so largely has this recasting become needful, from the changes in the law, that Mr. Serjeant STEPHEN is entitled to the honours of authorship.

The work was suggested, it appears, by the obvious inconvenience which had attended the previous editions of *Blackstone*, in which the notes had grown to be greater than the text, and the reader was every moment subjected to the torturing process of perusing an oracular sentence only to unlearn it forthwith, until ordinary brains became so perplexed between the law as it was and the law as it is, the dictum of the author and the contradiction of the editor, that when the student closed the book he was unable rightly to distinguish what he was to remember, and what forget. This palpable inconvenience, to give it the mildest appellation, suggested to Mr. Serjeant STEPHEN the propriety of wielding his pen, not alone to comment upon the commentator, but boldly to blot from his pages whatever they contained which time and change had marred, and to add to the pure metal that remained from the stores of his own knowledge, adapting his manner as best he might to that of the composition with which his own was to be incorporated.

And this delicate task he has accomplished with wonderful success; but for the brackets that mark the interpolations, few readers could discover where the one writer ends and the other begins. *Blackstone* melts into *Stephen*, and *Stephen* dissolves into *Blackstone*, with a skill which proves that the Serjeant might have ventured upon a distinct treatise without any fear of the comparison, although we think he has done wisely in the course he has adopted, for he would not have superseded the judge, and we should have had two Commentaries to read and purchase, and the old one still vexing us by the perplexity we have above described. But by the plan pursued, the Profession enjoys a *Blackstone* improved, and to be mastered with more ease, with less labour, in less time, and at less cost than hitherto.

The learned Serjeant has deemed it desirable to depart in some measure from the arrangement of his predecessor. The main division of municipal law into *Rights* and *Wrongs* he has retained, but instead of classifying *Rights* into the *Rights of Persons* and the *Rights of Things*, an order both ungrammatical and illogical, he has substituted a plan entirely of his own conception, the leading principle of which is to make the distinction between *persons* and *things* the foundation, not of a primary, but of a subordinate, arrangement, and to consider *persons* as constituting, in a primary sense, the only objects of the law's regard. Persons are considered first as individuals, and in that capacity their bodily rights are examined; secondly, in their connection with things around them, which introduces the consideration of their rights of pro-

gards; thirdly, as members of families, which involves their rights in *private relations*; fourthly, as members of the community, which leads to the discussion of their *public rights*. The propriety of this alteration will not be disputed; it is, like every thing introduced by Mr. Serjeant STEPHEN, a decided improvement.

It is scarcely necessary to add to this description of the work a formal recommendation of it to the regards of the Profession. It is the only form of *Blackstone* that any man would now think of buying or reading. Having so lately treated of its merits, we will say no more of it now, and the reports of the Term forbid the selection of any of the interesting and instructive passages we had marked for extract. But we have said enough to shew that Mr. Serjeant STEPHEN has added another to his claims upon the respect and regard of the Profession, of whose literature he is so great an ornament.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Alcock and *Wilson*, tailors, Wilson, 6s. 6d. Bell, London. —*Alderton*, C. tailor, 1s. 9d. Edwards, London.—*Allen*, J. H. timber merchant, third, 2s. 1d. Acraman, Bristol.—*Baxter*, R. farmer, final, 4d. Johnson, London.—*Bradshaw* and *Co.* woollen drapers, joint, sine die. Pennell, London. —*Bradshaw*, J. woollen draper, sine die. Pennell, London —*Brand*, T. livery stable keeper, 3½d. Edwards, London.—*Broughton* and *Co.* bankers, separate B. 20s. Turner, Liverpool.—*Brown*, B. oilman, 3¼d. Johnson, London.—*Brown*, J. H. chemist, 1s. 0¼d. Green, London.—*Brown*, G. draper, first, 5s. to new proofs, second, 9d. Wakley, Newcastle.—*Bunker*, J. E. merchant, final, 10d. Johnson, London.—*Burton*, R. silk warehouseman, 6d. Johnson, London.—*Caston*, G. ironmonger, final, 5s. 3d. to new proofs. Johnson, London.—*Coates*, G. apothecary, 4d. Turquand, London.—*Coe*, M. laceman, 1s. 3d. Bell, London.—*Coltam* and *Co.* wine merchants, further joint, 3¼., further separate of C. 2s. 6d. Hope, Leeds.—*Coupland* and *Co* merchants, joint, 11¼d., Coupland, 5s., Duncan, 14s. 7d. Morgan, Liverpool.—*Cox* and *Ralfe*, horse dealers, joint, Jan 21. Groom, London.—*Cranbrook*, J. draper, 4s. 4d. to new proofs. Edwards, London.—*Cranris*, R. J. butcher, 1s. 6d. Pennell, London.—*Crook*, C. livery stable keeper, final, 2d. Johnson, London.—*Crossfield*, A. scrivener, further, sine die. Edwards, London.—*Cross*, R. saddler, adjourned. Edwards, London.—*Davison*, J. farmer, third and final, 3d. and 1-6th of 1d. Baker, Newcastle.—*Deacon*, J. draper, 1s 9d. Johnson, London.—*Dray*, W. E. grocer, 4s. Edwards, London. —*Duckham*, W. J. hosier, final, 1s. to new proofs. Johnson, London.—*Ebridge*, W. B. coachmaker, final, none made. Turquand, London.—*Field* and *Co.* wine brokers, final, none made, Johnson, London.—*Field*, G. packer, 2s. 6d. Johnson, London.—*Fenner* and *Fenner*, merchants joint, 4d. Gibson, London.—*Giles*, T. wire worker, none made. Pennell, London.—*Gooding*, W. bootmaker, final, 9¼d. Johnson, London. *Groves*, G. miller, first, 2s. Acraman, Bristol.—*Hannam*, E. insurance broker, final, none made. Johnson, London.—*Harraden*, H. R. printseller, 5s. Pennell, London.—*Heathorn*, J. L. shipowner, sine die. Edwards, London.—*Helder* and *Helder*, scriveners, sep. none made. Turquand, London.—*Jones*, H. victualler, further, 8s. 10d. Pennell, London.—*Johnston* and Co. sugar refiners, fourth and final, 0¼ and 7-10ths of ¼d. Baker, Newcastle.—*Law*, W. draper, 3s. Pennell, London.—*Lediard*, T. scrivener, first, 1¼d. Acraman, Bristol.—*Lee* and *Co.* bankers, Jan. 19. Belcher, London.—*Makins*, R. J. grocer, final, 2d. Johnson, London.—*Milner*, J. engine manufacturer, 4s. Follett, London.—*Monteith*, J. W. teacher of navigation, 4d. Turner, Liverpool.—*Mowbray*, W. butcher, 4s. 9d. Johnson, London.—*Musgrove*, R. woollen draper, 1s. 3rd. Bell, London.—*Oliver*, W. upholsterer, 5d. Groom, London.—*Pennington*, W. draper, first and final, 1s. 2½d. Baker, Newcastle.—*Pope*, D. merchant, 2s. Edwards, London.—*Porter*, J. calenderer, first and final, 12s. 6d. to new proofs, and second and final, 5s. 10d. Fearne, Leeds.—*Reynolds*, T. jun. merchant, sine die. Edwards, London.—*Ross*, D. warehouseman, sine die. Pennell, London.—*Southey*, S. cabinet manufacturer, 10s. Edwards, London.—*Spurrier*, J. F. tailor, joint, 6 sep. S. 20s. Edwards, London.—*Thompson*, J. dealer in paper hangings, 1s. 0¾d. Green, London.—*Waddell*, W. merchant, second 6d. Bird, Liverpool.—*Wagstaff*, W. cabinet maker, 11d. Turner, Liverpool.—*Walker*, H. cordwainer, none made. Whitmore, London.—*Watson*, R. L. manufacturer of flags, none made. *Graham*, London.—*Wightman*, G. bookseller, final, 3¼d. *Johnson*, London.—*Wigney* and *Wigney*, bankers, joint, 5d. no further sep. divs. Edwards, London.—*Williams* and *Co.* Warehousemen, 2d. Bell, London.—*Young*, W. nurseryman, 1s. 8d. Bell, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Jan. 24.

Child, S. and S. B. distillers, Trinity-st. Dec. 27. Trusts. J. S. Smith, distiller, Whitechapel, P. W. Mare, distiller, Bromley, and F. Godsell, wine broker, Great Tower-st. Sols. Druce and Sons, Billiter-sq.—*Rollings*, W. gent. Westmoreland-place, City-road, Dec. 2. Trusts. J. W. Bampfield, Bird, Orchard-st. and E. Ives, upholsterer, High Holborn. Sol. Goddard, King-st.—*Wood*, J. and *Bicknell*, D. tobacconists, Coleman-st. Nov. 29. Trusts. D. Barlin, St. John-st. and W. Fryer, Smithfield-bars, cigar manufacturers. Sol. Cocker, Heathcote-st. Mecklenburgh-sq.—*Wyatt*, C. builder, Battersea-fields, Jan. 17. Trusts. A. Sim and J. Lamb, [illegible] manufacturers, Kingsland-road. Sols. Cole and [illegible], [illegible]-row.

Gazette, Jan. 28.

[illegible], joiner, Salford, Jan. 20. Trusts. G. Howard [illegible], plumbers, Manchester. Sol. Foster, Manchester.—*Hogge*, J. linendraper, Dover, Jan. 16. Trust. B. Smith, gent. Wood-st. Cheapside. Sol. Surr, Lombard-st.—*Terry*, R. grocer, Richmond, Jan. 23. Trusts. T. Close and J. Bowson, grocers, Stockton, and H. Cooke, paper manufacturer, Richmond. Sol. Simpson, Richmond.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Jan. 24.

DETTIMER, WILLIAM, pianoforte manufacturer, 50, Upper Marylebone-st. Jan. 31, and March 7, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off ass; Hodson and Gibbs, King's-rd. sols.—Date of fiat, Jan. 17. J. Walpole, gent. Brookes-st. Islington, pet. cr.

EVANS, JOSEPH, innkeeper, Bourton-on-the-Hill, Gloucester, Feb. 11 at, twelve, March 10, at eleven, Bristol. Com. Stephen; Hutton, off. ass.; Tibey, Moreton in Marsh, sol.—Date of fiat, Jan. 20. B. Austin, brewer, Banbury, pet. cr.

HAWKINS, GEORGE, clothier, Colchester, Feb. 7, at half-past two, March. 4, at twelve, Basinghall-st. Com Holroyd; Groom, off. ass.; Messrs. Linklater, Leadenhall-st. sols.—Date of fiat, Jan. 18. Bankrupt's own petition.

ISAACS, HENRY, woollen draper, Yarmouth, Norfolk, Jan. 31, at eleven, March 4, at twelve, Basinghall-st. Com. Goulburn; Graham, off. ass.; Sale and Worthington, Manchester, and Reed and Shaw, Friday-st. sols.—Date of fiat, Jan. 14. W. Bryan, merchant, Manchester, pet. cr.

SMYFTON, SAMUEL, cattle and sheep salesman, Sibertoft, Northampton, and 62, West Smithfield, Feb. 5 and March 4, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Weller, King's-rd. sol.—Date of fiat, Jan. 20. Bankrupt's own petition.

WATLING LIONAL, butcher, Gilbert-st. St. George, Hanover-sq. Jan. 31, at half-past two, March 4 at one, Basinghall-st. Com Holroyd; Edwards off ass.; Pain and Hatherley, Basinghall-st. and Great Marlborough-st. sols —Date of fiat, Jan. 18. J. Perring hat manufacturer Strand, pet. cr.

Gazette, Jan. 28.

BURRAGE, CHARLES, carcase butcher and cattle dealer, Newgate-market Feb. 4, at half-past twelve, March 11, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Philpot, Gray's-inn-sq. sol. Date of fiat, Jan. 24. Bankrupt's own petition.

FAIRCLOUGH, WILLIAM, licensed victualler, Liverpool, Feb. 12 and March 4, at twelve, Liverpool. Com Phillips; Cazenove, off. ass.; Wilkin, Furnival's-inn, and Wardle, Liverpool, sols. Date of fiat, Jan. 23. W. Fairclough, victualler, Liverpool, pet cr.

HURRELL, ALLEN, wine merchant and commission agent 22, Park-place St. John's-wood. Feb. 5 and March 13, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass., Chilcote, George-st. Mansion-house, sol. Date of fiat Jan. 18. T. R. Kemp, banker and discount agent, Abchurch-lane, pet. cr.

KELSALL JOHN, fishmonger, Hanley, Staffordshire, Feb. 3 and March 10, at eleven, Birmingham, Com. Daniell; Bittleston, off ass; Jackson, Gray's-inn, and Harrison and Smith, Birmingham, sols. Date of fiat, Jan. 17. Bankrupt's own petition.

MOORE, CHARLES, carver and gilder, 20, St. John-st. Clerkenwell, Feb. 5 and March 13, at eleven, Basinghall-st. Com. Fane; Whitmore, off. ass; Champion, Ely-place, sol. Date of fiat, Jan. 22. Bankrupt's own petition.

SMITH, WILLIAM and ROBERT, warehousemen and dealers in linen thread, Bow-lane City, and Aberdeen Feb. 4 and March 11, at eleven, Basinghall-st. Com Fonblanque; Pennell off. ass.; Parkes and Co. Bedford-row, sols. Date of fiat Jan. 21. J. and C. Chubb, patent lock manufacturers, St. Paul's Church-yard, pet. crs.

WILKINSON, CHARLES MAXWELL, wine, spirit, and beer merchant, Ulverston, Lancashire, Feb. 10 and March 4, at twelve, Manchester. Fraser, off. ass.; Mawe, New Bridge-st. and Yarker, Ulverston, sols. Date of fiat, Jan. 17, I. Penny, draper, Ulverston, pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, Jan. 21.

Armstrong, J. and *Wright*, J. W. hatters, Brighton, Jan. 8.—*Bradley*, R. *Burrows*, W. *Hall*, J. *Downing*, F. and *Darby*, T. coal merchants, Rowley Regis, March 12. Debts paid by Darby.—*Brown*, C. and *Williams*, J. drapers, Cheltenham, Jan. 18.—*Butler*, S., W., and J. ironfounders, Aston, so far as regards W. Butler, Nov. 5, 1843. Debts paid by S and J Butler.—*Grange*, M and *Booth*, R. smallware dealers, Manchester, Nov. 30.—*Hadland*, J. and *Shillingford*, R. warehousemen, Cheapside, Jan. 1.—*Hancock*, J. *Eyre*, M. *Stocker*, E. *Clemes*, W. *Parsons*, R. *Browne*, W. *Veale*, J. E., R., W., and A. H. *Pollock*, F. *Drew*, J. H. *Michell*, J. *Parnall*, E. *Ferrow*, J. and W. *Andrew*, R. and H. *Grose*, T. *Truscott*, C. *Rundle*, J. M. *Ball*, J. *Wheeler*, P. *Varcoe*, W. *Rabian*, J. *Vian*, J. *Lemarne*, H. *Harris*, S. *Williams*, R. *Hawke*, W. and *Hodge*, J. St Austell Gas Company, St. Austell, Dec. 25.—*Haseland*, A. and *Manning*, R. brewers, Mulksham, Jan. 14. Debts paid by Haseland.—*Higginson*, F. lieutenant, and *Gales*, E. R. ship owner and merchant, Rochester, Jan. 17.—*Hewitt*, W. sen. and jun. coal merchants, Bristol, Dec 31.—*Hughes*, J. and *Hanson*, W. lime masters, Sedgley, Jan. 17.—*Inkson*, J. and *Roth*, C. Little Ryder-st. St. James's, Dec. 31. Debts paid by Inkson.—*James*, J. S. and *Steery*, P. dealers in sand and general carriers on the Bede Canal, Dec. 23. Debts paid by James.—*Leeds*, R. and E. millers, Norwich, Jan. 18. Debts paid at the mill, in Pockthorpe.—*Lucy*, J. I. and C. L. wine merchants, Kidderminster, May 1. Debts paid by C. L. Lucy.—*Lynes*, J. and B. wire workers, Birmingham, Jan. 1. *Miles* W. *Kinder*, T. A. and *Wheeler*, T. H. coach builders, Leicester, as regards Miles, Jan. 1.—*Ormerod*, J. and *Hargreaves*, P. cotton sheet manufacturers, Bacup, Jan. 15.—*Penson*, T. and T. farmers, Foxcote and Eastleach Turville, Jan. 15. Debts paid by Penson, Eastleach Turville.—*Pistell*, W. and *Ayliffe*, C. painters, Basingstoke, Nov. 14, 1843.—*Reece*, J. and *Holybake*, T. surgeons, Kinver, Jan. 1.—*Stephenson*, C. and *Caley*, J. Liverpool, Nov. 27.—*Stephenson*, J. and *Royston*, J. engravers, Manchester, Jan. 16. Debts paid by Stephenson.—*Tayleur*, C. and *Dugre*, J. E. Vulcan Foundry, near Warrington, Jan. 1. Debts paid by Tayleur.—*Tayleur*, C. and W. H. *Bates*, W. *Pennington*, E. *Mellors*, D. and [illegible], C. W. Liverpool, so far as regards W. A. Tayleur, Dec. 31. Debts paid by the remaining partners.—*Teale*, T., T. H., and M. A. core and coal merchants, Wakefield and Louth, Jan. 17.—*Wilkinson*, J., F., G. and S. W. cotton spinners, Stockport and Manchester, Dec. 31.

Gazette, Jan. 24.

Blackburn, S. and T. jun. *Hepworth*, L. jun. and *Horsley*, H. warehouse keepers, Liverpool, so far as regards Heyworth Jan. 16.—*Body*, J. and R. mercers, Callington, Jan. 22.—*Bradbury*, T. and *Brierley*, G. quarrymen, Lymm, Jan. 31.—*Buck*, T. and G. printers, Cullum-st. Dec. 31.—*Burt*, J. and *Edwards*, J. wheelwrights, Church-st. Chelsea, Dec. 31.—*Cadman*, P. and W. merchants and manufacturers, Sheffield, Jan. 21. Debts paid by W. Cadman.—*Carter*, J. and W. turners, Fleur-de-lis-st. London, and Sheffield, Jan. 21. Debts paid by J. Carter.—*Clarance*, S. and *Bird*, C. egg agents, Ivy-lane, Jan. 1.—*Cockshott*, H. and *Yates*, R. fustian manufacturers, Manchester, Jan. 1.—*Cotterell*, H. F. and J. H. and *Cooper*, T. jun. land surveyors, Bath, so far as regards Cooper, jun. Jan. 23. Debts paid by Messrs. Cotterell.—*Eastwood*, W. and T. plumbers, Dewsbury, Jan. 20.—*Hampshire*, J. and *Moorhouse*, J. carpenters, Upperthong, Yorkshire, Oct. 26.—*Hargreaves*, J. W. H. and *Mulier*, A. A. lace manufacturers, Nottingham, Hamburgh, and Leipzig, Jan. 1.—*Holland*, S. A., M., and E. Grange, Little Woolton, near Liverpool, Jan. 1.—*Holmes*, J. B. and *Gooch*, W. T. dealers in writing and dressing cases, Poultry, Jan. 22.—*Jones*, W. and *Sells*, E. P. coal merchants, Bankside, Jan. 21.—*Markwall*, J. sen. and T. joiners, Bootle-cum-Linacre and Liverpool, Dec. 31.—*Munro*, A. and *Congreve*, W. printers, Duke-st. Lincoln's-inn-fields, Jan. 22. Debts paid by Congreve.—*Peak*, W. and J. and *Winch*, H. tea merchants, Liverpool, Dec. 31.—*Polley*, I. and *Lambard*, T. grocers, Bethnal-green-road. Sept. 7. Debts paid by Lambard.—*Sexton*, H. and J. drapers, Brentford, Sept. 20. Debts paid by J. Sexton.—*Taylor*, T. and *Rouse*, J. sail makers, Liverpool, Jan. 14.—*Teale*, E. J. and *Wainhouse*, R. attorneys, Leeds, Dec. 31.—*Tyler*, J. and *Lane*, A. J. attorneys, South-square, Gray's-inn, Jan. 1.—*Turner*, J., T., W., and H. farmers and graziers, Wolfhamcote, Warwickshire, and Catesby and Badby, Northumberland, Jan. 22.—*Varley*, R. *Fairclough* J. and *Harrison*, W. woollen cloth merchants, Leeds, Jan. 21. Debts paid by Fairclough.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Jan. 21.

Baker, S. whitesmith, Brighton, Feb. 6, at eleven.—*Bodle*, W. shoemaker, Purleigh, Feb. 5, at half-past eleven. —*Buck*, A. schoolmaster, Hampstead-rd Jan. 29, at twelve. —*Coun*, M. draftsman, Queen-st. Cheapside, Feb. 4, at eleven. *Donagan*, M. hair dresser, Strong's-place, Fulham-rd. Feb. 6, at half-past one.—*Ellis*, G. jun. broker, Shadwell, Feb. 5, at twelve.—*Goulding*, J. dealer in hair skins, Coltor's-rents, White-st. Borough, Feb. 7, at eleven.—*Hughes*, A. confectioner, St. John-st. Jan. 25, at twelve.—*Joy*, H. tailor, King's Lynn, Jan. 25, at half-past twelve.—*Muriel*, R. traveller, Great Russell-st. Covent-garden, Jan. 25, at twelve.—*Smith*, J. W. master mariner, Jamaica st. Commercial-road East, Feb. 5, at eleven.—*Wagnell*, G. green grocer, Putney, Feb. 6, at twelve.—*Whitaker*, R. gauger in the Customs College-ter. Highbury-vale, Jan. 29, at half-past one.—*White*, H. J. boot maker, Dunstable, Feb. 6, at one.

Gazette, Jan. 24.

Bettesworth, J. blacksmith, Portsea, Feb. 5, at eleven.—*Birley*, J. P. plumber, Brompton-row, Brompton, Feb. 5, at two.—*Carey*, J. baker, Horsell, Feb. 5, at eleven.—*Heard*, H. B. grocer, Fieldgate-st. Whitechapel, Feb. 7, at one.—*Lawrence*, E. shoemaker, Shirley, Feb. 7, at one.—*Shepherd*, J. labourer, Ramsden, Jan. 29, at half-past eleven.—*Tory*, A. sen. turner, Vineyard-gardens, Rosamon-st. Feb. 5, at one.—*Whiting*, J. farmer, Wolverton, Jan. 29, at twelve.

Country.—Gazette, Jan. 21.

Bowyer, L. spinster, Marston Montgomery, Derbyshire. —*Bowden*, H. whip manufacturer, Exeter, Feb. 6, at eleven, Exeter.—*Corthorn*, J. clock maker, Newark, Jan. 28, at twelve, Birmingham.—*Higginbotham*, R. printer, Manchester, Jan. 30, at twelve, Manchester.—*Partridge*, J. farmer, Standish, Feb. 14, at one, Bristol.—*Preston*, J. grocer, Easingwold, Feb. 4, at eleven, Leeds.—*Sansom*, J. wheelwright, Arnold, Feb. 4, at eleven, Leeds.—*Wade*, J. shoemaker, Silsden, Feb. 4, at eleven, Leeds.—*Waterhouse*, J. jun. clothier, Idle, Jan. 28, at eleven, Leeds.—*Waterhouse*, J. clothier, Idle, Feb. 4, at eleven, Leeds.—*Williams*, R. quarryman, Swetty, Feb. 10, at eleven, Bristol.

Gazette, Jan. 24.

Barker, W. sickle smith, Dronfield, Feb. 6, at one, Manchester.—*Battersby*, W. coal dealer, Stockport, Feb. 6, at twelve, Manchester.—*Drury*, G. K. brewer, Farmborough, Feb. 12, at eleven, Bristol.—*Earp*, G. grocer, Derby, Feb. 12, at eleven, Birmingham.—*Evans*, J. G. agent, Bath, Feb. 10, at one, Bristol.—*Hadley*, R. hair dresser, Worcester, Feb. 3, at eleven, Birmingham.—*Nathan*, H. clerk, Fishguard, Feb. 13, at one, Bristol.—*Parkinson*, J. cotton waste dealer, Farnworth, Feb. 7, at twelve, Manchester.—*Smith*, H. surveyor, Lyncombe and Widcombe, Feb. 7, at one, Exeter.

From the Gazette of Friday, January 31.

Bankrupts.

Burt, W. lodging-house keeper, Lisson-grove, New-road. —*Argent*, J. victualler, Golden-lane, Barbican.—*Flowers*, B. C. cattle dealer, Whitchurch, Buckinghamshire.—*Harris*, R. and *Hill*, J. tailors, Newgate-street.—*Brice*, S. tailor, St. John-st.—*Greenwood*, R. bookseller, Bradford.—*Collins*, J. grocer, Sheffield.—*Hepworth*, J. and *Hepworth*, D. cotton warp dyers, Rastrick.—*Whyte*, C. hardware, merchant, Birmingham.—*Robinson*, E. L. ironmonger, Moulton, Lincolnshire.—*Lester*, W. D. dealer in potter's materials, Newcastle-under-Lyne.—*Blackburn*, W. manufacturing chemist, Little Bolton, Lancashire.—*Fleming*, J. linen draper, Blackburn.—*Fielden*, W. silk plush manufacturer, Taunton, Lancashire.—*Francis*, A. *Davy*, W. and *Francis*, H. ironfounders, Dee Bank Forge, Bagillt, Flintshire.—*Jones*, R. bootmaker, Liverpool.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. HUGHES, Esq. of the Inner Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York, and Liverpool, by J. B. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLIPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW W. COX, Esq of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

Equity Courts.

LORD CHANCELLOR'S COURT.

DEAN AND CHAPTER OF ELY v. BLISS.

Tithes—Statute of Limitations—Case for the opinion of a court of law—The tithe commissioners.

The form of the case, which in this suit had been directed to be stated for the opinion of the Court of Exchequer, was this day spoken to in consequence of a difference between the parties.

Lloyd, for the plaintiffs, objected to the case as proposed by the defendants, the pleading parties, that it stated an equitable case. The simple question upon the record was the construction of the recent Statute of Limitations in reference to the subject-matter of this suit.

Eagle, for the defendants.—The plaintiffs had stated upon the case, as originally framed by them, that they were entitled to all the tithes of the parish. Now that was not in accordance with pleadings; for the claims made by the plaintiffs in this suit were, 1st, predial tithes; 2ndly, tithe of lamb and wool, arising in a particular district; and as the district was not co-extensive with the parish, and the defendant, besides lands in the district in respect of which the plaintiffs claimed tithes by this suit, held other lands

out of the district, but within the parish. The averments of the plea had also been altered.

The LORD CHANCELLOR.—The case seems to be framed in the very words of the plea. No one but the dean and chapter claims any tithes; but those words which would give a more extensive effect to the plaintiff's claim than that made by the bill must be omitted.

Eagle said that upon the argument at the hearing his lordship had observed, that knowing the tithe commissioners had put a narrower construction upon the Act than that intimated to be, in his lordship's opinion, the true one, and that an appeal from the decision of the commissioners to the Court of Queen's Bench was then pending, he would not take upon himself to construe the Act without the opinion of a court of law. Now he (*Eagle*) had seen Mr. Jones, one of the tithe commissioners, and that gentleman stated no such case existed; that the commissioners had never given any decision upon the construction of the Act; they had merely made awards between different tithe-owners and land-owners, but had formed no opinion as to the construction of the late Statute of Limitations.

FRISBY v. STAFFORD.

Payment of money into court—Acquiescence—Practice.

Where a fund is liable in the first instance to costs before distributable amongst a class, as the children of a testator, the whole fund will be directed to be paid into court, although a majority of the persons interested oppose the application for payment, and no hazard to the fund in the executors' hands is suggested.

It appearing that most of those who opposed the payment into court had received more than their full shares, although one of the questions in the cause was, whether they were liable to account for the difference, they were ordered to pay the costs of the petition.

Tinney and *Koe* appeared in opposition to a petition by some of the parties interested under the will of Mr. Stafford, the testator, praying that the executors should pay into court a sum of money amounting to about 4,000*l.* the produce of certain canal shares which had been ordered, in May 1833, to be sold, and the money paid into court. The shares had been sold and the produce paid into the Leicester bank, where it had remained, without interest, until the recent failure of that bank.

The testator had left a very large estate, which after the death of his widow became divisible amongst his ten children. The widow (now dead) and —— Stafford, were the executors, and the bill was filed, in the widow's lifetime, for the administration of the testator's estate, by the husband of one of the daughters. The residue consisted of 54,000*l.* part of which had been paid into court. The widow, by her answer, claimed to have advanced 29,000*l.* to several of the children, but these advances had not been made rateably: some of them having received more than their due proportions, while others had received less, and one had received nothing. Six of the ten children, or their representatives, now opposed the payment of this money into court; but it appeared that all those six children had been overpaid.

On the former occasion, when the sum of 54,000*l.* was ordered to be paid into court, the share of such of them as required it only were paid in. They proposed that course should be now adopted. Mrs. Stafford, the executrix, died in 1827, and in 1830 the suit was revived against the present defendant, who was her executor. By her will she stated, that the payments made by her were gifts to her children. No application was ever made to pay in this money until the failure of the Leicester Bank, and it was admitted, that the claim of the children was good as a personal demand against the executors.

Teed, Wakefield, James, Parker, Freeling, Busk, and *Renshaw*, for others of the children, said the whole of the fund should be brought into court, as it was, in the first instance, liable to costs, and the surplus only was distributable amongst the children.

The LORD CHANCELLOR.—The sum of 29,000*l* was not paid to the children rateably, but some received more and some less than their shares; all those who oppose the petition say is, that they don't wish the money to be paid in. The others say that the fund is in the first instance liable to costs, and that then it is to be apportioned between the children. The executrix states in her will that certain of the sums are gifts to her children, but the executors have a fund in hand, and the children had some claim upon that fund. There, has, however, been no winding up of the account, and I cannot now safely decide as to the state of the account between these parties; the money, therefore, ought to be paid into court. The parties who have opposed the payment of the money into court must pay the costs.

COLSTON v. COLSTON.

Married woman—Next friend—Pauper.

A motion was made on behalf of a married woman, who petitioned that her next friend might be allowed to sue *in formâ pauperis*. The usual affidavits had been made both by the plaintiff and her next friend, and the Master of the Rolls, to whom the application was originally made, had required the certificate of some barrister practising in the Court of Chancery. A certificate signed by a barrister had accordingly been handed in, but the Master of the Rolls not deeming it satisfactory, still declined to make the order. On that refusal the present application was made.

James, for the defendant, opposed the motion, and stated the above circumstances.

The LORD CHANCELLOR.—The application cannot be made here, the plaintiff must apply to the Master of the Rolls after having obtained a proper certificate.

Re THE KING'S GRAMMAR SCHOOL, WARWICK.

Educational charity—Scheme—Religious education—Principles on which the scheme of a grammar school will be settled.

The case of the Attorney-General v. Cullum overruled.

The teaching of the French language adopted in the scheme as a part of the compulsory routine of the school, and the teaching of other modern languages left to the discretion of the schoolmaster.

Practice—Submission of questions to the Court as to the modification of the scheme, without exceptions to the Master's report.

This was a petition for certain alterations in the scheme approved of by the Master for the future regulation of the Royal Grammar School at Warwick, and for the confirmation of the Master's report when thus modified.

Rolt, on the part of the trustees of this school, appeared to support the petition.

The estates for the maintenance of the school were granted by Henry VIII.; and, upon an information filed in the time of Charles I. a new scheme was approved of, by which, after the payment of certain yearly sums to the schoolmaster, the residue of the income was given to the corporation of Warwick, to be appropriated to pious, charitable, and useful works, for the advantage of the borough of Warwick. It was in that scheme expressly provided that, as it was impossible to see what in the lapse of time might become the most useful mode of applying the income of the charity estate, a large discretion should be confided to the corporation. The corporation have from time to time made an increase to the salary of the master; and on the death of the old master in 1842, the appointment of a new master took place. With the consent of all parties in the borough the present master, the Rev. Mr. Hill, had been chosen; and the corporation had agreed to act with great liberality, and to appropriate a considerable portion of the surplus funds of the charity estate to the improvement of the school. They engaged to pay a sum of 200*l.* a year to the head master, and 100*l.* a year to a second master; and also to expend a considerable sum in the improvement of the school-house and buildings. The scheme required that the head master should be in holy orders, and that he should have graduated at one of the English universities. The master was to add to the usual instruction of a grammar school the subjects of general education, as allowed by the recent Act. Certain other regulations were, however, laid down for the government of the charity, upon some of which all parties, in a most amicable spirit, desired to take the opinion of the Court. On the first regulation, which fixed the salaries of the masters, there was no difference of opinion. The second related to the number of boarders which the head master should be authorized to receive into the school. By the scheme the number had been fixed at thirty; but it was the opinion of the trustees, and also of the master, that he should be allowed to take a larger number, the trustees thinking that the increase of the number of boarders would tend to raise the character of the school. The school to be open to the children of the inhabitants of the borough of Warwick, and the boarders are to be the children of persons resident within the county of Warwick and other counties, but the scheme gives a preference to the residents in Warwickshire; such preference, however, was not to exclude any boy already established as a boarder; that is, the master was not to be required to dismiss any boy of his full number because a non-resident, and to take a resident's child, who might be desirous of coming to the school.

Rolt suggested that there was no use in restricting the number of boarders to thirty; the trustees of the charity considered it an advantage to the school that there should be a large number of boarders.

The LORD CHANCELLOR.—The number of boarders must depend upon the state of the buildings. I presume the master, in deciding on the scheme, must have taken into his consideration the extent of the buildings and the accommodation they are capable of affording. I cannot decide that the number shall be greater than thirty without considering the state of the funds and of the building. I think that it would not be proper that the boys should lodge in the town, as it would be inconsistent with moral discipline. I think thirty boarders are enough.

Rolt.—The 3rd and 4th regulations provide for the appointment of an under or assistant-classical master, who is to teach mathematics and the higher branches

of arithmetic; and also that each boy on the foundation should pay an annual fee of 7*l.* 7*s.* to be divided between the masters in certain proportions. By the 5th regulation a salary of 40*l.* a year is allotted for a writing master. It was thought that sum might be usefully increased.

The Lord Chancellor.—You had better make it 50*l.*

Roll.—By the 6th rule the head master must reside at the college, and neither the head or under master is to be at liberty to undertake clerical duties having the cure of souls, unless, and so long only as they should be excused from residence on each benefice "by the proper authorities." [It was, after some discussion, settled that neither should they hold any lectureship beyond the town of Warwick, lest it might withdraw their attention from the boys on Tuesdays.] The 7th and 8th rules provided that one hour a day at the least should be devoted to the religious instruction of the pupils. It was thought better to omit this regulation, and leave the whole matter of religious instruction to the schoolmaster. Such a rule in the scheme of a grammar school was quite new, and had been introduced for the first time by Vice-Chancellor Knight Bruce in the *Attorney-General* v. *Cullum*; the master had felt bound to insert it by the authority of that case.

Hetherington, for the schoolmaster, suggested that the rule should be altered thus, "that in every school all the boys should receive one lesson at least of religious instruction."

The Lord Chancellor.—I think it is better to leave the care of religious instruction to the discretion of the schoolmaster, without any limited provision. The object will be much better attained by leaving the subject to the master's discretion. The 7th and 8th rules must be struck out. This does not imply that religious instruction is to be omitted, but I think the mode in which that instruction is given may be most usefully left in the schoolmaster's hands.

Rolt.—The next rule on which it is necessary to remark, is the 13th, which specifies the various subjects on which the master is bound to give instruction to all the boys alike, which, amongst other branches of modern education, mentions the French language. By the 15th rule, any pupils, whose parents desired it, might be taught German or other modern languages.

The Lord Chancellor.—It would be better not to make the teaching of French compulsory, and to make the 15th rule applicable to modern languages in general, without specifying any.

Hetherington, for the schoolmaster, wished that it should be compulsory on all the boys to learn French, because that would then form a part of the ordinary routine of the school, and would not interfere with the arrangement of the classes.

The Lord Chancellor.—I accede to that view. French may prove useful to many boys who would not learn it, unless it formed part of the regular school instruction.

Rolt.—The 19th rule provides that the schoolmaster should have the power of expelling any boy, and on so doing should report the grounds of expulsion to the governors of the school; and an appeal should lie to the Lord Chancellor, as visitor.

The Lord Chancellor.—Omit the report to the governors, and add that the appeal shall lie to any person whom the Chancellor for the time being may appoint.

Rolt.—The only other rule to be mentioned is that which provides that two examiners, graduates of one of the English Universities, shall yearly receive a fee of five guineas each. It was proposed that one examiner only should be appointed, and that he should receive a fee of ten guineas.

The Lord Chancellor.—He should be a graduate of Oxford or Cambridge. I hope the school will go on well.

Rolt.—The unanimity of all the different political parties in the borough, in carrying these regulations into effect, for the benefit of the school, is the best proof of their desire that there should be no difference of opinion in all that related to the school.

Bayley, for the corporation, consented to the alterations, and the Master's report, as modified, was confirmed.

Wray, for the Attorney-General.

Wednesday, Jan. 15.

Re The Bishop of Bath and Wells, a Lunatic.

Practice in lunacy—Service on agent.

Bird supported a petition praying that some person might be appointed to convey, in the place of the Bishop of Bath and Wells, a lunatic. The Master had found the Bishop to be a trustee within the Act. The former order had been directed to be served upon the Bishop's agent, who had not attended the Master; and it was asked that the present order should be served upon the same agent. — *Ordered.*

Re Peover, a Lunatic.

Practice—Diminution of security by committee of the estate.

[illegible], in support of a petition, asked that the committee of the estate might be authorized to pay certain sums of money belonging to the lunatic's estate into court, and that he might deposit with the commissioner various securities for money. The lunatic was also entitled to the fifth part of a testator's estate, which would become payable in parts, and at different times. It is stated in Shelford on Lunacy that the only way to get over the difficulty is to obtain a special order to authorize the committee to pay in the money as received from time to time. (*Re Sherrard*, App. Shelford on Lunacy.) The object of the application was to decrease the amount of security to be given by the committee.

The Lord Chancellor.—The committee can give no receipt without a special order.

— *Ordered.*

Reed v. Pike.

Alibone v. Jones.

Pauper—Prisoner—Costs—Suitors' fund.

Blunt, as counsel to the suitors' fund, moved, upon the report of the Master under Sir E. Sugden's , that the defendants in both the above suits, who were prisoners in contempt for not putting in their answers, might be discharged; and, by reason of their poverty, that the costs of putting in their answers might be discharged out of the suitors' fund.

— *Ordered.*

Murray v. Vibart.

Substituted service of subpœna against a defendant residing abroad ordered upon a solicitor in London shewn to be her agent—Evidence of agency—Collusion.

This was a suit by creditors for the administration of the estate of an intestate. The administratrix was resident in Boulogne, and it was sought to obtain an order that service of the subpœna upon Mr. Bennett, a solicitor in London, should be deemed good service under these circumstances. Three letters had been written by the plaintiff's solicitor, and addressed to her at Boulogne; the first of which was written in June, and the last on the 27th of December last. On the 30th of December last, the plaintiff's solicitor received a letter dated the same day, in which he said, "Mrs. Vibart has forwarded to me your letter of the 27th instant, and in replying to it I have to express my regret at your client's want of courtesy and precipitation. Immediately upon receiving your partner's two former letters, Mrs. Vibart handed them to me to do what was necessary on her behalf." A *distringas* had been placed upon certain stock at the Bank, which belonged to the testator's estate, and Mr. Bennett applied to remove that *distringas*.

Anderson, for the plaintiff.

The Lord Chancellor.—What recognition have you of Mr. Bennett by Mrs. Vibart as her agent? These parties might be playing into each other's hands. What was the first thing Mr. Bennett did in the matter?

Anderson.—He wrote the letter of the 30th of December to the plaintiff's solicitor, in which he shewed himself fully aware of the contents of the letter of the 27th of December, which had been sent to the defendant. Though the affidavit on which the application is grounded does not expressly deny collusion, yet the circumstances shew collusion to be out of the question. A similar was made by the Vice-Chancellor of England in *Hobhouse* v. *Courtney* (12 Simons, 140), where all the cases on the subject are collected in the notes. (*English* v. *Kendrick*, 6 Mad. 205; *Kinder* v. *Forbes*, 2 Beav. 103; *Webb* v. *Salmon*, 3 Hare, 3rd part.)

The Lord Chancellor.—I think that will do. The plaintiff undertaking again to communicate by post with the defendant, the order may be made. The affidavit of the plaintiff's solicitor does not negative any understanding with Mr. Bennett; but of course in such cases the order can be made, if the Court is satisfied with the evidence.

ROLLS COURT.

Thursday, Jan. 30.

Cattel v. Symons.

In a suit for the administration of the estate of a deceased debtor, a bond creditor, who was also an equitable mortgagee by deposit of title-deeds, comes in under the decree, and claims the debt on bond; and it being suggested that there was an equitable mortgage, the claim was allowed to stand over to be amended, but this had not been done. The estate is then sold, and a conveyance made to the purchaser without the title-deeds. The sum realized being insufficient to pay all the debts, the equitable mortgagee presents his petition, after a lapse of seven or eight years, for leave to come in and prove his lien, so as thereby to gain priority over a specialty creditor, suggesting that he had then only for the first time ascertained that his claim had never been amended. The petition was dismissed, with costs.

This was a petition presented by Ann Bates, the widow and administratrix of J. L. Bates, of Daventry, who died in April 1839. It appeared that Henry Fleckno having died indebted to a considerable amount, a suit was instituted for the administration of his estate, and on the 9th March, 1836, a decree was made for taking an account of the debts, and of the real and personal estate of the deceased. Under that decree J. L. Bates claimed 200*l.* secured to him by a bond of January 1832, and in his affidavit suggested that the same was further secured by a deposit of title-deeds. The claim was then allowed to stand over for the purpose of being amended, and allowing a state of facts to be carried in. This was never done, and the Master marked opposite the debt—"Note.—Secured also by deposit of title-deeds. See affidavit." On the 16th December, 1837, the personal estate of Henry Fleckno, by the Master's report, was represented to be insufficient for payment of his debts, and the Master found that E. Bromwich and E. Smith were mortgagees of the real estate, and J. L. Bates was a creditor by bond. Mr. Fleckno, the surviving trustee of a settlement in which Henry Fleckno, deceased, covenanted to pay the trustees 1,000*l.* on the trusts thereof, went in before the Master, under the decree, and established his claim as a specialty creditor. The real estate was sold, and a conveyance made to the purchaser without the title-deeds. On the 16th July, 1844, there was an order for payment of 518*l.* to R. Bromwich, the personal representative of E. Bromwich, and of 324*l.* 4s. 1d. to E. Smith. On the 7th December, 1844, a reference was made to the Master, who found that 95*l.* 7s. 9d. was due for interest on the 200*l.* to J. L. Bates, or his administratrix, and that 476*l.* 10s. 1d. was due on the 1,000*l.* to Mr. Fleckno. The fund applicable for payment of these sums being only 871*l.* 17s. 10d., the petitioner now applied for leave to carry in a state of facts as to the deposit of the title-deeds, stating that she had now, for the first time, become aware that the claim was not amended, and that, by accident, the Master had excluded J. L. Bates in the report, and so the priority of his claim was lost, and that she had never been asked for the title-deeds.

Bird, for the petitioner, insisted upon her right to come in now, under all the circumstances, to establish her claim. He said there was a misconception on the matter in the mind of the country solicitor, who believed his town agent had taken the necessary steps before the Master, and produced an affidavit to that effect. In order to shew that it was quite in accordance with the practice of the Court to permit such claims to be established, on further directions, even at so late a stage of the proceedings, he cited *Lashley* v. *Hogg* (11 Ves. 602); *Angell* v. *Haddon* (1 Madd. 529); *Gillespie* v. *Alexander* (3 Russ. 130).

Daniell, for the plaintiffs, insisted that Bates was only a specialty creditor, and had stood out; and that Fleckno had come in under the decree.

Chandless, against the petitioner, said that on the last order on further directions, there was only 871*l.* 17s. 10d. applicable to the payment of debts, and that Fleckno, being a creditor to a large amount, would be hardly dealt with if, after all his trouble in proving his debt, the petitioner should now be permitted to come in and deprive him of the fund. The petition is wrong in its prayer, untrue in fact, and absurd. This is a creditors' suit, involving the usual inquiries as to incumbrancers, &c. Two incumbrancers came in, and the estate was decreed to be sold. The principle of the decree is, that an incumbrancer is only entitled to the proceeds if he comes in and submits to the sale. This was not so here, but, on the contrary, the petitioner held out, and kept the title-deeds. The estate was sold, and the purchase-money distributed; and now this petition seeks to undo all that has been done under three reports of the Master, and those orders. This, however, cannot be effected on further directions, though cases are cited as authorities for the position that it can. No laches, however, appeared in those cases as here; nor is this a petition of a creditor, but of one trying to establish her claim as an incumbrancer. But a creditorial character is given to her by the Master's report, and what she is entitled to as such lies for her at the Master's office. The situation of a creditor is peculiar. As soon as the decree for an account, &c. is pronounced, the object is to have the debts paid, and the bill will not be dismissed; and creditors are under an obligation also to sue in equity, and not at law. The other side argue from the case of a creditor to that of an incumbrancer. It is said the petitioner's priority was lost by the Master's accidentally excluding her from the report. But the only thing Mr. Bates did was to put in an affidavit of his debt; no memorandum was given, nor any state of facts carried in, though that is always done by an incumbrancer as contradistinguished from a creditor; and the Master could not, therefore, have done more than he did. And now they ask to make out their claim on this memorandum and deposit.

The Master of the Rolls.—The only question is, whether the incumbrancer can have his claim considered on petition.

Bird, in reply.—The circumstances, notwithstanding the lapse of time, are favourable to the petitioner as regards Mr. Fleckno. When Bates went in with bond and mortgage, there was quite enough to pay him and the simple contract creditors in the suit, and it was therefore unnecessary to take any further steps; but then Mr. Fleckno under the decree makes his claim, and we knew nothing of our mistake till December last.

The Master of the Rolls.—It does not appear

from the Master's report what were the proceedings before him. And it is clear that no just imputation lies on any one, and that the costs of the petition must be borne by the petitioner. The question is whether there is to be an inquiry. The cause has advanced so far, that after sale of the estate and payment of the mortgagees, there remains a sum insufficient to satisfy the specialty debts, and it is ordered to be apportioned between the petitioner and Mr. Fleckno; and after that the petitioner presents this petition, and says, I am not only creditor, but equitable mortgagee, and have priority to Mr. Fleckno. In 1836 the charge was carried in as a bond debt, and it is said that petitioner's testator also claimed as mortgagee, and that claim, therefore, at the suggestion of the Master, stood over. It was known, then, in 1836, that the claim was not put forward in the most advantageous way, and the debt is ultimately allowed as a bond debt, and not a mortgage. An affidavit is produced, but it was no evidence on which to found a claim as equitable mortgagee. It is said the country solicitor was informed by his town agent that the state of facts had been amended; however that may be, the debt was only allowed as a bond debt. Now, then, from December 1836 to the present time, with the knowledge that the claim should be amended, and a representation that it had been so, the cause going on without the Master's requisitions being attended to—whether, after all these years, we ought to give effect to this security, and thereby deprive another party of his fund, is difficult to determine. I think I cannot give relief, and it is the less to be lamented, as if I had, the petitioner must have paid the costs throughout, which would have made it a useless proceeding.

Hughes v. Wynne.

Taxation of bill of costs—9th General Order of 26th October, 1842.

The consideration of what is a fit amount of remuneration to an accountant for services performed, is for the Master in Ordinary, and not the Taxing Master, the remuneration being brought in in the shape and under the name of a bill of charges.

In this case a bill of costs was referred to the Master for taxation, and the taxation was accordingly made. The Master having made his report, an order was obtained to review the same, on grounds of irregularity; and an inquiry was also directed before the Master as to the proper amount of remuneration to be given for his services to an accountant, in reference to whom a bill of charges had been brought in along with the bill of costs. The reference being ordered after the publication of the General Orders of the 26th of October, 1842, the Master thought his jurisdiction, upon objection being taken to it, had been taken away by the 9th of those Orders, which transfers all the powers of the Master as to taxation to the Taxing Masters, and refused to proceed to take into consideration the question of remuneration without an order distinctly directing him to do so. The party raising the objection now applied for the authority to enable the Master to proceed.

Turner and *Bilton*, for the application.

Kindersley and *Fleming*, on the other side.

The Master of the Rolls.—As I understand you, there is an order to tax, and along with that there is mixed up a direction that a proper remuneration be allowed to the accountant. This, which was brought in as a bill of charges, produced some confusion in the Master's mind, and the party who now seeks to have the estimate made took the objection as to the Master's jurisdiction, which the Master allowed. The Taxing Master is not the proper person to deal with this matter, but only the Master in Ordinary. The only object is to ascertain the proper amount, and if too much is given, the other side can object. Can I do better than make an order that the Master shall proceed to take cognizance of the question? The application having been occasioned by the party who now asks to remove the obstruction, he must therefore pay the costs.

Friday, Jan. 31.

Gibert v. Hales.

9th Order of 5th May, 1837—Practice.

If a court of equity retains a bill, and gives leave to bring an action of debt at law, and judgment is obtained in the action, it has no priority over simple contract creditors.

The facts of this case are stated in 2 Law T. 496; it will be seen by referring to the report that the bill was retained for twelve months, to allow an action at law to be brought on certain terms by the plaintiff. He did so, and succeeded in obtaining judgment in his favour. It being then apprehended that the judgment would give him an advantage over simple contract creditors, a common creditors' suit was on advice instituted in the meantime in the Court of Vice-Chancellor Knight Bruce for the administration of the estate of Hales, the intestate, and a decree was obtained therein. It was then sought to restrain the plaintiff from proceeding further at law or in this suit, and to oblige him to come in in the other suit and prove his debt and have his costs taxed. Leave was accordingly obtained from the Lord Chancellor to move at the Rolls in both causes for that purpose.

Kindersley, for the motion.—We wish to restrain the plaintiff, and we have got leave from the Lord Chancellor to move in both causes, notwithstanding the 9th General Order of May 1837; and therefore in this particular case it is the same as if there was no General Order. [The Master of the Rolls.—There can nothing reasonably be done but transfer from either Court to the other.] That is no use, for the suit will be at an end if your lordship grants the motion. [The Master of the Rolls.—How can I when it is not in the same cause, but in a cause in another court? This is the first time I have received a peremptory order from the Lord Chancellor.] [*Calvert*.—The order was only giving leave to move before your lordship.] The doubt as to the priority of the plaintiff's judgment is unfounded, and he himself does not wish to take any advantage. We wish to make him come in and prove his debt and costs, &c.; but he objects, and says he should not be asked to prove it again. Mrs. Hales is quite satisfied about it now, and we merely wish him to come in and we will admit it before the Master. That removes the principal objection. [It is strange that it should be thought that the Court giving him leave to bring his action, would permit his judgment afterwards to have priority.]

Calvert, on the same side.

Lowndes and *Shadwell*, for the plaintiff in the other suit, concurred with *Kindersley*.

Turner, for the plaintiff.—There must be an inquiry into the assets in the hands of Mrs. Hales, the administratrix. [The Master of the Rolls.—That of course, if an injunction be asked.] Mr. Gibert does not desire to take the conduct of the cause; but still, the other bill being filed at the instance of Mrs. Hales, as appears from the solicitor of the latter being also the solicitor of the plaintiff in that suit, we ask for liberty for Mr. Gibert to attend the administration at the expense of the estate.

White, on the same side, said it was more Mr. Gibert's interest than that of any one to take care of the property, as the debts owing to him were fifteen times the amount of all the rest.

Kindersley, in reply.—Let him make oath as to his debt; even in his own case he would have to do so. [The Master of the Rolls.—If the cause was at the hearing, I could declare the debt proved, but not on an interlocutory motion.] He would have been entitled to his costs as between solicitor and client, if the estate had been solvent, but as it is not, he can only have them as between party and party.

The Master of the Rolls.—I understand the other suit is to be brought here. The only doubt I have is as to the two solicitors attending at the cost of the estate; though, as Mr. Gibert is much the largest creditor, that expense will chiefly fall on himself. I am surprised that any doubt should ever have been entertained on the question of the judgment obtaining priority. I give Mr. Gibert leave to attend the proceedings as asked.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, Jan. 14.

Davies v. Salusbury.

Principal and surety—Release—Demurrer.

A bill filed by a surety on a promissory note for the purpose of having the note cancelled, stated that the principal had executed an assignment for the benefit of his creditors, and that, in consideration thereof, his creditors had released him, and that the solicitor of the payee in the note had executed the assignment on his behalf, and that the payee had accepted the dividend. A demurrer to the bill, for want of equity, was reserved till the hearing, on the ground of its not appearing sufficiently clear upon the bill that the release of the debt had been executed by the payee of the note.

The bill in this case was filed on the 28th of Nov. 1844, and stated, that on the 4th July, 1843, Sir J. Salusbury put up for sale by auction the growing crops on his farm at Cord Robin, and one of the conditions of the sale was that the purchasers should give security for the payment of their purchase-money. The defendant, William Mellish, became the purchaser at the sum of 233*l*. 17s. 6d. and the plaintiff and the defendant, Robert Parry, became security in a promissory note for him to Sir J. Salusbury, for the payment of that sum by two instalments—the first, on the 1st January, 1844, and the second, on the 1st July, 1844. Before the 4th May, 1844, William Mellish had reduced the debt to 123*l*. 17s. 6d. In May 1844, Sir J. Salusbury issued a writ of summons against Mellish for the payment of the balance, but proceeded no further in the action. Mellish by transactions subsequent to the date of the promissory note, became further indebted to Sir J. Salusbury, and on the 9th May, 1844, was indebted to him to the amount of 138*l*. 6s. 6d. By an indenture of the 9th May, 1844, Mellish assigned to trustees all his property for the benefit of his creditors, and in consideration thereof the several creditors, whose names and seals were thereto attached, released Mellish from all actions, &c. which they, or any, or either of them, might have or claim against him. The bill stated that "Thomas Evans, attorney and solicitor, as the solicitor and agent of the said Sir J. Salusbury, executed the same for and on behalf of the said Sir J. Salusbury, and which execution was in the handwriting of the said Thomas Evans, and was in the words and figures following, i. e. 'For Sir John Salusbury, Thos. Evans, 138*l*. 6s. 6d.;' and a seal was also affixed thereto, opposite to his said signature." The creditors, and amongst them Sir J. Salusbury, received a dividend of 10s. in the pound upon their debts; and on the 28th October, 1844, Sir J. Salusbury signed a receipt for his dividend. On the 30th October, 1844, Sir J. Salusbury commenced an action in the Queen's Bench against the plaintiff and Parry to recover the balance. The bill charged that Sir J. Salusbury recognized the execution of the deed of composition on his behalf by Evans, and in other parts spoke of Sir J. Salisbury's having executed the indenture. The bill prayed that the promissory note might be given up to be cancelled, and that Sir J. Salusbury might be restrained from proceeding. To this bill a general demurrer was filed by Sir J. Salusbury.

Wigram and *Smollett*, for the demurrer, urged that the release of the principal to the note was a release of the sureties. (Coke's Inst. 232; *Cheetham* v. *Ward* (2 Bos. & Pull. 630); *Pickard* v. *Sears* (6 Ad. & Ell. 469); and *Nicholson* v. *Revill* (4 Ad. & Ell. 675). The deed was the deed of Sir J. Salusbury, and could have been so pleaded at law.

The Vice-Chancellor.—Supposing Sir J. Salusbury's legal remedy or legal right on this instrument as against the plaintiff in equity not extinguished, the bill states an equity giving the plaintiff a standing-place here. The question is, whether the bill states such a capacity of defending by the plaintiff in equity at law as to exclude this jurisdiction. I qualify the phrase in this manner for obvious reasons, for there are several cases of concurrent jurisdiction, and questions of the discharge of sureties by dealing with the principal form a part of them. The first question is, whether the release is to be taken as pleadable at law as a release; but it is stated by the bill that Sir J. Salusbury authorized the execution, though it is not said by what means, nor that it was executed in his presence. I can not infer that the authority was by deed. He has done other acts of recognition; and I think it is highly probable, that if in the trial of an action the jury were to presume that he authorized the execution, a new trial would not be granted. I do not, however, see that so clearly upon the face of the bill as to bar him from access to the Court at this stage. There is strong language in the bill, amounting almost to the assertion of personal execution by Sir J. Salusbury. That Sir J. Salusbury did authorize Evans to execute, and that he did so execute, is not so clearly sufficient as to render the deed the deed of Sir J. Salusbury. It is also said that there is here accord and satisfaction; that is, that the acceptance of part is a discharge of the whole: but I think that it is not so clear upon the bill as to allow the demurrer, or to stop the case at this stage of the cause. Subject, then, to what the plaintiff's counsel may say, I think that the benefit of the demurrer should be saved till the hearing.

Russell and *Stinton*, for the plaintiff, cited *Hawkshaw* v. *Parkins* (2 Swanst. 539).

The Vice-Chancellor.—I cannot say that cases of extinction, and of time given, are to stand upon the same ground. Save the benefit of the demurrer, reserving all costs.

Bond v. Warden.

Stamp Act—Check—Reasonable diligence.

A check directed to "A, B, and Co. bankers, L." without any other mention of the place of issuing the check, is not within the exemptions from the Stamp Act, and being unstamped, is void.

A received a check at L, after office hours, on the 20th of April, and sent it to his bankers, at R, eight miles from L, on the same evening. On the 21st, the bankers at R forwarded it by post to the bank at L, where it was received on the 22nd, and at half past one o'clock on that day the bank at L stopped:—Held that A had used reasonable diligence, and that the check was no payment.

On the 7th of October 1841, a contract was entered into between the plaintiff and Mr. Wallin, since deceased, for the sale to Wallin of a farm at Willey, in Warwickshire, for the sum of 4,200*l*. the contract to be completed on the 6th of April 1842. Wallin entered into possession, and by his will devised the farm to the defendants upon certain trusts, and subsequently died.

On the 20th of April, 1843, the deeds of conveyance to the defendants were executed, and a receipt was signed for the purchase-money. The purchase-money and interest, amounting to 4,734*l*. was paid by a check on the bank of Messrs. Clarke, Mitchell, Phillips, and Smith, at Lutterworth. The check was directed to Messrs. Clarke and Co. "Bankers, Lutterworth," but no other mention was made of the place of issue. It was given after the office hours

of the bank at Lutterworth, and on the same evening the plaintiff sent the check by a private hand to the bank at Rugby, where it was received by one of the partners in that bank.

On the 21st of April, the Rugby bankers sent the check by post to Messrs. Clarke and Co. with directions to pay the same to their agents in London, and at half-past one on the 22nd, the day on which Messrs. Clarke and Co. received the check, their bank stopped payment, and the check was returned dishonoured. This bill was filed for the specific performance of the agreement, for the payment of the purchase-money, and for a declaration of a lien on the farm, &c. for the amount of the purchase-money. Two points arose in the case: 1st, whether the check was valid, it not being stamped, and not having, according to the requisitions of the Stamp Act, the place where it was issued upon the face of it; and, 2nd, whether there had been laches on the part of the plaintiff in presenting the check.

Wigram and *Freeling*, for the plaintiffs, cited *Rough* v. *Webb* (1 Esp. 129); *Wilson* v. *Viner* (4 Taunt. 287); *Walters* v. *Brogden* (1 Y & J. 457); *Rickford* v. *Ridge* (2 Campb. 537); *Williams* v. *Smith* (2 B. & Ald. 496); *Monke* v. *Brown* (4 Bing. N. C. 466; 5 Scott, 697.)

Russell and *Speed*, for the defendants, cited *Boddington* v. *Shinker* (1 B. & Ad. 752), and *Cannage* v. *Hannay* (6 B. & Cr.)

The VICE CHANCELLOR.—I think the plaintiff is right on both points. The Stamp Act requires, in order to the exemption from a stamp that the place where a check is issued or drawn should be expressed upon it, that is, so expressed as to shew that it is the place from which it was issued. The mere circumstance that the place is mentioned for another purpose is not sufficient. Here it is plainly so used as to describe the situation of the bank, not the place where the check was drawn, though nothing wrong was intended. This then, was an insufficient security, and a void check, and I think, therefore, no payment. But supposing the document were not open to this objection, a question arises whether reasonable diligence was used. It was delivered in the town where it was drawn, and where it was made payable, after the office hours, after it had become impossible to receive the money on that day. What was incumbent on the plaintiff to do? He was a country gentleman or a farmer, living two or three miles out of the town. There were bankers at Rugby whom he chose to employ. He sends the check to Rugby that evening, and it was received after office-hours by one of the partners, who deposited it in a place of safe custody, and in the morning it was paid into the bank in the ordinary way. I think the plaintiff was entitled to employ a banker, as he was not bound to keep the check in his own custody, where it might be exposed to various hazards. I think the distance at Rugby was not an unreasonable distance, and that the plaintiff pursued a right and reasonable course. The banker then must have a reasonable time to present the check; he inquires in the morning as to the best mode of conveyance, and puts it in the post-office, directed to the bankers upon whom it was drawn. This mode of presentation was not under the circumstances unusual. In this state of things, before two o'clock, the ordinary banking hours extending to four, the bank stops. I am of opinion that the Rugby bankers had, under the circumstances, the whole of the banking hours of the day for their own and the plaintiff's protection. I must, therefore, hold that the plaintiff's debt is due, and that there is a lien on the farm, &c. sold for the amount.

Thursday, Jan. 16.

MORGAN *v.* HERBERT.

Service of copy of bill—Husband and wife.

Order made for the entry of a memorandum of service of a copy of a bill upon a wife alone who was living separate from her husband.

In this case, *W. M. James* moved for leave to enter a memorandum of the service of a copy of the bill. The copy of the bill was intended to be served on the defendants John Lloyd and Ann his wife, but upon serving the wife, she stated that for the last eight years she had lived separate from her husband. It was now asked that the memorandum might be entered of the service upon the wife alone.

The VICE-CHANCELLOR said that he thought this service might be treated in the same way as the service of a *subpœna* upon a woman living separate from her husband, and accordingly made the order as asked.

CLOUDER *v.* KENDALL.

Witness—Re-examination.

Order made for the re-examination of a witness for the purpose of proving exhibits and liberty given to the other party to cross-examine him.

Swanston applied for liberty to examine John Burgess as a witness, either *viva voce* before the Master to whom the cause stood referred, or before the examiner or commissioner, or by any of the said means (notwithstanding he had been already examined in chief), confining such examination to the proof of exhibits not entered in the decree or matters not already deposed to by the said witness. He cited *Whittaker* v. *Wright* (3 Hare, 412).

Willcock, on the other side, asked that the mode of examination should be now named by the applicant, and that his client should be at liberty to cross-examine.

Swanston stated his willingness that the examination should be taken by interrogatories, and

The VICE-CHANCELLOR made the order accordingly, giving the other party liberty to cross examine the witness.

Saturday, Jan. 18.

COCKRILL *v.* PITCHFORTH.

Will—Construction.

A B gave the residue of her personalty to trustees upon trust to sell and to divide the proceeds among twelve persons, and then gave her real estate to the same trustees upon trust for payment of three annuities to three persons for their respective lives, and after the decease of the survivor of the annuitants upon trust to sell the real estate, and divide the proceeds between the same twelve persons and three others, or such of them as should be then living. A clause was then introduced, declaring that the share or proportion of one of the twelve (who was a married woman) should be held in trust for her separate use for her life, and after her decease in trust for her son. Then followed the usual receipt clause, the clause for indemnity of trustees, and a clause giving the trustees power to lease for twenty-one years. Held, that this clause as to the married woman's share related to the personalty as well as the realty.

Elizabeth Pocock, by her will dated the 15th of Nov. 1824, after bequeathing certain pecuniary legacies, gave and bequeathed the residue of her personal estate to trustees upon trust to sell and convert the same, and upon further trust to pay, apply, and divide the same unto and amongst the several persons following, that is to say, Truman Machin, Hector Tause, John Machin, Sabra, wife of Thomas Cockrill, Sarah, wife of John Cockrill, Elizabeth, wife of David Bidmead, Maria, wife of Frederick Kerchevall, Jane Elizabeth Hankinson, Elizabeth Mary Wardell, Caroline, wife of Charles Pitchforth, Charlotte St. George, and Elizabeth Eleanor St. George, or such of them as might be living at the time of her decease, in equal shares and proportions. The testatrix then gave and devised all her real estates to the same trustees upon the trusts therein mentioned for payment out of the rents and profits of the said premises or otherwise of three several annuities of 40*l.* 30*l.* and 10*l.* to Edward Machin, Eleanor Anson, and Elizabeth Hankinson, during their respective lives, and after payment of the said several annuities upon further trust to lay out and invest the surplus rents in Government securities, and from time to time to lay out and invest the accruing dividends and interest to be received from such investments as an accumulating fund during the lives of the said several annuitants, and the life of the survivor of them, and after the decease of the survivor of them, then upon trust to sell and dispose of the said real estate in the manner therein mentioned, and to pay, apply, and divide the clear produce of such sale unto and amongst the following persons, or such of them as should be then living; that is to say [here follow the names of the legatees above mentioned, and of three others]. The will then immediately proceeded thus: "Provided always that as to the *share or proportion of the said Sabra, the wife of Thomas Cockrill*, it is my will and mind that *such share or proportion* shall be invested in the funds in the names of my said trustees, upon trust, to pay the dividends and interest thereof into the hands of the said Sabra Cockrill, during her life, for her own absolute use and benefit, and not to be subject to the control of her present husband or any future husband, and after her decease, then upon further trust to pay, assign, and transfer the funds in which such share shall have been invested, and all dividends and interests accrued thereon, unto Richard Cockrill, the son of the said Sabra, for his own use and benefit." Then follow clauses to exempt purchasers from the obligation of seeing to the application of the purchase-money, and to make the receipts of the trustees good discharges,—for the indemnity of the trustees,—and to enable the trustees to lease all or any part of the premises for 21 years. The testatrix then appointed the same persons before named as trustees, to be her executors. The testatrix died in March 1826, and the will was proved in the following month. The trustees paid the legatees, and set apart 145*l.* 14*s.* 4*d.* consols to answer Mrs. Cockrill's legacy. On the 31st of July, 1841, Tomlinson, one of the defendants in this suit, purchased Richard Cockrill's share in this sum for 49*l.* Mrs. Cockrill being now dead, her husband filed this bill against the trustees and Tomlinson, claiming the transfer of the fund to himself, alleging that the clause in the will directing the share or proportion of his wife to be for her separate use, &c. was applicable to the real estate only. One only of the annuitants mentioned in the will was dead.

Tripp, for the plaintiff.

Shebbeare, for the trustees.

Russell and *Bagshawe*, for Tomlinson.

The VICE-CHANCELLOR said, that the words upon which the dispute had arisen were "the share or proportion" not "the said share," not "the last-mentioned share." Although in effect there were two distinct properties payable at different times and in different proportions; yet the words were large enough to include both. Without changing the ordinary interpretation of the words used, they were properly applicable to one or two. If the words could be applicable to both, the question was, what was the more probable construction? In the personalty her share was immediate, and with regard to the realty, it was subject to several contingencies. It was highly improbable then that the testatrix would confine the limitation to the more remote and most contingent fund. His Honour said, that he was at first struck with the expression, "my said *trustees*;" but the testatrix also gave the personalty to them "*upon trust*." The position also of the clause was worthy of attention, preceding as it did, the clause providing for the receipts of the trustees being sufficient discharges for the purchase-moneys. However unnecessary this clause, where the trustees were also executors, there was an express trust for the sale of the personalty as well as the realty. Considering too the other clauses introduced, His Honour thought no reliance could be placed on the respective positions of the clauses. He thought then, that the grammatical construction ought to prevail. Of course, in such a case, the plaintiff could not pay costs, but the defendant's costs should come out of the general estate of the testatrix, and, if there were no general estate, then out of the fund.

VICE-CHANCELLOR WIGRAM'S COURT.

Wednesday, Jan. 29.

JUDGMENT.

HARROP *v.* HEAWARD.

Separate use—Anticipation.

Under a marriage settlement, a sum of money, the personal property of the intended wife, was vested in trustees upon trust, to lay out and invest the same in the Parliamentary Stocks or Funds, or at interest upon Government or real securities; and to stand possessed of such stock or securities upon further trust, to pay the interest, dividends, or yearly proceeds thereof, from time to time, as the same became due and payable, into the proper hands of the wife, or into the hands of such person or persons as she, by any note or writing under her hand, should, from time to time, appoint to receive the same during her life, but not so as during the joint lives of herself and her husband to dispose thereof, or deprive herself of the benefit thereof by mortgage, charge, sale, assignment, or otherwise, in the way of anticipation, to the intent that the same might be for the sole and separate use of the wife, and might not be subject to the debts, control, disposition, or engagements of the husband, or any other person with whom she might, after her then husband's decease, intermarry. And here it was also, by the settlement, agreed and declared that the receipt or receipts of the wife, or of such person or persons as she should appoint to receive the same, and his, her, or their receipt or receipts, should be a good and sufficient discharge to the person or persons paying the same, or so much thereof as, in such receipt or receipts, should be acknowledged or expressed to be received. The question in this case was, whether the clause against anticipation was effectual in the absence of any words restraining anticipation in the receipt clause.

HIS HONOUR said that the only doubt was, whether the effect of the clause against anticipation was rendered inoperative by the absence of negative words in the receipt clause. That clause certainly must operate as an effectual restraint upon anticipation; and, in his opinion, the receipt clause must be construed with reference to the previous words of restraint, which could not be altered or indued with a different sense by the subsequent language, provided such was not of a distinct revocatory character.—See *Moore* v. *Moore* (1 Coll. 54); *Baggett* v. *Meux* (1 Coll. 138); and *Brown* v. *Bamford* (11 Sim., 127).

COURT OF QUEEN'S BENCH.

Thursday, Jan. 30.

REG. *v.* CARTER.

Judgment on several counts of an indictment for the same and similar offences.

The *Solicitor-General* prayed the Court to pass sentence upon the defendant, who had pleaded guilty to two several indictments, charging him, being an excise officer, with obtaining money under false pretences in the counties of Merioneth and Montgomery; the false pretences being, that larger sums than the law authorized were payable for excise licenses; and also in other counts with forging and falsifying excise licenses. There were eight counts in the first and twelve in the second indictment.

PATTERSON, J. in pronouncing the sentence of the

Court, went through each count of each indictment separately; and upon each sentenced the defendant to be imprisoned and kept to hard labour, *the same* eighteen months in the House of Correction at Cardiff.

PARNELL v. SMITH.

DENMAN, C. J.—We think that we ought to grant the rule for a new trial unless the parties can agree on the case. Upon the case we should enter the verdict for the plaintiff, if we thought him entitled on the facts. *Rule accordingly.*

PITCHER v. VICARS.

DENMAN, C. J.—In this case we think the verdict of the jury as to the non-identity was warranted by the facts, and there is an end of the case. *Rule discharged.*

PRICE v. CARTER.

DENMAN, C. J.—We are quite satisfied that there is no ground for the motion made in this case; and that the defendant had no right to take advantage of the objection to the warrant of attorney. *Rule discharged.*

REG. v. HUDSON.

This Court will not interfere by mandamus to order the gaoler of the Queen's Prison to pay a certain sum weekly out of the fund for poor prisoners to a poor prisoner in his custody: the regulation of the prison being in the Secretary of State, according to Act of Parliament.

Pashley shewed cause against a rule calling on John Long, the prosecutor, to shew cause why the *mandamus* which had been issued to the defendant, the keeper of the Queen's Prison, commanding him to pay to the prosecutor a sum not exceeding 3s. 6d. per week, out of a fund in his hands provided for the relief of poor prisoners, should not be quashed, *quia improvide emanavit.* Two points are raised by the affidavits: 1st, whether this Court had any jurisdiction to issue the writ, or whether the exclusive jurisdiction over the subject-matter was not vested in the Secretary of State; 2nd, if the Court had the power, whether the circumstances were such as called for its exercise. It appeared that John Long had been a prisoner in the Queen's Prison from May 1843, for a contempt of the Court of Chancery. At first, 5s. a week had been allowed him out of the fund for poor prisoners, and afterwards a diminished allowance of 3s. 6d. which he received from the 24th Feb. 1844, when he became master of the racket court, which produced about 5s. a week; his allowance was then discontinued, and not restored to him after he had ceased to hold the office. The stat. 5 Vict. gave the Secretary of State power to make regulations concerning the government of the Queen's Prison, and under that stat. Sir James Graham had made certain rules authorizing the payment of 5s. during the first six months, and 3s. 6d. during the second to poor prisoners imprisoned for a variety of causes, but not including cases of contempt, after which period it was to cease altogether. He had also ordered a diet to be provided similar to that which was provided in county prisons for poor debtors; and that diet the prosecutor had received from the 23rd to the 29th November, when the *mandamus* to pay the money was served upon Mr. Hudson. Upon the first point it is submitted that, under this Act, the Secretary of State had certain powers given to him, in the exercise of which even he would be liable to a *mandamus* from this Court; and that a *mandamus* to him could not be treated as a *mandamus* to the Crown; that whatever might be the authority of Sir James Graham, it could not afford any protection to Mr. Hudson for his wrongful act, the rule *respondeat superior* not being in such cases recognized by the law of this country; that *mandamus* was the appropriate remedy in all cases of oppression to the subject; and although it was doubtful whether, at common law, a gaoler was bound to feed his prisoners, that very doubt rendered the duty of distributing any funds provided for poor prisoners by statute the more stringent upon the gaoler; that in this case the gaoler had a fund in his hands; that the Secretary of State had made no regulation applicable to the case, but had in express terms provided that if any case occurred which did not fall within the regulations which he had made, the gaoler was to act in the manner which he considered most appropriate; and lastly, that the motion to quash the writ could not properly be made till after the return: citing on the last point —— v. —— (2 Atk. 318); Tidd's Pr. 403; *R.* v. *Lediard* (Say. Rep.); *R.* v. *Owen* (Skinner, 669; Comberb.) [PATTESON, J.—It is laid down in those cases that there may be a motion to quash *even after* the return, —much more *before.*] On the second point it was contended that the circumstances demanded the interference of the Court, as it appeared from the affidavit that the prosecutor had been reduced to the extremity of destitution by the refusal of the gaoler to make him any allowance.

Authorities cited as to office of Secretary of State: —— v. *Carrington* (2 Wils. 725); Hallam's Constitutional History; 1 Blackst. Com. 338; Stat. 38 Geo. 3, c. 36; *Lord Canterbury* v. —— (1 Phil. 324). As to the rule *respondeat ouster: Whitfield* v. *Le Despenser Lord* (Cowp. 754); *Gidley* v. *Lord Palmerston* (3 Brod. & B. 275). Not a *mandamus* to the Crown: 2 Co. Inst. 186; *R.* v. *Powell* (1 Q. B. 352); *R.* v. *Steward of Manor of Witchford* (7 Dowl. 709; 1 Q. B. 356, n.). As to ground for *mandamus*: *Bagge's* case (11 Rep. 93). As to the duty of gaoler to feed his prisoner: Co. Litt. 295; *Pinchon's* case (9 Rep. 86); *Robinson* v. *Walter* (Popham, 127); Bro. Ab. tit. Ley. Gage, pl. 8; *Driver* v. —— (Plowd. 68); *Munby* v. *Scott* (1 Mod. Rep.); *Mood* v. *The Mayor of London* (2 Salk. 683); *R.* v. *JJ. N. R. of Yorkshire* (2 B. & C. 286); 2 Hawkins, P. C. c. 22. As to the provision for poor prisoners: Stats. 22 & 23 Car. 2; 2 Geo. 2, c. 22, s. 19; the Lords' Act. General authority over gaolers: *R.* v. *Huggins* (17 How. Sta. T. 179); Magna Charta.

The *Solicitor-General* (*M. D. Hill*, Q. C. and *Waddington*, with him) in support of the rule.—The question here is not whether this Court will interfere by *mandamus* to save a prisoner from starvation; but whether it will direct a payment out of a particular fund. It appears upon the affidavits that a diet was provided for the prisoner under the orders of the Secretary of State, and that he refused it. The statute 5 & 6 Vict. for regulating the Queen's Prison, provided much more amply for the relief of poor prisoners than did the previous Act, 53 Geo. 3; and it gave the Secretary of State power to make regulations. It is admitted that the Secretary of State is bound by that Act as much as any other public officer executing a statutory power; but he has issued his regulations under the statute; they have been acted upon by the gaoler in this case, and the question is whether this Court will interfere. (He was then stopped by the Court.)

Lord DENMAN, C. J.—It is clear that the keeper had no authority to do what we ordered. We granted the *mandamus* under the supposition that some violence had been done to the rights of the subject; but as the facts now appear, we cannot suppose that the prisoner was in the slightest degree of danger from destitution. *Rule absolute.*

Ex parte STANESBY and OTHERS.

It is not necessary on an application for a rule for payment of money pursuant to an award, to shew the same formalities of demand and refusal which are necessary on moving for an attachment.

Smirke (*Martin*, Q. C. with him) then shewed cause against a rule which had been obtained in the same matter, for the payment of the money awarded by the arbitrator. He submitted that the award was bad. It purported to be the award of three, and appeared on the face of it to be signed by one in London, and two at Truro, and there was also an affidavit to that effect. The Court of Exchequer last Term decided that point in a case of *Stalworth* v. *Innes. Little* v. *Newton* (2 M. & G. 351); *Perrin* v. *Keane* (3 Ad. & E. 215), are authorities on the same question. Then, before this application can be granted, the Court must see that a formal demand has been made, there being no distinction between this application and that for an attachment.

Alexander, Q.C. *amicus curiæ*, stated that in *Stalworth* v. *Innes*, the Court of Exchequer refused to set aside an award by two arbitrators, on the ground that both had not argued it at the same time and place; but declared that they would not assist the party to enforce it by attachment, but leave him to his remedy by action.

O'Malley, in support of the rule. That was a perfectly extra-judicial opinion; and here, at all events, there is nothing to shew that this award was not signed by each in the presence of the others. It is true that the attestation to the two signatures is by the clerk of an attorney of Truro; and to the other one by a person describing himself of London; and the dates are different; but it is not inconsistent with that, that all the arbitrators were present when each signed; and the affidavit only states that when the last signed, the award then purported to have been signed by the other two; which would have been the case if the others had signed a minute before.

Lord DENMAN, C. J.—We think that the evidence does not raise that point, as to the execution of the award.

Montague Smith.—As to the other point, the practice is not the same on moving for payment of the money, and for an attachment; in the former case it is only a summary method of obtaining the money that is due, but in the latter, the formal demand and refusal, and the warrant of attorney are necessary, in order to bring the party into contempt. (*Doe dem. Moody* v. *Squire*, 2 Dowl. N. S. 327; *Jones* v. *Williams* (2 Dowl. N.S. 938).

Lord DENMAN, C. J.—We think that distinction is sufficient. *Rule absolute.*

Re CHARLES CARUS WILSON.

REG. v. THE VICOMTE OF JERSEY.

Under stat. 1 & 2 Vict. c. 45, every judge of the superior courts of common law has power to make an order at chambers directing a writ of habeas corpus to issue under the seal of the court, and returnable in any of the three courts.

The stat. 1 & 2 Vict. c. 45, is binding in Jersey, though not expressly named therein.

It is no ground for quashing a writ of habeas corpus issued by a Baron of the Exchequer under the seal of this court, returnable in this court, that the affidavit on which the order of the learned judge is made is entitled in the Exchequer, the rule of H. T. 2 Wm. 4, not applying to that case.

Semble—That if it were shewn beyond all doubt, that fraud had been practised on the judge who issued the order, that would be a ground for quashing the writ; but the general practice of the court is not to quash the writ for any matters which can properly be raised on the return.

Kelly, Q. C. and *Peacock* shewed cause against a rule calling on Charles Carus Wilson to shew cause why a writ of *habeas corpus ad subjiciendum*, to bring up the body of the said Charles Carus Wilson, a prisoner in her Majesty's gaol in Jersey, should not be quashed. The first objection taken to the writ was that the learned judge (Mr. Baron Rolfe) under whose order the writ had issued had no authority to make that order. It must now be taken for granted that the great prerogative writ of *habeas corpus* would lie to Jersey; and the first answer to the application was that the matters of fact and law raised by it could only be properly discussed on a return; then an opportunity would exist of traversing the facts stated. The writ in question had been issued under the seal of this court, *i. e.* out of this court, and made returnable in this court; and the question was, whether the learned judge, being a Baron of the Exchequer, had power to make the order. That depended upon the 1 & 2 Vict. c. 45, than which no words could be more comprehensive; the former Act applied only to matters pending in the courts; and it was found necessary to extend the powers of single judges sitting in chambers to all business which might be transacted by a single judge, in any court, the granting of writs of *habeas corpus* and *certiorari* being expressly named; and as to the writ of *certiorari*, that must always issue out of the Queen's Bench. *Pro hac vice* Rolfe, B. was a judge of this court. The necessity of such a provision is obvious, when it is considered that during the circuits, only a single judge remains in London to transact all the business of all the courts. The Court will not be astute in finding defects in the issuing of a remedial writ so important as the *habeas corpus*, and will not construe the Act of Parliament so as to narrow the powers given. (The *Canadian Prisoners'* case, 9 Ad. & El. 731.) Another objection was, that this writ being issued as at common law, and not under either of the statutes, could not be issued in vacation; but that is not so. First, this is not a criminal matter, and, therefore, the writ is good under the 56 Geo. 3, c. , which extended the remedy by *habeas corpus*, given originally in criminal matters by stat. Chas. 2, to other than criminal matters (*Long Wellesley's* case, 1 Dowl. N. S. 152): and secondly, at common law every judge has power to order a writ of *habeas corpus* to issue in vacation, either returnable before himself, or, if Term should intervene, before the Court of which he is a member; and then the stat. 1 & 2 Vict. says that he may do it in any court. (*Re The Canadian Prisoners*, 9 Ad. & E. 731; *Ex parte Beachy*, 4 B. & C. 3; Blackstone's Com.; *Shepherd's* case, 1 Burr. 660; Wilmot's Notes.) Another objection is, that in the 1 & 2 Vict. c. 45, Jersey is not named, and that that Act, therefore, is not binding there. But a great confusion of legal doctrines is involved in that proposition; if a new penalty were imposed upon any offence, or a new offence created by any Act in which Jersey was not named, it might not take effect there; but that is the full extent of the doctrine. It might as well be said that the Act for altering the Terms, or the Regency Act, making George 4th Prince Regent, or the present Regency Act, has no force in Jersey. Where powers already existing are intended by Act of Parliament, if they applied to Jersey before, they apply afterwards in their extended force. The affidavits shew no ground for quashing the writ; they only shew at the most that there were the means of serving a former writ, which the opposite party had got a rule to set aside, *quia improvide emanavit.* Lastly, the application is irregular; it ought to have been to set aside the order of Mr. Baron Rolfe; until that is done, the writ cannot be quashed. (*Turquand* v. *Hawtrey*, 9 Mee. & W. 727.)

The *Solicitor-General*, *Wortley*, Q. C. and *J. W. Smith*, in support of the rule.—At common law, no Court had power to issue a *habeas corpus*, except the Queen's Bench. In the Common Pleas and Exchequer their power to do so was limited to cases concerning the officers of their own courts. Whether the single judges of the Queen's Bench could in vacation was long doubted. (Coleridge's Blackst.; *R.* v. *Cowle*, 2 Bur. 834.) When, therefore, a Baron of the Exchequer issues a writ of *habeas corpus*, he does it by statute. Under the 31 Car. 2, he could do it in respect of criminal or supposed criminal matters, and "under the seal of the Court of which he was a member." By the 56 Geo. 3, that power was extended to other than criminal matters; but still the writ could only be issued under the seal of the Court of which the judge issuing it was a member. Then the 1 & 2 Vict. c. 45, recited

the 1 Wm. 4, c. 70, which it was clear gave to the judges of all the courts equal power as to all matters depending in the courts, and over which they had concurrent jurisdiction; and it was equally clear that the object of the statute 1 & 2 Vict. was to extend that power to business belonging to some one of the courts, exclusive of the others, and to such business only. The Act does not therefore apply here, because the granting of writs of *habeas corpus* did not, when that Act passed, exclusively belong to any one court. It is true, the issuing of writs of *habeas corpus* is expressly mentioned; but it is mentioned in conjunction with writs of *certiorari*, which do exclusively belong to this court; the meaning must therefore be, such writs of *habeas corpus* as belong to one court in particular, as writs of *habeas corpus cum causâ* or *ad testificandum*, arising out of matters depending in one of the courts. As to the second point, Jersey is not bound by Acts in which that island is not expressly named (4 Inst. 287); and by the statute in question extensive powers are given, which may materially affect the people of Jersey. Unless the rule of law be strictly acted upon, the greatest uncertainty will arise as to what Acts are, and what are not, binding on the people of Jersey. The Acts referred to are not analogous. The Act altering the Terms gives no additional powers; and the Regency Acts contain words large enough to comprehend Jersey, and all the dominions of the Crown. (Sir F. Dwarris, 12 Rep. 109.) As to the objection to the form of the rule, if the writ is void, the order is void; and *Turquand* v. *Hawtrey* has no application. The writ of *habeas corpus* is a writ of right, but not a writ of course; and at common law the judge ought to be satisfied that there is reasonable ground for believing that the party is illegally imprisoned (the case of *The Hottentot Venus*, 13 East); nor will the Court issue the writ if it sees that it will be useless to do so. (*R.* v. *Stirell*, and other cases cited in *Hobhouse's* case, 3 B. & Ald. 420; *Blake's* case, 2 M. & S. 428; *Way's* case, 2 M. & S.) [It was then contended, upon the affidavits, that if Mr. Baron Rolfe had not been kept in ignorance of the facts, he would not have granted the application, or at most only a rule *nisi*, for that it appeared from the affidavits, that Mr. Carus Wilson well knew that there was a legal judgment of the Royal Court of Jersey pronouncing him guilty of contempt; and that that alone, by the law of the island, justified his imprisonment without any warrant; and that the jurats were ready to swear him to any affidavit; which he had denied.] Lastly, the affidavit on which the order of Mr. Baron Rolfe was obtained, is entitled in the Exchequer, and cannot therefore be used in this court.

Lord Denman, C. J.—Mr. Peacock, can we act on an affidavit so entitled?

Peacock.—The Court is not asked to do so. The writ has already issued; but the motion was not made on that ground; and if the objection had any weight, it would apply to the order and not to the writ. *Cur. adv. vult.*

JUDGMENT.

Lord Denman, C. J. now delivered judgment.—That the writ of *habeas corpus ad subjiciendum* has legal force in the Island of Jersey, and must be obeyed, is now admitted on all hands, nor can we be parties to the encouragement of any doubt whether the inconvenience that may result may justify us or any judge in declining the exercise of it in behalf of any person who lawfully requires it. The present question, therefore, on the rule for quashing the writ, depends upon the peculiar circumstances attending that writ: had the learned baron power to issue it, returnable in this court? We are convinced that he possesses that power. The statute of the 1 & 2 Vict. uses the words "*habeas corpus*" in the most general manner. In any case we should be slow to control the operation of unambiguous words for any supposed intention of the Legislature, and we should least of all think ourselves at liberty to pursue that course to restrain the power of the *habeas corpus*. It is not needful to dwell more particularly on the arguments of counsel in support of that proposition; but those affidavits upon which the writ was issued appear to be entitled in the Exchequer, and a doubt was felt whether, so entitled, they can authorize a learned baron of that court to act as a judge of this under the statute. No reference is made to the rule (promulgated by all the Courts) in the 2nd Wm. 4, which said that an affidavit sworn before any judge shall be received in the court to which such judge belongs, but not in any other, *unless entitled in the court in which it is to be used*. This is not applicable to the present case; but this language points out a distinction which we think is applicable. These affidavits are not pressed upon us to be received here; they have been received and performed their office before the Baron: were they properly received? is the question. It is not enough to say they may have been; for when they were last before him he may have acted as judge of the Court of Exchequer, having power to make the writ returnable there; and it is stated he was requested to do so, but he suggested it should be made returnable before us. Then he would have received them properly in the first instance; and it seems to us he had a discretion at the last as to the court where the writ should have been made returnable, and might legally act on those affidavits in sending the matter to the Court of Queen's Bench. But a deception is said to have been practised, as the applicant knew he was in prison under sentence of contempt in the Royal Court of Jersey, and fraudulently kept Baron Rolfe in ignorance of that fact; and that if he had been properly informed of that he would not have issued the writ at once, but would have obtained further information of such fact from the applicant, or, at least, have granted a rule *nisi*; and in either case there may be good reason for believing it would not have issued. It may be that if it appeared, beyond all doubt, a fraud had been practised, the writ ought to be quashed; but of the fact we are not quite satisfied. It rather seems to us that Mr. Wilson, an English lawyer, may have assumed a warrant for his commitment was necessary, and that the absence of any warrant, or the refusal to shew him the warrant, would entitle him to his liberation; and it may be that he was ignorant of what was stated upon the affidavits, that a sentence of the Court was a sufficient warrant. If the fraud is not made out, then we must consider whether the writ is to be set aside because the learned baron did not obtain that information which might have been given, that is, whether he has abstained from exercising a discretion so obviously demanded by the occasion that we ought to condemn and annul that which he has done. The strong cases supposed of a sick man sinking under an infectious distemper, or of an insane man being brought into court, are instances where, if shewn to the Court, all other considerations must give way. But there is a wide difference between such a state of things and the imprisonment of a sane man. We do not intimate any opinion that a previous inquiry would be wrong, where there was reason for supposing the prisoner to be under a sentence of the Court; but we think such a course desirable, and the learned judge would, on further reflection, have granted a rule *nisi*. But this is an application to quash a writ actually issued forth. We find from the Master of the Crown-office that this Court held more than once in the 26 Geo. 3, that no writ of *habeas corpus* should be quashed for matters that can be properly returned to it; and we certainly think, as a general rule, that is the most convenient course, the most just to the party applying for the writ, and most in furtherance of the great object for which our Constitution has appointed it. Still, as the learned judge thought proper to issue the writ without these facts being required to be proved before him, we do not think we should be justified in setting it aside, and the consequence is, this rule must be discharged, and the return must be made.

Rule discharged, the writ returnable in ten days.

Friday, Jan. 31.

Sir *J. Bayley* moved for leave to make a judge's order a rule of Court, under 1 & 2 Vict. c. 110, s. 18, for payment of debt and costs by instalments, or the plaintiff to be at liberty to sign judgment and issue execution upon non-payment of any instalment. The motion had been referred to the full Court, as there was some doubt whether such an order was within the Act. *Leave granted.*

JOHNSON v. HILL.

The construction of particulars of demand is a point of law, and will not be taken the last day of Term.

Gale moved to enter a verdict for 8*l.* the plaintiff having been nonsuited upon what was alleged to be a misconstruction of the particulars of demand.

Lord Denman, C. J.—That cannot be taken today.

DOE dem. DEACON v. PERRY.

Practice—Amendment of declaration in ejectment.

Bramwell shewed cause against a rule obtained by *Willes* to set aside an order of Mr. Justice Williams, with costs, giving liberty to the plaintiff to add a new demise on payment of costs.

Willes, contrà, stated the principal point to be, that the attorney had concealed from the learned judge that there was an action of ejectment already pending in the name of the proposed new lessor.

Lord Denman, C. J. That would have made no difference. *Rule discharged without costs.*

FORSTER v. BANK OF ENGLAND.

A plaintiff suing in formâ pauperis has no right to amend without payment of costs.

This was an action by the plaintiff, suing *in formâ pauperis* against the Bank of England, for non-payment of dividends. The declaration had been demurred to, and *Pearson* had obtained a rule for leave to amend the declaration without payment of costs, against which

Bovill now shewed cause.—The 23 Hen. 8, c. 15, exempted paupers from all costs given by that statute. In *Pratt* v. *Delarue* (2 D. N. S. 32, 10 M. & W. 309) the Court of Exchequer decided, that although paupers were exempt from interlocutory costs, they were liable to costs under 1 Reg. Gen. H. T. 2 Wm. 4, s. 110. The judgment confined their liability to this single exception, but the older cases of costs imposed for vexatious conduct were not referred to. They are collected in 16 Vin. Abr. The Court will exercise its discretion to inflict costs. (*Doe dem. Lindsey* v. *Edwards*, 2 D. P. C. 471.) Here it appears the alleged ground of action occurred in 1841, and nothing is done until 1844. The declaration is full of objections.

Pearson, contrà.—The pauper has a right to amend. [Lord Denman, C.J.—How do you shew that? Amendments are at the discretion of the Court.] By 23 Hen. 8, c. 15, s. 2, he is exempted from all costs. If it is a matter of discretion, the Court will not compel a person who is not worth 5*l.* in the world to pay costs. [Lord Denman, C.J.—Then he should take care and have a better declaration.] The faults are only grounds of special demurrer.

By the Court.—This amendment is asked as of right, and we therefore give our opinion upon it. A pauper has no right whatever to make amendments without payment of costs. We might advise the Bank to make some arrangement, but as a matter of law, the rule must be discharged. *Rule discharged.*

REG. v. JUSTICES OF HERTFORDSHIRE.

Costs of certiorari to remove order of petty sessions after certiorari for order of quarter sessions on appeal.

Wordsworth mentioned this case again to the Court as to the second rule for a *certiorari*, which had been obtained to bring up the order of the petty sessions. (See *suprà*, p. 291.) It was unnecessary, as by the removal of the order of quarter sessions, that of petty sessions was also removed.

Kelly, Q. C. and *Hawkins*, contrà.

Discharged with costs, if the order of Petty Sessions was, in fact, removed.

SHORT v. STONE.

Averment of request in a declaration for breach of promise of marriage may be material, although the subsequent marriage of the defendant is averred.

Butt shewed cause against a rule obtained by *Peacock* for rescinding an order of Wightman, J. setting aside a judgment signed, for want of a plea. It was an action for breach of promise of marriage. The promise was laid to marry upon request. The breach was a refusal to marry upon request, and that the defendant had married another person. *Plea*—Traverse of the request.

The Court called on

Peacock, who contended that it was not an issuable plea, and that the judgment was rightly signed. The marriage of another person dispenses with the request. (*Harrison* v. *Gage*, 1 Lord Raym. 386; *Ford* v. *Tiley*, 6 B. & C. 325.) A woman cannot be expected to request a man who is already married to marry her. The request, although a condition precedent, is dispensed with.

By the Court.—The plea is material. The plaintiff has chosen to allege a double breach. Suppose the case of a purchase of goods, and an action for non-delivery, and an averment that the defendant refused to deliver, and threw them into the sea, the traverse of the request would be good.

Discharged with costs.

REG. v. PRINTER and PUBLISHER OF THE COURT JOURNAL.

Talfourd, Serjt. appeared on the part of the defendant, and stated that the defendant felt that it was his duty to take the earliest opportunity of adopting the course which appeared to be that most befitting him in the circumstances of the case. The application had been made against the printer and publisher, and not against the proprietor of the paper, who was a lady. He (Mr. Serjeant Talfourd) could well understand the feeling which had induced the noble earl to abstain from making an application against the proprietor, who now came forward to express her deep regret at the introduction into her journal of the unfounded calumny of which the noble earl had complained, and she had already done every thing in her power to atone for the injury which had been involuntarily done. In the week following the publication she wrote a letter, in which she apologised for it, and this letter she caused to be inserted in the *Court Journal*, and sent for insertion to the morning papers, in some of which it appeared. Whether Lord Cardigan would be satisfied with this he (Mr. Serjeant Talfourd) did not know. The lady, however, felt the deepest contrition, which was shared in by the printer and publisher, who placed the most perfect reliance on the denial of the noble earl. It now remained for Lord Cardigan to state what course he should adopt. The parties for whom he (Mr. Serjeant Talfourd) appeared had made all the reparation in their power, and had now only to throw themselves upon the mercy of the noble lord.

The *Solicitor-General* said that, not having had any communication with his client, he was unable at present to do any thing else than make the rule absolute. What might be done afterwards would be a matter for future consideration.

Lord Denman, C. J. observed that the apology was most ample.

The *Solicitor-General* admitted such to be the fact, and expressed his gratification at the defendant's conduct. *Rule absolute.*

ROWCLIFFE v. GUNDRY.

Practice—Application for peremptory undertaking to try after consolidation of actions.

This was a rule obtained by *Kinglake*, Serjt. calling upon the plaintiffs to give a peremptory undertaking to try at the next Devonshire Assizes, or that money paid into court in this action and in *Rowcliffe* v. *Brown* should be paid out.

These were two actions in covenant, one against the executor of the lessee, the other against the assignee of the lease. On July 2, 1844, at the application of the defendants, Wightman, J. ordered the actions to be consolidated; that Brown should pay 400*l.* into court, Gundry should pay 200*l.* into court upon his plea of payment; that the present action should be tried, and the other stayed; but all the evidence applicable to both to be admissible in this, and the defendant Brown should be bound by the result. The commission day was July 23. On August 10th the plaintiff was ruled to reply. On November 29th there were some amendments made to meet the form of the order. Replication delivered Dec. 2, with rule to rejoin. Jan. 10, 1845, issue joined.

Bull now shewed cause, contending that the affidavits were entitled in one action only, and further, that there had been no neglect on the part of the plaintiff.

Kinglake, Serjt. contrà.—The facts and dates shewed that it was intended that the action should have been tried at the Summer Assizes; one of the terms was, that the defendant should accept two days' notice of trial. [PATTESON, J.—Is there any precedent for such a peremptory undertaking?] Under the circumstances, the Court will either order the money to be paid out of Court or the undertaking to be given.

Bull objected that the money belonged to Brown, upon which

Gray, for Brown, assented to the money being paid out to Gundry.

Bull pressed the objection to the affidavits.

By the COURT.—Probably the necessity of the case will be met by the defendants making a prompt application if the cause is not tried at these assizes.

Discharged without costs.

SIMMONS, Assignee of BIRCH, v. KING.

Practice—Acceptance of costs under a judge's order, after a rule nisi obtained to rescind it, precludes the party from making the rule absolute.

Watson, Q. C. shewed cause against a rule obtained by *Pashley* to set aside an order of Wightman, J. allowing the plaintiffs to amend the record in a feigned issue, under the Interpleader Act. A bill of exceptions had been tendered at the trial, and error brought thereon. The Exchequer Chamber held that a writ of error did not lie upon a feigned issue; but as it appeared by the record in this case, that the cause had been commenced by writ of summons, which was untrue, they postponed the judgment to allow an application to be made to this Court to amend the record. Wightman J. had made the order, the plaintiffs to pay the costs occasioned by the amendment. This rule was moved for on the 14th or the 15th King had his costs taxed, and received them on the 16th; the defendants are therefore estopped from disputing the order. (*Kennard* v. *Harris* 2 B. & C. 801.)

Lord DENMAN, C. J.—It is quite clear the defendants are not entitled to the costs.

Pashley.—There was no jurisdiction to make the order. [Lord DENMAN, C. J.—You rely on *Green* v. *Miller* (2 B. & Ad. 781).] It was an improper application, and therefore we are still entitled to the costs. [COLERIDGE, J.—How is the rule drawn up?] To rescind the order allowing the amendment. It can be moulded as to the costs. The record was drawn up two years ago.

By the COURT.—You cannot now object. It is a personal disability. There is no further occasion for the rule. *Discharged with costs.*

KING v. TRESS.

Practice—Where a cause is made a remanet from one sittings to another, the record must be resealed before the commencement of the sittings to which it stands over.

A rule had been obtained by *D. D. Keane* (*suprà*, 289) to set aside the verdict in this case, which had been tried as undefended. Notice had been given that it would be taken as undefended, but it stood over to the sittings after Michaelmas Term. On the first day of these sittings it was in the cause list, when *Keane* applied for a postponement, on the ground of the absence of a material witness for the defendant. Lord Denman, C. J. who presided, said it should keep its place, but that at all events it should not come on that day. It appeared that the officer of the Court had pointed out that it was not resealed, but this was not then heard by the defendant's counsel. The record was then resealed, and the case taken as undefended on the Saturday following. The irregularity complained of was, that the resealing should have been prior to the sittings.

Pashley now shewed cause.—It is a question of strict right, and the Court will decide in favour of the plaintiff, unless the words of the rule relied upon by the defendant are express beyond all doubt. The rule of 7 E. T. Geo. 1 requires that all records are to be sealed *on or before* the respective days for which the trials are appointed. By rule 1 E. T. 33 Geo. 3, all writs of *distringas* and records which stand over from one sitting to another are to be regularly resealed previous to the sittings of the Court to which they stand over; and in default thereof that the causes be not tried. The rule Hil. 4 Wm. 4, R. G. 18, orders that it shall not be necessary to repass the record which shall have been once passed," and gives power to a judge, on an *ex parte* application, to amend the day of the *teste* and return of the *distringas* or the *habeas corpora*, or of the clause of *nisi prius*. But this has been held to be unnecessary where the cause is made a *remanet*. (*Wells* v. *Day*, 8 A. & E. 941.) [COLERIDGE, J.—Rightly it should be rescaled before. I have refused to try where it has not been resealed.] There is no absolute rule requiring it to be resealed before the commencement of the sittings. It would be sufficient if done before the trial. The whole "sittings" may, for some purposes, be considered as one day, but not for this.

D. D. Keane, in support of the rule.—The postponement of the trial is no bar to this rule. There can be no trial where there is no record, and the sealing is essential. And if there is no power to try, there is no power to postpone. The 7 Geo. 1 allowed the rescaling to be "on or before;" but experience having proved this to be inconvenient, the 33 Geo. 3 required the record to be resealed *previous* to the sittings. It is clear this meaning of "sittings" is, before the commencement of the sittings, not the day on which the trial takes place. This rule has been often acted upon. (*Walker* v. *Hussey*, 1 Car. & M. 366; *Cook* v. *Smith*, 1 D. N. S. 861.) [Lord DENMAN, C. J.—You say that there was no right to postpone, and you did not consent.]

By the COURT. The rule must be made absolute, with costs. *Rule absolute, with costs.*

Saturday, Feb. 1.

BROWNING v. SUGDEN.

Practice—Intervention of rights of third parties.

Bliss shewed cause against a rule obtained by *Gray* for setting aside a judgment and execution upon a warrant of attorney against the defendant and another, on the ground that it was entered up after the death of John Sugden, jun. The application is too late. The execution was levied on the 12th of November; on the 14th a fiat issued against the defendant. This rule was not obtained until Jan. 13. The plaintiff has since obtained a rule to enter a suggestion of the death, and to amend the *fi. fa.* His right to do this is shewn by various cases. (*Newnham* v. *Law*, 5 T. R. 577; *Lacock* v. *Washbrough*, 2 T. R. 757; *Shaw* v. *Maxwell*, 6 T. R. 450; *Webb* v. *Taylor*, 1 Dowl. & Lownd. 678.) [PATTESON, J.—Your judgment is wrong your rule does not go far enough.] Entering a suggestion implies amendment of the judgment. [PATTESON, J. The words do not include it.]

Gray waived his objection, and supported the rule upon the merits. It is not too late, because other interests have intervened. (*Hunt* v. *Passman*, 4 M. & S. 329; *Webber* v. *Hutchins*, 8 M. & W. 319.)

By the COURT.—The plaintiff's rule will be discharged, and the defendant's made absolute.

Judgment accordingly.

REG. v. DOBSON.
DOBSON v. GROVES.

M. Chambers had obtained two rules in these cases, the first of which was an indictment, and the second an action arising out of the dispute concerning the Greenwich pier. (The award had been set aside, *suprà*, 155.) In the indictment the verdict of guilty was to be entered, and the verdict in the action to be set aside, the case referred to a new arbitrator, and the costs to abide the result.

Bodkin offered a *stet processus*, but refused an undertaking that no new action should be brought.

Verdict of guilty to be entered, and verdict in the action set aside.

Re MANDER.

An outlaw cannot refer a bill to taxation.

Hoggins shewed cause against a rule obtained by *Martin*, Q. C. on behalf of Mr. Fulke Greville, to refer an attorney's bill for taxation. The bill appeared to be partly due from the late Countess of Mansfield and partly from Mr. Greville, who was her executor. It had been delivered as a joint account. This application to tax had been refused at chambers, on the ground that Mr. F. Greville was an outlaw, and this objection was again urged, and *Aldridge* v. *Buller* (2 M. & W. 412) was cited.

V. Williams, with whom was *Martin*, Q. C. in support of the rule.—There is no rule of law which debars an outlaw from having an attorney's bill taxed. It is not necessary, however, to consider this, as it appears Mr. Greville is the administrator of the Countess of Mansfield. [COLERIDGE, J.—You acquiesced in receiving a joint bill, and there must be a joint taxation.] He is the survivor. [COLERIDGE, J.—Yes, but not as administrator.] An outlaw may sue as administrator; and what is to be done here if he cannot tax the bill? It is a demand of moneys due from him at law as survivor, but from the intestate also in equity. He cannot tax the bill in equity, and must, therefore, do so here. But although an outlaw, he may tax the bill. The distinction is, that he cannot be heard to enforce a legal right of his own; but he may do so to protect himself from the claims of others. (*Walker* v. *Thelluson*, 1 D. N. S. 277, 578.) Suppose an action brought, and the bill cannot be taxed, the attorney will recover an unreasonable amount. The right depends upon the late statute. The words are general. [WIGHTMAN, J.—He has allowed a month to elapse, and there must be special circumstances.] He may take advantage of the Insolvent Act. (*Hamlin* v. *Cropley*, 8 Ad. & E. 677.) [PATTESON, J.—There is no undertaking necessary under the new Act, but how could judgment on the taxation be enforced?] There are abundance of funds to pay; the affidavits shew this. Unless there is a binding rule against it, the taxation will be allowed. An outlaw may file a bill for relief in equity.

By the COURT.—We think the rule applies to all cases where the outlaw is seeking to set the Court in motion for his own benefit, as he is doing here. If an action is brought, he can defend himself by an application. *Rule discharged with costs.*

FITZBALL v. BROOKS.

Is an action for less than 20l. under 3 & 4 Wm. 4, c. 15, s. 2, an "action for the recovery of a debt," within 7 & 8 Vict. c. 96, s. 57?

Ogle moved for a rule *nisi* to rescind a judge's order. The question is upon the construction of 7 & 8 Vict. c. 96, s. 57, as to the meaning of the words "action for recovery of any debt." The declaration was upon the 3 & 4 Wm. 4, c. 15, s. 2 (Dramatic Property Act). It follows the form of the Act. Judgment went by default for less than 20*l.* as stated in the declaration, and the defendant was arrested. He paid the amount, and the order was for the sheriff to refund, on the ground that the arrest was illegal according to the Act. There was no writ of inquiry, but the action was for unliquidated damages by the statute. "Debt" must mean contract on which the defendant owes. (*Davies* v. *Lloyd*, 3 M. & W. 69.) Here the jury must have found more than the sum. [COLERIDGE, J.—It is not penal action in requiring local venue. (*Fyfe* v. *Bousfield*, 3 Law T. 160.)] It has been held also not to be a debt. It is a *quasi* penalty. It might have been drawn for unliquidated damages.

Cur. adv. vult. Notice to be given to the sheriff that the question is under consideration.(a)

COLE v. DUKE OF SUTHERLAND and BARKER.

Costs—Sufficiency of allocatur.

Ogle shewed cause against a rule obtained by *Gray*, calling on Barker to pay to Cole certain costs, and the costs of the application. This question has already been disposed of in an application by the attorney for Cole for an attachment, which was refused in the Bail Court.

WIGHTMAN, J.—No; that was made by the wrong party. According to your view, neither party could obtain the money. The former application was altogether by a different party.

Ogle.—There has been no sufficient *allocatur*. It does not shew upon the face of it that they were the costs of the reference. They were to be paid a week after they had been ascertained. Nothing shews that the week had expired.

WIGHTMAN, J.—The date of the rule. It was served with the *allocatur* on the 1st of October.

COLERIDGE, J.—What other taxation was there?

Rule absolute.

FINDON v. M'LAREN.

Carriages upon the premises of a commission agent for the sale of carriages are privileged from distress.

This was an action of trover.

Plea.—Justification under a distress.

Replication That one Bailey was a coachmaker and commission agent for the sale of carriages; that the plaintiff sent the cabriolet in question to him for sale in the way of his trade, and not otherwise; and whilst it was in and upon the said premises for the purpose of sale in the way of his trade, it was seized.

Special demurrer.

Lush, in support of demurrer.—The question is whether, under the circumstances, the cabriolet was privileged from distress. The cases shew that exceptions of privilege will not be extended. (*Muspratt* v. *Gregory*, 3 M. & W. 677; *Jackson* v. *Joule*, 7 M. & W. 450.) It is only where the party exercises a public trade, as factors and auctioneers. [WIGHTMAN, J.—Does not a commission agent for sale of carriages carry on a public trade?] He must hold himself out publicly. *Public* is defined in *Musgrove* v. *Gregory*. In *Gilman* v. *Eaton* (3 B. & B. 86), the goods in the

(a) We have inserted this, although no judgment was given, as we may not have an opportunity of hearing whether the rule is granted or not, and we understand that many similar actions are pending.

hands of a factor were held to be privileged. Dallas, C.J. there said, "Goods delivered to any person exercising a *public* trade or employment, to be carried, wrought, or managed in the way of his trade or employ, are for that time under a legal protection and privileged from distress." Factors and brokers are both known to the law. Factors receive goods into their possession, brokers do not. Auctioneers carry on their trade in a known manner, and therefore goods on their premises are privileged. (*Adams* v. *Grane*, 1 Cr. & M. 380.) [Wightman, J.—Does not that apply to a commission agent?] No. Factors and auctioneers are known to have possession of goods not their own; brokers are not. If a broker took possession, the goods would be liable to be distrained. The law does not know what a commission agent is, and the replication, therefore, is deficient in not shewing that it was a known trade. It is quite consistent with the allegation that he had merely a counting-house on the premises to carry on this business, or that, as coachmaker, he exposed the carriages for sale for the convenience of his customers. This is the common habit of coachmakers. And as commission agent has no known meaning, the replication should have shewn it was the usual course of trade, or that he had been accustomed to receive carriages in this way. This might have been merely an exception.

Lord Denman, C. J.—This is within the auctioneer's case.

Patteson, J.—A commission agent is for all intents and purposes a person carrying on a public trade within the exception.

Wightman, J.—The goods were sent to him in the course of a trade within the rule. The exceptions must arise from the progress of trade.

Judgment for plaintiff.

Tuesday, Feb. 4.

Balls *v.* Pink.

Execution—Fi. fa.

The sheriff must continue either absolutely or constructively in possession, even if the goods seized be in the possession of a third party, whose right to hold them is questionable.

Trover, for an omnibus. *Pleas*—Not guilty: Not possessed.

On the trial before Patteson, J. it appeared that the plaintiff was executor of an execution creditor, who derived title under the usual bill of sale by the sheriff. The defendant was a wheelwright, to whom the omnibus was sent to have new wheels put to it. On the 1st of April it was delivered to the owner, Mr. Matthews, and being used and broken on that day, was again left in the evening at the defendant's shop for further repair. This second repair amounted only to nine shillings, which was afterwards tendered, but the defendant refused to receive this sum, or to redeliver the omnibus, unless he were paid for the new wheels as well. On the 9th of April the execution was put in, but the sheriff's officer merely claimed the omnibus, and left no one in possession. It was delivered by bill of sale to the plaintiff's attorney on the 16th. There was a verdict for the plaintiff. A rule *nisi* had been obtained to shew cause why the verdict should not be set aside, and a nonsuit entered.

Edwin James shewed cause.—After the first delivery of the omnibus by the defendant, his lien was gone. As to the second repair, the money was tendered, and the defendant had no right to refuse delivery, he was a tortfeasor for so doing. (*Hartley* v. *Hitchcock*, 1 Starkie, 408.) There was sufficient possession by the sheriff as against a stranger. Here there was a third party, which distinguishes this case from *Blades* v. *Arundel* (1 M. & S. 711). There was a good original seizure here. The omnibus remained untouched by any third party, and in a few days the bill of sale by the sheriff was given, which would have been a good resumption had six years elapsed. [Lord Denman, C. J.—Not so, for that would be evidence of abandonment.] But here the defendant himself being a wrong doer, cannot set up possession as in him.

Kelly, Q.C. in support of the rule.—The sheriff having full means of putting in a person to maintain possession, failed to do so. Neither did he or could he have made the defendant his agent to hold. There must be a continuance of actual or constructive possession; even a short absence must be accounted for. (*Ackland* v. *Paynter*, 8 Price, 95.)

Lord Denman, C. J.—It appears that nothing was done here by the sheriff to override the possession by the defendant, and that nothing was done amounting to resumption.

Rule absolute for a nonsuit.

Duncan *v.* Louch.

Right of way.

In an action for disturbance of right of way, it is no variance to prove a larger easement than that alleged, neither need the declaration set forth a condition attaching to the easement unless it be a condition precedent.

Case for disturbance of right of way.

There were nine pleas. The main question was whether the plaintiff, who claimed under a right of way subject to a condition to keep in repair, was or was not bound to set out that condition with an averment of performance in the declaration. There was a verdict for the plaintiff, which a rule *nisi* had been obtained to set aside, and to enter a nonsuit.

Ogle now shewed cause.—The plaintiff put in a deed, by which the condition appeared, and it was contended that this was a variance. It is not so; the first issue of not guilty was found for the plaintiff, hence the defendant was a wrong-doer, and cannot make this objection; it is for him to plead the condition and its breach. (*Pomfret* v. *Rycroft*, 1 Saund. 320.) The grantee is of course bound to repair.

Peacock, in support of the rule.—The plaintiff should have set out the claim of the right he proved. It is not a right of way, but merely a right of using a terrace. He had the right of walking on the terrace, not a mere right of way. It would have been an answer to him to have said you had no occasion to use the terrace. [Denman, C. J.—I find no such words in the deed.] [Wightman, J.—It only comes to this, that his right of way is over every part of the terrace.] [Coleridge, J.—And thus your objection is, that his proof is larger than his allegation.] No, that which is alleged as an absolute is only in fact a conditional right, and that condition should have been averred. (*Thomas* v. *Cadwallader*, Willes, 496; Platt on Covenants, 75.) But this is a condition precedent, and must be alleged. It was a condition to pay repairs, which we shewed was refused.

Lord Denman, C. J.—Taking the facts of the case as Mr. Peacock puts them, the verdict is right. Suppose a padlock is put on the gate of a square, would it be an answer to say you have only a qualified right, to a complaint that the right was wholly obstructed? Here was a clear right of way over the whole terrace, and the declaration is sufficient.

Patteson, J.—I cannot comprehend the distinction Mr. Peacock takes about this right of way; what is a right of way but a right of going backwards and forwards? his distinction is too subtle a great deal. The non-payment of repair is not a forfeiture of the right.

Coleridge, J.—The chief question seems to turn on the objection that the easement is incorrectly described, because the declaration sets forth less than the proof. It is contended that the right, being clogged with a condition, it ought to have been set out. Had it been a condition precedent, it might have been so, but that is not so here; it is, in fact, not a condition of the enjoyment of the right at all.

Wightman, J. It is maintained that the proof is of a different easement to that alleged; but it appears to me to state merely a right of way over part of the close, whereas it was over the whole, laying less than the right: this is clearly no variance. This is no condition precedent. (Buller's Nisi Prius, 169.) There is also the case of *Gray* v. *Fletcher*, tried in 1827 at Nisi Prius, and noted in Starkie on Evidence, where these points arose. *Rule discharged.*

There was another rule, to enter a verdict for the plaintiff on the three first counts, which was made absolute.

Penny *v.* Gabriel and Others.

Demurrer to replication.

The plea alleged an agreement between the plaintiff and defendants, that if the defendants executed a certain deed of assignment, he, the plaintiff, would not sue them upon certain bills of exchange. It further alleged the execution of the agreement by the defendants, and the *acceptance* thereof by the plaintiff. The replication traversed that the plaintiff *accepted* this assignment as and for the assignment stipulated for.

Grounds of demurrer.—That the traverse taken was immaterial; that *acceptance* by the plaintiff was not necessary to be alleged; and that the defendants were not bound to prove such acceptance.

Joinder in demurrer. That the traverse was material and proper; that the plea without the concluding averment shewed no sufficient accord and satisfaction, or suspension of the action: and, further, that the assignment in the plea mentioned as executed did not appear to be the assignment stipulated for by the agreement, the assignment executed being a deed of *trust*, and not absolutely vesting the assignees with the legal and *equitable* estate according to the agreement.

P. M'Mahon, in support of the *demurrer*.

Bovill and *Weightman*, contrà.

Bovill stopped by the Court.

Judgment for the plaintiff.

Wednesday, Feb. 5.

Rolfe *v.* Reynolds.

A contracts with B to do certain work for him at a certain sum, to be paid at its completion. Before the whole work is finished, A authorizes B to pay a certain portion of the money, when it shall become due, to C, and B undertakes to do so. A sues for the whole price. Is this undertaking an answer, pro tanto, under non assumpsit?

The above question was sought to be raised in this case, on a motion for a new trial, but when the facts were sifted, it appeared that the undertakings alleged to have been given by the surveyor, as agent for the defendant, were in truth given by him as agent for the plaintiff. Consequently, the point was not decided.

Cockburn, Q. C. and *Whitehurst*, Q. C. for the plaintiffs.

Wordsworth and *Wood*, for the defendants.

Case cited: *Bussey* v. *Barnett* (9 M. & W. 312).

Rule refused.

BUSINESS OF THE WEEK.

Thursday.

Reg. *v.* The Mayor of Dover.—The rule for a *mandamus* in this case was made absolute without argument, that the questions might be raised on the return. The questions relate to the legality of certain borough rates; and as there are as many as forty rules depending on the same question, it was arranged that a decision in one should govern all. *Kelly*, against the rule. *Whately*, in support of it.

Rule absolute.

Reg. *v.* The Mayor of Sunderland.—The rule in this case was also made absolute for the same purpose. Here the main question was, whether the aldermen and assessors at an election for town councillor, having once declared and published the result of the election, can, within the time limited by the Act for that publication, withdraw that declaration and substitute another, on finding, by an examination of the voting-papers, that the first was incorrect. *Watson*, Q. C. and *F. Robinson*, against the rule. *Knowles*, Q. C. in support of it. *Rule absolute.*

Ex parte Stanesby and Others.—*Award.*—*Crowder*, Q. C. shewed cause against a rule for setting aside an award, on the ground that the party making the application had not had a sufficient opportunity of being heard. The affidavits of the three arbitrators filed in answer to the rule completely denied every part of the complaint made. *Smirke* admitted that an answer had been given; and the rule was discharged. *Rule discharged.*

Reg. *v.* Gregory.—The rule in this case was enlarged, in consequence of the elevation to the bench of Mr. Baron Platt, who had been engaged in it. *Crowder*, Q. C. against the rule. *Talfourd*, Serjt. in support of it. *Rule enlarged.*

Friday.

Price *v.* Carter.—*Atherton* asked whether the rule had been given with costs in this case.

Cur. adv. vult.

Blott *v.* Elwood.—*Atherton* shewed cause against a rule obtained by *Martin*, Q. C. to strike out certain pleas. *Martin*, Q. C. in support of the rule. Wightman, J. said he would look at the pleadings, and decide upon the motion.

R. Wardroper and Kingdon.—*F. V. Lee* shewed cause against a rule obtained by *Godson*, Q. C. to compel payment of bills of costs incurred in an action said to have been brought by them without any authority. The facts were disputed.

Referred to the Master.

Bartlett *v.* Barclay. *Humfrey* shewed cause against a rule for new trial, on the ground of surprise. (*Supra*, p. 290.) *Rule discharged.*

Reg. *v.* Burgesses of Tregonning.

Rule enlarged.

Bunhill *v.* Breeze. *New trial.*

Murietta *v.* Oldfield.—*Kelly*, Q. C. shewed cause against a rule obtained by the *Solicitor-General* for leave to add pleas denying the interest in the subject of the insurances, and of unseaworthiness. A commission to examine witnesses at Monte Video had been issued.

Rule absolute on payment of costs occasioned by the delay.

Mercer *v.* Wall.—*Fixed for the first open day in the week.*

Reg. *v.* Auditor of Burnham.—*M. D. Hill*, Q. C. requested leave to draw up this rule into a more specific form of notice. (*Suprà*, p. 291.)

Application granted.

Doe *dem.* Spilsbury *v.* Burdett.—At the motion of *Kelly*, Q. C. the rule in this case was opened.

Wood *v.* Elliotson.—*Peacock* shewed cause against a rule obtained by *Crowder*, Q. C. for leave to add to *non assumpsit* and payment various pleas. They were objected to, as amounting to the general issue. *Rule discharged.*

Wood *v.* Duncan. *Rule absolute.*

Reg. *v.* Assistant Tithe Commissioners.—In the matter of the Dent boundaries.

Rule nisi for certiorari.

Dunn *v.* Humphries.—*Allen* moved for a new trial, on the ground of improper reception of evidence.

Rule refused.

Reg. *v.* Justices of West Riding of Yorkshire. *Rule enlarged.*

Saturday.

Reg. *v.* Willcock.—*Overend* concluded the argument in this cause against the conviction. *Pashley* and *Hardy*, in support of it. *Cur. adv. vult.*

Vine *v.* Bird.—*Hugh Hill* appeared in support of the demurrer. No one appeared on behalf of the plaintiff. *Judgment for the defendant.*

Penny *v.* Gabriel.—*Bovill* (with whom was *Wightman*) prayed judgment for the plaintiff. No counsel appeared for the defendant.

Judgment for the plaintiff.

Myers *v.* Parfett. *Judgment for plaintiff.*

HARRIS v. REYNOLDS.—*Peacock* prayed judgment for the plaintiff. *Judgment for plaintiff.*

MORRIS v. CORK.—*Demurrer to declaration.*—*Bayley*, for defendant. *Petersdorff*, for plaintiff.
Judgment for defendant.
Leave to amend refused.

GREY v. WRIGHT.—*Willes* prayed judgment for plaintiff, in absence of counsel for defendant.
Judgment for plaintiff.

BERNAY v. READ.—*Motion for new trial.*—*Byles*, Serjt. and *Gunning*, shewed cause. *Watson*, Q. C. and *Palmer*, contra. *Argument adjourned.*

Monday.

BERNEY v. READ. *Cur. adv. vult.*

GILLOTT v. WHITMARSH.—*Ordered to stand over.*

HART v. STEVENS. *Cur. adv. vult.*

BATE v. RAWLINSON.
Time allowed, in order that a reference may be considered of.

Tuesday.

MARTIN v. WRIGHT.
Rule to enter nonsuit discharged.

Wednesday.

DOE *dem.* TEBBUTT v. GREEN.
New trial granted.

COBB v. BECKE.—This case raises the question whether a town agent receiving money from an attorney in the country with knowledge that it is the money of the client, and remitted for a particular purpose, and a promise to the attorney so to apply it, is liable to the client in an action for money had and received, on that promise not being performed. *Martin*, Q. C. and *Bull*, argued in support of the action. *Keating* (with whom was *Jerris*, Q. C.) against it. *Cur. adv. vult.*

HARRIS v. REYNOLDS.—On the motion of *Bull*, the plea in this case was allowed to be amended.

VINE v. BIRD. *Replaced in the special paper.*

DOE *dem.* MUSTON v. GLADWIN.—This was an ejectment for forfeiture of a lease in not insuring according to covenant. *Peacock* for the plaintiffs. *Borill* for the defendant. *Cur. adv. vult.*

HOPKINSON v. LEE.—A motion for nonsuit for nonjoinder in an action of covenant of the *cestui que trust* with the trustee; the words of covenant being distinct with each separately. *Martin*, Q. C. and *Arnold*, in support of the declaration. *Knowles*, Q. C. contrà. *Cur. adv. vult.*

COURT OF COMMON PLEAS.

REGISTRATION APPEALS.

Thursday, Jan. 23.

BOROUGH OF TAUNTON.

ALLEN (Appellant) v. HOUSE (Respondent).

A notice of objection is not vitiated by the insertion of the words "as householders" after the words "entitled to vote."

Where a case is so clear that the Court does not call upon the other side, costs will be allowed of course.

This was an appeal from the decision of the Revising Barrister for the borough of Taunton.

The facts, as set out in the case, were as follow:—In the borough of Taunton there are two lists of voters, one, of persons entitled to vote under the franchise created by the Reform Act, the other, of persons entitled in respect of the ancient franchise. The appellant's name appeared upon the former list, upon which a notice of objection was served upon him by the respondent, in the following form:—

"To Mr. John Allen, of East Reach, South-side.

"I hereby give you notice that I object to your name being retained on the list of persons entitled to vote as householders in the election of members for the Borough of Taunton.

"Dated, &c. "Signed, &c."

It was objected that the words "as householders" vitiated the notice, as there was no such list. The Revising Barrister admitted the notice, and the appellant, being unable to prove his qualification, was struck off the list. The question for the Court was "whether the notice in the form aforesaid given by the objector to the appellant was, under the circumstances, sufficient."

Other appeals were consolidated with this.

Kinglake, Serjt. for the appellants, submitted that the Act had prescribed a form of objection, and it was remarkable that there was not given to this, as to the others, any latitude by the words "to the like effect." The reason for it might be that the Legislature would require an objector, who sought to limit a right, to be more precise than a claimant. But even if the Court should be of opinion that the notice need not so strictly follow the form prescribed, he contended that the variance in this case was such as would not be sanctioned. It was calculated to mislead. There was no such list as "householders," and if the term applied to anything, it was more applicable to the list of Potwallers, who in their origin were householders, that is, 10*l.* occupiers.

ERLE, J.—But suppose he had said "as a free and independent elector," would that have vitiated the notice? Would it not have been surplusage?

Kinglake, Serjt.—But I submit that the statement is not only *surplusage*, but a wrong statement, and the person objected to might fairly have said, "There is no such list as householders; I shall not attend to it."

CRESSWELL, J.—But he clearly did understand it, for he appeared.

Cockburn, Q. C. and *Cox*, for the respondent, were not called upon.

TINDAL, C. J.—This notice is substantially good. If anything had been omitted or inserted calculated to mislead, it would have been bad. But certainly the words "householders' list" must be sufficiently understood in the borough of Taunton. It is so termed in common parlance, and at the utmost it is surplusage, and might be rejected. The only complaint is that the objector was too anxious to inform the claimants of his objection. The decision must be affirmed.

The rest of the Court concurred.

Cockburn, Q. C. applied for costs.

TINDAL, C. J.—When the case is so clear that we do not think it necessary to call on the other side, we shall give costs of course.

Decision affirmed with costs.

COURT OF EXCHEQUER.

Thursday, Jan. 30.

LACEY v. BUNN.

Pleading—Several pleas.

Ogle moved for a rule to add three special pleas to the general issue.

The action was in *assumpsit* on a contract, whereby, in consideration that the plaintiff would play at Drury-lane Theatre at a certain salary as principal light comedian, the defendant undertook to employ the plaintiff, and to pay him the said salary.

Breach—That the defendant would not employ the plaintiff or pay him his said salary. The defendant now proposed to plead in addition to the general issue—

1st. That by the said agreement it was conditioned that the plaintiff should not play elsewhere than at Drury-lane, and that if he did, the defendant should be at liberty to put an end to the contract.

2nd. That there was a similar condition empowering the defendant to put an end to the agreement if the plaintiff refused to play "light comedy" on request; and,

3rd. To play any character at all, at seven days' notice.

By the COURT.—The third plea is only a variety of the second. You can take a rule to plead the two first.

Rule nisi to shew cause at chambers.

WILLIAMS v. WYNNE and OTHERS.

Award.

E. V. Williams moved to set aside the award, under an order of reference, whereby the cause and all matters in difference were referred. The action was in trespass, for taking a cow, mare, colt, and yearling-colt of the plaintiff, to which the defendant pleaded not guilty, and that the goods were not the property of the plaintiff.

It was contended that the arbitrator had not finally disposed of the cause, as though he had found against two of the defendants, with 9*l.* 10*s.* damages, he had only awarded, as to the other defendant, that the evidence was not sufficient to satisfy him. Therefore he awarded a stay of proceedings, without costs.

The next objection to the award was that all the issues on the record had not been disposed of.

Rule nisi.

RIDDELL v. DAVISON.

Award—Irregularity—Want of finality.

M. Chambers moved to set aside an award.

The action was one of trespass to the reversionary interest of the plaintiffs, as trustees of a chapel, by stopping up a water-course.

Pleas—1st, Not guilty; 2nd, a denial that the reversion was in the plaintiffs; and, 3rd, a denial of right to the water-course.

The award was irregular, inasmuch as it had been made by one of the arbitrators and the umpire, in the absence of the arbitrator, and it was not final, as it did not find upon the two last issues. *Rule nisi.*

Ex parte WM. PARTINGTON.

Habeas corpus—Commissioners of Bankruptcy—Power to remand—Construction of 7 & 8 Vict. c. 96.

A Commissioner of Bankruptcy has a right to remand to his former custody a party who had petitioned the Court, obtained his interim order, but whose petition was dismissed. The twelve months mentioned in the Act only control the duration of the imprisonment, after the refusal of the final order, but do not apply to the case of a party in custody before that refusal.

Peacock moved on behalf of Wm. Partington for a writ of *habeas corpus ad subjiciendum*. The affidavits shewed that the prisoner, having been detained in execution by the sheriff on three writs, for a sum total exceeding 300*l.* petitioned the Insolvent Court in 1842, since which no further steps have been taken by him. In August 1844, he petitioned the Court of Bankrupts, under the 6th section of the 7 & 8 Vict. c. 96, when an *interim* order was made till the 23rd September, for the protection of his person from process. On the 23rd Sept. the Commissioner refused his *final* order, on the ground that as he had already petitioned another court, he could not move in that court till the proceedings in the other had been concluded; and he further remanded him to custody. This the Commissioner had no authority to do. The prisoner could only have been retaken by the sheriff, after he had obtained his *interim* order, though the final order was refused. The 24th section of the Act shews the cases under which the Commissioner may remand a prisoner, and this case is not within that section. If, however, he has that power, the prisoner is entitled to his discharge under the 28th section of the Act, as he has been in custody more than twelve months. These points have been before the Court of Queen's Bench, and they have been decided against the application; and such was the view entertained of the Act by the Chief Baron at chambers; but as the petitioner is entitled to take the opinion of all the judges, he now presses for the judgment of this Court. *Peacock* then handed to the Court this case (*Re Partington*, 4 Law T. 172), which, he said, was the only report that had appeared, and contained a *verbatim* copy of the judgment of the Queen's Bench. Their lordships, having read the report, said that the case was of importance, and they would consider it. *Cur. adv. vult.*

Afterwards, *Friday, Jan.* 31.

PARKE, B. delivered judgment.—We are all of opinion that the prisoner is not entitled to his discharge. The right of the Commissioner to remand does not depend on the 27th section, but is incident to his power. It is not confined to the cases mentioned in the Act. This being so, it is unnecessary to decide the second point. As to the third, it is clear that the twelve months mentioned in the Act are imposed as a limit on the discretionary power of the Commissioner. It is meant thereby to control the duration of imprisonment after the refusal of the final order, and cannot apply to the cases of those parties, who, like the petitioner, have been in custody for any period of time before that refusal. When he shall have been imprisoned twelve months under the Commissioner's remand, the question may arise, but it cannot now.

Rule refused.

POYLE v. ——.

A document bearing a 10l. receipt stamp, and purporting to be for 10l. and also for "favours and services," is not within the provisions of the Stamp Act, which refers only to "debts, claims, and demands."

This was a motion for a new trial, on the ground of misdirection and the misreception of certain evidence, in which the Court had taken time to consider. The action was for seduction, *per quod servitium amisit*, and it appeared at the trial that the illness of the plaintiff's daughter arose from the desertion of the defendant, and not from her proving *enceinte*. This Pollock, C.B. thought was too remote a cause of action, and so directed the jury, who found on the plea of not guilty for the defendant accordingly. On this point, Pollock, C.B. now said that the Court was of opinion that the question was proper for discussion, but suggested that the necessity for a new trial might be obviated by the defendant submitting to a verdict for the plaintiff on the general issue, as, under the view taken of the other point, the defendant would be entitled to retain the verdict of the jury on the plea of accord and satisfaction.

In support of that issue a document was put in bearing a receipt stamp to the amount of 10*l.* and purporting, moreover, to be a discharge for all "favours and services" rendered by the plaintiff or her daughter to the defendant. This, it was objected, ought to have borne a 10*s.* stamp, as being a "receipt in full;" but it appeared that the Act only referred to cases of "debts, claims, and demands," neither of which could be said to be embraced in this paper; on that point, therefore, there would be no rule.

Watson consented for defendant, and so

Judgment accordingly.

Friday, Jan. 31.

NORDONSTROM v. PITT.

The common count for interest, alleging that defendant was indebted to plaintiff for interest on money forborne to the defendant at his request, is good; and a writ of error assigning that it does not raise any implied promise, is frivolous.

Edwards shewed cause against a rule obtained by *Jerris*, Q. C. to shew cause why execution should not issue against the defendants, notwithstanding a writ of error sued out by them, upon the ground that the grounds of error assigned were frivolous. The declaration contained the common count for interest, alleging that the defendant was indebted to the plaintiff for interest upon divers sums of money, for divers long spaces of time forborne by the plaintiff to the defendant, at his request. The ground of error assigned was, that the count was founded upon a promise supposed to be implied by law, and that no such promise could be implied, and that there was no

sufficient consideration alleged to support an express promise.

Edwards.—There can be no promise to pay interest implied from the mere forbearance of money, whether that forbearance was at the request of the defendant or not. It ought at least to be alleged that the money was forborne at interest, but the request to forbear does not at all raise an implied promise to pay interest.

POLLOCK, C. B.—Are you aware how long this form has been in use in Westminster Hall?

Jervis, Q. C. and *Butt*, contrà.

By the COURT.—The rule must be absolute. We must consider this a frivolous objection.

Rule absolute.

M'INTYRE *v.* MILLER.

A declaration by the secretary of a company, suing for the company under an Act of Parliament, need not shew that the plaintiff was secretary at the commencement of the suit, if it appear that he was so at the time of declaring. The defendant having pleaded a plea, to which plaintiff demurred, defendant entered a relictâ verificatione, and no further proceeding was taken upon the plea. The proceedings were entered upon the Nisi Prius record, and judgment was given for the plaintiff upon the other pleadings. Error having been brought by the defendant, assigning that the plea had not been properly disposed of, and that, being admitted by the demurrer, it was an answer to the action: Held, that the error assigned was not frivolous, and the Court would not permit execution to issue.

In this case, *Edwards* shewed cause against a similar rule to that in the last case. The first ground of error was the same as that in the last case. The second was that it did not appear from the declaration that the plaintiff, who sued as secretary to a company under an Act of Parliament, was such secretary at the commencement of the suit, but only at the date of the declaration. The third ground of error was that founded upon the following state of the pleadings. The defendant had pleaded among other pleas, one to which the plaintiff demurred. The defendant then entered upon the record a *relictâ verificatione* in the following form:—"And the defendant, inasmuch as he cannot deny that his said plea is not sufficient in law to answer the said declaration, freely here in court abandons and relinquishes his said plea and all verification thereof; wherefore let no further proceeding be had to the said plea." The plaintiff had, in consequence of this, taken no further notice of the plea, but in making up the *Nisi Prius* record, it was entered with the rest, and also with the demurrer and subsequent *relictâ verificatione*. The error assigned upon this was, that this proceeding was wrong; that the plaintiff ought to have ruled the defendant to join in demurrer, and so have disposed of the demurrer in a proper manner, and that the *relictâ verificatione* was a mere nullity.

Edwards shewed cause against the rule, and contended that the grounds of error were not frivolous. After the decision of the Court in the other case, the defendant cannot rely upon the error firstly assigned. The second, however, is a substantial objection to the declaration. The plaintiff sues as secretary to a company, pursuant to an Act of Parliament, and the declaration does not shew that he was such secretary at the commencement of the suit. He may have been appointed after the writ was issued, although before declaration. [PARKE, B.—Is it not analogous to the case of a common declaration, which need not shew that the cause of action arose before the writ issued, though it would be necessary to prove it at the trial?] At all events, the third error assigned is far from frivolous. There has never been a decision upon an entry of this sort. The plea is admitted to be true in fact by the demurrer, and the defendant, although he might, perhaps, have entered a *retraxit*, if issue had been taken upon it, and so admitted the facts, cannot be supposed to be a judge of the sufficiency of the plea in law. Supposing the Court should be of opinion that the plea is good, are they, finding it admitted on the record to be true in fact, still to give judgment against the defendant? The plaintiff ought to have ruled the defendant to join in demurrer, so as to procure the judgment of the Court in the proper way, upon the validity of the plea. Not having done so, he must be taken to have admitted it. It is not necessary for the defendant now to shew the Court that there is actually error. It is sufficient if he makes out that the point is new and admits of doubt.

Jervis, Q. C. and *Butt*, contrà.—This is, at all events, not a point upon which the Court will look with favour. The defendant comes now to the Court to take advantage of what he says is the informality of his own proceedings. He has, in fact, laid a trap, in which he hopes to catch the plaintiff. The form is taken from Rastall's Entries, and has been frequently used. It amounts to exactly the same thing as if the defendant had, with the consent of the plaintiff, withdrawn the plea after having pleaded it. The only difference is, that instead of his taking back the plea, and putting it in his pocket, he has chosen to put his withdrawal of it upon paper. To this the plaintiff has assented, and the effect of it is, that the plea is completely done away with. It need not have been upon the Nisi Prius record, and its being there is of no consequence whatever. It cannot be said, that when pleadings were made, *ore tenus*, in open court, a party might not, at any stage of a case, have withdrawn any defence which he had once set up.

Borill, as *amicus curiæ*, here mentioned to the Court a case of *Cooper* v. *Painter*, and another, *Hutton* v. *Turk*, reported only in the Law Times, vol. 2, p. 74, in which forms like this had been before the Court. The effect of those cases was, that a form like this might be used by a defendant, and that as there could be no judgment given upon the demurrer upon such an abandonment of the plea, the plaintiff could obtain no costs of the demurrer.

By the COURT.—If the only grounds of error in this case had been the first and second, we should probably have thought them frivolous; but we cannot consider ourselves justified in deciding that the third error assigned is entirely frivolous, and unless we could come to that conclusion, we have no power to make this rule absolute. We are far from deciding that the point is really good, but we cannot say that there is absolutely nothing in it.

BUSINESS OF THE WEEK.

Thursday.

TURNER *v.* WILLIAMS. *Rule for a new trial.*—*Whately* shewed cause. *E. V. Williams* supported the rule. *Rule discharged.*

SYDNEY *v.* BINGHAM.—*Whately* shewed cause against a rule for judgment as in case of a nonsuit. *Humfrey*, in support of the rule.

Rule discharged on terms.

DOE *dem.* WILMOTT *v.* ROSS. *Rule to set aside an order of Rolfe, B.*—*Whitehurst* shewed cause. *M. D. Hill*, and *Mellor*, contra. *Rule enlarged.*

Friday.

THE ATTORNEY GENERAL *v.* REILLY. The Court having taken time to consider in this case, to-day made the rule absolute for the examination of the witness on interrogatories, reserving to the defendant the right to except to the admission of the deposition at the trial. *Rule absolute.*

THE ATTORNEY-GENERAL *v.* BAYANI.—POLLOCK, C. B.—The Court thinks that in this case there ought to be a rule *nisi* for a new trial, on the ground of the rejection of evidence for the defendant.

Rule nisi.

THOMAS *v.* WATERS.—*Watson*, Q. C. shewed cause against a rule obtained by *Lush* to take a judgment off the file.

The matter was ultimately referred to the Master.

BRANT *v.* POOLE.—*Peterson*, for judgment as in case of a nonsuit. *Unthank* shewed cause.

Rule discharged on peremptory undertaking.

JOHNSON *v.* MORLEY.—*Jervis*, Q. C. shewed cause against a rule obtained by *Hoon*, upon affidavits, to shew cause why a certain affidavit, which was alleged to have been surreptitiously taken off the file of the court, should not be refiled. *Rule discharged.*

DICKINSON *v.* ALSOP.—*Watson*, for a rule to shew cause why plaintiff should not pay to defendant a sum of money, pursuant to an award herein on the Master's *allocatur* thereon. *Rule refused.*

PEEL *v.* WEATHERBY.—*Crowder*, Q. C. shewed cause against a rule obtained by *Peacock*, calling upon the claimant under the interpleader rule in this case, Mr. Wood, to shew cause why he should not pay certain costs. *Rule absolute.*

CLOUD *v.* TWART.—*Humfrey* shewed cause against a rule obtained by *Ogle*, to shew cause why the attorney for plaintiff should not pay certain costs.

Rule discharged.

EXCHEQUER CHAMBER.

On Error from the Court of Queen's Bench.

Tuesday, February 4.

(Before TINDAL, C. J., PARKE, ALDERSON, ROLFE, and PLATT, Barons, and MAULE and CRESSWELL, Justices.)

NEWTON *v.* HOLFORD and OTHERS.

Held, that money may be paid into court under the 3 & 4 Wm. 4, c. 42, s. 21, on an action of trespass, for breaking into the plaintiff's dwelling house, and assaulting his son, per quod servitium amisit.

This was an action of trespass, and the declaration, in the first count, charged the defendants with breaking and entering the dwelling-house of the plaintiff, and, in the second count, with assaulting his son, whereby he was deprived of the services of such son; and, in the third count, with another breaking and entering into the dwelling-house of the plaintiff, and assaulting another of his sons, whereby, &c. The plea was one of payment into court of forty shillings.

The replication traversed that the plaintiff had sustained damage to a greater amount than the forty shillings.

The jury found that the plaintiff had not sustained damage to a greater amount than the forty shillings.

Error was assigned that the plea was insufficient in law to bar the action, and now

Newton, in person, appeared to maintain the writ of error. He stated that the question was whether, in this form of action, the defendant can have the advantage of paying money into court, and thereby satisfy the declaration. Money was never before allowed to be paid into court in an action of this nature, or one resembling it. No precedent could be found of any such payment. A broad distinction had been always taken between actions for injuries *with force*, and *without* force. It was incumbent on the other side to shew the change which had taken place in the law in this important respect. This was an action of trespass, and charged three distinct causes of action for general damage:—1st, that defendant had forcibly entered the plaintiff's dwelling house, with weapons, &c.; 2nd, had assaulted the plaintiff's son; and, 3rd, had assaulted another son of the plaintiff. Now, either of these would form a separate cause of action, and a plea of payment cannot be pleaded to part of a count; and even if it *could* be, it *is* not so pleaded. It applies to the whole count. It might be a question (which he should confidently contend would be decided in the negative) whether such a plea could be pleaded to a forcible entry into a dwelling-house, because the wrong was one *of force*, and in such cases the defendant not only was bound to compensate the plaintiff, but also to *pay a fine* to the King. This count, besides, charges an assault on the plaintiff's son. No greater violation of the peace could be charged than the facts stated in this count. The recent statute, 3 & 4 Wm. 4, c. 42, s. 21, extends the power of paying money into court by leave of the judge; but it has never been held to extend to such an action as this. Why should the parties guilty of such acts as those charged in the declaration be at liberty to pay money into court, and throw upon the plaintiff the onus of trying the amount of damages at his own hazard? The 3 & 4 Wm. 4, c. 42, s. 21, seems to guard against such actions, as it contemplates them in its exception, thus enacting, that "the defendant may, in all personal actions (*except actions for assault and battery*, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation or debauching of the plaintiff's servant or daughter), pay money into court," &c. [ROLFE, B.—The question is whether *this* is an action for assault and battery?] Here decidedly the plaintiff claims damages for an assault and battery. [TINDAL, C. J.—Not *on himself*. ALDERSON, B.—The section clearly only applies to an assault upon himself. The case of *the servant* is nearer this. TINDAL, C. J.—The case put of *debauching* shews *beating* a servant is not within the section, as *expressio unius est exclusio alterius*.] Case would lie for that injury without the assault. [ALDERSON, B.—The exception was intended to apply to personal injuries. MAULE, J.—The *son* might bring an action, and money could not be paid into court. The injury to the father is only the loss of service, which may be compensated by money.] This action will lie without an allegation of loss of service, if the plaintiff's house has been entered. (Buller, J. in *Bennett* v. *Allcott*, 2 T. R. 166.) [TINDAL, C.J.—There the debauching was held merely *aggravation*. The plaintiff might have recovered damages without the debauching, merely for breaking the house. ALDERSON, B.—Suppose the defendant had used slanderous words. The question is, what is the cause of action? Here, *entering the house* is the cause. MAULE, J.—The cause of action is breaking into the house and the loss of service of the son; the injury to *the son* is a cause of action to *him*, which possibly he may sue upon.] Has the parent a right to damages irrespective of the loss of service? He would have a right of action for the breach of peace in entering the house: he would be justified in resisting in defence of his son. It is a breach of the peace to assault the son in the parent's house. [ALDERSON, B.—Paying money into court for breaking the plaintiff's house *with aggravation*, is *not* within the exception. PARKE, B.—The action could not be maintained for the injury to the son without the allegation of *the loss of service*. ALDERSON, B.—If you *proved* the assault, you might still *fail*, which shews that the assault is no *cause of action*.] *Ditcham* v. *Bond* (2 M. & S. 436) is a very material case for the plaintiff. There it was held, that "a count for beating the plaintiff's servant, *per quod servitium amisit*, might be joined with counts in trespass for breaking and entering his dwelling-house and assaulting himself. This is substantially the declaration adopted here. [ALDERSON, B.—Could you not pay damages into court—1st, for the breaking the house; and, 2nd, for the loss of service? then why not for *both*? because *debauching* a servant (and not *beating* a servant) is the only exception. PARKE, B.—The reason why you cannot in this case pay the money into court is, that if you only proved the *assault*, you would get no damages.] The Legislature in the exception had the distinction mentioned by Blackstone in view, of cases of breach of the peace and of cases not within that category. [ALDERSON, B.—No doubt, before the Act, the law was so; but the question is, whether this case is within the Act?] The *exception* in the Act was intended to include actions *on the case*.

TINDAL, C. J.—The Act says, that in all personal

actions, except for assault and battery, &c. and debauching the plaintiff's servant, money may be paid into court. This is not an action for assault and battery, as the assault here charged is only matter of aggravation, and could not be made the foundation of an action; and the express enactment as to debauching a servant shews that beating him was not included. Judgment must be affirmed.

BAIL COURT.

Thursday, Jan. 30.

(Before Mr. Justice WILLIAMS.)

DOE *dem.* MAJOR and ANOTHER *v.* ROE.

Judgment against the casual ejector—Sufficiency of affidavit of service.

Prideaux moved in this case for judgment against the casual ejector. The affidavit of service stated that the deponent served the three tenants in possession, "by delivering such true copy to each of them, the said Thomas Williams, Thomas Alexander, and Ann Thomas," not stating that a true copy was delivered to each.

WILLIAMS, J. thought the statement sufficiently certain. *Rule absolute.*

HAWKINS *v.* BENTON.

Judgment.

WILLIAMS J. gave judgment in this case, declaring that, as the award was certainly not free from objection, and as the parties could enforce it by action, he did not feel himself called upon to interfere; and he directed the *Rule to be discharged.*

(See 4 Law T. 340.)

SPARDING and ANOTHER *v.* GREVILLE.

Judgment.

His lordship, after having referred to the facts of this case, and the arguments used (see 4 Law T. 319), declared his opinion to be, that the variations and abbreviations were wholly immaterial; that they were such as were uniformly resorted to, and were sufficiently intelligible to prevent any misunderstanding; he therefore directed the *Rule to be discharged with costs.*

(Before Mr. Justice WIGHTMAN.)

MILNER and ANOTHER *v.* HART.

Warrant of attorney—Setting same aside when given for a debt in respect of which the defendant has been discharged by the Insolvent Court.

Greenwood and *Payne* shewed cause against a rule obtained herein by *Crowder*, Q.C. calling upon the plaintiffs to shew cause why the warrant of attorney, and the defeazance, should not be set aside, and why a sum of money received thereon by the plaintiffs should not be refunded to the defendant, with costs. It appeared that the defendant had applied for his discharge under the Insolvent Debtors Act; that he was opposed by the plaintiffs; that he was thereupon ordered to be discharged at the expiration of seven months; that, with the view of detaining the defendant during this latter period, the plaintiffs caused a detainer to be lodged against him. A proposal was then made, that, in consideration of the defendant giving a warrant of attorney for 49*l.* payable by instalments (the original debt as inserted in the schedule being 82*l.* 1s. 9d.), they would release him from custody. The warrant of attorney was accordingly given, and several payments had been made under it. It was now objected, 1st, that this application was premature, inasmuch as no proceedings had been taken upon the security (*Key* v. *Masters*, 1 Dowl.); 2nd, that the warrant of attorney was not in violation, as it was asserted, of the 1 & 2 Vict. c. 110, s. 91, which renders void any new contract to pay a debt from which the insolvent has been discharged; inasmuch as the consideration for the warrant was the defendant's discharge from custody. (*Collins* v. *Benton*, 9 Dowl. 930; *Ashley* v. *Killick*, 5 M. & W.)

Crowder and *Hoggins*, contrà, cited *Sweeney* v. *Sharp* (4 Bing. 37), and were stopped by the Court, which thought the case clear from doubt, and directed the rule to be made *Absolute without costs.*

Friday, Jan. 31.

(Before Mr. Justice WILLIAMS.)

BILLING *v.* RAILTON.

Although a plaintiff may insert a return day in the jury process or the writ of trial at a distant period after the day of trial, the Court will, on the application of a defendant (if he is prejudiced by the length of the return), order the officer in whose custody the record is, to return it earlier into court.

James shewed cause against the rule obtained herein, calling upon the plaintiff to shew cause why the officer of the judge of the Sheriff's Court should not return the record in this cause into this court. Issue in this case was joined on the 3rd of January last, and an order for trying the case before the judge of the Sheriff's Court having been obtained, the cause came on for trial on the following 7th. At the trial, the defendant succeeded on his sixth plea, which went to the whole action. The writ of trial was made returnable on the first day of next Easter Term (15th April). It was now contended, in opposition to this rule, that notwithstanding the plaintiff had made the return of the writ at so distant a period, he was justified in so doing; that the defendant could have applied to have had the issue amended; that since the trial, an application had been made to a judge at chambers to order the return of the writ, but that he had refused to make an order; that the Act 3 & 4 Wm. 4, c. 42, s. 17, merely requires that the writ of trial shall be made returnable at a day certain in Term or vacation, to be named in such writ, without imposing any limitation as to the length of the return.

Hoggins, contrà, argued that as the uniform practice of the Court is to have these writs returnable sometime in the same Term as the trial, or if the trial be had in vacation, on the first day of the ensuing Term, that the Court would interfere to prevent the injustice of the defendant's being deprived of his costs until the next Term; that if the plaintiff was justified in postponing the return to so long a date, he could postpone it for years; and a plaintiff who expected to be defeated probably would avail himself of such a power.

WILLIAMS, J. thought that, notwithstanding the terms of the Act of Parliament left it open to the plaintiff to insert what day he chose for the return of the writ of trial, yet as the practice had always been to make these writs returnable the same Term as that of the trial, and as it would be a matter of indifference to the sheriff whether the writ is returned now or at a future period, he should make the *Rule absolute.*

BUSINESS OF THE WEEK.

Thursday.

SMITH *v.* LORD.—*Rule absolute for a new trial.*

Ex parte COLLINS. *Knowles*, Q. C. appeared herein; *Horry*, contrà. *Rule enlarged till next term.*

PAINE *v.* SPOONER.—*Martin*, Q.C. and *Miller* shewed cause against a rule obtained herein for setting aside an award, on the grounds, 1st, that the award was uncertain; 2nd, that the arbitrator had not awarded on a material matter. *Rule discharged, with costs.*

Ex parte THE MIDLAND RAILWAY COMPANY.—*Hill*, Q. C. moved for a *certiorari* to bring up a coroner's inquisition taken on view of the body of William Samuels, who met with his death by an accident on the railway between Nottingham and Derby. The object of the motion was to have the inquisition quashed, on the grounds, 1st, that the jury was not composed entirely of "*men of the county*;" 2nd, that the statement of the accident on the face of the inquisition was repugnant and insensible. *Application granted.*

REG. *v.* THE JUSTICES OF BUCKINGHAMSHIRE.—(See this case reported last week.)

REG. *v.* THE JUSTICES OF CORNWALL. *M. Smith* shewed cause against a rule for a *certiorari* to bring up an order of justices for the removal of a pauper lunatic from Falmouth to the county lunatic asylum at Bodmin, and it was objected that the removing justices of Falmouth had no jurisdiction. *Montagu*, contrà. *Rule absolute.*

Ex parte LLOYD.—*Stephens* moved for a *habeas corpus* to bring up the applicant from the lunatic asylum at Hanwell, whither it was alleged he had been conveyed without any justifiable cause. *Writ granted.*

AUSTIN *v.* MARTIN. *Pearson* moved for a rule to restrain the plaintiff from issuing an execution herein, on the ground that the action which was brought was on a judgment recovered against the defendant in an action for a debt under 20*l.* *Rule refused.*

Friday.

REG. *v.* THE GUARDIANS OF THE KINGSBRIDGE UNION.—*Tomlinson* moved to make this rule absolute, no cause being shewn. (See 4 Law T. 340.) *Rule absolute.*

REG. *v.* THE EASTERN COUNTIES RAILWAY COMPANY.—*Hayes* moved for a *mandamus* commanding the company to proceed to award compensation to a landowner. *Rule refused.*

REG. *v.* THOMAS PAINTER, Esq. *Crompton* moved for a rule *nisi* for a *mandamus*, commanding the above gentleman, who is one of the magistrates at Lambeth-street police office, to grant his warrant of distress on the goods of one of the proprietors of Putney-bridge for non-payment of the poor-rates assessed on the said bridge. *Rule nisi.*

PONTIFEX *v.* DUFFIELD. *Knowles*, Q.C. shewed cause against this rule. *Worlledge* contrà. (See 4 Law T. 342.) *Rule discharged.*

DAVIS *v.* HARRIS. *Bramwell* shewed cause. *V. Williams*, contrà. (See 4 Law T. 298.) *Rule absolute.*

BLACKWALL *v.* BUTLER.—*O'Malley* shewed cause against this rule, which was to set aside a nonsuit and for a new trial. *V. Williams*, contrà. *Cur. adv. vult.*

MARTIN and ANOTHER *v.* COLLINS.—*Phinn* moved for a new trial in this case, which was tried before the Undersheriff of Middlesex, when a verdict was returned for the plaintiff for 13*l.* 6s. 9d. *Rule nisi.*

DAVIS *v.* VERNON.—*F. V. Lee* shewed cause herein. *Alexander*, Q. C. contrà. *Cur. adv. vult.*

REG. *v.* THE JUSTICES OF CHESHIRE.—*Townsend* moved for a *certiorari* to remove an order of bastardy into this court, with the view to quashing the same, on the grounds that it does not appear that the evidence was taken upon oath, and that her statement was not declared to have been corroborated in some material particular. *Certiorari granted.*

THE LEGISLATOR.

Summary.

IT will be seen that many of the promised measures of law change (we will not call them law reforms till we see them) are to be introduced. Lord STANLEY brings into the Lords a Bill for regulating Charities. Sir JAMES GRAHAM renews his Settlement Bill, with amendments. The Government has adopted a Criminal Appeal Bill, we presume a sort of compromise between the measures of Lord CAMPBELL and Mr. F. KELLY. The County Courts Bill is not to re-appear this Session; the Ecclesiastical Courts Bill is to be permitted to sleep in peace. The Magistrates' Clerks Bill is to be passed. There is to be an amendment of the Transfer of Property Act; but no prospect is held out of an alteration in the Debtors' Indemnity Act; its noble and learned parent declaring that it has but *one defect* (! !) and Sir JAMES GRAHAM asking for it a fair trial.

These measures are of themselves sufficient for the amusement of a less busy session than the present is like to be. With a promised revision of the taxation of the country, and the immense mass of private business impending, our Legislators will have enough to do without perplexing themselves with Law Reforms. It is therefore most probable that very few of the measures talked of will be converted into laws.

Imperial Parliament.

HOUSE OF LORDS.

LAW REFORMS.

TUESDAY, Feb. 4.—Lord CAMPBELL begged leave to give notice that, unless a bill similar to that brought in last year in reference to the criminal law (as was understood), were again brought forward, he should himself offer a measure to their lordships on the subject. It would be infinitely preferable that such a bill should be brought forward by the Government, and he did trust it would. Although the Queen's speech was silent respecting legal amendments, their lordships were aware that various measures of that nature were to be brought forward, and he hoped that means would be speedily taken for the purpose. Much had been done in that department, but much still remained to be done. He took it for granted that at an early period of the session an Ecclesiastical Courts Bill would be laid on the table. Their lordships had passed such a bill last session, and the journals of the other House told them that, after one division there, it was abandoned. The state of the ecclesiastical courts imperatively required that as speedily as possible some measure should be brought forward respecting them. The law of debtor and creditor, too, was now in a very confused and unsatisfactory state. Various questions had arisen upon it which could only be settled by legislation, and he trusted that either one or other of his noble and learned friends who now divided the woolsack (Lord Brougham was at the moment seated with the Lord Chancellor) would at some short period bring forward some satisfactory measure on the subject, and he would earnestly implore them to do so, because they must be aware that serious inconvenience arose from delay in such matters. There was another bill introduced by his noble and learned friend in the centre of the woolsack, respecting the conveyance of property. That bill was brought in early in the session. It slept month after month, and it was only awakened from that profound repose about ten days before the close, and several clauses were then introduced which had never been heard of before—of which the profession were utterly ignorant—and by one of which the Legislature tried to do that which was impossible—as impossible as it would be to enact that a square was a circle; for, to enact that a "contingent remainder" should be an "executory devise," was, as was known to all who were acquainted with the matter, utterly impossible. The statute remained a dead letter. It was considered by the profession as utterly unjust, and it was thought that the only safe way to deal with it would be to treat it *pro non scripto.* He trusted, therefore, that a measure would be speedily brought forward by the Government, for it was important that it should be laid early on the table in order that it might be duly considered, and thus made conducive to the improvement of the law.—The Lord

Chancellor said he rose for the purpose of explaining the course which he intended to pursue with respect to the first bill mentioned by his noble and learned friend. Their lordships were aware that a bill had been brought forward last session by a noble and learned friend of his, in consequence of the absence of another noble and learned lord, with respect to the jurisdiction in criminal cases. He begged to say that it was the intention of Her Majesty's Government to introduce during this session a bill of that description, and he begged also to say that the only ground upon which he objected to the further proceeding in the measure at that time was, that when he considered the history of the bill it did not appear to him that it had undergone that mature deliberation which it required at the hands of those who were most competent to judge of the expediency of its provisions. With respect to the last bill, relating to the transfer of property, upon which some observations had been made, he must be permitted to say that the bill had been on the table for the consideration of noble lords for a long time. The first conveyancers in the country had been consulted upon it; printed copies of it had been distributed, and no objections were made to it in its progress. To his noble and learned friend who had left the House he (the Lord Chancellor) had stated that the bill involved a variety of important transactions, and begged of him to have the kindness to go through it, and to point out any of the provisions which appeared doubtful, stating that he should be ready to strike out any which he thought ought not to be in it. His noble and learned friend objected to some provisions, and they were struck out, and the bill passed with those exceptions. He believed he had addressed the same observations to his noble and learned friend, who had referred to the bill. As it was a bill which contained many nice points and metaphysical distinctions, he was anxious that it should have the advantage of all the law learning in the House, and his noble and learned friend would do him the justice to admit, that he had desired him to criticise it in order that by his assistance it might be rendered as perfect as possible. He admitted that in some particular cases difficulties had arisen. He had now a bill in preparation for the purpose of removing those anomalies and inconveniences. He should have the pleasure of submitting it to his noble and learned friend, and in a few days he would lay it before the House. Lord Brougham said, with respect to the law of "Debtor and Creditor," after what had fallen from his noble and learned friend, he would not now go into that subject, but he should be ready to discuss it at the proper time; and he was only anxious to take the present opportunity to vindicate the measure brought in last year, and to shew to their lordships and to the country—that country, to mislead which incessant means were taken—that it was not the fault of the Bill, and that no enactments of that Bill would have prevented those misdecisions, as they appeared to him, which had taken place in some quarters; but that the great outcry which had arisen, was with respect to the 20*l.* clause; and he was charged with having upset trade by the introduction of it. Now, he was a great friend to the 20*l.* clause; but it was not his clause. It was added in committee after the examination of evidence; and instead of the Bill as brought in and supported by the Government and himself being answerable for the 20*l.* clause, that was the part of the Bill which was most particularly approved of and supported by the predecessor of his noble friend—he might name him as he was not present, Lord Cottenham, and that noble lord's measure went ten thousand times farther than the present, for it abolished imprisonment in all cases and for all sums, whereas this Bill only prevented it under 20*l.* There was, however, one great omission and defect in this bill. It did not enable a creditor to take hold of salaries. A clerk with 200*l.* a year, might contract a debt to the amount of 19*l.* and the creditor could not touch his salary; and if he lived in lodgings, he could not take the furniture, because it did not belong to him. A very slight alteration would rid that clause of this defect, and it was the only defect in the bill. The most blessed, the most happy effects had arisen from the clause, as would appear from the report of Captain Williams, the prison inspector. —Lord Campbell said the Bill had been drawn by Mr. Erle, now a judge of the Common Pleas, at the request of Mr. More O'Ferrall, a member of the House of Commons; and at the request of Mr. More O'Ferrall, he (Lord Campbell) laid it before their lordships. He claimed no merit from the Bill; but he must observe that it did not belong to any member of that House. He was, however, delighted that it was adopted by the Government.

HOUSE OF COMMONS.

SMALL DEBTS IN SCOTLAND.

Tuesday, Feb. 4.—Mr. Wallace gave notice of his intention to move for leave to bring in a bill to alter and amend certain portions of the Apellate Jurisdiction Act, relating to the recovery of small debts in Scotland.

COURT OF SESSION.

Mr. Wallace further gave notice that he would also call the attention of the house to the amount of business transacted in this court, and to the nature of the duties of the judges, with a view to the restriction of the number of the latter.

COUNTY COURTS.

Wednesday, Feb. 5.—Mr. Hume wished to know if it was the intention of the Government to proceed with the County Courts Bill?—Sir J. Graham replied, that, considering the immense changes that had taken place in the law of debtor and creditor during the past session—considering the power of imprisonment had been abolished—he was not prepared to say it was the present intention of the Government to bring forward a measure relating to county courts.

MAGISTRATES' CLERKS BILL.

Mr. Escott said an excellent Bill had been brought in last session for the abolition of certain extortionate practices in courts of justice, and he wished to ask the right hon. baronet whether that Bill would be proceeded with on some early day?—Sir J. Graham said his hon. friend referred to the Bill relating to magistrates' clerks and clerks of the peace being paid by salary instead of by fees. He proposed to ask for leave to re-introduce this measure to-morrow se'nnight. (Hear.)

CHARITIES IN ENGLAND.

Mr. Hume asked whether it was the intention of Her Majesty's Government to bring in any measure relating to charities in England?—Sir R. Peel had great satisfaction in telling the hon. gentleman and the House, that his noble colleague (Lord Stanley) would, in the course of next week, lay upon the table of the other House a bill on this subject. (Hear.)

LAW OF DEBTOR AND CREDITOR.

Mr. Hume asked the right hon. baronet the Secretary for the Home Department, whether it was his intention to introduce any measure this session for the amendment of the law of debtor and creditor?—Sir J. Graham replied, that considering the immense change recently made in the law of debtor and creditor, and that the power of imprisonment for debts under 20*l.* was abolished, he could not undertake in the present session, to propose any new measure. (Hear.) It would be expedient, he thought, to give a certain time, during which the recent change in the law should be tested by experience.

LAW OF SETTLEMENT.

Sir G. Grey said, that in the course of last session the Government had brought in a Bill for an alteration in the law of settlement, and he wished to know whether it was intended to re-introduce that Bill, or one substantially the same?—Sir J. Graham replied, that he before expressed his full expectation to the House that this subject, being of immense importance, would be taken into the most serious consideration of the Government. In that hope he had not been disappointed. He had received from many quarters important suggestions, which had led him to propose important alterations in the Bill; and therefore he thought it right to say he should take an early opportunity of re introducing it, and of stating in detail the alterations he proposed to make. If the House gave him leave to introduce the Bill, he should allow some time to elapse between its introduction and any further stage, so that the opinion of the country might be taken with regard to the proposed alterations. (Hear.)

ALLOWANCE TO IRISH JUDGES.

Lord Clements inquired whether the Government contemplated increasing the lodging allowance to the judges of assize in Ireland?—Sir J. Graham said if the noble lord had given notice of his question he should have been able to reply; but in the absence of the Secretary for Ireland he could not inform himself on the subject.

POOR AND COUNTY RATES.

Thursday, Feb. 6.—Sir James Graham moved for the production of an account of the amounts levied for poor rates and county rates in England and Wales during the past year.—Ordered.

LAW OF SETTLEMENT.

Sir James Graham.—It is my intention to move for leave to bring in a bill for the alteration and consolidation of the law of settlement in England. If the House has no objection, it will be most convenient to take the earliest time for its introduction. I propose, therefore, to make the motion in question on Tuesday next. (Hear.)

MEDICAL REFORM.

Sir James Graham.—I stated last night that it is my intention to move, on Tuesday se'nnight, for leave to bring in a Bill for the better regulation of medical practice. There is also another Bill which it will be necessary for me to ask leave to introduce, and I wish to give notice that, on the same day, I shall move for leave to bring in a measure to enable her Majesty to grant new charters to certain colleges of physicians and surgeons.

MUSEUMS IN CORPORATE TOWNS.

Mr. Ewart gave notice that he would, at an early period, move for leave to bring in a Bill to enable town councils to establish museums of art in corporate towns.

PRIVILEGES OF COUNSEL.

Mr. Ewart also gave notice that he should shortly move for leave to bring in a bill enabling the defendant's counsel in civil, and the prisoner's counsel in criminal cases, to address the jury on the close of the evidence for the prisoner or defendant. (Hear, hear.)

ASSIZE EXPENSES IN IRELAND.

Lord Clements wished to know whether the expenses of the going judges of assizes in Ireland had been increased in consequence of any recent arrangement?—The Chancellor of the Exchequer said the noble lord was not present last session when the votes regarding law expenses in Ireland were under the consideration of the House. The grounds for seeking an additional allowance were simply these. By an Irish Act of Parliament the judges were allowed 20*l.* Irish to provide themselves with lodgings in the several assize towns in Ireland. The sum was found inadequate to obtain lodgings in which the judges could decently reside; and it appeared, therefore, to the Government that an estimate should be submitted to Parliament for an increased allowance. Accordingly an estimate was submitted in the course of last session; Parliament acquiesced in the amount fixed, namely, 669*l.* for the thirty-nine assize towns.

CONSOLIDATION CLAUSES BILL.

Lord G. Somerset explained the object of this Bill in a tone which rendered him almost inaudible in the gallery. He was understood to say, that its object was to consolidate the clauses generally inserted in a certain class of Bills. He did not intend they should be compulsory, but that parties applying might adopt them or not, as they chose. He proposed to read the Bill a second time on Monday, when he should state when the committee would take place, where, of course, any alterations might be made that were thought expedient. The noble lord then moved to bring in the first of the following Bills:—Companies Clauses Consolidation Bill, Land Clauses Consolidation Bill, Railway Clauses Consolidation Bill, Companies Clauses Consolidation (Scotland) Bill, Lands Clauses Consolidation (Scotland) Bill, Railway Clauses Consolidation (Scotland) Bill.

ECCLESIASTICAL COURTS.

Sir G. Grey.—May I ask the Right Hon. Secretary for the Home Department, whether he means to bring in any Bill this session for the reform of the ecclesiastical courts? (Much laughter from the Opposition). —Sir James Graham.—My colleagues and I have given notice already of a great number of important measures, which we hope to bring to a termination. My experience, however, of the two last sessions, leads me to despair that any legislation on this subject, for which I am responsible, can be brought to a satisfactory conclusion this session. (Renewed laughter.) I don't know what my right hon. friend may be disposed to do, but I am not prepared to take any step in the matter.

PARLIAMENTARY PAPERS.

COLONIAL EXPENDITURE.

On Saturday a return procured by Mr. Hume was printed, shewing the total amount of revenue received by the colonies, and the expenditure for the same in the year 1842: as also a general abstract of the military and naval expenditure by Great Britain for the colonies in the year 1843. The return extends to 58 pages, and shews the revenue and expenditure of each of the colonies under separate heads, with the exception of that of New Zealand, which appeared in a Parliamentary document printed some months back. The revenue of Gibraltar was 31,454*l.* 7s. 4d. and the expenditure, 31,445*l.* 7s. 7½d.; shewing a surplus revenue of 8*l.* 19s. 8½. Of Malta, the revenue was 120,852*l.* 1s. 0¾d. and the expenditure 110,759*l.* 0s 6¾d.; surplus revenue, 10,093*l.* 0s. 6d. Of Canada, the expenditure was 476,304*l.* 11s. 11d. and the revenue, 465,141*l.* 4s. 2½d.; excess of expenditure 11,163*l.* 7s. 8½d. Of Nova Scotia, the expenditure was 95,899*l.* 16s. 7d. and the revenue, 84,869*l.* 2s. 8d. shewing an excess of expenditure of 11,030*l.* 13s. 11d. Of New Brunswick, the expenditure was 81,920*l.* 11s. 7d. and the revenue, 55,792*l.* 18s. 4d.; excess of expenditure, 26,127*l.* 13s. 3d. Of Prince Edward's Island, the expenditure was 19,626*l.* 7s. 2¼d. the revenue 13,411*l.* 18s. 11d.; excess of expenditure, 6,214*l.* 18s. 11d. Of Newfoundland, the revenue was 56,686*l.* 12s. 0½d. and the expenditure, 40,787*l.* 17s. 8d.; surplus revenue, 15,898*l.* 14s. 4½d. Of Bermuda, the revenue was 19,342*l.* 8s. 10d. and the expenditure, 17,435*l.* 8s. 8d.; surplus revenue, 1,907*l.* 0s. 2d. Of Honduras, the expenditure was 13,459*l.* 8s. 10 4-5d. and the revenue, 12,515*l.* 7s. 10 4-5d.; excess of expenditure, 944*l.* 1s. Of St. Helena, the expenditure was 17,756*l.* 13s. 1½d. and the revenue, 17,643*l.* 5s. 11½d.; excess of expenditure, 113*l.* 7s. 11¾d. Of Ceylon, it appears that the expenditure was 301,791*l.*; but, after the estimated expenditure of an agent in London, &c. the excess of expenditure would amount to 28,204*l.* Of the Cape of Good Hope, the revenue was 226,261*l.* 4s. 10⅝d. and the expenditure, 226,025*l.* 17s. 6½d.; surplus revenue, 235*l.* 7s. 4½d. Of Sierra

Leone, the expenditure was 26,209*l.* 2s. 5½d. and the revenue, 24,165*l.* 7s.; shewing an excess of expenditure of 2,043*l.* 15s. 5½d. Of Bathurst and its dependencies (River Gambia), the revenue was 9,592*l.* 3s. 11d. and the expenditure, 7,472*l.* 18s. 10d.; surplus revenue, 2,119*l.* 5s. 1d. Of New South Wales, the revenue was 844,265*l.* 8s. 10d. and the expenditure, 804,982*l.* 19s. 8d.; surplus revenue, 39,282*l.* 9s. 2d. Of Van Diemen's Land, the expenditure was 182,622*l.* 11s. 1d. and the revenue, 160,003*l.* 13s. 10d.; excess of expenditure, 22,618*l.* 17s. 3d. Of Western Australia, the expenditure was 18,334*l.* 1s. 4d, and the revenue, 17,031*l.* 14s. 8d.; excess of expenditure, 1,302*l.* 6s. 8d. And of South Australia, the expenditure was 84,531*l.* 16s. 10d. and the revenue, 81,813*l.* 19s. 5d.; shewing an excess of expenditure of 2,717*l.* 17s. 5d.

THE MAGISTRATE.

Summary.

THE Settlement Bill is to be revived with amendments, and then time is to be given for the country to consider the alterations, so that there is no chance of its passing during the present session. Nothing has been said about an alteration in the Game Law.

We regret that the great demand at the beginning of the week prevented a supply of Mr. SYMONS's *Bastardy Forms* to all the orders. But the fact is, they were in such request, that for four days three presses were in constant work, and the Publisher was unable, even then, to keep pace with the orders. It is to be hoped that in future there will be no such difficulty, as the Publisher will have an abundant stock. It may be as well to state here that, in pursuance of the arrangement announced in the leading article, these, as well as all the other forms now in preparation, will be a part of the publications of the Verulam Society, and will be supplied to the members at the Society's lesser prices. To others, the charges will be as usual.

A.D. *v.* THE YEAR OF OUR LORD.

THE following letter has been addressed to the editor of the LAW TIMES:—

SIR,—The form of order in bastardy prepared by Mr. Symons, appears to have been settled with much care and skill, but from the manner in which it has been printed for sale (the printer probably not being accustomed to the getting up of magisterial forms), I am apprehensive that it is open to a very material objection. I allude to the date of the order, and all the other dates set forth therein, which are thus printed:- "A.D. 184 ." Such an abbreviation would not be allowed in an indictment (2 Hale, 170), nor in a conviction, which must have as much certainty in it as an indictment; and in the present day, when orders are construed with as much strictness as convictions, I think the abbreviation would be fatal to an order.

At all events, I trust you will excuse my calling your attention to the objection.

I remain, &c.

We are much obliged to our correspondent for his communication; and to others, who have also called our attention to the same point.

We feel perfect confidence in the validity of the order in the respect mentioned. We confess we should enjoy a sight of Lord DENMAN's expression of countenance when counsel moved before him to set aside an order in bastardy, because the date was only expressed as "A.D. 1845," instead of "in the year," &c. The pedantry of pleading never yet hazarded a special demurrer on so small a quibble. Not all the foppish and silly subtlety which the Courts have latterly shewn so strong and exemplary a desire to crush, has ever yet brought forth such an abortion of a cavil. But let us gravely answer the objection.

First, as to *Indictments*.—Hale lays down nothing which can be properly used as an authority for the opposite view. What he says is, that "*Abbreviations that are usual are allowable in indictments.*" * * * "Figures," he goes on to say, "*to express numbers* are not allowable in indictments, though sometimes literal numbers be allowable in returns, but in indictments the numbers, whether cardinal or ordinal, must be expressed in *Latin.*" Hale, then, is no authority for the English form contended for. Before the 4 Geo. 2, c. 26, convictions were always written in Latin, and orders in English. Hale is therefore clearly inapplicable to the existing state of things. If the words at length are required at all, even in convictions, which we incline to question, it is with reference to the 3 Geo. 4, c. 23, which imposes the adoption of a set form of conviction on justices, in which the date is set out at length; this, of course, has no reference whatever to orders. On this point under that statute we know of no decisions; but how stands the case with respect to convictions not within its pale? In the case of *Rex* v. *Crisp*, 7 East, 389, we find a conviction under the Malt Act thus worded:—"That this 29th of May, 1805, at Woodbridge, in the county," being the date of the offence, and ending thus—"we, the said justices, to this our record of conviction have set our hands and seals at W. aforesaid, this 4th of June, 1805." The whole order is set out. Here even the A.D. is omitted; and although the point turned on the statement of the time of the offence being committed, so that the judge's attention was called to the statement of date, the conviction was held good by Lord Ellenborough; and in every instance in which convictions have been quashed for informality, it has been for some defect which might mislead. See *Rex* v. *Salomons* (1 T. R. 249); *Newman* v. *Bendshye* (10 Ad. & Ell. 11), and many other cases. Now in stating a year as A.D. 1840, there is nothing which can mislead, and every thing which is usual and explicit. We firmly believe that even a conviction could not be quashed on such a ground alone.

But does the same degree of exactitude required in convictions extend to orders? By no means. "It is nevertheless certain (says Paley, on Convictions, 129, speaking of *penal* orders), that those proceedings have been not only deemed valid in the shape of orders, but upon that ground merely have been allowed to admit of informalities which would have been fatal to a conviction." Nor is this open to any doubt. Penal orders fall under the designation of orders so long as they are named as orders in a statute (*Rex* v. *Lloyd*, 1 Strange, 996), and it is so in this case.

Our friends may rest at ease, and spare themselves the trouble of such an unnecessary elongation of the order as to follow any other than the usual formula of date. They may dismiss all fear of appeal on that score.

We may take this opportunity of requesting that the forms may not be altered, except in respects which cannot be avoided. The phrases as well as the allocation of the averments, are all carefully adopted either with reference to the wording of the Act, or to some known objection. We are obliged by all hints of amendment, of which we have received one or two, and notwithstanding the marked confidence of the Profession, evinced by the best possible evidence, we earnestly desire to improve to the uttermost; at the same time, the Court of Queen's Bench is resolved not to sanction any frivolous ground of objection. A slight variance from the established forms would certainly not prove sufficient to set an order aside.

A very important question has arisen owing to the acknowledged invalidity of the LUMLEY forms. Where the father refuses to pay, can the magistrates safely issue their warrant to compel him? Where the adjudication has not proceeded on sufficient evidence, or if on the face of the proceedings there appear a want of jurisdiction, the magistrates granting a warrant on such void order, would be liable to an action of trespass. *Mitchel* v. *Foster* (12 Ad. & Ell. 72) is a recent and strong authority on this point, as well as the leading case of *Cave* v. *Mountain* (1 M. & Gr. 257).

It requires consideration, what is the best course to be pursued with regard to the orders defectively made. The question is, whether they can be treated as nullities, and an order be made on proceedings *de novo*. We must take time to consider this point.

S.

JUSTICES' CLERKS' SOCIETY.

The committee of the Justices' Clerks' Society, consisting of Messrs. Shepperd, Blagg, Lowe, Clabon, Fletcher, Long, Finch, and Smith, introduced by the Solicitor-General, had an interview with Mr. Manners Sutton, at the Home Office, on Wednesday week last, on the subject of the proposed Justices' Clerks' Fees Bill, introduced into Parliament during the last session. The deputation was graciously received, and their representations were listened to by Mr. Sutton with great attention.

The main point which the committee endeavoured to urge was the mode of fixing the proposed salary, by substituting an average of years as the *minimum*, instead of leaving the amount entirely open, as in the Bill. Mr. Sutton did not appear disposed to admit that the fees of justices' clerks stood upon the same footing as those of the clerks of the peace. But the committee succeeded in satisfying him as to the Parliamentary foundation for the clerks' fees, under the 26th Geo. 2.

The wish expressed by the committee of being placed in communication with the gentleman who drew up the Bill was not acceded to, as being contrary to precedent; but Mr. Sutton stated his readiness to consider and take advantage of any practical suggestions from the society, when the Bill was again introduced.

He also said that most probably such a measure would be introduced in the present session, and that in its preparation the remarks and suggestions of the society, contained in their recent report, of which he had been supplied with a copy, would receive due attention.

The following building has been duly registered for the solemnization of marriages, pursuant to the Act of the 6th and 7th Wm. 4, c. 85. The Baptist Chapel, situated at the Sarn, in the parish of Kerry, in the county of Montgomery, in the district of Newtown and Llanidloes.

THE LAWYER.

Summary.

VERY few of the suspended judgments have yet been given; but next week will probably yield an abundant harvest of them. The legal incidents of the week have been of trifling interest. Another series of Orders in Bankruptcy is about to be issued, and we shall lose no time in placing them in the hands of our readers.

The following correspondence on a subject to which we purpose to return, has appeared in the daily papers:—

THE BAR AND ITS CLIENTS.

TO THE EDITOR OF THE TIMES.

SIR,—It has long been a matter of serious complaint on the part of suitors, the great injury and expense to which they are exposed, as well as the inconvenience experienced by the Profession generally, from the absence of counsel when matters in which they hold briefs are to be heard. I respectfully submit that it is time some arrangement were made, in order to remove the injury, and to obviate the inconvenience complained of, so that the suitors and the Profession may rely on the assistance of their counsel in the court in which they accept briefs. It is a common practice on the part of counsel to hand their briefs over to other members of the Bar, when they are engaged in another court, and frequently but a very short time before the cause is called on, and who are, in consequence, merely able to give it an imperfect and hasty attention, to the great detriment of the interests of suitors. If some remedy could be adopted, with the general concurrence of the leading members of the Profession, it would be most desirable; and the remedy I would propose is, that each counsel elect his own court, and strictly confine his practice to it.

Counsel must be aware, that from the immediate intercourse between the suitor and the solicitors, the latter are exposed to all the complaints which the former may make respecting any delay or disappointment in the conduct of their business; and it therefore becomes the indispensable duty of the solicitors to remove those complaints, if practicable, or at least to shew that they have done every thing in their power to accomplish that object. If, however, the expectation of our branch of the Profession should be disappointed by the perseverance of the Bar in the system complained of, solicitors will have the satisfaction of having done all in their power to remove

the just complaints of the suitors against the delay and expense to which they are frequently subjected.

I am, &c.

Harcourt-buildings, Jan. 24. A Solicitor.

This was succeeded by the following :—

THE BAR AND ITS CLIENTS.

TO THE EDITOR OF THE TIMES.

Sir,—The remedy proposed by "A Solicitor," in his letter to you in this day's *Times*, has been often before suggested ; and it is the attorneys and solicitors themselves who are to blame for not compelling counsel to confine their practice to the one court they may each elect to act in.

If attorneys and solicitors consulted the interests of their clients by insisting on such an arrangement, which they have power enough to effect if they chose to exercise it, instead of pretending to complain of the present system, which all the world knows brings grist to their mill, the absurd practice of feeing a man for the chance of deriving assistance from him by his advocacy of your cause at the trial would soon be exploded.

There are many other evils attending the present law practice, but the interested views of practitioners are a barrier to its improvement.

I remain, Sir, yours very respectfully,

Trinity-square, Jan. 25. A. R.

Some others of minor interest have appeared, but one is worth reading for its good sense and good advice :—

THE BAR, SOLICITORS, AND SUITORS.

TO THE EDITOR OF THE TIMES.

Sir,—In your issue of to-day I find a remedy suggested by "Another Solicitor" for a very great evil existing in the course and conduct of legal business—namely, that "a large proportion of counsel persist in the practice of accepting briefs in causes about to be heard in different courts, at the risk of not being able to discharge the duties for which they are liberally paid ;" and the remedy suggested is, that each counsel should strictly confine himself to some particular court, and that the Lord Chancellor and the Lord Chief Justice of the Queen's Bench should be requested to see to this; and that in the event of counsel persisting in going from court to court, and of their lordships countenancing and encouraging these vagrant habits, then the attorneys shall band themselves not to employ any counsel who will not attach himself to a particular court—that is, by the first part of the category supposed, they shall not employ any counsel at all.

With much deference to the acuteness of the remarks made, I submit that the remedy proposed cannot meet the evil, because, as it appears before, counsel cannot be employed who practise only in one court if they all persist in going into all the courts ; and, secondly, because counsel are so situate with respect to the public, that neither can the leaders refuse to give their assistance to clients in different courts where they may be able to attend, nor can the juniors refuse to oblige the leaders by holding their briefs at a pinch. But, Sir, an attorney is bound to see that his client's work is done, without regard to counter-agency or chance, or late hours, or Crown paper, or special paper, or registration appeal day, or excise cases, or the like ; and he is surrounded with all the legal circumstances of right to sue and be sued ; he stands in a very different position with respect to the client to a barrister ; and as his obligations are so great, I would suggest that he should rely on himself for his help—always the best reliance. The remedy is in his own hand. Let him not confine all his briefs to Mr. A or to Mr. B. Let the Incorporate Law Society (if they must have any thing to do with the matter) appoint a course of lectures to be read, informing the attorney mind that one man cannot be in two places at once ; that it is not necessary to employ the Attorney-General to conduct a suit on a bill of exchange, provided that the handwriting be admitted under a judge's order ; and that the infatuated love of one particular barrister is detrimental to the well-being of society, and the quick doing of business.

I know two cities, X and Y, about twelve miles apart (to be sure there is a rail), in which borough sessions are generally held at the same time. One gentleman is the favourite there, and so infatuated are all the "gentlemen of the Profession" with him, that the Y's think they would not be wise unless they sent their briefs to him though he is at X; and the X's will fill his bag with their briefs, though they know that as far as they are concerned he will be for that session an ex-barrister to them. What can the gentleman do? He pockets the fees from both places ; and if he can find any gipsy-like junior who loves wandering, he gets him to traverse between X and Y on his business ; if not, the prisoner goes undefended. Now, whom have the attorneys to blame for this? The barristers? No. Better blame themselves for the folly of thinking that only one man in the world is good enough for them. Let them remedy their bad habit of giving all their briefs to one counsel, and then the evil of which they so justly complain will remedy itself.

Yours, &c. O.

Another subject of considerable interest has also created some discussion in legal circles. It has been thus handled by two correspondents of the *Times*. The second of these gentlemen makes a somewhat startling proposition. The first letter states a just cause for complaint :—

BARRISTERS AND ATTORNEYS.

TO THE EDITOR OF THE TIMES.

Sir,—No one who cares for the respectability of the Legal Profession can have read your report of the judgment delivered by Lord Denman, on the application of a barrister, now under articles to an attorney, to be examined for admission as an attorney, without fully acquiescing in the truth of his lordship's remark, that "the fact of a particular individual being a barrister at the same time that he was serving under articles of clerkship to an attorney, opened the door to abuses the most obvious and considerable." Allow me to ask whether a door is not opened as wide for abuses as obvious and considerable, by a student for the Bar serving as managing clerk to an attorney up to the time when he is called to the Bar ; and whether the benchers of the inns of court have taken the proper steps to block up this door, by refusing to permit managing clerks to attorneys, while such, to keep terms for the Bar ?—Your obedient servant, B.

Temple, Jan. 30.

TO THE EDITOR OF THE TIMES.

Sir,—The Court of Queen's Bench having yesterday decided in Mr. Bateman's case, that "a barrister thinks fit to article himself to an attorney, he will not be allowed "to avail himself of that service as an articled clerk to be admitted as an attorney," I would ask whether, to use the words of Lord Denman, the same "opportunity is not offered for malversation between the members of the Bar and the gentlemen of the other branch of the Profession," by allowing a man to be called to the Bar who has practised as, or been articled to, or working in the office of, an attorney or solicitor? Is not "the danger of such malversation manifest, if this is to be considered as an admissible practice?" Is it "possible to doubt that such a practice leads to conferring the most improper advantages?" It is notorious that several men have of late years come, and are still coming, from attorneys' or solicitors' offices to the Bar, backed by all the business and influence of their *ci-devant* partners, or masters. I do not mean to say that these men are not competent to the business thus secured, but I do say there are scores, or hundreds of "regular men" at least as competent, but who, not having had the "improper advantages" alluded to, are almost briefless. The success of the former, in most cases at least, is not to be attributed to superior talents or acquirements, but solely to "improper advantages." Apart from the unfairness of this course to the members of the Bar in general, it is undeniable that it has tended, in more ways than one, to degrade what was, and ought to be, a liberal profession, into a driving, if not in some cases a jobbing, trade. There is, I believe, an understanding that the inns of court, in the case of an attorney applying to be called, require a previous relinquishment of his business ; but what is there to prevent an articled or paid clerk from being called to the Bar direct from his employer's office? Even if the articles are previously cancelled, the man may, and often does, practically work in or for the office up to or within a short period of his call. I ask (in the words again of Lord Denman), whether "upon those general circumstances which involve principles of conduct as between members of the Bar and gentlemen of the other branch of the Profession," the having been an attorney or solicitor, or articled to, or at any time employed by, an attorney or solicitor, ought not to be held an absolute disqualification for the Bar?

I am, Sir, your obedient servant,

Lincoln's-inn, Jan. 30. M.A., Oxford.

COURT PAPERS.

CHANCERY SITTINGS

After Hilary Term, 1845.

Before the LORD CHANCELLOR.

IN LINCOLN'S INN.

Monday .. Feb. 10—First Seal—Appeal Motions
Tuesday ...... 11, Wednesday .... 12, Thursday ...... 13 — Appeals
Friday .... 14 — Petition Day. Unopposed Petitions only, and Appeals
Saturday .... 15, Monday .... 17, Tuesday .... 18, Wednesday .... 19 — Appeals
Thursday ...... 20—Second Seal—Appeal Motions
Friday .... 21 — Petition Day. Unopposed Petitions only, and Appeals
Saturday ...... 22, Monday .... 24, Tuesday .... 25, Wednesday .... 26, Thursday ...... 27 — Appeals
Friday .... 28 — Petition Day. Unopposed Petitions only, and Appeals
Saturday .. March 1—Appeals
Monday .... 3—Third Seal—Appeal Motions
Tuesday .... 4, Wednesday .... 5, Thursday ...... 6 — Appeals
Friday .... 7 — Petition Day. Unopposed Petitions only, and Appeals
Saturday ...... 8, Monday .... 10, Tuesday .... 11, Wednesday .... 12 — Appeals
Thursday ...... 13—Fourth Seal—Appeal Motions
Friday .... 14—General Petition Day.

Such days as his Lordship is occupied in the House of Lords excepted.

Before the VICE-CHANCELLOR OF ENGLAND.

Monday .. Feb. 10—First Seal—Motions
Tuesday ...... 11, Wednesday .... 12, Thursday ...... 13 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday .... 14 — Petition Day. Unopposed first, Short Causes, and Causes
Saturday ...... 15, Monday ...... 17, Tuesday ...... 18, Wednesday .... 19 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday ..... 20—Second Seal—Motions
Friday .... 21 — Petition day. Unopposed first, Short Causes, and Causes
Saturday ...... 22, Monday .... 24, Tuesday ...... 25, Wednesday .... 26, Thursday ...... 27 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday .... 28 — Petition Day. Unopposed first, Short Causes, and Causes
Saturday*, March 1 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday .... 3—Third Seal—Motions
Tuesday ...... 4, Wednesday .... 5, Thursday ...... 6 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday .... 7 — Petition Day. Unopposed first, Short Causes, and Causes
Saturday ...... 8, Monday ...... 10, Tuesday ...... 11, Wednesday .... 12 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday ...... 13 Fourth Seal—Motions
Friday .... 14 — Petition Day. Unopposed first, Short Causes, and Causes.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Monday .. Feb. 10—First Seal—Motions
Tuesday ...... 11 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday .... 12—Bankrupt Petitions and Causes
Thursday ...... 13 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday ...... 14 Petition day. Petitions and Causes
Saturday ...... 15 Short Causes and Causes
Monday .... 17—Bankrupt Petitions and Causes
Tuesday ...... 18 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday .... 19 Bankrupt Petitions and Causes
Thursday ...... 20—Second Seal—Motions and Causes
Friday ...... 21—Petition Day. Petitions and Causes
Saturday .... 22—Short Causes and Causes
Monday ...... 24—Bankrupt Petitions and Causes
Tuesday ...... 25 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday .... 26—Bankrupt Petitions and Causes
Thursday .... 27 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday ...... 28—Petition Day. Petitions and Causes
Saturday . March 1 Short Causes and Causes
Monday .... 3 Third Seal Motions
Tuesday .... 4 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday .... 5—Bankrupt Petitions and ditto
Thursday .... 6 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday .... 7—Petition Day. Petitions and Causes
Saturday ...... 8—Short Causes and Causes
Monday ...... 10—Bankrupt Petitions and Causes
Tuesday ...... 11 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday .... 12—Bankrupt Petitions and ditto
Thursday .... 13—Fourth Seal—Motions and Causes
Friday .... 14—Petition Day. Petitions and Causes
Saturday ...... 15—Short Causes and Causes
Monday ...... 17—Bankrupt Petitions.

Before VICE-CHANCELLOR WIGRAM.

Monday .. Feb. 10—First Seal—Motions and Causes
Tuesday .... 11, Wednesday .... 12, Thursday ...... 13 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday .... 14 — Petition day. Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday ...... 15 — Short Causes, Petitions (unopposed first), and Causes
Monday .... 17, Tuesday .... 18, Wednesday .... 19 — Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday ...... 20—Second Seal—Motions and Causes
Friday .... 21 — Petition day. Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday ...... 22 — Short Causes, Petitions (unopposed first), and Causes
Monday .... 24, Tuesday .... 25, Wednesday .... 26, Thursday ...... 27 — Pleas, Demurrers, Causes, Further Directions, and Exceptions

Friday.........28	Petitionday. Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday..March 1	Short Causes, Petitions (unopposed first), and Causes
Monday........ 3	—Third Seal—Motions and Causes
Tuesday........ 4 Wednesday .... 5 Thursday 6	Pleas, Demurrers, Causes Further Directions, and Exceptions
Friday.......... 7	Petitionday. Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday 8	Short Causes, Petitions (unopposed first), and Causes
Monday........10 Tuesday.......11 Wednesday 12	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday 13	—Fourth Seal—Motions and Causes
Friday..........14	Petitionday. Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday 15	Short Causes, Petitions unopposed first), and Causes.

Before the MASTER OF THE ROLLS.

Monday ..Feb. 10	—Motions
Tuesday........11	—Petitions, unopposed first
Wednesday ....12 Thursday ......13 Friday..........14 Saturday ......15 Monday........17	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday. 18	—Petitions, unopposed first
Wednesday 19	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday 20	—Motions
Friday .... 21 Saturday ......22 Monday...... .24	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday 25	—Petitions, unopposed first
Wednesday ....26 Thursday ......27 Friday ....28 Saturday. March 1	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday........ 3	—Motions
Tuesday........ 4	—Petitions, unopposed first
Wednesday .... 5 Thursday . .... 6 Friday ... ... 7 Saturday ... .. 8 Monday........10 Tuesday ... .. 11 Wednesday 12	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday 13	—Motions
Friday 14	—Petitions, unopposed first.

Short Causes, and Consent Causes, every Tuesday at the sitting of the Court.

Note Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

EQUITY SITTINGS.

The general business of the Chancery Courts will, it is stated, be resumed on Monday, the 10th instant, the First Seal-day of the sittings after Hilary Term.

SPRING ASSIZES, 1845.

HOME CIRCUIT.

(Before the Right Hon. Lord DENMAN C J, and the Right Hon. Mr. Baron ALDERSON.)

Hertfordshire -Friday, Feb. 28, at Hertford; the civil business, however, will not commence before the following Monday, March 3, at eleven o' ock

Essex Wednesday, March 5, at Chelmsford.

Kent -Monday, March 10, at Maidstone.

Sussex -Monday, March 17, at Lewes.

Surrey—Monday, March 24, at Kingston.

LIST OF SHERIFFS FOR 1845.

At the Court at Buckingham Palace, the 3rd day of Feb 1845, present the Queen's Most Excellent Majesty in Council.

ENGLAND.

Bedfordshire, Wm. Bartholomew Higgins, of Turvey, esq.
Berkshire, John Bligh Monck, of Coley Park, esq.
Buckinghamshire, Edmund Francis Dayrell, of Lillingstone Dayrell, esq.
Cambridge and Hunts, John Bonfoy Rooper, of Abbotts Ripton, esq.
Cumberland, Timothy Featherstonhaugh, of the College, Kirkoswald, esq.
Cheshire, Sir William Thomas Stanley Massey Stanley, of Hooton, bart.
Derbyshire, Thomas Pares, of Hopwell, esq.
Devonshire, Edward Simcoe Drewe, of the Grange, esq.
Dorsetshire, Edward Balston, of Corfe Hall, esq.
Durham, John William Williamson, of Whickham, esq.
Essex, George Round, of Colchester, esq.
Gloucestershire, Edmund Hopkinson, of Ed eworth House, esq.
Herefordshire, James King King, of Staunton Park, esq.
Hertfordshire, Sir Henry Meux, of Theobald's Park, bart.
Kent, Sir Moses Montefiore, of East Cliff, Saint Lawrence, Thanet, knt.
Leicestershire, William Corbet Smith, of Bitterswell, esq.
Lincolnshire, Thomas Coltman, of Hagnaby Priory, esq.
Monmouthshire, William Phillips, of Whitson House, esq.
Norfolk, Theophilus Russell Buckworth, of Cockley Cley, esq.
Northamptonshire, The Hon. Richard Watson, of Rockingham Castle.
Northumberland, Ralph Carr, of Hedgeley, esq.
Nottinghamshire, William Hodgson Barrow, of Southwell, esq.
Oxfordshire, John Sidney North, of Wroxton Abbey, esq.
Rutlandshire, Henry Bennet Pierrepoint, of Ryhall, esq.
Shropshire, St. John Chiverton Charlton, of Apley Castle, esq.
Somersetshire, John Lee Lee, of Dillington House, esq.
Staffordshire, Charles Smith Forster, of Hamstead Hall, esq.
Southampton (County of), Sir Richard Goden Simeon, of Swainstone, Isle of Wight, bart.
Suffolk, Henry Wilson, of Stowlangtoft, esq.
Surrey, Richard Fuller, of the Rookery, Dorking, esq.
Sussex, James Baril Daubuz, of Offington, esq.
Warwickshire, James Roberts West, of Alscote, esq.
Wiltshire, Wade Browne, of Monkton Farleigh, esq.
Worcestershire, Thomas Simcox Lea, of Astley Hall, esq.
Yorkshire, Sir William Bryan Cooke, of Wheatley, bart.

WALES.

Anglesea, Robert Jones Hughes, of Plas Llangoed, esq.
Brecknockshire, William Williams, of Aberpergwm, esq.
Carnarvonshire, postponed.
Carmarthenshire, David Jones, of Glanbrane Park, Llandovery, esq.
Cardiganshire, John Lloyd Davies, of Alltyrodyn, esq.
Denbighshire, Charles Wynne, of Garthmeile, near Cerrig-y-drudion, esq.
Flintshire Ralph Richardson, of Greenfield Hall, esq.
Glamorganshire, Robert Savours, of Trecastle, esq.
Merionethshire, Richard Watkin Price, of Rhiwlas, esq.
Montgomeryshire, John Winder Lyon Winder, of Vaynor Park, esq.
Pembrokeshire Abel Lewis Gower, of Castlemalgwynne, esq.
Radnorshire, James Davies, of Colva, esq.

IRELAND.

Dublin Castle, Jan. 31, 1845.

His Excellency the Lord-Lieutenant has been pleased to appoint the under-mentioned gentlemen to the office of High Sheriff for the following counties, and counties of cities and towns in Ireland, for the year 1845:—

Antrim, John White, esq.
Armagh Thomas Morris Jones, esq.
Carlow Robert S. Doyne, jun. esq.
Carrickfergus (county of the town of), Stewart Dunn, esq.
Cavan, Anthony O'Reilly, esq.
Clare, Hugh Palliser Hickman, esq.
Cork, The Hon. Hayes St Leger.
Cork (city), James Morrogh, esq.
Donegal, Lord George A Hill.
Down, Hugh Montgomery, esq.
Drogheda (town), William Cairns, esq.
Dublin, The Hon Edward Preston.
Dublin (city), Thomas Crosthwaite, esq.
Fermanagh, William Archdall, esq.
Galway, Dennis Kirwan, esq.
Galway (town) Patrick M. Lynch, esq.
Kerry Christopher Galwey, esq.
Kildare, Lord William Fitzgerald.
Kilkenny, Charles Hely, esq
Kilkenny (city), John M'Craith, esq.
King's County, Richard Warburton, esq.
Leitrim, Edward King Tenisson, esq.
Limerick, Edward Crips Villiers, esq.
Limerick (city), Henry Watson, esq.
Londonderry (city and county), Sir Henry Hervey Bruce, bart.
Longford, George Lefroy, esq.
Louth, Frederick J. Foster, esq.
Mayo, Henry W Knox, esq.
Meath, Lord Killeen.
Monaghan, Andie Allen Murray, esq.
Queen's County, Horace Rochfort, esq.
Roscommon, Garrett O'Moore, esq.
Sligo, Philip Perceval, esq.
Tipperary, John Bayley, esq.
Tyrone, William D'Arcy, esq.
Waterford, John Bowen Gumbleton, esq.
Waterford (city), Jacob Penrose, esq
Westmeath, Hon L. H. King Harman.
Wexford, Patrick W Redmond, esq.
Wicklow, William W. Fitzwilliam Hume, esq.

PROMOTIONS, APPOINTMENTS, ETC.

THE PRINCE OF WALES'S COUNCIL CHAMBERS.

Somerset-house, Feb. 5, 1845.—Francis Rodd, of Trebartha-hall, in the county of Cornwall, esq. has this day been appointed Sheriff for the county of Cornwall.

DOWNING-STREET, Jan. 29 —The Queen has been pleased to appoint Edmund Murray Dodd, Esq. to be her Majesty's Solicitor-General for the province of Nova Scotia.

FOREIGN-OFFICE, Jan. 29.—Her Majesty has been pleased to appoint Edmund Gabriel, jun. esq. in the room of Charles Francis Fynes Clinton, esq. deceased, to be Arbitrator, on the part of her Majesty, in the Mixed British and Portuguese Commission, established at the city of Loanda, in the province of Angola, under the treaty, concluded at Lisbon on the 3rd of July, 1842, between Great Britain and Portugal, for the suppression of the slave trade.

WHITEHALL, Jan. 28.—The Lord Chancellor has appointed Henry King, of Mayfield, in the county of Sussex, Gent. and David Archibald Dixon Rawlins, of Market Harborough, in the county of Leicester, Gent. to be Masters Extraordinary in the High Court of Chancery.

WHITEHALL, Feb. 3.—The Lord Chancellor has appointed H. Oldham, of the city of Dublin, Gent. to be a Master Extraordinary in the High Court of Chancery.

The Right Honourable Sir Nicolas Conyngham Tindal, Knt. Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Thomas Hulbert, of Corsham, in the county of Wilts, solicitor, to be one of the perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Wilts.

The Right Honourable Sir Nicolas Conyngham Tindal, Knt. Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Adolphus Frederick Millns, of Windsor, in the county of Berks, Gent. to be one of the perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Berks, also in and for the county of Bucks.

MR. BARON PLATT.—On Friday evening last, the learned baron gave the usual inauguration dinner on his elevation to the bench, to the judges and serjeants-at-law, at the Dining Hall, in Serjeants'-inn, Chancery-lane. The whole of the judges and serjeants honoured the learned baron with their attendance on the occasion.

MIDDLE TEMPLE.—ADMISSIONS TO THE BAR, Feb. 1.—The eight undermentioned gentlemen were admitted to the degree of barrister-at-law yesterday (the last day of term), and this evening the ordinary oaths were administered in the dining hall before several of the benchers, previous to their being sworn in at Westminster:—Mr. John Wood, the eldest son of William Cole Wood, gentleman; Mr. Charles Forbes, the eldest son of Mr. Michil Forbes; Mr. Alfred Wyatt, the third son of Robert Wyatt, gentleman; Mr. Edmund John Bridell, the only son of William John Bridell, gentleman; Mr. Charles Frere, the second son of James Hatley Frere, gentleman; Mr. Henry Winfield Crace, the eldest son of Henry Crace, gentleman; Mr. John Gregory, the eldest son of Jones Gregory, gentleman; Mr. Samuel Naylor, the only son of Thomas Naylor, gentleman.

NEW QUEEN'S COUNSEL.—Mr. Russell Gurney, one of the sons of Mr. Baron Gurney, we are informed, has received an intimation from the Lord Chancellor, in reply to his application, that he will be called within the bar as one of her Majesty's counsel. The effect of this appointment will be to place him over the heads of Mr. Serjeant Channell and Mr. Serjeant Shee, who are many years his seniors both in rank and standing at the bar, and to lead those eminent and talented men on the Home Circuit, unless the Lord Chancellor grants them patents of precedence. In fact, owing to the elevation of Mr. Platt to the bench of the Court of Exchequer, and the appointment of Sir F. Thesiger as Solicitor-General, both of whom belong to the Home Circuit, Mr. Russell Gurney will lead the entire bar on that circuit.

ARCHES' COURT, FRIDAY, JAN. 31.

ADMISSION OF THE NEW QUEEN'S PROCTOR.

Mr. F. H. Dyke appeared in costume in the place appropriated to the Queen's Proctor, and, addressing the Court, said:—"Sir, I have the honour to state that her Majesty has been pleased to appoint me her Proctor, and to request you will direct that her royal warrant be read and entered in the muniments of the court."

Sir H. JENNER FUST.—Let the warrant be read.

The warrant was read by the registrar, all standing; it reserved to her Majesty and her successors the power to make any alterations in the fees of the office during war.

Sir H. JENNER FUST.—Let the warrant be entered in the muniment book.

Mr. Dyke then took his seat.

THE PROPERTY LAWYER.

AN ACT TO SIMPLIFY THE TRANSFER OF PROPERTY.

7 & 8 VICT. c. 76.

No. IV.

As this Act is now in operation, and men are anxiously inquiring the opinions and intentions, and watching the practice of their professional brethren regarding it, probably a few observations, in addition to those which have already appeared in our columns and in numerous other channels, will not be considered by our readers altogether superfluous.

It is seldom that an Act containing so small a number of provisions calls forth so much comment and such general reprobation in so short a period, as it has been the lot of this unfortunate statute to elicit. To what is its condemnation attributable? Solely, we think, to a firm belief in its pernicious character; for, had it been otherwise, if its tendency had been improving, probably we might have heard some vague grumbling complaints from parties whose indolence or peculiarity of temperament indisposes them to all change, or whose constant occupations leave them little time for study; the croakers might have croaked, the *fautores veterum* might have sneered and ridiculed, and the busy might have shrugged their heavily-laden shoulders; but the tone, the deliberate opinion of calm, fair-judging men would have been favourable. If, again, it had attacked *costs*, no doubt a considerable outcry would have been raised against it, irrespective of its merits or demerits;

but it does not. On the contrary, from the doubts and questions which it starts, its effect must, in a pecuniary sense, be beneficial to the Profession. Selfish considerations, then, being out of the question, we can refer the unfavourable verdict which, without exception so far as we are aware, has been pronounced by the Profession, to one cause only,—an entire coincidence in opinion that, looking at the measure fairly as an intended legal reform, it is a failure; and we ask, where could a stronger argument against any measure be found than such an unanimity amongst the class alone qualified to judge, and having no sordid interests to warp their judgment? Lawyers alone in this case are competent to decide, for the Act is peculiarly technical; no sweeping alteration in system is attempted; it calls for no wide and general consideration; it is essentially composed of "*points*," and therefore lies strictly within the province of the man of detail and practice.

At the present moment, however, it is of more consequence to consider the practical effect of the Act than to discuss its spirit and tendency. And the first question which suggests itself, one which is extensively canvassed, is, whether any and what alteration should be made in the *form* of deeds. That no alteration is rendered necessary is certain; and, as has been before pointed out, this circumstance constitutes one of the best recommendations of the Act. The matter, then, being left to discretion, is it expedient to adopt the changes which the Act allows? Now, under the present forms, there is *security*, and it is unquestionable, therefore, that any change in them unproductive of real benefit to the client, is not desirable; nay, it is the duty of the practitioner to abstain from making it, unless compelled, for he ought not unnecessarily to jeopardise to any extent his client's interests. On the other hand, if the alteration be unobjectionable and essentially beneficial to the client, it is equally incumbent on the lawyer to adopt it, whatever personal inconvenience or trouble it may occasion to himself; but safety must be his primary object. Now, it must never be forgotten, in estimating the desirableness of the proposed changes, that there is an amount of risk attaching to the clearest clauses which have not received judicial interpretation. Whoever has watched the course of decisions in a few Acts of Parliament must be painfully aware, that it is scarcely possible for any man, however skilful and sagacious, to predict, with absolute certainty, the operation of any provision; how often is it the case that the ultimate settled construction is widely different from the plain meaning of the language? In the first instance, special pleading subtlety, the *auceps syllabarum* refinement, or a peculiar, an unforeseen, or (the most likely of all) a hard case, induces the Courts to strain the words, and then, having once deviated from the plain path, as cases arise, further departure is necessary for consistency sake, and thus by degrees, here a little and there a little, they stray wider and wider, till at length, instead of the plain and obvious, a judicial, which usually means an artificial and unnatural, signification is established,—the adoption of which its propounders themselves sometimes, and more frequently their successors, regret and allow to be indefensible, but feel bound to support and continue. If this representation be correct, and we forbear to cite illustrations, solely because we believe them to be superfluous, it follows that a degree of danger must be considered to attend the alterations in question, and that he who ventures to make them incurs a gratuitous, and possibly a serious responsibility. Let us now see what changes may be made, and what benefit will flow from them. They consist in the omission of the reference to the 4 Vict. c. 21 of the trustees' receipt clause, and the limitation to trustees to preserve contingent remainders. (We assume for the present that as the Act proposes to authorize these changes, they may safely be made.) No privilege is annexed to the omission of any of these clauses, consequently the sole benefit derivable from leaving them out is the saving in expense from the curtailment of deeds. To what will this saving amount? In some few cases, in deeds of settlement, where all the clauses would otherwise be inserted, there will be an abridgment to the extent of about six folios; consequently a 25s. stamp may sometimes be saved, and a *few* shillings would be struck off the solicitor's bill; 2*l*. may be stated as the outside. But settlements are precisely the cases in which, comparatively speaking, expense is no serious object. The parties making them are usually in comfortable circumstances, and is it worth while, for the sake of 2*l*. at the utmost, to run the inevitable risk attendant upon the adoption of these untried clauses in any Act of Parliament, and particularly such an Act as that before us, which, as we have mentioned, has met with universal disapprobation? But we have fixed a very high amount. In many such cases there will be no saving of stamp, and therefore the client will only be benefited to the extent of a few shillings. In wills, of course, from the absence of stamp-duty, the amount saved cannot be greater. Surely in these cases, for the sake of a few shillings, to leave certainty for uncertainty, would be positive folly. It will be said, perhaps, these remarks may be very true as applied to settlements, &c. which are seldom made except by parties who can afford any little additional expense; but that in many cases of very small purchases, the saving of a stamp is a material consideration to the parties. The change in those cases is the omission of the reference to the Lease for a Year Act; that reference generally runs about a folio, but it may be made much shorter; *e. g.* "In pursuance of an Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties;" not more than half a folio; and how many deeds bear progressive duty for half a folio? and how many deeds are there in which words obviously superfluous cannot, to the extent of half a folio, be omitted? and is it not far better to reduce the draft by striking out those words, than to trust to the operation of a new clause? In small mortgages the omission of the receipt clause may be a consideration; but that clause may be, and frequently is, made very short. Although no advocates for "short cuts" in deeds,—a practice which we believe does not answer in the long run,—we are satisfied that it is more prudent to shorten the present forms, by paring down undoubted superfluities, than to have recourse to a novelty; and we are convinced that, without running the least danger, men may, if they choose, in nineteen out of twenty of those few cases in which a trifling expense is a very serious object, dispense with this new statute, without subjecting their clients to any further charge than an extra shilling or two added to their bill of costs. This, then, is the extent of the benefit: in some few cases of settlement, 2*l*.; in all wills, and in the large majority of deeds, a few shillings only.

But, independently of the general objection to new and untried clauses, is it clear that the changes in question may in all cases be adopted with propriety? Hitherto we have proceeded on the assumption that they may. We will now suggest one or two cases which may shew the contrary; and for that purpose we will take the provision which dispenses with the reference to the Lease for a Year Act. There were some interests which could not be conveyed by lease and release; but as it is a principle of law that a deed shall, if possible, take effect, an attempted conveyance in those cases by lease and release has been frequently held to operate as a grant at common law, or occasionally, if the relationship between the parties allowed, as a covenant to stand seised; and thus the main object was attained. Now suppose a party attempts to pass any of these interests by a deed under the clause in question; what will be the effect? Why a question will at once arise, whether his deed can have any operation. The clause says he may convey by deed what he can convey by lease and release; but he has attempted to convey by deed what he *cannot* convey by lease and release—*ergo*, his deed is bad, so far as that clause is concerned. Then will the deed take effect in any other way, as a grant or covenant to stand seised?—or will it be said, you have made use of a special statutory deed in a case to which the statute does not apply, and we can't help you? Another case that we would mention is this: the 3 & 4 Vict. c. 21, provided that progressive duty should not be payable in respect of the lease for a year; but the Act before us contains no such provision; it states merely that the same stamp shall be payable as if the conveyance were made by *lease and release*. If, therefore, from the length of the parcels, the lease for a year would have exceeded 30 folios, the progressive duty for the lease for a year must be paid upon a deed under this Act, though it would not be payable if the conveyance were made by a release referring to the Lease for a Year Act. Consequently, a burden, instead of a benefit, would be thrown on the client by the adoption of the new deed.

The foregoing illustrations are sufficient for our present purpose, as they tend to shew that the proposed alterations are *not* in all cases unobjectionable. But we put the question of "change or no change" broadly upon this ground. The Legislature has left it to the discretion of the practitioner to make the change or not; that discretion must be exercised for the benefit of the client alone, and his first duty to that client is, at all hazards, to make him secure. He has the means of doing so by continuing to travel in the beaten track; if he depart from it, he is running a risk, and exposing his client to unnecessary danger, for no solid or substantial reason. It is not enough for a man to feel satisfied that the deviation is safe; he must consider that his neighbour, more timid, if not more sagacious, may entertain a different opinion, or at all events a doubt, and require the decision of the Court, and thus not only is the client launched into a suit, but the solicitor is in the unenviable position of having to defend his own deeds, with the certainty of losing credit whether they are established or overthrown, and with the conviction on his mind that his presumptuous self-confidence is alone to blame. It is the object of the prudent draftsman, his duty and his interest, to make his drafts not only sound, but unquestionable; it is trying enough for him to guide his way by the uncertain light of a new statute when compelled to do so, but he will never court difficulties, or willingly leave the *via tuta* for an untrodden course.

The foregoing remarks were intended for insertion last week, but we could not find room for them. We will only in addition call our readers' attention to the announcement of the Lord Chancellor on the first evening of the session, that a Bill is to be introduced to remedy the defects of this most imperfect Act, and we suggest that this circumstance is a strong argument against the adoption of the changes referred to in the foregoing article. We had intended to make some further observations upon the present Act, but we think it better to suspend further notice of it till the promised measure appears.

LEGAL INTELLIGENCE.

MR. BARON PLATT.

In modern times the first judicial office which a man accepts is usually the last; and, therefore, when an eminent barrister receives a seat on the Bench his professional struggles may be fairly considered at an end; and the objects of his legitimate ambition as fully attained as the circumstances of his position will allow. He can hope for no promotion; he can scarcely contemplate the possibility of any reverse; he is high above the hopes and fears of party politics, and at a blow relieved from all professional rivalry. No period in his life is so favourable as this for gratifying a rational curiosity respecting him who has put off the character of advocate and assumed the responsible office of judge. The father of Mr. Platt was an eminent solicitor, who for many years enjoyed the additional distinction of being "father of his profession," in which latter position he might fairly have been congratulated on the number of his children, for, as is well known, the attorneys and solicitors of England constitute by far the largest portion of the legal profession. The late Mr. Platt attained the venerable age of eighty-two, and at the time of his decease was a solicitor of exactly sixty-two years' standing. He was chamber clerk to the celebrated Lord Mansfield, and continued in that office with Lord Kenyon and Lord Ellenborough during the periods that they respectively presided in the Court of King's Bench. When the latter died in 1818, the late Mr. Platt withdrew from the office, being then nearly sixty years of age, and having held it upwards of thirty years.

Nothing was more natural than that an eminent solicitor should indulge the ambition of seeing his son at the bar; since in no profession can a parallel be found for the deep respect with which solicitors regard the character of a successful barrister; but, of course, superadded to this was the natural inducement arising from the possession of business; for the son of a solicitor, with even common diligence, cannot fail to make at least a competency at the bar.

The late Mr. Platt having been educated at the free school attached to Magdalen College, Oxford, was not unobservant of the advantages of a university education; this he conferred on his son, not merely for the saving of time which it effects in an early call to the Bar, but for the more important advantages which it confers.

It would have afforded him a well-deserved gratification had he survived two years and seen his son Thomas on the Bench.

Mr. Platt was called to the Bar by the Hon. Society of the Inner Temple (of which he is now a Bencher) on the 9th of February, 1816; and in the early portion of his career enjoyed all the facilities and advantages which evidently sprung from his father being a native and a resident of London, living on terms of friendship with three successive Chief Justices, a circumstance not very necessarily or even usually attendant on the office which the late Mr. Platt held. But the learned barrister, though thus favoured, was not personally calculated to win the hearts of unprofessional spectators or even to attract the briefs of the more sensitive members of his father's profession; and it is said that his unconciliating deportment materially diminished the probable amount of his business. In spite of these drawbacks, his indomitable perseverance, his self-possession in court, and even his rough, ready coolness in the production of any of the statements necessary for his client's success, won him many a verdict from juries, who would have been, perhaps, mystified by the delicacy or fastidiousness of a man of more pretension. With a personal appearance not very prepossessing, his voice is by no means in his favour. Nor was he at any time ignorant of the latter disadvantage, for he almost invariably commenced his address in as modified, subdued, and quiet a tone as he possibly could; but when his interest warmed, as his speech advanced, he lost the man in the advocate, and he generally concluded in a loud, somewhat triumphant, though most discordant burst of clamorous declamation. Having all these difficulties to surmount, the honour of his progress is so much the higher, and the attorneys never forgot his success with the jury while they criticized and perhaps resented his occasional incivility to themselves. One of the strongest elements of Mr. Platt's good fortune was, however, his faculty of making a case amusing, in which he was

sometimes successful, even when the materials were of the most unpromising kind.

Mr. Platt's courage and perseverance in due course of time, received their reward; he despised the sneers of fastidious spectators, and consoled himself in the verdicts of his juries. He treated those who gave him briefs as if he returned them full value, and he had the satisfaction of seeing his business steadily increase, of receiving a silk gown in due time, and ultimately of leading the Home Circuit.

That he will support the dignity of the high office to which he has been elevated there can be little doubt, and although the process of sinking the advocate in the judge will have many observers, there is every reason to believe that his character will acquire renewed honour from the operation.

He will, of course, receive the distinction of knighthood in a few days.—*Historical Register.*

"Channel Island law," says the editor of the *Jersey Times* in his last paper, "is both cheap and simple." No Jersey lawyer will deny it! For proof we give the following:—The case of De Mirtre, at the suit of Messrs. Stevens, involves a disputed debt of only 46*l*. It is not pretended to be more than a simple contract. A more "simple" case for "simple law" cannot be imagined. Yet it has been off and on for more than twenty months! and during all that long period the poor defendant has been in actual custody in Jersey gaol! The costs amount to what? Only 170*l*. British sterling. The case is now in the hands of the Baillie's secretary to be prosecuted *in formâ pauperis* by appeal to her Majesty in Council. With such a *dernier ressort* for a defendant in custody on a simple contract account, how could the *Jersey Times* have ventured to assert that law in Jersey was either cheap or simple?—From a correspondent of the *Jersey Gazette.*

Lord Mountcashel lately prosecuted two officers of the Third Dragoon Guards stationed at Clogher Barracks, for shooting snipe on his grounds without leave, contrary to the 7th and 8th Victoria, cap. 9, sec. 69; but it was suggested that "snipe was not game," and therefore that the penalties were not incurred. Mr. Brewster and the Solicitor-General have since given their opinion, confirming this view of the case: "Snipe," they say, "is not game."

Special probate of the will, with three codicils, of Granville Penn, esq. was granted by the Prerogative Court of Canterbury, on the 16th January, 1845, to Granville John Penn, esq. the eldest son and one of the executors, so far as relates to the personal estate of the deceased in England and elsewhere, except in America, a power being reserved to Isabella Penn, the widow and relict, and other executors, to prove hereafter. The whole bearing of the will (which is of great length, dated 9th February, 1836) is in reference to the grant of an annuity by an Act passed in the 30th year of the reign of George III. intituled, "An Act for settling and securing an annuity on the heirs and descendants of William Penn, esq. the original proprietor of the Province of Pennsylvania, in consideration of the meritorious services of the said William Penn and the losses which his family have sustained in consequence of the unhappy dissensions in America." The annuity was originally 4,000*l*. in the nature of real property, payable out of the Consolidated Fund. From which annuity the deceased bequeaths the sum of 3,000*l*. per annum to his eldest son, Granville John Penn, for the term of 500 years (remainder over to other sons and descendants), subject to several annuities and legacies. He also bequeaths to him the premises at New street, Spring-gardens, Westminster; his estate at the Isle of Portland, in the county of Dorset; and a newly-purchased estate at West End, Stoke Poges, Bucks; and appoints him, the said Granville John Penn, residuary legatee of all the property (except in America.) Personal estate sworn under 14,000*l*. The deceased was late of Stoke-park, Stoke Poges, Buckinghamshire, and died on 28th September, 1844.—*Historical Register.*

The Will of the late Jacob Samuda, esq. engineer (whose distressing death took place on the 12th of November, by explosion of a steam-boiler), was proved in Doctors' Commons on the 21st ult. by the brother, Joseph d'Aguila Samuda, esq. one of the executors; a power to the sister, Miss Abigail Samuda, the other executor, to prove hereafter. The will is dated 28th of August, 1841, and is in the handwriting of the deceased. To his father and mother he leaves half the profits arising from a cloth manufactory in Portugal, and the like profits arising from the assignment of patents for valves and fabrics. He leaves also a share to his three sisters, and to an uncle and aunt; a few legacies to other persons; and appoints his brother residuary legatee.—*Ibid.*

Will of Sir William Heygate, Bart. late Chamberlain of the City of London, was lately proved in Doctors' Commons by his relict, Lady Isabella Heygate, and Sir W. Heygate, Bart. the son. The other executors are his son, William Unwin Heygate, a minor, to whom a power is reserved of proving will hereafter. The deceased died at his residence, Roecliffe, in the county of Leicester, on 28th August, 1844. A short time previous to his death, he desired his eldest son (who was in the habit of writing out documents for him) to prepare his will from his dictation, and accordingly on the day the same bears date, viz. the 19th July, 1844, he drew up instructions for a will. When it was completed the son proposed that it should be fairly drawn up for execution, but the deceased said, "No, no, I will sign this; there is no telling what may happen." The draft occupied the whole four sides of a sheet of letter paper, very closely written from beginning to end, and from side to side, the last side being more closely written than the others, and no room whatever was left at the *end* for signature; the deceased, however, called in two of his servants to witness the execution, and signed his name in a narrow space on the margin of the first side, and the two servants also subscribed their names in continuation. The opinion of the Queen's Advocate (Sir John Dodson) was taken and probate granted. By this document, an annuity is left to his wife, and the property under settlement; the rest of the property, real and personal, he bequeaths to his sons, with the exception of a few legacies and a gift to his servants. Personal estate sworn under 45,000*l*. He held the office of Chamberlain only eighteen months.—*Ibid.*

The Will of the late Sir Isaac Wilson, knt. M.D. and F.R.S. late of Fareham, in the county of Southampton, who died on the 2nd of December last, has just been proved in Doctors' Commons by the executors, Charles W. Hallett, Marmaduke Robinson, and Hartwell J. Maude, esqrs. who are each left a legacy of 100*l*.; the remainder of the property, after all expenses are paid, to be divided into seven parts, and given to his brothers and sisters and their children as named in the will. His nephew, Joseph M'Carogher, M.D. is left a seventh share. Effects sworn under 30,000*l*. The will is dated 1st June, 1839.—*Ibid.*

The Will of the Rev. G. W. Hall, D.D. late Master of Pembroke College, in the University of Oxford, has been proved in Doctors' Commons by his sons, the Rev. G. C. Hall, clerk, and the Rev. H. D. Hall, clerk, two of the executors; the relict, the other executor, has a power reserved to prove hereafter. The effects were sworn under 25,000*l*.—*Ibid.*

IRELAND.

Dublin, Feb. 5.

The February session of the Commission Court (similar to the Central Criminal Court) commenced to-day, when a rather unusual, but at the same time, very gratifying occurrence took place. The grand and petty jurors for the county and city of Dublin, after remaining in attendance for about half an hour, were discharged by the judges without having been sworn, their lordships informing them that happily there was no occasion for their services. The county calendar, it appeared, contained but one case of crime, which, however, was not prosecuted. In the city there are but seven prisoners to be tried, all of whom are charged with minor offences, with one exception, and that one, the case of a woman charged with having poisoned her husband, stands over from a former session.

Mr. Commissioner Macan, Q.C., Serjeant Stock, LL.D., and Mr. Gilmour, Q. C. who compose the committee of Benchers appointed to investigate and report on Mr. Hardy's case, met on Saturday and also on Tuesday, and continued for some time occupied in inquiring into the subject. The learned gentlemen, I believe, purpose sitting daily in the judges' council-chamber, until they find themselves in a situation to furnish their report to the Bench; but what progress they have made as yet cannot be ascertained, as the strictest privacy is observed in the conduct of the proceeding.

CORRESPONDENCE.

ATTORNEYS AND BARRISTERS.—*Re* BATEMAN.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I beg to trouble you with some remarks upon an article which appeared in the *Morning Chronicle* of Monday last, respecting a subject which affects most nearly both branches of the Legal Profession, and is, particularly at the present moment, of the utmost interest and importance. Your columns, I am sure, will be, as they ever have been, open to any observations which are intended to vindicate the claims and uphold the rights of what is usually and correctly termed the lower branch of the Profession. The writer of the article in question alludes to the decision of the Court of Queen's Bench, *re Bateman*, reported in the last number of the Law Times, and makes some remarks upon the propriety of that decision with which I entirely concur; that case merely determined that no one who has been an articled clerk while he was a barrister can avail himself of that service as an articled clerk so as to be admitted an attorney. This, then, is the case of an individual passing *from the profession of a barrister to that of an attorney*. But the writer goes on to denounce what he terms the great abuse of parties "serving their terms for the Bar at the very time that they are managing clerks to attorneys, or paid or articled clerks, or actual attorneys admitted and practising." And he says that the mischief of this is, that persons who come under these circumstances to the Bar have an advantage over their competitors, inasmuch as their previous acquaintance with the subordinate branch of the Profession furnishes them with a set of clients who support them in their new capacity of barristers. But surely this accidental acquisition of business can never be considered so great an evil (if, indeed, it be an evil at all, which seems somewhat difficult to maintain) as to counterbalance the manifest justice and reasonableness of opening the avenues of the Bar to all who have abilities or industry enough to attempt its difficult and thorny paths. Besides, the argument would go to exclude all who had been at any time employed as attorneys' clerks, or had been engaged in actual practice, even though they discontinued all professional avocations during the time of keeping terms, a doctrine savouring of absurdity, and one which, if it had formerly prevailed, would have shorn the Bar of some of its most splendid ornaments. As to the argument, or rather the assertion, that the "fallen state of the Profession in an intellectual point of view," is to be attributed to the admission of attorneys, it is enough to say that it is a *mere assertion*, and one somewhat at variance with fact and experience. The very circumstance which the objector relies on, of such persons possessing great practice, is sufficient to shew that they are skilful and learned *in their profession*; for it is the great distinction of the Law from all other Professions, that you can *infallibly* predicate of a man who has risen in it, that he is able and meritorious. In conclusion, I would only state that those who denounce it as a thing so monstrous, that a man should keep terms at the time he is a clerk or in practice, seem to forget that this is the *only* way which is open to many of attaining the higher branch of the Profession at all. There are numbers to whom it would be inaccessible, were they not allowed to engage in some professional employment during the period of their probation, and the injustice and cruelty of for ever excluding such persons as these seem too gross and palpable to require exposition or comment.

I am, &c.

Birmingham, Feb. 4, 1845. Jeremiah Gill.

SELECTIONS FROM CORRESPONDENCE.

E. K. S. (Southampton) offers the following suggestions for union:—

Had your journal done no more than it has done—proved the necessity, urged the formation, and announced the existence of law societies, it would have been enough for its fame—it might have rested its reputation upon the fact, that, in after-years, when the power and influence of unity shall be felt, professional men will trace the animating spirit to the energy, persuasion, and convincing arguments of the Law Times. This is enough for its reputation—enough to entitle it to the remembrance of all those who have at heart the purification of the Profession, and, ultimately, the welfare of society at large. You have already inserted one or two of my communications on this subject. Since then, the Metropolitan and Provincial Legal Association has been formed, and now, within the last month, the Northern Law Societies have confederated, forming themselves into a band powerful for good, and, if adhering to their rules, powerless for evil. All this says much; it tells us that there is a rustling amongst the "dry bones,"—that professional men are standing up as a *class*, and that now will shew their true characters as a body second to none in probity, and activity for all that is good. But there is more to be done yet. There must be union, in a more or less degree, between the legal societies, if any thing thorough is to be done; at present the exertions of each will be but partial, and its energies but restricted. There are three societies now; the Incorporated Law Society, the Metropolitan and Provincial Legal Association, and the Provincial Law Societies' Association; these ought to act in harmony—at least when any measure is projected which affects the Profession as a whole. What might they not do then? Read the last report of the first-named Society. They were not only consulted by the Criminal Law Commissioners on some proposed alteration in that branch of the law, but even by the judges themselves, and "they have to express their pride and gratification at the continued kindness with which this body is treated by the Bench, and the confidence which is reposed in its recommendations." Why should the other societies be debarred from suggesting or recommending? In the Parliament that is now open, of course numerous "amendments" will be started; let, then, all these societies intercommunicate; let committees from each meet; let them draw up queries, suggestions, or reports, and personally wait on the members of the House—*then* will their influence be felt, and we shall have fewer "whimsical" Acts, and less vituperation.

I hope, Sir, you will urge this gathering, as proposed; sure am I that, as a legal journalist, watching our interests, you could do nothing better.

To Readers and Correspondents.

H. M. A. (Poole)—*Perhaps the best work on Notaries Public is Brooke's Notary, in 8vo. 1839.*

E. M. R.—*Mr.* Slack's Hints on the Study of the Law *is in no way connected with the* Law Times. *Mr.* Crockford *only publishes it for the Author.*

A Student.—*1st. We think the shorter work named the best for a student. 2nd. We cannot answer, having no means of ascertaining. 3rd. The List of Reporters is weekly published for this reason. When a case is cited, it is upon the authority of the* Reporter, *not of the journal in which it appears; and as it might be difficult to recollect the name, it is necessary that a practitioner using any number in a Court should be enabled at once to find the authority upon which it is to be received.*

THE LAW TIMES.

SATURDAY, FEBRUARY 8, 1845.

COUNSEL.

The statement of the great inconvenience resulting from the acceptance of briefs by Counsel, with at least a strong probability that they will be unable to conduct them, to which we directed attention last week as one of the evils requiring early investigation and remedy, has, we hear, occasioned a great deal of discussion among both branches of the Profession, and our views have been defended and combated with considerable vehemence. We are not so uncandid as to deny that they who differ from us may adduce many and weighty reasons in favour of the existing practice, but nothing we have yet seen or heard has at all shaken our opinion that the practice is not in accordance with the principles of morality, and that there would be no serious difficulty in its abolition.

It is quite true that a power to correct the evil rests with the Attorneys; they might sweep it away if they pleased; but to do so effectually they must be unanimous. So great is the responsibility devolving upon an attorney in th conduct of a suit, that he will not deem himself justified in neglecting any chance, however small, which might conduce to success. Therefore, while there is a possibility that the ablest advocate may be brought into the field by his antagonist, he would not incur the remotest hazard by omitting to retain him, even though it be almost certain that his actual services will not be secured. The Attorney, therefore, is the victim of the system. Unless all the Attorneys would agree to give their briefs only where they will be certainly undertaken by the Counsel, it would be vain for a few to adopt such a rule; for it would be incurring a risk which no one would like to take upon his own responsibility. But is there any hope of such an agreement being made, or if made, adhered to? The grievance is admitted by all; but who will begin to apply the remedy? Sure we are that the reform, if it be desirable, can only be accomplished by some such interposition as was indicated last week.

A correspondent denies that it is, in fact, an evil. Surely he could have had but little experience in his Profession not to have felt it in his own affairs. Has he never found himself in this predicament? He has a heavy cause. He retains the best advocate to conduct it, the best case-lawyer as junior; he wants the one to speak for him, the other to work up the law for him, and for this purpose his arrangement is complete. The cause is called on. His leader is absent in another court. To his extreme dismay, the man whom he has selected *because he cannot make a speech*, is suddenly called upon to conduct the case, to address the jury, and to play a part for which he has not a single qualification—that of advocate. Defeat is the almost necessary consequence; and besides the loss of his verdict the attorney has the additional mortification of charging his client, who cannot comprehend how professional morality can differ from other morality, with the heavy fee paid to the absent advocate, who failed to fulfil his tacit engagement, yet keeps the gold as unconcernedly as if he had done the work for which it was paid to him, and won the cause which had, in fact, been lost through his absence.

That this is not an over-coloured picture we believe will be admitted by the greater portion of the attorneys, at least, and it cannot fail to be acknowledged by the experienced of the Bar, and the most readily by those who most profit by the system.

Let us not be misunderstood. We cast not the slightest reflection upon those who act in accordance with the existing practice. It *is* the rule, and they cannot and must not depart from it without something like general concurrence. We have noticed the system in hope that the evil, if such it be, will be pondered upon, talked about, and ultimately abandoned by common consent, as inconsistent with the high character of a Profession which should be above suspicion.

CERTIFICATE DUTY.

We learn from the Secretary to the Metropolitan and Provincial Legal Association, that an immense number of signatures have been appended to the petition praying for the repeal of this unjust and grievous tax upon the Profession. As it will be presented in the course of a few days, there should be no delay in the transmission of their names by those who may not yet have signed it. The suggestion has been thrown out, that some substitute for it might be found in an addition to the stamp duty on articles of clerkship, which would be a much more effective protection than an annual tax, which deters none whom it is desirable to exclude. We are inclined, at the first blush of it, to approve this suggestion; but the entire subject shall have early attention.

SHAM ATTORNEYS.

We have received another specimen of this noxious tribe. It will be best introduced by the letter that inclosed it:—

Cullompton, Devon, 27th Jan. 1845.

Sir,—As you are such a determined opponent to Sham Attorneys and Solicitors, inclosed you have a specimen, brought me by Bicknell, who is a poor man, and would have paid the debt and costs, but being unable to do so at once, wished me to say if he could not pay the amount by instalments. I insisted on his not paying the 3s. 6d. being an illegal demand. I consider the name a fictitious one, not appearing in the Law List. You can make what use you wish with the letter, for the benefit of the Profession,

And I remain, Sir, yours respectfully,

Albert Gribble.

Bridgwater, Jan. 20, 1845.

Mr. John Bicknell, I have to inform you that if the balance of your account due to Mr. Wm. Glencross & Co. is not paid when next called for, I have orders to commence an action at law for the recovery thereof, the expenses of which I trust you will avoid by settling the same forthwith.

I am, yours, &c.

B. Bonly, Solicitor.

	s.	d.
Debt....	6	6
Costs ..	3	6

VERULAM SOCIETY.

We have now to announce some arrangements which will add considerably to the interest and utility of this Society.

At the suggestion of many of the members, it has been resolved to prepare for the Society a complete series of Forms, for use in offices, embracing every branch of practice,—Common Law, Magistrates' Law, Conveyancing, Election Law. The Forms will be prepared with care by barristers conversant with the various subjects to which they belong. They will be printed on good paper, and adapted to the practical needs of the Profession. They will be supplied to the members at the reduced prices of the Society. It is proposed ultimately to embrace in the series every useful form; but as the work will be of necessity an extensive one, some time must elapse before all will be prepared. We shall take care from week to week to announce them as they are ready for delivery. The following have been sent to the press, and will be published in a few days:—Common Law.—*Letter for Payment of Debts; Copy of Writ of Summons; Copy Subpœnas ad test. and duces tecum; Notice to Quit; Warrant of Distress; Appraisement.* Magistrates' Law.—*Forms in Bastardy; Poor Law Forms.*

These will be immediately followed by others. A list of those completed will be regularly published, with the prices to the members, as well as the prices to the public.

Still so many of the circulars are not returned that we are unable to state the result, so as to announce what of the works proposed have been adopted by the members. But from a hasty calculation of those received, we expect that the *Year-Book* and the *Statutes* will be approved. The others are doubtful. So many of the members propose, instead of the suggested Practical Precedents, as a distinct publication, they should be appended to the Reports, that the amendment will be adopted, and, therefore, to each class of the Reports will be subjoined its appropriate precedents,—*Common Law* precedents to the *Practice Cases*—*Conveyancing* to the *Real Property and Conveyancing Cases*—*Magistrates' Forms* to the *Magistrates' Cases*—Forms of *Indictments*, &c. to the *Criminal Law Cases*. Thus the work will be made very complete and useful, and every member will obtain just the class of precedents he requires, without burdening himself with the entire set.

Some of the members have expressed surprise that no progress has yet been made with the expensive text-books. The reason is this. The cost of bringing out a text-book would not be repaid by a less sale than 500. The Society now numbers 754 members. If all would agree to take *the same* books, there would be no difficulty in proceeding with any number that might be required. But, unfortunately, they will not agree in this. Some want one class of books only, others another, and the consequence is, that no one work yet proposed has had more than 350 orders. Who, then, is to incur the risk of printing?

An author cannot be engaged to write a book without an undertaking from the publisher for payment of an agreed sum. The cost of writing and printing one of the text-books would be at least 400*l*. The publisher cannot be expected to hazard this, unless secured from loss by orders previously received from the members. The same difficulty does not occur in the case of works published in parts, like the Reports; for there the cost is limited, and the risk trifling; and if not approved they can be suspended at any moment.

We trust this explanation will suffice. The difficulty is one which will be removed as the Society increases in numbers; for then it may be expected that out of the whole body there will be sufficient demand for each class of books, to justify the necessary engagements with author and printer.

The Reports, which have somewhat fallen into arrear, are now in rapid progress. Nos. II. and III. of *Practice Cases* are out. No. VI. of *Magistrates' Cases* will be ready for delivery on Tuesday. No. III. of *Criminal Law Cases* on Saturday next. No. VII. of *Magistrates' Cases*, Nos. VII. and VIII. of *Real Property and Conveyancing Cases*, No. IV. of *Criminal Law Cases*, and No. IV. of *Practice Cases*, are ready for the press, and will be issued as fast as the printer can proceed with them.

We are anxious to complete a *Part* of each series. Each volume will probably consist of twenty numbers, or five parts, and it will contain at least three times as much matter as a volume of the old reports, at one-half the price of the latter.

The following new members have been added since our last report:—

Cooke, P. B. Gloucester.
Southee, Robt. 19, Ely-place.
Sawle, C. B. Gravis, esq. J. P., Penrice, St. Austell.
Chamberlain, Jas. Hardy, 42, Grafton-st. East.
Bond, Chas. Axminster.

THE CRITIC.

New Books.

Hints on the Study of the Law, for the Practical Guidance of Articled and Unarticled Clerks, seeking a competent knowledge of the Legal Profession. By EDWARD FRANCIS SLACK. London, Crockford.

THE title of this little volume exactly describes its contents. It is a collection of *Hints*—hints not merely as to what to study, but how to study; and not for study alone, but for general conduct both in and out of the profession. These exhibit a great deal of good sense and right feeling; and they are not the less likely to *tell* upon those to whom they are especially addressed because they are written in a familiar strain, more as if the author were talking than writing. The sketches of the opposite career of the industrious and of the idle clerk are graphic and truthful, and as the author speaks from experience, he can scarcely fail to be listened to with respect, and must carry silent conviction in quarters where advice in any other form is not readily admitted. The Hints as to the time for study, the books to be read, the studies of the office, how the student may test his learning and skill, are excellent, so far as they extend, and they are proffered so unaffectedly, so much more in the manner of a friend than in that of a master, that they can scarcely fail to be heard; and if heard they cannot but accomplish much good among the large circle to whom they are addressed.

The volume is so small, and its cost so trifling, that we will not anticipate the reader by extract.

The Law Magazine; or, Quarterly Review of Jurisprudence. No. LXVI. Old Series, No. 11. New Series. London, Benning and Co.

The Law Review, and Quarterly Journal of British and Foreign Jurisprudence. No. 11. London, O. Richards.

WE have already fully described the design of these periodicals. Our duty now is limited to a notice of the contents of the numbers just issued. The pressure of reports will compel us to brevity this week, but during the vacation we purpose to return to the varied and instructive pages before us, and to present to our readers some interesting specimens of their contents.

The *Law Magazine* has *eight* articles. The first, on "The Origin and Progress of Ecclesiastical Law in England," is an historical disquisition on a subject very imperfectly understood; though not strictly within the scope of a legal periodical, the present interest attaching to the system of ecclesiastical law is sufficient apology for its introduction, and the learning accumulated by the writer will repay the most busy lawyer for the half-hour devoted to its perusal. The "Joint Stock Companies Act" is the subject of the second article, and presents some novel views even upon a topic worn threadbare. "Chancery Practice" is a succinct account of that somewhat intricate branch of our law. The article on "Criminal Law Reform" is, perhaps, the best of the number, abounding in suggestions which might usefully be adopted when the much-desired consolidation of the criminal code shall be effected. A clever review of Mr. BROWN'S volume of *Legal Maxims* follows. Mr. F. KELLY'S Bill to provide an "Appeal in Criminal Cases" is advocated with irresistible force of argument in the sixth article; we trust that it will be read in quarters where the power to *do* an act of justice, as well as the honesty to acknowledge it, is to be found. A "Memoir of Lord ABINGER," containing a finely-drawn sketch of his intellectual character as an advocate and as a judge, concludes the more elaborate papers. To these are appended notes on leading cases in Equity and Common Law, short notices of new law books, and a digest of cases recently decided.

The *Law Review* contains twelve articles, on various and very interesting topics. The first is a "Life of Lord ELDON," which bears internal evidence of its authorship. Lord BROUGHAM'S pen is visible in every page. The next is a short practical essay "On enforcing the attendance of Witnesses at Common Law." The second of the series on the "Law of Fees and Costs" is a fearless attack on a bad system. A "Biographical Sketch of Mr Baron GARROW" is the theme of the fourth article. The "Recent State Trial in Ireland" affords an opportunity for considering the Defects in the Criminal Law, and proposes some amendments. The sixth article reverts to the subject of Legal Education, and suggests the propriety of a Law University. To this paper also we shall probably return. The anomalies and absurdities of our Law of Divorce are ably treated in the seventh article. "Conveyancing; its Early History and Present State," should be read by every lawyer. A Memoir of the late Sir JOHN BAYLEY follows; and to this also we shall have occasion to return. The tenth article is entitled "The Legal Budget," and treats of the inequality of taxation among suitors, and improvidence in its collection, and is a severe attack on the fee-taking system. From this article we shall quote largely in future comments upon a system whose abuses have been too much neglected by the Profession. "The Judicial System of France" contains some severe strictures on the administration of the law among our neighbours. "The Criminal Law Consolidation Bill" is recommended in the concluding essay, which seems also to be the production of Lord BROUGHAM. Some correspondence, and a selection of adjudged points, complete the number.

We reserve a variety of passages we had marked for extract until our columns shall be somewhat relieved from the matters of immediate importance that now press upon them.

NECROLOGY.

THE RIGHT HONOURABLE WILLIAM STURGES BOURNE.

The death of the Right Hon. William Sturges Bourne took place on Saturday last at Testwood-house, near Southampton, after an illness of several weeks. The deceased, William Sturges Bourne, was son of the Rev. John Sturges, Chancellor of Winchester. He was born in 1769, and married, 1808, Miss Bowles, daughter of Mr. Oldfield Bowles, of North Ashton, Oxfordshire. On the death of his maternal uncle he assumed the name of "Bourne" in addition to his patronymic. He was educated at Winchester College, and then graduated at Christ Church, Oxford. He was brought up to the bar, but retired from the profession on the death of his uncle. In 1798 he was elected representative for Hastings. He was joint Secretary to the Treasury from 1804 to 1806, under Mr. Pitt, but on Lord Grenville coming into office he retired. From 1807 to 1809 he was a lord of the Treasury, in the Duke of Portland's administration. In August 1814 he was appointed one of the commissioners for the affairs of India, and was made a privy councillor. He continued at the board till 1821. In 1827 he was for a short time Secretary of State for the Home Department; and in July, when Mr. Canning resigned, he succeeded the Earl of Carlisle as Lord Commissioner of Woods and Forests, which office he continued to hold until January 1828. He sat for a period of above thirty years in the House of Commons, having represented Hastings, Christchurch, Bandon, Ashburton, and Milbourne Port. On the passing of the Reform Bill he retired altogether from political affairs. A well-known bill for the regulation of parish vestries is called after him, "Sturges Bourne's Act." He was Lord Warden of the New Forest, a sort of honorary situation, which he had held ever since 1827. He was deservedly esteemed in the immediate neighbourhood of his seat for his benevolence to the poor.

SIR C. F. WILLIAMS.

The following additional particulars respecting the early career of the late Chief Commissioner of the Court of Bankruptcy have been sent to us by a correspondent:—

"He has always been known by the sobriquet of 'Minimus' Williams, on account of his little stature: he wanted exactly half an inch of being five feet high. Though a small figure, his proportions were perfect and well-formed; he was an excellent rider, and once took the part of jockey in a race. Before he entered the legal profession he was in the militia, and fought a duel, occasioned by some ball-room dispute; he was wounded in it, and the feat ever afterwards formed a topic for his after-dinner talk, and he would sometimes be pleased to display the garment which the ball had pierced. He was an excellent mimic, and especially happy in his imitation of countrymen, and of the late Baron Thompson, which was well known to all his legal contemporaries. He would have made a capital actor, having great command and self-assurance. In private conversation his utterance was very quick, voluble, and even indistinct; whereas in public, it was slow, measured, and very clear. He would say, "You never catch me talking quick in public." Though no vocalist, he used to write songs for Tom Welsh, the composer, to set to music, and had likewise an appreciation for painting. I believe he was called to the bar between the years 1806-8, and I do not think he was so old as seventy-five; I should say he was not more than seventy. He was always of Whig principles, and his success in his profession should be attributed more to his good humour in society, great activity, and general liveliness, than to his legal knowledge. Mr. Leader, the father of the present member for Westminster, was one of his earliest patrons. Together with Mr. Charles Phillips, he was counsel for Probert, one of Thurtell's associates in the murder of Mr. Weare, and I remember the air of triumph with which he told me he had saved his client's life by getting him made an approver for the Crown."—*Historical Register.*

THE MARQUIS OF SLIGO.

DUBLIN, JAN. 30.—Accounts were received in Dublin this evening of the death of the Marquis of Sligo, in the 57th year of his age.

Howe Peter Browne, Marquis of Sligo, Earl of Altamont, Viscount Westport, county Mayo, and Baron Monteagle, in the same county, K.P. and P.C. for England and Ireland, late captain-general and governor of the island of Jamaica; also a peer of the United Kingdom, by the title of Baron Monteagle, of Westport, county mayo, and custos rotulorum, county Mayo; born 18th May, 1788; succeeded his father, John Denis, the late Marquis, Jan. 2, 1809; married, March 4, 1816, Hesther Catherine de Burgh, eldest daughter of John Thomas, 13th Earl of Clanricarde, and had 14 children, most of whom still survive.

The deceased Marquis, though professedly a Whig, had not mixed up in party matters for many years past. In his domestic character and that of landlord he stood high. He effected great agricultural and social improvements upon his estates in the west of Ireland, and the linen trade of Westport owes its origin to the noble marquis's attention to the welfare of his tenantry.

The immediate cause of the noble marquis's death is not accurately known, but it is supposed to have been caused by apoplexy.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Tuesday, Jan. 28.

Attwater, W. dyer, last exam. Feb. 11.—*Bucknall*, S. carman, last exam. Feb 25.—*Dewe* and *Dewe*, booksellers, final joint and sep. divs. next week. Belcher, London.—*Keevil*, W grocer, last exam. March 14.—*Robson* and *Co.* pump manufacturers, last exam. Feb 24.—*Wacey*, J. bookseller, final div. next week. Belcher, London.—*Watson*, I. smith, last exam. passed.

Thursday, Jan. 30.

Ayling, J. cabinet maker, last exam. March 14.—*Lett*, A. timber merchant, final div. next week. Whitmore, London. —*Oliver* and *York*, bankers, final div. next week. Whitmore, London.—*Oliver* and *Co.* coal masters, div. next week. —Whitmore, London.—*Roberts*, T. draper, div. next week. Whitmore, London.—*Thorn*, T. G. builder, div. next week. Graham, London.

Friday, Jan. 31.

Ashwell, E butcher, div. next week. Edwards, London. —*Birley*, J. P. plumber, last exam. sine die.—*Copper*, W. grocer, final div. next week. Belcher, London.—*Eldridge*, T. coach builder, div. next week. Groom, London.—*Preston*, W. builder, last exam. Feb. 21.—*Robinson*, R. coal merchant, div. next week. Groom, London.—*Sturla*, H. C. glass dealer, assignees, Feb. 28.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Jan. 24.

Addison, J. jeweller, Bridgnorth, Dec. 7. Trusts. G. Marsden, cutler, Sheffield, Sol. James, Birmingham.—*Blossome*, J. and *Carr*, J. S. drapers, Woodbridge, Dec. 3. Trust. D. Smith, gent. Wood-st. Cheapside. Sol. Hardwick and Davidson, Weavers'-hall.—*Donald*, W. furrier, Brighton, Dec. 4 Trusts. W. Alger, draper, and R. D. Buckoll, accountant, both of Brighton. Sol. Dempster Brighton.—*Potter*, J. farmer, Milby, Jan. 8. Trusts. J. Gilbertson, gent. Boroughbridge, and H. Pickering, innkeeper, Kirby hull. Sol. Hirst, Boroughbridge.—*Smith*, W. bookseller, Wakefield, Jan. 29. Trusts. J. Stanfield, bookseller, and J. Becket, upholsterer, both of Wakefield. Sol. Lumb, Wakefield.—*Taylor*, J. brass founder, Birmingham, Jan. 4. Trusts. I. Lea, gent. J. Lloyd, jun. banker, J. Kempson, metal dealer, and S. S. Lloyd, banker, all of Birmingham. Sols. Messrs. Simcox, Birmingham.—*Worsley*, T. draper, Stockport, Jan. 17. Trust. J. Smith, merchant, Manchester. Sol. Bennett, Manchester.

Gazette, Feb. 4.

Fowler, G. artificial florist, Exeter, Jan. 19. Trust. Lion Guilleaume, lace merchant, Great Castle-st. Regent-st. Sol. Sydney, Liverpool-st.—*Jones*, A. scrivener, Oakfield, Mon-

[illegible]shire, Jan. [illegible]. Trusts. W. Williams, banker, and T. [illegible], [illegible], Abergavenny, and T. Gartrez, Monmouth, [illegible], Abergavenny, and Waddington, [illegible].—[illegible], [illegible], G. [illegible], Gainsborough, Nottinghamshire, Jan. [illegible]. Trusts. T. Black, grocer, and R. Rushby, butcher, East Retford. Sols. Messrs. Mee and Bigsby, East Retford.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Jan. 31.

ARGENT, JAMES, victualler, 49, Golden-lane, Barbican, Feb. 6, at eleven, March 14, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Cooke, King-st. Cheapside, sol.—Date of fiat, Jan. 20. Bankrupt's own petition.

BLINKHORN, WILLIAM, manufacturing chemist, Little Bolton, Lancashire, Feb. 18 and March 10, at twelve, Manchester; Fraser, off. ass.; Fox, Finsbury-circus, and Earle, Manchester and Ashton-under-Lyne, sols.—Date of fiat, Jan. 27. J. Spencer, banker, Manchester, on behalf of the Bank of Manchester, pet. cr.

BATCH, SAMUEL, tailor and draper, 50, St. John-st. Middlesex, Feb. 7, at twelve, March 14, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Garry, Chancery-lane, sol.—Date of fiat, Jan. 30. Bankrupt's own petition.

BURT, WILLIAM, lodging-house keeper, 86, Lisson-grove, Feb. 7, at half-past one, March 13, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass., Lawrance and Plews, Bucklersbury, sols.—Date of fiat, Jan. 22. Bankrupt's own petition.

COLLINS, JOHN, grocer and corn dealer, Sheffield, Feb 13 and March 6, at eleven, Leeds, Com. West; Freeman, off. ass.; Duncan, Featherstone-bldgs. Unwin, Sheffield, and Blackburn, Leeds, sols.—Date of fiat, Jan. 23. R. Woodhead, corn factor, Rotherham, pet. cr.

FIELDING, WILLIAM, hat plush and silk manufacturer, Taunton, Lancashire, Feb. 11 and March 5, at twelve, Manchester; Stanway, off. ass.; Gregory and Co. Bedford-row, and Cooper, Manchester, sols.—Date of fiat, Jan. 22. E. Preston and W. Bindloss, silk merchants, Manchester, pet. crs.

FLOWER, EDWARD COOPER, cattle dealer, Whitchurch, Buckinghamshire, Feb 6 and March 14, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Close, St. Mildred's-court, sol. Date of fiat, Jan. 13. G. Arnatt, farmer, Stanton Harcourt, Oxfordshire, pet. cr.

FRANCIS, ABSALOM, Halkin, Flintshire, DAVEY, WILLIAM, Coniston, Lancashire, and FRANCIS, MATTHEW, Aberystwith, Cardiganshire, ironfounders, Feb. 10 and March 4, at twelve, Liverpool, Com. Phillips; Morgan, off. ass.; Cox and Williams, Lincoln's-inn-fields, and Oldfield, Holywell, sols. Date of fiat, Jan. 2[illegible]. Bankrupt's own petition.

GREENWOOD, RICHARD, bookseller and stationer, Bradford, Yorkshire, Feb. 13 and March 6, at eleven, Leeds, Com. West; Young, off. ass.; Nethersole, New-inn, and Cariss, Leeds, sols. Date of fiat, Jan. 25. H. P. Finucane, surgeon, Bradford, pet. cr.

HARRIS, RICHARD, and HILL, JOHN, tailors, trimming sellers and haberdashers, 86, Newgate-st. Feb. 15, at two, March 15, at one, Basinghall-st. Com. Goulbourn; Green, off. ass.; May, Queen-sq. sol. Date of fiat, Jan. 21. J. B. May, gent. Queen-square, pet. cr.

HEPWORTH, JOHN, and HEPWORTH, DAVID, cotton warp dyers, Raistrick, Yorkshire, Feb. 10 and March 3, at eleven, Leeds, Com. Boteler; Fearne, off. ass.; Leaver, King's-row, Bedford-row, and England and Hellawell, Huddersfield, sols. Date of fiat, Jan 20. E. Jones and J. Ripley, drysalters, Huddersfield, pet. crs.

IRVING, JOHN, linen and woollen draper and tea dealer, Blackburn, Lancashire, Feb. 13 and March 6, at twelve, Manchester, Hobson, off. ass.; Milne and Co. Temple, and Wilding and Co. Blackburn, sols. Date of fiat, Jan. 20. G. Johnston, draper and tea dealer, Blackburn, pet. cr.

JONES, ROBERT, boot and shoe maker, Liverpool, Feb. 11 and March 14, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Troughton, Liverpool, and Keddell and Co. Lime-st. sols. Date of fiat, Jan. 11. H. Lewis, miller, Machynlleth, pet. cr.

LA[illegible]TER, WILLIAM UPTON, dealer in potters' materials, Newcastle-under-Lyme, Feb. 6 and March 8, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; White and Co. Bedford-row, and Ward and Co. Newcastle-under-Lyme, sols. Date of fiat, Jan. 15. Bankrupt's own petition.

ROBINSON, EDWIN LLEWELLIN, fellmonger, Moulton, Lincolnshire, Feb. 11, at half-past twelve, March 11, at twelve, Birmingham; Christie, off. [illegible] Bunner and Son, Spalding, and Motteram and Co. [illegible]ham, sols. Date of fiat, Jan. 22. J. Robinson, farmer, Moulton, Lincolnshire, pet. cr.

WHYTE, THOMAS, hardware merchant, Worcester-st. Birmingham, Feb. 7, at half past ——, March 11, at eleven, Birmingham; Valpy, off. ass.; Messrs. Ryland, Birmingham, sols. Date of fiat, Jan. 23. J. and T. Moilliet, bankers, Birmingham, pet. crs.

Gazette, Feb. 4.

ASHBARRY, JOSEPH, farmer and timber merchant, Holm Lacy, Hereford, Feb. 10, at twelve, March 10, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Lanwarne, Hereford, and Suckling, Birmingham, sols. Date of fiat, Jan. 22. N. Lanwarne, gent. Hereford, pet. cr.

ASTON, WILLIAM, the elder, victualler, Aston juxta Birmingham, Feb. 13, and March 15, at eleven, Birmingham, Com. Daniell; Bittleston, off. ass.; Chaplin, Gray's-inn, and Messrs. Harrison and Smith, Birmingham, sols. Date of fiat, Jan 25. W. Aston, jun. locksmith and bellhanger, Birmingham, pet. cr.

HAWARD, CHARLES STEPHEN, grocer and tallow chandler, Colchester, Essex, Feb. 14, at eleven, March 14, at two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Reed and Shaw, Friday-st. and Philbrick and Co. Colchester, sols. Date of fiat, Jan. 30. J. W. E. Green and G. Round, bankers, Colchester, pet. crs.

HIGGINBOTHAM, JOSEPH, and PECK, GEORGE, machine makers, Great Bridgewater-st. Manchester, Feb. 15, and March 7, at eleven, Manchester; Hobson, off. ass.; Makinson and Co. Temple, and Atkinson and Co. Manchester, sols. Date of fiat, Jan. [illegible]. G. Wilson and J. Porter, machine makers, Salford, pet. crs.

HUMME, SAMUEL, silk hat and cap manufacturer, late of No. 148, Brick-lane, Bethnal-green, Middlesex, Feb. 11, at twelve, March 18, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Horwood and Griffis, Austin-friars, sols. Date of fiat, Jan. 24. T. Harris, silk shag manufacturer, Ironmonger-lane and Coventry, pet. cr.

MILLER, JAMES, boot and shoemaker, Southampton, Feb. 18, at two, March 18, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Smith and Atkins, Serjeants'-inn, and Mackey and Girdlestone, Southampton, sols. Date of fiat, Jan. 28. A. Leapard, widow, Three Crowns, Old Jewry, pet. cr.

RAYNER, JAMES BURTON, and CARTER, THOMAS SCARLETT, lamp manufacturers, Coleman-st. City of London, Feb. 13, at two, March 14, at one, Basinghall-st. Com. Fane; Alsager, off. ass.; Stevens and Co. Queen-st. sols. Date of fiat, Jan. 31. S. Carter, tallow-chandler, Blackman-st. pet. cr.

WESTON, THOMAS, plumber, painter, and glazier, Southampton, Feb. 12, at half-past one, March 19, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Jones and Co. Bedford-row, sols. Date of fiat, Jan. 31. C. T. Rumer, provision merchant, Southampton, pet. cr.

WHITLOW, JOHN, laceman, Manchester, Feb. 15 and March 13, at twelve, Manchester; Pott, off. ass.; Reed and Shaw, Friday-street, and Sale and Worthington, Manchester, sols. Date of fiat, Jan. 21. S. Copestake and G. Moore, Bow Church-yard, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Jan. 28.

Alcock, W. N., *Alcock*, H., *Birkbeck*, T., *Robinson*, W., *Birkbeck*, R., *Birkbeck*, J., *Birkbeck*, M., *Stansfield*, J., *Birkbeck*, J. jun. and *Stansfield*, G., bankers, Settle, Skipton, Keighley, Burnley, Colne, and Clitheroe, so far as regards Rachel Birkbeck, and the executors of John Birkbeck (deceased), Dec. 31. Debts by the remaining partners.—*Austin*, F. and *Seeley*, J. artificial stone manufacturers, Keppel-row, New-road, Nov. 11. Debts by Seeley.—*Bassnett*, S., *Arrandale*, R., and *Bassnett*, G. hat manufacturers, Denton, Jan. 24. Debts by S. Bassnett.—*Buckley*, E., *Buckley*, J. and R., and *Kershaw*, W carriers, Manchester, Aug. 1, 1841.—*Chesnay*, E. and *Ozam*, M. importers of foreign goods, Bourne-street, Dec. 22.—*Cox*, T. and G. glove manufacturers, Worcester, Jan. 21. Debts by G Cox.—*Crofts*, T. and J. mercers, Belper and Clay-cross, Jan. 7. Debts paid by T. Crofts. *Cussons*, W. and *Balderson*, J. wool-staplers, Huddersfield, Jan. 18.—*Dalton*, T. and J. sail makers, Ilfracombe, Jan 25.—*Elias*, D. and *Duxbury*, G. cotton manufacturers, Blackburn, Jan. 15 Debts by Elias.—*Hale*, H. and *Holdsworth*, H. drapery and furnishing warehousemen, Westminster-bridge-rd. Jan. 23. Debts by Hale.—*Hayes*, J. and *Bowler*, W. manufacturing chemists, Newton and Manchester, Jan. 25. Debts by Hayes.—*Hegan*, J., *Hall*, J., and *Hegan*, J., merchants, Liverpool, Manchester, Chili, and Peru, so far as regards George Hall and John Hegan. Debts by J. Hegan and Co. Liverpool.—*Hutchinson*, M. and *Ward*, J. L. electro platers, Regent-street, Jan. 25.—*Jones*, J. and E. plumbers, Wrexham and Overton, Jan. 24. Debts by E. Jones.—*Kemp*, J. F. and *King*, J. brewers, Hayes, Jan 1.—*Leathers*, E. and *Attwater*, J. and C. grocers Palace-row, New-road, Jan. 25.—*Livingston*, R. P. and *Cheetham*, W. lace manufacturers, Nottingham and Salford, Jan. 1. Debts by Cheetham.—*Mills*, W. and *Eyles*, J. painters, Maidstone, Jan. 1.—*Nevitt*, T. H. and *Thomason*, J. brewers, Tranmere, Sept. 17. Debts by Nevitt. *Newton*, W F. and *Kelk*, J. carpenters, Margaret-st. Cavendish-square. Dec. 31.—*Platt*, T. and *Sutcliffe*, H. commission agents, Manchester, Jan. 22. Debts by Sutcliffe.—*Powell*, J. and *Tanstall*, A. pawnbrokers, Liverpool, Jan. 1.—*Scholefield*, F. and *Dawson*, J. carriers, High-st. Southwark, Jan. 1. Debts by Dawson.—*West*, J. and *Pearson*, H. wharfingers and carriers, Selby and Bradford, Jan 1. Debts by Pearson.

Gazette, Jan. 31.

Banks, R. and T. L. tallow chandlers, Salmon's-lane, Limehouse, Jan. 28. Debts paid by R. Banks.—*Bell*, J and *Eagle*, J. linen factors, Bow-lane, Jan. 29. Debts paid by J. Bell.—*Candy*, C. and *Dean*, W. Watling-st. Jan. 31.—*Clayton*, M. A. and *Clough*, A. milliners, Nottingham, Jan. 27.—*Finch*, J sen. and jun. iron founders, Blackburn, Jan. 1. Debts paid by W. Dickenson.—*Foster*, T. and W. joiners, Nottingham, Jan. 28.—*Fryer*, D. and *Prince*, J. colliers, Baildon, Yorkshire, Jan. 14. Debts paid by Prince.—*Hull*, H. and T. P. hosiers, Leicester, Jan. 21.—*Lister*, C. and *Cleworth*, J. chemists, Liverpool, Dec. 31.—*Marshall*, T. and *Purvis*, A. grocers, Newcastle-upon-Tyne, Nov. 4. Debts paid by Purvis. *Muir*, G. and *Marshall*, T. drapers, Newcastle-upon-Tyne, Jan. 28. Debts paid by Muir.—*Newbery*, J. and A fringe manufacturers, Percy-st. Jan. 31. Debts paid by J. Newbery.—*Parr*, A. and J. shrimp dealers, Blackpool, Nov. 5. Debts paid by J. Parr.—*Pearson*, J. and *Price*, S. chartermasters, Kingswinford, March 25, 1843.—*Phillips*, J. *Facey*, P. and *Broughton*, B. lace machine makers, Chard, Jan. 25.—*Relf*, S. and *Neale*, J. wine merchants, Reigate, Dec. 25.—*Shacklock*, F. and *Evans*, J. I. maltsters, Sutton-in-Ashfield, Nottinghamshire, Jan. 28.—*Sykes*, W. and *Crossland*, R. woollen spinners, Almondbury, and Huddersfield, Jan. 1.—*Waterhouse*, H. *Boulton*, W. and *Morris*, W. cotton spinners, Manchester, so far as regards Boulton, Aug. 29, 1844.—*Watson*, W. *Brook*, J. *Murgatroyd*, J. and *Stead*, C. stonemasons, Huddersfield, so far as regards Watson, Dec. 9. Debts paid by Watson and Brook.—*Wiley*, W. jun. *Beckett*, W. and *Wiley*, J. japanners and tin plate workers, Wolverhampton, Jan. 29. Debts paid by Messrs. Wiley.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Jan. 28.

Bowers, R. carman, Prospect-place, St. George's-rd. Feb. 3, at two.—*Bown*, B. dealer in newspapers, Southampton, Feb. 11, at eleven.—*Bradfield*, J. window blind manufacturer, Clarence-pl. Regent's-park, Feb. 1, at eleven.—*Clarke*, W. coach painter, Morning-lane, Hackney, Feb. 12, at twelve.—*Cork*, P. oil bagging manufacturer, Twickenham, Feb. 13, at half-past one.—*Cork*, W. oil bagging manufacturer, Twickenham, Feb. 13, at half-past one.—*Crocker*, W. bootmaker, Bedford-st. Covent-garden, Feb. 3, at half-past one.—*Curtis*, J. smith, Stoney-lane, Tooley-st. Feb. 13, at twelve.—*Few*, W. carpenter, Ely, Feb. 13, at half-past eleven.—*Hatch*, Rev. H. clerk, Sutton, Jan. 29, at one.—*Holloway*, J. H. attorney, Clifford's-inn, Feb. 3, at half-past one.—*Horne*, T. clerk, Newington-crescent, Kennington-road, Feb. 9, at twelve.—*Hubbersty*, Z. clerk, Exmouth-st. Clerkenwell, Feb. 11, at eleven.—*Learmouth*, W. messenger, Blenheim-pl. St. John's-wood, Feb. 3, at eleven.—*Linsell*, L. farmer, North Weald, near Epping, Feb. 3, at half-past eleven.—*Metcalfe*, F. stationer, Marchmont-st. Feb. 6, at two.—*Moore*, H. J. builder, Greenwich, Feb. 6, at twelve.—*Murton*, H. J. retired colonel, Hill-st. Brompton, Feb. 6, at half-past one.—*Overton*, W. O. draper's assistant, Feb. 5, at twelve.—*Ravenscroft*, J. E. schoolmistress, Doddington-grove, Feb. 6, at one.—*Shelbourne*, J. victualler, Exmouth-st. St. George's East, Feb. 6, at twelve.—*Smith*, C. A. clerk, Eldon-st. Shoreditch, Feb. 6, at one.—*Smith*, J. bricklayer, Drury-lane, Feb. 6, at one.—*Smith*, R. clerk in the Customs, Bedford-pl. Old Kent-road, Feb. 20, at eleven.—*Stevens*, J. agent, Ashley-ter. City-road, Feb. 6, at two.—*Woollard*, H. professor of music, Goswell-st. Feb. 5, at twelve.

Gazette, Jan. 31.

Andrews, J. cheese dealer, Shaftesbury, Feb. 8, at eleven.—*Aris*, J. victualler, Colchester, Feb. 8, at twelve.—*Course*, G. out of business, Tingewick, Feb. 13, at twelve.—*Cripps*, T. painter, Notting-hill, Feb. 18, at eleven.—*Davis*, H. traveller, Howley-st. Lambeth, Feb. 18, at eleven.—*Dutiel*, A. lodging-house keeper, Foley-st. Feb. 12, at twelve.—*Griffiths*, T. L. tutor, Titchborne-st. Feb. 12, at twelve.—*Mallett*, J. miller, Hadley-mill, next Barnet, Feb. 8, at half-past twelve.—*Moss*, T. chandler, Portman-place, Mile-end. Feb. 3, at one.—*Parsons*, J. B. cheesemonger, High-st, Camden-town, Feb. 13, at eleven.—*Sercombe*, J. master mariner, Homerton, Feb. 18, at one.—*Stow*, W. T. painter, Church-st. Paddington, Feb. 18, at half-past eleven.—*Wohlman*, G. J. plumber, Dorset-st. New-road, Feb. 1, at eleven.

MEETINGS IN BASINGHALL-STREET.

Gazette, Jan. 31

Callaway, G. grocer, Hedge-row, Islington-green, Feb. 20, at half-past eleven, aud. Feb. 21, at one, div. Com. Fonblanque.—*Campe*, M. single woman, Abingdon, Feb. 20, at twelve, aud. Feb. 21, at half-past one, div. Com. Goulburn.—*Hayward*, W. milliner, Bedford-place, Commercial-road East Feb. 20, at eleven, aud Feb. 21, at eleven, div. Com. Goulburn.—*Jones*, W. grocer, Acton, Feb. 20, at eleven, aud. Feb. 21, div. Com. Goulburn.—*Lee*, T. tailor, Odiham, Feb. 20, at eleven, aud. Feb. 21, at half-past eleven, div. Com. Goulburn.—*Mathews*, W. Goswell-st. Feb. 20, at eleven, aud. Feb. 21, at twelve, div. Com. Goulburn. *Montefiore*, A. burial ground keeper, Mile-end-road, Feb. 20, at twelve, aud. Feb. 21, at half-past one, div. Com Fonblanque.—*Moss*, W. G. clerk, Guildford-place, Kennington, Feb. 20, at eleven, aud. Feb. 21, at half-past eleven, div. Com. Goulburn.—*Pagden*, T. out of business, St. Thomas-st. Southwark, Feb. 20, at twelve, aud. Feb. 21, at one, div. Com. Goulburn.—*Payn*, W. farmer, Preston, Kent, Feb. 20, at twelve, aud. Feb. 21, at twelve div. Com. Goulburn.—*Schram*, E. C. schoolmistress, Bayswater, Feb. 20, at twelve, aud Feb. 21, at one, div. Com. Goulburn.—*Sharpcott* T. L. vicar, Southampton, Feb. 20, at twelve, aud. Feb. 21, at half-past twelve, div. Com. Goulburn.

Country.—Gazette, Jan. 28.

Barker, W. sicklesmith, Dronfield, Feb. 6, at one, Manchester.—*Battersby*, W. coal dealer, Stockport, Feb. 6, at twelve, Manchester.—*Drew*, S. cabinet maker, Wakefield, Feb. 19, at eleven, Leeds.—*Drury*, G. K. brewer, Farmborough, Feb. 12, at eleven, Bristol.—*Earp*, G. grocer, Derby, Feb. 11, at eleven, Birmingham.—*Evans*, J. G. agent, Bath, Feb. 12, at one, Bristol.—*Hadley*, R. hair dresser, Worcester, Feb. 8, at eleven, Birmingham.—*Shanklin*, J. H. landing waiter, Liscard, Feb. 18, at eleven, Liverpool.—*White*, W. publican, Durham, Feb. 10, at twelve, Newcastle.—*Whiting*, W. landing waiter, Egremont, Feb. 18, at eleven, Liverpool.—*Young*, J. haulier, Newland, Feb. 12, at twelve, Bristol.

Gazette, Jan. 31.

Buckley, J. jun. wood turner, Manchester, Feb. 10, at twelve, Manchester.—*Bray*, J. victualler, Sheffield, Feb. 12, at eleven, Leeds.—*Brotherton*, W. C. veterinary surgeon, Congleton, Feb. 3, at eleven, Leeds.—*Dobbs*, J. publican, Rochdale, Feb. 11, at twelve, Manchester.—*Fenton*, S. grocer, Manchester, Feb. 10, at twelve, Manchester.—*Haller*, J. blacksmith, Keadby, Feb. 12, at eleven, Leeds.—*Hayes*, T. tea dealer, Chorley, Feb. 10, at twelve, Manchester.—*Hemingway*, A. weaver, Dewsbury, Feb. 12, at eleven, Leeds.—*Howe*, G. beerhouse keeper, Feb. 12, at eleven, Leeds.—*Holton*, D. out of business, North Kelsey, Feb. 12, at eleven, Leeds.—*Ollerenshaw*, E. hat manufacturer, Manchester, Feb. 7, at twelve, Manchester.—*Owen*, W. maltster, Aberdovey, Feb. 5, at twelve, Liverpool.—*Richardson*, G. bootmaker, Chester, Feb. 6, at twelve, Liverpool.—*Spencer*, J. out of business, Maltby, Feb. 12, at eleven, Leeds.—*Wilson*, T. A. clerk, Worcester, Feb. 8, at half-past ten, Birmingham.

Country.

Hilton, J. surgeon, Croston, Feb. 17, at eleven, Liverpool.—*Howard*, W. wool teaser, Bank, Feb. 5, at eleven, Leeds.—*Lockett*, J. G. salesman, Manchester, Feb. 7, at eleven, Manchester.—*Mayor*, J. tailor, Liverpool, Feb. 7, at eleven, Liverpool.—*Mowbray*, J. farmer, Kirton, Feb. 15, at twelve, Birmingham.—*Nicholls*, W. brewer, Birmingham, Feb. 7, at eleven, Birmingham.—*Owen*, W. plasterer, Stoke-upon-Trent, Feb. 8, at half-past ten, Birmingham.—*Ramsbottom*, E. dyer, Halifax, Feb. 5, at eleven, Leeds.—*Rhodes*, J. painter, Bradford, Feb. 5, at eleven, Leeds.—*Ward*, W. butcher, Richmond, near Sheffield, Feb. 5, at eleven, Leeds.—*Wheelwright*, W. bookkeeper, Leeds, Feb. 19, at eleven, Leeds.—*Woodman*, J. wire worker, York, Feb. 5, at eleven, Leeds.

From the Gazette of Friday, February 7.

Bankrupts.

Beard, J. builder, Deptford.—*Haywood*, G. bricklayer, Luton, Bedfordshire.—*Cole*, W. H. grocer, Long Melford.—*Boggs*, S. carpenter, Chamberlayne-town.—*Bradshaw*, J. coal merchant, High-st. Camden-town.—*Tuvenet*, S. bricklayer, Sovereign-mews, Paddington.—*Richardson*, J. boot maker, Fish-street-hill.

THE REPORTS.

The following are the names of gentlemen who favour the Law Times with the Reports:—

PRIVY COUNCIL by Thomas Campbell Foster, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by William Paterson, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by Richard Griffiths Welford, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by George Goldsmith, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by Henry Baker, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. Symons, Esq. of the Middle Temple, Barrister-at-Law, and Edward Wise, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law, and W. Paterson, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by John Bridge Aspinall, Esq. of the Middle Temple, Barrister-at-Law, and H. T. Cole, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. Saunders, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. Fry, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by John W. Bittleston, Esq. of the Middle Temple.

ADMIRALTY COURT by John W. Bittleston, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. Hughes, Esq. of the Inner Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. Angus Homes, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. Robinson, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York, and Liverpool, by J. B. Aspinall, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. Oliphant, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by Jno. B. Dasent, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law, and Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by Edward W. Cox, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by Edw. W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by William Duggan, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by Wm. St. Leger Barington, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. Gregory, Short-hand Writer.

Equity Courts.

LORD CHANCELLOR'S COURT.

Ex parte Van Sandau, *re* Martin.

Nov. 6, 7, and 16, 1844.

Order of commitment by the Court of Review—Injunction—Contempt—Jurisdiction in bankruptcy.

Where a person, who had been committed by the Court of Review for a contempt, brought an action against the party at whose instance he had been committed, and the Court of Review granted an injunction to restrain that action, except by allowing the plaintiff to demur on the record at law in a particular form, in order to prevent the court of law trying the validity of the order of commitment:—Held, on appeal, that the order was bad, because it contained no distinct adjudication of the contempt, and that the injunction ought not to continue. Quære, whether the Court of Review has power to grant any such injunction.

This was a petition by Mr. Van Sandau, a solicitor, that several orders made by the Court of Review might be reversed or varied, and that the consequential orders might be made. The petition stated that a petition had been presented by Messrs. Turner and Hensman in the Court of Review, praying that Mr. Van Sandau might be committed for contempt, and that he might be struck off the roll of solicitors. That petition was heard before Sir George Rose, one of the judges of the Court of Review, who committed Mr. Van Sandau for contempt, and ordered him to pay Messrs. Turner and Hensman's costs, charges, and expenses. Mr. Van Sandau was afterwards released, on making a submission directed by the Court of Review, and payment of the costs of the petition. An action had been subsequently commenced by Van Sandau against Messrs. Turner and Hensman for damages in respect of such imprisonment. That action had been stayed by an injunction of the Court of Review. The proceedings arose out of a letter which Mr. Van Sandau had published reflecting upon the chief judge of the Court of Review, Knight Bruce, in respect of a judgment delivered by him upon a petition *Re Martin*, a bankrupt. It appeared that Messrs. Turner and Hensman, and Mr. Cummings, the partner of Mr. Van Sandau, had been the joint solicitors under the bankruptcy, and some errors occurred in the bills of costs, which had become the subject of acrimonious litigation between the solicitors. There were numerous orders which the petitioner sought to have discharged or varied, but the questions resolved themselves into three; first, whether the letter published by Mr. Van Sandau was in fact a contempt, or whether it was any thing more than a fair criticism on the judgment of the chief judge. Secondly, that the form of the order of commitment was inaccurate and insufficient; and thirdly, that the Court of Review had no power, by injunction, to restrain Mr. Van Sandau from proceeding with his action-at-law against Messrs. Turner and Hensman.

Bagshawe, for the petitioner Van Sandau.—The order of commitment directs that Van Sandau shall be committed *for a* contempt, in writing, printing, and publishing a certain letter set out in the schedule to the petition presented by Messrs. Turner and Hensman. That was not a sufficient averment of the contempt; nor was there any adjudication of the contempt in the commitment. In *Re Elgie* (8 Jur. 187), it was held, that a mere commitment for some contempt, without an express adjudication, was a fatal objection. Nor was the punishment awarded a proper one; for the Court of Review had no right to order a party in contempt to pay "charges and expenses," as well as costs. The Court of Review had no power to grant an injunction to restrain an action-at law; that power was confined solely to the Court of Chancery.

The Lord Chancellor.—The order seems to be in form like that in *Elgie's* case. The question is one affecting the liberty of the subject, and it is necessary that every order should be framed with the utmost precision. The objection to the form of the order which was sustained in *Elgie's* case exists in full force here.

Bagshawe.—The contempt must be founded on an attempt to pervert the course of justice, and this letter was published after the matter was virtually at an end. Then, even if the Court of Review had power to grant an injunction at all, the form of the injunction was such that it could not be sustained. The order restrained the petitioner from further proceeding in the action, except to amend his demurrer, and thereby to raise certain points only; and his counsel were expressly enjoined from arguing any other points in the case than those directed by the injunction to be raised.

He cited *Ex parte Lund* (6 Vesey, 781); *Ex parte Glossop, re Kemp* (2 Glynn & Jameson, 268); *Ex parte Lee* (ibid.).

The Lord Chancellor.—In *Ex parte Dennett*, in the same volume, Sir John Leach said the objection should be taken by petition, otherwise a bill might be filed in the Court of Exchequer, and the Bankruptcy might go there. If a contempt of the Court of Queen's Bench was committed in the course of the trial of a cause there, could that Court restrain an action in respect of that contempt in the Common Pleas?

Bagshawe, on the question of an appeal from the Court of Review upon a question of contempt, cited *Ex parte Bushell*, mentioned in *Rex* v. *Burdett* (14 East, 63, 122).

The Lord Chancellor.—If an inferior Court commits for a contempt without stating the facts, cannot the superior Court inquire into the question?

Bagshawe referred to *Crossley's* case (3 Wilson, 129, 200). Then, under the Bankruptcy Court Act of 3 & 4 Wm. 4, and the Act of 5 & 6 Vict. c. 122, one judge has no power to commit; and in this case the commitment was signed by a single judge.

The Lord Chancellor.—If to publish a libel on a court of justice is a contempt, then this letter is a contempt, for it is plainly a libel. There can be no justification for such conduct; an apology may go to diminution of punishment.

Rolt, on the same side.—Questions of contempt are not exempt from the appellate jurisdiction (5 & 6 Wm. 4, c. 29, s. 25).

The Lord Chancellor.—By the Act constituting the Court of Review, the judges of that Court and the commissioners have certain duties to perform when sitting alone; now does it not mean that a single judge shall not have power to commit, sitting alone in the performance of such duties? It could not apply to the Court of Review. The subsequent Act enables one judge only to act as the Court of Review, and as such to commit for contempt. The only question is, was not Sir George Rose, when he signed the warrant of commitment, sitting as the Court of Review?

Rolt.—If the object had been to obstruct the course of justice, or to influence the decision of the Court, then it was in contempt, but if the cause was actually concluded, the judge has only the ordinary remedy. Nothing remained to be done in the matter except the formal drawing up of the order, which was not a continuing proceeding. Sir Geo. Rose referred to *Rex* v. *Oliver*, from a judgment written, but not pronounced by Chief Justice Wilmot, which is published in Wilmot's Opinions and Judgments, 255, and in 4 Burrow's Reports. A blow given to a judge after the matter was ended would be no contempt, nor was a libel under similar circumstances.

The Lord Chancellor.—But what is done to a judge with reference to his judicial duties, is a contempt. Lord Hardwicke, in the case of the *St. James's Evening Post* (2 Atk. 469), said, "There are three different sorts of contempt. One kind of contempt is scandalizing the Court itself. There may likewise be a contempt of Court by abusing parties who are concerned in causes here; and there may be also a contempt of Court in prejudicing mankind against persons before the cause is heard." Nothing is more incumbent on a Court of Justice than to prevent its proceedings from being mis-represented. This was held by Lord Eldon in *Ex parte Jones* (13 Ves. 237), and by Lord Cottenham in Mr. *L. Charlton's* case, and in *Faulkner's* case (2 Myl. & Craig, 316; 2 Montague & Ayrton).

Rolt.—Criticism is not contempt, if the proceeding is concluded. If it were otherwise, when would it cease to be a contempt? The true rule is, whether the libel be an obstruction or not? Here the letter is no obstruction to justice, and though it may be libellous, it is no contempt. To say the effect of the judgment will be so and so, is legitimate criticism.

The Lord Chancellor.—You cannot do away with the libellous character of the paper.

Rolt.—The offensive expressions are withdrawn. The form of the order is bad for want of an express adjudication. (*Ex parte Wilton*, 1 Dowl. Rep. 808.) Charges and expenses are never given, except in the Court of Chancery, to trustees and others in fiduciary situations, or out of a fund. (*Fearns* v. *Young*, 10 Ves. 184.) The apology made by Mr. Van Sandau was no submission to the order. Irregularity may be waived, but not error; and this is substantial error. (*Levi* v. *Ward*, 1 Sim. & Stu. 334.) Then, as to the injunction, even if the Court of Review had power to restrain an action by injunction, it is not in the proper form.

The Lord Chancellor.—The order does not direct how the record is to be shaped, it only limits the argument. The demurrer at law cannot be so amended as to exclude a consideration of the validity of the order. If the injunction operates at all, it must be upon the Court; for there is no occasion to argue the case, but the Court would notice the objection appearing on the record, whether argued or not.

Rolt.—There is no jurisdiction to restrain by injunction, except in the Court of Chancery. (*Aston* v. *Heron*, 2 Myl. & K. 390; *Froud* v. *Lawrence*, 1 Jac. & Wal. 655; *Ex parte Davidson*, 1 Montagu & Ayrton, 287.) The Court of Review may make orders on parties within its jurisdiction, which may operate as an injunction; but Van Sandau was not the solicitor under the bankruptcy. He might be within that jurisdiction as to a contempt.

The Lord Chancellor.—If the Court of Review had adjudicated that he had committed a contempt, without specifying in what contempt consisted, that would be an answer to any action. No Court would unravel that matter. This shews no injunction is necessary.

Rolt.—The law leaves it to the Court complained to, to say whether the action should be brought. (*Dicas* v. *Lord Brougham*, 6 Carrington & Payne.)

Swanston and *Simon*, for the respondents, distinguished the order of committment for contempt from the injunction. Lord Ellenborough, in *Burdett* v. *Abbott* (14 East), laid down that if there be an order of commitment for contempt by one of the superior Courts, another Court would not inquire further.

The Lord Chancellor.—Was there any adjudication in that case? Where there is an adjudication of contempt, followed by a commitment, no other Court will interfere.

Swanston.—The objection of want of adjudication was not taken in that case.

The Lord Chancellor.—The objection I have is this: it is a question of law, and I should not wish to decide a question of law in bankruptcy. The case of *Green* v. *Elgie* seems in point; it is exactly similar to this. First, there was no adjudication; secondly, the contempt complained of was stated by way of reference.

Swanston.—The paper is set out in the schedule. It is a mere form of words to say there was not an adjudication. The paper was before the Court, and

he was committed for circulating it. As to the injunction, the Act establishing the Court of Review declares that it shall be a court of equity. Nothing is more common than an injunction to restrain an action by assignees, or by a bankrupt. Lord Eldon said that the power of the Lord Chancellor was wanted to effect objects in bankruptcy. (*Ex parte Lund*, 6 Ves. 781.)

The Lord Chancellor.—He had all the authority of the Great Seal, through sitting in bankruptcy. That further power is not transferred by the statute to the Court of Review.

Swanston.—The case of *Ex parte Glossop*, *suprà*, mentioned on the other side, proceeded on its peculiar circumstances. (*Ex parte Pease*, 1 Rose; *Ex parte Hornby, re Tarleton*, 1 Mon. & Bl. 1; *Ex parte Davy*, 4 Dea. & Chit.; *Ex parte Fletcher*, 1 Ves. & Bea. 350; *Ex parte White*, 4 Dea. & Chit. 279; *Ex parte Figes*, 2 Glyn & Jam.; *Frowd* v. *Laurence*, *suprà*.)

The Lord Chancellor.—It appears to me that the injunction was quite ineffectual for the purpose intended, for the question of the validity of the warrant was to be withdrawn from the consideration of the court of law; but the warrant was set out in the plea, and the Court would take notice of it. It is not necessary to assign cause of demurrer. Therefore if the party is allowed to demur at all, the objections being apparent upon the record, will be taken by the Court itself.

Bagshawe, in reply, read the judgment of Sir George Rose. There were no other powers than those of the Lord Chancellor, in bankruptcy, transferred to the Court of Review. (*King* v. *Harris*, 7 Term Rep.; *Sheriff of Middlesex's* case, 11 Ad. & E.)

Swanston referred to Seton's Decr. es, 435.

The Lord Chancellor. — I do not think this case is very distinguishable from *Green* v. *Elgie*, in both cases it refers to the petition for the contempt.

Saturday, Nov. 16.

JUDGMENT.

The Lord Chancellor.—The facts of this case may be stated in a very few words. A petition and a motion were depending in the Court of Review in the bankruptcy of a person of the name of Martin. Mr. Van Sandau was the solicitor on one side, and Messrs. Turner and Hensman on the other. An order was made upon the petition and motion; Mr. Van Sandau was dissatisfied with the decision, and he wrote, printed, and published a libel upon the Court of Review, upon the eminent judge of that court, and upon Messrs. Turner and Hensman, with respect to this matter. Messrs. Turner and Hensman complained by petition to the Court of Review, and the Court, after considering the subject, made an order directing that Mr. Van Sandau, for his contempt in publishing the libel set forth in the schedule to the petition, should be committed to the custody of the marshal of the Queen's Bench Prison. He was committed accordingly, and afterwards apologised, and was discharged. For the part which Messrs. Turner and Hensman took in this transaction Mr. Van Sandau commenced an action against them in the Court of Queen's Bench. He filed his declaration. They pleaded in justification the order of the Court of Review and the warrant, both of which were set out at length in the plea. To this plea Mr. Van Sandau demurred, and the case now stands for argument in the Court of Queen's Bench. An application was made to the Court of Review to restrain Mr. Van Sandau from proceeding in the action, and the Court made a qualified order on this application, restraining him from proceeding, except for the purpose of raising certain questions. The Court of Review gave him permission on the argument upon the demurrer to object to the proceedings of the Court on three distinct grounds, but restrained him, his counsel, &c. from raising any other questions upon the demurrer except those pointed out by the Court of Review.

This is the state of things, and from this and some consequential orders Mr. Van Sandau has appealed to this Court, and the question is, what course should be taken with respect to these matters? It was, in the first place, contended that no contempt had been committed. Now any person who reads the publication, which is admitted to have been written, printed, and circulated by Mr. Van Sandau, must be satisfied that it is a gross and impudent libel upon the Court and the learned judge, imputing to him the most unworthy motives in pronouncing the judgment of which Mr. Van Sandau complains; a more gross and scandalous libel upon the administration of justice never was published. It was circulated while the matter was still pending, and before the minutes of the order were finally settled. It further appears that it was not only extensively circulated, but that it was even distributed by Mr. Van Sandau in the court itself, and in the presence of the learned judge, to solicitors who were attending the business of the court. That such conduct was a contempt—a gross contempt—of the Court, no reasonable man can for an instant doubt. Lord Hardwicke, in the case of the *St. James's Evening Post* (reported in 2 Atk. 469), in enumerating the different kinds of contempt, states as one distinct head of contempt the scandalizing of the Court itself. I might further refer upon this point, if it were necessary, to the elaborate judgment of Chief Justice Wilmot, written, but not delivered, in the case of *Rex* v. *Oliver*, in which the subject is learnedly and elaborately considered. The next point urged was, that the Court of Review possessed no authority to commit for contempt; but by the Act 5 & 6 Wm. 4, c. 29, s. 25, it is declared that the Court of Review shall be a Court of Record, and may have, use, and exercise all the powers, rights, and privileges of a Court of Record, as fully, to all intents and purposes, as the same are used by any of his Majesty's courts of law at Westminster; and the Court is in terms authorized to commit for contempt. But a distinction was taken; it was said that under this clause a judge sitting alone cannot commit for contempt. This requires some explanation. The Court originally consisted of four judges; the number was afterwards reduced to three, and certain powers were given to them sitting as the Court of Review, but the judges might also sit alone in performing the other duties prescribed by the Act. When, therefore, the Act says that a judge or commissioner sitting alone shall not commit for a contempt, it obviously means a judge sitting, not as the Court of Review, but acting as a judge in the exercise of the other duties prescribed by the statute. By a subsequent Act, power is given to a single judge to constitute the Court of Review; but the judge so sitting as the Court of Review does not come within the exception as to commitments for contempt, which relates only to a single judge sitting in his individual character for the purpose already stated, and not as the Court of Review. The objection originates in a misapprehension of the meaning of the Act of Parliament, and is obviously unfounded.

The next question relates to the form of the order. It is said that the order is vicious, as it contains no adjudication of a contempt having been committed. The order is in this form: it recites the petition and the libel, the latter being annexed to the petition as a schedule; and then it goes on in these words—"for his contempt in publishing the libel in the schedule to the said petition mentioned, this Court doth order him to be committed to the custody of the warden of the Queen's Prison until further order." It is said that this does not amount to an adjudication that Mr. Van Sandau had been guilty of a contempt, but merely assumes his guilt, and upon that assumption the order directs that he be committed to prison. Different precedents were referred to; first, Mr. *Long Wellesley's* case, before Lord Brougham. In that case there was a distinct adjudication that a contempt had been committed. The order recites the facts, and contains the decision of the Court on those facts, declaring "that the conduct of Mr. Long Wellesley was a gross and aggravated contempt of Court, and that as Mr. Wellesley, not withstanding admonition, persisted in such his contempt, the Court ordered him to be committed to the Fleet Prison." In that case, therefore, there was a precise and distinct adjudication. The next case was that of Mr. *Lechmere Charlton* before Lord Cottenham. In that case also there was an adjudication. The facts are stated, and the order runs thus—"The Lord Chancellor, upon taking the said matter into consideration, and deeming the conduct of the said Lechmere Charlton therein a contempt of this Court, doth think fit and so order," &c. The order in the case of Mr. *Lechmere Charlton* was founded on that made by Lord Hardwicke in the case of *Martin*, and which is in precisely the same terms, and there is no doubt that Lord Cottenham framed his order upon that precedent, which has, therefore, the sanction of those two distinguished and learned judges. The case of *Green* v. *Elgie*, in the Court of Queen's Bench, was also cited. The order in that case was made by the Court of Review, committing Green for contempt. He brought an action against Elgie for the part which he had taken in the proceeding. The order was set out in the plea of justification, but the Court of Queen's Bench thought it defective, as it did not adjudge that any contempt had been committed. The order stated "that Elgie had preferred his petition, praying that Green might be committed for his contempt of the order in the petition mentioned or referred to, and that on reading the petition, the affidavits, and the former order of the Court, the Court ordered that Green should be committed for his contempt in the said petition mentioned or referred to." In all criminal cases it is necessary that there should be a charge, a finding, and a conviction, as a foundation for the sentence. Every thing should be strictly and accurately pursued; and if in any one of these three points a substantial defect should appear, it would be a ground for reversing the proceeding. The question, therefore, will be, whether there is in this case a sufficient adjudication; the words are, "for his contempt in writing, printing, and publishing the paper set out in the schedule to the petition." Does this amount to a sufficient averment that Mr. Van Sandau published the paper in question, and to an adjudication that in so doing he had committed a contempt? Now, considering that I am sitting here in bankruptcy, and that, from the form in which this question has come before me, doubts may be entertained whether there could be an appeal from my decision, and adverting to the authorities which have been referred to, I think I ought not to give an opinion in affirmance of the sufficiency of the order, and at the same time follow it up by an injunction to restrain the party from taking the opinion of a court of law upon the subject. It was contended that the Court of Review had no power to grant an injunction, at least not an injunction of this sort; and the particular form of the injunction has been made the subject of comment. I think it unnecessary to decide the former of these questions; for, assuming that the Court of Review had authority to grant the injunction, the question would still remain to be considered, whether I ought, under the circumstances to which I have adverted, to sanction the injunction in such a case as the present. Then, as to the form of the injunction; when the injunction was issued, the record in the Court of Queen's Bench was complete; there was a declaration, a plea, and a demurrer. The plaintiff is permitted upon the demurrer to argue certain questions, and not others. Three objections are mentioned in the order, upon which alone he is permitted to insist. If the order of commitment is defective in substance, the injunction would be ineffectual. But the defect relied upon, if it is a defect, is one of substance, and not of form. It must appear on the record, and the Court of Queen's Bench would, in the proper discharge of its duty, and whether the objection was made by counsel or not, take notice of it, and give judgment accordingly. I think, therefore, the order for the injunction should be discharged. I confine myself to discharging the injunction. After the demurrer has been argued, the parties may again apply to the Court if they think proper.

Tuesday, Feb. 11.

Practice in bankruptcy—Special case—Adjudication.

The demurrer of Mr. Van Sandau to the defendants' plea in the action at law having been allowed by the Court of Queen's Bench, this petition again stood in the paper, both the petitioner and the respondents having applications to make; Messrs. Turner and Hensman had presented a distinct petition in order to bring all the questions before the Court.

Bagshawe and *Rolt*, for Van Sandau.

Swanston and *Simon*, for Turner and Hensman.

The Lord Chancellor.—The point upon which this case was decided in the Queen's Bench was, that there was no distinct averment in the plea that the warrant on which Mr. Van Sandau was committed was the warrant of the Court of Review. Was the argument of that point within the restriction imposed by the order of V. C. Knight Bruce?

Bagshawe.—It was.

The Lord Chancellor.—This Court interposes by injunction where the business of this court is concerned; but it is an admitted inconvenience in such cases that damages must be assessed by the Master. That inconvenience will not be incurred, unless where there are some circumstances which render it less inconvenient than to allow the case to proceed at law. There is nothing in this case to render it inconvenient, therefore why withdraw it from the proper tribunal? This Court is not the constitutional tribunal for questions of damages. If it had come before me upon a special case the questions might have gone to the House of Lords. By the Act for establishing the Court of Bankruptcy (1 & 2 Wm. 4, c. 56, s. 37) it is enacted, "that in case the Lord Chancellor shall deem any matter of law or equity brought before him by way of appeal from the Court of Review, to be of sufficient difficulty or importance to require the decision of the House of Lords, or in case both parties in any proceedings before the Court of Review shall desire that any such matter may be determined in the first instance by the House of Lords, and not by the Lord Chancellor, then in such case the Lord Chancellor or the Court of Review may direct the whole facts, whereupon such question of law or equity shall arise, to be stated in the form of a petition of appeal to the House of Lords, and the party appealing may carry such appeal to the House of Lords in like manner as other appeals are preferred to that House; provided that the cases to be lodged by the parties in the House of Lords shall be confined in matter of fact, in cases of appeal from the Lord Chancellor, to setting forth the special case brought up to the Lord Chancellor from the Court of Review, and in cases of appeal from the said Court of Review, to setting forth a special case, to be approved and certified in manner hereinbefore provided touching appeals to the Lord Chancellor." Now as this has come before me upon petition, I must send it back to the Court of Review to be turned into a special case, in order that there may be an appeal to the House of Lords. It is unfortunate, too, that this case has been decided in the Queen's Bench on the form of pleading. It should have been averred in the plea that Sir George Rose was sitting as the Court of Review. It is a mere technical point. A single judge of the Court of Review sitting as the Court of Review is competent to make the order of commitment which forms the subject of the action. The error in the warrant is the fault of the officer, as it should have been sealed with the seal of the Court. On the hearing of the petition of Turner and Hensman, the Court will have to consider the whole question of the juris-

diction of the Lord Chancellor sitting in Bankruptcy to grant an injunction to restrain proceedings in the ordinary courts, and whether that question can properly come before me on a general petition.

The hearing of the matter fixed for Friday, the 14th inst.

Monday, Feb. 10.

CALVERT v. GANDY.

Practice—Orders under Act 4 & 5 Vict. c. 52—Parties—Discretion.

The Court has no discretion to exercise with respect to the orders made under the authority of the Acts of 4 Vict. c. 94, and the 4 & 5 Vict. c. 52, for facilitating the administration of justice in the Court of Chancery. Such orders are as imperative upon the Court as if they had been contained in a schedule to the Act itself.

The bill in this case had been filed for an account of the affairs of a joint-stock bank in the Isle of Man, the shareholders of which consisted of 120 persons, and the answer of the principal defendants suggested that all those shareholders ought to have been made parties. The answer, which was very long, extending to 327 folios, was put in on the 6th of November last, but was not laid before the plaintiff's counsel until the 20th of November. Then such counsel advised that the question as to whether all the shareholders ought or ought not to have been made parties was one which ought to be argued.

By the 39th order of August 1841, it is provided that if the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument on that objection only, and that where the plaintiff shall not so set down his cause, but shall proceed to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled, as of course, to an order to amend.

In this case, the fourteen days having elapsed, the plaintiff applied to the defendants to consent that the cause should, nevertheless, be set down and argued as to the objection of want of parties. The defendants having refused, on the 4th of December to consent, on the 9th of December last, the plaintiff applied to the Vice-Chancellor of England for leave to set down the cause for argument, on the question of parties. That application was refused, and the plaintiff applied here by way of appeal.

Bagshawe, for the plaintiff, contended that the Court had a discretionary power to relax the general orders when justice to the suitors required it; and he cited *Kershaw* v. *Clegg* (1 Phillips, 120), where a similar application had been granted.

Lloyd, for the defendant, insisted that the plaintiff in this case had not used due diligence, and had not made out a case to entitle him to the indulgence of the Court; and that in fact the Court had no power to relax the 39th order of August 1841. That order was made under the authority of Acts of Parliament, which enacted that the orders, when made and presented for a certain time, were to have the force and authority of an Act of Parliament.

Bagshawe, in reply.

The LORD CHANCELLOR (after looking at the Act).—I am sorry to say I have no discretion to exercise. The orders are expressly binding on the Court, and are the same as if they formed a schedule to the Act itself. If the orders had formed part of the Act of Parliament, I could have no power to alter them, and the effect here is the same, for the orders are declared to be absolutely binding on the Court unless altered within five years by the conjoint order of the Lord Chancellor, the Master of the Rolls, and the Vice-Chancellor. It turns out that the order in the case of *Kershaw* v. *Clegg* was made by consent, and, therefore, it is no authority one way or the other.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Saturday, Dec. 21.

GORDON AND CO. v. THE GOVERNOR AND CO. OF THE BANK OF ENGLAND.

Practice—Pleading—16th order of 26th August, 1841.

G. and Co. carried on business in London, in the course of which they had several money transactions with W. and Co. and a mutual account had, previous to May 1837, subsisted between these two firms. In June, 1837, W. and Co. stopped payment, having, in April, 1837, pledged and deposited with the Governor and Company of the Bank of England a bill of exchange for 2,000l. as a security for a loan which had been drawn by M. and Co. in the United States, and accepted by G. and Co. In August, 1838, W. and Co. brought an action (the Bank of England being the actual plaintiffs), in the Superior Court of New York, against G. and Co. and M. and Co. upon the said bill of exchange. Under these circumstances, G. and Co. commenced the present suit against W. and Co., the Bank of England, and M. and Co. upon the grounds that, in April, 1837, and at the time when the bankruptcy of W. and Co. took place, there were larger sums due to them from W. and Co. than 2,000l. and that the Bank of England had notice of the claims of the plaintiffs, G. and Co. before the bill of exchange was deposited as aforesaid, and that G. and Co. were entitled to set-off against such bill of exchange, which, upon taking the account between them and W. and Co. should be found due from W and Co. to them. The bill then prayed for such account, and that the defendants W. and Co. and the Governor and Co. of the Bank of England, might also be restrained from proceeding in their names in the above action.

The defendants, the Bank of England, put in their plea to all the relief sought by the bill, and all the discovery (except that part which related to no tice of the plaintiffs' equities), as purchasers for valuable consideration without notice. Held, that the plea was good, notwithstanding the action was in the name of W. and Co.

The 16th Order of 26th August, 1841, directs that a defendant shall not be bound to answer any statement or charge in the bill unless specially interrogated thereto, and that he shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer, &c.

The plea was accompanied by an answer to the excepted interrogatory relating to notice, denying notice in the terms of the interrogatory which were general. Held, that since the above-named orders, the interrogatory being in general terms, the answer sufficiently supported the plea, and was good in point of form.

The bill of complaint stated that previous and up to 1837 the plaintiffs carried on business in co-partnership as merchants in London; that previous and up to the month of May, 1837, the defendants, Wilson and Co., also carried on business as merchants in co-partnership; that for some years previous to May, 1837, the plaintiffs and defendants had various pecuniary dealings and transactions, in the course of which a mutual account arose and subsisted between the two firms, and no settlement of accounts had ever been had between them; that in the month of June, 1837, Wilson and Co. suspended payment, at which time there was a considerable sum due to the plaintiffs from them, arising out of such transactions; that since then the firm of Wilson and Co. had paid the plaintiffs various sums on account of such debt, but that there still remained due to the plaintiffs a sum exceeding the amount sought to be recovered in the action hereafter mentioned. The bill then stated that the defendants pretended that they had a claim against the plaintiffs in respect of a bill of Exchange for 2,000l. reporting to have been drawn by Messrs Mackenzie and Brogden, of Mobile, in the United States, upon the plaintiffs, and accepted by them: but the plaintiffs charged that the bill of exchange had been drawn without the authority of them, the plaintiffs, and that they had refused to accept it; that it had subsequently been dishonoured, and that neither in law nor in fact had it been accepted by them. And the bill further suggested that the said bill of exchange was indorsed by Messrs. Mackenzie and Brogden to Wilson and Co. for some consideration, but that they refused to disclose and set forth what consideration was given. The bill then charged that in August 1838, Wilson and Co. commenced their action in the Superior Court of New York, in the United States of America, against the plaintiffs and Messrs. Mackenzie and Brogden upon the said bill of exchange for 2,000l. but they had lately discovered that Wilson and Co. had deposited the said bill with or made it over to the defendants, the Governor and Company of the Bank of England, as a security for some considerable sum of money due or claimed to be due to the bank from the said firm of Wilson and Co. and that the action is, in fact, the suit of and brought for the benefit of the Governor and Company of the Bank of England. That before the said bill of exchange was made over to or deposited with the Governor and Company of the Bank of England, the last named defendants had full notice of the several circumstances in the bill stated, and particularly of the right of the plaintiffs to set off in equity against the amount of the said bill of exchange if they be chargeable therewith, the amount due from the said firm of Wilson and Co. as aforesaid, and that such claim as the defendants the Governor and Company of the Bank of England, may have upon the said bill of exchange, is subject to the equity of the plaintiffs as against the firm of Wilson and Co., and if the plaintiffs were liable upon the said bill of exchange, they would be entitled to set-off in equity against the same the amount so due to plaintiffs from the defendants, Wilson and Co., which considerably exceeds the amount sought to be recovered from the plaintiffs. They further charged that Wilson and Co. ought to be restrained from proceeding at law upon the said bill, or in respect of any item of the accounts between that firm and the plaintiffs, and that the Governor and Company of the Bank of England ought, in like manner, to be restrained from proceeding in the names of the said defendants, Wilson and Co. The bill then prayed for an account of all the transactions between the plaintiffs and the defendants, Wilson and Co., and that the defendants, Wilson and Co. might be restrained from proceeding in the action upon the bill of exchange, and that the other defendants, the Governor and Company of the Bank of England, might also be restrained from proceeding in the names of the said defendants, Wilson and Co., in the action. To this bill the Governor and Company of the Bank of England put in a plea of purchase for valuable consideration, without notice, to all the relief asked by the bill, and to all the discovery sought by it, except so much as required these defendants to set forth "Whether, before the said bill of exchange was made over to or deposited with them, they had not full, and what, or some, and what notice of the several circumstances in the said bill of complaint stated; and whether or not, particularly of the right of the plaintiff to set-off in equity against the amount thereof, if they be chargeable therewith, the amount due from Messrs. Wilson and Co.; and whether such claim as the said defendants may have upon such bill of exchange is not subject to the equities of the plaintiffs as against the said defendants and Wilson and Co." and except as to the interrogatory relating to books, papers, &c. The defendants answered both these interrogatories by a denial, traversing the words of the interrogatories, and stating that "the said Messrs. Wilson and Co. did, on the 25th of April, 1837, indorse and deliver, make over to, and pledge and deposit with them the defendants the bill of exchange for 2,000l. by way of security (together with certain other securities) for 80,000l. which they then advanced upon the faith of such securities. That the said bill of exchange bore date March 6, 1837, payable 60 days after sight, which became due on the 17th June, and that there has ever since been a much larger sum than 2,000l. due to the said defendants upon such advances." The defendants then averred, that they "had not at or before the time when the said bill of exchange for 2,000l. was so indorsed and made over to, and pledged and deposited with them as aforesaid, or at or before the time when such advances as hereinbefore mentioned, or any of them, or any part thereof, were or was made to them by the said firm of Wilson and Co. any notice whatever that any debt was owing, or was claimed to be owing from the said firm of Wilson and Co. to the said plaintiffs, or that the said plaintiffs had, or claimed to have, any right to set off in equity against the amount of the same bill, if they were chargeable therewith the amount due, if any thing was then due from the said firm of Wilson and Co. to the plaintiffs, or that the said firm of Wilson and Co. did not in fact give a valuable consideration for the said bill of exchange, or that the plaintiffs had any other equities against the said firm of Wilson and Co. in respect thereof, and that they the said defendants are *bonâ fide* purchasers of the said bill of exchange for a good and valuable consideration, and without any notice of the said alleged right of set off, or any other the equities or equity claimed by the plaintiffs.

Jas. Parker and *R. Palmer*, in support of the plea, contended that the plaintiff could have no equity against a party who holds a bill of exchange for valuable consideration before it becomes due; and if any such equity did exist between the plaintiffs and Wilson and Co. there was a complete denial of any notice being had by the Governor and Company of the Bank of England. That the latter had become purchasers of the bill for valuable consideration in April 1837, which bearing date 6th March previous, and made payable sixty days after sight, did not become due until 17th June. The plaintiffs allege that the Bank of England were, in fact, the plaintiffs in the action upon the bill at New York, whilst their debtors, Wilson and Co., were nominally so; but that, supposing that to be true, the plaintiffs did not in their bill allege any claim of set-off against the Bank of England, and that the mere fact of the plaintiffs' debtors being trustees for their clients (the Bank of England) gave the plaintiff no equitable right against the latter, who, under the circumstances, had shewn a clear, legal, and equitable title.

Bethel and *Heathfield*, for the plaintiffs, argued, that it was one of the first principles of pleading that where a defendant pleads a purchase for valuable consideration, without notice, he must at any rate shew a legal title, and at the same time deny any matter which would tend to defeat it in a court of equity. That the proceedings in America were instituted in the names of Wilson and Co. the original payees of the bill, and that the Bank of England was in this suit assumed not to have the legal title. They were, therefore, not legal, but merely equitable owners of the bill of exchange, and their action can only be in respect of such rights as the payees had at the time when they commenced their action. That the statement in the plea was, that Wilson and Co. indorsed, delivered, made over to, pledged, and deposited with the Bank of England, the bill of exchange; but that the character of pledgee of a bill, who has only a right of lien upon it, is very different to an indorsee, who is the absolute owner of the bill; and that, therefore, the plea is of an equitable title only. That as to the purport of the bill, and the nature of the relief prayed, it is perfectly clear. The plaintiffs

shew that for some time the firm of Wilson and Co. are parties between whom and the plaintiffs there is a long unsettled account, the bill in question forming one item in that account; that the Bank of England cannot claim any lien upon the bill before the account is taken, and it can then only claim such an equity as the payees may have after such account is actually taken, consequently, if it should appear, after the winding up of their accounts, that the bill has been satisfied, the plaintiffs, as acceptors, would have an equity against Wilson and Co. the indorsees, to have the bill through their means delivered up to them by the Bank. They submitted also, in the second place, that the plea was defective in point of form, that the charge contained in the bill was, "that before the said bill of exchange was made over to or deposited with the said Governor and Company of the Bank of England, the said last-named defendants had full notice of the several circumstances *herein* stated," which must be taken to mean all the allegations stated in the bill; that the plea was to all the discovery sought, "except so much as required the defendants, &c." (traversing the terms of the interrogatory to that charge); that the plea was a plea to the *whole* discovery, excepting the *whole*, for it went to the whole, excepting the particular charge which in itself was co-extensive with the bill, and that even this excepted part not covered by the plea was not sufficiently answered by the denial which accompanied the plea; the plea was consequently bad.

Parker, in reply, urged that his clients being purchasers for valuable consideration without notice, all that was necessary for them to except from the plea was so much of the allegations in the bill as would destroy the effect of the plea; that the charge of notice, which was all that was necessary to be excepted, had been fully denied.

The Vice-Chancellor.—I will not trouble you as to the substance of the plea, my doubt at first being only in reference to the form of it; as to the substance of the plea, my opinion fully coincides with your own. With regard to the form, I cannot help thinking that if the 16th Order of August 1841 had never come into operation, the answer not undertaking to meet all those parts of the bill not covered by the plea would have been insufficient. The allegation in the bill is, "that before the said bill of exchange was made over or deposited with the Governor and Company of the Bank of England, the said last-named defendants had full notice of the several circumstances herein stated, and particularly," &c. The interrogatory is founded upon that charge. Now, it is easy to conceive that before the issuing of the orders of Aug. 1841, when a defendant undertook to support his plea by answer, such answer must have fully met every part contained in the bill not covered by the plea, but then the 16th Order of August 1841 declares that a defendant shall not be bound to answer any statement or charge in the bill, *unless specially and particularly interrogated thereto*. So that, if he be specially interrogated thereto, and he does answer the interrogatory, his answer is sufficient; and it follows that where the interrogatory is general, as in the present instance, the answer, couched in the words of the interrogatory, is sufficient. With regard to the main facts of the case, they are simply these. In the month of April 1837, the defendants Wilson and Co. indorsed and made over to, pledged and deposited the bill of exchange and other securities with the Governor and Company of the Bank of England, by way of security to them for 8,000*l*. The bill thus became the absolute property of the Bank of England, subject to the following equities:—That if the said bill, and the other securities, should be proved to exceed the amount of the loan, the Bank of England might be forced to surrender the bill of exchange, and it would be equally bound to do so, provided the firm of Wilson and Co. had paid to the Bank sums of money equal to the amount borrowed. But, subject to this, the Bank of England had obtained, by the deposit, an absolute property in the bill of exchange against Wilson and Co. and against all other persons who had rendered themselves liable to them as indorsees of the same. Wilson and Co., it seems, stopped payment in the month of June 1837, and then it is stated in the bill, that a balance was due to the plaintiffs from that firm, in respect of certain other transactions, prior to the time when the bill of exchange was pledged to the Bank of England. But, be that as it may, my opinion is, that when the bill was delivered over to the Bank of England the Bank took it absolutely, without being affected by any other equity than that which existed between the Bank of England and Wilson and Co. in respect of their mutual private transactions.

The plea must be allowed, with leave to amend the bill.

ROLLS COURT.

Friday, Jan. 31.

Roschetti *v.* Power.

If defendants admit in their answer generally that a considerable, but not any specific sum of money, is in their possession, they will not, without more, be ordered to pay it into court; but if they move to extend the time for answering, after exceptions taken to their original answer and submitted to, such payment into court may be made the terms on which they will obtain that indulgence.

Turner (with him *Rogers*) moved on behalf of two of the defendants, to extend the time for answering. Their answer had been excepted to for insufficiency, and upon consideration of the case, they were advised to submit to those exceptions, and put in a fresh answer. The time was now near expiring, and they moved to have it extended.

Lowndes (with him *Torriano*), contrà.—The same course has been taken by these defendants as by the other defendant, Power, previously. The same exceptions have also been taken and allowed as in the other answer. Power's answer gave no information; neither did theirs. Applications were several times made to extend the time, and the answer was filed after the exceptions were taken and allowed to Power's answer, and yet the very same grounds of exception for insufficiency existed in theirs as did in his. They now seek for time, and if they get it, it must be on terms. There being a distinct acknowledgment by Power, though not by them, that a specific sum is in their possession, let them now bring the money into court before their motion is granted.

Turner, in reply.—It is useless to press for an answer till the accounts arrive from Gibraltar. [The Master of the Rolls.—Why not consent to pay the money into court? The only difficulty I have is, that the exact sum is not stated before me as being in their possession.] *Lowndes*.—The precise sum is mentioned in their affidavits.

The Master of the Rolls.—If there is an affidavit that there is a precise sum standing in their names, I will refuse this motion; if there is no affidavit, I will give the time required. I can make the payment into court the terms on which to grant this motion, though I could not order it on the former occasion when moved for, as a precise sum was not admitted in the answer. If, Mr. Turner, you pay in today the sum so admitted in the affidavit, you shall have your order; if not, I shall dismiss your motion, with costs. You are both wrong.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Saturday, Jan. 25.

Whitmarsh *v.* Robertson.

Appointment—Married woman—Assignment of life interest.

Where a settlement of a woman's interest was made upon her marriage upon trust for herself for life, and after her death for her children by the marriage, equally, with a power for the trustees with her consent to advance the children to the extent of one-half of their presumptive shares, and she married a second time, and she and her second husband for valuable consideration assigned her life interest, it was held that this power of advancement might still be exercised with her consent in favour of the children.

In 1820, on the marriage of Mr. and Mrs. Finlayson, a sum of 1,757*l*. stock, the property of the wife, was assigned to trustees upon trusts for the separate use of the wife during the joint lives of the husband and wife, and after the death of either, for the survivor for life, and after the death of the survivor, for the children equally, the shares to vest in the sons on their attaining twenty-one, and in the daughters on their attaining twenty-one or marrying. Power was by the settlement given to the trustees at any time or times after the decease of the survivor of the husband and wife, or in the lifetime of the husband and wife, or the survivor of them, with their, his, or her consent in writing, to raise any part or parts (not exceeding one moiety) of the expectant portions of the children, notwithstanding the same should not have become vested or payable, and apply the same for the preferment or advancement of such children. There were seven children of the marriage. In January, 1837, the husband died, and in the same year the widow married William Milebam; but no settlement was executed upon the second marriage. By indenture dated the 4th of April, 1837, William Milebam and his wife, for valuable consideration, assigned the life interest of Mrs. Milcham in the fund to the plaintiff, and notice of the assignment was given to the trustees. Upon this assignment disputes had arisen, and the points which were discussed are reported in 4 Bea. 26, and 1 Y. & C. C. C. 715. The assignment was established, but the decree was stated to be made without prejudice to any question as to the power of advancement before mentioned. A deed having been afterwards executed by Mrs. Mileham to enable the trustees to raise 480*l*. to advance four of her children, this petition was presented, praying that the trustees might be empowered to raise that sum.

Shapter and *Hanson*, for the petition, cited *Stiffe* v. *Everitt* (1 Myl. & Cr. 37); *Thompson* v. *Butler* (Moore 592); *Ray* v. *Pung* (5 B. & Ald.); *Doe* v. *Jones* (10 B. & Cr.); *Tunstall* v. *Trappes* (3 Sim.); *Skeales* v. *Shearley* (10 Sim. 153; 3 M. & Cr. 112); *Daniel* v. *Upley* (W. Jones, 137); *Noel* v. *Henley* (M'Cl. & Yo.); *Burnett* v. *Mann* (1 Ves. 156); 1 Sugden on Powers, 184 et seq.; *Hornsby* v. *Lee* (2 Mad. 16); *Purdew* v. *Jackson* (1 Russ. 1); *Honner* v. *Morton* (3 Russ. 65); and *Elwin* v. *Williams* (12 Law Journal, 440).

Russell and *Stinton*, for the plaintiff, opposed the petition citing *Badham* v. *Mee* (7 Bing.) and other cases.

Welford, for the trustees.

The Vice-Chancellor (without hearing a reply).—I understand that in this case there was no instrument of assignment by Mrs. Mileham, between the marriage settlement on her first marriage, and her second marriage; and, as under her first marriage settlement she would not take this property for her separate use after her first husband's death, when she married a second time, her interest became liable to all the incidents to which a woman's property, not being separate estate, is liable in the hands of her husband. The interest in the present case being derived under a particular instrument, became liable to all the incidents to which the property may be considered liable under that instrument. What would have been the effect if Mrs. Milcham, when a widow, had sold or incumbered her life interest, I give no opinion or intimation of opinion. In point of fact, the sale was made by her second husband and by herself, so far as she could, after her marriage. The first question is, whether, if a sale had not been made, and the second husband claimed, she could execute this power without, or against the consent of her second husband. I think she could; and that, immediately after her second marriage, she was at full liberty to exercise this power, and that the trustees were authorized to act upon such exercise without and against the consent of the husband. The second question is, whether the assignment of the husband makes any difference? I think not; and that a purchaser from him can stand in no better position than he did. The next question is, whether her concurrence was of any avail? Generally speaking, a married woman can execute no deed. A power may be given to her, and in the exercise of the power she is enabled to act under the power, but not to act not conformably with the power. This sale to Whitmarsh was not under any power, or in conformity with her marriage settlement; and it was, therefore, a mere nullity. I am of opinion that her consent is not effectual, and it is as if she had never married, and no sale had ever taken place. As matters stand, however, it is difficult to give effect to this opinion. The suit is by the purchaser of the life interest, but it is not in his option whether the suit shall be confined to the life interest. The decree, however, is not exhausted; for by the decree of the 5th July, 1842, it is ordered, that the hearing of this cause, in all other respects than those disposed of, shall stand over, with liberty to the parties to apply as they may be advised. Therefore, let the cause be set down to be further heard, and with the consent of the trustees and the children, for the purpose of administering this trust generally. It is the duty of the Court, upon a consent of Mrs. Mileham being produced, to give effect to that consent. This, however, cannot be done till the number of the children be ascertained. With this expression of my opinion, let this petition stand over to a day to be named, and let the cause be further heard at the same time; and let an affidavit of the number of the children be then produced.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, Feb. 8.

Holloway *v.* Turner and Rope.

In this case the plaintiff had recovered a verdict for 96*l*. in an action against the defendants for having entered his premises, and removed his furniture for sale to an auction-room. The pretence and colour for the seizure of the plaintiff's goods were a judgment entered up under a warrant of attorney, which, at the instance of the plaintiff, and for the purpose of preventing the sale, was set aside. At the conclusion of the trial leave was given to the defendant to move that the damages should be reduced by 26*l*. the sum at which the jury had estimated the reasonable costs of setting aside the warrant of attorney. (*a*)

Jervis, having obtained a rule accordingly, cause was now shewn against it by

Lush.—After the statement of the general damage, the declaration sets out special damages, enumerating as one cause thereof, the cost and charges "in and about preventing the sale of, and in and about setting aside the judgment, &c." [Lord Denman, C. J.—Can you make out those costs to be consequences of the trespass?] So long as the judgment stood,

(*a*) A question was raised at the trial whether the expenses of the plaintiff's attorney in going to Chelmsford to consult a gentleman then there attending the assizes, could properly be charged, and Lord Denman, C. J. ruled that they were properly charged.

the trespasses were justified, and the sheriff would have been justified in selling. (*Sandbach* v. *Thomas*, 1 St. 316.)

Jervis, Q. C. contrà.—That case is not in point. The plaintiff should have got his costs of setting aside the judgment from the judge who set it aside. The practice is for the judge to give the costs of setting aside the judgment, imposing the terms that an action shall not be brought. The judge has an entire discretion in the manner. This is a case of personal trespass, which was not the case in *Sandbach* v. *Thomas*.

By the COURT.—We have no doubt about this case. These costs are not consequences of the trespass, for which the plaintiff brought his action; and he, if entitled to them, should have got them from the proper authority.

Rule absolute for reducing the damages by 26l. No costs of this rule on either side.

BAYNTUN *v.* SEALE and COXE.

Trespass for breaking and entering the dwelling-house of the plaintiff, and taking his goods.

Plea—Justifying under a sheriff's warrant to Seale for executing a writ of *fi. fa.*

Replication—Admitting the writ and the delivery of the warrant to Seale, and putting in issue the residue.

At the trial, the plaintiff began, and called a person named Kelsey, who proved that he had entered under the authority of Coxe, who was a follower of Seale; that he did not know where Seale was at the time, neither had he seen him that morning. Mr. Roberts, the plaintiff's solicitor, was then called, and he said that when, on the day after the trespass, he pointed out to Coxe the irregularity of the proceeding to execute the writ when Seale was not present, Coxe replied, that Seale had been in the neighbourhood.

Lord DENMAN, C. J. left it to the jury to say whether there was evidence to shew that Seale had been at the time of the entering sufficiently near to be in fact authorizing the proceeding; for if he had been, that was sufficient.

The jury found for the plaintiff.

Afterwards, a rule *nisi* for a new trial was obtained, on the ground that the verdict was contrary to the evidence; against which cause was now shewn by *Channell*, Serjt.

H. Wilde, contrà.

Authorities cited: *Black* v. *Archer* (Cowp. 265); *Fentum's* case (Lofft, 524); *A.* v. *Whalley* (7 C. & P. 245); *R.* v. *Patience* (7 C. & P. 775).

By the COURT.—The case is peculiar. The plaintiff need not have called Mr. Roberts, for Kelsey proved his case; but he did call Mr. Roberts, and though, if that gentleman had been called on the other side, the matter of his testimony would have been inadmissible, yet against the plaintiff it was admissible. Then there was some evidence in support of the justification, which is sufficient.

Rule discharged.

Thursday, Feb 13.

Re CARUS WILSON.

Return to the writ of habeas corpus.

The *Solicitor-General* presented the body of Mr. Carus Wilson in obedience to the writ of *habeas corpus*. The return was then read.

Roebuck, Q. C. then stated to the Court that Mr. Kelly and Mr. Peacock having been unable to hold their briefs, he and Mr. Pearson had been instructed for Mr. Wilson on the preceding evening, and being wholly unprepared to argue on so short a notice, prayed for a postponement of the hearing.

An arrangement was then suggested for a postponement until next Term, Mr. Wilson being released on certain conditions, and on bail.

Roebuck, Q. C.—Mr. Wilson will enter into no compromise, and requires to be sent to the Queen's Prison

The *Solicitor-General*.—Yes, he knows he can there live at the expense of the country.

Roebuck, Q. C.—Mr. Wilson denies that he has ever done, or intends to do so.

Lord DENMAN, C. J.—We should be perfectly justified in remanding this person back to the gaol he has left. Both my learned brothers and myself are here at great sacrifice of time, which I by no means know that we are justified in having thus bestowed. This conduct is an abuse of the anxiety, and trouble, and time which the Court has bestowed in doing justice in this case. There has been ample time to instruct counsel properly, and the counsel who have already appeared for him having done every thing that could be done in his behalf, it is alone the question of injustice being done to any individual which renders us cautious of doing what may prevent this matter from being brought to a proper termination. That termination must, however, be promptly arrived at, and we suggest to-morrow we may be disposed once more so to arrange as to hear this case.

The *Solicitor-General*.—It is utterly impossible for me to attend here to-morrow, my lords.

Roebuck, Q. C.—Mr. Wilson is willing to postpone the case until next Term, if he is at large on his sole recognizance till then.

The *Solicitor-General* assented.

Lord DENMAN, C. J.—If the Solicitor-General assents, we have no objection.

Roebuck, Q. C.—My lord, I trust that I am exonerated from blame in this matter.

Lord DENMAN, C. J.—Not a shadow of imputation rests upon you, Mr. Roebuck.

The hearing of the case was then postponed until Tuesday, April 22.

Tuesday, Jan. 21.

VAN SANDAU *v.* TURNER.

(Argued in Michaelmas Term.)

A judge of the Court of Review has not power as a single judge to commit for contempt of Court in the publication of a libel. An averment that every thing was done according "to the practice of the Court" is insufficient. The Superior Courts not will take judicial notice of the practice of a Court recently established, like the Court of Review.

In this case, the declaration was for an assault and false imprisonment of the plaintiff.

Pleas—1st, Not guilty; 2nd, A justification, under a certain warrant, to imprison the defendant, issued by Sir George Rose, one of the judges of the Court of Review, for a contempt of that Court, in publishing a certain alleged libel in a handbill.

Demurrer to second plea, assigning various causes of demurrer, only two of which were relied on in argument; one of which was, that the plea was bad, as not shewing that Sir George Rose was a judge of the Court of Review at the time he made the order on which his warrant issued; the statement on the plea being—" Sir George Rose, one of the judges of the Court of Review," without going on to allege that he was a judge of the Court of Review at the time he issued the warrant. The other point relied on was, that Sir George Rose had no power to adjudge a party guilty of a contempt, or to issue his warrant for a contempt, but that it must be the act of the Court, and not of a single judge.

Kelly, Q.C. (*Creasby* with him), in support of the demurrer.—First, the plea is clearly bad, in not shewing any jurisdiction in Sir George Rose to issue his warrant. The statement in the plea—" Sir George Rose, one of the judges of the Court" of Review, may be only his present addition, but does not at all shew that he was a judge at the time he made the order. But even if this be held a sufficient allegation, still he has no power, as a single judge, to commit for a contempt, but only as the Court. [COLERIDGE, J.—But, Mr. Kelly, the plea says, " made and issued out of the court, according to the practice of the Court;" must we not take judicial notice of the practice of the Court?] True, my lord; but it is not so in the warrant, and it is on that they act. A single judge has only power to act as the Court. 5 & 6 Wm. 4, c. 29, s. 5, and 5 & 6 Vict. c. 122, s. 61, are the Acts of Parliament which give him the power to act and constitute the Court; there is no immemorial custom in the court that this Court can take cognizance of; it is so recently constituted, that we must look to the Acts themselves. Now these Acts only give power to a single judge of the Court of Review to act as the Court. Then there is no distinct adjudication.

Stopped by the Court.

Lord DENMAN, C. J.—These are quite distinct matters. We should like to hear the other side on these two points first.

The *Solicitor-General* in support of the plea.—The warrant is alleged to be issued according to the practice of the Court, and this Court will not inquire as to that practice. Then, as to the power to commit for a contempt, I apprehend that every Court of Record has a power incidental to it to commit. [PATTESON, J.—Is it not consistent with every thing stated in the plea, that Sir George Rose was appointed after the order was made?] Certainly to a common intent is all which is sufficient (Com. Dig. Pleader, f. 17); and it is sufficiently implied here that he was a judge of the court at the time he made the order.

Cases cited: *Posterne* v. *Hanson* (2 Wms. Saund.; 1 Coke, 460, 16 B.); *Worledge* v. *Massey* (Cro. Car. 67); *Lord Monson* v. *Brown* (Cro. Car. 527).

Kelly, in reply.

Case cited: *Green* v. *Elgie* (1 Dowl. P. C. 344).

Cur. adv. vult.

Tuesday, Feb. 3.

JUDGMENT.

Lord DENMAN, C.J. now delivered the judgment of the Court.—To a declaration in trespass for an assault and false imprisonment, the defendant pleaded a justification under a warrant of Sir Geo. Rose, one of the judges of the Court of Review, founded on an order of the same Court, that the plaintiff should stand committed for a contempt of that Court, charged upon him in a petition presented to that Court, and that a warrant should thereupon issue for his arrest. The contempt alleged was the publication, in the face of the Court, and elsewhere, of a scandalous hand-bill, or circular; to which plea a special demurrer was taken of enormous magnitude, with no other statement of the points intended to be raised, than that which appeared in the grounds of demurrer. We have heard the case argued upon two of these points which we selected; we hold both of these objections good. Supposing a judge of the Court of Review to possess the power of committing for the offence charged, it ought to appear he was such a judge at the time he issued such warrant. As a general proposition, this is too clear to require any proof; but we are also of opinion, a single judge, on his individual responsibility, has no power to cause any one to be arrested for the offence here stated. Such contempts are to be punished by the Court itself; the sentence to proceed from a sense of the necessity of inflicting it at the time of its infliction; and, therefore, it can be delegated to no other hand. For curing both these defects, the same allegation in the plea is relied upon. The learned judge on whose warrant the defendant acted, is said to have proceeded according to the practice of the court; and it is said this would not be true unless the practice were for one judge of the Court of Review to issue his warrant for the apprehension of one against whom the Court has made an order that he be arrested for a contempt; and, further, that the said averment cannot be true unless Sir Geo. Rose was a judge of that court. We are by no means sure these words can be so applied. Their meaning would be fully satisfied by confining them to the mode of issuing the warrant, which may then take place according to the practice of the court, although all the circumstances attending it were inconsistent with that practice. But supposing the fair meaning of the plea to be that the execution of Sir Geo. Rose's warrant was conformable to the practice of the court, we must next inquire whether this is a good justification in point of law. The statute which creates the Court of Review confers upon it all the powers and privileges of the courts at Westminster. Supposing it to be well established that we are bound to take notice of the practice of all the courts which have existed for centuries, can it follow we are bound to know all the rules and regulations of a new tribunal, created for purposes entirely different from our own? The constituent Act of Parliament has conferred no special power in a case of contempt, and if that Court has laid down any rule for its own guidance, this is a matter of fact which we have no means of knowing without its being communicated to us. Such communication has never been made, and if it had been we should still have to consider whether the course of procedure so described in the plea is legal. If, on the other hand, the justification is rested, in this respect, on the Act of Parliament, as conferring the power of the superior courts on the Court of Review, and so, impliedly, the same power of committing for contempt as that which this Court exercises, then, far from deducing the right to do what has been done for that power which has been pleaded as a justification of this arrest, we must take judicial notice that this was not in conformity with any power practised or claimed by the superior courts. The demurrer is said to admit that the warrant was issued in all respects conformably to the practice of the Court of Review. The demurrer to the plea admits no more than what is well pleaded, and the defence now set up did not appear to be good or to be well pleaded. The defendant's allegation should have been distinct as to the practice by which he sought to justify the arrest of the plaintiff. Such an allegation distinctly made might have been traversed, as the present argument supposes, or it might have been demurred to, and then the fact of its existence would have been admitted. We do not accede to the proposition that we are bound to take notice of the fact that Sir George Rose was a judge of the Court of Review, but if we did, our judgment must be distinctly for the plaintiff, inasmuch as we are of opinion an individual member of that Court is not at liberty to issue his warrant in that manner.

BUSINESS OF THE WEEK.

Saturday.

THE MAYOR OF ROCHESTER *v.* LEVI.

Cur. adv. vult.

Tuesday.

BARON DE BODE'S Case.—*Hill*, Q. C. and *Manning*, Serjt. were heard in support of the petition.

COURT OF COMMON PLEAS.

Thursday, Jan. 30.

MUMMERY *v.* PAUL.

In an action on the case for a deceitful representation on the sale of the goodwill of a trade, lease, and fixtures, the plea of not guilty puts in issue the sale as well as the deceitful representation.

Where, at the trial, leave is reserved to the defendant to move to enter a nonsuit, he is at liberty to avail himself thereof after a verdict has been found for him, and, in answer to an application by the plaintiff for a new trial, on the ground of the verdict being against evidence.

Case.—The declaration alleged that before and at the time of committing the grievances thereinafter mentioned, the defendant carried on the trade and business of a potato-salesman at a messuage and premises situate and being No. 31, James-street, Covent-garden, in the county of Middlesex, and was possessed of a lease of the said messuage and pre-

mises for a certain term of years, to wit, twenty-one years, from the 25th day of March, A.D. 1827, and was also possessed of certain fixtures then fixed and being in and upon the said messuage and premises, and of a horse, cart, van, utensils in trade, goods, and chattels; and thereupon heretofore, to wit, on the 27th day of May, A.D. 1842, the plaintiff, at the request of the defendant, bargained with the defendant to buy of him his interest in the said lease, and the said fixtures, horse, cart, van, utensils in trade, goods, and chattels, as also the goodwill of the said trade and business, at and for a certain price and sum of money, to wit, 700*l.*; and the defendant, by then falsely, fraudulently, and deceitfully pretending and representing to the plaintiff that the amounts received for commission in the course of the said business had been and were at the rate of 900*l.* a year, and that the net profits of the said business had been and were at the rate of 500*l.* a year, then bargained for and sold to the plaintiff the said lease, fixtures, horse, cart, van, utensils in trade, goods, and chattels, and the said goodwill, at and for the said sum of 700*l.* The declaration then averred payment to the defendant of the said sum of 700*l.* and then alleged that whereas, in truth and in fact, the amounts received for commission in the course of the said business had not been, nor were, at the rate of 900*l.* a year, but had been, and were, much less, to wit, 400*l.* a year; and whereas, in truth and in fact, the net profits of the said business had not been, nor were, at the rate of 500*l.* a year, but had been, and were, much less, to wit, 50*l.* a year, as the defendant at the time of the making the said false and deceitful representations well knew; and the defendant by means of the premises, on the day and year aforesaid, falsely and fraudulently deceived the plaintiff on the said sale, and thereby the said lease, fixtures, horse, van, cart, utensils in trade, goods and chattels, trade and business, have become and are of no use or value to the plaintiff. To the plaintiff's damage, &c.

Plea—Not guilty; whereupon issue was joined.

The cause came on for trial before Tindal, C. J. at the sittings after Trinity Term last, when it appeared from the evidence that there had been a written agreement between the parties for the sale of the lease, goodwill, fixtures, and utensils for 700*l.* and that a deed of assignment of the lease and goodwill for 500*l.* (part of the purchase-money of 700*l.*) had been executed. This deed was produced, but not the agreement, and it was therefore objected, on the part of the defendant, that there was no evidence of the sale of the fixtures and utensils, the agreement being in writing, and not produced. The learned judge, however, allowed the cause to go to the jury, leave being reserved to the defendant to move to enter a nonsuit, if it should be held necessary that the agreement should have been produced. The jury having returned a verdict for the defendant, *Shee*, Serjt. afterwards obtained a rule to shew cause why there should not be a new trial, on the ground of the verdict being against evidence.

Talfourd, Serjt. in now shewing cause, relied on the ground of nonsuit for which leave to move had been reserved at the trial, and submitted that it was not enough to prove a representation, and that it was false, but that it was also requisite to prove a sale as alleged in the declaration. The wrongful act was the selling, and therefore the sale was put in issue by the plea of not guilty, and it appearing that there was an agreement in writing, which was not produced, the plaintiff had failed in establishing such a sale as alleged, and ought to have been nonsuited. *Cotton* v. *Browne* (3 A. & E. 312) was referred to.

Shee and *Dowling*, Serjts. contrà, contended that the defendant's counsel was not entitled to insist now on the plaintiff being nonsuited; that when consent was given to reserve leave to the defendant to move for a nonsuit, the understanding always was, that it was to be conditional on the verdict being found for the plaintiff, and that as the verdict here was for the defendant, the defendant was not in a situation to avail himself of the leave to move. [Cresswell, J.—I think the understanding always is, that the party is to have the leave of moving, whenever the necessity for so doing shall arise. Tindal, C. J.—If the objection which was taken at the trial by the defendant's counsel was a valid one, then I ought to have directed the jury to have found a verdict for the defendant.] It was then urged that it was not necessary to have proved a sale of the fixtures, the action being for deceit, and not on contract. [Cresswell, J.—It is deceit on a sale.] The sale is admitted on the pleadings (*Dobell* v. *Stevens*, 3 B. & C. 62*); but assuming a sale must be proved, it was sufficient to prove a sale of the business, as the representation was only as to that, and no fraud was charged in the declaration except in respect of the representation as to such business.

Tindal, C. J.—The first question is, whether the defendant is now in a situation to take advantage of the leave that was given at the trial to move for a nonsuit; and I think he may. When the objection was taken at the trial, if the plaintiff's counsel had not consented to leave being reserved, I ought to have directed the jury to have found for the defendant. No doubt, on my direction, the plaintiff might, if he had thought proper, have tendered a bill of exceptions; he, however, in the present case accepted the offer, but it would be singular if the defendant should be in a worse situation because the offer was so accepted. Now, the next question is, whether the objection which was taken by the defendant was a proper one. I think it was; the declaration states that the plaintiff bargained with the defendant to buy of him his interest in the lease, and the fixtures, goods, and chattels, as also the goodwill of the trade, and then distinctly states that the defendant, by then falsely representing to the plaintiff that the amounts received for commission and the net profits of the business were so much, then bargained for and sold to the plaintiff the said lease, fixtures, and utensils. The only evidence at the trial on this was a deed of assignment, but that deed did not comprehend the fixtures; it was not such an agreement as is alleged in the declaration. It was clearly proved that such an agreement was existing in writing, but the same was not produced. It is now said that under the form of these pleadings it was not necessary that this agreement should be proved, inasmuch as the plea of not guilty does not put the same in issue. But this is a sale by a false representation, and it is as necessary that the sale should be proved, as under the old form of action of deceit for a warranty on a sale; where it would have been a singular thing if the plaintiff might have proved a warranty and not a sale. The case of *Cotton* v. *Brown* does not appear to me to be distinguishable from this in principle.

Maule, J.—I am of the same opinion. [His lordship having read the pleadings said:] The plea of not guilty denies every thing which the defendant is here alleged to have done, that is to say, that he sold fraudulently the goodwill, fixtures, and utensils. The plea of not guilty puts here in issue the fact of the subject of the sale; the plaintiff must, therefore, prove that the particular matter alleged in the declaration to have been sold was so sold. Now here the evidence was for the sale of a lease and goodwill for 500*l.*, and there also appeared to have been an agreement for the sale of certain fixtures, but the witness as to this said that the agreement was in writing. It is clear that where there is a sale to be proved by an agreement, which is in writing, that writing must be produced. It is said that it was here unnecessary to prove it, and my brother Dowling urges that inasmuch as the representation was made in respect of different portions of the subject of the sale, it was sufficient to prove so much of the agreement as applied to any such portion. I do not think so. The defendant by his false representation induced the plaintiff to buy the whole subject-matter of the sale; the whole of the sale, therefore, is material, and ought to be proved. As to the question of nonsuit, what we have now to do is to dispose of this rule. It appears that at the trial there was a failure of proof of a material allegation, and that unless the plaintiff had consented to being nonsuited, and the rigorous course had been pursued, the judge must have directed the verdict to have been found for the defendant. There has been here a verdict for the defendant, which, as the evidence now stands, was right, and the present rule must therefore be discharged.

Cresswell and Erle, JJ. concurred.

Rule discharged.

HUNTER v. HUNT.

A lessee underleases different portions of the demised premises to two tenants at separate and apportioned rents, one of the tenants is compelled under threat of distress to pay the superior landlord the rent of the entire premises. Held, that such tenant cannot, in an action for money paid, recover from the other tenant contribution.

Manning, Serjt. (*Corrie* with him) shewed cause against a rule obtained by the defendant for setting aside the verdict which had been found for the plaintiff, and entering a nonsuit.

The action, which was for money paid for the use of the defendant, was tried before the under-sheriff for Middlesex, when a verdict was found for the plaintiff for 14*l.* 10s. It appeared that one Jefferys demised certain lands to a person of the name of Short at an entire rent of 20*l.* 10s. Short afterwards underlet a portion to the plaintiff at a rent of 4*l.* 17s. 6d. and another portion to the defendant at a rent of 8*l.* 15s. 6d. and the remaining portion was unoccupied. Short having suffered the rent reserved by his lease to be in arrear, the assignee of Jefferys's reversion compelled the plaintiff under a threat of distress to pay it.

The plaintiff now sought by this action a contribution from the defendant for having relieved his land from a distress, and the question was, whether he could do so at law, without resorting to a court of equity.

In behalf of the plaintiff, the following authorities were cited:—Fitz. N. B. 162, Contributione Faciendâ; Viner's Abr. 561, title Contribution; *Cowell* v. *Edwards* (2 Bos. & P. 268); Bac. Abr. title Obligation, D. 5; *Schlencker* v. *Moxsy* (3 B. & C. 789); *Spencer* v. *Parry* (3 A. & E. 331).

Channell, Serjt. in support of the rule, was not called on.

The Court said the action was a novel one, and not maintainable, there being no privity or community of interest between the parties; that it did not appear what benefit the defendant had derived from the payment, as *non constat* but that there was nothing on his portion of the land to be distrained. Supposing there was some property there not belonging to the defendant, but to some other person, could it be said that, because such property had been saved from a distress by this payment by the plaintiff, an action would lie against such person for money paid to his use? Neither here could the Court see how this was money paid to the defendant's use.

Rule absolute.

Friday, Jan. 31.

BENAZECH v. BESSETT.

A party who has been made defendant by an order under the Interpleader Act, is entitled, like any other defendant, to security for costs from a plaintiff who is resident abroad.

Channell, Serjt. shewed cause against a rule obtained by *Byles*, Serjt. for staying proceedings in this action until security for costs should be given by the plaintiff to the satisfaction of the Master. The plaintiff was a foreigner resident at Baden, and the action had been originally brought against the London Dock Company for the recovery of a quantity of wines in their possession, which had been shipped by the plaintiff to this country. The defendant Bessett having also claimed the wines of the Dock Company, an order was made by a judge at chambers, under the Interpleader Act, by which Bessett was substituted defendant for the London Dock Company. It was now contended, in opposition to the rule, that as the defendant had been made defendant by an order of the judge, and not by the will of the plaintiff, it was not such an action against a party, in which a plaintiff resident abroad could be compelled to give security for costs. The action brought by the plaintiff was against the London Dock Company, and they had made no application for such security.

Byles, Serjt. in support of the rule, submitted that there was nothing to take this out of the ordinary rule by which a defendant was entitled to have security. The effect of the order was to place the defendant in the same situation he would have been in if the action had been originally brought against him. *Edinburgh and Leith Railway Company* v. *Dawson* (7 Dowl. 573) was cited.

The Court said that they thought the defendant stood in the same position as any other defendant, and was, therefore, entitled to relief. *Rule absolute.*

WALTON v. CHANDLER.

The attesting witness to a warrant of attorney was the brother of the plaintiff's attorney, who had requested him to attend, in order that the defendant might, if he thought proper, name him as his attorney to witness the execution. The defendant was informed of this, and did name him as such attorney, by repeating after the plaintiff's attorney words to that effect, taken from the body of the warrant, in which they had been previously inserted, but the defendant did not otherwise adopt him as his attorney:—Held, in the absence of fraud, to be a sufficient express naming of an attorney to make a good attesting witness under the 1 & 2 Vict. c. 110, s. 9.

Talfourd, Serjt. shewed cause against a rule obtained by *Channell*, Serjt. calling on the plaintiff to shew cause why the warrant of attorney given by the defendant, and the judgment and execution thereon, should not be set aside, on the ground that the warrant of attorney had not been properly attested within the meaning of the statute 1 & 2 Vict. c. 110, s. 9. It appeared from the affidavits that the warrant of attorney was prepared by Mr. Edward Meymott, who was the attorney for the plaintiff, and that the plaintiff and defendant went together in company to Mr. Meymott's office, for the purpose of executing the same. Mr. Edward Meymott, knowing the defendant had not any attorney of his own, got his brother, Mr. William Joseph Meymott, who was also an attorney, but not connected with him in business, to be present; and when the plaintiff and defendant called at the office, Mr. Edward Meymott explained to the defendant the necessity there was for an attorney to be present, on his part, to witness the signing, and informed him that he had therefore requested his brother, Mr. William Joseph Meymott, to be present, in order that the defendant might, if he thought proper, appoint him his attorney for that purpose. The defendant did not object nor assent to this, except by executing the warrant of attorney in the manner hereinafter mentioned. In the body of the warrant, as prepared before the meeting, there was the following:—"And I, the said Thomas Chandler, have expressly named William Joseph Meymott, of 86, Blackfriars-road, in the county of Surrey, gentleman, an attorney of her Majesty's Court of Common Pleas at Westminster, and requested him to attend on my behalf, to inform me of the nature and effect hereof before the same is executed, and to witness the due execution hereof by me; and do acknowledge that the said Wm. Joseph Meymott has accordingly informed me of the nature and effect hereof before such execution." At the time of the execution of the warrant, the defendant repeated after Mr. Edward Meymott, the plaintiff's

attorney, the following words, taken from the above-mentioned part of the warrant:—"I name William Joseph Meymott, an attorney of her Majesty's Court of Common Pleas at Westminster, and request him to attend on my behalf, to inform me of the nature and effect hereof before I execute the same, and to witness my execution hereof." The warrant was then executed and attested, the attestation clause being in the proper form. It appeared also, that the defendant was about to pay Mr. Wm. Meymott's charges for attesting the warrant; but, holding some silver in his hand, he said that he had not enough for that purpose, and requested, therefore, Mr. Edward Meymott to pay his brother, and that he would repay him, which was accordingly agreed to. On the 26th November last, judgment was signed on the warrant of attorney, and execution was issued thereon. On the 19th December last, a fiat in bankruptcy was sued out against the defendant; and the present rule was obtained on the 18th January, on behalf of the assignees under the bankruptcy. The cases of *Taylor* v. *Nicholls* (6 M. & W. 91, and 8 Dowl. 242) and *Hale* v. *Dale* (8 Dowl. 599) were referred to; and it was submitted, that although an implied naming of an attorney might not do, yet that here there had been such an express naming as was sufficient in the absence of fraud.

Channell, Serjt. in support of the rule, contended that, admitting there was no fraud, the repeating the words after the plaintiff's attorney was not a naming within the meaning of the Act; and that where there had not been a naming of the attorney originating from the party himself, the adoption should be made out otherwise than had been done here, which was at the instance of the plaintiff's attorney. (*Barnes* v. *Pendrey*, 7 Dowl. 747; *Gripper* v. *Bristow*, 8 Dowl. 797.)

TINDAL, C. J.—It appears to me that there has been an execution of the warrant of attorney in conformity with the directions of the Act. In the more early cases it was held that the warrant was not properly executed after the 1 & 2 Vict. c. 110, unless there had been an express nomination of an attorney to witness by the party executing the instrument; but the later cases have altered this, and have established that though the witness be not originally named by the party, yet if the latter freely adopts him as his attorney, it is sufficient. Now, that is what appears to have been done in the present case. On the part of the defendant, it is said that as the words naming the attorney were previously inserted in the body of the warrant, and afterwards read over to him, there has not therefore been a free adoption of the witness. It is quite clear why these words were introduced in the warrant; in consequence of the objections which have been frequently taken to the execution of these instruments, the creditor, in order to make himself more safe, has had put in the body of the warrant an express nomination, and I cannot but think that when it is read over to the party executing, it is sufficient in the absence of fraud, and that the circumstance of its being found in the document itself ought not to make any difference. There has been here, I think, a strict compliance with the words of the Act, and the present rule must therefore be discharged.

MAULE, J.—I am of the same opinion. The statute requires that there should be some attorney on behalf of the person executing, expressly named by him and attending at his request. It is contended, on the part of the defendant, that Mr. William Meymott was not expressly named by the defendant. Now, I think that the saying, "I name William Joseph Meymott, an attorney, &c. is an express naming of William Joseph Meymott. The Courts have required such extreme nicety as to the execution of warrants of attorney, that nobody can be safe unless there has been a literal compliance with the terms of the Act. This accounts for a formal proceeding like the present being gone through in a case which is *bonâ fide*. I do not see any objection to a person naming by repeating the words which were read to him; such person may quite as well understand what he utters after it is read to him as he can the oaths of supremacy which are taken in this court. Some proof of fraud is required to shew that what was a literal was not a substantial compliance with the Act; but where, as here, there is no fraud, it is very material that the warrant of attorney should be sustained.

CRESSWELL, J. and ERLE, J. concurred.

Rule discharged with costs.

HART *v.* TOMLIN.

Practice—Affidavit in support of rule wrongly entitled.

Channell, Serjt. shewed cause against a rule calling on the assignees of the defendant to shew cause why they should not pay to the plaintiff or his attorney his costs, incident to certain goods which had been the subject of proceedings under the Interpleader Act. A preliminary objection was taken, that though the rule was entitled in a cause of "*Hart* v. *Tomlin*," the affidavit on which it had been obtained was in a cause of "*Hart* v. *John Tomlin*," whereas the defendant's Christian name was James, as appeared by his own affidavit, by which it also appeared judgment had been signed against him in the name of James. The effect of the objection therefore was, that the rule was unsupported by affidavit.

Byles, Serjt. contrà, said he thought he could do without his affidavit, by using the affidavit of the defendant, together with the order of Mr. Justice Maule, on reading which the rule had been drawn up. [CRESSWELL, J.—Where is the order? MAULE, J.—The order is not with the Court; it is supposed to have been handed up to the Court, on granting the rule, and then to have been returned. The defendant has a right to say that that which was handed up was not the order.] It was attempted to read the copy order annexed to the affidavit, but as it could not appear to be a copy without reference to the affidavit, which, as already said, was entitled in a different cause to that in which the rule had been served, the attempt was unsuccessful.

Rule discharged without costs.

WEST *v.* COOK.

Before issue joined, the defendant is not bound to apply for security for costs as soon as he discovers the plaintiff is resident abroad.

Talfourd, Serjt. shewed cause against a rule obtained for compelling the plaintiff to give security for costs. The declaration was delivered on the 15th Jan. last, and an order had been made for time to plead, but without prejudice to the present application for security for costs. The demand for the security was made on the 21st January, but the defendant knew that the plaintiff was residing at Dublin before the action was brought. It was submitted that the defendant was not now in a situation to ask for such security.

Cases cited: *Montellano* v. *Garcias* (1 Bing. 67), and *Muller* v. *Gernon* (3 Taunt. 272).

Channell, Serjt. contrà.—No issue has been joined in this action, and there is a difference where the application is made before and after issue has been joined; in the latter case the application must be made immediately on discovery of the plaintiff being resident abroad.

TINDAL, C. J.—There does seem to be that distinction between applying before and after issue joined. *Rule absolute.*

Re BANKS.

Semble, this Court has jurisdiction to commit for contempt a person, though not a party to any cause, who serves another with a fictitious writ of summons purporting to issue from this court.

Byles, Serjt. shewed cause against a rule calling on a person of the name of Robert Lucas to shew cause why an attachment should not issue against him for causing Mr. Banks to be served with a paper purporting to be a copy of a writ of summons sued out in this court, whereas, in fact, no such writ had ever been issued. It appeared from the affidavit of Lucas, that the paper had been served on Banks by way of a joke; but it was said that it was done without any intention of committing a contempt of this court. It was now prayed that the Court would not, under the circumstances, make absolute the rule, if it had the jurisdiction to do so, but this it was submitted it had not, the person offending not being a party to any cause before the Court.

Channell, Serjt. in support of the rule, stated that the joke had been carried too far to be allowed to pass without notice, as Mr. Banks had been put to the expense of consulting an attorney, and had been kept in ignorance of the truth for a considerable length of time. Reference was made in the course of the argument to Chitty's Archb. 1266, 7th ed.; 2 Hawk. c. 22, s. 43; *Finnerty* v *Smith* (1 Bing. N. C. 649), and *Re Elsam* (3 B. & C. 597).

In consequence of a strong recommendation from the Court, *Byles*, Serjt. ultimately consented to the rule being discharged on payment of costs.

Rule discharged accordingly.

BUSINESS OF THE WEEK.

Thursday.

PETTY *v.* DREW.—*Dowling*, Serjt. shewed cause against a rule obtained by *Chadwicke Jones*, Serjt. for a new trial for want of evidence. *Rule absolute.*

STYLES *v.* MEEK.—*C. Jones*, Serjt. moved to have an award referred back to the arbitrator, on the ground of a mistake in a sum of money which he had allowed in the accounts. *Refused.*

NEWTON *v.* HOLFORD.—*Newton*, in person, moved to have the Master's taxation reviewed, in consequence of his allowing the defendant, Healy, his costs of some of the pleadings, which related to the special plea. The COURT, after consulting the Master on the following day, granted a rule absolute.

Friday.

SHARPE, Public Officer, *v.* ASHBY.—Sir *Thomas Wilde* shewed cause against a rule obtained by *Channell*, Serjt. in this cause, and reported 4 Law T. 293. *Channell*, Serjt. in support. The Court allowed the defendant to retain the fourth plea, on his pleading the fifth plea as an ordinary plea of payment by the drawer of the bill. The costs to be costs in the cause.

GIBB *v.* KING.—*Byles*, Serjt. appeared to oppose the defendant being charged in execution, on the ground that the judgment, which had been signed on the 9th of November, 1843, had not been revived, and also, that the writ of *habeas* had been sued out of the Queen's Bench returnable in this court.

Adjourned to next Term, that the plaintiff's counsel may be heard.

HAMMOND, Executor, *v.* CLARKE.—*Chadwicke Jones*, Serjt. moved for a rule to shew cause why the assessment of damages on a writ of inquiry should not be set aside, or the damages be reduced, on the ground that a paper writing had been received in evidence as a promissory note, which was not, in fact, a note. *Rule nisi.*

THOMAS *v.* STANDISH.—*Channell*, Serjt. shewed cause against a rule obtained by *Dowling*, Serjt. for setting aside an order to plead several pleas. *Dowling*, Serjt. in support of the rule. The COURT allowed all the pleas to stand but the 7th, 8th, and 9th, and gave leave to plead these in a different form.

COURT OF EXCHEQUER.

Friday, Jan. 31.

KILBURN *v.* KILBURN.

Sufficiency of award.

A case having been referred to an arbitrator, the costs to abide the event of his award, it appeared that the declaration contained several counts. The defendant pleaded—non assumpsit, payment, and a set-off. The award was in substance merely this, "that the defendant ought to pay a certain amount, and that judgment should be entered for the plaintiff for that amount."

Held, that such finding by the arbitrator sufficiently disposed of the two last issues, the substance of which was, that the defendant had paid the full amount of the plaintiff's claim, and that he had a set-off equal to the full amount, and therefore those two pleas were negatived by the finding.

Held, further, that the finding did not sufficiently dispose of the issue upon non assumpsit, which was divisible, and applied to all the counts in the declaration, whereas the finding did not shew upon how many of them the plaintiff had succeeded, or upon which of them either party was entitled to costs.

In this case, which was argued some time ago, judgment was now delivered as follows. The facts appear fully from the judgment.

POLLOCK, C.B.—In the case of *Kilburn* v. *Kilburn*, which was an application to set aside an award, the objection to the award was, that it had not disposed of all the issues. The costs of the cause were to abide the event. There were three pleas—*non assumpsit*, payment, and set-off. Upon looking at the declaration, there were several counts; there were three counts, and never indebted pleaded to all. And the objection was, that it did not appear upon the face of the award that the arbitrator had disposed of all the issues. Now the cases have certainly laid it down, and we accede to the law so laid down, that where the costs in a cause are to abide the event of an award, the award must either dispose specifically of such issues as are raised upon the record, or it must be clearly inferred from it in what way such issues are found, so as to enable the officer to tax the costs for the party in whose favour such issues have been found. The award was in substance wholly this, that the defendant ought to pay a certain amount, and that judgment should be entered for the plaintiff for that amount. Now it is clear that this determines both the issues of payment and set off. The plea of payment means that the defendant has paid the whole of the plaintiff's demand, and the plea of set-off that he has a set-off equal to the full amount. The finding of the arbitrator clearly disposes of two of the issues—the plea of payment and the plea of set-off; but the difficulty is as to the plea of *non assumpsit*, where the declaration consists of several counts. The plea of *non assumpsit* is a denial of the liability of the defendant, upon which there are several counts. Now the award does no more than determine that on some one or more counts in the declaration the defendant is liable. It does not necessarily or reasonably determine that he is liable for all, nor does it determine it in such a way so as to be equivalent to an express determination of all the counts on *non assumpsit* in the plaintiff's favour. We think, therefore, upon the decided cases, the objection to the award ought to prevail. We have taken time to consider, for the purpose of ascertaining whether there are any special circumstances on this reference and on the award which will distinguish it from the cases already cited. We cannot find any sufficient grounds to justify us in distinguishing it from these cases, and we therefore think that the rule for setting aside the award must be made absolute. *Rule absolute.*

BOYLE *v.* BRANDON.

In an action for seduction, the defendant had paid the plaintiff the sum of 10l. in addition to other sums, and the defendant pleaded payment of money in accord and satisfaction.

Held, that the following receipt, not being for "debts, claims, or demands," was not within the statute 55

Geo. 3, c. 184, and was admissible in evidence without any other receipt stamp than one for the sum of 10l.:—"Received of A B, by the hand of his friend, the sum of 10l. in addition to the various amounts received of him at different times in consideration of any favours conferred, or services rendered to him by either of us at any time during our acquaintance, and which sum we hereby acknowledge to be ample remuneration, and we beg to return him our best thanks for the same."

Watson, Q. C. shewed cause against a rule for a new trial which had been obtained by *Kennedy* on the part of the plaintiff, on the ground of misdirection and the reception of improper evidence. The question depended entirely upon the construction of the Stamp Act, 55 Geo. 3, c. 184, and the point decided appears fully from the judgment, which was now delivered by

Pollock, C.B.—This was an application for a new trial, on the ground of misdirection, and further, upon the ground of the receipt of improper evidence; that is, a document without a proper stamp. It was an action for seduction, and there were three pleas: first, Not guilty; secondly, Leave and license; and, thirdly, Payment of money in accord and satisfaction. The jury found a verdict for the defendant upon all the issues. The motion was made for a new trial, on the ground that there was a misdirection as to the liability of the defendant, when it appeared at the trial that her illness manifestly resulted not from his misconduct, but from his not continuing that misconduct. With respect to the plea of accord and satisfaction, the objection was, that the receipt required a higher stamp than that for the sum of 10l.; and that it required a ten-shilling stamp, being either a receipt in full of all demands, or a similar receipt for a sum in satisfaction, together with other sums not mentioned. Upon looking at the Act of Parliament it is quite clear that it refers to "debts, claims, and demands." The receipt in question is in this form—I have it before me—"Received" (of the defendant), "by the hand of his friend, the sum of ten pounds, in addition to the various amounts received of him at different times, in consideration of any favours conferred or services rendered to him by either of us at any time during our acquaintance; and which sum we hereby acknowledge to be ample remuneration, and we beg to return him our best thanks for the same." It appears to us that this document, called a receipt, has nothing to do with any claim, debt, or demand. It appears that certain favours are represented as having been conferred, and certain services rendered. The claim is in no respect treated as a debt, claim, or demand, within the meaning of the Act of Parliament, and the various amounts received from time to time do not appear to have been payments made on account of a sum due, but would rather lead to the belief that they were gifts or gratuities not at all in the nature of an amount claimed as due; and whether an instrument of this description requires a stamp or not, is to be judged from the face of the document, and upon this it appears that the stamp for the receipt for 10l. is all that is required to render this receipt admissible in evidence. Upon that point we are clearly of opinion that there ought to be no new trial. Upon the other point, as there were three pleas, every one of which was found for the defendant, if the defendant will consent to enter the verdict for the plaintiff on the plea of not guilty, there will be no new trial; otherwise we entertain sufficient doubt to think that that question ought to be further discussed.

Watson, on the part of the defendant, as his counsel.—My Lord, I will consent to adopt your lordship's suggestion—the verdict will then be on the general issue for the plaintiff, and on the other pleas for the defendant.

Pollock, C.B.—Then the defendant consenting that the verdict on the plea of not guilty shall be entered for the plaintiff, there will be no rule.

Rule discharged.

Monday, Feb. 10.

M'Intyre *v.* Miller.

The defendant having pleaded a plea, to which the plaintiff demurred, defendant entered a relictâ verificatione, *and no further proceedings were taken upon the plea. The proceedings were entered upon the nisi prius record, and the plaintiff obtained judgment upon the other issues. The defendants brought their writ of error, assigning for error, among other things, that the plea had not been properly disposed of; and that, being admitted by the demurrer, it was an answer to the action, and that the* relictâ verificatione *was a mere nullity. The plaintiff, upon a former day, had obtained a rule to shew cause why execution should not issue, notwithstanding the writ of error, upon the ground that it was frivolous. That rule was discharged after argument the Court holding it not to be frivolous. The plaintiff then took out a summons, to strike out the plea, demurrer, and* relictâ verificatione.

Held, that they should never have been on the nisi prius record, and that they ought to be struck out, even after error brought.

Where a summons is taken out in vacation, upon a matter too important to be decided at chambers, the judge may adjourn it to the Court then holding sittings after term, and the other judges will in such a case sit as his assessors.

In this case a summons had been taken out at chambers to shew cause why one of the pleas, with the demurrer thereto, and a *relictâ verificatione*, which the defendant had entered thereupon, should not be struck out of the record. The plaintiff having obtained judgment on the whole record, the defendant had sued out a writ of error, of which one of the grounds was that a *relictâ verificatione* was an entire nullity, and that the plea having been once pleaded and admitted by the demurrer, ought to have been disposed of by some proper judgment of the Court. The plaintiff had obtained a rule to shew cause why execution should not issue, notwithstanding the writ of error, and that rule was discharged, after argument, on the last day of last Term, the Court being of opinion that the ground of error above mentioned was not entirely frivolous. (See 4 Law T. antè, p. 358.) The plaintiff then, in pursuance of a suggestion thrown out by some of the Court upon the argument of the previous rule, took out a summons at chambers to shew cause why the plea and proceedings thereupon should not be struck out of the record. Alderson B. before whom it came on to be heard, thinking it too important a matter to be decided at chambers, and not wishing to throw it over till next Term, said he would hear it this morning in court, when the other barons would sit as his assessors.

C. Edwards now appeared to oppose the summons.—This is on the record a solemn judicial act, which the parties have a right to retain there. (3 Blac. Com. Record; Termes de la Ley, Record.)

Bull.—There is no judgment signed, and therefore no record. As long as the proceedings are in paper the Court has control over them, and they wi' interfere to set them right even after error brought. This entry amounts to the same thing as an abandonment of the plea and demurrer by consent.

C. Edwards.—Since the new rules the first entry on record is the *Nisi Prius* record, but that being made up, the parties are in the same position as if the old practice had prevailed. The plaintiff's proper course was to have demanded a joinder in demurrer and brought the defendant into default and made an entry accordingly. The consent of parties cannot change the rules of law or of pleading. (*Kavanagh* v. *Gudge and Another*, 1 Dowl. & Lownd. 928.) Whether the defendant is bound by this entry is the very point to be raised in error. If this entry is good and binding, it ought to be on the record, and the defendant is entitled to his writ of error upon it. A *retraxit* is on the record, and error may be brought on it. (Fitzherbert, Natura Brevium, Writ of Error.) So it may on judgment by confession. Here the application is to expunge.

By the Court.—This ought never to have been on the *Nisi Prius* record. The pleadings are in paper till final judgment, and till then the Court has power to amend the record if they see fit. This order will be made; but as the defendant had a right to bring his writ of error, it must be upon payment by the plaintiff of the costs of this application, and of the writ of error if abandoned within three days.

Wednesday, Feb. 12.

Clarke *v.* Royston.

Where an agreement in writing has been entered into between landlord and tenant which is at variance with the custom of the country, the written agreement must prevail, although where the two are not absolutely inconsistent, the custom may be proved to qualify and explain the agreement.

Baines and *Hoggins* shewed cause against a rule obtained by *Hugh Hill* to set aside the verdict for the plaintiff and enter the same for the defendant.

The declaration set out a contract with respect to the treatment of a farm, which was in consistency with the custom of the country.

It appeared, however, upon the trial, that the tenancy was under a written agreement, which contained stipulations differing materially from the contract declared upon, and also from the custom.

It was now contended, that the contract must be taken to be made subject to the custom of the country, and to be qualified by it.

By the Court.—Where a written contract for the occupation of a farm differs from the custom of the country, then the writing must prevail, although where they are not absolutely inconsistent, the custom may be proved to qualify the contract.

Rule absolute.

Cook *v.* Redillian.

In an action to recover the price of goods sold according to sample, if it turn out that some of them were not equal to sample when delivered, the plaintiff may prove a custom of trade that if the quantity inferior to sample did not exceed one-half of the goods, the contract should only be rescinded as to the inferior part.

Assumpsit for goods sold and delivered.

Plea—Non assumpsit.

Case tried before Cresswell, J. at Liverpool.

Martin, Q. C. and *Crompton* now shewed cause against a rule obtained by *Watson*, Q. C. for a new trial. The defendant had bought from the plaintiff 600 pieces of goods by sample. The defence set up was, that when the goods arrived, part of them did not accord with the samples. Plaintiff then gave evidence of a custom at Manchester, that if goods were bought according to sample, then if more than half of them differed from the sample, the buyer had a right to throw up the contract; but if less than half, he had only a right to call upon the seller to replace the improper pieces, or to make an allowance for them in the price. It appeared that, in this case, less than half differed from sample. This evidence was objected to by the defendant, but received by the learned judge, and upon that ground this rule had been obtained.

Martin, Q. C. and *Crompton* now shewed cause, citing *Street* v. *Blay* (4 B. & Ad. 456). They were stopped by the Court.

Watson, Q. C. and *Atherton*, contrà.—The evidence was given of a custom of trade, with a view to contradict the real contract between the parties, and which was set up by the plaintiff's own evidence. This custom of trade would go to deprive the defendant of certain legal rights which he has if the contract alone is to be looked to. It is not denied on the other side that a sale by sample is the same thing as a warranty. (*Hibbert* v. *Shee*, 1 Camp. 113.)

By the Court.—The rule must be discharged.

BUSINESS OF THE WEEK.

Richards *v.* Macey. *Rule nisi.*

Monday.

Collinson *v.* Newcastle and Darlington Junction Railway Company.—*Wortley* and *Addison* shewed cause against a rule obtained by *Knowles* to set aside the verdict for the defendants, and for a new trial. The question turned on the construction of some of the clauses in the defendants' Act. *Rule absolute.*

Pitts *v.* Becket.—*Martin*, Q. C. and *Atherton* shewed cause against a rule obtained by *Knowles* for a new trial, or to enter verdict for the plaintiff.

Rule discharged.

Doe *dem.* Oulton *v.* Oulton.—(Part heard.)

Wednesday.

Crellin *v.* Calvert.—Crellin *v.* Brook.—These two cases stand over till next Term.

Redman *v.* Wilson.—Redman *v.* Hay.—These two cases were part heard, and stood over in consequence of Parke, B. being obliged to go elsewhere.

Stables *v.* Tuting. *Arranged.*

Chapman *v.* Arnott.—*Knowles* shewed cause against a rule for a new trial obtained by *Watson*, Q. C. *Rule absolute on payment of costs.*

EXCHEQUER CHAMBER.

Tuesday, Feb. 4.

On errors from the Court of Queen's Bench.

(Before Tindal, C.J. Parke, Alderson, Rolfe, and Platt, Barons, and Maule and Cresswell, Justices.)

Fullarton *v.* Mittleholzer.

Debt upon a contract of September 1834, whereby the plaintiff, in consideration of 7,800l. did sell, assign, transfer, and set over all his right, &c. in and to the services and labour of 153 apprenticed labourers in favour of the defendant, to the use of his plantations, with a warranty of the quiet possession of the services of such labourers according to law; and the defendant engaged to pay the plaintiff the aforesaid sum of 7,800l. in six instalments, and that in case of failure in any of such instalments, the plaintiff might reclaim, and the services of the labourers should revert to the plaintiff, the defendant remaining liable for such sums as should be then due for the hire of such labour during such period as he should have received the services.

Breach assigned—Non-payment of the two last instalments.

Plea 2nd—That the agreement was made in Berbice, in the colony of British Guiana, for the transfer of the services of 153 apprenticed labourers in that colony; and that, before the making of the agreement, an ordinance for the government of apprenticed labourers was duly made by the governor of the said colony, according to the provisions of the 3 & 4 Wm. 4, c. 73, enacting that after the 1st August, 1834, no instrument transferring or affecting the services of apprenticed labourers therein should be valid in law to convey or affect such services, unless a memorandum should be recorded in a book within one month after the execution of the instrument. The plea then alleged that no such memorandum had been recorded.

Held, that it was incumbent on the defendant, as vendee, to secure the transfer of the services of such apprenticed labourers by recording the memorandum, and that having omitted to do so, he could not set up the failure of that transfer, or the invalidity of the contract, as a defence to the action for the remaining instalments, which he had absolutely bound himself to pay.

Plea 3rd—That before the expiration of the period of

service, and before the instalment was due, the plaintiff removed the labourers out of the plantations of the defendant to his own premises, and the defendant ceased to receive their services, and he declined to pay the instalment, and therefore the services reverted to the plaintiff.

Held, that the plea set out what might have given the defendant a cross remedy against the plaintiff for a trespass, but was no defence in this action.

Plea 4th—That while the said apprenticed labourers were in the service of the defendant under the agreement, an ordinance was duly made by the governor, according to the provisions of the 3 & 4 Wm. 4, c. 73, whereby it was enacted that all the persons who, on the 1st August, 1838, should be held in British Guiana as prædial apprenticed labourers should after that day be discharged from the remaining term of their apprenticeship, and that during the time that their services could by law be had, defendant duly paid all instalments.

Held, that there was an absolute sale of the services of the apprenticed labourers, and that the loss of such services must fall upon the defendant.

This was an action of debt, and the declaration consisted of two counts. The first stated, that, in September 1834, by a certain agreement, made between the plaintiff and Johann Ludenig Barnstedt, deceased, of the one part, and the defendant, of the other part, it was agreed that, in consideration of 7,800*l.* sterling, payable as therein expressed, the parties of the one part had bargained and sold, and they did sell, assign, transfer, and make over, all their right and interest in the services and labour of 153 apprenticed labourers, formerly slaves, belonging to the parties of the one part, classified in the schedule, for the term of their apprenticeship, in favour of the party on the other part, to the use of his plantations; the parties on the one part engaging to warrant and defend the party on the other part from all claims and demands on, and otherwise, as far as was in their power, to guarantee the quiet possession of, the services of such apprenticed labourers, according to law; that the party of the other part engaged to pay to the parties on the one part the sum of 7,800*l.* in six instalments, as specified; that it was mutually agreed that, in case of failure in the regular and prompt payment of any of the instalments, the parties of the one part should be entitled to reclaim, and the services of such apprenticed labourers during the then remaining term of apprenticeship should revert to the parties of the one part, the party of the other part, and his property, remaining nevertheless bound for the payment of such sums as should be then due for the value or hire of the labour during such period as they should have received the services of the said apprenticed labourers, at the rate of 1,300*l.* per annum, and to be moreover bound to make good any losses which might be sustained. The declaration then averred, that, after the making of the said agreement, the services and labour of the said apprenticed labourers were, in pursuance of the said agreement, used and enjoyed by the defendant from the time of making the said agreement, during the term of their apprenticeship; and the plaintiff and Barnstedt, before his death, and the plaintiff since, were at all times ready and willing to warrant and defend, and so did warant, &c. the defendant, against all claims on him in respect of the said apprenticed labourers, and did otherwise guarantee the quiet possession of the services of such labourers according to law; and that the defendant, in fact, had such quiet possession during the term aforesaid. Breach was then assigned, that, although the defendant, in part performance on his part, paid the plaintiff and Barnstedt four of the said instalments, and although the times for payment of the remaining instalments had severally elapsed before the suit, yet the defendant had not paid the remaining instalments, but the same, amounting to 2,600*l.* were wholly due to the plaintiff.

The second count was upon an account stated.

The pleas were, to the first count, 1st, That, before the remaining instalments became due, the agreement was, with the consent of the plaintiff and Barnstedt, and of the defendant, wholly annulled and rescinded. 2nd, That the said agreement was made in writing, and by a certain instrument, executed in September 1834; and that the said instrument was executed in parts beyond the seas, to wit, in the colony of British Guiana, to wit, in the district of Berbice; and that the said instrument was made and executed for the purpose of transferring and affecting the services of 153 apprenticed labourers in the said colony. That before the making of the said instrument of sale, to wit, on the 8th day of March, 1834, to wit, in the said colony of British Guiana, a certain ordinance for the government and regulation of apprenticed labourers was duly made by his Excellency Sir James Carmichael Smyth, bart. lieutenant-governor of the said colony, with the advice and consent of the Hon. Court of Policy of the said colony, in compliance with the provisions of an Act of the Imperial Parliament, passed in the 3rd and 4th years of the reign of King William the Fourth, intituled "An Act for the Abolition of Slavery throughout the British Colonies," &c. and according to the laws and usages in force in the said colony, which said ordinance was duly published on a certain day, to wit the 22nd of July, 1834, and it was enacted by the said ordinance that, after the 1st day of August, 1834, no deed or instrument whereby the services of any apprenticed labourer in the said colony should be transferred or affected, should be valid in law to pass or convey or affect the services of any such apprenticed labourer unless an annotation or memorandum of such instrument should be recorded in a book to be kept for that purpose in the Colonial Registrar's office of each of the respective districts of the colony, within one month after the making thereof, if made in such colony; that although before, and at, and after the making of the said instrument, to wit, on the 1st of August, 1834, and from thence hitherto, a book had been duly kept for the purpose in the Colonial Registrar's office, to wit, of the district of Berbice, in the said colony, in which district the said instrument was made, and within which the services of the said apprenticed labourers were intended to be transferred; yet that no annotation or memorandum of the said instrument of sale was recorded, according to the provisions of the said ordinance, in the Colonial Registrar's office, in the district of Berbice, in the said colony, within which district the said instrument was made, and within which the services of the said apprenticed labourers were intended to be assigned, nor elsewhere in the said colony, within one month after the making such instrument, or at any other time before the action, &c.

3rd. That after the making of the agreement, the said apprenticed labourers remained in the service of the defendant, to wit, on 1st Oct. 1834, and from thence till 1st August, 1838, and on that day, without the consent, and against the will of the defendant, and before the expiration of the time for which their services were originally transferred, and before either of the remaining instalments became payable, the plaintiff removed the labourers in certain boats belonging to the plaintiff, out of the plantations of the defendant, where the labourers were, up to that time, usually employed, and removed them to the premises of the plaintiff, and there retained them in his service, and the defendant ceased to receive the services of the said labourers, and has at no time since received them; and the said labourers wholly quitted the service of the defendant; and the defendant says he declined to pay the two last instalments, and thereupon the services of the labourers reverted to the plaintiff, according to the terms of the agreement, and all such sums as were then due for the hire of the labourers during such period as the defendant received the services, at the rate of 1,300*l.* per annum, were duly paid according to the agreement.

4th. That the agreement was made in writing, in parts beyond the seas, viz. in the colony of British Guiana, and that both the parties were British subjects, and the agreement was made for the purpose of transferring the services of 153 prædial apprenticed labourers, during the term of their apprenticeship, to wit, from Sept. 1834, to that of August 1840, to which time the term then extended, according to the provisions of an Act of the 3 & 4 Wm. 4, "for the abolition of slavery," &c. That after the making of such agreement, the defendant received such services till the 1st August, 1838. That while the said labourers were in the service of the defendant under such agreement, to wit, in July 1838, a certain ordinance was duly made by his Excellency Henry Light, esq. lieutenant-governor of the colony of British Guiana, with the advice of the Honourable Court of Policy of the colony, enacting that all persons who, on the 1st of August 1838, should be holden in British Guiana as prædial apprenticed labourers, should after that day become free to all intents and purposes whatever—absolutely freed and discharged of and from the then remaining term of their apprenticeship, and of and from all the obligations imposed by the recited Act. And thereupon afterwards, and before any breach of the said agreement, viz. on the 1st August, 1838, the said apprenticed labourers were freed and discharged from their apprenticeship, and the defendant was wholly deprived of their services; and the parties to the said agreement were prohibited by the authority aforesaid from further performing the agreement, or from carrying the said sale of the services of the said labourers into further operation for the remainder of the intended term of apprenticeship, according to the intent of the agreement, to wit, from the 1st August, 1838, to the 1st August, 1840. And the defendant says, that during all such time as the said apprenticed labourers remained in his service, and during all the time that their services could by law be had and retained by him according to the terms of the said agreement, the defendant duly paid all instalments as they became due, according to the said agreement, and before the commencement of the action, to wit, the three first instalments, and afterwards, and after the 1st August, 1838, and after the apprenticed labourers were freed by the said ordinance, and the defendant had been deprived of their services, the defendant also paid the 4th instalment.

5th. To the last count, *nunquam indebitatus*.

The replication to the 1st plea denied that the agreement was annulled or rescinded *modo et formâ*.

To the 2nd plea, denied that there was or had been any book kept for the purpose in the plea mentioned in the Colonial Registrar's office, *modo et formâ*.

To the 3rd plea the plaintiff demurred, as the first allegation was an argumentative traverse of the averment that the defendant had engaged the services of the labourers during their apprenticeship; that the allegation set up the default of the defendant himself as defeating the right of the plaintiff; that the matter alleged amounted to a denial that the debt ever accrued, and ought to have been so pleaded.

To the 4th plea, denied that the parties were prohibited by the authority of the said ordinance from further performing the said agreement *modo et formâ*.

On these pleadings, judgment was given for the plaintiff on the demurrer to the 3rd plea; and on the 1st and 4th issues the finding was for the plaintiff, and on the 2nd for the defendant; but on this 2nd issue the Court had entered up judgment for the plaintiff *non obstante veredicto*.

Jervis (and *Greenwood*) appeared in support of the writ of error.

Martin (and *Dasent*), contrà.

Jervis, in support of the writ, now contended, 1st. that the declaration was bad; 2nd, that the defendant was entitled to judgment on the 2nd plea and replication thereto, and the finding thereon; and, thirdly, on the 3rd plea; and lastly, also on the 1st and 4th pleas. 1st, He maintained the declaration to be bad, as the contract set out professes to be a sale of *apprentices*—and such a contract cannot be made by the law of this country; and it must be assumed, from the statement in this declaration, that the contract *was* made here. But even if it were made abroad, it would be necessary in the declaration to shew a compliance with the statute which justified such a contract there, but only with certain conditions and under certain formalities. The right of apprenticeship was created by the statute 3 & 4 Wm. 4, c. 73, and could only be transferred according to its provisions. Although the declaration states that these apprentices were *formerly* slaves, it does not follow that they were emancipated slaves. A contract for the transfer of the services of indentured parish apprentices is void at law. (1 Nolan, P. L. 567.) "An assignment, however formal, is good by way of covenant, but not as an assignment to pass the master's interest without a local custom to support it, and the defect is not cured by the apprentice's consent, because *the person of a man is not strictly and legally assignable.*" Upon these pleadings it must be assumed that the contract was made in this country, and if so, it was illegal and void. [PARKE, B.—We are not to suppose a contract illegal, if an intendment can be made to support it. It may be made here, to operate in the West Indies.] In the absence of averment, it is to be taken as made here, and the declaration must shew affirmatively that all has been done which is necessary to make it operate abroad. The 10th sec. of the 3 & 4 Wm. 4, c. 73, enacts that "the right or interest of any employer or employers to and in the services of any such indentured labourers as aforesaid shall pass and be transferable by bargain and sale, contract, deed, conveyance, will or descent, *according to such rules and in such manner as shall for the purpose be provided by any such acts of assembly, ordinances, or orders in council as hereafter mentioned.*" Now it is incumbent on the plaintiff to aver that the contract *was* made according to such rules and ordinances as had been promulgated on the subject. But, secondly, the second plea, which raises the question on the ordinances, is an answer to the action. The plea states that "a book had been duly kept in the Colonial Registrar's office in the colony, within the district where the instrument was made and executed, yet that no annotation or memorandum of the said instrument of sale, transfer, and agreement was made and recorded according to the provisions of the said ordinance in the said colony, within one month after the making or executing such instrument, or at any other time before the commencement of such action." The replication to the plea denied that there was or had been any book kept for the purpose in the plea mentioned, and upon this issue the finding was for the defendant. On this finding, however, the Court of Queen's Bench had given judgment for the plaintiff *non obstante veredicto.* (*a*) The grounds of that judgment appear to have been—first, that the ordinance affected the *services* only of the apprentices, and not the *consideration* of the contract; and, secondly, that it was the duty of the vendee, and not of the vendor, to make the annotation. Both these grounds, he respectfully submitted, were insufficient. The object of the statute was to protect apprentices, and, therefore, it must be construed strictly, to give full effect to it. [PARKE, B.—It was an *absolute* contract.] It was a foreign contract, and could not be enforced according to the law of the place where it was to operate. *There* it was illegal. The ordinance was violated by the omission to make the annotation; and such an ordinance is not merely *directory*. It was intended to protect the slaves, and public policy demands that it should be held compulsory. But even supposing

(*a*) See the report in the Jurist, vol. 8, p. 1025.

the sale absolute, whose duty was it to act on the ordinance? Surely his who sought to enforce the contract. Even if the obligation was mutual, it must be shewn to have been fulfilled by the party who sought to take advantage of the contract under which it was imposed. Whose duty is it to enroll a bargain and sale? Suppose the vendor brings an action to recover the consideration-money can he do so without previously enrolling the deed? [PARKE, B.—During the intermediate month, the property passed.] Even admitting that to be so, it does not follow that it *continued* to pass. The ordinance says that such a contract as this shall "not pass, convey, or affect the services of any such apprenticed labourers;" and suppose, at the end of the month, the apprentices were to say they would be no longer bound? If they had made that protest, the contract would have been absolutely void. The ordinance here must be considered as incorporated in the statute, and if the contract was illegal by the *lex loci*, it could not be a meritorious cause of action, according to the well-known cases of *Booth* v. *Hodgson* (6 T. R. 405), and *Law* v. *Hodgson* (11 East, 300). Such an ordinance must be construed most strictly, as it was made for the protection of the weak, and was demanded by public policy. In *Reg.* v. *Inhabitants of Spreyton* (3 B. & Ad. 818), it was held that a non-compliance with the regulations of the 32 Geo. 3, c. 57, s. 7, for the assignment of parish apprentices, made the deed of assignment absolutely void. In *Rex* v. *Inhabitants of Hipswell* (8 B. & C. 466), it was held, that all indentures of children under eight years of age, bound apprentices to chimney-sweeps, must be held absolutely void, under the stat. 28 Geo. 3, c. 48, s. 4, and not voidable only, as that statute was "introduced for public purposes, and to protect those who are incapable of protecting themselves,"—per Bayley, J. So in *Pearse* v. *Morrice* (2 Ad. & Ell. 84), where by a local statute, prior to the General Turnpike Act, 3 Geo. 3, c. 126, trustees of a turnpike-road were empowered to let the tolls, by writing under their hands and seals, the rent to be made payable to their treasurer, in default of which, every such lease should be "null and void to all intents and purposes," it was held that a lease making the rent payable to *the trustees or their treasurer*, was not conformable to the Act, and that the words "null and void" could not be construed as "voidable;" but the lessee *or his surety* might treat the lease as void, although the lessee had taken the tolls four years under the lease. *Jervis* also referred to the observations of Coleridge, J. in *Reg.* v. *Fordham*, 11 Ad. & Ell. 85. The contract, therefore, was clearly void as regards *the services*, and, if so, no action could be founded on it to recover the purchase-money. [TINDAL, C. J.—How could the vendor make the annotation? He delivers up the deed.] Whose duty would it be to enroll a memorial of an annuity? [CRESSWELL, J.—The grantee.] Because it would clearly be his interest, after the consideration-money had been paid. [TINDAL, C. J.—And here one would have supposed the vendee would do it, as it was clearly *his* interest. PARKE, B.—Every thing has been done by one party; the rest was to be done by the other. You seek to import terms into the contract. TINDAL, C. J.—The ordinance does not say the contract shall be void, but that it shall not pass the services of the apprentices, which shews the folly of the purchaser. MAULE, J.—A man may bind himself to pay absolutely for an option. Here the vendee has the power of annotating within a month. It would not be a bad consideration that he should, for an absolute promise of payment, have the option of annotating.] It might be a very good contract, but it is not the contract set out in these pleadings.

TINDAL, C. J.—The Court has no doubt whatever on the second plea. It is analogous to a bargain and sale, with a covenant that the bargainee shall pay on a future day. Even if the deed was not enrolled, though the land would not pass, the covenant would bind the bargainee.

Jervis, then on the 3rd plea.—The contract provides that in case of failure in the payment of any of the instalments, the plaintiff may reclaim, and the services of the labourers should revert to him. The vendor here has done the act of reclaiming wrongfully, by which we are released from payment. [PARKE, B.—It is only a trespass by the vendor, for which you can maintain a cross-action. You do not bring yourself within the clause of the deed.] We may waive the *tort*. [TINDAL, C.J.—That would be *pushing* the doctrine of waiving a *tort*.] Yes, to a certain extent. [TINDAL, C.J.—No, but to an *uncertain* extent. The plaintiff must have judgment on the 3rd plea.]

Jervis, then lastly on the 4th plea.—We contracted for the services of the apprenticed labourers till the 1st August, 1840, and there was a warranty on the part of the vendor that we should have the services during all the term which had been provided by the 3 & 4 Wm. 4, c. 73. [TINDAL, C.J.—There was a warranty of their services *according to law*. MAULE, J.—Suppose the vendor did warrant, would that avoid the contract? It would form the subject of a cross-action rather. TINDAL, C.J.—The vendee must sustain the loss produced by the ordinance. He has bound himself to pay the instalments.]

Judgment affirmed.

CLERKE v. LEICESTERSHIRE CANAL COMPANY.
Judgment was given for the defendants in error.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Wednesday, Feb. 12.

Ex parte TEAGUE.

46th and 55th sections of 1 & 2 Wm. 4, c. 56—Costs. Where the bankrupt has obtained his certificate, and there has been no proof under the fiat, and no choice of assignees, and there exists a moral certainty that no choice will ever take place, it appears that the official assignee may pay over a small sum in his hands in discharge of the solicitor's costs without reserving the sums required to be paid under the above sections.

The fiat in this case was issued on the 10th of October, on the petition of the bankrupt himself. On the 15th of October advertisements were published for the meeting of creditors for the choice of assignees and proof of debts. On the 26th October the meeting was held but no creditor proved, and the meeting was therefore adjourned to the 27th Nov. when from the same cause the meeting was again adjourned to the 24th Dec. At this last meeting no creditor proved, but the bankrupt passed his examination. The petitioner was the solicitor to the fiat, and his bill of costs up to the 27th of Nov. had been taxed and paid; his petition was now presented to obtain out of a sum of 33*l.* in the hands of the official assignee, the payment of 11*l.* 6*s.* 10*d.* the amount of his costs since the 27th of Nov. The 46th section of the 1 & 2 Wm. 4, c. 56, requires the official assignee to pay to the Accountant-General out of the first moneys that shall come into his hands, and immediately after the choice of assignees, the sum of 20*l.*; and the 55th section of the same Act requires the official assignee, immediately after the choice of assignees, or so soon afterwards as a sufficient sum shall come into his hands for the purpose, to pay over and above the sum before directed to be paid by such official assignee, the sum of 10*l.* into the Bank of England, &c. The official assignee in this case refused to pay the petitioner his costs, as under these sections of the Bankrupt Act he might be called upon to pay the greater part of the sum in his hands to the Accountant-General. The bankrupt had not obtained his certificate.

Glasse, for the petitioner, said that there was no probability of a choice of assignees ever taking place, and that the official assignee might safely pay the petitioner's costs.

Anderdon, for the official assignee.

The CHIEF JUDGE.—My present impression is, that if the bankrupt had obtained his certificate, and there had been no proof of debts and no choice of assignees, and you could shew that there was a moral certainty that there would be no choice, I should make an order in favour of this claim.

Ex parte DIAMOND, *re* DIAMOND.

46th and 55th sections of 1 & 2 Wm. 4, c. 56—Commissioner's certificate—Supersedeas.

A fiat was annulled with the consent of the creditors, notwithstanding the sums of 20l. and 10l. had not been paid under the above sections, and the consent of the creditors was permitted to be proved by other evidence than the Commissioner's certificate.

This was a petition by the bankrupt to annul the fiat, with the consent of all the creditors. There was the sum of 8*s.* only in the hands of the official assignee, and the sums of 20*l.* and 10*l.* had not been paid under the 46th and 55th sections of the 1 & 2 Wm. 4, c. 56. The Commissioner, pursuant to the directions of the general order 21st August, 1818, declined to give a certificate of the consent of the creditors until these two sums had been paid.

Rolt, for the petitioner, now applied for the *supersedeas*, notwithstanding the non-payment of the 20*l.* and 10*l.* and submitted that the consent of the creditors might be proved otherwise than by the Commissioner's certificate. He cited *Ex parte Green, re Green* (1 Mont. Dea. & De Gex, 174), which he stated was a case directly in point: and

The CHIEF JUDGE said that he should follow the precedent, and accordingly made the order, subject to the production of sufficient proof of the consent of the creditors.

COMMISSIONERS' COURTS.

Tuesday, Jan. 28.

(Before Mr. Commissioner EVANS.)

Re ADAMS.

The petition of an insolvent must be true in every particular—The Court has no power to amend same.

This insolvent was described as a pastry-cook and confectioner, residing at Canterbury, and owed debts to the amount of nearly 300*l.*

He was opposed by *T. B. Hughes* **on the part of several creditors. The grounds of the opposition were, that the petition was not true, and could not, therefore, be sustained under the 2nd section of the Act; and also on the grounds of fraud and concealment of property.**

***Hughes* submitted that the first point of opposition was fatal to the petition, and called his honour's attention to the 2nd section, which enacts that the petition must be true, and shall be in the form prescribed in the schedule annexed to the Act. It would be seen that in the balance-sheet the insolvent had charged himself with the payment of 5*l.* to his solicitor for preparing his petition and schedule. This entry was not found in the petition, although a blank was left in the printed forms for that purpose, and the Act required its insertion, viz., "That the insolvent had expended a sum not exceeding 5*l.* for the necessary expenses of this his petition." Now, there was a blank in the petition where the entry of the 5*l.* should have been; and, therefore, the petition was neither true nor according to the form laid down; and, therefore, it must be dismissed.**

It was suggested by the insolvent's solicitor, that the petition might be amended in that particular.

Hughes urged that the Act did not empower the commissioner to amend a *petition*, although he could amend a schedule.

Mr. Commissioner EVANS was of opinion that the objection taken was a fatal one; and as to amending the petition, it was utterly out of his jurisdiction to do so, the Act of Parliament not giving him the power, and therefore the petition must be dismissed.

Petition dismissed accordingly.

Tuesday, Feb. 4.

(Before Mr. Commissioner GOULBURN.)

Re BIRLEY.

Fiat in bankruptcy issued after a petition filed. Refusal of the Commissioner to act on the fiat, while the petition was on the file.

Insolvent had some time since filed a petition to the Court, but being advised he could not succeed on it, caused a fiat in bankruptcy to be issued against himself. On the day for choice of assignees, Mr. Commissioner Fane refused to act on it, in consequence of the insolvent having filed a petition.

Buchanan, sol. applied to-day to Mr. Commissioner Goulburn (before whom the petition had been set down to be heard), to dismiss the petition, on the ground that the insolvent had no *locus standi* in court, his debts exceeding 300*l.* All his creditors had notice of this application. The petition was dismissed, and Mr. Commissioner Fane will proceed with the fiat.

Monday, Feb. 10.

(Before Mr. Commissioner SHEPHERD.)

Re GARDINER.

Petition must be true in all its allegations.

This insolvent was brought up in custody from Horsemonger-lane gaol, to be heard on his interim order.

Buchanan, solicitor, opposed him, on the ground that the petition was not true. He had not stated what was his trade or profession, although the marginal note in the printed forms settled by the Act gave express directions for such an insertion. He contended that the occupation of the insolvent should be inserted to prove his identity, as there might be several persons of the same name in custody; and therefore, unless the trade or profession of a party were fully stated, creditors could have no certain knowledge whether or not it was their debtor who was to be heard.

Mr. Commissioner SHEPHERD concurred in the view taken, and that the petition was not true as the Act required. *Petition dismissed.*

Re STANLEY.

New Rules.

Discharge of an insolvent after petition and schedule filed.

Charnock, on the behalf of the insolvent, applied that he should be discharged out of custody, having obtained an interim order of protection. The insolvent was brought up in custody from the Queen's Prison. The notice required by the recent rules framed by the commissioners had been duly served on Friday last about six o'clock in the evening on the detaining creditor.

Llewellyn, solicitor for the detaining creditor, submitted that the insolvent should not be discharged, on two grounds; first, that the notice to the detaining creditor had been served too late, and that he, on behalf of his client, had not sufficient time to obtain an office copy of the schedule, and that the insolvent had not inserted certain property belonging to him in his schedule. He also urged that the insolvent should be examined as to the statements made in his schedule, and in fact that certain points of opposition might be entered into.

Charnock, contra.—The insolvent is secretary to the North Ireland Railway Company, and if detained in custody might lose his situation, which would

be no benefit either to the insolvent or his creditors. He contended that the notice was sufficient in a London case, and that the opposing creditor could have availed himself of every opportunity of inspecting the schedule. It had been stated that the insolvent might abscond if he obtained his discharge; if any fear was entertained of that, he could be arrested under a judge's order. As to examining the schedule of the insolvent, the Court had no power to do so until he appeared to be heard on his interim order (the first hearing).

Mr. Commissioner SHEPHERD did not see any thing on the face of the schedule to authorize him to detain the insolvent in custody. He considered he had no power to go into the merits of the case on this occasion. Regarding the notice, he thought the time was sufficient, because by the manner the opposing creditor's solicitor had conducted the case, he must have had some little knowledge of its merits. He should order the insolvent to be discharged.

Insolvent discharged.

Tuesday, Feb. 11.

(Before Commissioners FONBLANQUE, HOLROYD, and GOULBURN.)

Re J. H. DENISON.

Important decision regarding the execution of a power contained in a marriage settlement—Power of the Court to appropriate funds.

In this case, which was partly heard before Mr. Commissioner Goulburn, and which stood over for the decision of the Subdivision Court, that learned Commissioner stating that it was a question which he should not wish to decide without the assistance of Mr. Commissioner Fonblanque, whose practice at the bar of a court of equity would enable him to enter more properly into the case,—

Judgment was this day given by Mr. Commissioner FONBLANQUE as follows:—This case, which arises out of the marriage settlement of a Mr. and Mrs. Denison, whereby certain property, situate at King's Stanley, was conveyed to trustees (from and immediately after the decease of Ann Pierce, widow, the mother of Mrs. Denison), for the term of ninety nine years, upon trust to pay the rents &c. to Mrs. Denison, for life, to her separate use, and after her death, to her husband and his assigns, for life; and after his decease, in trust for the issue of such marriage, either entire, or in such parts, shares, and proportions, at such time or times, and in such manner and form, as the wife should by deed or will, appoint. And in default of appointment, the same to go to and amongst all the children issue of the marriage, or the survivors, in equal shares, upon their attaining twenty one. By an indenture, dated 17th August, 1829, Mrs. Denison, in consideration of the natural love and affection which she bore to her children, J. H. Denison, W. Denison, and T. P. Denison (one of the marriage), did direct, limit, and appoint, that the whole of the property so settled should from thenceforth be charged with the sum of 700*l*. payable upon the death of the survivor of herself and husband; and that such last-mentioned sum should belong, and be the exclusive property of T. P. Denison, "*for his own use;*" and that, subject thereto, the said hereditaments should go, remain, and be to the use of the said three children in equal shares. Mrs. Judson, a sister of Mrs. Denison, by her will, made certain provisions for her sister (Mrs. Denison) and her husband, and bequeathed legacies of 500*l*. each to her nephews, J. H. Denison and W. Denison (the said T. P. Denison not being then born), payable upon the death of the survivor of Mr. Judson (her husband), her mother, and Mrs. Denison. Mr. and Mrs. Denison, previous to this, in 1821, borrowed of a Miss Pierce 200*l*. on their joint bond (prepared by Mr. J. H. Denison, the son, the insolvent), whereby they became bound to pay to Miss Pierce interest on the said sum at 5*l*. per cent., and to pay off 100*l*., part thereof, within one year, and the residue within two years after the decease of Mr. Judson. This last gentleman died in 1823; but Mr. and Mrs. Denison being unable, without great inconvenience, to pay the bond, requested an extension of time; they, in fact, only paying the interest up to the 6th of May, 1821, and that payment being made on the 3rd of Jan. 1827. Between that time and 1829, Miss Pierce made repeated applications for payment of the debt due to her (some of them being made through Mr. J. H. Denison, the insolvent), and Mr. and Mrs. Denison being still unable to pay, it was arranged between Mrs. Denison and her three children, who had all three then attained their majority, that, in order to provide a fund for the payment thereof, so far as 200*l*. would extend, she, the said Mrs. Denison, should charge the property with a sum of 200*l*. in favour of her son, Mr. T. P. Denison, he verbally undertaking to apply that sum in part liquidation of the bond debt. To effect this object, and to make her son, T. P. Denison, equal with his two brothers, who were respectively to take legacies of 500*l*. on the death of their mother under said Mrs. Judson's will as before mentioned, Mrs. Denison determined to charge, and did accordingly charge, the Kings Stanley property with the sum of 700*l*. This arrangement was perfectly well known to and acquiesced in by J. H. Denison (the insolvent) and W. Denison, and was carried into execution by the before mentioned indenture of appointment of 1829. J. P. Denison died in 1831, in the lifetime of his father and mother, having by his will appointed his brothers, J. H. Denison and W. Denison, his executors. The said Mr. Denison died in June 1835, having by his will made the like appointment of executors. The said Mrs. Denison died in 1841, having by her will also made the like appointment of executors. The property of Mr. Denison, at his death, was very small; and it is stated that the expenses of his funeral, and of his executors in proving his will, exhausted the value of his furniture, &c., but this bond debt was the only specialty. On the death of Mrs. Denison, the Kings Stanley property was sold, and the produce (of which a part has been paid to Mr. W. Denison) has been more than sufficient to pay the 700*l* charge created in favour of T. P. Dennison. The bond debt, with a large arrear of interest, still remain due to Miss Pierce, and it has been contended on her part that the household furniture, &c. of Mr. Denison, deceased (subject to the payment of the reasonable expenses of his funeral and of proving his will, and 200*l*., part of the 700*l*. charged in favour of the said T. P. Denison, are applicable, so far as they will extend, to the payment thereof. Mr. J. H. Denison took the benefit of the New Insolvent Debtors' Act, and on the 2nd February, 1843, obtained his final order. His brother, Mr. W. Denison, had acted entirely in the executorships, and had in his hands 191*l*. as the share to which his brother (the insolvent) was entitled of the proceeds of the Kings Stanley property. This sum has been, by order of my brother commissioner Goulburn, paid into the hands of the official assignee, subject to further order. The assignees of Mr. J. H. Denison, the insolvent, contend, on the other hand, that Miss Pierce has no claim whatever on the fund now in court, as Mr. T. P. Denison did no act which could make the property at Kings Stanley liable for the 200*l*., nor were J. H. Denison (the insolvent), or Wm. Denison parties to any legal Act rendering their shares liable, and that Miss Pierce has no claim beyond a right to prove for her debt and come in with the rest of the creditors. The question which arises for our decision is, whether the power contained in the settlement is general or not. A strict interpretation would make it general and the execution of the bond might have been construed as an execution of the power. It is clear, however, that the parties thought afterwards it was questionable, and the learned Commissioner then cited the case of *Bristow* v. *Ward*, which, although it had been shaken by the eminent author of the Treatise on Powers (Sugden) and other *dicta* of leading council, yet the decision has not been overruled, and we have therefore come to the conclusion that the power is not general, and this the parties appear to have known some years ago. Thomas P. Denison promised to make this payment, and Miss Pierce appears to have consented to make this her security, although the appointment was to "him for his own use," and on this point the claim of Miss Pierce must fall to the ground, and the assignees of Mr. J. H. Denison, the insolvent must be declared to be entitled to the fund in Court.

Thursday, Feb. [illegible]

(Before Mr. Commissioner HOLROYD.)

Re STAGG.

As to Amendment of Schedule—Order for payment out of a salary.

The insolvent had been a lieutenant in the navy, and is now the keeper of the Semaphore, at Hazlemore, in Surrey.

He was opposed by *Knight*, solicitor, and supported by *Buchanan*, soliciter.

It appeared that the insolvent had petitioned the Court some time previously, but his petition was dismissed in consequence of his having paid his creditors 30*l*. between the date of his first petition and the interim order obtained thereon. He had filed a fresh petition and had omitted certain creditors in his first schedule.

Buchanan prayed an amendment, and offered [illegible] the sum [illegible] a year, in liquidation of his debts.

Knight, solicitor, objected, and urged that the insolvent should pay one-third of his salary.

Mr. Commissioner HOLROYD, under all the circumstances, ordered an amendment of the schedule, and granted a day for the final order, on the insolvent paying the sum of 40*l*. per annum, the insolvent being on full pay. The first payment to be made in July, and if the payments were not strictly made, the petition to be dismissed.

A day fixed for the final order.

THE LEGISLATOR.

Summary.

THE new Settlement Bill is the topic most interesting to our readers, which has engaged the attention of Parliament during the past week. It is considered elsewhere. On Tuesday, Lord BROUGHAM brought before the House of Lords a complaint of the infrequent sittings of the Bankruptcy Commissioners. He was answered by the LORD CHANCELLOR, who explained the matter, and the conversation dropped.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Tuesday, February 4.

Outlawries Bill—"for the more effectual preventing Clandestine Outlawries."

Thursday, February 6.

Companies Clauses Consolidation Bill—"for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of Companies incorporated for carrying on undertakings of a public nature."

Railway Clauses Consolidation Bill—"for consolidating in one Act certain provisions usually inserted in Acts authorising the making of Railways."

Lands Clauses Consolidation Bill—"for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of Lands for undertakings of a public nature."

Lands Clauses Consolidation Bill, Scotland—"for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of Lands for undertakings of a public nature in Scotland."

Railway Clauses Consolidation Bill, Scotland—"for consolidating in one Act certain provisions usually inserted in Acts authorising the making of Railways in Scotland."

Companies Clauses Consolidation Bill, Scotland—"for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of Companies incorporated for carrying on undertakings of a public nature in Scotland."

N.B. These Bills were all read a second time on the 10th instant.

SESSIONAL PRINTED PAPERS.

Par. Num.

4. Bills—Companies Clauses Consolidation.
5. — Railway Clauses Consolidation.
6. Lands Clauses Consolidation.
7. Lands Clauses Consolidation, Scotland.
8. — Railways Clauses Consolidation, Scotland.
Companies Clauses Consolidation, Scotland.
1 New Zealand—Papers.
608 Session, 1844 Colonial Expenditure—Return.
Public Income and Expenditure, Balance Sheet—Account.
Customs Duties—an Expository Statement.
Belgium—Copy of Convention regulating the Communication by post.
Belgium—Articles agreed upon respecting the Postage Convention.
11 Private Bills—Resolutions.
12 National Debt—Accounts.
14 Court of Session, Scotland—Return.
Tahiti—Correspondence relating to the removal of Mr. Pritchard.

HOUSE OF LORDS.

LAW OF DIVORCE.

MONDAY, Feb. 10.—Lord BROUGHAM gave notice that he should, early next week, being guided in the selection of a day by their lordships' convenience, move for leave to renew a Bill, the consideration of which had only been postponed, never abandoned, and containing clauses, some of them suggested by his noble and learned friend on the woolsack, and others by one of his right reverend friends, for the purpose of transferring the jurisdiction of courts in *vinculo matrimonii*, from the ecclesiastical courts to the court of Privy Council. He did not, however, think it necessary to move for a renewal of the committee which had already sat upon the subject, or for a new committee.

LAW REFORMS—BAIL IN ERROR—CHALLENGE TO THE ARRAY.

Lord CAMPBELL put a question to his noble and learned friend on the woolsack, relating to the important subject of bail in error in criminal cases. He wished to know whether the noble and learned lord on the woolsack intended to introduce a Bill in reference to this matter, and if so, when it might be expected. It was very desirable that it should be sent down to the other House as soon as possible after it had been originated in this. There was another subject to which he begged leave to draw the attention of their lordships. He referred to the mode in which objections were to be made to a jury improperly returned. Now he would assume that the opinions of the judges in the late case to which reference had been made were perfectly correct, and also that his noble and learned friend upon the woolsack had taken an equally correct view of the case. Then supposing this to be the fact, how did the law of England now stand as to a jury improperly returned? Why, it appeared that we were without remedy. An accused person, who was about to be placed on his trial, might have a jury improperly impanelled. Now, the old common law of England provided a remedy by challenge to the array, and on the proof of the validity of the objection, the array was quashed, and the proceedings began *de novo*. In these days the impanelling of the jury was intrusted to the sheriff, and upon him depended whether the jury were properly or improperly constituted. Now the grounds of

challenge at that time were that the sheriff was not indifferent—that he was partial. Afterwards, however, by a most excellent law, for which they were indebted to the present Prime Minister, the mode of constituting the jury was altered, and the power formerly vested in his hands was taken from the sheriff, and intrusted to other functionaries. The sheriff could, therefore, no longer be recognized. This being the position of matters, the learned judges came to the unanimous decision that, as the sheriff could no longer be complained of, the challenge to the array was gone. Now, although he was humbly of opinion that this was a point involved in considerable doubt, and that another mode of redress might still be pointed out, still, assuming that the decision was correct, he hoped that his noble and learned friend would acknowledge that the law, if such were the law, should not remain in that condition, but that some remedy should be provided, something tantamount to the challenge to the array when the sheriff was the returning officer. Now, he begged to draw the attention of his noble and learned friend to this subject, and he ventured to ask him now, or, if he wished for time to consider it, he would not press the question, but he ventured to put it—to ask whether it was the intention of government speedily to bring forward a measure upon the subject? Such a Bill would certainly be better in their hands than in those of any noble lord sitting upon the left of the woolsack. He would repeat the question—whether it was now the intention of his noble and learned friend to introduce any such measure as that to the necessity for which he had referred? If it was his intention, he would most willingly leave the matter in his hands. His (Lord Campbell's) sole object was to amend the criminal law, and he would much rather that the measure came from his noble and learned friend than that he should attempt to introduce it. But should that noble and learned lord's answer be that he declined to take any such steps, then he (Lord Campbell) gave notice that he should feel it his duty to move for leave to bring in such a Bill as he believed was wanting upon the subject. — The Lord CHANCELLOR said his noble and learned friend had put two distinct questions to him. First, whether, in pursuance of engagements entered into on a former night, it was his intention speedily to bring forward a Bill relating to bail in error. In reply to his noble and learned friend, he had to state, that he had directed his attention to the subject, and that it was his intention, within a few days (so that the Bill should pass through the House before Easter), to introduce a measure upon the subject, similar in many points to the Bill last year introduced by his noble and learned friend. With respect, however, to the second point to which that noble and learned lord referred, he believed that he laboured under some misapprehension as to that subject. He, the (Lord Chancellor) had not understood that the judges had pronounced any such opinion as that attributed to them by his noble and learned friend. Certainly, so far as he (the Lord Chancellor) was concerned, he never ventured to express any such opinion. He did not think that the judges were of opinion that the challenge to the array was taken away by the recent Act of the Legislature; all that the judges decided was, that the challenge to the array did not lie in the particular instance or case referred to. The challenge to the array could only be sustained in consequence of a fault in the sheriff or returning officer, or on account of some connection he had with the party accused, so as to be a challenge on the ground of unindifference. There were two grounds of challenge granted to the prisoner by the common law. In the instance under discussion there was no imputation of partiality upon the part of the sheriff, and nothing upon the record tending to shew that he was unindifferent. Therefore the challenge to the array was not allowed, consequent upon the course of common law. This was, as he understood it, the opinion of the judges. He did not say that that opinion was correct, but he had stated the grounds upon which it rested. The principal objection, however, in the case under discussion, arose from a defect in the book. The book containing the names of persons liable to become jurors was defective. A certain number of names which ought to have been there were not found in it. With this, however, the sheriff had nothing to do. He was merely bound to take the names from the book. No blame could be attributed to him; and, therefore, he apprehended that the learned judges had given no opinion to the effect of that stated by his noble and learned friend. He (the Lord Chancellor), however, admitted that the proved evil was one requiring a remedy. If the book was defective—if names were omitted from it which ought to have been inserted, or if names were inserted which ought to have been omitted—then he admitted that a jury might be improperly impanelled, and that that was an evil which required a remedy. He had already directed his attention to the subject; he would continue to direct his attention to the subject, and if he found it possible to provide an adequate remedy, that was, supposing the existence at present of no actual remedy, then he would bring in a Bill to supply the omission. In fact, the defect had arisen out of the legislative measure introduced for the purpose of reforming the law relative to juries. The common law did not apply to the case in question, and no provision had been made by the legislature to provide for the defect. But if the fault lay in the sheriff, if he was not indifferent, the case was then open to challenge to the array under the common law.—Lord CAMPBELL was glad to hear that his noble and learned friend had devoted his attention to the subject, and that he would continue so to devote it. He was sure, however, that, on mature consideration, he would find that the opinion of the learned judges was, that challenge to the array was taken away, because they said that unindifference or default on the part of the sheriff were the only grounds for a challenge to the array. Now in the case under question, it appeared that the power of returning the jury was taken out of the hands of the sheriff, and there could, therefore, be no challenge. The only grounds for challenge were entirely lost. However, he was satisfied with the assurance given by his noble and learned friend, that the subject should receive his full consideration.

LAW OF DEBTOR AND CREDITOR.

THURSDAY, Feb. 13.—Lord CAMPBELL laid on the table of the House two Bills similar to those which he had presented to their lordships' House last session upon this subject. By the law of England a creditor could not proceed against a debtor unless the latter were within the jurisdiction of the Court in which the action was to be tried, and process accordingly served upon him; so that if he chose to go abroad he might there live in the receipt of 10,000*l.* a year without the creditor being able to proceed against him. He (Lord Campbell) had proposed that process might be served upon the debtor although living in a foreign country; then that, having ample opportunity to make any defence which he might purpose making, there might be judgment against him, upon which the whole of his property might be taken in execution. Their lordships had unanimously approved of that measure, and it had been sent down to the House of Commons. But there by an unfortunate misunderstanding it had been lost. A clause had been introduced excepting Scotland from the operation of the measure, so that the debtor might go to Holyrood House and there live in as a sanctuary. He was happy to say, however, that he had had a communication with the Lord Advocate of Scotland, and he had informed him (Lord C.) that there had been a misunderstanding in this matter, but that, as at present advised, he would offer no opposition to the measure. He (Lord C.) therefore now hoped that those Bills would pass both Houses without opposition, and he was sure they would produce very great improvement in the law upon this subject.—The Bills were then read a first time.

HOUSE OF COMMONS.

LAW OF SETTLEMENT.

TUESDAY, Feb. 11.—Sir J. GRAHAM said, he had laid on the table at the close of last session a Bill, in the hope of its undergoing free discussion in the recess, and of his receiving aid from the public, in order to amend it. He would now proceed to lay before the House his present Bill, as the best return which he could make to the comments and suggestions which had been offered him. In his Bill of last year there were four points prominently treated. First, he had proposed great alterations in the law of settlement by proposing that all other causes of settlement should be repealed, and that birth should be the sole ground of settlement hereafter. Secondly, as to removals, he had proposed seven checks to the summary power now in existence, and it was not necessary for him to repeat more than one of them at present, by which he proposed that, five years' industrial residence in one locality should not give an absolute settlement to any individual, but should place him in such a situation that, though without a settlement, he could not be removed. His third branch related to appeals on the law of removal, and his fourth to the removal of Scotch and Irish paupers to their respective countries. To the two last branches no serious objections were made; but the strongest were made to the two first, the substitution of a birth settlement prospectively and retrospectively, and the proposition for the irremovability of parties not having a settlement but having a five years industrial residence. It was his wish at present to meet both those objections. He was not prepared to propose that a retro-active effect should be given to the right of settlement by birth; but he was prepared to propose, that from and after the passing of this Act only prospectively, birth should be the ground of settlement, leaving undisturbed all existing settlements. Of late years a great statistical improvement had been introduced. The registrations, not only of the birth but also of the place of the birth, was now compulsory, and thus facilities were given for proving birth settlements. The interests of the town and the country did not always run in the same direction. The effect of the substitution of a birth settlement, retrospectively and prospectively, was in favour of the town at the expense of the country districts; for towns were the great marts of industry, and attracted the labour of the rural districts. If birth were the only ground of settlement, it was clear that the expense of providing for destitution must be thrown upon the country. The abolition, therefore, of birth settlement retrospectively would be favourable to the rural districts, and not beneficial to the towns. The converse of this was true with respect to irremovability. The clause which provided that five years' industrial residence should render a man irremovable would cause an increase of burden on the towns, and would be a consequent benefit to the country. He was therefore disposed to forego two portions of his former Bill. He would no longer insist on birth settlement retrospectively, and he would withdraw the irremovability arising from a five years' residence. He then called the attention of the House to the advantages which the poor would derive from the other six limitations in his Bill of last year, which he proposed to continue in the present. He then stated that it was his intention to propose that no woman residing with her husband at the time of his death in the parish of his settlement should be removable to her own parish after his death; that no widow, whether living in her husband's parish or elsewhere, should be removable for 12 months after his death; that no legitimate child after its father's death should be removable under 16 from its father's settlement; that no illegitimate child under 16 years of age should be removable from its mother's settlement; that no one becoming chargeable by sickness or accident should be placed under order of removal until he or she had received relief for 40 days consecutively; and, lastly, that persons requiring relief should be relieved wherever they were resident, irrespective of their settlement. He then detailed the substance of the clauses which he had provided for the removal of Irish and Scotch paupers, and for the reparation of any wrong which might be done by illegal removals, and which were precisely the same as those introduced in his Bill of last year. He then came to what he called the most important provision in his measure—it was so important that he would give the fullest time for its consideration before he called upon the House to affirm it on the second reading of the Bill. Dr. Adam Smith doubted whether any poor man ever reached the age of 40 without experiencing the hardship and injustice of the law of settlement, and thought it monstrous that any man should be confined within the narrow limits of his parish either for his residence or his labour. In England and Wales there are 14,500 parishes—their limits are of course very narrow, and yet within them is the poor man restrained. It will be an advantage to the poor man to reduce the number of restrictions which are now placed on the free circulation of his labour, and the number of those small local circles within which he is confined by the present law. He, therefore, proposed to substitute 620 for these 14,500 small districts—in other words, to substitute unions for parishes. If he could induce the House to substitute union settlements for parochial settlements, he should consider himself as having accomplished a great benefit both for the payers and recipients of the rates. He then read several memorials which he had received from boards of guardians in Norfolk and Lancashire, and from Assistant Poor Law Commissioners, and from a meeting of the clerks of boards of guardians, in favour of the alterations which he had just suggested. The right hon. gentleman next proceeded to state in detail the manner in which he proposed to change parochial into union settlements, and the manner in which he intended to apportion the rates to be paid by the different parishes in the union. He proposed that the amount of the poor-rate (abstracting the county rate and other similar charges) paid for the seven years antecedent to the 5th of March, 1845, should fix the relative amount of the burden to be defrayed by each parish. The equity of such an arrangement could not, he thought, be impugned. He should weary the House if he stated all the advantages which he anticipated from these changes; he would therefore conclude by moving for leave to bring in a Bill to consolidate and amend the laws relating to parochial settlement and the relief of the poor, and would recommend it to the justice and humanity of all who were anxious to promote the interests of the poor.—Colonel WOOD (Brecon) thought that this principle of an union settlement would raise alarm.—Mr. BRIGHT saw some difficulties, but, in the face of the pauperism of England, and the imperious necessity for a remedy, was willing to give the measure a *fair* consideration.—Mr. HENLEY was fearful that this proposition of a union settlement was a prelude to the breaking up of the parochial system of England.—Mr. BROTHERTON and Lord EBRINGTON were disposed to think that the measure would give satisfaction.—Mr. BECKET DENISON regarded the existing law of settlement as absurd and cruel in its operation, and was of opinion that, though the proposed Bill was an immense improvement, it did not go far enough.—Sir JAMES GRAHAM pointed out that some of the objections taken to his measure would lead to the entire abrogation of the law of settlement. He reiterated that parochial settlement, as applied to paupers, origi-

nated in an act of Charles II. which he cited.—After a few words from Mr. WAKLY, leave was given to bring in the Bill.

PARLIAMENTARY CHANGES. — The average amount of alterations in the House of Commons is about 17 or 18 per annum; in the present year, however, we find the number to be 21—that is to say, there are in the representative branch of the Legislature 21 gentlemen who had not seats there at the commencement of last session. The names of the places which they sit for are subjoined. Our statement on the subject is taken from Mr. Dodd's *Parliamentary Companion*—a work now so complete, that it amounts to little less than a biographical dictionary of the House of Commons, and almost a pocket encyclopædia of all Parliamentary matters. The places above referred to are as follows :—Tipperary, Londonderry, Christchurch, Hastings, Huntingdon, Woodstock, Horsham, Lancashire (South), Launceston, Devizes, Kilmarnock, Enniskillen, Limerick, Birmingham, Lancashire (North), Abingdon, Dartmouth, besides a few others which were vacated before the beginning of last session, and filled up afterward.

"CONSOLIDATION OF CLAUSES" BILLS.—The table of the House of Commons already groans beneath the superincumbent pressure of three new Bills, in a printed shape, for the introduction of which leave was obtained a few nights back. The first is the Railway Clauses Consolidation Bill, which is entitled, "A Bill for Consolidating in one Act certain Provisions usually inserted in Acts authorizing the Making of Railways," and contains as many as 109 clauses or sections; this Act is not to extend to Scotland. The second is the Lands Clauses Consolidation Bill, which is entitled, "A Bill for Consolidating in one Act certain Provisions usually inserted in Acts authorizing the Taking of Lands for Undertakings of a Public Nature," and contains as many as 124 clauses. The third and last is the Companies Clauses Consolidation Bill, which is entitled "A Bill for Consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public nature," and contains 161 clauses for dissection by a committee of the whole House. The operation of all these Acts is intended to be purely prospective, that is, they will only affect future undertakings, and not those concerns already in existence. It may be worth while to notice a few of the provisions (for we have not space at present for a regular analysis) of the new Railway Bill. The clauses 5 to 19 relate to the construction of the railway. Clauses 20 to 30 refer to the powers of the company with regard to the temporary use of lands during the construction of the said railway (for which compensation is to be made); clauses 15 and 46 empower the Board of Trade to require a railway company to erect screens at those points where the railroad adjoins the turnpike-road, in order to prevent the danger arising from the frightening of horses by the engines and carriages, under a penalty of 20*l*. for non-compliance. The board is further empowered to modify the construction of certain roads and bridges, &c. in cases where a strict compliance with the Act of Parliament may be impossible or inconvenient. That portion of the Bill which relates to the carrying of passengers and goods on the railway, and the tolls to be taken, occupies clauses 66 to 88. All these measures are under the superintendence of Lord Granville Somerset and Mr. Greene.

THE MAGISTRATE.

Summary.

THE event of the week is Sir JAMES GRAHAM'S new Settlement Bill, which has been treated of in an article that appears below. We have only further to announce that Mr. SYMONS, to whom we were indebted for the very valuable *Forms in Bastardy*, has undertaken to prepare a complete series of Magistrates' Forms, which will be printed as speedily as they can be drawn with the consideration necessary to ensure correctness.

SETTLEMENT BILL, No. II.

WE regard this Bill, and the speech with which Sir JAMES GRAHAM introduced it on Tuesday last, as interesting illustrations of the new art of experimental legislation. In days of yore, when the powers of Parliament were somewhat less prolific, and had not attained to that perfection of despatch which now produces a statute per night,(a)—in those dull times, when each measure was the result of some slight reflection, it was the way with Governments not to introduce a new Bill until they had not only inquired into its applicability to the purpose in view, but had, to some extent, matured it for the further deliberation of Parliament: and the more important the change to be effected, the more care and attention were bestowed on this preliminary labour. All such proceedings are now superseded by an ingenious system, which not only edifies the public, but relieves the Cabinet and Parliament of all sorts of trouble and responsibility. The plan simply consists in putting forth the first project that strikes the imagination of the Minister in the shape of a speech and a Bill, and in begging people in general, and Poor Law guardians in particular, to supply ideas upon it, under cover to the Home Office. It was thus the last Bill was treated.

I seized (says Sir James) with anxiety the opportunity of the approaching recess to lay the Bill before the public, in the hope that during the recess it would undergo free discussion, and that I might receive aid from that discussion, and profit by the hints thrown out. (Hear.) In that expectation I have not been disappointed. (Hear.)

And once more on this amended project—

I wish it to be understood that I have no intention of pressing this measure to a second reading till there is time to collect the opinions of persons best informed upon these subjects, and I commit the plan to that species of examination with entire confidence as to the merits of the measure. I commit it to the favourable consideration of all men of humanity who have laboured sedulously to promote the well-being of the poor. * * * *

The provision which I now mean to lay before you is one of such great importance as to induce me very much to wish that some time should elapse before it becomes necessary for me again to press it upon the attention of the Legislature, for I earnestly desire that it should receive the fullest attention, and undergo the most searching investigation.

So do we; and it shall be no fault of ours if it do not receive an investigation quite as searching, if not rather more so, than that which the Government shifts from its own shoulders. Whether it be quite correct that Ministers, deriving immense salaries from the public, should thus cast their own work on those who pay them to do it themselves, is a matter into which it is bootless to inquire; we are willing to concede to Sir JAMES GRAHAM that under existing circumstances this may be an advantage to the people

Let us state in brief the new plan thrown down for discussion. Yielding with inimitable pliancy and in the most gracious manner to the objections made, first we believe in this Journal, Sir JAMES says—

It is my wish to meet these objections (hear, hear), after having given them the best attention in my power. I am not prepared any longer to propose that a *retroactive* effect should be given to birth settlement. What I now propose, with the permission of the House, is, that birth should only have a *prospective* effect. I see very great advantages in limiting the proposition as regards further settlement to a prospective operation.

From "retroactive" to "prospective" operation, the transition is conceded as soon as asked. The reason alleged is that—"We have lately introduced a great statistical improvement. (Hear.) Our mode of registering births as recently enacted was a very great improvement upon the former law." This seems to be a new thought, which had not struck the Home Minister before; *ergo*, the births are not to be retroactive. The next result of the "suggestions and objections" is an entire abandonment of the quinquennial residence industrial irremovability. We lay claim to a large share of the glory of having immolated this beautiful creation of the last Bill. Sir JAMES thus states his reasons :—

It is *quite clear* that birth settlement was in favour of the towns at the expense of the rural districts. (Hear, hear.) The towns are the great marts of industry—the great centres of capital, and they do attract labour from the rural districts. Thus the population becomes redundant on account of the supply of labour from those districts. On the other hand, the abolition of birth settlement retrospectively would be a measure favourable to the rural districts, but would not confer benefit on the towns. (Hear, hear.) Parties are attracted to the towns, the marts of industry, by the greater demand for labour; thus *it is clear* that conferring a settlement by five years' industrial residence would cause a great burden to the towns and confer great advantages on the rural districts. But I am bound to hold the balance evenly (hear); I am bound not to impose upon the towns the extra burden which the measure laid on the table last session proposed.

Sir JAMES, who proposed his last Bill with just as perfect a confidence as he does now, sees "it is quite clear" how unjust it was. Vulgar people will want to know why this clairvoyance comes so late; but that is upon the assumption that Ministers are to consider their measures. They know better; and we proceed to assist Sir JAMES in setting that task to the people. The quinquennial irremovability is at an end—*Requiescat in pace!* But the widows' irremovability is to remain; and it is also provided that no child under sixteen years of age shall be removable from its father; that no legitimate or illegitimate child under sixteen years of age shall be removable from its mother; and that no one becoming chargeable by sickness or accident shall be placed under order of removal till he or she has received relief for forty days consecutively. All this is well enough.

But now comes the great change. Sir JAMES proposes that paupers should be henceforth deemed to be settled in unions, and not in parishes.

I beg to call the attention of hon. gentlemen to this material fact,—that there are in England and Wales as many as 14,500 parishes and townships. It requires no observations from me to shew how narrow the limits are which so minute a subdivision necessarily creates; and within those limits does the existing state of the Poor-law confine and restrain the labour of the poor man. I think, and I hope the House will likewise think so, and it would be an immense advantage to the poor man, and no disadvantage to the wealthier classes, at once to remove that restriction. (Hear.) By reducing the number of places within which settlements may be acquired, I expect to be able to give a more free circulation than ever to the labours of the poor. I do not propose that the whole of the 14,500 places should be rated in a mass; on the contrary, I think that a national poor-rate would be most objectionable; but I am sure that no valid objection can be urged to substituting 620 divisions for 14,500. There are in England 620 unions. Now, if I should be so fortunate as to induce the House to substitute settlement by unions for parochial settlement—if I can reduce the number of districts conferring the right of settlement from 14,500 to 620, I shall consider myself as having effected a great change for the better, and as having bestowed an immense advantage upon the ratepayers, and upon those who may become the recipients of those rates.

Sir JAMES rightly states that this is no new principle; inasmuch as it is to be found in the 33rd section of the Poor Law Act, where assuredly a permission is given to the parishes of a union to make themselves one for purposes of settlement, if all their guardians agree, which we believe they scarcely ever have done yet. Then comes an equally important project, namely, that parishes shall hereafter pay a proportion to the expenses of the union to which they belong, to be ascertained *and* PERMANENTLY *fixed*, according to the proportion they may have contributed, upon an average of the seven years' actual payments ending March 1844.

This is the substance of the Bill which the Government flings into the arena of discussion.

The first striking feature of this Bill is, that it leaves the present law of settlement in the main unaltered for the next twelve or fourteen years. All existing settlements remain in full force during the lives of those who now possess them. Not an iota of the old law will pass away: the host of reports from BURROW to BITTLESTON; sessions cases, old and new, and text-books, from NOLAN to ARCHBOLD, will remain in full force and effect. Even the prospective generation will remain with their mothers for sixteen years to come. To provi-

(a) Neither House sat as many nights as they produced Acts last session.

sions thus retropassive, (a) it would be difficult to find an objection prospectively active.

Let us turn to the grand crotchet of union settlements. And here we must avow our perplexity. Having read the *Times* of Thursday last with becoming deference, we were at first disposed to join its monody on parishes, and bewail the disruption of rural localities. But we confess ourselves to be people prone to dull realities and matter of fact ways of viewing things; and, to our shame be it spoken, though nowise enamoured of Sir James's proposal, yet, for the life of us, we do not see why being settled pauperically in union No. 6 should exterminate a man's birth-place, or abolish the hills, dales and purling streams of his *locus in quo*, and its divers endearments, or take away his powers of saying he belongs to his parish; or, in short, why it should prevent his being wholly and entirely "retroactively" parochial. If he becomes a pauper now, he is a *union* and not a *parish* pauper; and from the union, and not from the parish, he receives relief. When, however, he emerges from pauperism, he is just as much a *parishioner* as before, and so, for aught we see, he may be when (if at all) Sir James Graham's Bill passes. The only difference will be that there will be much less removal from places in which paupers reside; and, more rather than less parochiality; for within unions there will cease to be removal at all. And it is among neighbouring parishes that there has been most removal. As far as this goes, the proposal is a step on the right road. We should be sorry to be mistaken; if this were really a plan for the destruction of parishes, and the overthrow of all social haunts and rural homes, we should oppose it manfully, and though we do not excel in heroics, and rather avoid the "Cambyses vein" than otherwise, we should denounce such a measure quite as sincerely, and perchance not less forcibly than our great namesake, the leading journal. But perfectly satisfied that no such disruption can ensue from directing orders of removal to the guardians of a union instead of to the overseers of a parish, or by lessening the number of removals, we must alike decline swelling the rhapsodies of newspaper romancists or the invective of Parliamentary partisans.

The proposed mode of rating is, we think, decidedly bad. Why is the proportion of the last seven years to be immutably affixed on the rate-payers of parishes? Why is the improved industry of parish A to be eternally deprived of its just reward for that better management and alleviation of burdens of which it has entitled itself to enjoy the benefit? Why i parish B to be saved harmless at the expense of its neighbours from any future growth of pauperism within its bounds? And why, when the ratio of increase in places varies almost incalculably, is the relative proportion of their burdens to be incapable of adjustment? These objections must be answered, and answered with effect, before t' provision can be passed into a law. We enter our humble protest against the perilous mania which besets these times of putting futurity into the clutches of septennial averages. What possible relation can they bear to the unforeseen changes and chances of time to come? What effect can they have but to be continually unfit for their purpose and perpetually wrong? A man may just as well measure his grandfather for his son's clothes. Nothing could be more ridiculous than the regulation of tithe payments by floating septennial averages, except Sir James's new proposal of fixing rates for ever by one septennial standard. We do hope that this is the last time we shall hear of this Vandal folly.

There is another great objection to the proposal; it consists in the extreme difficulty parishes already experience in knowing how their money goes, and which will render them still less disposed to intrust the blind control of its distribution to boards of guardians.

As a whole, Sir James Graham's present Bill is an improvement on the last. Our objection to it is, that it does not go nearly far enough in the right direction. Sir James Graham begins his speech by echoing the general principles on which settlement laws ought to proceed, and which have this basis, that "*removal is an evil*."(a) If so, why not abolish it *in toto*? Why is the benefit to be confined to the unions? Why not multiply it by 620, and give it to the kingdom?

We have given this subject much thought; and without pretending to "perfect confidence," we humbly submit this scheme of settlement as not unworthy of the consideration of the country:—

1. To abolish all removals, and render them illegal.

2. To provide that every pauper shall be relieved wherever he may become chargeable.

3. That the relief of the pauper be defrayed by the union, as at present, out of the general fund; but that such relief be entered and classed as relief given to the parish in which the pauper became chargeable.

4. That the proportion in which each parish of a union should be rated in each year should vary according to the proportion of relief so entered and classed to such parish as aforesaid during the year ending on the 31st December then next preceding.

This plan, we think, would clearly sweep away the present sources of litigation, with all the expense of appeals and removals. It would not impair any of the inducements to industrious occupation; it would, on the contrary, give free adaptation of the supply to the demand for labour; and each parish would have additional incentive to lessen the burden of its own pauperism; and this would certainly not be the case where the proportion of burden was rendered insensible of diminution even by the decrease of the burden itself.

With great deference we submit this our Bill for the Improvement of Settlements and the Abolition of Removals, to the judgment of a discerning public. S.

(a) We do not see why Sir James is to possess a monopoly in coining words.

(a) This principle was set forth in an article in the December number of the *Law Magazine*, nearly in the same words as were used by Sir James Graham.

The following gentlemen are to be raised to the rank of Queen's Counsel:—Messrs. Lee, Parry, and Wood, of the Equity Bar; and Messrs. Humfrey, Hayward, Butt, Russell Gurney, and Montagu Chambers, of the Common Law Bar.—*Evening paper*.

THE LAWYER.

Summary.

A few important judgments in cases that had been hung up, have been delivered since our last. Some of them will be found reported *verbatim* in this number; the others, given too late in the week to be prepared for the press, will appear next Saturday. By dint of exertion, we are enabled to place in the hands of our readers the New Rules and Orders in Bankruptcy, just issued. The forms prescribed are important, and therefore to make room for them, we have been compelled to exclude much of the usual information of the Law Times.

COURT PAPERS.

CHANCERY SITTINGS

After Hilary Term, 1845.

Appeal Causes before the Lord Chancellor, and Causes before Three of the other Equity Judges.

Before the LORD CHANCELLOR.

Clun Hospital v. Earl Powis, appeal and petition
The Sheffield Canal Company v. the Sheffield and Rotherham Railway Company
Strickland v. Strickland, three causes
Bruin v. Knott
Saumarez v. Saumarez
Millar v. Craig
Cochrane v. Cochrane, two causes
Davenport v. Bishop
Clifford v. Turrell
Forbes v. Peacock
Marquis of Hertford v. Lord Lowther, two causes

Appeals:
Tyler v. Hinton
Miles v. Walton
Vandeleur v. Blagrave
Crosley v. The Derby Gas Company
Parker v. Bult
Ladbroke v. Smith
Hitch v. Leworthy
Cooke v. Lowndes
Drake v. Drake
Dalton v. Hayter
Buggett v. Meux
Payne v. Banner
Dobson v. Lyall
Moorat v. Richardson
Millbank v. Collier
Deeks v. Stanhope, three causes
Wiltshire v. Rabbitt
Smith v. Earl of Effingham
Archer v. Hudson
Turner v. Newport

The Attorney-general v. The Master and Wardens of the City of Bristol
Truelock v. Roboy
Courtney v. Williams
Whitworth v. Gangen
Bash v. Shipman.

Before the VICE-CHANCELLOR OF ENGLAND.

Emmett v. Mitchell	Ashton v. Parker
Baker v. Walton	Timmins v. Brassey, 2 causes
Brown v. Cole	Reid v. Keith.
Watts v. The Earl of Eglintoun	Tomlinson v. Troughton, 2 c.
Montague v. Cator, 3 causes	Spruce v. Perren
Breese v. Hawker, 2 ditto	Guinard v. Nash
Boazman v. Cazenove	Guinard v. Johnson
Freeman v. Roberts, 4 causes	Butlin v. Allibone, 3 causes
Williams v. Williams	Mackereth v. Dunn
Greenwood v. Taylor, 2 caus.	Newton v. Hazeldine
Preston v. Melville	Grace v. Waldron, 2 causes
Pearse v. Brooke, 5 causes	Turquand v. Knight
Butcher v. Jackson, 2 causes	Yeats v. Yeats
Hazlewood v. Partridge	Clarke v. Smith, 2 causes
Mapp v. Ellcock, 2 causes	Genge v. Matthews
Grand Junction Canal Company v. Dimes	Lockwood v. Abdy
Emerson v. Gibbins	Hazlewood v. Partridge
Dickson v. Moss	Roberts v. Griffith
Goldsborough v. Hawdon	Roberts v. Evans
Hills v. Moore, 2 causes	Beale v. Warder
Snow v. Hole, ditto	Fearce v. Pearce
Christ's Hospital v. Grainger	Butt v. Bowley
Fyson v. Foster, 2 causes	Corbett v. Limbrick
Gurney v. Goggs	Curling v. Curling
Jackson v. Brooke	Walker v. Dorset
Middleton v. Elliott	Lee v. Ivatt
Barnacle v. Nightingale	Lane v. Husband
Gray v. Gray	Algar v. Cock
Aubray v. Hooper, 5 causes	Cheatle v. Griffith
Casley v. Moneypenny	Crighton v. Blink
Miller v. Harris	Beaumont v. Manby
Sinnott v. Matthias	Robinson v. Aston
Wilson v. Williams	Hobson v. Everatt, 2 causes
Gardner v. Marshall	Armies v. Skillern
Kidd v. North	Ford v. Moline
Benett v. Ravenhill	Duncan v. Ross
Gould v. Uttermere	Andrews v. Andrews, 2 causes
Smith v. Farr, 4 causes	Nickels v. Haslam
Cloak v. Rolfe, 4 ditto	Davis v. Chanter, 4 causes
Hodson v. Ball, 7 ditto	Lloyd v. Burman
Borrodale v. March	Rainsford v. Rainsford
Youde v. Jones, 4 causes	Mitford v. Reynolds, 2 causes
Ridgway v. Gray	Hayford v. Handley
Nicholson v. Wilson	Conner v. Snell
Falkner v. Birkett	Cooper v. Palmer
Biddles v. Biddles	Salter v. Ackroyd
	Monkhouse v. Piper.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Dodsworth v. Kinnaird, 2 cau.	Ball v. Whatley
Adams v. Paynter, 3 causes	Hudson v. Bryant
Gibson v. D'Este	Shadbolt v. Woodfall
Wright v. Taylor	Bitmead v. Champion
Ellice v. Alsager, 5 causes	Crucifix v. Rowe
Lloyd v. Jenkins, 3 causes	Wilding v. Richards, 2 causes
Stevens v. Stevens	Allen v. Wedgwood
Wynn v. Heaveningham, 2 c.	Coombe v. Chapman
Fernyhough v. Grinders, 3 c.	Jones v. Griffith
Norton v. Pritchard	Strickland v. Strickland
Clayton v. Lord Nugent	Keable v. Smith
Cooper v. Hewson	Edington v. Rackham
Ferris v. Foley	Trimleston v. Farrell
Manningford v. Tolcman	May v. Grave
Dunn v. Dunn	Richards v. Caulthread
Adnams v. Champion	Frankcombe v. Hayward
Williams v. Tartt	Hand v. Hawarden.

Before VICE-CHANCELLOR WIGRAM.

Vincent v. The Bishop of Sodor and Man	Welsby v. Shaw
Massey v. Moss	Hodgetts v. Lord, 2 causes
Ferrand v. Wilson, 2 causes	Millers v. Millers
Brooks v. Jopling	Roberts v. Tunstall
Morison v. Morison	Oakes v. Gooday
Aspinell v. Andus	Smith v. Palmer, 2 causes
Smith v. Beesley	Pavitt v. Lawrence
Ashber v. Ashber, 2 causes	Wheeler v. Stroud
Strangeways v. Corbett	Packham v. Howell
Towgood v. Hankey, 5 causes	Jordan v. Jones.
Brown v. Brown, 2 ditto	Beacon v. Beacon
Packham v. Gregory	Dickin v. Barker
Phelps v. Deardin	Murch v. Hine
Davis v. Davis, 2 causes	Batten v. Jones
Cooper v. Pitcher	Skipton v. Rawlins, 2 causes
Morgan v. Chambers	Mayhew v. Edmonds
Reekes v. Capper	Harvey v. Towell, 2 causes
Morgan v. Elstob, 2 causes	Roberts v. Adams
Dunn v. Cooke	Holt v. Dewell
Bearden v. Barnes	Winter v. Winter
Bristow v. Kell	Palmer v. Palmer

RULES AND ORDERS

Made under the 7 & 8 Vict. cap. 70, sec. 14, for the better carrying into effect the several purposes of the said Act, the 11th day of January, 1845.

It is ordered as follows, that is to say :

1. That petitions under this Act shall be delivered, fairly written on parchment, to the Registrar of the day sitting at the Court of Bankruptcy, between the hours of eleven and two, who shall number the same as they are received, and at the rising of the Court shall deliver the same to the Commissioner of the day, who shall allot the petitions by ballot among the Commissioners of the Court of Bankruptcy in London and the Commissioners of the country districts, regard being had to the usual place of residence of the petitioner, the residences of the major part in number and value of his creditors, and the situation of the property to be administered. And every petition, and the number and allotment thereof, shall be entered in the private minute-book of the commissioner of the day; provided, that if for any sufficient cause, agreed by any two commissioners, any commissioner shall decline to act in the matter of any petition, or other cause shall be shewn for altering the allotment, such petition shall be allotted in such manner as such two commissioners shall direct.

2. That two fair copies of every such petition shall be delivered to the said registrar at the same time with the original petition, one for the use of the commissioner to whom the same shall be allotted, and one for the use of the person to be appointed to preside at the meetings and for the inspection of creditors.

3. That the sum of 10*l*. or such other sum, not exceeding 20*l*. as the commissioner to whom the petition is allotted, shall direct, shall be deposited with the messenger previous to the appointment of any meeting of creditors, for the costs of such meeting or meetings, the costs of serving notices upon creditors, and other necessary expenses; the residue, if any, after payment of such expenses, to be accounted for to the petitioner.

4. That the notices required by the 2nd section of this Act shall be transmitted through the post by the messenger of the Court, who shall be allowed the sum of 4d. and no more for the filling up of the forms, addressing the same, the messenger's signature, and the postage stamp.

5. That the notices required by the 4th, 11th, and 12th sections of this Act shall be served by the messenger of the Court (if within ten miles of the General Post Office or of the court), or by his agent, if at a greater distance.

6. No person, not being a creditor or the authorized agent or attorney of a creditor, except the appointed president and one clerk, and the petitioner, accompanied by two persons, shall be permitted to be present at any meeting, or to inspect the petition, schedule, or other document, unless so directed in writing by the commissioner.

7 The forms set forth in the annexed schedule shall, *mutatis mutandis*, be used under this Act.

Charles Fred. Williams,	E. Ludlow,
Joshua Evans,	N. Ellison,
John S. M. Fonblanque,	Edmund R. Daniel,
R. G. C. Fane,	M. J. West,
Edward Holroyd,	C. Phillips,
Edward Goulburn,	W. Tho. Jemmet,
Walker Skirrow,	Montague B. Bere,
Henry J. Stephen,	Richard Stevenson.
John Balguy,	

(No. 1.)

Petition for carrying into effect proposal for future payment or compromise of Debts, under 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY, London.

The humble petition of

SHEWETH, That your petitioner being a debtor unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, petitions this honourable Court under the provisions of the statute passed in the Parliament holden in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for facilitating arrangements between Debtors and Creditors," with the concurrence of one-third in number and value of his creditors, as is testified by their signing this his petition.

That the following is a full account of your petitioner's debts, and the consideration thereof, and the names, residences, and occupations of his creditors, and also a full account of your petitioner's estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever held in trust for him, viz.—

Name of Creditor.	Residence.	Occupation.	When Debt contracted, & Consideration thereof.	Amount of Debt.

That the inability of your petitioner to meet his engagements with his creditors arises from

That for the future payment or compromise of such debts and engagements your petitioner proposes

and one-third in number and value of your petitioner's creditors having assented to such proposal;

Your petitioner therefore prays that such proposal, or such modification thereof as by the majority of his creditors may be determined, may be carried into effect under the superintendence and control of this Honourable Court, and that he may in the meantime be protected from arrest by order of the said Court.

CONCURRING CREDITORS.

Signature.	Amount.

(No. 2.)

Affidavit of truth of allegations in the petition, under 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY, London.

of in the of

the petitioner named in the petition hereunto annexed, maketh oath [if the petitioner affirm, alter accordingly] and saith, that the several allegations in the said petition are true.

Sworn at

(No. 3.)

Affidavit of signature of creditors to petition, under 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY, London.

of , and of

, severally make oath and say; and first, this deponent for himself saith, that he, this deponent, was present and did see [put in all the creditors this deponent saw sign] creditors of the petitioner named in the petition hereunto annexed, on the day of , severally sign the said petition; and the above-named for himself saith, that he was present and did see , and other creditors of the said petitioner, on the day of severally sign the said petition.

Sworn by at

(No. 4.)

Temporary protection from arrest, 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY,

London, the day of 184 .

Whereas , a debtor unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the day of with the concurrence of one-third in number and value of his creditors, present his petition to this honourable Court, under the provisions of the statute passed in the Parliament holden in the 7th and 8th years of the reign of her present Majesty, Queen Victoria, intituled "An Act for facilitating arrangements between Debtors and Creditors." I, one of the Commissioners of Her Majesty's Court of Bankruptcy, having examined into the matter of the said petition in manner directed by the said Act, and being satisfied thereupon of the several matters required by the said Act, do hereby direct that a meeting of all the creditors of such petitioning debtor be convened at on the day of at o'clock in the noon. And I appoint an official assignee of this court [or "registrar," or "one of the principal creditors of the said petitioner," see the Act, sec. 3] president of such meeting, to preside thereat, and report the resolutions thereof to me. And I do hereby order that the said shall be protected and free from arrest, pursuant to the terms of the said Statute, from the date hereof until the day of [If any limitation or condition to the Protection, insert here. See the Act, sec. 7.] Commissioner.

In the COURT of BANKRUPTCY.

I, one of the commissioners of her Majesty's Court of Bankruptcy authorised to act in the matter of the within-mentioned petition, do hereby extend the protection of the said till the day of

Commissioner.

(No. 5.)

(First Notice to Creditors, 7 & 8 Vic. c. 70).

Take notice, that has presented a petition to her Majesty's Court of Bankruptcy, praying that a certain proposal set forth in his petition should be carried into effect under the superintendence and control of the said court; and that one of the commissioners of the said court, having examined into the matter of the said petition, has directed that a meeting of all the creditors of the said should be convened at at which meeting is to preside.

You are returned by the said as a creditor for the sum of £ .

A copy of the petition is lodged with the said at his where it is open for your inspection between the hours of and daily.

Should it be inconvenient to you to attend the said meeting, you can appoint any person, by writing to be your agent to vote at such meeting.

Messenger.

Terms of Proposal.

Copy the Terms from the Petition.

(No. 6.)

Second Notice to Creditors, 7 & 8 Vict. c. 70.

Take notice, that having presented a petition to her Majesty's Court of Bankruptcy, praying that a certain proposal set forth in his petition should be carried into effect under the superintendence and control of the said Court, and one of the Commissioners of the said Court, having examined into the matter of the said petition, directed that a meeting of all the creditors of the said should be convened at at which meeting was to preside; and such meeting having been duly held, and the proposal [or "a modification of the proposal of the said " as the case may be,] of the said which now lies for inspection at and the terms of which are hereunder stated, having been assented to by the requisite majority of the creditors then present, a second meeting of creditors has been appointed to be held at pursuant to the statute, for the purpose of the creditors at such second meeting, or three-fifths in number and value of all the creditors then present, or nine-tenths in value, or nine-tenths in number whose debts exceed 20*l*., considering the propriety of agreeing to accept such arrangement or composition as was assented to at the said first meeting of creditors. Messenger.

Terms of Proposal.

(No. 7.

Certificate of the filing of a resolution or agreement for compromise, confirmed by the commissioner, and protection from arrest indorsed thereon, 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY,

London day of 184

Whereas of , a debtor, unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the day of , with the concurrence of one-third in number and value of his creditors, present his petition to this Honourable Court, pursuant to an Act passed in the Parliament holden in the 7th & 8th years of the reign of her present Majesty Queen Victoria, intituled "An Act for facilitating arrangements between Debtors and Creditors." And whereas, the commissioner appointed to examine into the matter of the said petition was satisfied of the truth of the several matters alleged in such petition, and that the said was entitled to the benefit of the said Act. And whereas such meetings of creditors, as by the said Act are required, have been duly held, and certain resolutions or agreements have been made, which I, the commissioner, acting in the matter of the said petition, think reasonable and proper to be executed under the direction of this Court, and have therefore caused the same to be filed and entered of record therein, and do hereby certify the same.

Commissioner.

Registrar.

The within named is hereby protected from arrest at the suit of any person being a creditor at the date of the within mentioned petition, and having had such notice as by the within mentioned Act is required, until the day of 184 , provided that this protection shall not be valid in favour of the said if he shall be proved to have been about to abscond beyond the jurisdiction of this Court; or if he has concealed or is concealing any part of his estate and effects, nor against any creditor whose debt has been contracted by reason of any manner of fraud or breach of trust.

Commissioner.

(No. 8.)

Certificate to Trustee, 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY.

London, 184 .

Whereas , of , a debtor, unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did on the day of , with the concurrence of one-third in number and value of his creditors, present his petition to this honourable Court, under the provisions of the statute made and passed in the Parliament holden in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for facilitating arrangements between Debtors and Creditors," praying that a certain proposal therein contained should be carried into effect, under the superintendence and control of the said Court; and the said petition has been duly filed in Court; and whereas , one of the commissioners of the said Court, acting in the matter of the said petition, caused certain meetings of the creditors of the said to be held, pursuant to the said Act. And whereas a certain resolution or agreement was duly assented to at such meetings of creditors, which

the said commissioner thinking the same to be reasonable and proper to be executed under the direction of the said Court, caused to be filed and entered of record therein. And whereas the said resolution or agreement has been fully carried into effect, and a meeting of the creditors of the said has this day been held before me, the commissioner acting in the matter of the said petition, and I am satisfied that , the trustee appointed to carry the said resolution or agreement into effect, has fully performed his trust, I hereby certify the same, under my hand and seal, this day of 184 .

Commissioner.

(No. 9.)

Certificate to petitioning debtor, 7 & 8 Vict. c. 70.

In the COURT of BANKRUPTCY.

London, 184 .

Whereas , of , a debtor, unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes now in force relating to bankrupts, did, on the day of , with the concurrence of one-third in number and value of his creditors, present his petition to this Honourable Court, under the provisions of the statute passed in the Parliament holden in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for facilitating arrangements between Debtors and Creditors," praying that a certain proposal therein contained, or such modification thereof as by the majority of his creditors might be determined, should be carried into effect, under the superintendence and control of the said Court; and the said petition has been duly filed in court; And whereas , one of the commissioners of the said court, acting in the matter of the said petition, caused such meetings of the creditors of the said to be held, as are directed by the said Act. And whereas a certain resolution or agreement was duly assented to at such meetings of creditors, which the said commissioner thinking to be reasonable and proper to be executed under the direction of the said Court, caused to be filed and entered of record therein. And whereas the said resolution or agreement has been fully carried into effect, and a meeting of the creditors of the said has this day been held before me, the commissioner acting in the matter of the said petition, and I am satisfied that , the trustee appointed to carry the said resolution or agreement into effect, has fully performed his trust, I hereby certify the several matters aforesaid, under my hand and seal, this day of 184 .

Commissioner.

CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

SUMMER CIRCUITS, 1845.

Northern Circuit.

Henry Revell Reynolds, Esq. Chief Commissioner.

Yorkshire—at Sheffield, Friday, June 27.
Yorkshire—at Wakefield, Saturday, June 28.
Kingston-upon-Hull—at the Town and County of the Town of, Wednesday, July 2.
Yorkshire—at York, Friday, July 4.
York—at the City and County of the City of, on the same day.
Yorkshire—at Richmond, Monday, July 7.
Durham—at Durham, Tuesday, July 8.
Northumberland—at the Moot-hall, Newcastle-upon-Tyne, Thursday, July 10.
Newcastle-upon-Tyne—at the Town and County of the Town of, on the same day.
Cumberland—at Carlisle, Saturday, July 12.
Westmoreland—at Appleby, Tuesday, July 15.
Westmoreland—at Kendal, Wednesday, July 16.
Lancashire—at Lancaster, Thursday, July 17.
Cheshire—at Chester, Wednesday, July 23.
Chester—at the City and County of, on the same day.
Flintshire—at Mold, Friday, July 25.
Denbighshire—at Ruthin, Saturday, July 26.
Merionethshire—at Dolgelly, Tuesday, July 29.
Anglesey—at Beaumaris, Thursday, July 31.
Caernarvonshire—at Carnarvon, Friday, August 1.
Montgomeryshire—at Welsh Pool, Tuesday, August 5.
Lancashire—at Liverpool, Thursday, August 7.

Home Circuit.

John Greathed Harris, Esq. Commissioner.

Kent—at Dover, Friday, July 4.
Canterbury—at the City and County of the City of, Saturday, July 5.
Kent—at Maidstone, Monday, July 7.
Sussex—at Horsham, Friday, July 25.
Hertfordshire—at Hertford, Friday, August 8.

Southern Circuit.

William John Law, Esq. Commissioner.

Berkshire—at Reading, Saturday, June 21.
Oxfordshire—at Oxford and City, Monday, June 23.
Worcestershire—at Worcester and City, Wednesday, June 25.
Herefordshire—at Hereford, Friday, June 27.
Radnorshire—at Presteigne, Saturday, June 28.
Brecknockshire—at Brecon, Monday, June 30.
Carmarthenshire—at Carmarthen, Wednesday, July 2.
Cardiganshire—at Cardigan, Thursday, July 3.
Pembrokeshire—at Haverfordwest and Town, Friday, July 4.
Glamorganshire—at Swansea, Tuesday, July 8.
Glamorganshire—at Cardiff, Wednesday, July 9.
Monmouthshire—at Monmouth, Friday, July 11.
Gloucestershire—at Gloucester and City, Saturday, July 12.
Somersetshire—at Bath, Monday, July 14.
Bristol—at the City and County of the City of, Tuesday, July 15.
Devonshire—at Exeter, Thursday, July 17.
Exeter—at the City and County of the City of, on the same day.
Devonshire—at Plymouth, Saturday, July 19.
Cornwall—at Bodmin, Monday, July 21.
Somersetshire—at Taunton, Thursday, July 24.
Dorsetshire—at Dorchester, Saturday, July 26.
Wiltshire—at Salisbury, Tuesday, July 29.
Southampton—at the Town and County of the Town of, Wednesday, July 30.
Southampton—at Winchester, Thursday, July 31.

Midland Circuit.

David Pollock, Esq. Commissioner.

Essex—at Chelmsford, Monday, July 7.
Essex—at Colchester, Wednesday, July 9.
Suffolk—at Ipswich, Thursday, July 10.
Norfolk—at Yarmouth, Saturday, July 12.
Norfolk—at Norwich, Monday, July 14.
Norwich—at the City and County of the City of, on the same day.
Norfolk—at Lynn, Thursday, July 17.
Suffolk—at Bury St. Edmunds, Saturday, July 19.
Cambridgeshire—at Cambridge and Borough, Monday, July 21.
Huntingdonshire—at Huntingdon, Wednesday, July 23.
Northamptonshire—at Peterborough, Thursday, July 24.
Rutlandshire—at Oakham, Friday, July 25.
Northamptonshire—at Northampton, Monday, July 28.
Warwickshire—at Warwick, Wednesday, July 30.
Warwickshire—at Coventry, Friday, August 1.
Leicestershire—at Leicester, Monday, August 4.
Lincolnshire—at Lincoln and City, Wednesday, August 6.
Nottinghamshire—at Nottingham, Saturday, August 9.
Nottingham—at the Town and County of the Town of, on the same day.
Derbyshire—at Derby, Tuesday, August 12.
Lichfield—at the City and County of the City of, Thursday, August 14.
Shropshire—at Shrewsbury, Saturday, August 16.
Staffordshire—at Stafford, Tuesday, August 19.
Warwickshire—at Birmingham, Friday, August 22.
Bedfordshire—at Bedford, Monday, August 25.
Buckinghamshire—at Aylesbury, Wednesday, August 27.

The Court of Chancery.—By an order of the Court of Chancery made on Wednesday last, a further reduction has taken place in the fees payable by suitors in that court. When the office of the taxing masters was established by the Act of the session of 1842, a fee of 4 per cent. on the amount of every bill of costs as taxed was imposed. That fee has now been reduced to 3 per cent. and we understand that this reduction amounts to nearly 5,600*l.* a year.

PROMOTIONS, APPOINTMENTS, ETC.

Whitehall, Jan. 16, 1845.—The Lord Chancellor has appointed Francis Soames, of Wokingham, in the county of Berks, Gent. to be a Master Extraordinary in the High Court of Chancery.

Whitehall, Jan. 7.—The Right Hon. Sir Nicholas Conyngham Tindal, Knt., Lord Chief Justice of Her Majesty's Court of Common Pleas, has appointed Peter Day, of the city of Norwich, gent., to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the city of Norwich, and county of the same city, also in and for the county of Norfolk.

Whitehall, Jan. 7.—The Right Hon. Sir Nicholas Conyngham Tindal, Knt. Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Thomas Tudor Trevor, of Guisborough, in the county of York, Gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the North Riding of the county of York.

CIVIL SERVICE.—*Excise Department.*

Jan. 8, 1845.—Joshua Austin Supervisor, to be a Surveying General Examiner.
Jan. 22.—William Perrio, Surveying General Examiner, to be Collector of Oxford, in the room of James Smith, retired.
Jan. 22.—John Peter Johnson, Surveying General Examiner, to be Collector of Dumfries, in the room of Luke Kingsmill, appointed Collector of Dundalk.
Jan. 22.—Miles Butler, Surveying General Examiner, to be Collector of Lincoln, in the room of Thomas Rayner, retired.
Jan. 29.—Richard Pape, Supervisor, to be a Surveying General Examiner.

Her Majesty's Stationery Office.

July 20, 1844—Charles Dublinus Johnson, Clerk, in addition to the 4th Class of the Establishment.
Oct. 23—William Stanley Ginger, esq. promoted from the 2nd to the 1st class, vice John George Ginger, esq. resigned.
Oct. 23—Robert Lundie, Clerk, promoted from the 3rd to the 2nd class, vice W. S. Ginger.
Oct. 23—Frederick Bryan, Clerk, promoted from the 4th to the 3rd class, vice Robert Lundie.
Dec. 3—George William Draper, to be a Junior Clerk, vice F. Bryan, promoted.

We stated, in referring to the legal appointments of the government, that it was generally believed that Mr. Baron Gurney had obtained a promise, that upon his resigning his son should obtain a silk gown. We are assured that there is no foundation for such a report.—*Chronicle.*

We understand the office of Counsel to the Irish Office, now vacant for eight months, since the death of Mr. O'Hanlon, has been conferred on Mr. John E. Batty, of the Irish bar.

LEGAL INTELLIGENCE.

QUESTIONS AT THE EXAMINATION.

Hilary Term, 1845.

I.—PRELIMINARY.

1. Where, and with whom did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

II.—COMMON AND STATUTE LAW AND PRACTICE OF THE COURTS.

5. Give the names of some of the principal kinds of action at common law.

6. In a case of seduction, who is the party to bring the action, and what action must be brought?

7. When is a master answerable for damage done by his servant? In the case of a coachman driving against and injuring a cart, must the master be present to render himself liable?

8. Within what period must an action be brought on a simple contract debt?

9. How long does a writ remain in force? and if the defendant keeps out of the way to avoid service, is there any mode of compelling his appearance?

10. In a writ of summons, would it be a sufficient description if the defendant was described as "A.B. of the City of London;" and what description is required by the statute?

11. Writ served in any Term or vacation—Within what time should the plaintiff declare to prevent judgment of *non pros.?*

12. An action is brought on a charter-party; the defendant's witnesses reside at Singapore—How can he procure their testimony?

13. In an action for goods sold and delivered, the plaintiff claims by his particulars 25*l.* Before plea, defendant takes out a summons to stay on payment of 15*l.* only, which the plaintiff refuses to accept: on the trial the plaintiff only recovers 15*l.*, to what costs will he be entitled?

14. A and B, partners, bring an action for a client C. When the cause is at issue, A dies, B continues the action, and fails. C afterwards refuses to pay the costs incurred—Who must sue C for the costs?

15. In a town cause, if an issue is served in Hilary Term, or in the vacation preceding, and the plaintiff does not proceed, when is the earliest period in which the defendant can move for judgment as in case of a nonsuit? State the practice also in a country cause; and would it make any difference if the issue was joined in a non-issuable term, as Easter, instead of an issuable term, as Hilary?

16. A plaintiff obtains judgment on a promissory-note for 18*l.* with 6*l.* for his costs—Can he take the defendant in execution?

17. When a cause goes to trial, and a juror is withdrawn, what effect has that upon the costs of the trial?

18. A sheriff puts an execution into a defendant's house. The day after he has a notice served upon him that the goods belong to the defendant's brother-in-law. Under these circumstances, how must he proceed?

19. An attorney at Christmas delivers bills to five clients. One for borrowing 1,000*l.* on mortgage; one for defending an action for a libel; one for filing a bill on equity to compel the completion of a purchase; one for defending a client at the sessions house, charged with an assault; and the fifth for preparing a marriage settlement. Are any, and which of these bills, liable to be taxed? And if the bills are delivered on the 1st January, and not paid, when can the attorney commence an action to recover them? If the attorney had died, and the bills were delivered by his executor, would that make any difference as to the taxation?

III.—CONVEYANCING.

20. In preparing an abstract of title on a sale, is the vendor's solicitor personally liable for omitting to state all the incumbrances within his knowledge? And in examining an abstract with the title-deeds on behalf of a purchaser, what would be the consequence to the solicitor personally of his overlooking notice of any incumbrance contained in any instrument abstracted and produced for examination, whether such notice were contained in the abstract or otherwise?

21. What protection does the assignment of a term of years in trust for a purchaser of the inheritance afford the latter? and in what cases is such protection annulled or qualified by his having had at, or prior to, such assignment, notice, express or implied, of the estate or incumbrance against which he may claim such protection?

22. Where a power of appointment over real estate is executed, from whom does the appointee immediately take in point of estate, viz. the party creating, or the party executing the power? and state the reason.

23. Where a power is executed by will, at what point of time does it take effect?—And would there

be any difference in this respect if the power were executed by deed with a power of revocation to the appointor?

24. Prior to the Fines and Recoveries Act (3 & 4 Wm. 4, c. 74), if tenant in tail, with the immediate remainder or reversion in fee to himself, levied a fine, he created what was called a base fee, which immediately merged in the reversion, and became subject to any charges affecting the latter, the title to which he was also in future obliged to shew. What difference in this respect has been made by the above statute, both as respects past and future cases?

25. What are the requisites to the valid executions of wills made since the present Wills Act came into operation as respects the age of the testator, form of attestation, and otherwise?

26 State the effect of marriage upon the will of a man before and since the Wills Act.

27. A testator devises real estate to A for life, with remainder over to A's first and other sons successively in tail male, with remainder to testator's own right heirs—under such a devise, when does the ultimate remainder become vested in the heir of the testator, viz. at his decease, or at the time of the failure of the prior limitations?

28. A. dies seized of real estate without issue, an intestate, leaving his grandfather and his (A's) mother, and a brother and sister him surviving—Which of these is his heir?

29. In a devise of real estate to A in fee, in trust for B in fee, A by deed disclaims the estate—What is the effect of such disclaimer? viz. does it vest the estate in the testator's heir, or in B?

30. A testator seized in fee of lands, and also of the tithes of them, devises the lands without expressly including or shewing his intention to include the tithes -Will the latter pass to the devisee of the lands?

31. Where under the Tithe Commutation Act, tithes have been merged by an owner in fee simple of both the tithes and the lands out of which they are issuing, and he afterwards sells the lands as tithe or rent-charge free—Must he deduce his title to the tithes?

32. In a register county is it necessary that the memorial of a deed should be executed by a granting party, and attested by one of the witnesses to the execution of the deed by a granting party? or can the deed be duly registered without either, and which of these formalities?

33. If a vendor claim leasehold estate in a register county as executor or legatee, can a purchaser from him insist upon the will being registered in either case, and state a reason?

34. In a register county where the vendor of real estate is both heir-at-law and devisee, is it material that the will should be registered? and is it material if he should be devisee only?

IV.—EQUITY, AND PRACTICE OF THE COURTS.

35. If a defendant who has appeared and answered an original bill cannot be found to be served with a subpœna to answer a bill of revivor, what is the course of the plaintiff in such a case?

36. When a husband and wife are defendants in a suit, in what case is the wife entitled to an order to answer separately?

37. Does the "*prochein ami*" of an infant incur any and what liability in becoming such *prochein ami* for prosecuting a suit?

38. What is the difference in effect of the allowance of a *partial* demurrer and that of a *general* demurrer?

39. Where a plaintiff is suing a defendant both at law and in equity for the same matter, what is the course of proceeding to be adopted by the defendant under such circumstances?

40. Can a defendant in a suit be examined as a witness on behalf of a co-defendant in the same suit, and under what authority?

41. In what cases does a suit abate so as to render a bill of revivor necessary?

42. In what cases, and upon what grounds, is a writ of "*ne exeat regno*" granted?

43. Is there any and what mode, and under what authority applied, for the prevention of the transfer of stock standing in the books of the Governor and Company of the Bank of England, and for the payment of the dividends thereon by the bank without resorting to a suit?

44. Can witnesses be examined *vivâ voce* in chancery, and upon what occasions?

45. At what distance of time do deeds, bonds, and other writings prove themselves, and thereby render their proof unnecessary?

46. In what case is a mortgagee compelled to file a bill of foreclosure to enable him to enforce payment of his principal and interest?

47. Is it necessary in all cases to institute a suit for the purpose of having guardians appointed to, and of obtaining an allowance for the maintenance and education of infants? If not, state the exceptions to the rule.

48. In suits to carry into execution the suits of a will, in what case is it necessary or desirable that the heir-at-law should be made a party?

49. Explain the difference between *legal* assets and *equitable* assets, and state how each are administered amongst creditors.

V.—BANKRUPTCY AND PRACTICE OF THE COURTS.

50. State the proceedings now necessary to obtain a fiat in bankruptcy.

51. What amount of debt or debts will support a fiat?

52. Should the petitioning creditor's debt prove to have been insufficient, is the fiat void or not? and state the reasons.

53. Can a compulsory act of bankruptcy now be effected, and by what means, since the abolition of imprisonment for debt?

54. Can a creditor who has taken his debtor in execution, or who has taken his goods under a *fieri facias*, sue out a fiat against him?

55. Is a mortgage debt made payable only after six months' notice, a good petitioning creditor's debt, if notice has not been given?

56. Is it necessary that a petitioning creditor should prove his debt under the fiat before he can vote in the choice of assignees?

57. Doth the death of a bankrupt affect the fiat, and in what way?

58. A debt cannot be proved if barred by the Statute of Limitations. To what time does the six years apply:—to the time of proof, or of the issuing of the fiat?

59. Does bankruptcy affect the rights of the bankrupt as executor, and does property in his hands, as such executor, pass to the assignees?

60. What alteration has the late bankrupt law made respecting the bankrupt's certificate? and state the old and new practice.

61. If a plaintiff in an action at law, or suit in equity, become bankrupt, can the assignees continue the action or suit in his name?

62. Can a landlord distrain for rent when the messenger is in actual possession of the bankrupt's goods on the premises?

63. Does a lease to the bankrupt vest in the assignees, and are they liable to the bankrupt's covenants, or can they repudiate the lease? and if so, is the bankrupt liable to payment of future rent, and performance of future covenants?

64. If the drawer, acceptor, and first indorsee of a bill of exchange, become bankrupt, can a second indorsee, who holds the bill for a valuable consideration, prove the whole amount under each estate, and receive dividends from time to time on such amount, and to what extent?

VI.—CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. Are there any, and what forgeries, now punishable with death?

66. State what is meant by "Exhibiting articles of the peace," and how the same is effected.

67. What is a libel?

68. Can a libeller be prosecuted criminally, as well as proceeded against civilly? and if so, in what manner and for what reason?

69. Can the truth of a libel be made a defence to a criminal prosecution, as it can to a civil action? and if not, for what reason?

70. What is burglary? and state some of the requisites to support the charge.

71. What is the legal distinction between the crimes of murder and manslaughter?

72. What is a criminal information, and under what circumstances will it be granted?

73. By what court, and on what evidence, will leave to file a criminal information be allowed?

74. In what cases is it usual to grant an information against magistrates?

75. When will an information lie against parish officers?

76. Define the offence of perjury, and the circumstances which constitute the offence.

77. What evidence is necessary of the oath having been taken?

78. State the consequences to the offender of a conviction of perjury.

79. Has there been any, and what, recent alteration in the course of proceeding in the Crown Office?

THE OXFORD CONVOCATION.

The following are the questions submitted on behalf of the Board of Heads of Houses and Proctors, respecting the propositions to be brought before Convocation in the matter of Mr. Ward; and opinion of the Solicitor-General, Sir Charles Wetherell, Dr. Addams, and Mr. Cowling:—

"QUESTIONS.

"1. Whether the University has any power of depriving a party for any cause of any degree which has been conferred upon him?

"2. Whether the extracts given in the notice issued by the Board of Heads of Houses and Proctors contain sufficient cause to justify the degradation of Mr. Ward?

"3. Whether the House of Convocation has he power of degradation in this case?

"4. Whether in proceeding to degrade Mr. Ward, the University will render itself liable to a writ of *mandamus* at his suit?"

"ANSWER.

"1. We are of opinion that the University has the power to degrade, and that that power is by no means limited or confined to cases of prior conviction of an offence by a court of competent jurisdiction, nor to those particular cases enumerated in the statutes to which degradation is specifically annexed.

"2. We are of opinion that the extracts set forth in the notice contain sufficient cause to justify the House of Convocation, as representing the University, in taking cognisance of them, and coming to a decision on the subject, with a view to the degradation of Mr. Ward; but whether, in the result, the charge, preferred against him shall appear sufficient to justify the house in degrading him, is a conclusion which must rest entirely with, and be formed by, the members of Convocation upon consideration of the whole matter.

"3. Provided Convocation shall upon consideration come to the conclusion that Mr. Ward ought to be degraded, we are aware of no ground for impeaching, or questioning the validity of the degradation.

"4. If the determination of Convocation should be to degrade Mr. Ward, and he should apply to the Court of Queen's Bench for a writ of *mandamus* to restore him, we are of opinion that it will be an answer to it, that her Majesty is Visitor of the University, and that the subject lies exclusively within the province of her Majesty as Visitor, and that any complaint against the proceedings of Convocation must be made to her Majesty in that capacity, and cannot be withdrawn from her jurisdiction.

"FRED. THESIGER.
CHARLES WETHERELL.
J. ADDAMS.
JOHN COWLING."

SECONDARIES COURT—WEDNESDAY.

(Before Mr. Secondary POTTER.)

BARRISTERS AND ATTORNEYS' CLERKS—NIND *v.* IRWIN.

In this case, which was merely an action for goods sold and delivered, Mr. Neale, a barrister, appeared for the plaintiff, and Mr. Adams, clerk to an attorney, named Richardson, appeared for the defendant.

Upon the case being called on,

Mr. Adams objected to the trial proceeding, on the ground that the secondary had no jurisdiction. There were two issues to try, whereas upon the record the letter s had been left out, making the word issue instead of issues. He therefore contended that he had no jurisdiction beyond trying one issue.

Mr. Neale said he wished to know before he answered that objection, whether attorneys' clerks were allowed to practise in that court?

The Secondary said he allowed them to watch the cases and examine witnesses.

Mr. J. B. Hughes (barrister) said he believed there was a rule of that court, not to allow attorneys' clerks to practise.

The Secondary believed not. He remembered, however, a case which had occurred, of one attorney's clerk attending for the clerk of either the plaintiff or defendant's attorney, and he (Mr. Potter) refused to hear him.

Mr. Hughes thought it was a system that ought not to be tolerated, and that the litigant parties should be represented by their attorneys or counsel. It was not allowed either in the Bankruptcy or Insolvent Courts, and the debt sought to be recovered was 21*l.*; the attorney even could not appear, but was obliged to have counsel. He was of opinion that the Secondary, being the superior judge of that court, ought to insist upon the parties appearing either by their attorneys or counsel.

Mr. Neale said that the consequence of attorneys' clerks conducting cases was great irregularity and confusion.

The Secondary: Not so; he had known many clerks conduct cases much better than attorneys, and even gentlemen at the bar.

COURT OF CHANCERY.—The ancient hall of Lincoln's-inn, in which the Chancellors of England have sat for so many years, is nearly stripped of all the armorial bearings which decorated its walls, and the stained glass that ornamented the windows, the whole of which have been removed to the new hall, Lincoln's-inn. The admired picture of Paul pleading before Agrippa, which has so long ornamented the end of the hall, has also been removed to the new building. It is said that it is in contemplation to add the present kitchen (which is only divided by a passage) to the present hall, and then divide the building into three courts, one for the Lord Chancellor, the others for the Vice-Chancellors. If this plan is carried into execution, the temporary courts at present occupied by Vice-Chancellor Knight Bruce and Vice-Chancellor Wigram will be pulled down.—*Globe.*

PROXY VOTING IN PUBLIC COMPANIES.—The right of voting by proxy in railway, mining, and other public companies, although at all times legal, has, until very recently, been subject to a heavy pecuniary charge, to which the generality of shareholders were unwilling to submit, unless where the exercise of the vote was called for upon strong grounds. Under the old law, no proprietor could vote as proxy for an absent proprietor without the production of an authority, such instrument bearing a 30s. stamp. This was found to be a practical grievance, inasmuch as it was not always convenient for shareholders residing in distant parts of the kingdom to attend in person the meetings of companies in which they held shares. By the act of the 7th of Victoria, cap. 21, the stamp duty has been reduced to 2s. 6d. but the statute contains some stringent provisions which will, it is conceived, have a salutary effect. The 6th section provides, that any such instrument shall authorize the proxy to vote upon any matter at any one meeting of the proprietors or shareholders of the company, the time of holding such meeting being specified in such instrument, or at any adjournment of such meeting, the instrument being no further available. In order to prevent evasion of the law, the seventh section prohibits the Commissioners of Stamps from stamping any proxy paper after the same has been signed; and if any person shall sign any proxy paper not duly stamped, or shall vote or act as proxy under authority of an instrument not duly stamped, the party becomes subject to 50*l*. penalty, and every vote so given becomes absolutely null and void.

COURTS OF EQUITY.—The business of the equity courts was resumed on Monday, and they will continue to sit up to Friday, March the 14th. The total number, as appears in another part of our paper, of appeal causes and causes set down up to Saturday morning, amounts to 283. Of this number, 42 are in the Lord Chancellor's list; 139 in the Vice-Chancellor of England's list; 47 in Vice-Chancellor Knight Bruce's; and 55 in Vice-Chancellor Wigram's list—independent of these, there is a rather heavy list before the Master of the Rolls.

CORRESPONDENCE.

SELECTIONS FROM CORRESPONDENCE.

J. C. D. (Stockton) throws out the following suggestion on Capital Punishments :—

With all due deference to the opinions of those who advocate the abolition of capital punishment, I wish to shew that some absolute nonsense has been propounded on the subject, even in the correspondence of your columns; and in doing so I do not deny that, under better auspices, it *might* be expedient to try the effect of the abolition of a power hitherto exercised by all societies, in all ages; though I cannot myself believe, while murder in all its *forms* is so frightfully frequent, that the time for doing so is yet come, and would rather suggest that the progress of Christianity alone in preventing crime can really dispense with the necessity of punishment.

But it has been argued that putting to death, even for murder, is a breach of the commandment, "Thou shalt not kill!" Why, the law of the same God, given to the same people, at the same time, further directs (see Exodus xxi. 12), "He that smiteth a man, so that he die, shall surely be put to death." Sr ely a more utter confusion of the very ideas of crime and punishment than such an argument betokens cannot be conceived. It appears to me quite impossible to say that the exercise of the power in question by society is morally wrong in the abstract, without impugning the morality of God himself, in his own laws given to the Jews. Indeed, upon the same principle, all punishment whatever is equally unlawful, and the dictates of Christianity so applied to the punishment instead of the crime, would forbid society the power to imprison, to fine, and to transport! I cannot think it necessary further to expose this fallacy.

Next, as to the *expediency* of society exercising the power of capital punishment. This must be judged by the circumstances and state of society at any given time; but I do not think the question has been ever fairly argued as to this age and time, nor is there space here to do it. But it has been assumed that, because crime is committed at the very foot of the gallows(*a*), and because out of 160 criminals in a gaol, perhaps 147 had been present at executions, and because murder is still committed, *therefore* executions are inoperative to deter from crime, and, *ed ratione*, inexpedient.

Are not transportation and imprisonment equally inoperative, and, therefore, equally inexpedient? We see men go from prison to crime, and back again from crime to prison, over and over; and the same may be said of transportation—witness Tawell, the returned convict! Is all punishment, then, to be abolished, because crime continues?

(*a*) According to the tendency of the argument, it should be proved that murder takes place at executions.

But it is further said that public executions demoralize. It is not *proved*, any further than that all public spectacles—fêtes, fireworks, *churches*—demoralize, because pocket-picking flourishes at them; but suppose it granted, what follows? Only, that *executions in public* are inexpedient; and it may be well worth the attention of the Legislature before the hazardous experiment of abolition, to consider if *public* execution be at all a necessity; and to try the effect of executions *within the walls of prisons, in the presence of the sheriffs and other authorities*, with or without a jury to be summoned for the purpose, while the death-bell should toll solemnly to announce the dreadful "last scene" enacting within;—crime, inconsistent with the very existence of society, receiving its decreed and foreknown penalty at the hands of the law it had outraged.

I believe that this would have a very solemn effect. The excitement, which has its charm for depraved minds, would be at an end; and the bare fact, in its mysterious and unrelieved intensity, must appal the most hardened.

But, it may be objected, the public mind of England will not tolerate private executions. Why not? If the criminal be decreed to death by society, and handed to the officers of the law, what further interest has society in the matter than to know that the last dread penalty will be inflicted, and inflicted without torture? The presence of the sheriffs and a few others would sufficiently guarantee this. Again, the "public mind" *does* tolerate the private infliction of any other punishment, viz. whipping, imprisonment, and even transportation, in the like confidence of its due administration.

I will not trespass further on your space. My object was, first to expose an absurdity which I noticed some time since in your correspondence, and next to suggest what I conceive to be the logical remedy for the evils of *public* execution. I have no wish to enter into controversy, or to answer any letters on the subject.

"ORIGO" (Shrewsbury) transmits the following difficulty arising out of the "Transfer of Property Act:"—

It is well known as one of the common law rules, with reference to the creation of remainders, that they must be limited to take effect upon the regular and natural determination of the particular estate; but it appears to me that this old rule is now superseded by the new Act 7 & 8 Vict. c. 76. The reason generally given for the rule is, that the opposite limitation would tend to defeat the estate by force of a condition, which can only be done by the entry of the grantor, the effect of which would be to defeat both the particular estate and the remainder. Now, if the rule and the reason must stand or fall together (which I apprehend is the case), this rule no longer exists; for sec. 5 of the new Act enables persons to assign their rights of entry, upon breach of condition subsequent, as well as others, and the question therefore is simply, whether the remainder-man would not be *considered the assignee*, and consequently entitled *himself* to enter, upon breach, without the interposition of the grantor? for if so, then the *reason* above stated why such a limitation in abridgment cannot be made (the entry of the grantor not being *ex necessitate rei*) is not applicable, and either the *rule* must in future exist without a reason (by no means *legal*), or a new reason be discovered adapted to support the rule. By the new Act all assignments are required to be by deed; *sed quære*—Would not the original deed, if properly stamped, serve the purpose?

Perhaps *you*, or one of your numerous readers, would feel interested in answering this question; and if so, it will give me pleasure to be instructed.

"T. M." (a magistrate) submits the following practical query.

Can any of your correspondents point out any decision, or afford any information on a case like the following:—

A. B. is the paid clerk of an attorney, who is clerk to the town council of a small borough town. By the interest of his master (the town clerk), A. B. contrives to get himself elected a member of the council, and has attended the corporation meetings in the town-hall ever since his election, in the double capacity of councillor and clerk to the town clerk, the greater part of whose duties, A. B., in fact, performs. By the 28th section of the Municipal Corporation Act the disqualification of the partner of a town clerk is clearly expressed, and the question arises as to whether *à fortiori* his paid clerk is not to be considered as excluded from the office by the above-quoted section of the Act.

I am, Sir, yours, &c.,
11th Feb. T. M.

An "OLD SUBSCRIBER" announces the following novel point in "County Court Practice."

Will you have the kindness to insert the following in one of the columns of your valuable paper? and I have no doubt but that some of my brother subscribers will have the goodness to give their opinion on the point.

The County Clerk for the county of Cardigan has decided that a commissioner of one of the Superior Courts is not authorized to take affidavits in the County Courts, and that they are not valid unless sworn before him at the County Court. Consequently, to the great inconvenience of the attorneys, they have been obliged to send their clients to attend him then and there for that purpose.

"AN ATTORNEY" would be obliged by information as to the following:—

I have had occasion, this day, to apply to a clerk to the magistrates for copies of depositions against a person committed for trial at the ensuing assizes, on behalf of the prosecution; and I have been asked for eleven shillings, or at the rate of 8d. per folio. This I think too much, and will feel obliged if any of your subscribers will give me information as to the charge per folio by other magistrates' clerks. If I wanted the copies for the prisoner, 1½d. per folio is all that the magistrates' clerk can charge for them.

TO SUBSCRIBERS.

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

It is necessary again to state that the numbers of the completed Volumes, when transmitted for binding, should have some mark upon the parcel, by which they may be identified, and of which the Publisher should be advised by letter.

An Alphabetical Index to the Cases in the current Volume of the LAW TIMES *always lies at the Office for the purpose of reference.*

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at* 5s. 6d. *each, if forwarded to the Office; with the Solicitor's name and abode lettered on the cover,* 1s. *extra.*

To Readers and Correspondents.

DISCIPULUS.—*The query is one of those which it is a rule with the* LAW TIMES *not to answer.*

AN ORIGINAL SUBSCRIBER.—*The suggestion will be considered.*

A SUBSCRIBER'S *hint will probably be adopted.*

JUVENIS *is under consideration.*

A. C. D.—*Mr.* EAGLE'S *is, we believe, the best work on tithes.*

CONVICTION.—*The letter is good, but not of sufficient importance to justify our giving to it so large a space at this busy time.*

THE LAW TIMES.

SATURDAY, FEBRUARY 15, 1845.

NEW RULES AND ORDERS IN BANKRUPTCY.

A FURTHER series of New Rules and Orders in Bankruptcy have just been issued by the Commissioners with the sanction of the Lord Chancellor. They will be found in their proper place in the LAW TIMES of this day, and that our readers may possess them at the earliest moment, we have been obliged to omit much other matter that was in type, and to curtail the usual commentaries upon professional topics.

It may be as well to notify that these New Rules are also printed in a sheet folding in

duodecimo, and paged continuously with the Rules issued a few months since, so that they may be bound up with Mr. Homes's or any other 12mo. work on Bankruptcy and Insolvency. This sheet will be forwarded by post (free) to any person inclosing 1s. in postage stamps, or the two sheets, containing both the series of Rules and Orders, for 2s. transmitted in like manner.

A second edition of Mr. Homes's *Insolvent Debtors Act* is also published, comprising all the New Rules, and, therefore, being the only complete work on the existing Law and Practice of Insolvency and Bankruptcy that has yet appeared.

IMPRISONMENT FOR DEBT.

It would appear, from the conversations upon the subject in both Houses of Parliament, that there is to be no present amendment of a law which is working so vast an amount of injustice and wrong. Dishonest debtors are to be permitted to exult with impunity overruined creditors. Lord Brougham affirms that the iniquitous statute, of which he was the parent, possesses but one fault, and Sir James Graham states, in the House of Commons, that it is to have a longer trial.

May we hope that the Profession and the public will hasten to prove to the Lords that the *one fault* is a fault so grievous that it ought not to be permitted for a single month to deform the administration of justice in a civilized country, and to the Commons that the trial has been already long enough to shew that under its operation fraud is indemnified from punishment, and industry cheated of its rights. The Profession have the best means of learning the extent of the evil, and they should bring that knowledge before those in whom is vested the power of providing a remedy.

Nor is the demand unreasonable. We ask not that imprisonment for *debt* be restored; nay, we should approve its entire abolition. All we claim of the Legislature is a provision *in lieu* of it; power to reach the *property* of a debtor, now that his *person* is placed out of the creditor's reach.

The wrong of which we complain as perpetrated by Lord Brougham's *Rogues' Indemnity Act* is this:—There are many debtors who possess property that cannot be taken in execution. They have but to live in a furnished house, revel in luxury, and defy their creditors. The new law has forbidden us to take their persons, and they laugh at us.

The remedy we ask is simply this:—A provision that if any debtor, after judgment, shall not have sufficient property whereon execution may be levied, the creditor shall have the power to summon him before the Commissioners of Bankruptcy, who shall thereupon be empowered to examine him as to his means, his reasons for non-payment, and, in fact, to deal with him precisely as with any other insolvent, and to punish him for any *fraud* which may be proved.

This would meet the mischief effectually, and it is so simple and obvious a remedy, that we cannot believe the Legislature would refuse it, if it be sufficiently urged upon them by those who see and feel the mischiefs of the recent law that abolished one means of redress for creditors without providing another.

LAW FORMS.

In pursuance of the arrangement, announced last week, for publication in the Verulam Society of a complete series of Forms for Office use in Common Law, Magistrates' Law, Election Law, Bankruptcy, &c. &c. to be supplied to the Members at the lesser prices of the Society's publications, and to the public at the usual prices, the following have been already accomplished:—

I. Of *Common Law Forms* there are now ready for delivery:—

1. Copy of *Writ of Summons*. Price, to members, 4d. per dozen, to the public, 6d. per dozen.
2. Copy *Subpœna ad test*. Price, to members, 4d. per dozen, to the public, 6d. per dozen.
3. Copy *Subpœna duces tecum*. Price, to members, 9d. per dozen, to the public, 1s.
4. *Notice to Quit*. Price, to members, 9d. per dozen, to the public, 1s.

Others are in the press, and will be announced when ready for delivery.

II. As to *Magistrates' Forms*, we are happy to be enabled to state to the members that J. C. Symons, Esq. Barrister-at-law, has engaged to prepare for the Society a complete series, which will be published as speedily as each can be prepared. The series will commence with *Forms* in *Bastardy*, as in most immediate request. The following are ready, and may now be had at the prices named:—

1. Information of a Mother of a Bastard Child *before* Birth, *a*. To members, 2s. 3d. per quire; to others, 3s.
2. Information of a Mother of a Bastard Child *after* Birth, *a b*. Price ditto.
3. Summons to the Putative Father *before* Birth, A. Price ditto.
4. Summons to the Putative Father *after* Birth, B. Price ditto.
5. Summons to Witnesses. Price ditto.
6. Order of Maintenance *before* Birth, C. To members, 3s. per quire; to others, 4s.
7. Order of Maintenance *after* Birth, D. Price ditto.
8. Notice of Appeal. To members, 2s. 3d. per quire; to others, 3s.

The rest of the Forms in Bastardy are in rapid progress. Forms under the Constables' Act will be the next series.

III. The new Forms in Bankruptcy under the new Orders, and a series of Forms in Election Law, prepared for the Society by Edward W. Cox, Esq., Barrister-at-law, are in the press.

It may be as well to assure the Profession that all the Society's Forms will be settled by Counsel, and the utmost care will be taken to insure accuracy.

Orders should state whether they are from members of the Society, that the Society's prices only may be charged.

VERULAM REPORTS.

Numbers II. and III. of *Practice Cases* have been delivered. No. IV., completing the first part, will be ready early next week.

The *third* number of *Criminal Law Cases* is just published, and the fourth, completing the first part, for use at the ensuing circuits, will be ready on Thursday next.

The *seventh* and *eighth* numbers of Bittleston and Symons's *Magistrates' Cases* are in the press, and will contain the cases of Hilary Term, and the commencement of Mr. Symons's *Forms and Precedents in Magistrates' Law*.

Nos. VII. and VIII. of *Real Property and Conveyancing Cases*, completing Part II., will immediately succeed the above, with an Appendix, containing practical precedents in Conveyancing.

In pursuance of a recent arrangement, each series of the Reports will be accompanied with an Appendix of Practical Forms and Precedents in the branch of law to which the Reports refer. It is hoped that this will add materially to their value and utility to the Profession.

NECROLOGY.

THOMAS HAMILTON, ESQ.

We record, with much regret, the death of the above gentleman, of the firm of Few, Hamilton, and Fews, which took place at his residence, in the Mall, Hammersmith, on Sunday evening, the 2nd instant, in the fifty-seventh year of his age.

As Mr. Hamilton was a highly respected member of the Incorporated Law Society, and had been actively engaged before the public for a period of more than thirty years, with great credit to himself, and satisfaction to his clients, we think it right to give a short history of his Professional career.

Mr. Hamilton was the son of a respectable clergyman in Yorkshire, by whom he was principally educated, till after he had attained his sixteenth year; and for his years, his classical acquirements at that time were of no ordinary character. He was then articled by his father to Messrs. Upton and Co., an eminent firm in Leeds, with whom he served his clerkship, having acquired during that period a considerable knowledge of the law of real property, as well as of all commercial transactions. His clerkship having expired, he quitted Leeds, and went as an assistant to the office of Messrs. Few and Ashmore, who had a short time previously succeeded to the business of Mr. Townley Ward; and during the two years he remained their assistant, he became so valuable to the firm that they offered him a partnership, which he readily accepted.

From that time to the present, he has been most actively engaged in his professional capacity before the public, and few men have sustained a higher reputation than Mr. Hamilton, during his long and active career. He was retired and unostentatious in his manners; he possessed a noble and generous disposition, and performed unbounded acts of kindness and liberality to the widows and orphans of many of his poorer brethren.

For the last six months his health had been giving way by a pulmonary complaint, and he clearly foresaw that his earthly career was drawing to a close. He met his approaching fate with a quietude of manner perfectly consistent with his general character, and bowed with reverence to the will of that Divine Being, who had given him so many years, both of prosperity and enjoyment.

He has left a widow, but no family, to lament his loss.

JOURNAL OF PROPERTY.

The following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.
For every succeeding 30 words . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	99¾	97⅞	99⅝	99⅝	99⅝	99⅝
Three per Cents. Reduced	100¼	100⅛	100¼	100⅛	100¼	100¼
New Three-&-a-quarter per Cts	103¼	103⅛	103⅛	103⅛	103⅝	103¼
Long Annuities..............	12⅛	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	212	212¼	212¾	213	213½	213⅛
India Stock	283	283	283¼	283¾	283¼	283
India Bonds, prem............	70	69	70	68	69	70
Exchequer Bills, prem.	54	54	55	55	56	56
FOREIGN.						
Spanish Five per Cents.......	28	28	28½	28⅛	28¼	28⅛
Spanish Three per Cents.	41	41¼	41	41⅛	41⅛	41⅞
Russian	120	119½	119½	119	120	119⅛
Peruvian......................	32¾	33½	33¼	33⅛	34½	34
Portuguese	58⅛	59	59	59¼	59½	59
Mexican	36	36	36¼	36¼	36¼	36
——— Deferred	16¼	16¼	16⅛	16⅛	16⅛	15⅞
Dutch Two-and-a-Half per Cents.	63	63¼	63	63¼	63½	63⅛
——— Five per Cents.	98	98¼	98¼	98½	98¼	98⅛
Danish	89¼	90	90¼	90	90¼	90¼
Colombian	14¼	14½	14¼	14½	14¼	14⅞
Chilian	100	101	101¼	102	102	102
Buenos Ayres	42	42⅛	43	43⅛	43½	44
Brazilian....................	89	89½	90	90	90¼	90⅛
Belgian	101¼	101¼	102¼	101¼	102¾	102

Sales of Landed Property.—John Dugdale, Esq., the wealthy cotton-printer of Manchester, has lately become the purchaser of the Crathorne Estate, in the north riding of Yorkshire, which was advertised in our columns, and put up to auction at York, by Rushworth and Jarvis, in October last. The price given for the estate is 75,450*l*., comprising the baronial manor of Crathorne, and 2200 acres in a ring fence. The property had been in the possession of the Crathorne family for a very long period.

Public Sales.

By Messrs. SHUTTLEWORTH and SONS.

The absolute reversion to one-sixth part of 4,000*l*. Three-and-a-Half per Cent. Bank Annuities, on the decease of a lady now in the 73rd year of her age—400*l*.

The absolute reversion to an undivided moiety of a freehold estate, situate half a mile from Bures, Suffolk, called Fish House Farm, consisting of 109a. 2r. 3p. of arable and pasture land, of the value of 135*l*. 10s. per annum, on the decease of a gentleman, aged 65, and his sister, aged 65, without issue—550*l*.

The absolute reversion to two third parts of 2,834*l*. 10s. late Three-and-a-Half per Cent. Bank Annuities, receivable on the decease of two lives, aged respectively 72 and 73—940*l*.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Bromfield.—On the 10th inst. at Whitchurch, Shropshire, the lady of Mr. Bromfield, solicitor, of a son.

Stevenson.—On the 25th Jan. at Keith Hall, Jamaica, the lady of Mr. Justice Stevenson, of a son.

MARRIAGES.

Hughes, Hughes, jun. esq. of the Inner Temple, barrister-at-law, to Ellen, youngest daughter of Joseph Oldham, esq. of Stamford hill, on the 13th inst. at Hackney Church.

Throsby, W. B. esq. of Leicester, to Lydia Mary, youngest daughter of the late Joseph Smith, esq. of Bristol, barrister-at-law, on the 19th ult. at Stapleton.

DEATHS.

Jervis, Swynfen, esq. of Tavistock-place, Russell-square, on the 13th inst. aged 80.

Melhuish, Mrs. Nanny, the wife of Mr. John Melhuish, solicitor, on the 25th ult. at Honiton, aged 58.

Robeson, J. esq. solicitor, on the 3rd inst. at Droitwich, aged 80.

Springall, Ann, the beloved wife of John Springall, esq. of Hamilton-terrace, St. John's-wood, and of Raymond-buildings, Gray's-inn, on the 7th inst. aged 69.

Stone, William, sen. esq. late of Streatley-house, a deputy-lieutenant for the county of Berks, and many years an active magistrate for the counties of Berks and Oxon, on the 30th ult. at his house in Russell street, Reading.

Swann, Charlotte Lois, the third daughter of Mr. C. Swann, one of the coroners of Nottingham, on the 30th ult. aged eight years.

Taylor, Julia Marianne, youngest daughter of Mr. F. C. Taylor, solicitor, Bethal-street, Norwich, aged two years and ten months.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Alderson, I. worsted spinner, first and final, 6s. 2d. Hope, Leeds.—*Alexander*, G. innkeeper, 3s. 4½d. Hernaman, Exeter.—*Avery*, J. colonial broker, 1s. 4½d. Alsager, London.—*Bearup*, W. joiner, second and final, 4d. and 3-10ths of a penny. Baker, Newcastle.—*Beesley*, R. wine cooper, first, 1s. Alsager, London.—*Bright*, B. victualler, first, 2s. 6d. Follett, London.—*Buchanan* and *Co.* merchants, second, 3½d. and 1s. 3½d. to new proofs. Turner, Liverpool.—*Cartledge*, J. cotton spinner, first and final 4s. 6d. to new proofs. Hope, Leeds.—*Conden*, E. builder, second, 5½d. Follett, London.—*Crich*, J. maltster, first, 4s. 2d. Freeman, Leeds.—*Eyre*, T. corn merchant, third, 4½d. Freeman, Leeds.—*Gale* and *Gale*, ropemakers, 6d. Follett, London.—*Goddard* and *Co.* merchants, first, 4d. Whitmore, Birmingham.—*Goodeve*, A. warehouseman, first, 1s. Alsager, London.—*Heron*, E. shipowner, first, 9d. Baker, Newcastle.—*Heron*, J. shipowner, first, 9d. Baker, Newcastle.—*Hetherington*, R. tanner, first and final, 4s. 2d. and 9-15ths of a penny. Baker, Newcastle.—*Higginbottom*, J. scrivener, second, 5s. Pott, Manchester.—*Hutchinson* and *Co.* bankers, sixth and final, 5-8ths of a penny. Wakley, Newcastle.—*Jackson*, J. innkeeper, first, 3d. Young, Leeds.—*Jackson*, W. baker, first, 1s. 2d. Turner, Liverpool.—*Johnston* and *Co.* bankers, third and final, 10d. and 35-100ths of a penny. Baker, Newcastle.—*Lees* and *Co.* bankers, 10s. 4d. Belcher, London.—*Metcalf*, J. grocer, first, 1s. 6d. Casenove, Liverpool.—*Mills*, W. F. merchant, 6s. 6d. Turner, Liverpool.—*Mitchell*, R. merchant, second, 9d. Green, London.—*Parker*, J. coach builder, first and final, 10s. Pott, Manchester.—*Row*, J. chemist, 2s. 9d. Hernaman, Exeter.—*Sly*, S. engraver, final, 3½d. Follett, London.—*Smith* and *Tilford*, engravers, first, 4½d. sep. Tilford, 2s. 4d. Follett, London.—*Stein* and *Co.* merchants, third, 6d. Groom, London.—*Taylor*, W. wool and oil merchant, first, 2s. 9½d. Pott, Manchester.—*Williams*, H. grocer, first, 1s. 3d. Follett, London.—*White* and *Co.* music sellers, first, 6s. Acraman, Bristol.—*Whitmarsh*, T. H. hotel keeper, first, 3d. Alsager, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Feb. 7.

Barton, B. builder, Yarmouth, Feb. 3. Trusts. R. Wheeler, builder, Yarmouth, and T. Jarvis, tanner merchant, Lymington. Sols. Griffiths and Son, Newport and Cowes.—*Freeman*, A. draper, Newbury, Jan. 15. Trust. H. Gregory, straw hat manufacturer, Aldermanbury. Sol. Robinson, Queen-st. pl.—*Granville*, A. stationer, Devonport, Dec. 9. Trusts. G. B. Kirkman, stationer, London, and E. W. Cole, bookseller, East Stonehouse. Sol. Gilbard, Devonport.

Gazette, Feb. 11.

Bradbrook, J. innkeeper, Ipswich, Feb. 4. Trusts. J. Ratcliff, farming man, Lexden, near Colchester, H. G. Bristo, wine merchant, Ipswich, and R. Naunton, innkeeper, Ipswich. Sols. Barnes, Colchester, and Dunningham, Ipswich.—*Gorham*, J. B. grocer, Maidstone, Feb. 1. Trust. J. H. Hodsoll, cheesemonger, Maidstone. Sol. King, Maidstone.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Feb. 7.

Beard, John, builder, Deptford, Feb. 14, at one, March 26, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Govett, North-pl. Gray's-inn-rd. sol. Date of fiat, Feb. 3. Bankrupt's own petition.

Bradshaw, James, coal merchant, 57, High-st. Camden-town, Feb. 18, at one, March 26, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Seddington and Son, Gordon-st. Gordon-sq. sols. Date of fiat, Jan. 26. E. Lane, straw hat manufacturer, Aldersgate-st. pet. cr.

Coit, William Henry, grocer, Long Melford, Suffolk, Feb. 18 and April 8, at eleven, Basinghall-st. Com. Goulburn; Follet, off. ass.; Raimondi and Gooday, Gray's-inn, and Downan, jun. Sudbury, sols. Date of fiat, Jan. 22. W. Mann, soap manufacturer, Glemsford, Suffolk, pet. cr.

Haywood, George, bricklayer and plasterer, Luton, Bedfordshire, Feb. 14, at half-past one, March 21, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Dyne, Lincoln's-inn-fields, and Waring, Luton, sols. Date of fiat, Feb. 3. W. H. Cooper, E. Lawford, and H. Cooper, wharfingers, Leighton Buzzard, pet. crs.

Richardson, John, boot and shoe maker, 37, Fish-st.-hill, and 73, Cornhill, Feb. 19, at twelve, March 18, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; King, St. Mary-axe, sol. Date of fiat, Feb. 4. Bankrupt's own petition.

Rugg, Samuel, carpenter and builder, Chamberlayne-town, Southampton, Feb. 18, at two, March 20, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Paterson, Bouverie-st. sol. Date of fiat, Feb. 4. Bankrupt's own petition.

Tavener, Samuel, bricklayer and builder, 9, Sovereign-mews, Paddington, Feb. 18, at half-past two, March 19, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Chisholme, Cook's-court, sol. Date of fiat, Feb. 4. W. Spiller, plumber, Upper Berkeley-st. Paddington, pet. cr.

Gazette, Feb. 11.

Atkinson, Anthony, and Atinson, Francis, colour manufacturers and commission agents, Newcastle-upon-Tyne, Feb. 20, at twelve. April 3, at two, Newcastle, Com. Ellison; Wakley, off. ass.; Watson, Newcastle, and Shield and Harwood, Queen-st. Cheapside, sols. Dat of fiat, Feb. 4. A. Harris, coal fitter, Middleborough, pet. cr.

Bellinger, Hippolite Francis, licensed victualler, 10, Great Pulteney-st. Golden-square, Feb. 19, at half-past two, March 26, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Robson, Clifford's-inn, sol. Date of fiat, Jan. 23. Bankrupt's own petition.

Burrell, James, and Hall, Thomas, ironfounders, Thetford, Norfolk, Feb. 25, at two, March 25, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Johnston, Chancery-lane, sol. Date of fiat, Feb. 1. J. and J. Meyer, tailors, Conduit-st. Bond st. and M. Forrestall, Rodney-buildings, New Kent-road, executors of J. Meyer, deceased, pet. crs.

Challenor, John, grocer and cheesemonger, 45, White-st. Borough, Southwark, Feb. 21, at twelve, March 28, at one, Basinghall-st. Com. Fane; Alsager, off. ass.; Buchanan and Granger, Basinghall-st. sols. Date of fiat, Feb. 7. Bankrupt's own petition.

Cotterell, William, tea dealer and grocer, Southampton, Feb. 25 and March 26, at two, Basinghall-st Com. Evans; Johnson, off. ass; Brakenridge, Bartlett's-buildings, Holborn, and Newman, Southampton, sols. Date of fiat, Feb. 7. G. E. Humphry, surgeon, Southampton, pet. cr.

Gray, Henry Peacock, horse dealer and livery-stable-keeper, Caroline Livery Stables, Caroline-st. Eaton-sq. and of 6, Caroline st. Feb 18 and March 25, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Dupree, Lawrance-lane, sol. Date of fiat, Feb. 7. Bankrupt's own petition.

Paul, William Cheatle, sheep salesman and cattle dealer, Romford, Essex, Feb. 28, at two, March 25, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Hilleary, Fenchurch-st. sol. Date of fiat, Feb. 10. Bankrupt's own petition.

Peters, John, innkeeper, Godstone, Surrey, Feb. 18 and April 8, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Blake and Co. King'road, Bedford-row, and Dempster, Brighton, sols. Date of fiat, Feb. 5. J. Johnson, hotel keeper, Windsor, pet. cr.

Steadman, Richard, and Adie, William, button makers, Birmingham, Feb. 21 and March 18, at twelve, Birmingham; Christie, off. ass.; Harrison and Smith, Birmingham, sols. Date of fiat, Jan. 29. Bankrupt's own petition.

Tyler, Spencer William, carpenter, Walcot-place, Lambeth, Feb. 18, at eleven, March 25, at twelve, Basinghall-st. Com. Shepherd; Graham, off. ass.; Buchanan and Co. Basinghall-st. sols. Date of fiat, Feb. 8. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Feb. 4.

Barr, W. and J. builders, Nassau-street, Jan. 31. Debts paid by W. Barr.—*Barugh*, J. *Wingrave*, M. and *Sunley*, W. B. store shippers, Ratcliffe-highway, June 30.—*Belliss*, J. and *Giles*, T. drapers, Birmingham, Feb. 1. Debts paid by Belliss.—*Blyth*, M. and *Millborrn*, S. paper makers, Taverham-mills, Norfolk, Dec. 19.—*Brown*, G. and *Best*, I. carriers, Pickering, Jan. 31. Debts paid by Brown.—*Burt*, R. and J. linendrapers, Kingsbridge, Jan. 30. Debts paid by R. Burt.—*Findley*, J. L. jun. and *Naylor*, H. M. general dealers, Birmingham, Jan. 30.—*Hannen*, W. and *Rutter*, J. attorneys, Shaftesbury, Feb. 1.—*Hinde*, S. and M. plumbers, Bedford, Dec. 31.—*Hind*, J. and W. Farmers, Erith, Sept. 29.—*Holt*, W. and *Ingram*, G. drapers, Hull, Dec. 20. Debts paid by Holt.—*Kelk*, G. and *Brookes*, J. furnishing ironmongers, Old Compton-st. Dec. 31. Debts paid by Brookes.—*Law*, C. and *Cobb*, J. M. wine merchants, Margate, Feb. 1. Debts paid by Law.—*Lowry* J. and *Willson*, J. coal merchants, Hull, Jan. 31. Debts paid by Willson.—*Morley*, H. R. and *Hall*, H. merchants, Hull, Dec. 31. Debts paid by Morley.—*Newman*, W. and *Loft*, S. flour dealers, Louth, May 13.—*O'Rorke*, T. and *Birks*, W. commission agents, Manchester, Feb. 3. Debts paid by Birks.—*Pease*, T. and *Webster*, A. coal merchants, Penistone and elsewhere, Dec. 31.—*Price*, T. *Backhouse*, T. *Meek*, J. and *Spence*, J. glass manufacturers, York, Jan. 31.—*Redhead*, L. and *Spiers*, F. T. B. A. ship brokers, Mark-lane, Dec. 31. Debts paid by Redhead.—*Reid*, J. and *Glazier*, J. undertakers, Goodge-st. Tottenham-court-road, Jan. 31.—*Robin*, J. sen. *Robin*, C. and *Robin*, J. jun. merchants, Liverpool, so far as regards C. Robin, Dec. 31.—*Southan*, J. *Timms*, C. and *Davis*, W. drapers, Worcester, Jan. 21.—*Stuart*, H. and *Russell*, T. watch manufacturers, Liverpool, Jan. 29. Debts paid by Fry, accountant, Liverpool.—*Townson*, G. *Robinson*, T. and *Haworth*, J. drysalters, Oswaldtwistle, Jan. 30. Debts paid by Townson and Robinson.—*Westbury*, W. and [illegible], G. lithographic printers, Walbrook, Jan. 28. Debts paid by Westbury.—*[illegible]*, R. and W. cotton manufacturers, Padiham, Jan. 30. Debts paid by W. [illegible].—*Williams*, W. *Walker*, J. *Scott*, R. and *Scott*, H. brewers, Plymouth, Dec. 31.

Gazette, Feb. 7.

Adams, T. and *Page*, J. lace manufacturers, Nottingham, Dec. 2.—*Baxter*, R. and *Roberts*, J. bakers, Bristol, Jan. 16. Debts paid by Roberts.—*Brooks*, J. H. and *Brooks*, C. surgeons, Henly-on-Thames, Dec. 31.—*Browne*, S. W. *Hassell*, W. and *Williams*, H. commission agents, Liverpool, Feb. 4. Debts paid by Browne and Hassell.—*[illegible]*, W. and *Gibson*, C. carriers, Hereford, Jan. 1.—*[illegible]*, H. and *Hall*, S. bone crushers, Doncaster, Worksop, Stockwith, and elsewhere, Dec. 31.—*Flint*, A. G. and *Millman*, W. coal factors, Lower Thames-st. Feb. 3.—*Gorton*, C. and *Hodges*, G. W. importers, Manchester and New York, Feb. 1.—*Greg*, W. R. and *Milne*, S. cotton manufacturers, Bury, Jan 4. Debts paid by Greg.—*Hassell*, J., W., and J., and *Williams*, H. leather factors, Bristol, Feb. 4. Debts paid by W. and H. Hassell.—*Inglis*, D. and W. and *Scott*, D. G. linen manufacturers, Dunfermline, so far as regards Scott, Feb 1.—*Inglis*, W. and *Scott*, D. G. merchants, New York, Feb. 1.—*Jackson*, W. B. jun. and *Bond*, W. jun. fustian dealers, Manchester, Feb. 3.—*Jones*, F. P. and *Kindersley*, E. C. sugar refiners, Well-st. Well-close-sq. Feb. 6.—*Joyce*, E. and *Richardson*, H. printers, Congleton, Jan. 25. Debts paid by Joyce.—*Lloyd*, J. and *John*, P. drapers, Newport, Aug. 1.—*Merrett*, J. and *Major*, J. W. perfumers, Gough-sq. Feb. 5.—Debts paid by Merrett.—*Nunn*, R. and *Botwright*, J. brick makers, Bungay Holy Trinity, Suffolk, and Ellingham, Norfolk, Jan. 1.—*Prior*, J. jun. and *Hovey*, T. linen drapers, Nottingham, Feb. 5.—*Proctor*, C. G. and *Ryland*, T. jun. manufacturers, Birmingham and Emscote, Feb. 8.—*Radcliffe*, A. sen. and jun. glaziers' diamond manufacturers and lead merchants, Hermitage-place, St. John-st.-road, and Chichester-place, Gray's-inn-road, Feb. 1.—*Riley*, S. and *Wallis*, S. manufacturers, Stand and Manchester, Jan. 7.—*Routledge*, T. and *Gatley*, J. patent saw-mills proprietors, Holland-st. Blackfriars, Feb. 6. Debts paid by Routledge.—*Sims*, J. and *Brown*, G. iron founders, Tollard Royal, Wilts, Feb. 1. Debts paid by Sims.—*Sowersby*, T. and *Parke*, T. corn millers, Pickering and Thornton Wiseborough, Feb. 3. *Speall*, J. and *Tipper*, H. grocers, London-road, Sept. 1. Debts paid by Tipper.—*Stevens*, A. and *Morris*, E. printers, St. Clements', near Oxford, Feb. 6. Debts paid by Morris.—*Tankard*, J. and *Rushworth*, J. woolstaplers, Bradford, Jan. 31. Debts paid by Tankard.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL STREET.

Gazette, Feb. 4.

Baldree, P. tallow chandler, Cambridge-road, Bethnal-green, Feb. 17, at half-past twelve.—*Booley*, R. coach smith, Ipswich, Feb. 12, at one.—*Bryant*, S. bricklayer, Bedford, Feb. 17, at twelve.—*Bullock*, G. G. artist, Pall-mall, Feb. 17, at half-past eleven.—*Clyatt*, A. C. short-hand writer, Upper Stamford-street, Feb. 17, at one.—*Doughty*, E. out of business, Exeter-st. Lisson-grove, Feb. 19, at eleven.—*Flatt*, R. marine store dealer, King's Lynn, Feb. 17, at twelve.—*Furness*, T. out of business, Baden-place, Andrew-road, Hackney-road, Feb. 17, at eleven.—*Harwood*, A. T. marine painter, Southampton, Feb. 12, at twelve.—*Hutton*, W. K. L. grocer, Francis-ter. Hampstead-road, Feb. 17, at half-past eleven.—*Jones*, W. tailor, Maidenhead, Feb. 20, at one.—*Lamb*, R. baker, Croydon, Feb. 20, at half-past eleven.—*Mainstone*, C. J. jeweller, Great Sutton-street, Feb. 17, at eleven.—*Raynes*, W. A. sen. retired major, Woolwich, Feb. 19, at half-past eleven.

Country—Gazette, Feb. 4.

Ainscough, H. out of business, Liverpool, Feb. 14, at eleven, Liverpool.—*Cogswell*, J. bookseller, Bath, Feb. 19, at eleven, Bristol.—*Mitchinson*, F. butcher, Carlisle, Feb. 19, at eleven, Newcastle.—*Moore*, R. labourer, Dudley, Feb. 25, at eleven, Birmingham.—*Phillips*, S. maltster, Llangenneth and Llanhidian, Feb. 25, at twelve, Bristol.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Feb 7.

Allen, E. whitesmith, Croydon, Feb. 20, at one.—*Byrne*, J. J. reporter, Canterbury-st. Lambeth, Feb. 20, at twelve.—*Clarke*, J. E. out of business, Wellington-st, Norwich-road, Suffolk, Feb. 28, at half-past twelve.—*Debenham*, J. shoemaker, Hartest, Feb. 19, at twelve.—*Dinton*, J. slater, Canterbury, Feb. 28, at half-past twelve.—*Forrester*, J. out of business, Prospect-place, St. George's-road, Feb. 15, at one.—*Jenkins*, E. cowkeeper, Vine-court, Lamb-st. Spitalfields, Feb. 28, at one.—*Jones*, J. ship breaker, Deptford, Feb. 28, at one.—*Le Rendu*, A. lodging-house keeper, Somerset-st. Portman-sq. Feb. 11, at eleven.—*Maltwood*, W. trunk maker, Strand, Feb. 15, at half-past one.—*Palmer*, W. T. letter carrier, Richmond-bldgs. Soho, Feb. 25, at eleven.—*Perry*, J. farmer, Fingringhoe, Feb. 19, at twelve.

Country.—Gazette, Feb. 7.

Dewhirst, J. bookseller, Bradford, Feb. 11, at eleven, Leeds.—*Fairbourn*, J. out of business, Tadcaster, Feb. 19, at eleven, Leeds.—*Hirst*, J. cloth dresser, Rothwell, Feb. 11, at eleven, Leeds.—*Maxted*, W. cordwainer, Lincoln, Feb. 14, at eleven, Leeds.—*Middleton*, J. out of business, Sheffield, Feb. 19, at eleven, Leeds.—*Perry*, J. innkeeper, Helston, Feb. 20, at eleven, Exeter.—*Whittingham*, J. joiner, Shadforth, Feb. 14, at eleven, Newcastle.—*Wood*, J. slubber, Calverley, Feb. 19, at eleven, Leeds.—*Youde*, R. butcher, Everton, Feb. 18, at twelve, Liverpool.

From the Gazette of Friday, February 14.

Bankrupts.

Flint, A. L. warehouseman, Aldermanbury.—*Christian*, W. A. innkeeper, Newcastle-st. Strand.—*White*, J. leather seller, Great St. Andrew-st. Seven Dials.—*Herbert*, R. M. tea dealer, Reading.—*Turner*, J. and *Weeks*, S. stonemasons, Southampton.—*Ombler*, J. ironfounder, Kingston-upon-Hull.—*Howell*, W. jun. bookseller, Liverpool.—*Sanderson*, J. merchant, Liverpool.—*Hastings*, F. J. cabinet maker, Cheltenham.—*Watson*, S. stone-mason, Highbridge, Somersetshire.—*Hill*, R. currier, Exeter.—*M'William*, J. hosier, Gloucester.—*Wicks*, J. grocer, Bristol.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. HUGHES, Esq. of the Inner Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York, and Liverpool, by J. B. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLIPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

HOUSE OF LORDS.

Tuesday, Feb. 18.

THOMSON *v.* THE ADVOCATE-GENERAL.

Legacy duties.

A British subject born in England, resident in a British colony, made his will and died domiciled there. At the time of his death, debts were owing to him in England. His executor in England collected those debts, and out of the money so collected paid legacies to certain legatees in England.

Held, that such legacies were not liable to the payment of the legacy duty.

Kelly and *Anderson* appeared for the plaintiff in error, the *Solicitor-General* and *Crompton* for the defendant in error.

The point at issue will best appear from the question submitted by their lordships to the judges.

The *Solicitor-General* contended, that where a party acted in the discharge of duties of administration to a deceased person, the legacy duty was payable in respect of the money he received and dealt with in that character.

The LORD CHANCELLOR put the following question to the judges:—A B, a British subject, born in England, resided in a British colony, made his will and died domiciled there. At the time of his death, debts were owing to him in England; his executor in England collected those debts, and out of the money he collected paid legacies to certain legatees in England—are such legacies liable to the payment of the legacy duty? He had framed the question in this general form, because the statute equally affected England and Scotland.

The JUDGES requested a short time to consider their answer. They retired for this purpose, and at the end of about half an hour returned, when

TINDAL, C. J. read their answer, to the effect that, though the words of the statute could not apply everywhere, and that the principle which ran through all the decided cases was, that the domicile of the deceased party gave the law which regulated the distribution of his personal property, that this rule was not affected by the *situs* of the personal property itself, or by the place in which the administrator received that property, and that consequently, the law applicable to this case was the law of the colony where the deceased was domiciled at the time of his death, and was not the law of England, and consequently that the legacy duty was not payable here.

The LORD CHANCELLOR expressed his full concurrence with this opinion, and went into a very exact examination of the cases on the subject, which, he said, completely justified the opinions of the learned judges. He begged to add that the reason why the judges had been summoned to give the House their assistance in this case was, that as the law was to be stated definitely for the British islands and for all our colonies, the Lords had deemed it proper that the decision should have all the weight which the concurrent opinions of the judges and of their lordships could give it. He moved that the judgment should be given for the plaintiff in error.

Lord BROUGHAM and Lord CAMPBELL severally expressed their concurrence with the motion of the noble and learned lord.

Judgment for the plaintiff in error.

Equity Courts.

LORD CHANCELLOR'S COURT.

Jan. 14 *and* 21.

Re WATTS, a Lunatic.

Commission—Intervals of long continuance, during which the lunatic may conduct himself rationally, form no grounds for refusing a commission, if it is shewn that, in fact, delusions exist—Mortgagees, having an interest to prevent the finding of insanity being carried back, will not be allowed to attend the execution of the commission, unless they agree to be bound by the verdict.

Wakefield, for the petitioner, offered other affidavits.

It appeared that since the petition had been presented the patient had recently become very much excited and violent, breaking glass, furniture, and windows in his paroxysms.

Anderdon and *Bird*, contrà.

The LORD CHANCELLOR.—This man has been subject for a long time to paroxysms of insanity. In one he cut off his finger; in another he maimed his eye. He admits having done this, but justifies it. He appears to have been always a weak man, and easily imposed on. Weakness alone, however, is not sufficient to justify a commission. But Dr. Southey reports him to be subject to delusions, and since Dr. Southey has seen him he has had another paroxysm. He is passive, and does not know who pays for his board at the place in which he resides; his memory is defective; he does not know whether he received 100*l*. or 1,000*l*. as a consideration of the mortgage. The commission must issue. The mortgagees may attend, but if so, they must consent to be bound by the verdict.

Anderdon.—The wife, the present petitioner, joined in the mortgage transactions. The alleged lunatic has been allowed, since 18[illegible]1, to act in all the relations of life. (*King* v. *Daley*, 1 Ves. sen. 269; *Ex parte Morley*, Shelford on Lunacy, 103.)

The LORD CHANCELLOR.—Sometimes persons having an interest have been permitted to attend the commission, and sometimes such permission has been refused. It is entirely discretionary. I have allowed relations to attend, but not creditors.

Toller (*amicus Curiæ*),—In the case of *Ex parte Stevens*, not reported, where a person who had obtained a deed from the alleged lunatic, asked to be allowed to attend the execution of the commission, Lord Cottenham, C. said he might attend, but it must be at his own expense, and he must be bound by the result.

The LORD CHANCELLOR.—That is on the principle that you are embarking in an investigation which may occasion great expense to the lunatic's estate, and if not bound, you may afterwards traverse the inquisition.

Anderdon.—It is not denied that the object of the petitioners is to impeach the securities of the creditors.

The LORD CHANCELLOR.—I find by the minutes of a case in the office of the secretary of lunatics, that the vendor of an estate purchased by the lunatic was allowed to traverse. In the case of *Ex parte Stevens*, the order to attend the commission was refused. If the mortgagees will consent to be bound by the verdict, they may be at liberty to attend, but if not, I cannot increase the expense which such an attendance will occasion to the lunatic's estate. If the mortgagees, not being bound, should be allowed to attend, and having discovered facts at the expense of the estate, they may immediately traverse, and have the whole question tried over again. This application is for the benefit of the lunatic himself. In *Ex parte Hall* the circumstances are not stated by Lord Eldon. The question there, too, was as to the parties' right to traverse, and the applicant in that case, having an interest, was clearly entitled to traverse. But a party is not to come to this Court, and to throw the expense upon the lunatic's estate of lengthened examination, and then afterwards traverse the finding of the jury. With respect to the commission, the principle upon which this Court acts is, that when the party is under a delusion, you can never be sure of him. The delusions in this case are consistent with great acuteness in matters affecting his own interest; yet the instances of violence shew that he cannot be depended upon. Here the mortgagee comes not to say the man is not insane, but to carry back the insanity to an early date. I do not place much reliance on *Ex parte Hall*: Lord Eldon was very tender in his way of dealing with it. Have you any case in which the Court has allowed a party to come forward, not for the benefit of the lunatic, but for his own interest?

Anderdon.—The mortgagees were ready to pay all the additional costs which might be occasioned by their attendance.

Bird, on the same side.—In the case of *Ex parte Stevens*, there were two deeds which had been executed by the lunatic to Newbury, the party desiring to attend. One was a deed in trust for Stevens until lunacy, and the other was a mortgage from Stevens to Newbury. No money had passed. Watts had appeared to the foreclosure writ filed against him by the mortgagees, but not having put in any answer, they had filed a traversing note, and obtained a decree of foreclosure.

Wakefield, in reply.

The LORD CHANCELLOR.—Dr. Southey, upon a personal examination, did not think there was the least doubt as to Watts's insanity. The mortgagee had made out no case to be allowed to attend the inquiry. She is merely seeking to attend to protect her own interest, and that cannot be allowed, unless she is willing to abide the result. Having examined and ascertained all the facts of the case, she may then the next day traverse. Lord Eldon doubted whether any person having an interest should be allowed to attend, except for the benefit of the lunatic. Here the object of the mortgagee is her own, not the lunatic's benefit.

Petition of the mortgagee refused with costs.

Wednesday, Jan. 15.

Re JENNINGS, a Lunatic.

Practice—Trustee—Bank of England—Transfer.

This was a petition for an order requiring the Bank of England to transfer to the committee of the estate certain stock standing in the name of a deceased trustee. A testator had given a portion of the produce of his real estate to the lunatic, and the deceased trustee had declared that the sum standing in his name was held in trust for the lunatic. The Bank refused to make the transfer without a previous order. *Ordered.*

The petition likewise prayed that the costs incurred in a contemplated sale of an estate in which the lunatic was interested jointly with others might be allowed.

Goodeve, for the petition.

The LORD CHANCELLOR.—You may have the costs of consulting counsel, but nothing more, as the costs had been incurred without the previous direction of the Court having been obtained.

Re REVETT, a Lunatic.

Practice in lunacy—Transfer—Indemnity—Title-deeds.

Elmsley supported a petition by the administrator of the deceased lunatic, praying that a sum of consols which was standing in the names of Messrs. Alexander, of Ipswich, bankers, might be transferred to the administrator, on the bankers receiving an indemnity; and that all the deeds relating solely to the late lunatic's leaseholds might be delivered to the administrator, and those which relate to the freehold, or to the freehold, copyhold, and leasehold, might be delivered to the heir-at-law and customary heir, respectively. This arrangement was made by the consent of all parties. The petition also asked that a proportionate part of the yearly allowance from the last time of payment during which the lunatic lived might be paid to the administrator. *Ordered.*

Re Porch, a Lunatic.

Pauper lunatic—Guardians—Insolvent committee—Practice—Fees.

Blunt supported a petition by the guardians of the West London Union, which prayed that the income of the lunatic's estate might be paid to them. The committee of the person had become insolvent. The lunatic had been interested in certain freehold and copyhold estates, which had been sold to pay off annuities, and there remained a sum of 710*l*. Consols, producing an income of 20*l*. 13s. which constituted the whole of the lunatic's estate. The lunatic was in an asylum at Peckham, at an expense of 26*l*. a year. The guardians paid for the lunatic's maintenance; and it was asked that a power of attorney might be granted to their agent, to enable him to receive the lunatic's income. The committee of the person had been served with the petition, but did not appear.

The Lord Chancellor.—The insolvent person should not continue to be the committee.

Blunt asked that the officers of the Court should be directed not to take fees (which go to the fee fund) in this case.

The Lord Chancellor.—It may be a little stretch of authority to remit the fees. I won't make it a part of the order, but possibly the secretary may omit to require payment of the fees.

Re Lockey, a Lunatic.

Defaulting committee—Liability of sureties—Form of bond in lunacy.

The committee of the estate in this matter had a balance of 138*l*. reported to be due from him, and he being out of the jurisdiction, no part of the balance could be recovered from him. Considerable costs had been incurred in endeavouring to obtain payment of the balance, and it was now sought to enforce the bond, which was in the penalty of 900*l*. against the sureties, for the purpose of obtaining payment of such costs, amounting to 230*l*. The sureties had paid in the balance found due from the committee.

Elmsley, for the petitioner, the next of kin, contended that the bond into which the sureties entered comprised in terms these costs. The condition was, that the committee should duly account for all the estate of the lunatic, and should carefully observe, fulfil, and keep all the orders of the Lord Chancellor in the matter of the lunacy; and should well and carefully demean himself as a careful committee touching and concerning the lunatic and his estate.

Toller, for two of the sureties, contended that these costs were not within the terms of the bond; and even if they were, there had been so much delay in prosecuting the claim, that, as against the sureties, it was lost. One of the sureties, there having been originally three, had become insolvent. The debt, too, had been accepted without costs.

The Lord Chancellor.—The acceptance of a part of the debt would not discharge the whole. This is a matter relating to the estate of the lunatic, and by the bond the sureties undertake that the committee shall do all matters and perform all orders touching or concerning the estate. It is within the very terms of the bond. If it were not to be deemed sufficient to include these costs, the form of the bond ought to be amended; but I think it is sufficient to protect the estate.

Toller.—There is another point. There has been such a want of vigilance on the part of the next of kin, that they ought not to recover these costs against the sureties. It was known to them in 1840 that there was a deficiency in the committee's accounts, but that fact was never communicated to the sureties till July 1844. All the costs sought to be recovered were incurred between 1840 and July 1841. [He read affidavits as to these facts.]

The Lord Chancellor.—The sureties are bound to see that the committee passes his accounts regularly, and they cannot object that the next of kin have neglected their duty. The next of kin have no duties to perform. They are not bound to inform the sureties that the committee is in arrear. I am bound to protect the lunatic's estate, and the costs, if not paid by the sureties, must fall upon the lunatic's estate. The next of kin cannot accept only the balance in full for all that is due from the sureties under the bond. I must take care that the lunatic's estate does not receive damage by having these costs thrown upon it. It is true that the next of kin may ultimately have the benefit of a surplus, but at present the interest of the lunatic only is to be considered. This is not like the case of a receiver. If you have a case in which a receiver had become insolvent, and an infant was interested, there may be some analogy.

Toller.—It was held by Lord Eldon, that laches on the part of those interested might discharge the sureties of a receiver. (*Dawson* v. *Raynes*, 2 Russ. 466.)

The Lord Chancellor.—The next of kin have no duty. Incidentally they may have an interest, and therefore they are at liberty to attend the passing of the accounts, in order to watch them. But they are not bound to attend, and they are not always allowed to do so. The surety is the moving party, and he is bound to see that the committee passes his accounts. The Court accepts assistance from the next of kin, and therefore allows them costs; but they are not bound to attend to the committee's accounts, they are under no obligation, for what they do is for their own interest. If the next of kin do not attend to the passing of the accounts, how can they be compelled to do so? The present application is not for the benefit of the next of kin, but for the benefit of the lunatic, who may recover and take the whole of his estate into his hands. Suppose there may have been laches on the part of the new committee, is the lunatic to suffer from his neglect? There can be no waiver or neglect on the part of the lunatic, for he is incompetent.

Toller.—The steps taken appear from the bill of costs, and they shew that too much easiness was shewn towards the defaulting committee.

The Lord Chancellor.—Is not that usual? If it were to be rigorously insisted on, few sureties in lunacy would ever be made liable. Shew me a case or a dictum to the effect that any of the Acts referred to would relieve the sureties. These costs come within the very terms of the bond; but if the sureties desire it, they may be sued upon the bond.

Elmsley, in reply.—The sureties have submitted to the jurisdiction, for they have appeared upon the petition, which was presented in July last, and asked leave to pay in the balance.

The Lord Chancellor.—All these orders which direct the late committee to pay the costs, are existing orders under the lunacy. Unless the sureties can procure the discharge of those orders, they must be bound by them. I cannot enter into the questions they have raised at present. The orders were made upon the committee, which he has disobeyed. The bond is that the committee shall perform all the orders of the Chancellor in the matter of the lunacy, and the sureties are, therefore, liable to perform those orders. If they do not pay these costs, they must fall upon the estate of the lunatic. It is the duty of the sureties of the committee to see that he passes his accounts, and it is not sufficient to say they were not apprised of his default, for it was their duty to be apprised. They are bound to see that the committee performs all the orders relating to the estate of the lunatic which have been made by the Chancellor; these are orders relating to the estate. The costs are incident to the orders, which not only relate to the payment of the money, but to the costs as well.

Elmsley.—The order then will be that the sureties shall pay the money and all costs which the late committee had been ordered to pay.

Toller.—There is no power to enforce the order against the sureties by attachment.

The Lord Chancellor.—The order must be to put the bond in suit. They must be declared liable to pay the balance and costs, and if they are not paid, that the bond be put in suit, and the petitioners must follow up their remedy in that way.

December 7, 1844, *February* 15, 1845.

Oldfield v. Cobbett.

Contempt—Prisoner—Second rehearing on terms—Waiver—Return of writ—Irregularity—Practice.

Where a defendant has been arrested on process of contempt before the return-day of the writ, but not brought to the bar of the Court until after the return, the proceeding is regular, and the defendant has no right to be discharged.

Where a defendant is in custody for contempt in not putting in an answer, and (an answer having been subsequently put in) the plaintiff files a replication, that is a waiver of the contempt, and the defendant is entitled to be discharged without payment of costs.

The practice of the Court in that respect, certified by the officers to be in accordance with the case of Haynes v. *Bull* (5 Beav. 140).

Where a defendant is regularly in custody for contempt, and he makes various unsuccessful applications to be discharged, which are refused with costs, although by a subsequent act the plaintiff may waive the original contempt, and the defendant thereby become entitled to be discharged without payment of costs from the order by which he was first committed, he still remains liable to the costs ordered to be paid on his unsuccessful applications.

In this case Mr. Cobbett, the defendant, had been committed for contempt in not putting in his answer, and he afterwards applied many times to discharge the order of committal, on the ground of irregularity, all of which had been refused with costs; he had obtained leave now to move again to discharge all the orders under which he was detained in custody, upon entering into an undertaking to be bound by the result of the present application. The main question turned upon the regularity or otherwise of the first order of committal of the 11th of June, 1840. The facts so far as they are material, are stated in the Lord Chancellor's judgment. The following points made by Mr. Cobbett, who appeared in person, have been furnished by himself:—

Grounds of motion appearing on the documents and affidavits.

1st. That the writ of rebellion bears an indorsement as follows:—"8th June, 1840, Delivered the within-named William Cobbett into the custody of the keeper of the Debtors' Prison for London and Middlesex. For A. Sloman and others. J. Hesler;" and thereby shews that defendant was then not in the custody of the commissioners named in the writ, and shews nothing else as to them.

2nd. That the writ bears no other indorsement or return except as follows:—"1840, June 11th. In pursuance of the within writ, we have the body of the within-mentioned William Cobbett.—Henry Doncaster," which is false as a return, the same not being "in pursuance" of the writ, which was returnable on the 10th of June, and there being nothing to shew defendant in the custody of the commissioners before the 11th; and the same is moreover *no return*, it being made as of more than one, but signed by or for only one.

3rd. That defendant was taken or retaken on the said 11th of June, after the return-day of the writ, and therefore after it was *no writ*, and brought to the bar of the court by one Henry Doncaster, without any authority from the Court; but on a threatening notice from Messrs. Johnson, Son, and Weatherell, dated 10th of June, entitled in a cause which did not exist, and directed to the Sheriff of Middlesex, and the said keeper, as well as to the commissioners; and by which notice the said solicitors understood that defendant had been attached by both commissioners.

4th. That the commitment of the 11th of June, 1840, is false in not shewing the return-day of the writ or warrant, and in not shewing that defendant had been in the custody of the said keeper, and in omitting the date of the said indorsement,—date "1840, June 11th," which indorsement is in the said commitment referred to as the return, and in stating that the said defendant "was then brought to the bar of the court in pursuance of the said writ."

5th. That there is nothing in the commitment to shew that defendant was then in contempt, or that he had not put in his answer, or even that the contempt was not then cleared, or that he was examined in open court pursuant to the stat. 1 Wm. 4, c. 36, s. 15, rule 6, or that he was admonished, or that there was any cause for commitment.

6th. That the said commitment concluding in the words:—"It is ordered by the Court that the said defendant, William Cobbett, be, and he is hereby committed to the custody of the Warden of her Majesty's Prison of the Fleet, charged with his contempt of this Court in not putting in his answer to the plaintiff's said bill of complaint, as prayed," and thereby without any condition, alternative, or limit, is therefore contrary to the tenor and intent of the said statute (Rule 13), and not according to any other statute or law, or the practice of the Court.

7th. That the commitment is irregular in having been drawn up or lodged on the 12th of June, after defendant's answer was sworn and in the hands of his clerk in court, and the contempt costs (2*l*. 18s. 4d.) tendered to the plaintiff's clerk in court, and the answer being then or some time filed and accepted without in fact any act of the defendant in regard thereto, subsequent to the 12th of June, or to the commitment being lodged; which irregularity was brought before Lord Abinger on the 15th of December, 1840, in motion to discharge the commitment on that ground; but the last-mentioned fact not appearing by the affidavits, and very strong statements being made on affidavit by plaintiff's solicitor (that defendant's answer was vexatious, and implying that it was false), the motion was refused with costs.

8th. That plaintiff did not bring defendant by an *habeas corpus* to the bar of the court, pursuant to the said statute (Rule 5), and defendant was for that default of plaintiff entitled to his discharge without payment of the costs of contempt, and such costs were payable by the plaintiff from and after the 4th day of Michaelmas Term, 1840.

9th. That the plaintiff filed a replication and served a subpœna to rejoin in Easter Term, 1843, which was a waiver of contempt (if any) for all purposes, according to the practice of the Court.

10th. That independent of the defects, irregularity, default, and waiver aforesaid, defendant has been from the time of swearing his answer, on the 12th of June, 1840, fully entitled to his discharge without paying costs and for any costs to be made costs in the cause, under the 12th rule of the said statute.

11th. That the plaintiff not having prosecuted this suit, except by replying and serving subpœna to rejoin (and except as to the defendant's alleged contempt in not answering), defendant has been entitled to have the bill dismissed as of course, with costs, from and after Michaelmas Term, 1843, according to the 17th General Order of 1828, and to the practice of the Court.

He cited *Haynes* v. *Ball* (5 Beav. 140).

Wakefield opposed the motion, and made a preliminary objection, that the defendant had made six different applications in substance the same as the present, all of which had been refused with costs; and that until he had paid such costs he had no right to be heard.

The Lord Chancellor.—A party can have only one rehearing of right; but leave to have a second or more rehearings may be given on any terms. I will

hear the case, and consider the objection to his being heard as part of it.

Wakefield stated the various proceedings, and contended that every process of contempt taken against the defendant had been regular; and that even if there had been any irregularity, all objection to it had been on various occasions waived and abandoned by the defendant. As to the latter point, he cited *Const* v. *Barr* (2 Russell, 161); and upon the general question he cited and referred to the following cases: *Hoskins* v. *Lloyd* (1 Sim. & St. 393); *Anonymous* case (15 Ves. 174); *Green* v. *Thompson* (1 Sim. & St. 121); *Vowles* v. *Young* (9 Ves. 173); *Boehm* v. *De Tastet* (1 Ves. & Bea. 324); *Smith* v. *Blofield* (2 Ves. & Bea. 100); *Anon.* (1 Mad. 109); *Const* v. *Helen* (1 Mad. 530); *Bell* v. *Etches* (1 Russ. & Myl. 324); *Landreth* v. *Ellis* (6 Sim. 619); *Allibone* v. *Jones* (22 Law Journal, 408); *Woodward* v. *Cowling* (9 Sim. 301); *Livingstone* v. *Cook* (9 Sim. 458); *Williams* v. *Newton* (11 Sim. 45); *May* v. *Hook* (2 Dickens, 516); *Bailey* v. *Devereux* (1 Vern. 269).

JUDGMENT.

Feb. 13.—The LORD CHANCELLOR.—This case has occupied a considerable time in argument, but the points which require consideration are confined within very narrow limits. The outline of the case is this:—Mr. Cobbett, the defendant, was in contempt for want of an answer, and a writ of attachment issued against him. The sheriff could not arrest him upon that writ, and made a return of *non est inventus*. An attachment with proclamations was then issued, but upon that writ the defendant was not arrested. A commission of rebellion then issued, and upon that commission the defendant was taken, on the 6th of June, 1840. The commissioners named in the commission of rebellion were, Henry Doncaster, and a person of the name of Sloman, a sheriff's officer, who kept a lock-up house. The defendant having been arrested on Saturday, was taken to Sloman's house, and remained there in custody until the Monday following. He was then conveyed by Haslar, a servant of Sloman's, to Whitecross street prison, and delivered by Haslar to the keeper of that prison, with the commission of rebellion.

On the 9th of June an application was made by Henry Doncaster to the keeper of Whitecross-street prison that the defendant should be delivered back to him, Doncaster, in order to be taken to the bar of the Court of Exchequer. The keeper declined to deliver him, under the belief that he had no right to do so. The plaintiff then served a notice on the keeper of the prison, the commissioners of rebellion, and the sheriff, requiring the defendant to be brought to the bar of the court. The keeper then having consulted with his legal adviser, found that he had no right to detain the defendant, and he delivered the defendant to the commissioners of rebellion on the 10th of June, who brought him to the bar of the Court of Exchequer on the 11th of June. The writ of rebellion was then read, and the defendant was committed for his contempt in not answering the plaintiff's bill. That is the short outline of the transactions. Mr. Cobbett complains of ill-treatment while in the custody of the commissioners, and supposing that complaint well founded, his proper course would have been to have complained of the conduct of the commissioners to the Court, when they might have been censured. But that is not a ground for discharge from custody. He also complained that bail was not accepted. The commissioners were bound either to accept bail or bring up the defendant, and on their neglecting to do so, would become liable to punishment on application to the Court, but that would not affect the regularity of the proceedings. That is not the object of the present application.

The next objection taken by Mr. Cobbett is, that after the return-day of the writ, the 10th of June, the writ was exhausted, and that there was no power to bring him to the bar of the court upon the 11th of June. But the delay arose from the misapprehension of the officer, the keeper of Whitecross-street prison, who had refused for a time to redeliver the defendant to the commissioners. Mr. Cobbett thinks that after the return-day the writ of rebellion was at an end, and that he ought to have been discharged by the commissioners; but he is mistaken and misapprehends the law. He could not have been arrested on that writ after the return-day, but having been arrested in time, the officer had no right to discharge him. The same thing happens where a defendant is taken upon an attachment before the return-day, and the sheriff brings him up after the return-day on a writ of *habeas corpus*. There is nothing in the circumstance that the defendant was not brought up to the bar of the court by the officer before the return-day to entitle him to be discharged. Another ground was taken by Mr. Cobbett, which shewed that he had no great reliance on the former point. It was this; that by the delivery of the defendant to the keeper of Whitecross-street prison, he was out of the custody of the commissioners of rebellion; and that the bringing him to the bar of the court on the 11th of June was, in fact, a retaking after the return of the writ. This was most ingeniously and well put, but it is a fallacy. The commissioners were not bound to keep him in their personal custody, and they delivered him to the sheriff. But in law he still remained in the commissioners' custody, though he had been delivered over with the commission, and remained in the actual custody of the sheriff. It is clear that in law he was in the custody of the commissioners. That objection has no foundation, and the defendant was, therefore, properly brought to the bar of the court, and committed.

Mr. Cobbett complains that no questions were put to him when at the bar of the court; but it is plain that no questions were necessary for the protection of a person of his education and intelligence. He had been active in copying his answer, and the next day he delivered his answer ingrossed to his clerk in court. Upon all these grounds, I think there was no irregularity in the order of commitment, and that Mr. Cobbett ought not to be discharged.

The same application was made to Lord Abinger, sitting in equity, on which the late Mr. Dixon appeared as Mr. Cobbett's counsel; a most active and intelligent counsel, and particularly conversant with matters of this sort, who, I have no doubt, urged every point of which the case admitted. That application was refused, with costs. It is not necessary to consider the point put by Mr. Wakefield as to the waiver by the defendant of the irregularity of his committal, which it is said must have occurred, when Mr. Dixon, his counsel, moved that he should be discharged, because there was no irregularity. Afterwards, repeated applications were made on the behalf of the defendant, which were uniformly refused, with costs.

That was the state of things up to Easter Term 1840, when the plaintiff filed a replication, the subpœna to rejoin having been served in 1843. The filing a replication is, as a general rule, a waiver of contempt. Mr. Wakefield said that replication is only a waiver in ordinary cases where the defendant is in contempt, but not where he has been committed for such contempt, and he cited very numerous authorities in support of that distinction. But I think the cases do not establish that point. They only shew affirmatively that by replying a plaintiff waives this contempt. There are certainly some expressions tending that way in the anonymous case in 15 Ves. 174, but they are too vague to be of any authority.

But there is a modern case cited by Mr. Cobbett (*Haynes* v. *Ball*, 5 Beavan, 140), decided by the Master of the Rolls, which is an express authority, that though the defendant has been committed, he will be disharged on the plaintiff filing a replication. There is also another case (*Smith* v. *Campbell*, 1 Russ. & Myl. 323), tending the same way. There the defendant had been committed to the Fleet for contempt, in not answering the original bill. Subsequently to his commitment, the plaintiff obtained an order to amend the bill, and on a certificate of the Six Clerks that the amendments were actually on the file, the defendant was discharged. That was an *ex parte* motion, and the attention of the Court was expressly called to the point, and the officer was consulted. I have so much respect for the opinion of Mr. Wakefield upon all questions respecting the practice of the court, that I applied to the officers of the court to ascertain what is the understood practice; and I have received a certificate from the clerks of the records and writs, which states, that if the defendant is in custody for contempt, and the plaintiff shall accept the answer or file a replication, the defendant is entitled to be discharged out of custody without payment of costs. That is in accordance with the case of *Haynes* v. *Ball*, and there is no contrary decision. I am therefore of opinion that the filing a replication by the plaintiff was a waiver of the contempt, and that the defendant is now entitled to be discharged out of custody as to the order of the 11th of June, 1840. Mr. Cobbett will judge what is the effect of this decision upon his position.

There is an end of the order of the 11th of June. The defendant has subsequently made various applications to the Court to discharge this order for irregularity, upon which the Court has made orders, dismissing those applications with costs. These orders will still stand, and the defendant will remain liable to the costs therein ordered to be paid. He is discharged from custody under the order of the 11th of June, 1840, not on the ground of irregularity of that order, but on something which has subsequently occurred.

ROLLS COURT.

Jan. 31 *and Feb.* 10.

MARQUIS OF HERTFORD *v.* LORD LOWTHER.

Motion for an injunction to stay proceedings in a foreign Court by a party out of the jurisdiction suing in that Court for the same subject-matter, and that service of notice on the agent of the party in this country might be considered good service on the party.

Kindersley moved for an injunction to stay proceedings in Austria by the Countess de Zichy, to obtain certain Polish and Austrian bonds or certificates, part of the effects of the late Marquis of Hertford, which by a codicil to his will had, among other things, been bequeathed to her. [The MASTER of the ROLLS.—In whose hands are the documents?] In the hands of the Government of that country whose officials in the case of death take possession; but they should be in the hands of the executors, as the judgment here makes them general assets. There was a decree here in November 1842, for an account, &c. before the Master, and in January 1843, a claim was made and a state of facts brought in by Mr. Chatfield, acting under a power of attorney from the Countess, to establish her right to the property in question. The Master made a separate report in March 1843, by which he declared the Countess entitled to the property. In April 1843, exceptions were taken to the Master's report, which, in December following, were allowed. There was then an appeal, which is still pending. The executors having applied to the authorities at Milan for the property, were opposed by the Countess, and having failed in their application, then appealed to the Emperor of Austria, and were again unsuccessful. In March 1843, the Countess applied to the Court of Vienna for the property, on the ground of her being a legatee. The executors instructed their agent there to oppose her claim, inasmuch as she was suing here, and by so doing renounced the foreign jurisdiction. In August 1843, official copies of the proceedings here were sent over to the agent, but they did not satisfy the Court there, who required the originals. An official copy of an affidavit verifying the proceedings and stating that the originals would not be parted with, was then sent over. Whereupon the advocate for the Countess there put in a plea, in fact denying that the Countess was a party to a suit here, or that any steps such as were stated had taken place at all, the copies of the proceedings being treated as of no value or weight whatever, and the existence of the Master of the Rolls being the only fact admitted. The executors being defeated, and the Countess continuing the proceedings, it was now moved that an injunction be granted to stay them, and that notice served on Mr. Chatfield be good service on the Countess. [The MASTER of the ROLLS.—The consideration is what can be done. If she had any funds here which the Court could reach, there would be no difficulty.] There are legacies to a large amount, but they are disputed. All we ask is the injunction; how the Court would carry it out is another thing. The same thing was done in *Bunbury* v. *Bunbury* (1 Beav. 318). The only difference is, that *Bunbury* v. *Bunbury* was the case of a British colony. [The MASTER of the ROLLS.—If she violates the injunction, how would you act? You would not punish her agent?] No.

Schomberg, on the same side.—The question is, whether the power of the Court is to be baffled. [The MASTER of the ROLLS.—The question is not at all that, but how I can help it. When had your clients notice of the Countess's intention to proceed?] On the 18th January last, as soon as Lord Hertford could be consulted, they applied here. He cited *Bushby* v. *Munday* (5 Madd. 297).

Turner, contrà.—This is a question of importance. [The MASTER of the ROLLS.—Yes, and should be carefully considered.] The only ground for the application is the demand made in this court, which will not be satisfied till right is done. The whole difficulty was caused by the executors applying to the foreign court for the papers in question. The matter being thus before the Court, the Countess cannot retire without renouncing her claim entirely. The property is more than the bonds, and by giving up them, she would renounce the rest; the injunction will not be granted. [*Kindersley*.—We proposed to deposit all the papers in question at Coutts's, but this they refused, saying. We will take the rest, and get the certificates if we can.] They do not dispute her right to the other part of the property there. [The MASTER of the ROLLS.—She ought to be put in possession of the others, and give up the papers meantime.] It was then arranged to stand over.

Monday, Feb 10.—*Kindersley*.—An offer has been agreed to to allow the Countess to receive all effects at Milan except the bonds in question, and to allow them to remain within this jurisdiction, upon her undertaking to take no steps there till the questions here are tried, and then only with the leave of this Court.

Monday, Feb. 10.

FIESTEL *v.* KING'S COLLEGE, CAMBRIDGE.

Injunction to restrain payment to a fellow of the College of the emoluments of his fellowship, which he had assigned on trust to pay a sum borrowed, and the surplus to himself.

The bursars are, from the nature of their office, necessary parties to the bill by the assignee.

This was a motion for an injunction by the plaintiff against the College to restrain the payment to Lionel Buller, a senior fellow of the College, now residing in France, of the profits and emoluments of his fellowship, till the plaintiff's debt and costs as mentioned in the bill should be satisfied to him thereout. On the 28th December, 1842, the plaintiff obtained the assignment of the income, &c. of the fellowship, in consideration of an advance of 300*l.* upon trust, to be repaid the same thereout, and the surplus to go to Mr. Buller; and he gave notice of the assignment to

Mr. Peake, the solicitor of the College, and to Messrs. Denton, Annington, and Neale, the bursars for the time being, and the same was by them duly acknowledged. They were requested not to pay Mr. Buller till the debt of 300*l.* was discharged; but, nevertheless, they continued to make the payments as usual to Mr. Maltby, of Broad-street, his solicitor and receiver, under a power of attorney. In the end of 1842 there were new bursars elected, and they also continued to pay the accruing emoluments to Mr. Maltby, and took no notice of the plaintiff's application. A bill was accordingly filed, and an injunction was now moved for to restrain future payments. In the answer of the College it was stated that ever since 1648 the income of the College was divided in certain proportions, therein specified, among the members of the College. That Mr. Buller had been a senior fellow from the time mentioned in the bill, and had enjoyed the emoluments of the office except for a short time during which he was suspended. They stated also that the dividends are voted by the College, but the payments are afterwards made by the bursars, who alone are responsible for the same; that fellows could not reside above a given time out of the College without leave, but that it had been the custom for a long time to dispense with the rule. They also stated that they had the general power of expulsion, but submitted whether they could exercise it for the assignment in question, and whether the emoluments were assignable or not, but they thought it was inconsistent with the intention of, and forbidden by, the founder. They also said that it is usual, though not at all as a matter of right, to pay the emoluments of any absent member to such solicitor as he may name, and that they had done so in this case, first to Mr. Maltby, and then, after the revocation of his authority, to Mr. Pears, of Chesterfield, Cambridge.

Kindersley, for the motion, insisted that the assignment was valid, and consequently that the injunction should issue.

Turner, contrà.—There is a difficulty in the case. If payment was withheld, it might affect the interests of the parties entitled, and create difficulty in the division. The provost has no control over the payments after the vote has been passed, neither is there any direction to the bursars as to the mode of payment. The injunction, therefore, to the College would not affect the bursars, who ought, therefore, to be made parties. They are themselves, moreover, constantly changing. [*Kindersley*.—They are members of the College, and might be included in the injunction to the College. The MASTER of the ROLLS.—Would it not be enough to restrain the present bursars, and the bursars for the time being? Suppose the injunction to go to the College only. what is there to prevent the bursars continuing the payments?] We don't object to an undertaking that the bursars shall not pay, supposing it stands over for amending as to parties.

The MASTER of the ROLLS.—Very well; let it stand to next seal, in order to make the bursars parties, they undertaking to make no payments meantime, without the leave of the Court. The parties would do well, however, to avoid coming here if possible.

Tuesday, Feb. 11.

JOHNSTONE *v.* BABER.

A petition by a trustee to have an inquiry as to whether it would be beneficial for the parties interested, who have all come to the years of discretion, but do not agree in the object proposed, that an advowson should be sold presently, though directed under the trusts not to be sold till the death of the incumbent, was refused, but, under the circumstances, without costs.

Mr. Johnstone devised to persons represented by Mr. Lloyd, the petitioner, all his lands, &c. excepting an advowson, to sell and divide the proceeds among his children, except the eldest son William; and, after the death of William, he directed the advowson to be sold, and the proceeds to go to the children of William, if any, if not, to his own younger children, in like manner as the other property. William, at the date of the will and at the death of the testator, was incumbent of the living; and the question was, to whom the next presentation would go, if the advowson should be sold at the death of William, as it could not be sold during a vacancy.

Roupell, for the petitioner.—It occurred to the trustee, that it would be prudent for him to relieve himself from probable difficulty hereafter, by presenting a petition for an inquiry, whether it would be for the advantage of the parties interested that the advowson or the next presentation thereto should now be sold. Now, if the parties refused to concur, the Court would not order a sale. Some of the younger children do concur, and others do not. [The MASTER of the ROLLS.—Can I depart from the direct words of the will, even if they do consent?] They apply to the advowson, not to the next presentation. [The MASTER of the ROLLS.—The Court always waits till the death, if the question does not arise till then.] The difficulty is created by the testator, and the trustee may be liable for a *devastavit*, if there be no sale till William's death. The next presentation might be sold now, but not if we follow the exact words of the will.

Lewis, for some of the parties, consented.

Kindersley, for William, and four others out of seven of the parties interested.—The petition was presented without any communication with the parties interested, who are all 50 or 60 years of age; and had taken an opinion of a conveyancer, who declared the right of presentation in William. If the Master should ever so much report it beneficial for the parties that there should be a sale, the Court will not carry that arrangement into effect, for William may have children, who may take the proceeds of the advowson. If the trustee had been discreet, and had applied to my clients, he might not, perhaps, be liable for costs, but as he has not, he ought to pay them.

Osborne, for other parties.

Roupell, in reply.—The suit commenced in 1805, and the trustee only came into the trusts in 1834, and was ignorant of the opinion being taken. He cited *Hawkins* v. *Chappell* (1 Atk. 621).

The MASTER of the ROLLS.—I have nothing to do with providing for the interests of the parties, for they are all competent. If I had any power to do as I am asked, as on the ground of the parties being infants, &c. I cannot act contrary to the trusts of the will, even if the report of the Master should be in favour of the sale. There is clearly an omission in the will, and one which ought to have occurred to the testator at the time. If what is asked could be done, it might be beneficial. There is a difficulty as to costs. It is an old suit, having commenced in 1805, and therefore this trustee, coming in in 1834, could not be aware of the communications on the subject. It is extraordinary, however, that he should press the matter forward without consulting the parties; but yet his object was good, and I cannot charge him with the costs. It is difficult to arrange as to the fund. [*Roupell*.—We are satisfied to let them be costs in the cause.] Very well, be it so.

Friday, Feb. 14.

WARING *v.* LEE.

A power to appoint among such of a testator's nephews and nieces, grand-nephews and nieces, as the donee may think fit, cannot be exercised in favour of any other than the class pointed out, unless there be some indication of the words describing the class having a more extended meaning. Accordingly, an appointment by will to a grand-niece for life, and after her decease to her children, is void as to the children, though the appointment might have been made to her by deed, and a settlement on the children at the same time.

Francis Waring, of Stockwell-common, Surrey, by will, dated 20th Nov. 1826, gave to Anne Waring, his wife, a life interest in his estate and effects, and after her decease he gave and bequeathed all the residue thereof "to such of my nephews and nieces, grand-nephews and nieces, as my wife, Anne Waring, shall appoint;" and in default of appointment, to such persons as at the death of his wife, would, under the Statute of Distributions, be entitled thereto as his next of kin; and he appointed his wife, Richard Cooper, and Peter Earnshaw his executors. Mrs. Waring, by her will, dated Feb. 14, 1829, after noticing the power and making other appointments, gave "3,000*l.* other part thereof, to Mrs. Margaret Shearman, one other of the grand-nieces of my husband," and appointed Peter Earnshaw and Roger Lee executors. By a codicil, dated 4th March, 1836, she revoked the bequest of 3,000*l.* and gave the same to her executors in trust, to lay out in stock, and pay the dividends thereof to Margaret, then the wife of William Jarman Cross, formerly Margaret Shearman, for life, and after her decease to pay the same to all the children of the then late and the then present husband of Margaret Cross who should be living at her death, payable at 21, with benefit of survivorship. Mrs. Waring survived Peter Earnshaw and Richard Cooper, and died 11th August, 1842. Roger Lee proved her will on the 29th of the same month. Mrs. Cross died in the lifetime of Mrs. Waring, leaving children by both her husbands, and the Master found that the husbands had no children by any other wife.

Samuel Waring and Elizabeth Waring, the plaintiffs, are the nephew and niece and only next of kin of Francis Waring, living at the decease of Anne Waring, and they now claimed the surplus of the testator, left unappointed by A. Waring, and also the 3,000*l.*, on the ground that the ulterior limitations were void.

Willcock, for the plaintiff, insisted that the ulterior limitations in favour of Mrs. Cross's children were void, they not being objects of the power. Where there is a total want of persons fully answering the description, there may be an appointment to persons falling short of it (*Oxford* v. *Churchill*, 3 Ves. & B. 69; *Shelley* v. *Bryer*, Jac. 207; *Sanderson* v. *Bayley*, 4 My. & Cr. 56); and parties answering and not answering the description cannot take together, unless there was something in the will to shew that a larger class is meant than that described. (*Hussey* v. *Berkeley*, 2 Eden, 194.) That is not the case here.

Turner and *Hargrave*, for the executor, Mr. Lee.

Kindersley (with him *Mitchell*).—The gift was good at first, and the codicil only revokes it to give in a particular way. The result is the same as to the children. But if not, the question is whether grandchildren may not include great grandchildren. The case in 2 Eden is the same as *Hussey* v. *Dillon* (Ambler, 603), and that is in my favour, that grandchildren means descendants. He cited *James* v. *Smith* (3 Law Jour. N. S. 280).

The MASTER of the ROLLS.—No doubt, in cases of this kind, where the power is limited in its exercise to a class, it must not be extended beyond the members of the class, and the question, therefore, is, do the appointees come within the class? Where the terms used by the donor of the power are not well defined, the Court gladly lays hold of any indication of intention to extend its meaning, and this was done in two of the cases cited. I would do the same here, if I saw any thing to justify me, but, in the absence of that, I must declare the appointment void so far as the children are included; the parties to have their costs out of the 3,000*l.*; the executor, as between solicitor and client.

Saturday, Feb. 15.

FULTON *v.* GILMORE.

An executor directed to invest in real or sufficient securities is liable for loss sustained by leaving the assets in a firm even of which his co-executor is a partner.

Dividends received in respect of part of the estate of a testator being in the hands of the agent of one executor, and part of the estate being in a firm of which his co-executor is partner, but which is or is expected to be insolvent, the agent cannot demand a general release as a condition of payment of a share of such estate to a legatee.

This case (of which the principal facts may be found in 4 Law T. pp. 231 and 329) now came on for hearing. It is sufficient to mention, in addition to what is stated in the pages referred to, that the father of the defendant Gilmore was partner in the firm of Gilmore and Co. and at his decease the defendant, as his executor, drew out his own share of his property therein.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Monday, Jan. 27.

HAMMATT *v.* LEDSAM.

Construction of will—Tenancy in common.

A testatrix gave all her personal estate to a trustee upon trust to pay two annuities, and directed that the sum of 800l. should be raised and invested, and that the same should be held upon trust to pay thereout the two annuities, and she directed her trustee to sell the remainder of her personal estate and the moneys arising therefrom, and the residue of her estate, except the 800l., after paying certain legacies, to pay, distribute, and divide equally unto and amongst A, B, C, and D, or such of them as should be living at her decease; and in case D should not be living at her death, her share of and in her said personal estate and the residue of her property should go amongst D's children. And after the decease of the two annuitants, the testatrix directed her trustee to pay and distribute the said sum of 800l. and all and singular the rest, residue, and remainder of her said personal estate, unto and amongst A, B, C, and D, or unto and amongst such of them as should be then living; and in case D should not be then living, the testatrix directed that her share of and in the said residue should go amongst D's children. At the death of the surviving annuitant, A, B, C, D were dead, but D had left two children, who claimed the whole residue of the testatrix's property.

Held, that they were entitled to the 800l. but that the residue did not go exclusively to them.

Sarah Scragg, of West Bromwich, in the county of Stafford, widow, by her will, dated the 24th of October, 1811, gave certain freehold and leasehold messuages, and all her personal estate, chattels, and effects, to Joseph Priest, upon trust, to pay to her sister, Elizabeth Bickerstaff, the weekly sum of 12s. and after her decease to pay to her niece, Elizabeth Smith, widow, the yearly sum of 10*l.* with a proviso that in case her trustee, or his heirs, or either of them, should sell her said freehold and leasehold messuages, then out of the moneys arising therefrom, upon trust to lay out the sum of 800*l.* upon parliamentary stocks or funds, or upon government or real security, &c.; and she directed her trustee to stand possessed of the sum of 800*l.*, and the stocks, &c. wherein the same might be invested, and the dividends, &c. thereof, upon trust to pay the two several annuities or rent-charges; and her mind and will was, and she thereby directed her said trustee, his executors and administrators, as soon after her decease as conveniently might be, to sell and dispose of her personal estate, chattels, and effects, by public auction, and the moneys arising therefrom, together with all and singular the residue of her property, except the said sum of 800*l.*, to be placed out at interest, as aforesaid, and after payment of the said several legacies thereinbefore given and be-

bequeathed, pay, distribute, and divide equally unto and amongst her nephews and nieces, William Baker, Charles Whitmore, Elizabeth Whitmore, and Elizabeth Davies, *or such of them as should be living at her (the testatrix's) decease; and in case the said Elizabeth Davies should not be living at her (the testatrix's) death, then she directed that her share of and in her said personal estate, and the residue of her property, should go and be paid and divided amongst her (the said E. Davies's) children, if any, that might be then living, and if but one child, to such only child, his or her executors or administrators.* And after the deceases of her said sister E. Bickerstaff and her said niece E. Smith, the testatrix willed and directed that her said trustee, his heirs, executors, and administrators, should pay and distribute the said sum of 800*l.* so to be placed out at interest as aforesaid, *and all and singular the rest, residue, and remainder of her said personal* estate, chattels, and effects, unto and amongst her said nephews and nieces, W. Baker, C. Whitmore, E. Whitmore, and E. Davies, *or unto or amongst such of them as should be then living; and in case the said E. Davies should not be living at that time, then the testatrix directed that her (the said E. Davies's) share of and in the said residue should go and be paid to and divided between and amongst her children, if any, that might be then living, equally, share and share alike, and if but one only child, to such child, his or her executors, or administrators;* and the testatrix thereby appointed the said Joseph Priest sole executor of her will. The testatrix died on the 18th of December, 1816; E. Bickerstaff died in the testatrix's lifetime. On the 15th of March, 1818, E. Whitmore died; and in September 1820, C. Whitmore died. Elizabeth Davies died on the 18th of December, 1826, intestate, leaving two children, one of whom was a plaintiff, and the other a defendant, in this suit. W. Baker died on the 4th of April, 1832, and Elizabeth Smith, the annuitant, died on the 15th of February, 1842. The two children of Elizabeth Davies assigned their interest under the will to one of the defendants, Wilford, and a claim was now made on their behalf to the whole residue, as well as to the 800*l.*; it being alleged that they stood in the place of Mrs. Davies, and that the other residuary legatees being dead, the whole residue consequently belonged to them.

Russell and *Younge*, for the plaintiff.

K. Parker and *Glasse*, for the defendant Davies.

Spence, for Wilford.

Wigram, G. Simpson, Craig, Temple, and *Wetherell*, for other parties opposed to the plaintiff's construction of the will, were not heard.

The VICE-CHANCELLOR said, that if the 800*l.* was effectually given separately from the residue, then, in the events which had happened, the residue had been given to the legatees as tenants in common, the words used being such as to create a tenancy in common, and therefore the residue did not go exclusively to the children of Mrs. Davies.

Thursday, Jan. 30.

GOSLING *v.* CARTER.

Construction—Power of sale—Executors.

A testator directed his debts to be paid out of his estate and effects, and, subject thereto, gave all his real and personal estate to his wife for life, and after her decease directed that his real and personal estate should be sold, with power to the executor to give valid discharges for the purchase-money. The wife, who was an executrix, joined with the other executor in a contract for sale, she consenting to give up her interest under the will, and releasing her dower, and it was held that, upon proof of the existence of debts at the time of the contract, the contract might be enforced.

The testator in this cause by his will directed his debts and funeral expenses to be paid out of his estate and effects, and, subject thereto, he gave all his freehold, copyhold, leasehold, and personal estates, whether in possession, reversion, or remainder, to his wife for her life, for her separate use, and after her decease he directed all his real and personal estate to be sold by auction or private sale, with power to his executor to give valid discharges for the purchase-money, and he directed the proceeds of the sale to be divided in moieties among the persons named in his will; and he appointed his wife and another person executrix and executor of his will. The executors entered into a contract with the defendant for the sale of the real estate, the executrix consenting to give up her interest in the will, and releasing her dower; and a question having arisen as to their power to sell under the will, this bill was filed to enforce a specific performance of the contract. It was alleged by the plaintiffs that at the time the contract was signed there were debts due from the testator remaining unsatisfied.

Wigram and *Hardy*, for the plaintiffs.

Teed and *Goldsmith*, for the defendant.

The following cases were cited: *Ball* v. *Harris* (4 Myl. & Cr. 264); *Shaw* v. *Borrer* (1 Keen, 559); *Bailey* v. *Ekins* (7 Ves. 319); and *Forbes* v. *Peacock* (11 Sim.)

The VICE-CHANCELLOR said, that in this case he should give no opinion whether the mere circumstance of a charge of debts upon real estate would or would not confer on the executors a power of sale at law or in equity; because, looking at the whole will, it appeared to be the intention of the testator that the real estate should be sold for the payment of the debts. He could not say, consistently with the current of the authorities, that such was not the intention. The next question was, by whom the sale was to be made. The sale could only be made by the executor and executrix, or one of them, or by the heir-at-law. He was of opinion that, in this will, there was a manifest intention that the heir-at-law should have nothing whatever to do with the sale. The gift to the widow included personal as well as real estate, and the direction for the payment of debts also included personal estate as well as real estate. If it had been intended to defer the sale of the personal estate, it would have been bad, for the creditors would have had a right to an immediate sale. Then the will gave the executor a power to give discharges for the purchase-money, and such words were construed by law to give executors an immediate power of sale. The contract in the present case was entered into by the executor and the executrix, who was the wife, and it was impossible for the Court not to say that the sale was effected by those whom the testator intended should sell. His Honour added that he purposely avoided saying whether or not the concurrence of the heir-at-law was needed; but if it were, such concurrence could be compelled on the application of the executor and executrix and the purchaser. He should declare that, the plaintiffs undertaking to prove that there were debts of the testator owing at the time of the contract, the plaintiffs had full power under the will to enter into the contract for sale, without prejudice to any question whether the heir-at-law would or would not be a necessary party to convey.

COURT OF QUEEN'S BENCH.

FLETCHER *v.* CALTHORPE and ANOTHER.

Trespass for false imprisonment.

A conviction under 9 Geo. 4, c. 69 (the Night Poaching Act), ought to shew that the prisoner entered the close with the intent to kill game THERE—*Where an act which may be lawful under certain circumstances is made punishable by summary conviction, those circumstances ought to be negatived in the conviction.*

This was an action for false imprisonment against the defendants, the justices by whom the plaintiff had been committed under 9 Geo. 4, c. 69, s. 1, the Night Poaching Act. The defendants, instead of pleading the general issue by statute, justified specially, in order to obtain the judgment of the Court upon the legality of their proceedings. The declaration was for assault and imprisonment, with special damage for the costs incurred by the plaintiff in obtaining his release by *habeas*. (See 1 Dowl. & Lownd. 726.)

The plea set out that on, &c., by night, between the hours, &c., Fletcher unlawfully entered, &c., with nets, for the purpose of taking game contrary, &c.; that he was taken, brought before the justices; that the offence was proved, and that he was then and there convicted, setting out the conviction *verbatim*, and thereupon committed, setting out the warrant *verbatim*, with the necessary averments of identity of the person and the offence. To this plea there was a special demurrer.

Gunning, in support of the demurrer.—The argument will turn upon a few of the grounds of demurrer alleged, and those mostly substantial. It will not be disputed that where justices plead specially, the plea must be good *in omnibus*. Their privilege is waived, and the plea must stand or fall by itself. The conviction then, is bad on two grounds. 1st. It ought to have stated that the plaintiff was on the land for the purpose of taking game THEREON. 2nd. That he was there for the purpose of taking game there by *night*. 1st. If he had no intention of taking game *there*, he was only a trespasser. Patteson J. thought this was necessary when the warrant was before him. (*Re Fletcher*, 1 Dowl. & Lownd. 726, and 13 L. J. M. C.) The marginal note of *Reg.* v. *Gainer* (7 C. & P. 231) is to the same effect, and appears to be borne out by the case itself. (See also *R.* v. *Davies*, 8 C. & P. 739.) In *Davies* v. *King* (10 B. & C. 89), this seemed to have been the opinion of the Court, although the indictment was held bad upon another ground similar to my second objection. The offence must not only be within the express words of the statute, but also within the intention. (Dwarris on Statutes, 711; *Chaney* v. *Payne*, 1 Q. B. 712.) 2nd. It ought to have been alleged that he entered by night for the purpose of killing game *by night*. This was held by this Court in error in the case before cited. (*Davies* v. *King*, 10 B. & C. 89.) That was a conviction on 57 Geo. 3, c. 90. The words of the section were the same, at least, no valid distinction can be drawn between that Act and the present. It was held that the words "did by night unlawfully enter divers closes, and were *then and there* in the said closes," &c. were no averment that they were *there by night*, and the indictment was held bad. The present is still more deficient, for the words "then and there" are wanting. [COLERIDGE, J.—The going armed by night to take game was the evil at which the statute was aimed. The plaintiff was within the mischief of the statute, although he did not intend to kill game by *night*.] Many cases may arise in which it would not be so. He might be merely traversing the close that he might reach his own covers by daylight. 3rd. The warrant is bad, even if the conviction be good. It has no date. (See *Re Fletcher*, 1 Dowl. & Lownd. 726; 2 Hawk. Pleas of the Crown, 119; Dalton's Just. 458; *Morse* v. *James*, Willes, 122; *Ex parte M'Gee*, 6 Mad. 206; *Ridley* v. *Wilson*, Barnes's Notes, 420; *Whipple* v. *Manley*, 5 Dowl. 100.) There are other objections. It does not appear before whom he was convicted, nor that the committing magistrates were justices of Cambridgeshire, or that they were justices at all. It runs thus—

"Whereas R. Fletcher, &c. is convicted by and before us, Rev. John Calthorpe, clerk, and ———, two of her Majesty's justices of the peace, in and for the said county, &c." At the end is—"Given under our hand and seals, the —— day of October, in the year of our Lord 1843.

"JOSEPH SIDNEY SHARP (L.S.)
"JOHN CALTHORPE (L.S.)"

The authority should distinctly appear as in examinations for removal. (*Reg.* v. *Shipston-upon-Stour*, 13 L. J. M. C. 1 Car. Ham. & Al. 239; see 1 Bit. & Sym. 41.) Nor does it shew where the warrant was given. (Hawkins and Dalton, *suprà*, Year B. 14 H. 6 pl. 16.)

These are also objections in form. The introductory averments are insufficient and ill-pleaded. It does not appear that the plaintiff was properly charged;—that the offence was proved. The oath of the parties ought to have been set out. "Duly" amounts to nothing. (*Abbot of Strata Marcella's* case, 9 Rep. 25; *Everard* v. *Paterson*, 6 Taunt. 625; *R.* v *Lyme Regis*, Dougl. 135; *Collett* v. *Lord Keith*, 2 E. 261; *Ex parte Fuller*, 1 Car. Ham. & Al. 284.) It does not appear that the evidence was heard in the defendant's presence. (*Re* Tordoft, 1 Car. Ham. & Al. 171; 1 Bit. & Sym.)

The 38th objection is, that the pleadings contain much that is superfluous and irrelevant. (*Bishton* v. *Evans*, 2 C. M. & R. 12.)

Worlledge, contrà.—The conviction is good. In the statute there is nothing about the intention to take game in the close, or by night. We have followed the form given in the statute. [PATTESON, J.—As "by night" is inserted in the first part of the sentence as to the taking, it would be odd that there should be no similar limitation as to the entry.] That argument may apply both ways. It is inserted in the first, and purposely omitted in the second. We follow the statute. In *Reg.* v. *Ash and Others* (not reported), tried before Wightman, J. at the last Staffordshire Assizes, that learned judge, after consulting Mr. Justice Patteson, overruled a demurrer to an indictment on this very point. [WIGHTMAN, J.—We thought that case deserved consideration, and should have overruled the demurrer, that it might be taken into error; but on the intimation of our opinion, Mr. Edwards, the counsel for the defendants, withdrew the demurrer, as, it being a misdemeanor, his clients would have been estopped from pleading after the demurrer. And they were acquitted.] Where the offence is simple, it is sufficient to follow the statutory words. (*R.* v. *Chandler*, 1 Ld. Raym. 581; *R.* v. *Speed*, 1 Ld. Raym. 584; Paley on Conv. by Deacon, 108.) [Lord DENMAN, C. J.—How in cases of complicated circumstances?] Cases of that kind are distinguishable. In *Chaney* v. *Payne* (1 Q.B.) it was necessary to shew the person was party to the offence in addition to the words of the statute. In the cases cited from Carrington & Payne, the form of the indictment was not in question. (He also cited Russell by Greaves, 1, 479.) [COLERIDGE, J.—*R.* v. *Speed* is nothing to the purpose.] Then the warrant is good. The *dicta* as to the date do not say that the warrant is void, but only that it should have the date. This imprisonment dates from the time he arrives in prison. (*Dickenson* v. *Brown*, 1 Esp. 217.) The name of one justice is clearly left out. [WIGHTMAN, J.—How are we to make sense of this warrant? PATTESON, J.—There is no description of them as justices.] *Elkington's* case, 2 Ld. Raym. 978, is in point. [COLERIDGE, J.—Suppose in resistance to such a warrant the officer was killed?] In 2 Hale Pleas of the Crown, it is said that subscription to a *mittimus* is sufficient. But further, even if warrant is bad, judgment must be given for the defendant, because sec. 7 says "that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. (*Daniels* v. *Philips*, 1 C. M. & R. 662.) [Lord DENMAN, C.J.—These are large words, but it is a strong thing to say that any invalid warrant is cured by a good conviction.] This was decided in *Costar* v. *Wilson* (3 M. & W. 411); on 11 Geo. 2, c. 19, s. 4. Further, one justice only who convicted need sign the warrant, and here Mr. Calthorpe is shewn to be a justice. As to the formal objections, we were not bound to set out preliminary proceedings, and if insufficiently stated, it is not ground of demurrer. (*Williams* v. *Wilcox*, 8 A. & E. 334; Stephen on

Pleading; Co. Litt. 303 b.; Com. Dig. "Pleader," c. 28; Hall v. Tapper, 3 B. & Ad. 655.) Surplusage would not vitiate the conviction. But they are sufficiently stated.

Gunning, in reply.—There is no offence set forth in the conviction. *Ash's* case, as already observed by Mr. Justice Wightman, is no authority. *Davis* v. *King* (10 B. & C. 89) does not appear to have been cited. It is a monstrous proposition to say that the bad warrant would be cured. Suppose, an illegal punishment, as whipping, commanded by the warrant, would the party have no remedy?—because here was a good conviction. *Cur. adv. vult.*

JUDGMENT.

Lord DENMAN, C. J., now delivered the judgment of the Court. Many important matters were discussed in the argument, but there is only one point to which we find it necessary to advert. The defendant's plea cannot be supported unless the conviction is good in point of law. The plaintiff contends that it is invalid for want of setting forth that he entered the close with intent to kill the game *there*. The defendant's learned counsel indeed admitted that the conviction as laid could only have been proved by evidence of the intent to kill game there; but he urged that a statement in the conviction of the offence in the terms of the Act creating it was sufficient, though more might be necessary to be proved by the evidence. This proposition is undoubtedly too extensive. The rule laid down in Paley on Convictions, that it is sufficient to follow the words of the Act, unless the offence be of a complicated nature, is open to two objections. It does not rest on any authority, nor does it furnish any criterion by which the justice of peace or this Court can discover what cases are thus complicated. In favour of the more general proposition, *Rex* v. *Marsh* (2 B. & C. 717) was cited, but Littledale, J. holds the contrary opinion, declaring that, "generally speaking, a conviction which follows the words of the Act will be good;" which is undoubtedly true, but imports that there are cases in which it would not. The decision there, which dispenses with the word "knowingly," as qualifying the possession of game unlawfully, appears to be founded on the defendant's trade, and the duty imposed upon him by the Act as a carrier. In the case of *James* v. *Phelps* (11 A. & E. 483; 3 P. & D. 231), for a malicious prosecution, where the defendant had indicted the plaintiff for felony, in obstructing the works of a mine, a member of the Court expressed the opinion that an obstruction not wilful or with knowledge, could not apply to a felony from the general principles of criminal justice. This I well remember, though the words are not reported in either of the reports. But *R.* v. *Cord·n* (2 Burr. 2279) is a distinct and pointed authority for the proposition that the words of the Act are not universally all that must appear on a conviction. There the charge was for fishing in a pond. It was held naught, for want of negation of the owner's consent. The same argument which is here resorted to would have supplied the defect, and was pressed upon the Court, who said, however, "The offence intended in this conviction is fishing in the fishery of Mr. Hayne, being private property. But all this might be, for aught that appears upon this conviction, with the consent of the owner. The fact ought to appear so that the Court may be able to judge whether the conviction be agreeable to law. If the owner had been the complainer, it would have shewn his dissent. But this conviction is upon the complaint of Martha Buxton, and it does not appear that the defendant has been guilty of fishing in any water, being private property, without the consent of the owner. As in that case the consent of the owner was required to be negatived in the conviction, so in the present case, the necessity of its alleging the intent to kill game there is deduced from the enormous consequences which would otherwise follow. For it cannot be disputed that its omission would leave any man open to a summary conviction as an offender against the 9 Geo. 4, c. 69, s. 1, who should enter the land of another at an early hour during that period which the statute defines as the night-time, with the intent to pass over such land in order to arrive at his own, and there shoot his own pheasants. The conviction states, in the terms of the Act, that the plaintiff entered the close "unlawfully." But we do not know in what sense the word is used. The justice of the peace may have thought it unlawful to enter any close with the remotest purposes of killing game; or it may possibly mean that the entry was unlawful as a trespass on the land of another. If such was their meaning, I apprehend that the fact ought to have been averred; and if the ground of illegality was held essential to the offence, the decision in [illegible]rden's case would have proved that the absence of the owner's consent ought also to be averred. Two cases which occurred at the assizes before two of my learned brothers were cited. (*Reg.* v. *Gainer*, 7 Car. & P. and *Reg.* v. *Davis*, 8 Car. & P.) In the former, the indictment, framed on sec. 9 of the same Act, alleged that three defendants entered a wood armed, with intent to kill game there. My brother Coleridge held, that the strict proof of that precise intent was requisite; observing, that though the intent was to kill game in every other cover in the country, that indictment could not be proved. It was not holden, or even argued that the word *there* could be rejected as surplusage. The other case occurred before my brother Patteson, who held in the first place that the arming of one of the party was not an arming of all, so as to satisfy the indictment on the same section. This alone secured the defendant's acquittal, and there was no absolute necessity for inquiring whether the intent must be to kill game in the place entered. But the learned judge pointed out the deficiency of such proof as fatal to the prosecution. There were, however, strong reasons for dispensing with such intent in the description of misdemeanor which do not apply to the offence made the subject of summary conviction. In the former case the mischief against which the Act appears to be directed is the danger to the public which is produced by the assemblage in the night of armed numbers in the pursuit of game. The place where the game is to be killed is wholly immaterial, and it is not impossible that these cases now created may deserve more consideration. But when the thing denounced by law is the entry of a close for the purpose of killing game, the words of themselves would convey the ordinary sense, though they do not necessarily import that the intention to kill is, to kill game *there;* and the probable result of not so restricting the sense of the clause seems pointed out as too monstrous to have been contemplated. The learned counsel, indeed, admitted on the argument that the sense ought to be so restricted, and that it is, in fact, so restricted by the very words employed, and hence that the omission objected to makes no difference. A doubt was felt whether the omission was not too large. On reflection, it seems to us that it depends on the principle in former cases, that principle being, that where a certain act is made punishable by a summary conviction, which act may be lawful, if performed under certain circumstances, those circumstances ought to be negatived in the conviction. None of us doubt that where the proof must negative such circumstances, the allegation in the instrument of conviction ought to do the same. This principle is well expressed in a similar though not exactly the same case (*R.* v. *Baines*, 2 Lord Raym. 1269), that proceedings in cases of this nature, which are to deprive a man of his freedom in a summary way, without letting him be tried by his peers, are always construed strictly, and never supplied by intendment of matters of which cannot appear on the face of them. Our judgment must, therefore, be in favour of the plaintiff.

Wednesday, Feb. 12.

FITZBALL *v.* BROOKS.

An action brought under 3 & 4 Wm. 4, c. 15, s. 2 (Dramatic Property Act), is an action for "the recovery of a debt" within the 7 & 8 Vict. c. 96, s. 57, and the defendant is therefore not liable to arrest where the amount is under 20l.

On the last day of Term (*suprà*) *Ogle* had moved to rescind a judge's order by which the defendant had been discharged from an arrest, under a judgment for less than 20*l.* in an action upon 3 & 4 Wm. 4, c. 15, s. 2.

Lord DENMAN, C. J. now said that the rule must be refused, as the Court thought that it was an action for the recovery of a debt within the recent statute, and that therefore the arrest was illegal.

Rule refused.

COBB *v.* BECKE and ANOTHER.

A gives B, his attorney, money to settle an action, B transmits it to his town agents with directions to pay the money. They acknowledge the receipt, saying it shall be paid accordingly. On their default, an action for money had and received does not lie against them at the suit of A, for want of privity.

Action for money had and received.

It appeared that the plaintiff had paid his attorney (Dalling) in the country a sum of money to settle an action, in which he (Cobb) had been defendant, in which a judge's order had been made to stay proceedings. This had been transmitted to the defendants, his town agents, who acknowledged the receipt, by letter, to the attorney "that the money should be paid accordingly;" but in consequence of the bankruptcy of Dalling, they did not pay the money, and this action was brought for money had and received. The jury found that the defendants had notice that it was the plaintiff's money. *Jervis*, Q.C. had obtained a rule for nonsuit, against which *Martin*, Q.C. and *Butt* now shewed cause. There is now no question that the defendants had notice that it was the plaintiff's money then. *Moody* v. *Spencer* (2 D. & R. 6) is an authority for the plaintiff. [PATTESON, J.—There the money was received from the opposite party, here the plaintiff's own attorney hands it to another to pay, and is the receiver liable to this action? Put the case of a private friend.] Yes, if the receiver has notice from whom the money is sent, and agrees to apply it as directed. [PATTESON, J.—That may be so; but is there authority?] In *Moody* v. *Spencer*, Bayley, J. put it upon that very ground. He said the defendant, as agent for the attorney in the country, must have known that the money was received for their use. Nor do I see the difference of money being had by the hostile parties, or from his own client. In *Collins* v. *Griffin* (Barnes, 37), the attorney was held answerable for the mistakes of his agent, shewing that there is an identity between them. And the town agent has a lien against the client for the costs of the cause, so that there is privity between the agent and the client. [PATTESON, J.—My difficulty is the delegation of the agency.] *Bamford* v. *Shuttleworth* (11 A. & E. 926) is distinguishable, because there the auctioneer was held to be the agent for both parties. *Lilly* v. *Hayes* (5 A. & E. 548); *Williams* v. *Everett* (14 E. 582); *Badcock* v. *Stephens* (3 B. & Ad. 354); *Edden* v. *Read* (3 Campb. 338), were also cited.

Keating, contrà.—Independent of the fact of knowledge, there is no privity, and that fact makes no difference. It is the ordinary case of client, attorney, and town agent, and there is no privity between the client and the town agent. It appears only portion of the 20*l.* remitted was to be appropriated to the payment of the debt. And who is liable? Would Dalling be discharged here? If this action is supported, innumerable actions may be brought. If money is given to a servant to pay a bill, and he gives it to some one else to pay, the person to whom the bill was due could sue the second messenger, and the first would be discharged. He cited *Yates* v. *Bell* (3 B. & Ald. 643); *Sims* v. *Brittain* (4 B. & Ad. 375); *Sims* v. *Bond* (5 B. & Ad. 380).

Cur. adv. vult.

JUDGMENT.

Lord DENMAN, C. J. now delivered the judgment of the Court.—The facts of this case are as follows: the present plaintiff being defendant in an action at the suit of a Mr. Cutbush, and a Mr. Dalling, of Rochester, being his (the plaintiff's) attorney, and the present defendants being Dalling's agents in London, an order was made for staying proceedings upon payment of the debt and costs. Cobb, the plaintiff, paid the money to Dalling for that purpose, upon which Dalling sent the defendants his own cheque for 20*l.* being somewhat more than the debt and costs, which turned out to be 17*l.* 18*s.* 4*d.*; directing them to pay the debt and costs; and they acknowledged the receipt to Dalling by letter, saying, "the money shall be applied accordingly." Afterwards they retained it in satisfaction of a balance of a general account due to themselves from Dalling. Cobb brought this action for money had and received, and on the trial the jury found that the defendants knew the money remitted to be Cobb's. The question is, whether there was sufficient privity between Cobb and the defendant to sustain this action. The general rule is, that where there is no privity between an agent in London and a client in the country, something more is necessary beyond the mere relation of the parties to each other, as above stated, to make the agent in town liable. If he had desired Dalling to transmit it to the defendants specifically, and they had received it from Cobb and not from Dalling, they would then become Cobb's agents, and accountable to him; but it appears that Cobb paid the money to Dalling to pay the debt and costs, but without any special and specific directions through what channel it was to be remitted. The money appears to have been mixed with Dalling's general account: he sent it to the defendants by cheque, and he was at liberty to send the money direct to Cutbush's attorney, or through any channel he chose to select, and unless the party through whom he sent the money became and was employed by Dalling as agent of Cobb, it seems difficult to contend the defendants became so liable. The cases of *Walton* v. *Price* (5 A. & E.) and *Williams* v. *Everett* (14 East) were quoted, and *Baron* v. *Husband* (4 B. & Ad.) and *Sims* v. *Bond* (5 B. & Ad.) were cited. Those turn upon the question whether the defendant had entered into any engagement that would lead us to say the plaintiff transmitted the money as payment to a third person. Those cases are not applicable to the present case, in which there has been no direct engagement entered into by the defendant at all. The case of *Moody* v. *Spencer* (2 Dow. & Ryl. 6) differs from the present case in this respect, that there the defendant, the London agent, had received the money, in the course of business, from the opposite party for the client, and it could not be said that the London agent received it for the use of the attorney of the country client. It is going very far to say, that an agent can delegate his authority, or that he can, by employing a third person, make that third person an agent of the principal; but it is argued for the plaintiff, that Dalling was merely the hand employed to forward the money to the defendants, to be by them employed for the payment of the debt and costs. If the facts warranted such a conclusion, this action might be maintained; but the facts shew that the plaintiff was employed by Dalling, and that Dalling employed the defendants; and we are of opinion there was no privity established between the plaintiff and the defendants, and the rule for the nonsuit must be made absolute.

Rule absolute.

REG. v. COMMISSIONERS OF EXCISE.

Goods imported from the Channel Islands, under 3 & 4 Wm. 4, c. 52, are subject to the Excise regulations.

M. D. Hill, Q. C. had obtained a rule *nisi* for a *mandamus* to the Commissioners of Excise to grant a permit for transferring into the stock of a dealer named Mr. Howell certain spirits which had been imported from Jersey, and upon which it was contended all duties had been paid.

The *Solicitor-General*, with whom was *Jervis*, Q.C. and *Waddington*, now shewed cause; and *M. D. Hill*, Q.C. and *R. Gurney*, appeared in support of the rule.

A preliminary objection was taken, that there was no jurisdiction in the Court to issue a *mandamus* to the commissioners; but as it was not pressed, and no decision was given upon it, the arguments are here omitted. Upon this point the following cases were cited: *R.* v. *Commissioners of Customs* (5 A. & E. 380); *Re Baron de Bode* (6 D. P. C. 776); *R.* v. *Collector of Customs* (2 M. & S. 223); *R.* v. *Commissioners of Excise* (2 T. R. 381); *Barry* v. *Arnauld* (10 A. & E. 646); *Cullen* v. *Morris* (2 Stark. 577); *Ashby* v. *White* (2 Lord Raym. 938); *Doswell* v. *Impey* (1 B. & C. 163); *Harman* v. *Tappenden* (1 E. 555); 6 & 7 Vict. c. 67, s. 3.

The construction of the various statutes, 3 & 4 Wm. 4, c. 52, s. 40; 2 Wm. 4, c. 16, s. 2; 6 Geo. 4, c. 81, and 4 & 5 Vict. c. 20, was then argued at length. The substance of the arguments is sufficiently stated in the judgment, which was delivered by Lord Denman, C. J. on Feb. 12.

JUDGMENT.

Lord DENMAN, C. J. now delivered the judgment of the Court.—This was an application for a writ of *mandamus* to grant permits to one Howell for certain spirits which had been imported from the island of Jersey. The question was raised, whether the writ should issue; but it is not pressed upon us; nor, from the view the Court takes of the statement decided on the merits, is it necessary to determine that point. The spirits were imported, and the proper duty paid, under the 3 & 4 Wm. 4, c. 52, s. 40, which enacts "that it shall be lawful to import into the United Kingdom any goods of the produce and manufacture of the islands of Guernsey, Jersey, Alderney, Sark, and Man, from the said islands respectively, without payment of any duty, except in the cases hereinafter mentioned, and that such goods shall not be deemed to be included in any charge of duties imposed by any Act hereafter to be made on the importation of goods generally from parts beyond the seas, provided always that such goods may nevertheless be charged for any proportion of such duties as shall fairly countervail any duties of excise or any coast duty." The spirits having been so imported, it is contended by the Commissioners of Excise that they are subject to the regulations of the Excise in the same manner as spirits manufactured in England; and among other things, that the delivery of a request note under the 5th and 6th sections of the 2 Wm. 4, c. 16, is necessary; and they further contend that the regulations of the Excise have not been complied with in this case in several particulars. It seems clear that no sufficient request note has been delivered; but the applicant contended that none was necessary. This depends upon the construction to be put on the 52nd section of the 3 & 4 Wm. 4, c. 52, the same Act that authorizes the importation of spirits from Jersey. The express object of this section is to place imported goods under such internal regulations of the Excise as are applicable to similar goods manufactured in this country; and we cannot doubt that it is as necessary to obtain a permit from the officers of Excise as far as relates to import goods, as is necessary in the case of goods manufactured here. We are of opinion that the applicant did take those steps enumerated, and that he is not entitled to receive a permit, because he omitted to take other steps required by the Excise, and particularly because he omitted to deliver the proper request note. This rule must, therefore, be discharged.

ADAMS v. ADAMS.

(Argued January 17.)

A devise to trustees and their heirs, to permit and suffer C D to receive the rents and profits, is subject to the same construction as a devise in which the word heirs is omitted, and confers no greater estate upon the trustees.

Special Case.

This was an action which had been tried at the Devonshire Summer Assizes in 1843, and a verdict had been found, subject to a special case. The plaintiff claimed title under John Adams, who had suffered a recovery of the land in 1797; and the question for the Court was, whether at that time, under his father's will, the legal estate was in him or in the trustees. It was now argued for the plaintiff by

Hodgson, Q. C. (of the Chancery Bar).—The estate in question was devised to three trustees, "to permit and suffer John Adams, the son of the testator, to take the rents, issues, and profits during his life." All the authorities shew that such a devise gives the legal estate to the person who is to receive the rents. (*Barker* v. *Greenwood*, 4 M. & W. 421.) It will therefore be for the other side to distinguish this case from the decisions. It does not come within any of the exceptions. Where there is any thing in the language shewing an intention to effect some purpose for which the legal estate must be in the trustees, then the rule does not apply; as a trust to suffer a married woman to take for her use, for without the trustees, she cannot. So a trust to support contingent remainders, and subject thereto to permit and suffer; and so a devise to trustees to permit the testator's wife and daughters to receive the *clear* rent to their sole and separate use. (*White* v. *Parker*, 1 B. N. C. 573.) So a devise to permit and suffer A to take all the *net* rents and profits during her life. (*Barker* v. *Greenwood*, 4 M. & W. 421.) Yet no one can receive more than net rents. It is doubtful in this devise, whether the words "to permit and suffer John to take the rents and profits, subject with the proviso to pay" the wife of the testator an annuity, do not mean that John is to pay. Subsequently the burden is fixed upon "whoever shall enjoy the land," and "they who enjoy the land shall keep it in repair;" so that there is nothing for the trustees to do. All is to be done by John.

2. Even if the trustees took the legal estate, it could only endure while the widow was living, and she died in 1792, and the recovery was in 1797. This is a clear rule. (*Doe dem. Player* v. *Nicholls*, 1 B. & C. 336.) There Bayley, J. said, "It may be laid down as a general rule, that when an estate is devised to trustees for particular purposes, the legal estate is vested in them so long as the execution of the trust requires it, and no longer; and, therefore, as soon as the trusts are satisfied, it will vest in the person beneficially entitled to it. *Doe* v. *Simpson* (5 East, 162), and *Doe* v. *Timins* (1 B. & Al. 380), are authorities upon that point." The annuity may be only a rent-charge, giving her power of distress, as in *Buttery* v. *Robinson* (3 B. 392). At any rate, in 1797 John Adams was seized of a freehold in possession, and the recovery was good.

Crowder, Q. C. contrà.—The question, no doubt, is whether J. Adams took a legal estate or not. Attention has been drawn to particular decisions, and then it is said, because this is not within those decisions, then it is a legal estate. But the result of all those cases is, that where the language is such that the estate might vest in the trustees, then the whole intention of the will is to be looked at, and trust is to be construed *trust*. (*Parkhurst* v. *Dormer*, Willes, 327.) If the words were merely "permit and suffer," then I admit that we are not entitled to the verdict. But the decisions as to "permit and suffer" apply only when there is nothing beyond. (*Broughton* v. *Langley*, 2 Salk. 679; *Doe dem. Leicester* v. *Biggs*, 2 Taunt. 108.) The Courts will seize any thing to get rid of this construction. (*Robinson* v. *Grey*, 9 E. 1; *Horton* v. *Horton*, 7 T. R. 652; *Gregory* v. *Henderson*, 4 Taunt. 771.) In this last case, Chambre, J. said, "It is true very little is left for the trustees to do during her widowhood, but if it was intended that she should have the legal estate, there would have been no need of any trustees at all." [WIGHTMAN, J.—What is there here for trustees to do?] Then the devise here is to the trustees and their *heirs*. An express fee is given, and it will not be taken out to give effect to this supposed rule, which may be established in identical cases by authorities, but is not to be extended. It appears from the will that the widow was to have the use of the two chambers over the kitchen, with the household goods; also, the apples of the orchard. The trustees, who were strangers, were put in to protect the widow. If the legal estate was in John, there was nothing for the trustees to do. [PATTESON, J.—Would it be more than an estate for her life?]

Hodgson, in reply.—No doubt the intention is to be looked at, but the words are to be construed by legal rules to discover what the intention was. Then here there is nothing to negative my argument. The clause as to the apples might give a mere *profit à prendre*. [COLERIDGE, J.—Is there any authority for a *profit à prendre* of artificial growths?] Perhaps not; but I may even admit the argument, and split the estate. (*Doe dem. Noble*, 11 A. & E. 188.) *Cur. adv. vult.*

Friday, Jan. 31.

JUDGMENT.

Lord DENMAN, C. J. now delivered the judgment of the Court.—The case argued before us turned upon the question whether John Adams, the recoverer, had a legal or equitable estate when he suffered the recovery, either one or the other. The defendant argued he had only an equitable estate, because the use was executed to the trustees, who were required by will to perform certain duties; and although those duties had ceased at the death of the wife before that recovery, still their estate continued, because originally limited to them and their heirs. He wished for time to consider this argument, which appears now argued for the first time, a circumstance not very consistent with its correctness. If it had been valid, many of the cases might have been affected by it. Parke, B. in the case of *Barker* v. *Greenwood*, expressly holds that it makes no difference; his expression is, "There is no doubt the general rule of law is that whenever there is a limitation to trustees by the words of the inheritance, the trustees are to take only so much of the legal estate as the purposes of the trust require." The learned baron refers to no authority for that proposition; but consideration as to the nature of the case proves that he is right; for the manner in which the estate in fee is created is immaterial to this consideration; whether created by implication or by express words, it will equally be executed. The object of giving certain advantages under this will to the widow terminates with her life, and on her death the will becomes the same as if the words effecting that object had not appeared in it. Hence the only objection being removed, we are bound by all the decisions to hold that J. Adams had a legal estate at the time of suffering recovery, and the plaintiff must, therefore, have our judgment.

Judgment for plaintiff.

HOPKINSON v. LEE.

(Argued Wednesday, Feb. 5.)

Where the interest is joint, an action of covenant must be brought in the names of the joint covenantors, notwithstanding that the words state the covenant to be a "distinct covenant."

Martin, Q. C. and *Arnold* shewed cause against a rule obtained by *Knowles*, Q. C. for a nonsuit in this case, on the ground that the action should have been brought by the two covenantors jointly. The covenant was by the parties to and with Hopkinson, and also "as a distinct covenant" to and with Caroline Hogg, and on this ground, and the nature of the respective interests, it was contended that the action was rightly brought.

Knowles, Q. C. supported the rule.

The facts are sufficiently set out in the judgment, and the principal cases, which, with many others, will also be found in the note to *Eccleston* v. *Clipsham* (1 Wms. Saund.) *Cur. adv. vult.*

JUDGMENT.

On a subsequent day the judgment of the Court was delivered by

Lord DENMAN, C. J.—The question was whether a nonsuit ought to be entered or not, on account of the action being brought by the plaintiff only, when the covenant, in contemplation of law, was said to be made by the defendant with the plaintiff and Ann Caroline Hogg. That it is so made is argued upon the authority of a large number of cases, of which *Slingsby's* case is the leading, and by no means the oldest case. That case is more entitled to respect because it is founded upon principles of reason which were admitted and sanctioned, and fully explained by Lord Kenyon in *Anderson* v. *Martindale* (1 East), whose comment upon a subsequent decision received the silent acquiescence of the whole Court. That case did not appear to have been overruled or questioned, and was acted upon in the Court of Exchequer by Gibbs, C. J. in 1818, in *James* v. *Emery* (5 Price, and 8 Taunt.); and the same principle is laid down by Shepherd in his Touchstone, p. 166; but the last learned editor of that work, Mr. Preston, has originated a doubt whether it is expressed clearly. He refers to several cases, none of which impugn or qualify the rule. What is truly remarkable is, he does not even name the case of *Anderson* v. *Martindale*. He cites Salkeld, 383, which gives no countenance to the exception, and 2 Rolles's Abridgment, which relates to wholly different matters. We have looked not only to the 2nd but to the 1st Rolles's Abridgment, under the title "Condition," and also at p. 419, which comprises the head of "Covenant," but in neither place does this doctrine at all appear. Mr. Preston thus concludes his observations. "The general rule proposed by Sir Vicary Gibbs, and to be found in several cases, would establish that there was a rule of law too powerful to be overruled by any intention however expressed." But we think there is no ground for Mr. Preston's apprehension that the words are perfectly plain and unambiguous, confining the contract expressly to one person, and excluding all others from its protection. The true explanation of the rule is rather this, that the whole covenant, taken together, binds both covenantors, although not either of them severally named on the face of the covenant itself. Such being the state of things, a special case was reserved at the assizes for the Court of Exchequer, where certain persons, with whom the covenant was made, sued the covenantors in it. (*Sorsbie* v. *Park*, 12 M. & W. 146.) The deed being fully set out, was found to be a covenant with the plaintiff and others by the defendant for himself and others. In Easter Term, 1843, the Court held, in strict conformity with all the cases, that a nonsuit ought to be entered, because those others had not been joined as plaintiffs in bringing the action. But the plaintiff here turns the argument on certain dicta which fell from the late Chief Baron and Mr. Baron Parke, applicable not to that case, but to the converse of it, alleging a variance of the old law. Unluckily, no reference was made to *Anderson* v. *Martindale*, and the Court, justly thinking the general rule too clear for argument, stopped the learned counsel who supported it; Lord Abinger thought the rule required no authority. It is correctly stated by Mr. Preston, and then he states the

rule with the exceptions. Mr. Baron Parke also thinks the rule clear as laid down by Sir Vicary Gibbs in *James* v. *Emery*; still, however, with the qualification expressed by Mr. Preston. Those learned judges could not intend to overrule *Anderson* v. *Martindale*, nor if they did, could we be bound by their extra-judicially declared opinion. The instrument proved here recited that the defendant had borrowed of the plaintiff 2,900*l.* part of the money of Ann Caroline Hogg, then in his hands in trust for her, on the security of a mortgage, and the insurance of certain bank annuities and other valuable securities; that the plaintiff then required some further security, and thereupon the defendant promised to enter into this covenant, and the plaintiff and Ann Caroline Hogg were satisfied therewith, and agreed to accept the same, and to advance the same sum of 2,900*l.*; and thereupon the mortgage had been executed in consideration of the said advance; and it is witnessed, in pursuance of the said agreement, in consideration of the premises, and of the advance of the said sum, that the defendant covenanted with the plaintiff, his executors, administrators, and assigns, and also as a distinct covenant, with and to the said Ann C. Hogg, her executors and assigns, in manner following, that is to say, that the plaintiff, his executors, administrators, and assigns, would pay the annual interest upon 2,900*l.* and such part thereof as should remain unpaid, provided this covenant should be only security for such part of the said interest as the dividend or other annual income, or produce of bank annuities as shall from time to time be insufficient to pay and satisfy it; and that as between the two Lees, their heirs, &c. and the plaintiff and Ann C. Hogg, her executors, &c. such part of the aforesaid dividend or income, or annual produce as shall from time to time remain due or payable in satisfaction of the insurance, and shall in the first instance be applied in payment of the interest on the 2,900*l.* A covenant is made with the plaintiff on reciting the security of 2,900*l.* the sole property of the said Ann C. Hogg, and it binds the borrower to pay the deficiency. The money lent in *Anderson* v. *Martindale* was the consideration of the covenant to pay an annuity during the life of Elizabeth Wyatt, by the covenant itself was, with the plaintiffs, their executors, &c. and also with the said Elizabeth Wyatt and her assigns, to pay the plaintiff her annuity. This language has entirely confined the covenant to the plaintiff, and makes another and stipulated covenant with Elizabeth Wyatt, as any words not directly exclusive can be. Going back to *Slingsby's* case, the covenant there was with certain persons named, *cum quolibet eorum aut altero eorum*. No words can be stronger to give the plaintiff an option to sue all jointly, or each severally; yet in both cases the Court held, by reason of the joint interest in the subject-matter of the suit, the action must be joined. We think it would be a waste of time to argue that the words in a distinct covenant do not furnish any stronger interest than those just stated. From these well-known cases, if they are still law, the present case must be decided against the plaintiff, but we see ground for doubting that they are. I must not conclude without mentioning the case of *Foley* v. *Addenbrooke* (4 Q. B. 197), decided in this court in Michaelmas Term 1843, which was not alluded to in *Sorsbie and Others* v. *Park*. It is in direct conformity with the decision of that case and this, and contains no doctrine at variance with *Anderson* v. *Martindale* and the older authorities.

THE MAYOR OF ROCHESTER *v.* LEVI.

Debt for tolls—Verdict for the plaintiff—Rule nisi for a new trial.

The questions were—1st. Whether the corporation of Rochester was entitled to tolls at the rate of 4d. per chaldron on all coals brought into the port of Rochester by water. 2nd. Whether it could enforce the right to those tolls against the owners of vessels as well as against the masters.

Channell, Serjt. *Espinasse*, and *Petersdorff*, shewed cause.

Deedes and *Borill*, contrà. *Cur. adv. vult.*

JUDGMENT.

Lord DENMAN, C.J.—We have considered how far there ought to be a new trial, and we are of opinion there is no sufficient ground for one. We have written some observations more at large upon it, but the ground upon which we go is, that the jury were to form their opinion as to the two points now in dispute: whether the plaintiffs made themselves out to be the owners of the port; and, second, whether they proved the payment of the duty. These two questions were most materially connected in proof. There was a payment proved at a very remote period, and which had been taken as far as memory could be expected to go. We think the defendant had not placed himself in a situation to complain; and, inasmuch as this question may be still tried by any other person who thinks he can resist the claim, we do not think that we ought to disturb the verdict, which the plaintiff in the present action has fairly obtained. *Rule discharged.*

COURT OF COMMON PLEAS.

Thursday, Feb. 13.

THOMPSON and ANOTHER *v.* SMALL.

One G. chartered a vessel, of which the defendant was master and part owner, for a certain voyage, G. undertaking to pay, two months after the vessel had cleared from the Custom-house, a stipulated sum for the hire: G. purchased of the plaintiffs certain goods, to be shipped on board the vessel on G.'s own account, and to be paid for before the vessel left the port. The plaintiffs shipped the goods accordingly, but G. becoming shortly afterwards insolvent, an agreement was made between him and the plaintiffs to rescind the contract of purchase, and an order was signed by G. for a redelivery of the goods to the plaintiffs. The plaintiffs accordingly demanded the goods of the defendant, offering to pay all reasonable charges, and every lawful claim in respect of the same. The defendant refused to redeliver, as the goods had been put on board for a particular voyage, and afterwards carried the goods on the voyage. Held, that as G. had not become bankrupt, or taken the benefit of the Insolvent Act, the property in the goods revested in the plaintiffs by operation of the agreement to rescind and the order to redeliver, and that, therefore, the right to the possession was in the plaintiffs at the time of the conversion. Held, also, that as the charterer had a right to take the goods out of the vessel before the stipulated sum for the hire of the vessel had become due, the refusal by the defendant to redeliver the goods after the demand of the plaintiffs was a wrongful conversion.

Trover for goods.

Pleas—first, Not guilty; and, secondly, that the plaintiffs were not possessed.

At the trial of this cause a verdict was found for the plaintiffs, damages 500*l.*, subject to the opinion of the Court on a special case, the facts contained in which sufficiently appear in the judgment of the Court.

The case was argued in Michaelmas Term last by *Channell* and *Byles*, Serjts. (*Peacock* with them), for the plaintiffs; and by *Shee*, Serjt. for the defendant.

On behalf of the plaintiffs, it was contended that they had the right, as unpaid vendors, of stopping the goods *in transitu*, or, at all events, that the property in the goods had been revested in them by the agreement to rescind the contract made between Grumbrecht and the plaintiffs. Cases cited: *Craven and Another* v. *Ryder* (6 Taunt. 433); *Bohtlingk* v. *Inglis* (3 East, 381); and *Ruck* v. *Hatfield* (5 B. & A. 632). Also, that there had been a conversion by the defendant, in refusing to deliver the goods after the plaintiffs had demanded them; that Grumbrecht, the charterer, had a right to take them out of the vessel at any time by the charter party, for the vessel had been let to Grumbrecht for the voyage, during which the charterer was to have the whole and entire use of the ship; that, therefore, Grumbrecht was, *pro tempore*, the owner of the vessel, and would have been entitled to whatever freight the vessel might have earned; and that the defendant had, therefore, no right to insist on the goods being carried on the voyage for which they had been shipped. (*Colvin* v. *Newberry*, 1 Cl. & Finelly, 283; *Belcher* v. *Capper*, 5 Scott, N. R. 257.)

On behalf of the defendant, it was contended that the possession of the vessel had never been taken out of the owners, the master and crew still being their servants, and that there being a contract for the carrying of the goods, the person who had so shipped them had no right to take them out without paying the price for the hire of the vessel.

Cases cited: *Paul* v. *Birch* (2 Atk. 621); *Faith* v. *The East India Company* (4 B. & A. 630); *Saville and Others* v. *Campion* (2 B. & A. 503); *Stevenson* v. *Blakelock* (1 M. & S. 535); *Thompson* v. *Trail* (2 C. & P. 334 and 6 B. & C. 36).

The Court now delivered

JUDGMENT.

TINDAL, C. J.—This was an action of trover and conversion of a certain quantity of goods; the first pl a denied the wrongful conversion by the defendant, and the second the possession of the plaintiffs. The material facts appear to be, that on the 3rd of June, 1843, one Grumbrecht chartered the ship *Bucephalus*, of which the defendant was master and part owner, from London to Sidney, and, if required by him or his agent, to Wellington or New Zealand; the ship to clear from the Custom-house and sail from London on or before the 31st of August, wind and weather permitting; and in consideration thereof the charterer undertook to pay to the broker or the shipowner 1,600*l.* in London two months after the ship had cleared at the Custom-house in London. On the 20th of July the charterer ordered of the plaintiffs the goods in question to be shipped on his own account on board the *Bucephalus*, and to be paid for before the ship left the port of London. On the 27th of July the plaintiffs shipped the goods accordingly, and they took the mate's receipt for the goods, which receipt they still retain. Upon or about the 29th of August Grumbrecht became insolvent, and unable to pay for the goods, and on the 1st of September the plaintiffs demanded, by a notice in writing, the redelivery of the goods from the defendant, offering at the same time to pay all reasonable charges attending such redelivery; which was refused by the defendant, on the ground that the goods having been shipped for the voyage stated in the charter, he must convey them upon such voyage. On the 14th of September, Grumbrecht agreed with the plaintiffs to rescind the contract of purchase with the plaintiffs, and give up all his interest in the goods to them, and signed an order for the redelivery of the goods to the plaintiffs; and the plaintiffs demanded them of the defendant, offering to pay all reasonable charges and every lawful claim in respect of the goods. The defendant refused to redeliver, on the ground that the goods had been put on board to be taken to Sidney, and he afterwards carried the goods on the voyage. Upon this state of facts we think, as to the last question—the right to possession—that such right was in the plaintiffs at the time of the conversion; for the property was originally in them, and assuming that it passed from them to Grumbrecht by the shipment on board the *Bucephalus*, on the 27th of July, in the manner above stated, yet as Grumbrecht had neither become bankrupt nor taken the benefit of the Insolvent Act, but continued *sui generis* up to the time of the making the agreement of the 14th of September, by the operation of that agreement, and the orders given by Grumbrecht to the defendant to deliver the goods, the property in those goods revested in the plaintiffs, either in their original right as vendors, or as a new right derived from the assignment of the vendee; and it becomes therefore unnecessary to decide whether the plaintiffs derived that right from their retaining the mate's receipt and demanding the goods on the 1st of September, upon which there was some argument. Upon the other point, we think the refusal by the defendant, on the grounds stated by him, to redeliver the goods after the demand by the plaintiffs on the 14th of September, and the offer then made of the payment of all reasonable charges and all lawful claims, was a wrongful conversion; for whatever powers Grumbrecht himself had over the disposition of these goods before the agreement of the 14th of September, we think the plaintiffs, after such agreement, had the same. We see nothing in the terms of this charter-party which could in any way restrain Grumbrecht from dealing with the cargo as he thought proper; he had the entire use of the ship under the charter, and there was nothing to prevent him from taking out the cargo before the ship sailed, if circumstances rendered expedient the changing of such cargo, or even from sending the ship empty to Sydney, or from fully loading it with goods of other persons, the freight of which had been paid to him in London, there being no agreement on his part to put a full cargo or any cargo on board, the payment for the hire of the ship being made quite independent of the delivery of any cargo. No question, therefore, arises as to any lien of the defendant on this cargo for freight, for the sum stipulated to be paid is not made payable until two months after the ship had cleared from the Custom-house, and, consequently, it becomes unnecessary to decide whether the possession of the ship was altogether parted with by the ship-owner to the charterer, according to the doctrine laid down in *Hutton* v. *Bragg* (7 Taunt. 14). But it was contended, on the part of the defendant, that, under the authority of *Thompson* v. *Trail* (2 Car. & P.), the goods having been put on board to be carried to Sidney, the defendant had the right to insist on their being taken on the voyage. In that case Abbott, C. J. is recorded to have said, "If the captain had said, when the goods were demanded, 'I cannot give them up; they are on board, and I must take them to Leghorn;' I should have held that that was no conversion. But instead of that, the captain says he has signed a bill of lading; and a refusal on that ground is, in my judgment, a conversion." But upon this dictum, it is to be observed the case was not decided on this ground: it was no more than an opinion given on a point not then before him, and adduced either by way of illustration than deliberate judgment; and, further, that although such opinion may be perfectly correct in reference to the facts of the case, yet such facts are materially different from those in the case before us. The goods in that case were in a general ship, not, as here, in a ship chartered by the owner of the goods; therefore, there was no tender of freight, which in that case had begun to be earned, nor any compensation for the trouble in getting the goods to Leghorn; and, lastly, the ground of the captain's refusal was, that he had signed a bill of lading to a different person. We cannot think the authority in that case applies itself in any way to the present; and as to the foreign authorities cited, they are not in any way opposed to the construction we have put upon this contract, and amount, in fact, to the proposition that the freight was still stipulated for, notwithstanding the goods were not carried on the voyage by reason of some act of the charterer himself, which prevented their being carried; and there can be no doubt, in the present case, that the gross sum of 1,600*l.*, stipulated to be paid for the

use of the ship on the voyage, would have been still recoverable by the ship-owners under the agreement, although the charterer had taken the goods out of the ship. But this doctrine does not militate against the right of the charterer to take the goods out of the ship, or, at all events, before the stipulated sum became due. On the whole, therefore, we think the verdict on both these pleas is to stand for the plaintiffs for the sum of 374*l.* 6s. 2d., the sum agreed upon between the parties.

Judgment for the plaintiffs.

CAMAC, Knt. *v.* WARRINER.

A plea that certain goods were warranted fit for "roofing or building" is not supported by the production of an invoice at the trial describing part of the goods as roofing and the remainder as material.

This case, which arose out of a rule for a new trial, was argued by *Byles*, Serjt. and *Channell*, Serjt. in Michaelmas Term last. The facts and points which arose during the argument will be found in the following

JUDGMENT.

TINDAL, C. J. delivering the judgment of the Court.—In this case, in answer to the declaration by the drawer against the acceptor of a bill of exchange for 25*l.* 11s. the defendant paid 1*l.* 14s. into court, and pleaded as to 23*l.* 17s. part of the sum demanded, that the defendant accepted a bill of exchange in consideration of certain goods called "onopholite," which the plaintiff had warranted as fit for "roofing" or "building," but which were not so, and to which the plaintiff replied *de injuriâ*, &c. and had a verdict, by the direction of the learned judge, that there was no evidence to be left to the jury in support of the plea. The defendant obtained a rule to shew cause why the verdict should not be set aside, and a new trial had, on the ground of misdirection, and, after cause shewn, we are of opinion that the direction of the learned judge was right. The contract for the goods in question is not shewn to have been made with any reference whatever to the treaty for "roofing," which took place in September 1842, proved by the witness Holcroft, nor that a prospectus had been delivered to the same witness. Of the goods in question, one parcel, of the value of 7*l.*12s. was delivered in April 1843, which was described in the bill delivered by the plaintiff as "roofing;" and the other parcel, of the value of 16*l.* 18s. 3d. was delivered in July 1843, and was described in the same bill as "material." There was no evidence of the contract for the goods in question, except this bill, which contained one other item of 1*l.* 14s. for goods delivered in October 1842, and described as "flooring." The word "material" does not express a warranty of fitness for "roofing" or "flooring," and even if a warranty of fitness for any purpose is expressed, as the expression is "flooring" or "roofing," and the word "material" refers to what was sold before, still the evidence falls short of the point to be proved in order to shew that the material was sold for "roofing" rather than "flooring." The plea, therefore, is without any proof as to the 23*l.* 17s. part of the sum to which it is pleaded, and consequently it fails altogether, and the rule for a new trial must be discharged.

Rule discharged.

REGISTRATION APPEALS.

Thursday, Feb. 13.

BOROUGH OF LICHFIELD.

MARSHALL, Appellant, and BOWN, Respondent.

The 7 & 8 Wm. 3, c. 25, passed to prevent the multiplying of votes by dividing tenements, does not apply where the vendor of the estate out of which the votes arise was not cognizant at the time of the conveyance for what purpose the vendees purchased.

The case submitted by the Revising Barrister to the Court stated, that one William Gorton had contracted in his own name for the purchase of a freehold house, in the borough of Lichfield, and had afterwards *bonâ fide* sold the same house to the respondent, and five others, a conveyance, duly executed, having passed between the vendors and vendees. The purchase-money was paid to the vendors by the hands of Gorton, and the object of Gorton in proposing the purchase of the house to the respondents, was admitted to be that they would by such purchase increase the number of voters in the borough. No stipulation or understanding existed at the time of the sale that the respondents or any of them should vote in respect of the premises purchased in any particular way, or in support of any particular party. The respondents had been in the receipt of 50s. each, in respect of their share of the rents and profits for twelve calendar months next previous to the last day of July, 1844. All the other requirements as to residence, &c. had been complied with. It was objected on behalf of the appellant that this was a void conveyance under the 7 & 8 Wm. 3, c. 25, s. 7, being made to multiply voices, and that under that Act no more than one single voice ought to be admitted for the said house. The Revising Barrister retained the names on the register, subject to the decision of the Court.

Byles, Serjt. (on a former day, Nov. 21, argued the case for the appellant).—This conveyance has been made in direct contravention of the 7 & 8 Wm. 3, c. 25, s. 7, which declares "that all conveyances of any messuages, lands, tenements, or hereditaments, in any county, city, borough, town corporate, port, or place, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections of members to serve in Parliament, are hereby declared to be void and of none effect, and that no more than one single voice shall be admitted for one and the same house or tenement." The mischief in a small city like Lichfield of upholding the Revising Barrister's decision would be apparent, as the *bonâ fide* voters would be inundated by those created in the face of the restrictive words contained in this Act of Parliament.

Kinglake, Serjt. contrà.—The statute cited does not apply to *bonâ fide* conveyances, but to collusive grants of property made to enable parties to go to the poll, with a secret understanding that the qualifying property was to be conveyed back again when the temporary purpose was served. The object of that statute and the 10 Anne, c. 23, was to prevent fraudulent conveyances. The 18 Geo. 2, c. 18, was passed *in pari materiâ*, and is made applicable to voters in cities and counties.

Byles, Serjt. in reply. *Cur. adv. vult.*

JUDGMENT.

TINDAL, C.J. now delivered the judgment of the Court.—The objection taken against the claim of Bown, and the several other persons mentioned in the case, to the right of voting as freeholders in the election of members for the city of Lichfield, was this:—that the five persons therein named claimed to vote in respect of the same freehold house, and that the conveyance to those persons was void under the provisions of the Act 7 & 8 Wm. 3, c. 25, which enacts that all conveyances in order to multiply voices or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in Parliament, is hereby declared void and of none effect. The argument before us proceeded on the supposition that the facts of the present case brought it within the enactments of the statute, and we were called upon to give a legal construction of that statute with reference to the abstract question, whether a *bonâ fide* conveyance, where the money was really paid by the purchaser, and there was no secret trust or reservation in favour of the seller, but where the object of the conveyance was to split and divide the interest, falls within the provisions of the statute. Whenever that question comes before us, we shall be prepared to give our opinion upon it; but as we think the facts stated in this case do not raise the question, it would be premature to do so on the present occasion. But we think the obvious meaning of the statute is, in order to make the conveyance void, the party must be privy to the real object and intention of the conveyance; for it would indeed seem to be an unreasonable consequence, and never to have been in the contemplation of the Legislature, that a person who sold his property *bonâ fide* to more than one purchaser, having no intention himself and no knowledge of the object of the persons making the purchase to evade the statute, should afterwards, at any distance of time, find the conveyance void and the land thrown back on his hands, and himself liable to refund the purchase-money on account of his having subsequently discovered that the purchase was made by several persons in order to split and divide the interest and to multiply votes. And the necessity of this privity and intention on the part of the seller appears from the subsequent statute, 10 Anne, which, after reciting the statute of the 7 & 8 Wm. 3, c. 25, and that it was made for the more effectually preventing such undue practices, proceeds to make provision for cases in which the object of the conveyance or assignment cannot be known to the party who conveys the estate. That still further appears from the Act 53 Geo. 3, c. 49, which enacts that a device for the same purposes shall be taken to be a conveyance within the meaning of the former statute. Now, looking at the case before us, there is not only no statement of the fact, but no reason to infer that the former proprietors of the house, who were the conveying parties, had any knowledge of the object for which the house was purchased at the time they executed the conveyance to the persons. Gorton contracted in his own name with the then proprietors for the purchase of the house, such proprietors having, as it appears, no knowledge whatever of the five persons to whom the conveyance was afterwards made, up to the time of the conveyance itself. Then Gorton *bonâ fide*, after entering into the contract, sold the house to Bown and the other five persons, and all the others did was to request Gorton to obtain the execution of the conveyance to him and the other five purchasers. As to the argument on the part of the appellant, that Gorton may be considered the seller, it is clear he is no party to the conveyance which is to be made void, as he had nothing to convey. As the case appears to us not to fall within the statute, we are of opinion that the objection taken before the Revising Barrister never, in fact, arose; and, without giving any opinion on the merits of such objection, we think the names of the claimants are properly retained on the lists, and, therefore, we affirm the decision. *Decision affirmed.*

COURT OF EXCHEQUER.

Tuesday, Feb. 11.

NEW TRIAL PAPER.

DOE *dem.* OULTON *v.* OULTON.

Martin, Q. C. and *Addison* continued their argument in opposition to the rule in this case; and *Knowles*, Q. C. and *Cowling* were heard in support of it. *Rule discharged.*

POLLETT *v.* FORREST.

Landlord and tenant—Rent and penalty.

Where the language of an instrument is ambiguous, but the intentions of the parties are plain, it will be so construed ut res magis valeat quam pereat.

This was a rule to set aside the verdict for the defendant, and to enter one for the plaintiff for 3*l.* 3s. 0d. or for judgment *non obstante veredicto.*

The action was in replevin, and the defendants avowed the taking of the goods, because the plaintiff was their tenant of a farm at 170*l.* rent, under an agreement that he should pay 5*l.* to be recovered by distress, as for rent, for every acre of meadow land which he should plough up, and also 2s. 6d. penalty for every yard of hay produced on the farm which he should remove off the premises, to be recovered as aforesaid. They then alleged that a certain number of yards of hay had been sold off the farm, in contravention of the agreement, whereby a large sum accrued to them, &c. To this the plaintiff pleaded *non tenuit modo et formâ.* At the trial it was objected by the plaintiff that the agreement produced by the defendants did not entitle them to distrain, as it was not under seal, but a verdict passed for the defendants, subject to the present rule.

Knowles, Q. C. and *Cowling* now shewed cause.—This sum, though styled a penalty in the agreement, is, in fact, so much increased rent reserved by the defendants, on conditions which were plain and certain. It is obvious that the parties here meant to stipulate for a right to distrain for this penalty as so much rent reserved. A reservation of rent need not be under seal; all that is required is that the rent be reserved. It may be contained in a *proviso.* [PARKE, B.—It is clear that the parties meant this to be rent. The only question is, whether it be rent, and the difficulty arises in the word "*for.*"] That may be rejected. [ALDERSON, B.—If that be rejected from the agreement, how can the Court reject it from the avowry, which must be taken to have pleaded the agreement according to its legal effect? Your argument is that it is rent reserved in the agreement; but you plead it as a penalty to be recovered in the same way in which rent in arrear may be recovered, *i. e.* by distress. There would, therefore, be a *variance.*] *Cowling.*—That point was not taken at the trial, and the Court will not look too narrowly at these pleadings now. We might have amended had it been taken then.

Cases cited: *Rolston* v. *Clarke* (2 H. Bl. 563); *Chapman* v. *Beauchamp* (3 Ad. & El. 732); *Daniel* v. *Gracie* (13 Law Jour. 309); Co. Lit. 96 a, and 142 a; Gilbert on Rents, 26; *Rolfe* v. *Peterson* (2 Brown's Parl. Cases, 436).

Martin, Q.C. and *Atherston*, in support of the rule.—The right to distrain under this agreement is put upon a forced construction of its terms. It is not rent, but a penalty or liquidated damages for a breach of an agreement, which the defendants claim, and they have not the power of distraining for it, as the instrument is not under seal. The other parts of this agreement speak of the plaintiff's holding the farm at a certain rent and subject to certain stipulations and conditions. If this be rent, then the defendants may put in a distress for every yard of hay sold off the land,—a most oppressive system, and one which the Courts will not encourage.

Cases cited: *Davies* v. *Fenton* (6 B. & C. 216); 1 Co. Lit. "Real Service," 213; Bacon's Abr. "Rent.")

PARKE, B.—The Court is inclined to think that, as this could not be distrained for under this agreement, unless it was to be taken to be rent reserved, upon the principle of construction, "*ut res magis valeat quam pereat,*" as the parties decidedly meant to confer the right of distress, the instrument should be so construed. We should thereby carry the intentions of the parties into effect, which we certainly could not do if we were to hold otherwise. The words are ambiguous; and the only question is, whether we shall so construe them as to support the manifest intention of the parties, which no doubt was to get a right to distrain for every yard of hay sold off the farm. It has been suggested, however, that there is a variance between the agreement so construed, and the avowry, which pleads it in its legal effect, and using its very words, implies rather a penalty than rent. This point, however, was not taken at the trial, and as the defendants would be allowed to amend if we were to send down the record in its present case, we think that they ought to have liberty to amend at once, on payment of costs.

Judgment accordingly.

ECCLES v. HARPER.

Knowles, Q. C. and *Crompton* shewed cause against a rule for a new trial, on the ground that the verdict was not warranted by the evidence, and was a perverse verdict.

Martin and *Hoggins*, contrà.

Rule absolute, without costs.

SMITH v. BOUTCHER.

This was an action for work and labour as a broker in and about the obtaining a charter-party for the defendants, to which they pleaded *non assumpsit*. At the trial before Cresswell, J. at Liverpool, a variety of letters were put in to prove the plaintiff's case, and ultimately the verdict passed for the plaintiff; afterwards this rule for a new trial was obtained, on the ground that there was no evidence to go to the jury to shew any privity between the parties.

Knowles and *Crompton* were heard for the plaintiff.

Martin, for the defendant.

Rule absolute on payment of costs.

Thursday, Feb. 13.

(Sittings in Banco, Hilary Vacation.)

NEW TRIAL PAPER.

KIRKPATRICK v. TATTERSALL.

A debt which is barred by a bankrupt's certificate under 6 Geo. 4, c. 16, s. 121, may be revived by a promise in writing under the 131st section, whether made before or after the certificate has been obtained, and in either case a simple promise is sufficient.

This was an action for work and labour, goods sold, and the usual money accounts, to which the defendant pleaded *non assumpsit*.

At the trial, before Cresswell, J. at the last Liverpool assizes, it appeared that the plaintiff, being a creditor to the amount of 73*l.* the defendant became a bankrupt, and a fiat issued against him on the 13th of June, 1840. On the 17th of February, 1843, the defendant entered into a written agreement with the plaintiff to pay him the whole of his debt by instalments, and a few days afterwards obtained his certificate. Under these circumstances the learned judge was of opinion that the certificate operated as a bar to the new debt thus created, as well as to the original one, and the plaintiff was nonsuited. Afterwards, this rule was obtained to enter a verdict for the plaintiff for 73*l.* 4s. and now

Knowles, Q.C. and *Cowling* shewed cause.—The certificate operates as a statutory release from all existing debts, by virtue of the 121st sec. of 6 Geo. 4, c. 16 (Bankrupt Act). When this new promise was made, the original debt was not barred; but when the certificate was obtained, it and the new promise, which was necessary to it, were both extinguished. It is contended, however, that this debt is revived, notwithstanding the certificate, by the 131st section of the Act, which enacts that no bankrupt having obtained a certificate shall be liable to pay any debt from which he shall have been discharged by virtue of such certificate, or of any part thereof, or any promise, &c. made after the issuing out of the commission, unless such promise, &c. be made in writing signed by him. This, however, does not apply to the cases of promises *made* before the certificate was obtained. If the promise had been made after the certificate was obtained, no doubt the bankrupt would thereby render himself liable to pay any debt from which he would otherwise be discharged: but whe the promise precedes the certificate, it is extinguished as well as the original debt.

Cases cited: *Van Sandau* v. *Crosby* (3 B. & Ald. 13); *Freeman* v. *Fenton* (2 Cowp. 544); *Crofton* v. *Poole* (1 B. & Ad. 568); *Stevens* v. *Wilkinson* (2 B. & Ad. 326); *Lewis* v. *Chace* (2 P. Wms. 620); *Sumner* v. *Brady* (2 H. Black. 647); *Birch* v. *Sharland* (1 T. R. 715); *Roberts* v. *Morgan* (2 Esp. 736).

PARKE, B.—There would be no doubt if this promise had been after the certificate; but the question is, whether, being before the certificate, the promise ought not to have been so expressed as to exclude the operation of the certificate,—a promise in fact to pay the debt *notwithstanding* that the defendant might obtain a certificate. The Act requires a promise to pay, and the doubt is, whether that must not be a promise to pay, at all events, if given before the event, which would exonerate the debtor altogether.

Martin and *Crompton* supported the rule.—The point now suggested by the Court was not made at the trial, where the sole question was, whether a promise made before the certificate was equivalent to one made after. Taking that point, however, too, it is contended that the plaintiff must recover, for, in either view, the debt is revived, the promise here being all that the Act requires either before or after the certificate. It is beyond all doubt that a debt barred by the certificate may be revived by promise made after it, and that the original debt is a good consideration for such promise. If that be so, a debt not yet barred by the certificate must be a good consideration for a promise before the certificate is obtained. Then as to the peculiar terms of the promise made before the certificate, it is apprehended that if the certificate can be barred by a promise made before it was obtained, the Act does not require any particular form of promise. All that is required is an absolute promise in writing to pay, and as no particular form is required after, so none ought to be insisted on before the certificate is obtained.

Cur. adv. vult.

JUDGMENT.

PARKE, B. now delivered judgment.—In the case of *Kirkpatrick* v. *Tattersall*, which was argued yesterday, the plaintiff sued in debt for work and labour, to which there was a plea of "never indebted" and "bankruptcy." On the trial of this case, which was before my brother Cresswell, it appeared the defendant after the fiat issued against him, and three days before the certificate was signed, gave the plaintiff a memorandum, whereby, in consideration of the plaintiff's services before his bankruptcy, the defendant promised to pay him the debt due to him by instalments of 76*l.* 13s. 4d. at future dates. The learned judge referred the question to the consideration of this Court whether the defendant was liable in this action, directing a nonsuit, with liberty to enter a verdict for the plaintiff for the instalment due before the action. There was no plea alleging any illegality, nor does the consideration appear to be illegal. The only question is whether, assuming the contract to be without illegality, it is valid. There can be no question that a debt, though barred by a certificate, is a sufficient consideration for a promise to pay;—that is established by many cases. It is equally clear and admitted that if the promise is made after the certificate is obtained, it is binding, though there is no other consideration than the old debt; but it is contended that if the promise was made before the certificate was obtained, that then the rule does not apply; that the old debt is not sufficient, and that to make the promise binding, there must be some new consideration; but whether the promise is made before, or after the certificate, it is agreed it must be distinct and unequivocal, and by the provisions of 6 Geo. 4, c. 50, s. 18, and the 5 & 6 Vict. it is enacted that it must be in writing. We are all of opinion there is no distinction in this respect between the case of a promise before certificate and one after certificate, and that both are equally binding, though the only consideration be the old debt; but then the promise must be one binding the bankrupt personally to pay, notwithstanding the certificate. It must be a promise that he, and not his estate, would pay; for a mere acknowledgment of a debt, and a promise to pay, would amount to no more than an account stated; and though that might be in writing, it would be a promise which the certificate would bar. The only difference between a promise to pay before and after the certificate is, that in the former case it would be more doubtful whether the debtor meant to pay notwithstanding he was discharged under his bankruptcy; but it is clear that the promise is equally binding. The promise before certificate is more open to suspicion, and more likely to be void; but that does not arise in this case. The only question is, whether there was a distinct and unequivocal promise by the bankrupt, binding him to pay notwithstanding the certificate, and whether it was so expressed in the memorandum. That it was meant to be so, is clear, from the circumstances attending it; and whether it is clearly expressed in writing is the only point in discussion. But we are all satisfied by the arguments urged, that it is sufficiently expressed; it is a positive and absolute promise that the bankrupt will pay at certain times, and therefore it is necessarily a promise to pay, though he may have obtained his certificate before those times. When we refer to the date of the promise, and find it was only three days before the meeting, when the bankrupt's certificate might be granted or not, it is impossible to entertain the least doubt upon it. We are, therefore, all of opinion that the promise was sufficiently expressed, and therefore we think the rule must be made absolute.

Rule absolute.

COOMLEN v. THE EASTERN COUNTIES RAILWAY.

Shee, Serjt. and *Lush* shewed cause against a rule to enter a verdict for the defendants on one of the issues to the first count.

Peacock, contrà.

Rule absolute.

CHARRINTON v. JOHNSON.

Where a collector of highway-rates refuses to hand over the surplus arising from a distress on demand, he is liable to an action at common law for money had and received, and no notice of action need be given under the General Highway Act 5 & 6 Vict. c. 50, s. 109. In such a case the demand ought to be personally made by the plaintiff or an agent having written authority to receive the surplus.

Assumpsit for money had and received to the plaintiff's use. *Non assumpsit* by statute.

At the trial before Alderson, B. at the last Cambridge Summer Assizes, it appeared that the action was brought to recover the sum of 2*l.* 15s. as the balance remaining in the hands of the defendant, a collector of highway-rates, after the sale of a distress for rates. Soon after the sale, a friend of the plaintiff went to the defendant and demanded the balance, which the defendant placed on a chair, offered to allow the witness to take it up if he produced a written authority from the plaintiff to receive it. This the witness, who seemed to have been a stranger to the defendant, was unable to do, and the defendant thereupon refused to pay him the money. It was then objected that the refusal to hand over the balance, being an act done under the statute 5 & 6 Wm. 4, c. 50, the defendant was entitled to twenty-one days' notice of action; and 2ndly, that the demand ought to have been either personally made by the plaintiff, or by an agent, clothed with a written authority to receive the overplus. Alderson, B. being of opinion that both the objections were fatal, nonsuited the plaintiff, whereupon this rule was afterwards obtained for a new trial, and

Byles, Serjt. and *Worlledge* now shewed cause.

This action arises out of a distress for highway-rates, the collectors of which have the same powers as the overseers of the poor, under the 27 Geo. 2, c. 20, which enacts, that the overplus, if any, shall be returned on demand; whereas the 43 Eliz. c. 2, simply provides that the surplus shall be rendered to the party. There must, *therefore*, be a demand, and that demand ought to be by the party, or an agent duly authorized by him, and in writing. The defendant being a public officer, has a right to the receipt of the party, or if the plaintiff does not demand the overplus in person, his agent must be clothed with a written authority. Then the plaintiff was properly nonsuited for want of a notice, under the 109th section of the Act. If the defendant was bound to pay over this surplus, his omission to do so was a breach of duty, a tortious act done in pursuance of the Act, and the plaintiff cannot, in order to get rid of the protection of the Act, waive the tort, and bring *assumpsit*.

Cases cited: *Simpson* v. *Routh* (2 B. & C. 682); 2 Sugden's Vendors and Purchasers, 437; *Solomons* v. *Davies* (1 Esp. 81); *Cour* v. *Calloway* (1 Ves. 115); *Roe* v. *Davis* (7 E. R. 364); *Attwood* v. *Mannings* (7 B. & C. 283); *Waterhouse* v. *Keene* (4 B. & C. 200); *Oakley* v. *Salter* (Yeld. 176); *Wright* v. *Cuthill* (5 E. R. 491); *Greenway* v. *Hurd* (4 T. R. 553).

O'Malley and *Wells*, contrà.—The defendant is not entitled to any notice under this Act; for the action is not brought for any breach of duty under the Highway Act, but on the common law liability of the defendant to pay over the surplus to the plaintiff; and if, after demand or notice, the defendant refused, it then became money had and received to the plaintiff's use in the defendant's hand. The cases go to shew that where the thing done is a mere nonfeasance, the Act does not apply; but where it is a misfeasance it does. In that case tort is the remedy, and notice is necessary. The next question is, whether the demand in this case was sufficient;—the defendant contending that the words "in writing," should be added to the language of the Act. But that is not so; any demand is sufficient, and it need not be made by the plaintiff in person. (*Irving* v. *Wilson*, 4 T. R. 87.)

By the COURT.—There is considerable doubt whether any notice of action was necessary in this case. The defendant had properly distrained on the plaintiff, and had regularly sold the distress, there being a surplus in his hands, which, according to the Act, he was to pay over to the owner on demand; and we think that this case has been properly distinguished from the cases cited by the defendant. Looking at the statute and those cases, there is strong reason for saying that no notice was requisite here, as it was, in fact, a mere money demand between the parties. With respect, however, to the other point, it is clear that the demand was not a reasonably sufficient one, and that the defendant was justified in refusing to give the surplus to the agent or friend of the plaintiff without a written authority. On that ground, therefore, the nonsuit is correct.

Rule discharged.

Friday, Feb. 14.

SLADE v. HAWLEY.

Special demurrer—False return—Sheriff—Demurrer to declaration.

This case was argued last Term by *Kennedy* for the plaintiff, and *Peacock* for the defendant, and turned altogether upon points of special demurrer.

JUDGMENT.

PARKE, B. now delivered judgment.—The case of *Slade* v. *Hawley*, which stood over, and which was argued by Mr. Peacock, on the one side, and by Mr. Kennedy, on the other, was an action against the sheriff for improper execution of *fi. fa.* and for a false return. The declaration is in the usual form, so far as relates to the delivery of the writ to the sheriff, and it is averred that the writ was indorsed to levy 66*l.* 9s. 8d. besides 16s. for the writ, officers' fees, sheriffs' poundage, and all incidental expenses, and being so indorsed, and afterwards, and before the execution thereof, was delivered to the defendant, who was sheriff of the county of Kent, and afterwards the defendant seized and took in execution divers goods and chattels of the debtor of great value, and of greater value than the moneys so indorsed on the said writ, and directed to be levied as aforesaid; and then could and might have, and ought to have levied the whole of the moneys thereout, but the defendant, being such sheriff, and so forth, did not, nor would levy out of the goods and chattels so seized and levied as aforesaid, the whole of the moneys so in-

dorsed on the writ and directed to be levied as aforesaid, but levied thereout only a portion of the said moneys, to wit, the sum of 60*l.*; and the defendant afterwards, further disregarding his duty as sheriff, falsely and deceitfully returned that the goods and chattels of the debtor only amounted to the sum of 43*l.* 15s. 9d. besides officers' fees, sheriff's poundage, and other incidental expenses, which sum the defendant was ready to produce before the Barons of her Majesty's Exchequer, and that he, the debtor, had not any further or more goods or chattels in the sheriff's bailiwick to satisfy the residue of the debt, damages, and interest, or any part thereof, as demanded; whereas, in truth and in fact, the defendant, as such sheriff as aforesaid, had levied, under the said writ, a larger sum of money than the said sum of 43*l.* 15s. 9d. mentioned, to wit, the sum of £ , which, after the payment of the sheriff's poundage and other incidental charges, ought to be paid in satisfaction of part of the moneys directed to be levied as aforesaid, by means of which premises the plaintiff was injured and deprived of recovering his debt. Then to this count there is a demurrer, assigning a variety of special causes. On the argument of this case Mr. Peacock urged several objections to the first count of the declaration. One was, that if the word "moneys" was taken to mean "debt" only, the first breach was imperfect, because though the defendant might have levied the whole debt, there being sufficient to satisfy it without the officers' fees, &c. yet that he was not guilty of a breach of duty in not doing so. We think, however, that the true construction of the declaration is, that the word "moneys" embraces the debt, officers' fees, sheriff's poundage, &c.—in short, all the items indorsed on the writ. The objection then assumes another shape, namely, that the first breach is insufficient, because, though it alleged the defendant did not levy the whole of the moneys, it does not follow that he could have done so in the reasonable discharge of his duty to both parties, or that a reasonable time elapsed for converting the goods seized into money. And this objection appears to us to be tenable. The plaintiff then alleges that the second breach is properly laid, and that to make a return of *nulla bona* to any part was a false return, because there were goods sufficient; and we are of this opinion. This view of the case makes it unnecessary to consider whether the allegation which follows the statement of false return—the statement of damage—is well pleaded or not: that may be rejected. For these reasons we think the second breach was well assigned, and that on that breach our judgment must be for the plaintiff.

DE BERNARDY *v.* GRIMSTON.

The attorney for the plaintiff having been called as a witness for the plaintiff, and having, amongst other evidence, expressly sworn that he was retained by the plaintiff, a verdict for the plaintiff having been obtained:

Held, That the defendant might properly move for a new trial, upon an affidavit of the plaintiff himself, contradicting that fact.

M. Chambers and *Ogle* shewed cause against a rule obtained by *Channell*, Serjt. upon affidavits, to set aside the verdict for the plaintiff, and for a new trial. The attorney for the plaintiff had been examined as a witness, and among other evidence had sworn that he was retained by the plaintiff to conduct this action. The defendant now sought a new trial upon the affidavit of the plaintiff himself, who denied that he ever did retain the attorney, and entirely disavowed him. It was now contended that a new trial, at all events, could do the defendant no good, and that it was not the proper application. The attorney will be no more retained the second time than he was the first. [ALDERSON, B.—Does it not go to his credit? It is a direct contradiction of his evidence by his own supposed client. The defendant will be entitled to use the affidavit at the second trial to contradict him.]

Channell, Serjt. and *Wordsworth*, contrà.

By the COURT.—The rule must be absolute, without costs on either side. *Rule absolute.*

PARRY *v.* NICHOLSON.

In an action upon a bill of exchange, the bill, when produced, appeared to have been originally drawn and accepted on the date alleged in the declaration, but there appeared to have been a subsequent alteration. Held, that that defence could not be relied upon under non accepit, but that it should have been specially pleaded that the bill had been avoided by the alteration.

M. Chambers and *Hayes* shewed cause against a rule obtained by *Peacock* to set aside the verdict for defendant, or for a new trial.

The action was on a bill of exchange.

Plea—*Non accepit.*

The bill, as originally drawn, corresponded with the bill set out in the declaration, but when produced at the trial it appeared to have undergone an alteration by the substitution of one date for another.

It was now contended that before the new rules there was no doubt that an alteration on the face of a bill of exchange called on the plaintiff to account for it, and shew how it occurred, and if he could not do so he was non-suited. It is submitted that the new rules make no distinction.

Shee, Serjt. and *Peacock*, contrà.—All that is denied by *non accepit* is that the defendant ever accepted the bill in the declaration mentioned. If he did once accept, but means to rely upon a subsequent avoidance, he ought to plead that as much as he ought to plead any other plea in confession and avoidance. (*Mason* v. *Bradley*, 11 M. & W. 590; *Calvert* v. *Baker*, 4 M. & W. 417.)

PARKE, B.—The case in 11 M. & W. is quite decisive, and the reasons given by the Court there for their judgment govern the present one. It may, however, be part of the rule that the defendant have leave to amend on payment of costs, and also that the plaintiff, after he has seen such amended plea, may, if he chooses to withdraw, have the costs of the cause, excepting the costs of the trial.

Rule accordingly.

UTHWAITE *v.* ELKINS.

An agreement having been entered into between the owner of land and the churchwardens, overseers, and surveyors of the highways, for the letting to those officers of certain land for the purposes of parish gardens and allotments to labourers, which agreement purported to bind the said churchwardens, overseers, and surveyors of the highways, their executors, administrators, and assigns, and successors in office, and under which the land had been used for the above purposes:

Held, that the interest in the land was not such as the churchwardens and overseers could take, under the 59 Geo. 3, c. 12, s. 17, as a quasi corporation, and that they became liable for rent in their personal capacity.

Byles, Serjt. and *O'Malley* shewed cause against a rule which had been obtained by *Gunning*, to set aside the verdict for the plaintiff, and enter a nonsuit.

Action for use and occupation.

Plea—Never indebted.

It appeared at the trial that the plaintiff and defendants had entered into the following agreement, under which the lands therein mentioned had actually been used for the purposes therein specified:—

"At a public vestry of the parish of Great Linford, held the 8th day of February, 1833, it was agreed, on the part of Mr. Thomas Kemp and Mr. Benjamin Pavyer, churchwardens; and Mr. Wm. Thos. Tomkins and the said Mr. Benjamin Pavyer, overseers of the poor; and Mr. Eli Elkins and Mr. Thos. Lines, surveyors of the highways; that they, the said churchwardens, overseers of the poor, and surveyors of the highways, their executors, administrators, and assigns, and successors in office, should take to rent of Henry Andrews Uthwait, esq. his executors, administrators, and assigns, for the term of twenty-one years, from the 11th day of October, 1832, a grass field called the Grove, and also a certain portion of the Town Green, to be properly fenced off and quicked, and hereafter to be called the Parish Gardens, being intended for the use of the poor; and also, for such further purpose, a piece of ground lying south of the Wood House Cottages, at and after the yearly rent of 2*l.* 7s. 6d. per acre, for the whole quantity which might be so taken. These proportions of ground are now measured, and amount altogether to 8a. 1r. 36p. and 10¼ square yards: the annual rent is, therefore, 20*l.* 2s. 8d.; and the said churchwardens, overseers of the poor, and surveyors of the highways likewise agree for themselves, and also for their executors, administrators, and assigns, and successors in office, to rent of the said H. A. Uthwait, his heirs, executors, administrators, and assigns, a cottage, late in the occupation of H. Goss, for the term of eighty-four years, from the 6th April, 1833, at the annual rent of 2s.; the rents herein reserved to be paid by quarterly instalments; if so demanded; and they also agree to pay all rates, tithes, dues or duties, impositions and assessments, charged on the said premises, the land-tax only excepted, which is agreed to be paid by the said H. A. Uthwatt: and lastly, the said churchwardens, overseers of the poor, and surveyors of the highways, agree to sign the counterpart of a lease, drawn up in proper form, of this demise, in case the above writing shall be deemed insufficient at any future period.

"ELI ELKINS, }
"THOS. LINES, } Surveyors,
"BENJ. PAVYER, }
"THOS. KEMP, } Churchwardens,
"THOS. TOMKINS,
"HENRY ANDREWS UTHWAIT.
"JOHN BAGLEY SHARP, Witness.
"March 12, 1833."

The defendants, who signed the agreements as churchwardens and overseers, had since gone out of office. It was contended at the trial on the part of the defendants, that as regarded the churchwardens and overseers, at all events, the contract was only binding upon them in their official capacity, and as a *quasi* corporation under the 59 Geo. 3, c. 12, s. 17. The learned judge, however, thought that the interest in lands was not such as they were empowered by that statute to take as a *quasi* corporation. The plaintiff had a verdict, subject to leave to move to enter a nonsuit.

Gunning having obtained a rule accordingly,

Byles, Serjt. and *O'Malley* now shewed cause.—What would have been the effect of this document at common law and independently of any statute? The personal representatives of the parties are mentioned as well as successors in office. But the statute 59 Geo. 3 will be relied upon on the other side. The 12th and 17th sections are those which are relied on, but neither of them applies to this case. The purpose to which the land was to be applied is not such as was contemplated by the statute, nor was it intended that the parish officers should take any joint estate with other parties.

Gunning and *Wells*, contrà.

Cases cited: *Doe dem. Jackson* v. *Hiley* (10 B. & C. 885); *Alderman* v. *Neate* (4 M. & W. 704); *Attorney-General* v. *Lewin* (8 Sim. 366).

PARKE, B.—I think nothing can pass to the parish officers under that statute except property over which they would have entire control. In this case the contract becomes a personal contract of their own, and they are responsible for the due payment of rent during the whole term.

The rest of the COURT concurred.

Rule discharged.

BUSINESS OF THE WEEK.

Thursday.

DARNAY *v.* CHEESEMAN.—*Martin*, Q.C. *Bankes*, and *Peacock* shewed cause. *Willes* supported the rule. *Cur. adv. vult.*

Friday.

D'ARNAY *v.* CHESNEAU. *Cur. adv. vult.*

Saturday.

LIDDINGTON *v.* PALMER.—*Byles*, Serjt. and *O'Malley* shewed cause against a rule for a new trial on affidavits. *Gunning* and *Dasent*, contrà. *Rule discharged.*

CHOWNS *v.* BROWN.—*Gunning** shewed cause against a rule to arrest the judgment in this cause for the plaintiff. *Byles*, Serjt. and *O'Malley* supported it. *Cur. adv. vult.*

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Tuesday, Feb. 18.

Ex parte MEYER, *Re* SOLLY.

Equitable mortgage—Interest.

In pursuance of an arrangement between trustees and their cestuis que trust, an equitable mortgage was given to the latter for sums due by the trustees, and the trustees paid interest on the sums up to the time of their bankruptcy. The Court allowed interest at the same rate to be continued from the date of the bankruptcy, although no mention of interest was made in the memorandum given by the trustees upon the equitable mortgage being made.

This was the petition of James Meyer and others entitled to an equitable mortgage on certain freehold and leasehold estates, praying the ordinary relief; and the only question which arose was as to the allowance of interest upon the debt. The claim of the petitioners arose out of the will of Elizabeth Solly, by which certain legacies were bequeathed to them. By this will, which was dated the 22nd of September, 1818, Isaac Solly, the elder, one of the bankrupts, Thomas Solly, since deceased, and Sir William Domville, were appointed executors.

By an order dated the 28th of July, 1826, and made in a suit instituted by Sir W. Domville against the other executors, they were required to pay into court by a certain day the sum of 31,500*l.* due from them to the estate of the testatrix. A compromise having been effected between the parties interested under the will and the executors, an equitable mortgage was made by Isaac Solly and Thomas Solly, as part of that compromise, to secure various sums to the legatees under E. Solly's will; at the same time, by a memorandum dated the 12th of February, 1827, it was agreed by Isaac Solly and Thomas Solly that the freehold and leasehold estates therein mentioned should be charged with the several sums set forth in the schedule to the memorandum, and that a regular and sufficient mortgage should be executed to or in trust for the parties interested when required, but no mention was made of interest on the sums. This fiat was issued on the 20th of March, 1837, against the firm then representing the partnership of Isaac Solly and Thomas Solly. Some of the legatees' claims had been satisfied by other means, and the estates subject to the mortgage having been sold, and a sufficient sum realized to pay all the remaining claims, with interest, it was now sought to have five per cent. interest allowed from the time of the bankruptcy. The mortgagors had paid five per cent. upon the sums secured, and had used those sums in their business.

Bacon, for the petition.

Rogers, for the assignees, said that they were willing to allow five per cent. up to the time of the bank-

ruptcy, but that the arrangement upon which the mortgage was given was a mere family arrangement, the debts not being caused by a breach of trust. He, therefore, submitted that interest from the time of the bankruptcy ought not to be allowed. He cited *Anon.* (4 Taunt. 876); and *Page* v. *Newman* (9 Barn. & Cr. 378).

Macnaghten, for the legatees whose claims had been discharged.

The CHIEF JUDGE.—An equitable mortgage is given for a debt, in its nature carrying interest, and a memorandum is given in which interest is not mentioned; afterwards interest is paid by the party owing the money. I am of opinion that the debt is one which carries interest.

COMMISSIONERS' COURTS.

Saturday, Feb. 15.
(Before Mr. Commissioner FANE.)
Re MARGARET PARRY.

Punishment for vexatiously defending an action—Refusal of the Court to order an insolvent's discharge.

This insolvent was in custody at Bury St. Edmund's Gaol, and having petitioned the Court of Bankruptcy, this day was appointed for the detaining creditor to shew cause why she should not be discharged out of custody until her first hearing, pursuant to the new rules.

T. B. Hughes appeared for the opposing creditor.

A clerk to Messrs. Johnson, Son, and Weatherall, solicitors, attended on behalf of the insolvent.

Hughes took the objection that the clerk could not be heard, and the Court so decided.

The insolvent was described as a straw plait manufacturer, and it appeared she had become a party to an accommodation bill with a person named Mackham, and that the same had been discounted by Mr. Bousfield, the opposing creditor. On the bill arriving at maturity it was not paid, and an action was commenced against the insolvent, to which she pleaded she did not accept the bill. The cause was set down for trial, and only two days before it would have been decided, a summons on order was obtained to withdraw the plea. The opposing creditor's costs amounted to 21*l.* 19s. 3d. being upwards of 12*l.* more than if a judgment had been suffered to go by default.

The COMMISSIONER, on inquiry, finding she had been in custody two months, thought she was not sufficiently punished for the vexatious defence, and refused to discharge her, fixing a day for her to be heard in a month's time.

Monday, Feb. 17.
(Before Mr. Commissioner GOULBURN.)
Re MALTWOOD, Insolvent.

Clerks (not being Solicitors) cannot be heard.

In this case the insolvent was opposed by *Buchanan*, solicitor; a clerk to an attorney appeared on behalf of the insolvent. *Buchanan* took the objection that a clerk could not be heard in this court, but afterwards offered to waive it; but the Commissioner said, Certainly not, we can only hear counsel, solicitors, and the parties themselves; the objection cannot be waived.

Wednesday, Feb. 19.
(Before Mr. Commissioner SHEPHERD.)
Re C. J. MATHEWS.

Where part of consideration of claim was the debt under a former Insolvency Court, creditor can be inserted in the schedule for amount of the new claim only—Assignees can take the same objection as insolvent himself.

This was a dividend meeting for adjustment of claims and distribution of the fund in court, being the whole amount of his first instalment paid in by the insolvent, agreeably to his undertaking on a former occasion.

Phinn appeared on behalf of a creditor named Silk, in support of his claim, which had been inserted in the schedule for 213*l.* being the full amount of several bills of exchange given by the insolvent to the claimant, for securing moneys due from him under his former insolvency, and a new claim for professional services of 43*l.* together with an additional 50*l.* over and above the actual sum due. The learned counsel was ready to concede that unless he could distinguish this case from that of *Sherborne* v. *Osborne* (11 Ad. & El. 1027), in which the authorities on the subject were collected, his claim would fall to the ground, excepting so far as related to the 43*l.*, the new consideration. It was quite clear that under the present law a man might give 50 bills for 1*l.* and that it was no usury. In support of this claim he should cite the case of *Philpott* v. *Aslett* (1 C. M. & R. 85), where, after taking the benefit of the Insolvent Act, a debtor contracted a new debt, and accepted a bill of exchange for the balance of the old and new debt. Being sued upon the bills, he gave a warrant of attorney for the amount, and judgment being entered up on the warrant of attorney, the Court refused to set it aside. The moral consideration runs over the whole transaction, although it would be impossible to say but that the 43*l.* was the moving cause; but it is submitted that the only person who can take advantage of the circumstance is the debtor himself, and he has not and does not claim to do so. The creditors dispute Mr. Silk's right of claim, and the question is, has the Court power to reject debts contained in the schedule? He then referred to the before mentioned case of *Philpott* v. *Aslett*, and contended that, in analogy therewith, the insolvent having, as it were, neglected to plead the statute, he was entitled to claim the full amount.

Mr. *Lewis*, the solicitor on behalf of the creditors, in reply, referred to the Act of Parliament 5 & 6 Vict. c. 122, and a case in Dowling, in which a like instrument was held to be invalid, and under the 31st section of the Act lastly referred to, any party being a creditor might object to the claim; for, supposing it was otherwise, any fraudulent claim might arise by collusion with the insolvent. The document is void.

The COMMISSIONER.—I think the assignees can take any objection insolvent could have taken, and the claim must be inserted in the schedule for the 43*l.* the new consideration only.

The learned counsel then submitted that after the present creditors were paid twenty shillings in the pound, he should be entitled to be paid the residue of the claim if there should be any assets.

The Solicitor for the insolvent, objected that the securities were void, and there could be no claim.

The COMMISSIONER.—The insolvent will then have paid his creditors according to his undertaking, and it will be for him to object or not, as he has the power to do so.

Claim amended to 43l. accordingly.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEVENSON.)
Wednesday, Feb. 12.
Re DRURY.

The choice of assignee under 7 & 8 Vict. c. 96, cannot be adjourned without an adjournment of the first hearing.

This insolvent came up to-day for his first hearing, when Mr. Higgins, of Bath, solicitor, on behalf of several creditors, appeared to oppose. On examination the insolvent admitted that some years ago he had taken a lease, or agreement for a lease, of some premises, jointly with his brother; that his brother had since given up the whole of the premises to insolvent; that the lease was in the possession of the lessor's attorney, but that he believed his brother had a copy.

Higgins asked for an adjournment, on the ground that he was unable to enter fully into his case until a copy of the lease was filed.

Homes, for the insolvent, suggested that the first hearing should not be adjourned, but that his Honour might name a day for the final order, and reserve leave for *Higgins* to oppose then as fully as he could do now. The objection as to the omission to file a copy of the lease was only raised for the purpose of delay. The lease was mentioned in the schedule, though no copy was filed, and the insolvent's interest in the premises was not of any value.

Higgins said he relied upon the adjournment, otherwise his clients would have attended to vote in the choice of assignee, or he would have brought letters of attorney. At present he was not prepared, although he represented a sufficient number of creditors to carry the assigneeship.

Homes.—Perhaps your Honour will adjourn the choice of assignee without adjourning the first hearing.

His HONOUR.—I cannot do that. By the 7 & 8 Vict. c. 96, sec. 3 the choice of the creditors' assignee must take place at the sitting for the first examination, or at some adjournment *thereof, i. e.* at some adjournment of that sitting. The first hearing must be adjourned. *Adjournment accordingly.*

(Before Mr. Commissioner Serjeant STEPHEN.)
Re ACRAMAN and Co. Bankrupts. *Ex parte* MILES.
Evidence.

Where a witness has had ample opportunity to attend and be personally examined, an affidavit from him will not be received, if objected to.

This was a sitting for the examination of witnesses in opposition to a heavy claim of certain creditors under this bankruptcy.

Rolt and *Homes* appeared for the assignees; *Palmer*, for the claimants; and *Stone*, for the assignees under a separate fiat against D. W. and E. Acraman.

Rolt asked leave to file an affidavit of Mr. Holroyd, who had left this country for Calcutta. The affidavit was sworn on the 17th of January.

Palmer objected.—This is a matter entirely in the discretion of the Court, and, under the circumstances of this case, the affidavit should be rejected. Its object is to contradict the evidence of a witness who has been personally examined. Mr. Holroyd has been several times lately in Bristol, and might easily have attended and given his evidence *vivâ voce*, and submitted himself to cross-examination.

His HONOUR.—When was it first known that Mr. Holroyd's evidence would be required?

Haberfield, solicitor to the assignees.—The point was known in December. I wrote to Mr. Holroyd, requesting him to attend the Court, to be examined *vivâ voce*, but he said he was engaged in many other matters, and could not possibly attend. This was before the 3rd of January, and he has been in Bristol since.

His HONOUR.—Under these circumstances, I cannot allow the reception of the affidavit. Mr. Holroyd might have been summoned to attend. There was ample time, and as his evidence is for the purpose of contradicting the testimony of another witness, he should have submitted himself to cross-examination in the usual manner.

Affidavit rejected.

Ecclesiastical Courts.

ARCHES COURT.

Tuesday, Feb. 18.
The office of the Judge promoted by HOMER and BLOOMER *v.* JONES.
Practice.

The bishop in whose diocese an offence is committed by a clerk holding preferment in another diocese, may issue a commission of inquiry, and if the commissioner report that there is primâ facie ground for the complaint, the bishop of the diocese in which the defendant holds his preferment is to proceed.

This was a question as to the admissibility of the articles in a proceeding against a clergyman for incontinence. The bishop of the diocese had, under the Church Discipline Act, issued a commission of inquiry, and the Commissioners had reported that there was *primâ facie* ground for proceeding, upon which the case was sent by letters of request to this court.

Dr. *Addams*, on behalf of the party proceeded against, objected to the articles, that one of them imputed an offence committed in another diocese, which rendered that article inadmissible, at least, and might extend to the whole, since the proceeding was founded entirely upon the report of the Commissioners, who might have been mainly influenced by that particular charge.

Dr. *Phillimore*, for the promoter, contended, that there was nothing in the Act which prohibited the Court from entertaining the charges relating to both dioceses. In the case of a clerk holding no preferment, the Act provided that the bishop of the diocese in which the offence was committed should proceed; but there was nothing to shew that if a clerk holding preferment in one diocese, committed an offence in another, he might not be proceeded against by his own bishop.

By the COURT.—Then he may be proceeded against twice for the same offence, for the bishop in whose diocese the offence is committed may proceed.

Dr. *Addams*.—And if the offence be committed at Paris, there could be no proceeding at all under the Act.

Sir H. JENNER FUST.—The bishop in whose diocese the offence is committed by a clerk holding preferment in another diocese, may issue a commission of inquiry, and if the commissioners report that there is *primâ facie* ground, the bishop of the diocese in which the party holds preferment is to proceed. In this case, the inquiry of the commissioners, and consequently the articles founded upon their report, must be limited to the diocese in which the party holds preferment; and this Court is confined by the letters of request from the bishop of that diocese, who can only proceed in respect to acts of immorality within his own diocese. The article pleading an offence without the diocese in which the party holds preferment must, therefore, be rejected.

THE LEGISLATOR.

Summary.

NOTHING of the slightest professional interest has occurred in the Legislature during the past week.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.
Monday, Feb. 17.

Parochial Settlement Bill, "to consolidate and amend the laws relating to Parochial Settlement, and to the removal of the Poor."

BILLS READ A SECOND TIME.
Monday, Feb. 17.

Constables (Scotland).

BILLS READ A THIRD TIME AND PASSED.
Thursday, Feb. 21.

Constables (Scotland).

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, Feb. 17.

Greenwich Colliery Railway.

Wednesday, Feb. 19.

Manchester and Birmingham Railway (Ashton Branch).
York and Scarborough Railway (Deviation).
Leeds and Bradford Railway (Extension).
Pudsey Gas.
Manchester and Leeds Railway.
Ashton, Stalybridge, and Liverpool Junction Railway.
Manchester and Leeds Railway (Burnley Branch).
Leeds and West Riding Junction Railway.
Leeds, Dewsbury, and Manchester Junction Railway.
West Yorkshire Railway.
Ellesmere, Birmingham, and Liverpool Junction Canals.
Richmond Railway.
Liverpool Docks.
Kingston-upon-Hull Docks.

Thursday, Feb. 20.

Hull and Selby Railway (Bridlington Branch).
Manchester Division Stipendiary Magistrate.
Cockermouth and Workington Railway.
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Lancaster and Carlisle Railway.
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PETITIONS.

For Repeal of Attorneys' Certificate Duty.
Solicitors of Stamford.

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Par. Num.
18. Trade and Navigation—Accounts.
19. Railway Companies—Return.
Health of Towns - Second Report of the Commissioners, with Appendix, part 1.
23. Railways (Kentish and South Eastern Schemes)—Report of the Board of Trade.
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22. Mill Work and Machinery—Account.
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30. Poor and County Rates—Return.
Lunacy—Supplemental Report of the Metropolitan Commissioners (Wales).
13. Orders of Removal—Abstract of Returns.
17. Navy—Account of Receipt and Expenditure.
26 Court of Chancery—Return,
Gold Mines (Siberia, &c.)—Account.
24. Bill—Fisher Lane (Greenwich) Improvement.
Occupation of land (Ireland)—Report of Commissioners.

HOUSE OF LORDS.

BAIL IN CRIMINAL CASES.

THURSDAY.—The LORD CHANCELLOR obtained leave to bring in a Bill for empowering bail in error to be taken in criminal cases—by which he meant cases of misdemeanor.—To be read a second time on Thursday next.—Lord CAMPBELL asked when the Bill as to the challenge to the array would be ready—The LORD CHANCELLOR answered it was now in a state of preparation.

PARLIAMENTARY PAPERS.

MARRIAGES IN ENGLAND.—It appears from very elaborate tables, prepared by the Register-General of Births, Deaths, and Marriages, and on Tuesday laid before Parliament, that the total number of marriages in 1842, in England and Wales, was 118,825; of these 17,689 were in the metropolis alone. Of this number 26,198 were persons who had been married before, the proportion being, 15,619 widowers, and 10,579 widows. Thus the proportion per cent. of those who were re-married was 11·02 for the whole of England, and 12·34 for the metropolis. The proportion of annual marriages to persons of all ages was 1 in 130 in all England, 1 in 102 in London: the annual marriages were to the persons aged from 20 to 40, nearly as 1 to 40 in England, 1 to 37 in the metropolis; or, more exactly, 2·515 per cent.; and 2·675 (as regards London). There was, altogether, 1 marriage to 136 males and females living in 1842, but only 1 person married for the first time to 76·3 persons living, which may be considered equivalent to 1 first marriage to 153 persons living: 11 per cent. of the persons married had been married before, and had been enumerated in the returns of previous years. In 1839 the number married out of 100,000 males was 1,625: and of 100,000 females 1558; in 1840, 1,597 males, and 1,626 females; in 1841, 1,574 males, and 1,504 females; and in 1842, 1,506 males, and 1,439 females. Thus, it will be perceived, there has been a yearly decrease during that period. The annual average has been, however, 1 in 64 males out of 100,000, and 65 females.

MILLWORK AND MACHINERY.—An account of the declared value of all millwork and machinery exported from the United Kingdom in each quarter of the years 1841, 1842, 1843, and 1844, has just been laid before Parliament in the shape of a printed return, by order of Mr. Cardwell. We find, on examining this paper, that the declared value of the millwork and machinery exported in 1841 amounted to 551,361*l.*, of which 470,133*l.* consisted of legal exportations, and 81,228*l.* of licensed exportations, by warrants of the Treasury or the Privy Council. In 1842 the total value amounted to 554,653*l.*, of which 465,829*l.* consisted of legalized, and 88,824*l.* of licensed exportations. In 1843, the total value amounted to 713,474*l.*, of which 616,399*l.* consisted of legal, and 97,075*l.* of licensed exportations. In 1844 the total value of the machinery and millwork exported from the kingdom amounted to 773,187*l.*, consisting altogether of exportations allowed by law.

COURT OF CHANCERY.—The annual accounts from the Accountant-General of the Court of Chancery, presented under an Act of the fifth year of the Queen, were issued, shewing the state of the several funds in his name, called the Suitors' Fund, and the Suitors' Fee Fund, and the charges thereon. It appears that on the Suitors' Fund, the payments in the year amounted to 85,494*l.* 0s. 2d. The balance on the account on the 1st of October last was, in cash, 11,803*l.* 8s. 3d.; on stock, 3,207,650*l.* 13s. 5d. On the Suitors' Fee Fund account the charges for the year ending the 24th of November last amounted to 143,992*l.* 15s. 6d., and the excess of fees above the charges amounted to 11,517*l.* 12s. 4d. The public salaries, &c. were 173,434*l.* 2s. 5d., and the fees paid into Court in the year amounted 154,662*l.* 2s. 7d. The cash amounted to 234,125*l.* 7s. 4d., and the stock to 111,781*l.* 1s. 7d. The fees received in the Masters' offices were 38,632*l.* 11s. 6d., and by the Taxing-Master 32,430*l.* 2s. 2d.

POOR AND COUNTY RATES.—A Parliamentary return has been issued, which was procured by Sir James Graham, shewing the total amount of money levied for poor-rates and county-rates in England and Wales, and the amount expended thereout for the relief and maintenance of the poor for the years ended Lady-day 1813 to 1844 inclusive. The total amount of money levied for poor-rates and county-rates in the years mentioned was 238,153,571*l.* and the sum expended for the relief and maintenance of the poor, 190,369,632*l.* The largest sum levied was in the year 1818, when the amount reached 9,320,440*l.* and the smallest in 1820, when it was only 3,719,655*l.* The poor-rates and county-rates in 1844 amounted to 6,848,717*l.* The largest sum expended for the relief and maintenance of the poor was in the year 1818—7,516,702*l.*; and the smallest in 1837, when it was 4,044,741*l.* The following figures exhibit the money levied and the sum expended thereout, for the last four years—from 1840 to 1844 inclusive.—In 1840, money raised, 6,014,605*l.*; expended, 4,579,965*l.* In 1841, 6,351,828*l.*; expended, 4,760,929*l.* In 1842, 6,552,890*l.*; expended, 4,911,498*l.* In 1843, 7,085,595*l.*; expended, 5,208,027*l.* And in 1844, 6,848,717*l.* and the sum expended, 4,982,096*l.*

BIRTHS, DEATHS, AND MARRIAGES.—The annual report of the Registrar-General has recently been issued. The number of marriages entered in 1842 was 111,825; of births, 517,739; and of deaths, 349,519, shewing an excess of births over deaths of 168,220. In the same year (1842), there occurred 10,881 violent deaths and suicides. "The violent deaths in England appear to be nearly twice as frequent as in the other countries of Europe from which returns have been procured, and this is an attempt to determine the causes of the excess, so far as that could be done from the coroners' information, which, although not made at present upon a uniform plan, furnish many valuable facts, and when compared with the occupations and other circumstances recorded in the registers, or ascertained at the census, become doubly interesting." The Registrar-General, in his report to the Home Secretary, alludes to the Act 3 & 4 Vict. c. 92, enabling courts of justice to admit non-parochial registers as evidence of births or baptism, deaths or burials, and marriages. The registrar states "Regulations have been made, with the approbation of one of her Majesty's principal Secretaries of State, for permitting searches, and granting certified copies or extracts from these registers, and the public are entitled to have access to them every day, except Sunday, Christmas-day, and Good Friday, paying for each search 1s., and for a certified copy 2s. 6d. When the facility thus afforded becomes more generally known than it is at present, I anticipate that great numbers will avail themselves of it, and have recourse to this central office, in which are now deposited the registers and records of more than 4,000 religious congregations dissenting from the Established Church." The number of illegitimate children registered in 1842 amounted to 31,796, which is an admitted increase. The baptisms and births returned in 1830 amounted to 399,324; illegitimate children, 20 039. Births registered in 1842, 517,739; illegitimate children, 34,796. The number of boys born is in all countries greater than the number of girls, and it has been generally observed that the excess of males is greater among legitimate children, but in England the difference appears at present to be inconsiderable, or not more than 8 to 10,000. In the lowest terms that express these relations, there were 20 boys to 19 girls among legitimate, and 21 boys to 20 girls among illegitimate children, born alive.

REDUCTION OF CHANCERY FEES.—A return has just been made to an order of the House of Lords of the 17th of February, 1845, showing the dates and substance of all orders of Court for the reduction of fees in the Court of Chancery, made since the passing of the Court of Chancery Offices Abolition Act in 1842; and of the amount per annum of such reductions. According to that return the following important reductions have been made:—An order of the 22nd of March, 1844, reduced the charge upon copies in the office of the clerks of records and writs from 10d. to 8d. per folio, which reduction amounts to 5,884*l.* 15s. 6d. An order of the 15th of April, 1844, reduced copies in the office of the examiners from 1s. 2d. to 8d. per folio; and this reduction amounts to 854*l.* 11s. 6d. An order of the 21st of June, 1844, reduced the charge upon copies in the two before-named offices from 8d. to 6d. per folio; and these reductions amount, in the first office to 5,884*l.* 15s. 6d., and in the second to 284*l.* 17s. 2d. An order of the 13th of November, 1844, reduced the charge upon copies in the same offices from 6d. to 4d. per folio; and these reductions amount to a further sum of 6,169*l.* 12s. 8d. An order of the 12th of February, 1845, reduced the per centage upon the amount of bills of costs as taxed, which, by an order of the 26th of October, 1842, was made payable in the Taxing-master's office, from 4*l.* to 3*l.* per cent.; this reduction amounts to 5,596*l.* 2s. 8d. Thus the total amount of reductions is 24,674*l.* 15s. per annum; the reductions being calculated upon the business done last year.—H. J. Perry, Principal Secretary.

ORDERS OF REMOVAL.—Mr. Tatton Egerton, M.P. for North Cheshire, has obtained an abstract of the returns of appeals made to the Courts of Quarter Sessions against orders of removal during the years 1841, 1842, and 1843. It appears, that in England the total number of appeals amounted in 1843 to 1,751 (1,550 in the counties and 201 in boroughs); that the number of orders confirmed amounted altogether to 101, and the total number quashed to 1,049, of which 547 were quashed on the merits, 371 on points of form, and 94 by consent. The number of appeals not proceeded with amounted to 607. In 1842, the total number of appeals amounted to 1,437, the total of orders confirmed to 97, and the total number quashed to 802. The grand total (inclusive of Wales) shows, that in 1843 there were altogether 1,847 appeals, and that there were 104 orders confirmed, and 1,118 quashed.

PUBLIC PETITIONS.—The first Report of the Select Committee of the House of Commons on Public Petitions has been printed and distributed. The following petitions have already been laid upon the table of the House by various hon. members, viz. two petitions for arranging the existing differences in the Church of England (caused by recent innovations and attempts to establish a system of priestly domination), signed by 162 persons; a petition signed by 192 persons, against the contemplated union of the dioceses of Bangor and St. Asaph; 94 petitioners against a reduction of the sugar and coffee duties; 2 125 petitioners (all of the city of Bath) for a repeal of the window-tax; 1,240 petitioners against the practice of sending troops abroad; 229 petitioners for an alteration of the Medical Practice Bill of 1844; 32 petitioners against the Parochial Settlement Bill of 1844; and 1,298 petitioners for diminishing the number of public-houses. There are various minor petitions, but signed by very few individuals; we therefore pass them over *sub silentio.*

Crown-Office, Feb. 17 and 18.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—Borough of Buckingham, The Right Hon. Sir Thomas Fremantle, bart.; Borough of Stamford, The Right Hon. Sir George Clerk, bart.; County of Wilts, Southern Division, The Right Hon. Sydney Herbert; Borough of Lewes, The Hon. Henry Fitzroy.

THE MAGISTRATE.

Summary.

ALL matters of interest to Magistrates that have occurred during the past week will be found collected below.

It will be seen that two more of Mr. SYMONS's Bastardy Forms are now ready.

No. 9. Information and complaint of non-obedience to the order.
No. 10. Warrant to apprehend.

SETTLEMENT LAW.—APPEALS.

A VERY interesting and instructive return has just been made to an order of the House of Commons "of all Appeals to Quarter Sessions against Orders of Removal in 1841, 1842, and 1843, distinguishing how many have been quashed on merits, or on points of form."

Returns have been made and are given for every county (except Bedford) and borough in England, and the aggregate result is as follows:—

ruptcy, but that the arrangement upon which the mortgage was given was a mere family arrangement, the debts not being caused by a breach of trust. He, therefore, submitted that interest from the time of the bankruptcy ought not to be allowed. He cited *Anon.* (4 Taunt. 876); and *Page* v. *Newman* (9 Barn. & Cr. 378).

Macnaghten, for the legatees whose claims had been discharged.

The CHIEF JUDGE.—An equitable mortgage is given for a debt, in its nature carrying interest, and a memorandum is given in which interest is not mentioned; afterwards interest is paid by the party owing the money. I am of opinion that the debt is one which carries interest.

COMMISSIONERS' COURTS.

Saturday, Feb. 15.
(Before Mr. Commissioner FANE.)
Re MARGARET PARRY.

Punishment for vexatiously defending an action—Refusal of the Court to order an insolvent's discharge.

This insolvent was in custody at Bury St. Edmund's Gaol, and having petitioned the Court of Bankruptcy, this day was appointed for the detaining creditor to shew cause why she should not be discharged out of custody until her first hearing, pursuant to the new rules.

T. B. Hughes appeared for the opposing creditor.

A clerk to Messrs. Johnson, Son, and Weatherall, solicitors, attended on behalf of the insolvent.

Hughes took the objection that the clerk could not be heard, and the Court so decided.

The insolvent was described as a straw plait manufacturer, and it appeared she had become a party to an accommodation bill with a person named Mackham, and that the same had been discounted by Mr. Bousfield, the opposing creditor. On the bill arriving at maturity it was not paid, and an action was commenced against the insolvent, to which she pleaded she did not accept the bill. The cause was set down for trial, and only two days before it would have been decided, a summons on order was obtained to withdraw the plea. The opposing creditor's costs amounted to 21*l.* 19*s.* 3*d.* being upwards of 12*l.* more than if a judgment had been suffered to go by default.

The COMMISSIONER, on inquiry, finding she had been in custody two months, thought she was not sufficiently punished for the vexatious defence, and refused to discharge her, fixing a day for her to be heard in a month's time.

Monday, Feb. 17.
(Before Mr. Commissioner GOULBURN.)
Re MALTWOOD, Insolvent.

Clerks (not being Solicitors) cannot be heard.

In this case the insolvent was opposed by *Buchanan*, solicitor; a clerk to an attorney appeared on behalf of the insolvent. *Buchanan* took the objection that a clerk could not be heard in this court, but afterwards offered to waive it; but the Commissioner said, Certainly not, we can only hear counsel, solicitors, and the parties themselves; the objection cannot be waived.

Wednesday, Feb. 19.
(Before Mr. Commissioner SHEPHERD.)
Re C. J. MATHEWS.

Where part of consideration of claim was the debt under a former Insolvency Court, creditor can be inserted in the schedule for amount of the new claim only—Assignees can take the same objection as insolvent himself.

This was a dividend meeting for adjustment of claims and distribution of the fund in court, being the whole amount of his first instalment paid in by the insolvent, agreeably to his undertaking on a former occasion.

Phinn appeared on behalf of a creditor named Silk, in support of his claim, which had been inserted in the schedule for 213*l.* being the full amount of several bills of exchange given by the insolvent to the claimant, for securing moneys due from him under his former insolvency, and a new claim for professional services of 43*l.* together with an additional 50*l.* over and above the actual sum due. The learned counsel was ready to concede that unless he could distinguish this case from that of *Sherborne* v. *Osborne* (11 Ad. & El. 1027), in which the authorities on the subject were collected, his claim would fall to the ground, excepting so far as related to the 43*l.*, the new consideration. It was quite clear that under the present law a man might give 50 bills for 1*l.* and that it was no usury. In support of this claim he should cite the case of *Philpott* v. *Aslett* (1 C. M. & R. 85), where, after taking the benefit of the Insolvent Act, a debtor contracted a new debt, and accepted a bill of exchange for the balance of the old and new debt. Being sued upon the bills, he gave a warrant of attorney for the amount, and judgment being entered up on the warrant of attorney, the Court refused to set it aside. The moral consideration runs over the whole transaction, although it would be impossible to say but that the 43*l.* was the moving cause; but it is submitted that the only person who can take advantage of the circumstance is the debtor himself, and he has not and does not claim to do so. The creditors dispute Mr. Silk's right of claim, and the question is, has the Court power to reject debts contained in the schedule? He then referred to the before-mentioned case of *Philpott* v. *Aslett*, and contended that, in analogy therewith, the insolvent having, as it were, neglected to plead the statute, he was entitled to claim the full amount.

Mr. *Lewis*, the solicitor on behalf of the creditors, in reply, referred to the Act of Parliament 5 & 6 Vict. c. 122, and a case in Dowling, in which a like instrument was held to be invalid, and under the 31st section of the Act lastly referred to, any party being a creditor might object to the claim; for, supposing it was otherwise, any fraudulent claim might arise by collusion with the insolvent. The document is void.

The COMMISSIONER.—I think the assignees can take any objection insolvent could have taken, and the claim must be inserted in the schedule for the 43*l.* the new consideration only.

The learned counsel then submitted that after the present creditors were paid twenty shillings in the pound, he should be entitled to be paid the residue of the claim if there should be any assets.

The Solicitor for the insolvent, objected that the securities were void, and there could be no claim.

The COMMISSIONER.—The insolvent will then have paid his creditors according to his undertaking, and it will be for him to object or not, as he has the power to do so.

Claim amended to 43l. accordingly.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEVENSON.)
Wednesday, Feb. 12.
Re DRURY.

The choice of assignee under 7 & 8 Vict. c. 96, cannot be adjourned without an adjournment of the first hearing.

This insolvent came up to-day for his first hearing, when Mr. Higgins, of Bath, solicitor, on behalf of several creditors, appeared to oppose. On examination the insolvent admitted that some years ago he had taken a lease, or agreement for a lease, of some premises, jointly with his brother; that his brother had since given up the whole of the premises to insolvent; that the lease was in the possession of the lessor's attorney, but that he believed his brother had a copy.

Higgins asked for an adjournment, on the ground that he was unable to enter fully into his case until a copy of the lease was filed.

Homes, for the insolvent, suggested that the first hearing should not be adjourned, but that his Honour might name a day for the final order, and reserve leave for *Higgins* to oppose then as fully as he could do now. The objection as to the omission to file a copy of the lease was only raised for the purpose of delay. The lease was mentioned in the schedule, though no copy was filed, and the insolvent's interest in the premises was not of any value.

Higgins said he relied upon the adjournment, otherwise his clients would have attended to vote in the choice of assignee, or he would have brought letters of attorney. At present he was not prepared, although he represented a sufficient number of creditors to carry the assigneeship.

Homes.—Perhaps your Honour will adjourn the choice of assignee without adjourning the first hearing.

His HONOUR.—I cannot do that. By the 7 & 8 Vict. c. 96, sec. 3 the choice of the creditors' assignee must take place at the sitting for the first examination, or at some adjournment *thereof, i. e.* at some adjournment of that sitting. The first hearing must be adjourned. *Adjournment accordingly.*

(Before Mr. Commissioner Serjeant STEPHEN.)
Re ACRAMAN and Co. Bankrupts. *Ex parte* MILES.
Evidence.

Where a witness has had ample opportunity to attend and be personally examined, an affidavit from him will not be received, if objected to.

This was a sitting for the examination of witnesses in opposition to a heavy claim of certain creditors under this bankruptcy.

Rolt and *Homes* appeared for the assignees; *Palmer*, for the claimants; and *Stone*, for the assignees under a separate fiat against D. W. and E. Acraman.

Rolt asked leave to file an affidavit of Mr. Holroyd, who had left this country for Calcutta. The affidavit was sworn on the 17th of January.

Palmer objected.—This is a matter entirely in the discretion of the Court, and, under the circumstances of this case, the affidavit should be rejected. Its object is to contradict the evidence of a witness who has been personally examined. Mr. Holroyd has been several times lately in Bristol, and might easily have attended and given his evidence *vivâ voce*, and submitted himself to cross-examination.

His HONOUR.—When was it first known that Mr. Holroyd's evidence would be required?

Haberfield, solicitor to the assignees.—The point was known in December. I wrote to Mr. Holroyd, requesting him to attend the Court, to be examined *vivâ voce*, but he said he was engaged in many other matters, and could not possibly attend. This was before the 3rd of January, and he has been in Bristol since.

His HONOUR.—Under these circumstances, I cannot allow the reception of the affidavit. Mr. Holroyd might have been summoned to attend. There was ample time, and as his evidence is for the purpose of contradicting the testimony of another witness, he should have submitted himself to cross-examination in the usual manner.

Affidavit rejected.

Ecclesiastical Courts.

ARCHES COURT.

Tuesday, Feb. 18.
The office of the Judge promoted by HOMER and BLOOMER *v.* JONES.
Practice.

The bishop in whose diocese an offence is committed by a clerk holding preferment in another diocese, may issue a commission of inquiry, and if the commissioner report that there is primâ facie ground for the complaint, the bishop of the diocese in which the defendant holds his preferment is to proceed.

This was a question as to the admissibility of the articles in a proceeding against a clergyman for incontinence. The bishop of the diocese had, under the Church Discipline Act, issued a commission of inquiry, and the Commissioners had reported that there was *primâ facie* ground for proceeding, upon which the case was sent by letters of request to this court.

Dr. *Addams*, on behalf of the party proceeded against, objected to the articles, that one of them imputed an offence committed in another diocese, which rendered that article inadmissible, at least, and might extend to the whole, since the proceeding was founded entirely upon the report of the Commissioners, who might have been mainly influenced by that particular charge.

Dr. *Phillimore*, for the promoter, contended, that there was nothing in the Act which prohibited the Court from entertaining the charges relating to both dioceses. In the case of a clerk holding no preferment, the Act provided that the bishop of the diocese in which the offence was committed should proceed; but there was nothing to shew that if a clerk holding preferment in one diocese, committed an offence in another, he might not be proceeded against by his own bishop.

By the COURT.—Then he may be proceeded against twice for the same offence, for the bishop in whose diocese the offence is committed may proceed.

Dr. *Addams*.—And if the offence be committed at Paris, there could be no proceeding at all under the Act.

Sir H. JENNER FUST.—The bishop in whose diocese the offence is committed by a clerk holding preferment in another diocese, may issue a commission of inquiry, and if the commissioners report that there is *primâ facie* ground, the bishop of the diocese in which the party holds preferment is to proceed. In this case, the inquiry of the commissioners, and consequently the articles founded upon their report, must be limited to the diocese in which the party holds preferment; and this Court is confined by the letters of request from the bishop of that diocese, who can only proceed in respect to acts of immorality within his own diocese. The article pleading an offence without the diocese in which the party holds preferment must, therefore, be rejected.

THE LEGISLATOR.

Summary.

NOTHING of the slightest professional interest has occurred in the Legislature during the past week.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.
Monday, Feb. 17.

Parochial Settlement Bill, "to consolidate and amend the laws relating to Parochial Settlement, and to the removal of the Poor."

BILLS READ A SECOND TIME.
Monday, Feb. 17.

Constables (Scotland).

BILLS READ A THIRD TIME AND PASSED.
Thursday, Feb. 21.

Constables (Scotland).

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, Feb. 17.

Greenwich Colliery Railway.

Wednesday, Feb. 19.

Manchester and Birmingham Railway (Ashton Branch).
York and Scarborough Railway (Deviation).
Leeds and Bradford Railway (Extension).
Pudsey Gas.
Manchester and Leeds Railway.
Ashton, Stalybridge, and Liverpool Junction Railway.
Manchester and Leeds Railway (Burnley Branch).
Leeds and West Riding Junction Railway.
Leeds, Dewsbury, and Manchester Junction Railway.
West Yorkshire Railway.
Ellesmere, Birmingham, and Liverpool Junction Canals.
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MARRIAGES IN ENGLAND.—It appears from very elaborate tables, prepared by the Register-General of Births, Deaths, and Marriages, and on Tuesday laid before Parliament, that the total number of marriages in 1842, in England and Wales, was 118,825; of these 17,689 were in the metropolis alone. Of this number 26,198 were persons who had been married before, the proportion being, 15,619 widowers, and 10,579 widows. Thus the proportion per cent. of those who were re-married was 11·02 for the whole of England, and 12·34 for the metropolis. The proportion of annual marriages to persons of all ages was 1 in 130 in all England, 1 in 102 in London: the annual marriages were to the persons aged from 20 to 40, nearly as 1 to 40 in England, 1 to 37 in the metropolis; or, more exactly, 2·515 per cent.; and 2·675 (as regards London). There was, altogether, 1 marriage to 136 males and females living in 1842, but only 1 person married for the first time to 76·3 persons living, which may be considered equivalent to 1 first marriage to 153 persons living: 11 per cent. of the persons married had been married before, and had been enumerated in the returns of previous years. In 1839 the number married out of 100,000 males was 1,625: and of 100,000 females 1553; in 1840, 1,597 males, and 1,626 females; in 1841, 1,574 males, and 1,504 females; and in 1842, 1,506 males, and 1,439 females. Thus, it will be perceived there has been a yearly decrease during that period. The annual average has been, however, 1 in 64 males out of 100,000, and 65 females.

MILLWORK AND MACHINERY.—An account of the declared value of all millwork and machinery exported from the United Kingdom in each quarter of the years 1841, 1842, 1843, and 1844, has just been laid before Parliament in the shape of a printed return, by order of Mr. Cardwell. We find, on examining this paper, that the declared value of the millwork and machinery exported in 1841 amounted to 551,361*l.*, of which 470,133*l.* consisted of legal exportations, and 81,228*l.* of licensed exportations, by warrants of the Treasury or the Privy Council. In 1842 the total value amounted to 554,653*l.*, of which 465,829*l.* consisted of legalized, and 88,824*l.* of licensed exportations. In 1843, the total value amounted to 713,474*l.*, of which 616,399*l.* consisted of legal, and 97,075*l.* of licensed exportations. In 1844 the total value of the machinery and millwork exported from the kingdom amounted to 773,187*l.*, consisting altogether of exportations allowed by law.

COURT OF CHANCERY.—The annual accounts from the Accountant-General of the Court of Chancery, presented under an Act of the fifth year of the Queen, were issued, shewing the state of the several funds in his name, called the Suitors' Fund, and the Suitors' Fee Fund, and the charges thereon. It appears that on the Suitors' Fund, the payments in the year amounted to 85,494*l.* 0s. 2d. The balance on the account on the 1st of October last was, in cash, 11,803*l.* 8s. 3d.; on stock, 3,207,650*l.* 13s 5d. On the Suitors' Fee Fund account the charges for the year ending the 24th of November last amounted to 143,992*l.* 15s. 6d., and the excess of fees above the charges amounted to 11,517*l.* 12s. 4d. The public salaries, &c. were 173,434*l.* 2s. 5d., and the fees paid into Court in the year amounted 154,662*l.* 2s. 7d. The cash amounted to 234,125*l.* 7s. 4d., and the stock to 111,787*l.* 1s. 7d. The fees received in the Masters' offices were 38,632*l.* 11s. 6d., and by the Taxing-Master 32,430*l.* 2s. 2d.

POOR AND COUNTY RATES.—A Parliamentary return has been issued, which was procured by Sir James Graham, shewing the total amount of money levied for poor-rates and county-rates in England and Wales, and the amount expended thereout for the relief and maintenance of the poor for the years ended Lady-day 1813 to 1844 inclusive. The total amount of money levied for poor-rates and county-rates in the years mentioned was 238,153,571*l.* and the sum expended for the relief and maintenance of the poor, 190,369,632*l.* The largest sum levied was in the year 1818, when the amount reached 9,320,440*l.* and the smallest in 1820, when it was only 3,719,655*l.* The poor-rates and county-rates in 1844 amounted to 6,848,717*l.* The largest sum expended for the relief and maintenance of the poor was in the year 1818—7,516,702*l.*; and the smallest in 1837, when it was 4,044,741*l.* The following figures exhibit the money levied and the sum expended thereout, for the last four years from 1840 to 1844 inclusive.—In 1840, money raised, 6,014,605*l.*; expended, 4,579,965*l.* In 1841, 6,351,828*l.*; expended, 4,760,929*l.* In 1842, 6,552,890*l.*; expended, 4,911,498*l.* In 1843, 7,085,595*l.*; expended, 5,208,027*l.* And in 1844, 6,848,717*l.* and the sum expended, 4,982,096*l.*

BIRTHS, DEATHS, AND MARRIAGES.—The annual report of the Registrar-General has recently been issued. The number of marriages entered in 1842 was 111,825; of births, 517,739; and of deaths, 349,519, shewing an excess of births over deaths of 168,220. In the same year (1842), there occurred 10,881 violent deaths and suicides. "The violent deaths in England appear to be nearly twice as frequent as in the other countries of Europe from which returns have been procured, and this is an attempt to determine the causes of the excess, so far as that could be done from the coroners' information, which, although not made at present upon a uniform plan, furnish many valuable facts, and when compared with the occupations and other circumstances recorded in the registers, or ascertained at the census, become doubly interesting." The Registrar-General, in his report to the Home Secretary, alludes to the Act 3 & 4 Vict. c. 92, enabling courts of justice to admit non-parochial registers as evidence of births or baptism, deaths or burials, and marriages. The registrar states—"Regulations have been made, with the approbation of one of her Majesty's principal Secretaries of State, for permitting searches, and granting certified copies or extracts from these registers, and the public are entitled to have access to them every day, except Sunday, Christmas-day, and Good Friday, paying for each search 1s., and for a certified copy 2s. 6d. When the facility thus afforded becomes more generally known than it is at present, I anticipate that great numbers will avail themselves of it, and have recourse to this central office, in which are now deposited the registers and records of more than 4,000 religious congregations dissenting from the Established Church." The number of illegitimate children registered in 1842 amounted to 34,796, which is an admitted increase. The baptisms and births returned in 1830 amounted to 399,324; illegitimate children, 20,039. Births registered in 1842, 517,739; illegitimate children, 34,796. The number of boys born is in all countries greater than the number of girls, and it has been generally observed that the excess of males is greater among legitimate children, but in England the difference appears at present to be inconsiderable, or not more than 8 to 10,000. In the lowest terms that express these relations, there were 20 boys to 19 girls among legitimate, and 21 boys to 20 girls among illegitimate children, born alive.

REDUCTION OF CHANCERY FEES.—A return has just been made to an order of the House of Lords of the 17th of February, 1845, showing the dates and substance of all orders of Court for the reduction of fees in the Court of Chancery, made since the passing of the Court of Chancery Offices Abolition Act in 1842; and of the amount per annum of such reductions. According to that return the following important reductions have been made:—An order of the 22nd of March, 1844, reduced the charge upon copies in the office of the clerks of records and writs from 10d. to 8d. per folio, which reduction amounts to 5,884*l.* 15s. 6d. An order of the 15th of April, 1844, reduced copies in the office of the examiners from 1s. 2d. to 8d. per folio; and this reduction amounts to 854*l.* 11s. 6d. An order of the 21st of June, 1844, reduced the charge upon copies in the two before-named offices from 8d. to 6d. per folio; and these reductions amount, in the first office to 5,884*l.* 15s. 6d., and in the second to 284*l.* 17s. 2d. An order of the 13th of November, 1844, reduced the charge upon copies in the same offices from 6d. to 4d. per folio; and these reductions amount to a further sum of 6,169*l.* 12s. 8d. An order of the 12th of February, 1845, reduced the per centage upon the amount of bills of costs as taxed, which, by an order of the 26th of October, 1842, was made payable in the Taxing-master's office, from 4*l.* to 3*l.* per cent.; this reduction amounts to 5,596*l.* 2s. 8d. Thus the total amount of reductions is 24,674*l.* 15s. per annum; the reductions being calculated upon the business done last year.—H. J. Perry, Principal Secretary.

ORDERS OF REMOVAL.—Mr. Tatton Egerton, M.P. for North Cheshire, has obtained an abstract of the returns of appeals made to the Courts of Quarter Sessions against orders of removal during the years 1841, 1842, and 1843. It appears, that in England the total number of appeals amounted in 1843 to 1,751 (1,550 in the counties and 201 in boroughs); that the number of orders confirmed amounted altogether to 101, and the total number quashed to 1,049, of which 547 were quashed on the merits, 371 on points of form, and 94 by consent. The number of appeals not proceeded with amounted to 607. In 1842, the total number of appeals amounted to 1,437, the total of orders confirmed to 97, and the total number quashed to 802. The grand total (inclusive of Wales) shows, that in 1843 there were altogether 1,847 appeals, and that there were 104 orders confirmed, and 1,118 quashed.

PUBLIC PETITIONS.—The first Report of the Select Committee of the House of Commons on Public Petitions has been printed and distributed. The following petitions have already been laid upon the table of the House by various hon. members, viz. two petitions for arranging the existing differences in the Church of England (caused by recent innovations and attempts to establish a system of priestly domination), signed by 162 persons; a petition signed by 192 persons, against the contemplated union of the dioceses of Bangor and St. Asaph; 94 petitioners against a reduction of the sugar and coffee duties; 2,125 petitioners (all of the city of Bath) for a repeal of the window tax; 1,240 petitioners against the practice of sending troops abroad; 229 petitioners for an alteration of the Medical Practice Bill of 1844; 32 petitioners against the Parochial Settlement Bill of 1844; and 1,298 petitioners for diminishing the number of public-houses. There are various minor petitions, but signed by very few individuals; we therefore pass them over *sub silentio*.

Crown-Office, Feb. 17 and 18.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—Borough of Buckingham, The Right Hon. Sir Thomas Fremantle, bart.; Borough of Stamford, The Right Hon. Sir George Clerk, bart.; County of Wilts, Southern Division, The Right Hon. Sydney Herbert; Borough of Lewes, The Hon. Henry Fitzroy.

THE MAGISTRATE.

Summary.

ALL matters of interest to Magistrates that have occurred during the past week will be found collected below.

It will be seen that two more of Mr. SYMONS'S Bastardy Forms are now ready.

No. 9. Information and complaint of non-obedience to the order.
No. 10. Warrant to apprehend.

SETTLEMENT LAW.—APPEALS.

A VERY interesting and instructive return has just been made to an order of the House of Commons "of all Appeals to Quarter Sessions against Orders of Removal in 1841, 1842, and 1843, distinguishing how many have been quashed on merits, or on points of form."

Returns have been made and are given for every county (except Bedford) and borough in England, and the aggregate result is as follows:—

	1841.	1842.	1843.
Orders confirmed . . .	63	97	101
Quashed on the merits . .	369	448	547
Quashed for formal defects .	127	230	371
Quashed by consent . .	57	69	94
Appeals not proceeded with .	347	532	607
Total number quashed . .	574	802	1,049
Total number of appeals . .	984	1,437	1,751

These figures do not exactly tally, owing, in some measure, to the appeals "quashed by consent" being in some counties again classed as quashed on the merits or on points of form. Some counties, also, have returned appeals as quashed both ways.(a) These irregularities prevent any accurate analysis of the subject, but they scarcely detract from the value of the return as affording a general glance of the progress of appeals, and the tendency of the results.

We confess our surprise that appeals are so rapidly on the increase. They have increased, it appears, by upwards of 77 per cent. in three years! There is one obvious reason for *some* increase, namely, in that of pauperism during the same time. But, by a return also laid before Parliament last week, it appears that the sums expended for the relief and maintenance of the poor in 1841 were 4,760,929*l.*; in 1842, 4,911,498*l.*; and in 1843, 5,208,027.(b) Here is, therefore, an increase of little more than nine per cent.; which cannot account for that of appeals. The counties in which the increase of appeals is the most marked are those of Cornwall, Durham, Salop, Wilts, Stafford (where they have risen from 25 to 104), and the West Riding. In Cheshire and Lancashire the increase took place in 1842, and in Middlesex, where the increase has been but slight, it is confined also to 1842. We should be obliged to our correspondents in these counties, if they who are versed in these matters would communicate to us the means of throwing light upon the phenomenon of so sudden an explosion of parochial litigation.

The return clearly shews the necessity of appeals under the present system, and affords a complete answer to the objection, that the power of appeal gives rise to vexatious and groundless litigation, for of the total number of the appeals of which the result is known, scarcely one out of twenty-five of the orders have been confirmed, and of those quashed, by far the greater part have been quashed on the merits. In this respect there has, it will be observed, been a marked change of late. The disproportion between these two grounds of quashing has been much diminished during the three years. Whereas one only out of fo r was quashed for defect of form in 1841, the proportion in 1843 had grown to about three out of seven. We observe that in the West Riding, where there are far more appeals than either in Lancashire or Middlesex, this has been peculiarly the case: also in Middlesex, Staffordshire, and Cornwall.

We are very far from lamenting this as an evil. It is a ve great benefit to parishes so to insist on plainness and fulness of statement, that there may be no possibility of mistaking the nature and legality of the proceedings taken. We have always set our faces against the ingenious devices put forth for the succour of slovenliness and the protection of a paltry economy in the management of these matters.

We, however, regret to see the increase of appeals on any point, because it would appear that the experience of the last ten years has been less profited by than we hoped had been the case, and that the law was beginning to be tolerably understood. True it is that the commercial crisis of the period in question may have in some measure tended to the augmentation of removals, but we cannot well reconcile this to the very small comparative growth of poor relief. People must become chargeable before they can be removed. There is, upon the whole, some mystery in the matter, of which we must look to the country for a solution.

S.

(a) Durham, for instance.
(b) Last year it subsided to 4,982,696*l.*

WHAT IS TO BE DONE WITH MR. LUMLEY'S ORDERS?

This is a question which the Queen's Bench, or in all probability the House of Commons, can alone finally set at rest. In what we are about to say, we must be understood to speak with very great diffidence on a subject so thoroughly complicated, obscure, and difficult. The difficulty arises not only from the positive badness of the orders, and the obvious impossibility of acting with any safety upon them, but from the anomalous character of the proceedings taken under the Act, which divests the case of that light and aid which is derived from established law or recognized decisions of an analogous character. There is nothing parallel to the difficulty in question.

First and foremost, have the magistrates power to make another order, proceeding *de novo*, and merely treating the former order as a nullity —in point of fact, making an amended order? We believe that they have no such power. In cases of convictions it has been held both legal and laudable to do so. (*Rex* v. *Barker*, 1 East, 186.) But the distinction in this respect between convictions and orders was expressly taken in the case of *Rex* v. *JJ. Cheshire* (5 B. & Adol. 439). There an informal order had been made, ordering R. O. to pay 72*l.* 5*s.* being double the value of goods fraudulently removed to defeat a distress under 11 Geo. 2, c. 19. The defendant appealed, and on the first day of sessions the justices caused a new and amended order to be filed with the clerk of the peace, giving notice of it on the same day to the appellant. The sessions then persisted in confirming the amended order. A *mandamus* was, however, granted, compelling the sessions to enter continuances, and hear the appeal on the first order. Parke, J. said, "The moment the justices have put their hands and seals to it, meaning it to be an order, it is one, and must be subject to the same rules." Lord Denman, C. J. also said, "If an order of removal were absurd, could a new one be filed at the sessions? *The absurdity of the instrument cannot increase the power* of the justices. * * The document here is only an order; and the consequence is, that the party affected by it had a right to appeal against it in the form in which it was made."

Thus, where the putative father has appealed, the order cannot be amended, and must be quashed; and we are clear that no fresh order upon the same charge can be made. The only question arises where the man has not appealed. In such case, instead of proceeding upon the bad order, we are inclined to think that the justices who made the order have the power of issuing a *supersedeas* and so nullifying it. We are also disposed to think that in giving notice to the man that his costs of the second hearing would be allowed to him, it would, under the circumstances of the case, be permissible to summons him again and proceed *de novo*. The great objection to the proceeding would be got over by the notice of allowing the costs, for the grievance to the man is in being twice tried upon the same charge. We must again express the entire absence of confidence with which we throw out this not unimportant suggestion. The most experienced lawyers are at a loss how to remedy the mischief of this case. We confess we should like to see this plan tried. The necessity of the case would afford a strong ground of justification were the proceeding brought, as it may probably be, before the Court of Queen's Bench.

Though certainly not strictly analogous, the case of a *supersedeas* to an order of removal affords at least some degree of support to the course we have suggested. Where an order of removal had been abandoned, and a *supersedeas* issued *before* an appeal was entered, the Court of Queen's Bench strongly upheld the sessions in refusing afterwards to hear the appeal, so as to conclude the respondents upon the bad order, and shut them out from the power of obtaining a better. (*Reg.* v. *JJ. West Riding*, 2 Q.B. 785.)

We learn that Sir James Graham has given an intimation that an Amendment Bill will be introduced, which may perhaps remove the difficulty.

S.

The following building is certified as a place duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 Wm. 4, c. 85:—Canaan Chapel, Foxhole, Glamorganshire; Alexander Cathbertson, superintendent registrar.

THE LAWYER.

Summary.

The legal events of the week are few, and none demand particular notice.

The following indignant letter on the subject of some recent promotions has appeared in the *Morning Chronicle*:—

TO THE EDITOR OF THE MORNING CHRONICLE.

Sir,—A job and injustice are about to be, if not already, perpetrated. The papers announce that Messrs. Humfrey, Gurney, Hayward, and Butt, are about to be made Queen's Counsel. This is true, and no possible objection can be made to any of those gentlemen. But it is also announced that Mr. Montague Chambers is to be promoted to that rank. This is not true, and a ranker job and grosser injustice never were attempted, even by Lord Lyndhurst. Mr. Chambers is senior to all the four gentlemen who are to be honoured with a silk gown, except Mr. Humfrey, and has certainly triple the practice of two of them, and as much as either of the others; moreover, he is universally esteemed and respected by the bench and bar, and is every way deserving the honour he aspires to. Nor is there any local objection on the ground of his circuit (the Home), as Mr. Gurney, who is his junior on it, is to be favoured with the silk gown. Why, then, is Mr. Chambers refused?

The best way to find that out will be to look to the result. By giving a silk gown to Mr. Gurney and not to Mr. Chambers, Mr. Gurney will lead the Home Circuit, including Mr. Chambers; by giving it to Mr. Chambers, he would lead Mr. Gurney and the Home Circuit. But why favour Mr. Gurney? Lord Lyndhurst's love of a job may be cause enough for this; but there are certain coincidences which are very remarkable; though, suffice it to say that this case is very like the Northern Circuit job, when Mr. Wortley took rank. There it was not granted to any one else for some time, and then to a member of Parliament, and also to a near connection of a *then high legal officer*; while it was refused to a gentleman senior to Mr. Wortley, and one of the others, and equal to them all in the amount of practice, but who did not possess either of the recommendations I have referred to, or the still stronger one of being son of the President of the Council. To make the present job more palpable, Lord Lyndhurst is about to confer a patent of precedence on a learned serjeant *not* on the Home Circuit, and to refuse it to two *who are*, and who have ten times his practice; the object being to put Mr. Gurney over their heads. It is a gross job, and a grievous injustice, not merely to the feelings of a very legitimate ambition, but a pecuniary injustice to Mr. Chambers, nearly amounting to a robbery. If you cannot stop it, at least expose it.—I am, Sir, yours obediently,

A Constant Reader.

Temple, Feb. 17.

Knowing nothing of the merits, we offer no opinion; but a complaint is always entitled to a hearing, and therefore we give to it a place, as we shall do to any explanation or reply.

Mr. Baron Platt.—The members of the Home Circuit held a meeting last week, at the chambers of Mr. Serjeant Channell, at which it was resolved that the learned Baron should be invited to a most magnificent entertainment, as a mark of the high esteem in which he is held by the Bar. The learned Baron has accepted the invitation, and the dinner will consequently take place at the Albion Tavern, on Friday evening next. Mr. Russell Gurney is to preside as chairman in his new capacity as leader of the circuit. The banquet will be of the most costly description, and the tickets are two guineas each.—*Times.*

Bankruptcy Court at Hull.—It is said to be in contemplation that one of the commissioners of the Leeds district shall hold a court in Hull on one day in every week.

PROMOTIONS, APPOINTMENTS, ETC.

LIST OF SHERIFFS, UNDER-SHERIFFS, DEPUTIES, AND AGENTS, FOR 1845.

(From Laidman and Cox's List.)

Warrants are granted in Town for Carmarthen Borough, Carmarthenshire, Radnorshire, and all places except Berwick-upon-Tweed, Canterbury, Cinque Ports, Durham, Exeter, Gloucestershire, Kingston-upon-Hull, Lancashire, Lincoln City, Norwich, Poole, Southampton, York City, and the remainder of the Welsh Counties.

COUNTIES, &c.	SHERIFFS.	UNDER-SHERIFFS.	DEPUTIES AND TOWN AGENTS.
Bedfordshire	William Bartholomew Higgins, of Turvey, esq.	Messrs. Sharman and Turnley, of Bedford	Meggison, Pringle, and Co. 3, King's-road, Bedford-row.
Berkshire	John Bligh Monck, of Coley Park, esq.	Edward Vines, of Reading, esq.	Abbott, Jenkins, and Abbott, 8, New-inn, Strand.
Berwick-upon-Tweed	George Johnstone, of Berwick-upon-Tweed, esq.	Robert Home, of Berwick-upon-Tweed, esq.	Joseph Warner Bromley, 1, South-square, Gray's-inn.
Bristol, city of	John Harding, of Bristol, esq.	William Ody Hare, of Bristol, esq.	Bridges and Mason, 23, Red Lion-square.
Buckinghamshire	Edmund Francis Dayrell, of Lillingstone Dayrell, esq.	Messrs. Tindal and Son, of Aylesbury	Owen Tickell Alger, 37, Bedford-row, Holborn.
Cambridge and Hunts	John Bonfoy Rooper, of Abbotts Ripton, esq.	George Game Day, of St. Ives, esq.	Milne and Co. 2, Harcourt-buildings, Temple.
Canterbury, city of	Joseph Jackson, of St. Margaret-street, esq.	Rob. Geo. Chipperfield, of Canterbury, esq.	Thomas Kirk, 10, Symond's-inn, Chancery-lane.
Cheshire	Sir William Thomas Stanley Massey Stanley, of Hooton, bart.	Messrs. Mousley and Son, of Derby (A. U. John Hostage, of Chester, esq.)	Gregory, Faulkner, and Co. 1, Bedford-row.
Chester, city of	Edward Tilston, of Chester, esq.	John Finchett Maddock, of Chester, esq.	John Philpot Jun. 3, Southampton-street, Bloomsbury.
Cinque Ports	His Grace the Duke of Wellington	Thomas Pain, of Dover, esq.	Waterman Wright, and Kingsford, 24, Essex-street, Strand.
Cornwall	Francis Rodd, of Trebartha Hall, esq.	Thomas Whitford, of St. Columb, esq.	Paynter and Ollard, 13, South-square. Gray's-inn.
Cumberland	Timothy Featherstonhaugh, of the College, Kirkoswald, esq.	Silas Saul, of Carlisle, esq.	George Carew, 9, Lincoln's-inn Fields.
Derbyshire	Thomas Pares, of Hopwell, esq.	John Barber, of Derby, esq.	Capes and Stewart, 1, Field-court, Gray's-inn.
Devonshire	Edward Simcoe Drewe, of the Grange, esq.	Mark Kennaway, of Exeter, esq.	Finch and Neate, 5, Lincoln's-inn Fields.
Dorsetshire	Edward Balston, of Corte Hill, esq.	William Manfield, of Dorchester, esq.	Rhodes and Lane, 63, Chancery-lane.
Durham	John William Williamson, of Whickham, esq.	Thomas Griffith, of Durham, esq.	James Griffith, 6, Raymond-buildings, Gray's-inn.
Essex	George Round, of Colchester, esq.	Thomas Morgan Gepp, of Chelmsford, esq. (A. U.)	Thomas Wright Nelson, 62, Cheapside.
Exeter, city of	William Denis Moore, of Exeter, esq.	Edwin Force, of Exeter, esq.	William Harris, 5, Stone-buildings, Lincoln's-inn.
Gloucestershire	Edmund Hopkinson, of Edgeworth Manor, esq.	John Brurup, of Gloucester, esq.	Jones, Trinder, and Tudway, 1, John-street, Bedford-row.
Gloucester, city of	Charles Parker, of Gloucester, esq.	John Lovegrove, of Gloucester, esq.	Nicholls and Doyle, 48, Bedford-row.
Hampshire	Sir Richard Godin Simeon, of Swanston, bart.	Charles Seagrim, of Winchester, esq.	William Brakenridge, 16, Bartlett's-buildings.
Herefordshire	James King King, of Staunton Park, esq.	Richard Underwood, of Hereford, esq.	George Pleydell Wilton, 1, Raymond-buildings, Gray's-inn.
Hertfordshire	Sir Henry Meux, of Theobald's Park, bart.	Messrs. Longmore and Sworder, of Hertford	Hawkins, Bloxam, Stocker, and Bloxam, 2, New Boswell-court.
Huntingdon and Camb.	John Bonfoy Rooper, of Abbotts Ripton, esq.	George Game Day, of St. Ives, esq.	Milne and Co. 2, Harcourt-buildings, Temple.
Kent	Sir Moses Montefiore, of East Cliff, Saint Lawrence, Thanet, knt	David Williams Wire, of 9, St. Swithin's-lane, esq.	Palmer, France, and Palmer, 24, Bedford-row.
Kingston-upon-Hull	Robert Harrison, of Kingston-upon-Hull, esq.	John Earnshaw, of Kingston-upon-Hull, esq.	Zachary Brooke, 17, Featherstone-buildings, Holborn.
Lancashire	Pudsey Dawson, of Hornby Castle, esq.	Messrs. Higgin and Maxted, of Lancaster, (A. U. John Stanfield, of Preston, esq.)	Bell, Brodrick, and Bell, 9, Bow-churchyard, Cheapside.
Leicestershire	William Corbet Smith, of Bitteswell, esq.	Robert William Fox, of Lutterworth esq (A. U. Wm. Gregory, of Leicester, esq).	Campbell and Witty, 16, Essex-street, Strand.
Lichfield, city of	John Thaynes Blood, of Lichfield, esq.	Francis Eggington, of Lichfield, sen. esq.	Messrs. Lawrence, 25, Old Fish-street, Doctors' Commons.
Lincolnshire	Thomas Coltman, of Hagnaby Priory, esq.	Messrs. Walker and Son, of Spilsby	Taylor and Collisson, 28, Great St. James-st. Bedford-row.
Lincoln, city of	John Summerscales, of Lincoln, esq.	Richard Mason, of Lincoln, esq.	
London, city of	William Hunter, of Moorgate-street, esq.	George Matten, of 31, and 35, Commercial Sale Rooms, Mincing-lane, esq. Wm. Henry Ashurst, 137, Cheapside, esq.	James and Potter, Secondaries' Office, 5, Basinghall-street.
Middlesex	Thomas Sydney, of Ludgate-hill, esq.		Messrs. Burchell, Sheriffs' Office, 24, Red Lion-square.
Monmouthshire	William Phillips, of Whitson House, esq.	Messrs. Prothero and Towgood, of Newport	George Hall, 11, New Boswell-court.
Newcastle-upon-Tyne	John Featherstone Ayton, of Newcastle, esq.	William Harle, of Westgate-street, esq.	Raimondi and Gooday, 14, South-square, Gray's-inn
Norfolk	Theophilus Russell Buckworth, of Cockley Cley, esq.	Charles Bonner, of Spalding, esq. (A. U. Messrs. Adam Taylor and Sons, Norwich)	Temple and Bonner, 16, Furnival's-inn.
Northamptonshire	The Hon. Richard Watson, of Rockingham Castle	Henry Lamb of Kettering, esq.	Grimaldi, Stables, and Burn, 1, Copthall-court, Throgmorton-street.
Northumberland	Ralph Carr, of Hedgeley, esq.	Peregrine George Ellison, of Newcastle, esq.	James Griffith, 6, Raymond-buildings, Gray's-inn.
Norwich, city of	John Betts, of Norwich, esq.	John Oddin Taylor, of Norwich, esq.	White and Borrett, 35, Lincoln's-inn Fields.
Nottinghamshire	William Hodgson Barrow, of Southwell, esq.	Richard Bridgman Barrow, of Southwell, esq (A. U. John Brewster of Nottingham, esq.)	Capes and Stuart, 1, Field-court, Gray's-inn.
Nottingham, town of	William Knight, of Nottingham, esq	Christopher Swann, of Nottingham, esq.	Holme, Loftus, and Young, 10, New-inn.
Oxfordshire	John Sidney North, of Wroxton Abbey, esq.	Benjamin Aplin, of Banbury, esq.	Benjamin Aplin, 5, Furnival's-inn, Holborn.
Poole, town of	William Pearce, of Poole, esq.	Henry Mooring Aldridge, of Poole, esq.	Cuvelje, Skilbeck, and Hall, 19, Southampton-buildings.
Rutlandshire	Henry Bennet Pierrepoint, of Ryhall, esq.	William Hopkinson, of Stamford, esq.	Taylor and Collisson, 28, Great St. James-st. Bedford-row.
Shropshire	St. John Chiverton Charlton, of Apley Castle, esq.	William Nock, of Wellington, esq (A. U. Joshua John Peele, of Shrewsbury, esq.)	Edward Smith Bigg, 38, Southampton-buildings.
Somersetshire	John Lee Lee, of Dillington House, esq.	Edward Coles, of Taunton, esq.	W. and F. Dyne, 61, Lincoln's-inn Fields.
Southampton, town of	Joseph Ball, of Southampton, esq.	Richard Blanchard, of Southampton, esq.	Davies and Son, 21, Warwick-street, Regent-street.
Staffordshire	Charles Smith Forster, of Hamstead Hall, esq.	Messrs. Keen and Hand, of Stafford	White, Eyre, and White, 11, Bedford-row.
Suffolk	Henry Wilson, of Stowlangtoft, esq.	Messrs. Wayman, Greene, and Smythies, Bury St. Edmunds	Walter and Pemberton, 4, Symond's-inn, Chancery-lane.
Surrey	Richard Fuller, of the Rookery, Dorking, esq.	Mark Smallpiece, of Dorking, esq.	Abbott, Jenkins, and Abbott, 8, New-inn, Strand.
Sussex	James Baril Daubuz, of Offington, esq.	Thomas France, of 24, Bedford-row, esq.	Palmer, France, and Palmer, 24, Bedford-row.
Warwickshire	James Roberts West, of Alscot, esq.	Thomas Heath, of Warwick, esq.	Ensor and Pittendreigh, 14, South-square, Gray's-inn.
Westmoreland	The Right Hon. the Earl of Thanet	John Heelis, jun. of Appleby, esq.	George Mounsey Gray, 9, Staple-inn.
Wiltshire	Wade Browne, of Monkton Farleigh, esq.	Wm. Stone, of Bradford, esq. (A. U. Matthias Thos. Hodding, of Salisbury, esq.)	Smith and Atkins, 12 Serjeants'-inn, Fleet-street.
Worcestershire	Thomas Simcox Lea, of Astley Hall, esq.	Messrs. Bird, Saunders and Bird, Kidderminster (A. U.) Messrs. Gillam and Son, of Worcester	Cardales and Iliffe, 2, Bedford-row.
Worcester, city of	Edward Lloyd, of Barbowme, esq.	Robert Tomkins Rea, of Worcester, esq	George Hall, 11, New Boswell-court.
Yorkshire	Sir William Bryan Cooke, of Wheatley, bart.	Robert Henry Anderson, of York, esq	Charles Lever, 10, King's-road, Bedford-row.
York, city of	Henry Bellerby, of York, esq.	Henry Richardson, of York, esq.	No Deputy or Agent to be appointed.

NORTH WALES.

COUNTIES, &c.	SHERIFFS.	UNDER-SHERIFFS.	DEPUTIES AND TOWN AGENTS.
Anglesea	Robert Jones Hughes, of Plas Llangoed, esq.	William Hughes, of Amlwch, esq.	William Jones, 11, Parliament-street.
Carnarvonshire	Postponed.		
Denbighshire	Charles Wynne, of Garthmeilio, near Cerrigy-driudon, esq.	Jas. Vaughan Horne, of Vale St. Denbigh, esq.	Edward Robert Butler, 7, Furnival's-inn.
Flintshire	Ralph Richardson, of Greenfield Hall, esq.	Messrs. Roberts and Son, of Mold	Milne and Co. 2, Harcourt-buildings, Temple.
Merionethshire	Richard Watkin Price, of Rhiwlas, esq.	Messrs. Williams and Breese, of Portmadoc	Rob. Vaughan Wynne Williams, 3, Paper-buildings, Temple.
Montgomeryshire	John Winder Lyon Winder, of Vaynor Park, esq.	Charles Thomas Woosnam, of Newtown, esq.	Harvey Bowen Jones, 22, Austin Friars.

SOUTH WALES.

COUNTIES, &c.	SHERIFFS.	UNDER-SHERIFFS.	DEPUTIES AND TOWN AGENTS.
Breconshire	William Williams, of Aberpergwm, esq.		Jones, Trinder, and Tudway, 1, John-street, Bedford-row.
Cardiganshire	John Lloyd Davies, of Alltyrodyn, esq.	Thomas Morgan, of Cardigan, esq.	Rickards and Walker, 29, Lincoln's-inn Fields.
Carmarthen, boro. of	John Lewis Brigstocke, of Carmarthen, esq.	George Thomas, jun. of Carmarthen, esq.	
Carmarthenshire	David Jones, of Glanbrane Park, Llandovery, esq.	Dav. Thos. of Brecon, esq. (A. U.) Charles Bishop, of Llandovery, esq.	Henry Hammond, 16, Furnival's-inn, Holborn.
Glamorganshire	Robert Savours, of Trecastle, esq.	William Lewis, of Bridgend, esq.	Isaac Wrentmore, 19, Lincoln's-inn Fields.
Haverfordwest, town of	Mr. John Llewhellin, of Hill-street	No U. S., Deputy, or Agent, to be appointed.	Writs to be sent direct to the Sheriff.
Pembrokeshire	Abel Lewis Gower, of Castlemalgwynne, esq.	William Amlot, of Cardigan, esq.	Richard Nation, 4, Orchard-street, Portman-square.
Radnorshire	James Davies, of Colva, esq.	Richard Wm. Banks, of Kington, Herefordshire, esq.	Henry Hammond, 16, Furnival's-inn, Holborn.

LAW APPOINTMENTS IN N. S. WALES.—In consequence of the lamented death of Sir James Dowling, the Solicitor-General, Mr. A'Beckett has been temporarily appointed by the Governor of New South Wales as judge of the Supreme Court, and Mr. William Montagu Manning has been appointed, also *pro tem.* to the Solicitor-Generalship. Mr. Manning has filled the situation of Chairman of the Quarter Sessions for New South Wales during the last seven years, to the satisfaction of the whole colony, and various congratulatory addresses have been presented to him from the magistrates. He was the coadjutor of Mr. Neville in the series of Reports in the Queen's Bench, known as Neville and Manning, and is a nephew of Mr. Serjeant Manning. Both these appointments will, we hope, be confirmed by the Home Government, as the long experience which both these gentlemen have had of the colony and its peculiar population, as well as their high character, eminently fits them for the position which they now hold until the Queen's pleasure be known. [We are authorized to state that Serjeants Manning and Channell have been honoured by the grant of patents of precedency under the Great Seal.]

Messrs. Butt and Hayward, of the Western Circuit, and Mr. Russell Gurney, of the Home Circuit, have been appointed Queen's Counsel.

The Lord Chancellor has appointed Richard Gibson, of Wigan, in the county palatine of Lancaster, gent.; James Blake, of Croydon, in the county of Surrey, gent.; Henry Yorke, of Oundle, in the county of Northampton, gent. to be Masters Extraordinary in the High Court of Chancery.

WHITEHALL, Feb. 12.—The Right Hon. Sir Nicolas Conyngham Tindal, Knt. Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Francis Soames, of Workingham, in the county of Berks, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Berks, and also in and for the counties of Wilts, Surrey, Hants, and Oxford.

COURT PAPERS.

COURT OF QUEEN'S BENCH.

8th Victoria—20th February, 1845.

This Court will, on Saturday, the 1st day of March next, at ten o'clock, A.M., hold a sitting, and will deliver judgment in cases that have been argued.

BY THE COURT.

FURTHER REDUCTION OF CHANCERY FEES.

ORDER OF COURT,

Wednesday, 12th Feb. 1845.

The Right Honourable John Singleton, Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry, Lord Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice-Chancellor of England, the Right Honourable the Vice-Chancellor Sir James Lewis Knight Bruce, and the Right Honourable the Vice-Chancellor Sir James Wigram, do hereby, in pursuance of an Act of Parliament passed in the fifth and sixth years of the reign of her present Majesty, intituled "An Act for Abolishing certain Offices of the High Court of Chancery in England," and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following, that is to say:—

That the Taxing Masters and their clerks shall, in lieu and instead of the fee of four pounds for per-centage on the amount of every bill of costs as taxed, mentioned in the third schedule to the order of court of the 26th Oct. 1842, receive and take the fee of three pounds for such per-centage, and no more, upon all bills of costs brought in for taxation after the 13th Feb. instant.

That this order be entered with the registrar of the High Court of Chancery.

(Signed) LYNDHURST, C.
LANGDALE, M. R.
LANCELOT SHADWELL, V.C.E.
J. L. KNIGHT BRUCE, V. C.
JAMES WIGRAM, V. C.

LEGAL INTELLIGENCE.

WIGNEY'S ESTATE.—The dividends just declared are as follows:—Joint estate, 5d.; I. N. Wigney's separate estate, 4s. 3d.; and C. Wigney's separate, 5s. 3d. in the pound.—*Brighton Guardian.*

SUBMISSION OF THE ROYAL COURT, JERSEY.—The States met on Tuesday and Wednesday, and discussed with closed doors the subject of Mr. Wilson and the *habeas*. It was decided, after a rather stormy debate, that the writ should be obeyed under protest; and Mr. Dupré, the solicitor-general, and Mr. Godfray, constable of St. Saviour's, were directed to proceed to London to represent the interests of the states and the Royal Court. They will leave the island this day by the *Monarch*, and Mr. Wilson will go in the same vessel. Colonel Le Couteur left this island, by the *Transit*, on Wednesday last.—*Jersey Times*, of Feb. 7.

IRELAND.

Dublin, Wednesday evening, Feb. 19.

The following gentlemen having been previously admitted members of the Honourable Society of the King's Inns, were sworn in as attorneys of the Court of Exchequer, before the Right Hon. Baron Lefroy, on the last of the eight days after last Hilary Term:—Berkeley Edgar Whitestone, Robert King Piers, Perry Nicholl Bolger, Robert Ross Todd, A.B., Trin. College, Dublin, William Humphrey Browne, Stephen Frewen, John Rowan, Leonard Monogh, William Leeds, William Morris Tandy, James Ansdell Leech, Michael Morony, Leonard Prendergast, William O'Driscoll, Abraham Powell, A.B., Trin. Coll., Dublin, Francis Donagh Henzell, Patrick James Mooney, Ffrench Keogh, —— Kelly, Piers Gale, William Courtenay, Wellington Shegog, and William Colbourne, Esqrs.

THE BENCHERS OF THE KING'S INNS.—MR. HARDY'S CASE.—The Committee (Mr. Commissioner Macan, Q.C., Serjeant Stock, LL.D., and Mr. Gilmore, Q.C.) appointed by the general body of the Benchers to examine into and report upon the facts and circumstances of this case, have at length concluded their laborious investigation, after having sat for eighteen successive days. Their proceedings have been conducted, from the commencement, with extraordinary privacy, no person whatever, not even Mr. Hardy, nor any of his counsel, having been permitted to be present at their meetings, and until their report is laid before the general body of the benchers, which I understand cannot be done until the judges return from circuit, or more probably until the commencement of next term, when a special meeting of all the members of the bench will most probably be summoned for the purpose; under these circumstances, of course, no official information can be expected on the subject at present. I may, however, as the subject is one of great public and professional interest, and that an impression has been for some time gaining ground in the hall of the Four Courts (and I believe there is no doubt that it is founded upon authentic though non-official information) state that the investigation will terminate in a manner highly favourable to the feelings and character of Mr. Hardy, at whose special instance and request, it will be remembered, the inquiry was entered upon; and it is a circumstance strongly confirmatory of this impression, that of several witnesses who were ready to attend and give evidence on behalf of Mr. Hardy before the committee, and whose names were sent in to them by Mr. Hardy for that purpose, it was not deemed necessary to examine a single one.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY OF ATTORNEYS AND SOLICITORS, IRELAND.

The following petition has emanated from this society, and has been extensively signed by the attorneys of Ireland.

To the Right Honourable and Honourable the Knights, Citizens, and Burgesses in Parliament assembled.

The humble Petition of the undersigned Attorneys and Solicitors, practising in that part of the United Kingdom of Great Britain and Ireland, called Ireland, on behalf of themselves, and the other Attorneys and Solicitors of Ireland.

Sheweth,

That by an Act of Parliament passed in the 46th year of the reign of King George 3, c. 64, the following annual certificate duties were imposed upon every attorney and solicitor practising in Ireland, viz.:—

If not admitted three years, 1*l*.

If more than three years, 3*l*.; and which duties were confirmed by two subsequent Acts, one passed in the 47th year, c. 50, and the other in the 52nd year, c. 87, of King George 3.

That by another Act passed in the 55th year of King George 3, c. 78, the said annual duties were increased, and the following were then imposed in lieu thereof, viz.:—

If admitted for three years and upwards, 8*l*.

If not admitted three years, 3*l*.; and which increased duties were confirmed by a subsequent Act passed in the 56th year of King George 3, c. 56.

That by another Act passed in the 5th and 6th years of the reign of her present Majesty, c. 82, the said duties were further increased, and the following were then imposed, viz.:—

If resident in the city of Dublin, or within three miles thereof, and admitted three years or upwards, 12*l*.

If not admitted so long, 6*l*.

If resident elsewhere in Ireland, and admitted three years or upwards, 8*l*.

If not admitted so long, 4*l*.

That by the said last-mentioned Act, the Stamp Duty upon all articles of clerkship or apprenticeship to an attorney or solicitor (which had been previously 100*l*.) was increased to 120*l*., and a further sum of 1*l*. 15*s*. was imposed on the counterpart thereof, and a duty of 25*l*. is payable upon the admission of an attorney, amounting altogether to the sum of 146*l*. 15*s*. previous to each admission, producing an average annual revenue to the Crown of nearly 20,000*l*., in addition to the duty on the certificate.

That the duties on articles of apprenticeship or clerkship in Ireland for ten years from Hilary Term 1835, to Hilary Term 1845, amounted to about 128,863*l*. 10*s*.; and on admissions for the same period, to 41,830*l*.; making in that period no less a sum than 170 693*l*. 10*s*.

That the profession of attorney and solicitor is the only one in which an individual is subject to an annual tax for liberty to employ his time and talents.

That petitioners do not complain of the duty on indentures of apprenticeship, because it is calculated to exclude persons not likely to be properly qualified.

That by the alterations made in the law by successive legislative enactments, and changes made in the practice of the different courts, the emoluments of an attorney or solicitor have been very materially reduced.

That your petitioners willingly pay their share of all the taxes imposed on the community at large, but feel that the Certificate Duty levied on their branch of the legal profession, and upon them alone, is not founded on any just principle.

Your petitioners further submit, that as the tax was originally imposed to meet the exigencies of a war, involving the very existence of the State, and in extent and importance unexampled in history, it should now, in a time of profound peace, with commerce and manufactures improving, and a revenue steadily increasing, be abolished; especially, as while the amount produced forms but a very minute fraction of the revenue of the empire, it yet presses severely, exclusively, and invidiously, upon a comparatively few individuals.

Your petitioners therefore humbly pray your Honourable House, that the annual duty on certificates of attorneys and solicitors in Ireland, may be wholly abolished.

And your Petitioners will pray.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Solicitors' Buildings, Four Courts, Dublin,
Feb. 15, 1845.

Sir,—I am directed by the Committee of the Society of the Attorneys and Solicitors of Ireland, to forward you the annexed Copy Petition, and to beg that you will have the kindness to obtain as many signatures of attorneys in your town and neighbourhood, on the lined leaf, as you possibly can, their names being written on the left side of the line, and their addresses on the right. Please return same to me with as little delay as possible. The signatures will be joined at foot of the petition, which is lying for signature at the Solicitors' Buildings, Four Courts, Dublin.

I am, Sir, your obedient servant,
EDWARD ILES, Secretary.

The following are among the leading objects of the Society of the Attorneys and Solicitors of Ireland:—

- To support the general interests of the Profession; to preserve its rights and privileges; to guard its respectability by a vigilant attention to the promotion of upright and honourable practice; and to prevent the apprenticing of uneducated and improper persons, and their admission to the profession, as far as practicable.
- To originate and assist in obtaining all useful and practical reforms and improvements; to suggest such alterations in the statute law and in the rules and practice of the Courts as experience or circumstances may render necessary; and to watch over all bills that may be proposed to Parliament, in which the rights of the profession may be directly or indirectly involved, with a view to the protection of the rights and the interests of the Profession.
- To maintain the respectability of the Profession by an honourable and liberal mode of practice.
- To co-operate with all Law Societies (provincial or local) having similar objects in view.

CORRESPONDENCE.

EFFECTS OF LORD BROUGHAM'S ACT FOR ABOLISHING IMPRISONMENT FOR DEBTS UNDER 20*l*.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your insertion of the following letter in your valuable Journal, being one of a large number which I have received from parties to whom I have applied for debts under 20*l*. will serve to shew the disastrous effects of the same to the trading community, and that debtors are not now content with defrauding their creditors, but treat them in many cases with ridicule and contempt. The undermentioned letter was a few days since received by me from a party holding a good situation in this city, in reply to a third application requesting payment of 3*l*. odd, to avoid any unpleasant proceedings being taken against him to compel payment thereof, and after giving him eight months from the date of my first application.

I am yours, &c.

Exeter, Feb. 14, 1845. HENRY W. HOOPER.

(Copy.)

—— *v.* SELF.

"SIR,—As I am *personally* safe according to the present law (*which I assure you I regret*), I beg to inform you that the whole of my goods were sold yesterday under a distress for rent; I will leave you to judge the probability of my paying your demand. 'Therefore to avoid any unpleasant proceedings' on the part of the estate, you must write it down 'bad.'

"Exeter. "I am, &c. R. F.

"To Henry W. Hooper, esq. Solicitor, Circus."

SELECTIONS FROM CORRESPONDENCE.

The following SUGGESTIONS, by "P." are worth consideration. Some of them are excellent, and they are practical.

"If you think the following suggestions worthy a place in your valuable paper, they may lead to a good

result. I consider it would be very beneficial to defendants, and not at all prejudicial to plaintiffs, that a full particular of a plaintiff's demand should be given *with the writ of summons*, instead of, as now, with the notice of declaration; and that defendants should have eight days, instead of *four*, to settle an action, without further expense. If a party resides at some distance from the plaintiff's attorney, he has scarcely time to inquire what the action may be brought for, or, as is often necessary, to consult with some other person, who may, in fact, be liable over to the defendant for payment; and it would prevent pettifogging or vindictive attorneys from being enabled to put a defendant to further unnecessary expense before the expiration of eight days, and would seldom delay a plaintiff in recovering a just demand, as he cannot now file his declaration before the expiration of the eight days, but may increase the expense by affidavit and instructions for declaration. It would also be a great advantage to both plaintiffs and defendants, that, after a verdict, the judge should be at liberty to issue an order, directing the sheriff to take possession of the plaintiff's or defendant's goods (whichever the verdict may be against), so as to prevent a fraudulent sale, but that the officer should not continue in possession, on having security that the goods should be forthcoming at a certain time, so as to afford an opportunity for a motion for a new trial, &c. I have known sales made immediately after verdicts, before costs could be taxed or execution issued, and parties thus deprived of all benefit of the verdict.

LAW OF SETTLEMENT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have to thank you for the able article which appears in your Journal of the 15th inst. on the subject of Sir James Graham's proposed Law of Settlement, and for your own suggestions for abolishing removals altogether.

There can be no doubt as to the extreme simplicity of the plan you propose, but I think you will agree, on reflection, that there would be much injustice in burdening a parish with all the poor who reside within it.

Take, for example, the parishes situated in the outskirts of London and other large towns. The labour of farms is performed by the residents of their outskirts—for instance, the parishes of Shoreditch, Bethnal-green, Stepney, and many others contain an immense population of poor labourers. Would you propose that this poor population should be supported by the rate-payers of those parishes, while the rich residents of the parishes in the heart of the metropolis are to be unburdened with any poor at all?

I think you must give this part of your scheme a little further consideration, whereby you may agree in its injustice with

Your subscriber, J. T. R.

Feb. 20, 1845.

[It is impossible to legislate for isolated cases; injustice is oftener done now under the present system, but we shall be glad to collect opinions, whether hostile or friendly to the plan referred to, with a view to further discussion of the subject.—ED. LAW T.]

TO SUBSCRIBERS.

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

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To Readers and Correspondents.

BLANK.—*The suggestion shall be considered when the works are published.*

A SHARE-BUYER.—*The question is, we fear, within the rule of exclusion.*

The case from Bath has no point of law, which only is recorded by the LAW TIMES.

JUVENIS, *in a letter, for which we regret we cannot find room, proposes to pay coroners by salary instead of fees.*

A CONSTANT READER *asks us for a course of reading. It is an invidious task to recommend books, and would require more consideration than we can give to the question just now.*

J. P.'s *letter on the Certificate Duty is too long for insertion. He objects to the suggestion for raising the stamp on Articles of Clerkship and abolishing the Certificate Duty.*

THE LAW TIMES.

SATURDAY, FEBRUARY 22, 1845.

THE CHANCERY COMPENSATION JOB.

A TIMELY pamphlet has been sent to us, professing to be a statement in aid of Mr. WATSON'S proposed renewal of his motion for inquiring into this most iniquitous affair.(a) Many of the facts set forth in its pages have already appeared in our columns, but there are some novel aspects of the question which may well engage the attention of our readers for a few minutes.

The annual charge imposed partly upon the Profession, partly upon the unhappy suitors, by this monstrous compensation job, amounts, in the whole, to no less a sum than 77,071*l.* 7s. per annum.

From the speech of the Solicitor-General, it appears that the *Bill was drawn* by Mr. WAINWRIGHT, *one of the persons* compensated.

It was then submitted to a *committee of the Law Institution!!*

How was that committee constituted?

It consisted of Mr. FOSS, not then a solicitor; Mr. MARTINEAU, appointed a taxing master under the Act! Mr. FOLLETT, appointed a taxing master under the Act! Mr. EDWIN FIELD, whose elaborate defences of the job cannot be forgotten by any member of the Profession.

Do the annals of jobbing in any country, in any age, record so audacious a job as this; so planned, so executed?

And does it not kindle indignation to reflect that it was perpetrated under the apparent sanction of the very Profession it has so grievously annoyed; that it should have emanated from the rooms of the Institution calling itself the chartered representative of the Attorneys and Solitors of England and Wales?

Let us see precisely what was thus concocted by a person who was to profit by it, and palmed upon the Legislature as having the approval of the Profession.

The 18th section of the Act provided, that if any person compensated should accept office, no compensation shall be reduced so as to make the amount to be received during office in respect of compensation and salary, together less than the full net annual value of the fees and emoluments in respect of which the compensation shall have been awarded.

The effect of this is, that the compensated Taxing Masters receive as follows:—

	£	s.	d.	
George Gatty . . .	7,232	19	1	per ann.
Henry Ramsay Baines . .	7,204	3	8	"
Richard Mills . . .	6,580	12	9	"
John Wainwright . . .	6,000	6	9	"
	£27,018	2	3	"

The duties of taxing master(b) (with ten weeks' vacation) are to tax costs from eleven till three, with a further hour's attendance till four, to complete privately the work done.

The present salary of the Lord Chief Justice of England is . . .	£8,000 per ann.
The future salary of the Lord Chief Justice of the Court of Common Pleas	7,000 "

A most suspicious fact is first noticed in the pamphlet before us. In the Bill, as introduced by the Chancellor, the Lords of the Treasury were, as *in every other compensation clause*, the commissioners for awarding the compensation. In the Commons, this clause was struck out! By whom, when, or how, nobody knows!

Let us now trace, with the author of the pamphlet, some of the more striking details of this gigantic job.

The Act of 3 & 4 Wm. 4, c. 94, had provided that vacancies which occurred in the office of the Six Clerks should not be filled up, and five only were remaining when the recent Act passed. Some of them were willing to have remained and served in other offices, but they were all, together with their subordinates, dismissed, to live in luxurious idleness, and the sum of 19,581*l.* 1s. 1d. per annum was thus saddled in new fees upon the suitors of the Court.

But the most astounding part of the whole affair was the compensation awarded to the Sworn Clerks.

Originally they were the only attorneys of the Court of Chancery; but in 1729 solicitors were admitted to practise in Chancery, though it was still necessary for them to employ the Sworn Clerks as their clerks in court.

By an order of Lord HARDWICKE in 1743, a table was framed of fees which were to be paid to the Sworn Clerks, and office copies were directed to be paid for according to a scale therein ascertained, and also certain other fees on the taxation of costs. For every attendance on a Master on other occasions, by the direction or at the request of the proper client or his solicitor, if together with the solicitor in the cause, there was allowed a fee of 3s. [illegible] But it was expressly declared in a note that the fee is only to be allowed by the Master on taxing costs between the client and his solicitor, or clerk in court; "but on taxing costs between party and party no fee is to be allowed to the Sworn Clerk for any such attendance, together with the solicitor in the cause."

It is clear that these fees were allowed in direct terms, only where the business was done and the attendance actually given.

In 1807 an order was made for an increase of these fees, upon the petition of the Sworn Clerks that they were inadequate to the duties performed.

But gradually the solicitors came to act without their aid, and in 1824 a commission was issued by Lord ELDON to inquire into the office. The evidence shewed decisively that the office was practically a sinecure.

In 1838, Lord LYNDHURST issued an order that the Sworn Clerks and the Waiting Clerks should *not* "*be entitled to receive any fees for attendance in court, except in cases when they shall actually attend, and when this attendance shall be necessary.*"

This order was, however, of little practical value. The officers continued to charge the fees, always under pretence of their being warranted by some proceeding in the cause; and if it be asked how they contrived this, the answer is—THEY TAXED THEIR OWN COSTS!!

And their compensation has been awarded, not upon the fees they were *entitled to*, but upon those they *charged*.

But this is not all! Another iniquity remains to be told: for the unveiling of which the Profession and the public are indebted to the author of this timely pamphlet.

The Sworn Clerks' fees had *increased*, in the year 1842, to the sum of 77,319*l.* 11s. 1d. for the year, in consequence of the working off the

(a) The Chancery Compensation. Statement in support of the Renewed Motion of Mr. Watson. Hatchard.

(b) This income would have supplied the court with five additional Vice-Chancellors had their services been required. The salaries of the Vice-Chancellors and Puisne Judges are 5,000*l.* a year.

arrears by the appointment of the two Vice-Chancellors; and hence in that year the fees were *very much* greater than ever they had been before, or could be again.

Accordingly, the gentleman *who drew the Act*, and the gentlemen of the Law Institution who sanctioned it, fixed the time for estimating the compensation at the value of the fees for three years expiring on any day between the passing of the Act and the 1st of November following; and it was accordingly taken on the last three years, up to 29th October, 1842. The effect of this was, to give a compensation, not upon a fair average of years, but upon a period when the amount was extraordinary.

Thus were the suitors first mulcted of fees which were illegal, then taxed for compensation for those illegal fees, and then the average struck for a season which yielded a sum that a longer and fairer average would not have furnished.

We have already shewn how much of the burden thus created falls upon the solicitor. The above outline of this useful pamphlet shews how Parliament was deceived throughout the whole business. Mr. WATSON promises again to bring it under the consideration of the Legislature; and we trust he will succeed in convincing his audience that justice to the suitor and solicitor demands the rescinding of a bargain so tainted in its inception and progress as the Chancery Compensation Job.

THE ROGUES' INDEMNITY ACT.

FROM all quarters complaints come to us of the mischievous operation of Lord BROUGHAM's Act for the relief of fraudulent debtors and the ruin of honest creditors. Many striking illustrations have already appeared in the columns of the LAW TIMES. But lament and indignation are wasted if they be not brought immediately under the notice of those in whom is vested the power of redressing the wrong complained of. Rulers require to be teased into doing an act of justice; Parliament must be besieged with petitions and remonstrances, and individual sufferers must bawl their wrongs into the ears of individual legislators. Thus only will a bad law be amended by a senate so overwhelmed with business as is ours.

We have in our own case adopted a plan which we recommend to all who have seen or felt the grievance of the cruel law of last session; we have privately addressed to the author of the law a brief epistle, shortly stating the wrong inflicted, and the remedy we would suggest.

The *wrong* is, that a man who has property that cannot be taken in execution should be enabled to snap his fingers at his creditor simply by living in lodgings or in a furnished house.

The *remedy* is to enable the creditor, on the return of *nulla bona* by the sheriff, to summon the debtor before the commissioner, and subject him to the law of insolvency.

We cannot conceive why a man who cannot pay 19*l.* should not be treated as an insolvent equally with the man who owes 21*l.*

The remedy is reasonable, and it would be efficient. It needs but to be named to recommend itself to every practical man.

We, therefore, entreat our readers, whenever a case occurs in their practice in which the injustice of Lord BROUGHAM's law is exhibited, forthwith to address to the noble lord a short statement of the facts, and a demand that he, as the author of the mischief, would provide the remedy above proposed.

And if Lord BROUGHAM be so enamoured of his pet that he will see in it no fault, or only *one* fault, as he alleges, then let them individually address petitions to both Houses of Parliament, in like manner setting forth the facts and how to amend the evil, and intrust them either to the noble lord himself, or to Lords COTTENHAM or CAMPBELL in the Lords, and to their own representatives in the Commons; and if their injured clients would add their petitions to the number, there can be little doubt that attention will be directed to the mischief, and that the very simple and effective cure we have suggested will be applied, were it only to be rid of a question that must not be permitted to rest until injured creditors be righted and roguish debtors compelled to honesty.

NEW RULES AND ORDERS IN BANKRUPTCY.

THROUGH an accidental error, the price of the two 12mo. sheets containing the New Rules and Orders in Bankruptcy for binding with books on those subjects, was stated last week at 1s. each, whereas it should have been *one* shilling for the *two*, or sixpence for either.

The second edition of Mr. HOMER's Insolvent Acts, comprising these New Rules, &c. is now ready.

SHAM LAWYERS.

THE following appears in the *Reading Mercury* of January 4:—

TO PERSONS IN DIFFICULTIES.

Messrs. Grand and Co. of Moira Chambers, 17, Ironmonger-lane, Cheapside, will be happy to undertake the arrangement of the *affairs* of parties in any way *embarrassed*, or to negotiate any matters requiring *experience and skill*, they having been long and successfully engaged in *arranging the affairs* of parties so situated; where necessary to have recourse to the Bankruptcy Court, means will be taken to procure the desired relief at a small cost. *The most honourable treatment* and strictest secrecy observed. —N. B. Please to copy the address, as this advertisement will not be repeated.

Another rich specimen of the doings of this noxious tribe will amuse, and perhaps subject the writer to *surveillance*:—

Mr. ——

Sir,—I am instructed to write to you for the sum of 3*l.* 18*s.* 0*d.* wich is now due to Mr. G. Reid, and if the amount is not paid before Monday next, I am authorised to proceed against you for the same without delay.

Sir, I remain yours &c.

J. C. BISHOP, 44, Carey St.

A third is a printed form; it is evident, therefore, that the writer enjoys an extensive practice. The Law Society of his neighbourhood should keep an eye upon him:—

Hull, August 21, 1844.

Mr. Mitchell Green, Carnaby,

I am directed by Mr. Geo. Bielly to apply to you for the payment of the sum of 7*s.* 9*d.* due from you to himself, and to inform you, that unless the same be paid to me on or before Tuesday, the 27th inst. I shall *without further notice*, order a process to be issued out of the County Court to compel you to shew cause at the Castle of York on the next Court Day, why the same has not been duly discharged.

I am, Sir, your obedient servant,

WM. PURDON,

No. 1, Paragon-street, Hull.

VERULAM SOCIETY.

THE *third* number of *Practice Cases*, the *third* of *Criminal Law Cases*, and the *ninth* of *Magistrates' Cases*, have been issued to the subscribers.

The *fourth* number of *Practice Cases*, and the *fourth* of *Criminal Law Cases*, completing the *First Part* of each series, will be ready on Wednesday. The *seventh* and *eighth* numbers of *Real Property and Conveyancing Cases* are in the press.

The next forms that will be added to the series in preparation for the use of the Verulam Society, are those of *Letter for Payment of Debt; Warrant to sue; Warrant of Distress; Notice of Declaration; Bankruptcy and Insolvency Forms;* and *Registration Forms.*

Members will oblige by suggesting any forms which their experience may have shewn them to be useful in the office.

To the Bastardy Forms, the following have been added:—

No. 9. Information and Complaint for Disobeying Order.

No. 10. Warrant to apprehend.

A large portfolio, properly lettered on the back for preserving copies of bills in offices, has been prepared for the Verulam Society, price to members 7s., to other persons 9s.

Some members have suggested that a well-prepared series of Solicitors' Account-books would be an extremely useful addition to the works of the Society. Experience would, in this, be the best guide. If some of our readers would transmit a short specimen of the plans adopted by themselves, and which, in practice, they have found the most convenient, a good system shall be framed and the books prepared accordingly for the use of the Society.

The following new Members have been enrolled since our last report:—

Hunt, Price, and Harward, Stourbridge.
Harrison, Frederick, Bloomsbury-square.
Morgan, Thomas, Leeds.
Hays, John W. Durham.
Milner, C. 47, Upper Seymour-street, Portman-square.
Cameron, J. H. esq. Barrister-at-Law, Toronto, Upper Canada.

THE CRITIC.

New Books.

A Selection of Legal Maxims, Classified and Illustrated. By HERBERT BROOM, Esq. of the Inner Temple, Barrister-at-Law. London, 1845. Maxwell and Son.

THIS is a very ingenious and a very useful work, peculiarly adapted to aid the researches of the student, and even the practitioner will often find his memory refreshed and his knowledge enlarged by reference to Mr. BROOM's pages. It is not, indeed, a mere collection of legal maxims, for that a dictionary will supply; but its chief value lies in its illustrations of those selected. The volume is, in fact, a budget of succinct treatises on curious legal topics—the maxim serving for a text, and the examples and exceptions are brought down to the latest decisions. In the library this work will occupy a place by the side of *Smith's Leading Cases.*

The maxims are classified to prevent wearisome repetition. The plan adopted is this:—The first two chapters treat briefly of the maxims that relate to constitutional principles, and the mode in which the laws are administered. These are subdivided into sections, severally handling the rules founded on public policy, the maxims relating to the Crown, to the judicial office, to the mode of administering justice. After these come maxims that are rather deductions of reason than rules of law, and which therefore admit only of illustration. Such, for instance, as "*Ubi eadem ratio, ibi idem jus.*" "*Cessante ratione cessat ipsa lex.*" "*Utile per inutile non vitiatur.*" The fourth chapter comprises the principles that may be deemed universal; such as "*Ubi jus, ibi remedium.*" "*Volenti non fit injuria,*" &c. The next chapter treats of those which relate to property, its rights, and liabilities, and to marriage and descent. These are followed by the maxims that concern the interpretation of deeds and written instruments, and the law of contracts; and the volume concludes with the maxims applicable to the law of evidence.

Of the utility of such a work, if well written, there can be no question; and Mr. BROOM has certainly performed his task most creditably. From pages that afford so fertile a field for extract we are perplexed what to take by way of specimen, seeing that this busy season compels us to look for brevity. But perhaps the following may serve to show the reader the manner of the author; and it has the merit of explicitly setting forth a point about which there is much perplexity in the legal mind.

VOLENTI NON FIT INJURIA.

(*Wing. Max.*, 482.)—*It is a general rule of the English law, that no one can maintain an action for a wrong where he has consented or contributed to the act which occasions his loss.* (*a*)

In accordance with the above maxim, when an action is brought for criminal conversation, the law is now clearly settled to be, that, if the husband consent to his wife's adultery, it goes in bar of his action:

(*a*) Per Tindal, C. J. cited Gould *v.* Oliver (2 Scott, N. R. 257). See Bird *v.* Holbrook (4 Bing. 628, 639, 640; Plowd. 501).

if he be guilty of negligence, or even of loose or improper conduct not amounting to a consent, it only goes in reduction of damages. (*b*) So, if a person says generally, "There are spring-guns in this wood," and if another then takes upon himself to go into the wood, knowing that he is in hazard of meeting with the injury which the guns are calculated to produce, he does so at his own peril, and must take the consequences of his own act. (*c*) So, although the deck of a vessel is *primâ facie* an improper place for the stowage of a cargo, or any part of it, yet, when the loading on the deck has taken place with the consent of the merchant, it is obvious that no remedy against the shipowner or master for a wrongful loading of the goods on deck can exist. (*Gould* v. *Oliver*, 2 Scott, N. R. 257, 264.) In addition to the above and similar decisions, there is an extensive class of cases to which the maxim *volenti non fit injuria* may be applied, but which will be more conveniently referred to another and more general principle of law; those, namely, in which redress is sought for an injury which has resulted from the negligence of both plaintiff and defendant, and in many of which it has, therefore, been held, that the former is precluded from recovering damages. (*d*)

Further, the rule has always been, that, if a man has actually paid what the law would not have compelled him to pay, but what in equity and conscience he ought to pay, he cannot recover it back again in an action for money had and received. Thus, where a man has paid a debt which would otherwise have been barred by the Statute of Limitations, or a debt contracted during his infancy, which, in justice, he ought to discharge, in these cases, though the law would not have compelled payment, yet, the money being paid, it will not oblige the payee to refund it. But where money is paid under a mistake, which there was no ground to claim in conscience, the party may recover it back again as money had and received. (*e*)

There is also a large class of cases in which it has been held, that money paid voluntarily cannot be recovered, although the original payment was not required by any equitable consideration; and these cases are very nearly allied in principle to those which have been considered in treating of a payment made in ignorance of the law.

Thus, an occupier of lands, during a course of twelve years, paid the property tax to the collector under stat. 46 Geo. 3, c. 65, and likewise the full rent as it became due to the landlord, without claiming, as he might have done, any deduction on account of the tax so paid; and it was held, that the occupier could not recover from the landlord any part of the tax so paid, for the payment was voluntary, and, according to the principle above stated, could not therefore be recovered. (*f*)

The maxim under consideration holds only where the party has a freedom of exercising his will; (*g*) and therefore, where a debtor from mere necessity, occasioned, for instance, by a wrongful detainer of goods, pays more than the creditor can in justice demand, he shall not be said to pay it willingly, and has a right to recover the surplus so paid. (*h*)

The plaintiff having, in the month of August, pawned some goods with the defendant for 20*l.* without making any agreement for interest, went in the October following to redeem them, when the defendant insisted on having 10*l.* as interest for the 20*l.* The plaintiff tendering him 20*l.* and 4*l.* for interest, knowing the same to be more than the legal interest amounted to, the defendant still insisted upon having 10*l.* as interest: whereupon the plaintiff, finding that he could not otherwise get his goods back, paid defendant the sum which he demanded, and brought an action for the surplus beyond the legal interest as money had and received to his use. The Court held, that the action would well lie, for it was a payment by compulsion. (*i*)

It is worthy of observation, also, that there are cases where an intentional wrong-doer will be, to a certain extent, protected by the law through motives of public policy. Thus, a horse with a rider on him cannot be distrained damage feasant, on the ground

(*b*) Per Buller, J., Duberley v. Gunning (4 T. R. 657); per de Grey, C. J., Howard v. Burtonwood, cited 1 Selw. N. P. 10th ed. 8, n. 3; Id. 10, n. 6; per Alderson, J., Winter v. Henn (4 C. & P. 498). As to the effect of a separation between husband and wife, or of the wife's death, on the maintenance of this action, see Weedon v. Timbrell (5 T. R. 357); Chambers v. Caulfield (6 East, 244); per Coleridge, J. Wilton v. Webster (7 C. & P. 198); Calcraft v. Earl of Harborough (4 C. & P. 499).

(*c*) Per Bayley, J., Ilott v. Wilkes (3 B. & Ald. 311).

(*d*) See remarks on the maxim, *sic utere tuo ut alienum non lædas.*

(*e*) Per Lord Mansfield, C. J., Bize v. Dickson (1 T. R. 286, 287); Farmer v. Arundel (2 W. Bla. 824).

(*f*) Denby v. Moore (1 B. Ald. 123); cited per Bayley, J., Stubbs v. Parsons (3 B. & Ald. 518). See also Cartwright v. Rowley (2 Esp. 723); Fulham v. Down (6 Esp. 26, note); Bull, N. P. 131; cited, 8 T. R. 576; Spragg v. Hammond (2 B. & B. 59); per Dallas, C. J., Andrew v. Hancock (1 B. & B. 43).

(*g*) 1 Selw. N. P. 10th ed. 84.

(*h*) See per Lord Mansfield, C. J., Smith v. Bromley, cited Dougl. 696, commenting on Tomkins v. Bernet (1 Salk. 22); cited Argument, 6 Scott, N. R. 319; per Patteson, J. and Coleridge, J., Ashmole v. Wainwright (2 Q. B. 855, 846).

(*i*) Astley v. Reynolds (Stra. 915); Hills v. Street (5 Bing. 37); Bosanquet v. Dashwood (Cas. temp. Talbot, 88).

of the danger to the peace which might result if such a distress were levied; and therefore, to a plea in trespass, justifying the taking of a horse, cart, and other chattels, damage feasant, it is a good replication that the horse, cart, and chattels were, at the time of the distress, in the actual possession and under the personal care of, and then being used by, the plaintiff. (*k*)

The Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland. By JOHN HILL BURTON, Esq. Advocate. Edinburgh, 1845. Tait.

ALTHOUGH treating of the law of Scotland, this work is not without interest to the English lawyer, who has frequent occasion in practice to refer to the Scotch law on an occurrence of so large a range in its effects as insolvency.

Mr. BURTON'S volume is admirably fitted to supply to the Profession south of the Tweed whatever information they may require on this subject. It exhibits extensive learning, is laboriously got up, and printed upon a plan which might be advantageously adopted with our own law books. The principle is set forth in a conspicuous type; the cases that illustrate it follow in a smaller type. The effect is to impress the former more deeply upon the memory, and it materially aids in hasty reference, so often required in court.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.
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THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	99¾	97⅞	99⅞	99⅞	99½	99¾
Three per Cents. Reduced	100⅛	100¼	100¼	100¼	100¼	100⅛
New Three-&-a-quarter per Cts	103¼	103½	103¼	103⅜	103⅜	103½
Long Annuities..........	12⅛	12⅛	12⅛	12⅛	12⅛	12⅛
Bank Stock	212½	212½	212½	212½	212¼	212½
India Stock	282	282	282½	283	283½	283¼
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Exchequer Bills, prem.	55	56	56	59	57	57
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Spanish Five per Cents.......	28¼	28¼	28¼	28¼	28	28¼
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Russian	119⅞	119½	119⅞	119⅞	120	119⅞
Peruvian..........	30	30½	31⅛	31⅛	31¼	31
Portuguese	59	59¼	59½	59½	60	60
Mexican..........	85¼	35¼	36	36	35¼	35
——— Deferred	19⅞	19⅞	16	16	16¼	16⅜
Dutch Two-and-a-Half per Cents..........	63	63¼	62⅞	63	63	63¼
——— Five per Cents.	98	98¼	98¼	98⅛	98¼	98¼
Danish	89½	90	90¼	90¼	90⅛	90⅛
Colombian..........	14¼	14	14	14	14¼	14½
Chilian	101	101⅛	101⅛	102	102¼	102
Buenos Ayres	43	43½	43¼	43⅛	43⅛	44
Brazilian..........	89⅞	89⅞	90	90¼	90¼	90½
Belgian	101¼	101¼	102¼	101⅛	102⅜	102

NEW PROJECTED RAILWAYS.

(From the *Gazette* of Friday, Feb. 21.)

RAILWAY DEPARTMENT, BOARD OF TRADE, WHITEHALL, FEB. 21, 1845.

Notice is hereby given, that the Board constituted by the Minute of the Lords of the Committee of Privy Council for Trade, for the transaction of railway business, having had under consideration the following schemes for extending railway communication to the west of Ireland, viz.:—

The Great Western (Ireland) Railway—Dublin to Mullingar, &c.
The Great Western (Ireland) Railway—Alternative Line.
The Great Western (Ireland) Railway—Extension line.
The Irish Great Western—Dublin to Galway,

have determined on reporting to Parliament in favour of the Irish Great Western—Dublin to Galway; and against the

Great Western (Ireland) Railway—Dublin to Mullingar, &c.
Great Western (Ireland) Railway — Alternative line,
Great Western (Ireland) Railway—Extension line:

and the Board having further had under consideration the following schemes for extending railway communication in the north and north-west of Ireland, viz.:—

The Londonderry and Enniskillen,
The Londonderry and Coleraine,

have determined on reporting to Parliament in favour of the

London and Enniskillen;

and against the

Londonderry and Coleraine:

and the Board having further had under consideration the following schemes, viz. the

Blackburn, Burnley, and Accrington Extension,
Blackburn, Darwen, and Bolton,

have determined on reporting to Parliament in favour of the said schemes.

DALHOUSIE.
C. W. PASLEY. G. R. PORTER.
D. O'BRIEN. S. LAING.

(*k*) Field v. Adames (12 A. & E. 649, and cases there cited); Storey v. Robinson (6 T. R. 138); Bunch v. Kennington (1 Q. B. 679), where Lord Denman, C. J. observes, that "perhaps the replication in Field v. Adames was rather loose."

INCREASE IN THE VALUE OF PROPERTY IN AYRSHIRE.—It is a gratifying evidence of the enhancement of the value of landed property in Ayrshire, caused by the opening up of mineral fields consequent on the intersection of the country by the Glasgow and Ayrshire Railway, that the estate of Picton, in the parish of Dalry, purchased by Dr. Smith, a few years ago, at 14,000*l.*, was sold within the last twelve months at 18,000*l.*, and has again changed hands very recently at 35,000*l.*—*Ayr Advertiser.*

INCREASE OF RAILWAY TRAFFIC.—The increase in the traffic receipts of the undermentioned 24 railways for the first six weeks of this year, as compared with the corresponding period of last year, amounts to 63,334*l.*—namely, Birmingham and Gloucester, 2,202*l.*; Chester and Birkenhead, 406*l.*; Eastern Counties, 1,189*l.*; Edinburgh and Glasgow, 1,388*l.*; Glasgow, Paisley, and Greenock, 182*l.*; Glasgow and Ayr, 1,158*l.*; Grand Junction, 3,274*l.*; Great North of England, 1,283*l.*; Great Western, 11,364*l.*; Liverpool and Manchester, 1,904*l.*; London and Birmingham, 3,384*l.*; London and Brighton, 1,409*l.*; London and South Western, 1,757*l.*; London and Croydon, 900*l.*; Manchester and Birmingham, 2,539*l.*; Manchester, Bolton, and Bury, 447*l.*; Manchester and Leeds, 4,189*l.*; Midland Railway, 6,867*l.*; Newcastle and Carlisle, 1,170*l.*; North Union, 2,410*l.*; Preston and Wyre, 600*l.*; Sheffield and Manchester, 872*l.*; South Eastern and Dover, 11,579*l.*; Ulster, 222*l.*—*Herapath's Journal.*

EXTENSIVE PURCHASE.—It is confidently asserted in this city, that George Hudson, Esq., of York, has become the purchaser of the Duke of Devonshire's Baldersby estate, near Ripon.—*York paper.*

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

JOLIFFE.—On the 17th inst. at No. 41, Regent-square, the wife of W. P. Jolliffe, esq. barrister-at-law, of a son, still-born.

MARRIAGES.

BIRD, Charles, esq. of the Middle Temple, barrister-at-law, to Mary Albina, second daughter of Mr. Robert Surridge, of Romford, Essex, on the 11th inst. at Islington Church.

CANNING, George Barnes, esq. solicitor, Devizes, to Elizabeth Ive, eldest daughter of James Burbidge, esq. of Woodland-place, on the 11th inst. at St. Andrew's Church, Guernsey.

HOWARD, Hon. James K. youngest son of the Earl of Suffolk, to Lady Louisa Fitz-Maurice, only daughter of the Marquis of Lansdowne, on the 10th instant, at Derry Hill Church.

LANE, Charles, esq. of Sutherland-square, to Margaret, third daughter of the late John Wills, esq. of Doctors'-commons and Dulwich, on the 15th inst. at St. Peter's, Walworth.

SANDERS, Thomas, esq. M.A. Fellow of King's College, Cambridge, and of the Inner Temple, Barrister-at-law, to Mary Prescott, second daughter of Richard Paterson, esq. of Eliot-place, Blackheath, on the 18th inst. at Lewisham Church, Kent.

DEATHS.

CURRAN, Sarah, widow of the Right Hon. John Philpot Curran, sometime Master of the Rolls in Ireland, on the 18th inst. at her residence, 6, Mortimer-street, Cavendish-square, aged 89.

DOWLING, Sir James, Chief Justice of New South Wales, on the 27th Sept. 1844, at his residence, Darlinghurst, Sydney.

EFFINGHAM, General the Earl of, G.C.B. on the 13th inst. at Brighton, aged 78.

LARKEN, Maria, the wife of Metcalfe Larken, esq. of the Civil Service, and fourth daughter of the Hon. James Henry Crawford, esq. member of Council, at Bombay, Dec. 10, 1844, aged 21.

LAURENCE, Frances, wife of George H. D. Laurence, esq. and third daughter of George Buckton, esq. of Oakfield, Hornsey, Middlesex, and Doctors'-commons, on the 16th inst. aged 23.

NESHAM, John Douthwaite, esq. barrister-at-law, of the Inner Temple, at Ridgmont, Lancashire, on the 17th inst.

SYMONS, William Hales, esq. Lieutenant-Colonel of the South Devon Militia, a deputy-lieutenant, and for many years an active magistrate of the county, on the 11th inst. at his residence, Chaddlewood-house, in the county of Devon, aged 66.

WESTMINSTER, the Marquis of, on the 17th inst. at Eaton-hall, Cheshire, aged 78.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bradshaw and Co. drapers, third, 1½d. Pennell, London.—*Chamberlain*, W. draper, first, 1s. 9d. Pennell, London.—*Crespin*, J. C. shipping agent, third, 6d. Follett, London.—*Grantham*, G. grocer, first, 2s. 2d. Hobson, Manchester.—*Harraden*, H. R. printseller, first, 3s. Pennell, London.—*Holland*, J. grocer, first, 2s. Pennell, London.—*Jardine*, J. merchant, second, 9¾d. Cazenove, Liverpool.—*Johnsons* and Mann, bankers, first and final of Mann, 20s. Follett, London.—*Jones*, H. wine merchant, second, 2½d. Pennell, London.—*Lark*, J. shoemaker second 3½d. Pennell, London.—*Laycock*, J. tallow chandler, final, 1s. Hobson, Manchester.—*Loch*, J. tea dealer, second and final, 9d. Groom, London.—*Morgan*, W. sen. hardwareman, first, 2s. 4d. Groom, London.—*Oliver*, W. upholsterer, first, 6d. Groom, London.—*Petrie*, J. C. miller, first, 2d. Baker, Newcastle.—*Pirt*, G. ale merchant first, 1s. 4d. Pennell, London.—*Thompson*, M. ironmonger, first, 7s. 3½d. Whitmore, London.—*Williams*, R. butter dealer first, 3s. 6d. Miller, Bristol.—*Woollam*, J. silk throwster, first, 1s. Pennell, London.—*Younghusband*, R. brickmaker, first, 3d. Miller, Bristol.—*Yeill*, W. tailor, first, 2s. 7¼d. Whitmore, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Feb. 14.

Field, W. currier, Mansfield, Feb. 10. Trusts. H. Carr, tanner, and J. Carter, banker's clerk, Mansfield. Sol. Woodcock, Mansfield.—*Foster*, T. victualler, Nottingham Feb. 1. Trusts. J. G. Beckitt, F. Noyes, and Q. Beckitt, wine merchants, Nottingham. Sols. Messrs Parsons, Nottingham.—*Dallin*, T. and J. sail makers, Ilfracombe, Jan. 26. Trusts W. Dummett, Crewkerne, and H. Davey, sail cloth manufacturers, Crediton. Sol. Turner, Ilfracombe.—*Baird*, J. watch maker, Devonshire st. Queen-sq. Jan. 31. Trusts. J. B. Cronin, manufacturing jeweller, Bartlett's-bldgs. Holborn, J. Brown, goldsmith, Red Lion-st. Clerkenwell, and A. J. Clarke, watchmaker, Goswell-road. Sol Goldsworthy, Ely-place.—*Rice*, S. grocer, Lamerton, Feb. 3. Trusts. R. Gribbell and W. Gill, grocers, Tavistock. Sol. Carpenter, Tavistock.

Gazette, Feb. 18.

Scott, J. linen draper, Bath, Dec. 24. Trusts. E. Solomon, jeweller, and C. Lewis, wine merchant, Bath. Sol. Teague, Crown-court, Cheapside.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Feb. 14.

CHRISTIAN, WILLIAM ALEXANDER, innkeeper, Newcastle-st. Strand, Feb. 21, at two, March 28, at twelve Basinghall-st. Com. Fonblanque; Pennell, off ass; Paynter and Co. Gray's-inn, sols. Date of fiat, Feb. 13. Bankrupt's own petition.

FLINT, ALGERNON LINDSEY, warehouseman, 62, Aldermanbury, London, and Upper Clapton, Feb. 25, at half-past one, March 28, at one, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Cox, Pinners'-hall, sol. Date of fiat, Feb. 6. T. F. Piper, stay manufacturer, Cheapside, pet. cr.

HERBERT, ROBERT MAYOW, tea dealer and grocer, Reading, Feb. 19 and March 28, at half-past twelve Basinghall st. Com. Shepherd; Turquand, off. ass.; Hill and Matthews, Bury-court, St. Mary-axe, sols. Date of fiat, Feb. 3. S. Hanson, fruit merchant, Botolph-lane. pet. cr.

HILL, RICHARD, currier, Exeter, Feb. 25 and March 25, at one, Exeter, Com. Bere; Hernaman, off. ass.; Terrell, Exeter, and Terrell, Gray's-inn-sq. sols. Date of fiat, Feb. 10. Bankrupt's own petition.

HOWELL, WILLIAM, the younger, bookseller, Liverpool, Feb. 25 and March 25, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Fisher and Co. Liverpool, sols. Date of fiat, Feb. 8. J. Howell, bookseller, Liverpool, pet. cr.

MACWILLIAM, JAMES, hosier, Gloucester Feb. 26, at two, April 3, at eleven, Bristol, Com. Stevenson; Miller, off ass.; Richards and Co. Tewkesbury, sols. Date of fiat, Jan. 30. R. Dickson, grocer, Tewkesbury, pet. cr.

OLDHAM, JOHN, iron founder, Kingston-upon-Hull, Feb. 26 and March 28, at eleven, Leeds, Com. Boteler, Fearne, off. ass.; Willis and Co. Tokenhouse-yard, Colbeck and Co. Hull, and Holdsfall and Harrison, Leeds, sols. Date of fiat, Feb. 11. Bankrupt's own petition.

RAWLINGS, FRANCIS JOHN, cabinet maker and upholsterer, Promenade, Cheltenham, Gloucestershire, Feb. 28, at twelve, March 28, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Newbon and Evans, Doctors'-commons, sols. Date of fiat, Feb. 8. W. and F. G. Harding, plate glass factors, Bore-st. pet. crs.

SANDERSON, JOHN, merchant, Liverpool, Feb. 25 and March 25, at eleven, Liverpool, Com. Phillips; Cazenove, off. ass.; Birch and Grumah, Great Winchester-st. and Beckley and Thompson, Liverpool, sols. Date of fiat, Jan. 30. S. G. Martines, and W. P. Gassiot, sen. and jun. wine merchants, London and Oporto, pet. crs.

TURNER, JOSEPH, and WEEKS, SAMUEL, stone masons and builders, Bevois-st. Southampton, Feb 19 and March 28, at twelve, Basinghall-st. Com. Shepherd; Turquand, off. as.; Paterson, Bouverie-st. sol. Date of fiat, Feb, 13. Bankrupt's own petition.

WATSON, SAMUEL, stone mason and stone cutter, Sawmills, High-bridge, Burnham, Somersetshire, Feb. 26, at two, April 2, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Gray, Bristol and Bath, sols. Date of fiat, Feb. 8. Bankrupt's own petition.

WHITE, JOHN, leatherseller, 6, Great St. Andrew-st. Seven-dials, Feb. 26, at half-past two, March 25, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Hall, Rupert-st. sol. Date of fiat, Feb. 11, Bankrupt's own petition.

WEEKS, JACOB, grocer, tea dealer, and provision merchant, 2, Peter-st. St. Peter's, Bristol, Feb. 27, at one, April 2, at twelve, Bristol, Com. Stevenson; Acraman, off. ass.; Gray, Bristol and Bath, sols. Date of fiat, Feb. 8. Bankrupt's own petition.

Gazette, Feb. 18.

BRENT, JOHN FRANK, plumber and glazier, No. 25, Brompton-row, Brompton, Feb. 28, at half-past one, March 28, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Buchanan and Grainger, Basinghall-st. sols. Date of fiat Dec. 12. Bankrupt's own petition.

CLOSSON, EDWARD, stationer, No. 17, Lower Holborn, City of London, Feb. 26, at two, April 3, at half-past twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Fraser, Furnival's-inn, sol. Date of fiat, Feb. 12. S. Hooker, stationer, 45, Fleet-st. pet. cr.

CREW, SAMUEL, coal merchant, No. 3, Hazleton-st. Pennywell-road, Bristol, March 4, at one, April 1, at eleven, Bristol, Com. Stephen; Kynaston, off. ass.; Gray, Bristol and Bath, sols. Date of fiat, Feb. 12. Bankrupt's own petition.

GRIFFITHS, THOMAS, the younger, wine and spirit merchant, High-st. Wem, Salop, March 1 and 27, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Hammond, Furnival's-inn, Brown, Wem, and Hodgson, Birmingham, sols. Date of fiat, Feb. 13. Bankrupt's own petition.

HAGG, ICHABOD, tailor, draper, and outfitter, Colchester, Essex, Feb. 25, at half past twelve, April 1, at twelve, Basinghall st Com Fonblanque; Belcher, off. ass.; Soles and Turner, Aldermanbury, sols. Date of fiat Feb. 11. J. S. Bassett, warehouseman, Wood-st pet. cr.

HALL, WILLIAM, grocer and flour dealer, Claypath, Durham, Feb. 26, at half-past eleven, April 14, at half-past one, Newcastle Com Ellison; Baker off. ass.; Marshall, Durham; Harle, Newcastle; and Rogerson, Lincoln's-inn-fields, sols. Date of fiat Feb. 12 J. Sheldon, tallow chandler, Gilesgate, Durham, and T Gibson, miller, Kepier, Durham pet crs.

HOLMAN JOHN, victualler and keeper of an inn, No. 2, Grosvenor-place, St. Sidwell-st. Exeter, out of business, Feb. 27 and March 27, at eleven, Exeter, Com Bere; Hirtzel, off ass.; Turner Exeter, and Sayer Broad-st bldgs. sols. Date of fiat, Feb. 13. Bankrupt's own petition.

HUTCHINGS, JOHN, boot and shoe maker Bath, and late of Regent-st March 4, at one, and April 3 at eleven. Bristol, Com. Stephen; Kynaston, off ass.; Bachelor and Co. Bath, sols Date of fiat, Feb 10 I. Hemsworth, A. Kebble, and W. Linley, leather dealers, St. Martin's-lane, Charing-cross, pet. crs

KNIGHT, WILLIAM, oil cloth manufacturer, Henry-st Manchester, Feb 28, at one, March 20, at twelve. Manchester, Pott, off ass.; Makinson and Sanders, Elm-ct Temple and Atkinson and Saunders, Manchester, sols. Date of fiat, Feb 12 Bankrupt's own petition.

REES THOMAS, porter and ale brewer, Liverpool, March 3 and April 1 at twelve, Liverpool Com. Phillips, Morgan, off ass; Sharp and Co Bedford-row, and Harvey and Co. Liverpool, sols. Date of fiat, Feb 12. Bankrupt's own petition

SCHOFIELD, JAMES, grocer, Oldham and Greenacres-moor, March 4 and 24 at twelve Manchester Stanway, off. ass.; Barrett jun Manchester and Bower and Son Chancery-lane, sols Date of fiat, Feb 11. W. Woodward, cotton merchant, Manchester, pet cr

SCOTT, JOSEPH paper dealer, Liverpool Feb 26 at twelve, March 26 at half-past twelve, Liverpool Com Ludlow, Turner, off ass, Parkes and Co Bedford-row, and Greatley, Liverpool, sols. Date of fiat, Feb 12 Bankrupt's own petition.

WILKINSON, THOMAS, draper Hartlepool, Durham, Feb. 26 at twelve, April 14, at half past two, Newcastle, Com Ellison; Wakley off. ass; Marshall, Durham Harle Newcastle, and Rogerson Lincoln's-inn-fields, sols. Date of fiat, Feb 4 S and W Heighway, warehousemen, Manchester, pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Feb 11

Bowker, F. A and *Metcalf*, G copper-plate engravers, Manchester, Feb. 5. Debts paid by Bowker.—*Buckley* A. and J. S cotton spinners, Rycroft and Manchester, Dec. 30, 1843.—*Bullen* J. and *Spaul* R auctioneers, Wormwood-st. Jan. 25.—*Burnie*, W and *Dickson*, W merchants, London, Dec 31.—*Cleaner*, J. *Atwood*, M. and *Burwell*, J. spelter manufacturers, Ripley. Sept 11.—*Chadwick*, J. and *Andrew*, A warehousemen, Manchester, Feb. 4.—*Dobson* T. O. and *Lonie*, C. ship brokers, Liverpool, Feb. 6.—*Furie*, J *Tasker*, P and *Tod* A. iron merchants, Liverpool, so far as regards Tod, Feb. 1.—*Fairweather*, C. and *Matthews*, W. jun. wine merchants Kirton-in-Lindsey, Feb 7.—*Gregory* J. and *Burlingham*, H ironmongers and coal merchants Evesham, Dec. 31. Debts paid by Burlingham.—*Gledhill*, W and *Jagger* S drivers Thornton and Bradford, Feb. 8.—*Hagger* T. and *Payne*, H grocers and drapers, Fulbourn, Feb. 7. Debts paid by Hagger.—*Harrison* F. and C. drapers, Luton, Jan. 15.—*Jaquin*, C. A. and *Corss*, J button manufacturers, New Union-st. Moor-lane, June 9.—*Kronheim*, J. M. *Skirving*, J *Shepherd*, W. and *Sutton*, F. W. patent stereotype founders Earl-st. Blackfriars, so far as regards Skirving, Feb. 5. Debts paid by the remaining partners.—*Lockwood* R. and J. maltsters and farmers, Crowfield, Feb. 7. Debts paid by J. Lockwood.—*Longton*, E. and T. machine makers and small ware manufacturers, Manchester, June 30.—*Mather*, J. and *Brindley*, J. tobacco dealers, Manchester, Feb. 5. Debts paid by Mather.—*Mullins*, J. and *Wigley*, C. leather pipe makers, High Holborn, Dec. 31. Debts paid by Wigley.—*Parry*, G. and *Gillott*, T. L. ironmongers, Leicester, Feb. 6.—*Peters*, T. S. and W. P. corn merchants, Manchester, Feb. 8. Debts paid by W. P. Peters.—*Radcliffe*, J. and T. commission agents, Stockport, Feb. 4. Debts paid by J. Radcliffe.—*Ree*, C. and *Facey*, J. millers, Bideford and Bristol, Feb 6. Debts paid by Facey, Bideford, and Ree, Bristol.—*Shuttleworth*, J. and *Eastham*, J. coal dealers, Blackburn, Feb. 4. Debts paid by Shuttleworth.—*West*, J. H. and *Ives*, G. brewers, Hertford, Sept. 29.—*Whittaker*, J. and *Palmer*, C. B. general agents, Swansea, Feb. 4.—*Williams*, L. and *Watson*, W. powder flask manufacturers, Birmingham, Feb. 8. Debts paid by Williams.—*Young*, J. J. and *Bouneau*, A. importers and dealers in marble, Upper North-place, Gray's-inn-road, Feb. 10. Debts paid by Bouneau.

Gazette, Feb. 14.

Bailey, C. and *Edwards*, H. attorneys, Winchester, Feb. 8.—*Batchelor*, J. *Edge*, J. and *Croyden*, J. coach lace manufacturers, Coal-yard, Drury-lane, and Kidderminster, Feb. 11. Debts paid by J. Batchelor, 28, Long-acre.—*Burland*, W. jun. and *Edwards*, W. cabinet makers, Liverpool, Feb. 11. Debts paid by Burland, jun.—*Burnett*, S. L. and *Turner*, G. coal and corn merchants, Chudleigh, Feb. 10.—*Crabtree*, T. and *Binns*, J. machine makers, Halifax, Jan. 26. Debts paid by Crabtree.—*Crosby*, W. and *Wood*, W. joiners, Scarborough, April 1, 1844.—*Furnival*, J. *Wear*, W. W. earthenware manufacturers, Tunstall, Feb. 13. Debts paid by Furnival.—*England*, G. and A. clothiers, Winterbury, Feb. 13. Debts paid by A. England.—*Gould*, G. and *Thomas*, D. tea dealers, Taunton, Jan. 4. Debts paid by Gould.—*Gregory*, E. R. and *Hayward*, T. P. chymists, Church-st. Hackney, Feb. 13. Debts paid by Gregory.—*Key*, K. G. *Joyce*, F. *Baddeley*, Harpa de, A. C. de V. and *Chevalier*, H. soap manufacturers, Holy-bush-pl. Bethnal-green-road, Feb. 12. Debts paid by Key and Joyce.—*King*, H. W. and G. L. attorneys, Bristol, Feb. 6.—*Mills*, T. and *Dixon*, W. dyers, Charles-st. Westminster, and Stockwell, Jan. 12.—*Moore*, C. and *Fisher*, H. H. hatters and tailors, Pall-mall, Dec. 31. Debts paid by Moore.—*Nicholl*, T. and *Porter*, D. woolstaplers, Halifax, March 18, 1844.—*Parkin*, H. and *Binns*, R. card setting machine makers, Birstal, Feb. 10. Debts paid by Parkin.—*Pinder*, M. A. and *Taylor*, F. grocers, Timberland, Lincolnshire, Jan. 31. Debts paid by Pinder.—*Pratt*, J. and *Street*, H. brass founders, Birmingham, Feb. 11. Debts paid by Pratt.—*Rosselli*, J. V. and E. commission agents, London and Leghorn, Aug. 15, 1843.—*Smart*, J. and *Pollett*, C. Furnival's-inn, Feb. 12.—*Stray*, G. and *Reed*, J. tailors, Hull, Feb. 10.—*Tavernor*, H. J. and G. A innkeepers, Romford, Sept. 29, 1840.—*Tonks*, J. and *Hulse*, W. bedstead manufacturers, Birmingham, Feb. 11.—*Waterton*, S. and *Wilkinson*, J. wheelwrights and joiners, Leeds, Feb. 12.—*Webster*, J. and *Child*, J. bricklayers, Wakefield, Feb. 3. Debts paid by Webster.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Feb. 11.

Billing, J H Harrow-weald, near Harrow, Feb. 18, at eleven.—*Briggs*, J painter, Gravesend, Feb. 24. at one.—*Burcham*, W. market gardener, Little Meltham, Feb. 19, at one.—*Edmonds*, W. baker Great Stanmore, Feb 24, at half-past eleven.—*Edwards*, H. upholsterer, Kennington-common, Feb 17, at half-past eleven.—*Francis*, H. B. stationer, Alfred-place, Old Kent-rd. Feb. 26, at eleven.—*Franklin*, J. cattle dealer, Lyrsham, Feb. 24, at half-past eleven.—*Hickson*, T. carpenter, North Brixton, Feb 17, at twelve.—*Holledge*, R sen. labourer, Beckingham, Feb. 26, eleven.—*Isard*, W. H. upholsterer, Kennington-common, Feb. 17, at half-past eleven.—*Lusher*, R. hatter, Bungay, Feb. 17, at half-past eleven.—*Mallpass*, R stove maker, Long-alley, Feb. 24, at twelve.—*Neale*, J. upholsterer, Great Titchfield st. Feb. 24 at half-past twelve.—*Sainsbury*, J. T. beer retailer, Old Montague-st. Whitechapel-rd, Feb. 24, at eleven.—*Sterre*, G. milk retailer, Field-place Walworth, Feb 17, at twelve. *Stewart*, H keeper of a billiard table, Bury St Edmunds Feb. 26, at eleven. *Stympson* R farmer's assistant, Oakham Feb. 24 at eleven—*Voss*, D lighterman, Pudding lane; Feb. 24, at half-past eleven.

Country—Gazette, Feb. 11.

Allwood, M housekeeper, Patesbury. Feb. 22, at half-past ten, Birmingham.—*Bowyer* L. spinster, Marston, Feb. 25, at twelve, Birmingham.—*Bond*, J. shoe maker, Cantley, Feb. 26, at eleven, Leeds.—*Brayshay*, T. sen. beer-house keeper, New Wortley, Feb. 26, at eleven, Leeds *Ellison*, J miller, Liversey, Feb. 21, at twelve, Manchester —*Frubishaw*, W. tailor, Wakefield, Feb. 26, at eleven, Leeds —*Kirk*, E. printer, Worcester, Feb. 24. at half-past ten Birmingham —*Oldham*, W. joiner, Bulwell, Feb. 26, at eleven, Leeds.—*Powell*, W. F. out of business, Blue Broom, near Ragland, March 4, at half-past twelve, Bristol.—*Read* W. ale dealer, Lymm, Feb. 25, at twelve, Manchester.—*Sutton*, J. farmer, Caverswall, Feb. 24, at twelve. Birmingham.—*Towers*, J. cart owner, Liverpool, Feb. 18, at twelve, Liverpool.—*Williams*, W. cordwainer, Haverfordwest, Feb. 28, at eleven, Bristol.—*Winn*, J. clerk, Fordington, March 5, at eleven, Bristol.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Feb 14.

Edwards. G stationer, Albert pl. Shepherdess-walk, Feb. 27, at half-past twelve.—*Preece* H deputy sea coal weigher, John-st. Commercial-road East, Feb. 26, at twelve.—*Selby*, A T. out of employ, Queen's-road Dalston, March 15, at eleven.—*Walker*, F. F. engraver, Union-st. Somers-town, Feb. 27, at eleven.—*Wilson*, J. builder, Michael's-place, Kensington, Feb. 27, at eleven.

Country.—Gazette, Feb. 14.

Addison, J. out of business, Stafford, Feb. 25, at twelve, Birmingham.—*Chapman*, J. rope maker, Cirencester, March 3, at half-past twelve, Bristol.—*Boleshy*, J. innkeeper, Barrowby, Feb. 19, at eleven. Leeds.—*Gammon*, S. blacksmith, Brace Meole, Feb. 22, at half-past ten, Birmingham.—*Gill*, J. clothier, Calverley, Feb. 26, at twelve, Leeds.—*Hill*, J. jun. letter carrier, Nottingham, Feb. 21, at twelve, Birmingham.—*Johnson*, H. widow, out of business, Nantwich, Feb. 19, at twelve, Liverpool.—*M'Gowan*, J. lodging-house keeper, Liverpool, Feb. 25, at twelve, Liverpool.—*Parsons*, G. coach proprietor, Calverley, Feb. 12, at eleven, Leeds.—*Young*, F. draper's assistant, Wolverhampton, Feb. 21, at twelve, Birmingham.

From the Gazette of Friday, February 21.

Bankrupts.

Dale, W. shoemaker, London-wall.—*Dalbell*, L. B. dyer, Lower Mitcham.—*Crabb*, J. bricklayer, Great Tey, Essex.—*Ransford* C. grocer, South Tottenham.—*Wyatt*, A. victualler, Highworth, Wiltshire.—*George*, L. shawl warehouseman, Regent-st.—*Bakes*, W. stone merchant, Osnaburgh-st. New-rd.—*Cussock*, F. innkeeper, Bridlington, Yorkshire.—*Sansom*, G. corn dealer, Weymouth and Melcombe Regis, Dorsetshire.—*Ferris*, T. grocer, Weston Bassett, Wiltshire.—*Wells*, J. common carrier, Winchcomb, Gloucestershire.—*Thornton*, C. stationer, Huddersfield.—*Reeves*, W. coach builder, Walcot, Somersetshire.—*Langdon*, T. share broker, Manchester.—*Taylor*, T. farmer, Higher Walton, Cheshire.—*Danks*, J. wharfinger, Birmingham.

THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Friday, Jan. 17.

Re NELSON, a Lunatic.

Commission—Allowance to the alleged lunatic to contest his lunacy.

Taylor supported a petition by the executor of the will of the mother of the alleged lunatic, who had no relations, praying for a commission.

James Parker, for Nelson, said the lunacy, if any, was of a mild form. The party had no funds, and asked that 100*l.* should be allowed him for his defence.

The LORD CHANCELLOR.—According to the report made to me he is a dangerous lunatic. It is right, however, that he should have a proper sum to defend himself on this inquiry. 100*l. ordered.*

Wednesday, Jan. 22.

TULLOCK *v.* HARTLEY.

Secondary evidence of contents of title-deeds—Second commission to examine witnesses pending an appeal.—Further evidence on rehearing.

Though on a rehearing, documents and new evidence not in the party's possession at the time of the original hearing may be produced, that will not be permitted where such party has been negligent, and might, with diligence, have produced the same evidence earlier.

Mere slips and accidental defects may usually be corrected at any stage of the cause, but where the party mistakes the effect of the adverse case, and deliberately refrains from producing evidence, of the existence of which he was aware, and which on the hearing turns out to have been necessary in his case, he will not be allowed afterwards to correct his miscarriage.

This cause, which is an appeal from the decision of Vice-Chancellor Knight Bruce, involving the title to an estate in Jamaica, having been opened, the defendants presented a petition for a commission to examine witnesses in Jamaica. Various documents were in existence in Jamaica, which the defendants had discovered to be material to their case. The cause had been heard by the Vice-Chancellor in December, 1841; and the defendant's counsel knew of the facts previously to that hearing, but were of opinion that there was enough in the plaintiff's own evidence to make out the defendant's case.

Simpkinson and *Rennalls*, for the defendants, the petitioners, contended that the omission of the evidence was a mere slip, which the Court would give the parties an opportunity of rectifying.

Cooper, Anderdon, and *James Parker* for the plaintiff, the respondent.—They insisted that after the opportunities the defendants had of presenting their full case to the Court, they would not now receive aid to enable them to make a new case. Such an indulgence was never granted, except where the evidence could not have been brought forward before. Here the defendants were aware of the existence of the documents, and they deliberately determined not to offer secondary evidence of them.

The LORD CHANCELLOR.—There were two classes of deeds; some were lost, and others had not been proved in evidence. The defendants might have supplied the defect by application to the Court before the hearing, but they did not then apply. Here not merely production of documents is required, but to prove deeds by means of a second commission. There is no case in which such neglect has been overlooked. They go through all the stages of the suit until they come to a rehearing, and they then ask to supply evidence. There must be commission, and is there any case in which that has been done? I think the rest of the case far more feeble than that of the lost documents. The defendants, knowing of the registry of those patents, do not search; and afterwards, having desired their agent to search, the documents were sent over not authenticated.

James Parker.—After the hearing, the defendants had sent out to their agent in Jamaica, to say that original documents of sufficient age to prove themselves could be heard as fresh evidence upon the appeal; that office copies of such as were registered might be sealed with the official seal and given in evidence; and they sent out a list, in which the documents now stated to be essential were comprised.

The LORD CHANCELLOR.—More than the production of the documents is necessary to make them evidence. The question is, whether such steps will now be allowed to be taken. I do not like to pronounce a decree which will have the effect of determining the title to the estate, when I am not sure that I have all the evidence necessary for determining what are the rights of the parties. These documents were produced upon the former commission, but neither the witness nor the commissioners thought them material.

Parker.—The defendants knew of the existence of the documents before the commencement of the suit.

The LORD CHANCELLOR.—They must have known what was proved before the commission, and what was the deficiency. They thought their case would do without it.

Parker.—In all the cases in which such indulgence had been granted there had been a slip, by which the party failed in what he intended to prove; such as *Hood* v. *Pimm* (4 Sim. 101), and *Cox* v. *Allingham* (Jac. 337).

The LORD CHANCELLOR.—The object is to make a new case, so far as to meet the difficulties of the defendant's case; that is new in point of evidence.

Parker.—In *Bingham* v. *Dawson* (Jac. 243), leave to file a supplemental bill in the nature of a bill of review was refused, where the proper means of searching for it had not been used previous to the decree. (*Ord* v. *Noel*, 6 Mad. 127.)

Simpkinson, in reply.

The LORD CHANCELLOR.—In an ordinary case, a slip will be supplied; but the only question here is, whether there is any case in which the Court has afforded that indulgence where there has been delay or negligence on the part of the applicant. An accidental slip is rectified. The mere errors of examiners, commissioners, witnesses, counsel, or solicitors, have been relieved against, and when there has been an accidental defect in evidence, before the hearing, at the hearing, and at the rehearing of a cause, the Court has allowed the defect to be supplied. That is the language of the case in 4 Simons, and the indulgence seems to be confined to cases of mere error. No person can be more reluctant than I should be to shut out further evidence, especially as to title, and I will not do it unless I am obliged to do so.

Simpkinson.—The Court will direct the further inquiry sought by the defendants to satisfy its own conscience; it cannot shut from its knowledge that the documents are in existence.

The LORD CHANCELLOR.—Where there has been negligence, the Court will not give leave, though it is satisfied of the existence of the deed. This is an application to allow the defendants to let in evidence of which they were apprized in a very early stage of the cause, and which they might have supplied. They directed for a search for deeds in Jamaica, and a list of documents was sent out; some of those documents were proved and returned to this country; some were not returned; and the defendants, having a list of the documents, knew what were proved and what not; and they take no steps. Now they come, on a rehearing, to supply the defect. I cannot interpose to assist them, which I very much regret. They might have applied to the Court before the hearing of the cause, but they make no attempt to do so; and they lie by until they find their case is not sufficiently made out. The only thing the defendants can do is to send out a commission to take evidence in Jamaica; but in the case in 4 Simons it was said that "the instrument proposed to be proved *vivâ voce* was little more than a mere exhibit. Its due execution, though not admitted by the answer, was not denied. It was not the subject of dispute in the cause. It was merely a formal link in the plaintiff's title, and it happened only through the slip of counsel that it was not duly proved." Now what is asked is the same thing in principle and essence as a supplemental bill in the nature of a bill of review.

I am sorry to decide this case on insufficient evidence; but there is no remedy, for I am bound to refuse the present application. There is no question that on a rehearing any party may produce a document not given in evidence on the original hearing, and which was not then in his possession, and that without the leave of the Court. But if further evidence is necessary, the Court will not allow it to be adduced where the party has been guilty of negligence. The defendants in this case were aware, long before the appeal, that such documents existed. These are the facts: before the filing of the bill the defendants' agents in Jamaica searched for documents. The solicitors there stated the result of their search, and sent over to this country a list of the documents they had discovered. That list was considered and corrected. Afterwards the defendants sent out the list of these deeds, on the occasion of the commission to examine witnesses; some of the documents contained in it were proved and returned, some were proved before the commissioners, and not returned. A great many of the documents in the list were not produced or noticed in any way. The defendants were fully aware of what had been proved, and they had only to compare their list with what had been returned as proved, to be aware of any deficiency of evidence, and they might have supplied what was deficient. But they took no steps, and went to a hearing without having made any attempt to do so. The cause having been heard and decided against them, they direct inquiry to be made for further evidence. Then they apply, when the cause is in the course of a rehearing, in the very last stage, and ask the Court to grant them the indulgence of a second commission to take evidence of documents which they did not before think proper to give in evidence. I think this is not a case in which such an indulgence can be granted. The delay has been very great. I should run counter to all the authorities upon the subject if I acceded to the present application. I am bound to refuse it, and with costs. My decision is not final; if it is wrong in principle, the defendants have their remedy. No person can regret more than I do the necessity for this decision.

Friday, Jan. 24.

Re LOCKEY, a Lunatic.

Jurisdiction in lunacy—Defaulting committee—Sureties—Costs.

Toller, for the sureties, stated, that they had determined not to contest the question of their liability at law, but submit to the jurisdiction of the Lord Chancellor in lunacy.

Elmsley, for the next of kin.—Then the bond will not be put in suit, and the sureties will be liable for all the costs ordered to be paid by the defaulting committee. In June 1844, there was a petition by the new committee and the next of kin, that the sureties should pay in the balance due from their principal by a given day, which they did not do. There was on that occasion no order made as to costs, but in all the other orders against the defaulting committee himself he had been ordered to pay costs.

The LORD CHANCELLOR.—I was of opinion, that the sureties are liable to pay all the costs to which the late committee was liable. This order was against the sureties, and may be open to a different consideration.

Toller.—The order of January last, by which the late committee was discharged, and the new one appointed, directed costs only to be paid, and the petition asks for costs, charges, and expenses. On that occasion, two orders were taken, when costs were ordered on one only. It was also asked that the sureties should pay the costs of passing the late committee's accounts, whereas, if the accounts had been passed without difficulty, those costs would have been borne by the lunatic's estate. Those costs would have been allowed in the reduction of his balance. The petition also asks for payment of a sum of 3*l.* the costs of next of kin attending the passing the accounts; the sum of 12*l.* the costs of passing the late committee's accounts, which had been allowed to him, but not paid by him to the solicitor of the present committee, who had acted in the matter; and the costs of an order never drawn up. All these sums were asked for by this petition, and it was therefore necessary that the sureties should oppose it.

The LORD CHANCELLOR.—There was a fair question raised by the sureties upon the construction of the bond; and the effect of their opposition to the petition has been to cut down the demand. I think, under the circumstances, they should not pay the costs of this petition. No costs on either side.

Costs of the petitioner to be paid out of the lunatic's estate.

Wednesday, Jan. 29.

Re PROSSER'S PATENT.

Re PINKUS'S PATENT.

Caveat—Practice in applications for patents—Atmospheric railway.

There was a petition presented by each of the persons seeking to obtain the above patents, praying that caveats which the other party had presented against the respective patents might be discharged. Both petitions came on together. The facts, as stated by the opposing counsel, appeared to be these:—Mr. Pinkus had obtained various patents for apparatus, by which motive power by means of atmospheric pressure was obtained. The first of such patents was dated in 1834, and the last in July 1843. The last patent, however, he never specified. Mr. Carcano, a foreigner, had also invented a locomotive power by means of compressed air, and some communication took place between him and Mr. Pinkus. At a meeting at Mr. Prince's, on the 13th Sept. 1844, who was the patent agent of Pinkus, it was alleged by Carcano that his plan had been inspected by Pinkus for a sufficient period to enable a person well acquainted with the subject to adopt its principle. This was, however, expressly denied by Pinkus and his agent, who stated on affidavit that he had no knowledge of Carcano's invention. At that meeting Pinkus offered Carcano that if, on disclosure of his invention, there was any thing in his patent, he, Pinkus, would give such a compensation as might be fixed by an indifferent valuer. Pinkus, however, stated that his invention covered the whole ground, and that it would be barely possible to apply atmospheric pressure to railways without infringing some or one of his patents. Carcano declined that proposal, and obtained the aid of Mr. Prosser for introducing his invention. Accordingly, on the 18th of Oct. 1844, Prosser and Carcano presented a petition for a patent, and Pinkus having a standing caveat in the Attorney-General's office, was at once informed of the application. He then lodged a caveat against Prosser's patent. On the 24th of Oct. Pinkus also presented a petition for a patent "for improvements in applying motive power by means of atmospheric compression." This was opposed by Prosser. The Solicitor-General, acting for the Attorney-General, heard the agents of each party separately, and refused to report in favour of Prosser's invention. No ground for the refusal

was sealed. Afterwards, Pinkus having heard what had taken place at the meeting on the 13th of Sept. at Mr. Prince's, obtained a rehearing before the Solicitor-General on the 27th of December, when a report in favour of the invention of Carcano was made, and the patent would have been sealed, had not Pinkus lodged a caveat in the Chancery Patent-office against the sealing. Pinkus's application for a patent was heard on the 4th day of December, when, as he said, having voluntarily withdrawn certain parts of his invention, as the other side said having withdrawn them by the order of the Solicitor-General, which were supposed to, or did, clash with that of Prosser and Carcano, his (Pinkus's) patent was reported. Pinkus then proceeded with his patent, and, having lodged a caveat against Prosser's, would have had his sealed first, had not Prosser and Carcano lodged a caveat against it. Each party presented petitions for the discharge of his opponent's caveat.

James Parker and *Beale*, for Prosser's petition.

Wakefield, for Pinkers's petition.

The LORD CHANCELLOR.—It is not a sufficient objection to the grant of Prosser's patent, that he may not be able to use his invention without using also another patent; for he may obtain a license to do so.

Wakefield said the merits of each patent should be heard separtely before his lordship in the same way as before the Solicitor-General.

The LORD CHANCELLOR.—The only ground must be that it interferes with the other invention. No application has been made to me to hear the merits. It strikes me that Pinkus should have made some petition to the Court, stating that his invention had been pirated, or that he had in his possession some invention with which the other patent applied for would interfere.

Parker referred to *Re Fox's* patent, before Lord Eldon (1 Ves. & Bea. 67)

The LORD CHANCELLOR.—If two persons had been private inventors of the same invention, and one said "I do not intend to get a patent," that will not prevent the other inventor from applying for a patent; that would be no ground to stop the patent.

Parker.—In such a case, the only course would be for the person not intending to patent the invention to publish it.

The LORD CHANCELLOR.—In *Fox's* case all the particulars and details were heard before Lord Eldon. Here the caveat was lodged with the Solicitor-General, and Pinkus having notice, was heard against the patent, and the Solicitor-General reported in favour of it. Then a caveat may be entered in the Patent Office in Chancery to prevent the patent passing the Great Seal. Are not the parties in the same situation as when before the Solicitor-General? I do not know that it is an appeal. The application is to discharge the caveat. The question ought to have been granted or refused according to the merits. I consider I am in the same position when a caveat is lodged in the Chancery Office, as the Solicitor-General is when a caveat is lodged in his office. Both parties seem to have mistaken their course. The Chancellor refers it back to the Solicitor-General, and on receiving his report, hears both sides, in the same way as they are heard by the Attorney or Solicitor-General. It is usual to refer to the Attorney or Solicitor-General, not for evidence, but for a special report. That is confirmed by the clerk of the patents. I cannot enter into any of the collateral matters which have been discussed until I have received a report on the nature of the patent. I want a special report from the Solicitor-General, as to what has taken place with respect to both patents. When a party lodges a caveat he is not obliged to say a word, but has a right to be heard against the patent. The way in which the merits of the investigation will be dealt with will be by means of costs. I shall direct the reference in the usual form. It will be merely that the Solicitor-General shall inform me how the matter stood when it left his office. A caveat does nothing more than entitle a party to notice.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Thursday, Jan. 16.

KNIGHT *v.* MORRELL.

Practice—Examination of a defendant as a witness after replication—Release of defendant's interest.

The plaintiff in a suit having filed his replication to the answer of a defendant, obtained an order to examine him saving just exceptions. The defendant was, under the above order, duly examined, but by some omission did not, prior to such his examination, release his interest in the suit. No rule to pass publication had been entered, but a motion being made for liberty to withdraw the replication that had been filed to the defendant's answer, and that the depositions taken upon the defendant's examination as a witness might be suppressed, and for liberty to examine such defendant as a witness, saving just exceptions upon new or amended interrogatories:

Ordered,—That the plaintiff, upon proving the release to have been executed by the defendant, should be at liberty to use his depositions as if such release had been made prior to his examination, the rest of the defendants being also at liberty to cross-examine such defendant.

The original bill in this suit was filed so far back as August 1830, by James Knight and William Jones, as assignees of the estate of the defendant, Thomas Jones, a bankrupt. The defendants put in their answer about the 20th December, 1830. By an order dated 18th June, 1831, the plaintiffs amended their bill, and added William Morrell as a party to the record. The defendants put in their answer to the amended bill the 12th September, 1831. The object of the bill was for an account of what was due to Thomas Jones, on partnership transactions between him and the other defendants (with the exception of the defendant W. Morrell), also Charles Morrell, the elder, deceased, which partnership ceased in the year 1823. Charles Harrison having been appointed assignee of Thomas Jones, instead of the original plaintiffs, a supplemental bill was filed on the 1st November, 1832. The defendants did not file their answers to the supplemental bill until the 12th June, 1833. On the 26th July following the plaintiffs replied to all the answers, and obtained an order, intituled in the first two causes, for subpœnas to rejoin, returnable immediately, and for a commission to examine witnesses. The subpœnas were subsequently served. The plaintiff obtained an order, dated 22nd April, 1834, for liberty to examine the defendant, T. Jones, as a witness, saving all just exceptions, and notice of the defendant, T. Jones, being examined before the examiner was served on the defendants. The plaintiff entered his rules to produce witnesses in Trinity Term 1834, but did not obtain a rule to pass publication. No further proceedings were taken in the suit, except a motion for the production of certain documents admitted by the defendants' answer to be in their possession, until Feb. 1839, when, by reason of the death of Charles Morrell, the suit again abated, and a bill of revivor was filed on the 17th March, 1843, against his personal representatives, who appeared thereto and put in their answer, and the usual order to revive was obtained by the plaintiff on the 5th June following. No rule to pass publication having as yet been entered, the plaintiff moved "that he might be at liberty to withdraw the replication which had been filed to the answer of the above-named defendant, Thomas Jones, in the first-mentioned cause, and that the depositions taken upon the examination of the said defendant, Thomas Jones, as a witness in the said two first-mentioned causes, might be suppressed, and that the plaintiff, Charles Harrison, might be at liberty to examine the defendant, Thomas Jones, as a witness in all the said causes, saving just exceptions. Upon the interrogatories which had been already exhibited to him in the said two first-mentioned causes, or otherwise, to examine him upon new or amended interrogatories in all the said causes, as the Court should think fit." In an affidavit in support of the motion, it was stated that, pursuant to counsel's advice that it was necessary for the support of plaintiff's case, that the defendant, Thomas Jones, should be examined, the said Thomas Jones was, on or about the 22nd April, 1834, examined upon interrogatories before the examiner, under an order for that purpose obtained, but without having, *as was fully intended and had been advised, executed* a release of his interest in the said causes previous to such examination; that it had been discovered since the said examination that the replication filed to the answer of the said Thomas Jones to the said original and amended causes had not been withdrawn; that no rule to pass publication in the above-named causes had ever been entered, and that the depositions of the said Thomas Jones have not been seen or heard read by the above-named plaintiff, Charles Harrison, or his clerk in court, or solicitors or agents in these causes, or any or either of them; that the omission to procure from the said defendant, Thomas Jones, such release as aforesaid was entirely accidental, and arose from mere inadvertence on the part of the person at that time conducting the prosecution of these causes, and was not known to the plaintiff, or his solicitors or agents, until long afterwards, when, in consequence of the steps which were taken to prosecute the said causes with effect, after the said bill of revivor had been filed, the state of the proceedings was investigated, and the omission discovered.

Bethell and *Milne*, in support of the motion, contended that it was the constant practice of the Court, in cases like the present, to relieve, where the application was to get free from the effect of a mere inadvertent slip; that the Court, it is true, would not entertain any application to relieve a party who has wholly omitted to do a something which it was his duty to perform; but the case would be different, where, in the act of performing that duty, he omits some part of it which it was his intention to perform; for there the Court would allow the accident to be rectified.

Cases cited on behalf of the plaintiff: *Sandford* v. *Paul* (1 Ves. jun. 398); *Hood* v. *Pimm* (4 Sim. 101); *Cox* v. *Allingham* (Jac. 337); *Cholmondeley* v. *Clinton* (2 Mer. 614); *Coffin* v. *Mines* ([illegible] Ves. [illegible]); *Holmes* v. *Corporation of Arundel* (4 Beav. [illegible]); *Wardle* v. *Ward* ([illegible]).

Stuart, for another defendant, [illegible] the case for which the [illegible] of the Court was asked was one of [illegible] that *Sandford* v. *Paul* [illegible] the other side, were not [illegible] the Court being in those cases [illegible] and that the case of *Kenyon* v. [illegible] (2 [illegible] 398), and Lord Eldon's judgment against such examination, were exactly in point with the present one.

Blossom, for the other defendants.

The VICE-CHANCELLOR.—My opinion is, that the present application only followed that in *Holmes* v. *The Corporation of Arundel*, before the Master of the Rolls. The affidavit of W. E. Jones, the plaintiff's solicitor's clerk, clearly proves that it was the intention of the defendant Jones to release his interest, and that his omission to do so previous to his examination as a witness was purely accidental. I shall make the following order:—That the plaintiff, upon proving the release executed by the defendant, T. Jones, shall be at liberty to use his depositions as if such release had been made previous to his examination. The defendants to be at liberty to cross-examine Jones, and the plaintiff to pay the costs of the present application.

Tuesday, Dec. 3.

PARKINSON *v.* PIPER.

Defective title—Judgment creditors' priority.

A bill had been filed by simple contract creditors of a testator, wherein certain judgment creditors were made defendants. The decree directed a sale of the testator's estates, subject to the Master's approval. An estate situate in H, being lot 4 in the printed particulars, was sold, and the purchaser objected to the title by reason of certain incumbrances, in the shape of unsatisfied judgments against the testator's heir-at-law, upon whom the estate in lot 4 had descended from his brother, a devisee under the testator's will. Held, that the judgment creditors of the heir-at-law not having been before the Court, such circumstance constituted a good objection by the purchaser.

The testator, Robert Piper, by his will, bearing date the 29th December, 1829, having made several devises and bequests, as therein mentioned, and having given and devised certain estates in fee to trustees upon *trust*, out of the rents, issues, and profits thereof, or by sale or mortgage, to raise such sums of money as should be necessary for paying his debts, devised to his son John Robert, in fee, all his messuage, farm, tithes, and lands in Hartoft, in the county of York, and all other his moor and lands in Hartoft aforesaid.

The testator died in September, 1830, and his will, with several codicils, was proved by his executors in the Prerogative Court of York, but at the time of his decease the testator was indebted to various simple contract and specialty creditors.

The executors, in March, 1831, filed their bill against Nicholas Piper, the testator's heir-at-law, John Robert Piper, and all the other children of the testator, praying that the will and codicils might be established, and for an account of the testator's personal estate, and that the rents of the freehold and leasehold estates devised to the plaintiffs might be sold, and that his unsold personal estate not specifically bequeathed, and his real estate devised to the plaintiffs in trust for sale, might be sold, and the proceeds of the sale applied in payment of the testator's debts, and that the deficiency, if necessary, should be raised by sale or mortgage of the leasehold tithes and premises by the will charged therewith.

In Hilary Term, 1836 (*Parkinson* v. *Piper*) the simple contract creditors of the testator filed a bill against the specialty creditors, and certain other parties interested therein, praying that such simple contract creditors might stand in the place of the specialty creditors for such amount of the testator's personal estate as had been or should be applied in payment of specialty debts as against all the testator's real estate, except the leasehold estate devised to his trustees.

John Robert Piper, the devisee of the Hartoft estate, died in December 1836, leaving Nicholas Piper, his eldest brother and heir-at-law him surviving, upon whom, therefore, the said estate descended, whereupon the proceedings were revived against him in Trinity Term, 1837.

Various proceedings had been taken, and reports made, by which it appeared that the testator's debts exceeded the amount of his personal estate, and the estates devised for the payment of his debts.

By a decree in this last-mentioned suit it was, among other things, ordered that, to the extent of 3,415*l*. 17*s*. 2*d*. paid to specialty creditors, the simple contract creditors were entitled to stand in their place against the real estates not charged with the payment of debts, and the Master was to apportion them as therein mentioned. And it was ordered that the entirety of the estate at Hartoft, and all other the estates in the cause devised to the testator's sons, including the estate in Pickering devised to Nicholas for life, should be sold, and the money arising from

the [illegible] the Court [illegible] the [illegible] [illegible] [illegible].

The estate in Hartoft, being lot 4 in the printed particulars, [illegible] purchaser of [illegible] [illegible] in July 1841, and Mr. George Liddell [illegible] the purchaser thereof; but he [illegible] objections to the title, it was [illegible] referred to the Master to inquire whether a good title could be made to the premises comprised in lot 4 of the estates in question; and it was ordered that the said Master should state the result of his inquiries, with his opinion thereon.

The first objection taken to the title to the premises in lot 4 was, "That by the Master's report in the causes dated May 2, 1838, which was confirmed by an order dated July 4, 1838, he found that certain judgments were incumbrances on (among other hereditaments) the Hartoft estate, devised by the testator, Robert Piper, to his son, the defendant, John Robert Piper, upon whose decease, under twenty-one years of age, in December 1836, the same descended to the defendant, Nicholas Piper, subject as to how far the same were binding as against the creditors of the testator, Robert Piper, and that the same several judgments were still subsisting charges upon the said hereditaments at Hartoft aforesaid, and ought, therefore, to be satisfied before the said George Liddell completed his purchase.

Under an order of the 28th January, 1843, the Master, in June 1844, made his report, wherein, among other things, he stated that he was of opinion that a good title could not be made to the premises comprised in lot 4 of the estates in question, and which were sold to Mr. George Liddell.

To this report the Master annexed the following minute:—"By my report of 2nd May, 1838, which has been confirmed, I found that the judgments in question were incumbrances on the lands purchased by Mr. Liddell. Those judgments were against Nicholas Piper, and the question arose whether they were binding against the creditors of the testator, Robert Piper. I am inclined to think that the specialty creditors of Robert Piper have priority over those judgment creditors, and if the judgment creditors shall attempt to make this judgment available at law against the purchaser under the decree, they would be restrained by an injunction in the Court of Chancery. I think, however, that the purchaser has a right to have the lands exonerated from those judgments before he can be compelled to complete the purchase; by so doing, he would incur the risk of having an *elegit* sued out, and his only relief would be filing a bill for an injunction in the Court of Chancery. This applies to those creditors by judgment who are not parties to the suit, and who are, therefore, not bound by the proceedings which have taken place in that suit. Those who are parties to the suit would, I think, be compelled to join in the conveyance." The plaintiffs, John Parkinson and Robert Kitching, excepted to this report, because the Master had in his report certified that he was of opinion that a good title could not be made to the premises comprised in lot 4 of the estates in question, and which were sold to Mr. George Liddell, whereas he ought to have certified that a good title could be made to the said premises.

James Parker and *Sidebottom*, in support of the exception, contended that the judgments did not affect the title in the hands of the purchaser, for the estate being sold under the decree of the Court, for the purpose of paying the testator's debts, neither Nicholas nor his judgment creditors could take any thing till the creditors of the testator were fully satisfied. That the judgment creditors were not in a position to issue out execution against the estates as belonging to Nicholas, for they had commenced their suit *pendente lite*; and even could they raise a legal claim, it would be subject to the specialty creditors of the testator; so that the judgment creditor of Nicholas could not have sued out his *elegit* without being liable to be restrained by an injunction of the Court of Chancery, and that the bare possibility of there being any interruption in the enjoyment of the estate is not such as would form an objection to the title.

Bethell and *Ellis*, for the Master's report, were not called upon.

The VICE-CHANCELLOR.—I do not see in what way you can possibly make a good title to the purchaser without having all the parties claiming a title to the estate under Nicholas before the Court. These are his judgment creditors, who ought to have been parties to this suit. They do not appear upon the record, and this circumstance forms a good objection to the title. If they were here, there might be a decree against them.

Exception overruled. Costs to be paid out of the estate.

ROLLS COURT.

Thursday, Feb. 13.

GILBY v. GILBY.

A legatee has a right to the inspection of the accounts of a testator's estate, but he has no right to have a copy of them made out to him at the expense of the estate, being insolvent; on the other hand, it is not enough for the solicitors of the executors to say they have administered, and there are no assets for legacies. In case of a bill being filed under such circumstances, both parties are highly reprehensible.

This was a bill filed by the plaintiff, first against Gilby and Shepherd, the executors of John Lockwood, the acting executor of the will of Sir John Mark Sykes, under which the plaintiff claimed a legacy of 1,000*l*. Wilbraham Egerton and Lord Skelmersdale were afterwards made parties, as the executors of Tatton, the other executor of Sir Mark, who died in 1823. The plaintiff was at that time an infant, and came of age in 1833, after the decease of the original executors. In 1835, he made application for the legacy, and he was told by the solicitors of the executors that the estate was administered, and there were no assets to meet his claim. Not satisfied with this, he asked for a copy of the accounts, &c. and several applications were subsequently made, of which no notice was taken; and finally, in November 1837, another application was made, accompanied with a threat of filing a bill. A bill accordingly was filed in December 1837, and an answer put in in January following, in which assets were admitted amounting to 18,000*l*.; but that they had, in addition to 1,200*l*. contributed by Lady Sykes, been distributed, and a balance of 200*l*. was due to the executors. They said they could not comply with the application of the plaintiff as to the accounts, because of the expense, but to prevent trouble, they would give him an inspection. This he refused, if they did not pay the costs of the bill, which they would not do. In the Master's office, an allowance of 100*l*. a year to Lockwood by Sir Mark, for which there was no contract, was struck off, and some other items, so as to make the executors in debt to the estate in 95*l*. instead of the estate to them in 200*l*. The cause now came on for further directions, and the whole question was one of costs.

Lloyd, for the plaintiff, said, the questions will be, first, whether the plaintiff was right in filing the bill; and, secondly, whether the offer made to him was sufficient. As to costs, he cited *Sharples* v. *Sharples* (M'Clel. 506); *Anonymous* (4 Madd. 273). It was a question of conduct, and the point was, where the hardship must fall.

Kindersley (with him *Colville*), for the executors of Lockwood, cited *King* v. *Bryant* (4 Beav. 460); *Robinson* v. *Elliott* (1 Russ. 599).

Teed, for the executors of Tatton.

Lloyd, in reply.

The MASTER of the ROLLS.—There has been much wanton and improper litigation in this case. The testator died in 1823, leaving the plaintiff a legacy of 1,000*l*. and appointed executors, who died, having appointed as executors the present defendants. The plaintiff came of age in 1833, and his first application for his legacy was in 1835. The solicitors of the executors replied they had administered all the assets, and there was nothing with which to pay the legacy. I hardly think that this short, pithy way of answering a legatee was a fit or satisfactory way of replying by the executors. Another application was made in 1837, to which there was no answer. At last the bill was filed, and the answer to it substantially proves that the assets were distributed, and that the whole, together with Lady Sykes's contribution, were not enough to satisfy the debts. Now, the legatee was not bound to be satisfied with that, nor was he. He had no right, however, to have copies of the accounts furnished him at the expense of an insolvent estate, but he had a right to get a knowledge, through the executors and by inspecting the accounts, how the distribution was made. He says there was no offer before filing the bill to permit the inspection of the accounts. On the other hand, it is said it was not demanded. After the bill was filed, there was an offer of inspection, but the plaintiff refused it unless they paid the costs of the bill. Now, it could not have been prejudicial to him to inspect the accounts; he, however, refused, and went on to compel an answer which made the balance in favour of the executors. On that they come to a hearing, and the accounts are directed to be taken. Certain items are disallowed, and the balance is turned against the executors, but so small as to be of no use in payment of the legatee: so that the only triumph gained is to turn the balance, and we are just in the same condition as in 1838. The investigation is useless to everybody but the lawyers, their only endeavour being to charge each other. Such conduct is highly improper. Gentlemen should consider what is due to their clients, and to the confidence reposed in them; they should also consider what is due to their own station and character before they embark in such a useless course of litigation. The conduct of the plaintiff is such as to entitle him to no costs, and that of the executors of Lockwood is also of the same character. The state of the account has been altered in the Master's office, materially, not for the benefit of the plaintiff, but to shew that it could not have been supported from the first. As to Lockwood's executors, they are to have no costs, except the assets in their hands. The executors of Tatton are to have their costs from the plaintiff; he not to have them over, nor any costs of the suit.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, Feb. 18.

WILDING v. RICHARDS.

Voluntary conveyance—Creditors.

A conveyance of freehold estates, and a covenant to surrender copyhold estates, were made to a person who was surety in some bonds for the party conveying, upon trusts for sale, and the satisfaction of mortgages affecting the estates and the bond debts. No notice of the conveyance was given to the creditors; the trustee was admitted to some of the copyholds, but proceeded no further in the execution of the trusts of the deed. Three years afterwards, the person conveying died, and it was held, that the conveyance was void, but that the trustee could not be called upon to part with the estate (if any) conveyed to him, or give up the deeds, without being discharged from the bonds of which he was surety, and having the costs expended by him as trustee repaid to him.

Samuel Wilding and Henry Wilding, with the defendant, J. W. Watson, who was a solicitor, as their surety, executed two joint and several bonds, dated respectively in the months of April and November, 1828, for securing the payment of two sums of 400*l*. and 500*l*. and interest, and in the month of January, 1830, they executed another joint and several bond, for securing the sum of 600*l*. and interest. Samuel Wilding died on the 30th of July, 1832, intestate as to the freehold and copyhold estates afterwards mentioned, leaving his brother, Henry Wilding, his heir-at law, who thereupon became entitled to the freehold and copyhold estates, subject to mortgages made by Samuel Wilding, and as to the freehold estates, to the specialty debts of S. Wilding. By indentures, bearing date respectively the 13th and 14th of October, 1832, the freehold estates were conveyed, and the copyhold estates were covenanted to be surrendered by Henry Wilding to J. W. Watson and his heirs, to hold the same, subject to the mortgages affecting the same respectively, upon trust to sell and to pay off the sums due upon the mortgages, and out of the surplus to pay the several bond debts then due and owing from Samuel Wilding, deceased, or from Henry Wilding, with interest, and after satisfaction of the mortgages and bond debts, to pay the residue of the proceeds of the sale to Henry Wilding, his executors, administrators, or assigns, and in the meantime to stand seised and possessed in trust for H. Wilding, his heirs and assigns. Shortly after the execution of these indentures, J. W. Watson was admitted as tenant to some of the copyhold estates. It did not appear that notice of the indentures was given to any of the creditors. During the life of Samuel Wilding, and subsequently up to the death of Henry Wilding, which occurred in May, 1835, Watson acted as the agent in the receipt and collection of the rents of these estates. No steps were taken by Watson to carry the trusts of the indentures of the 13th and 14th of October, 1832, into execution. This suit was instituted on the 24th of May, 1836, for the administration of Samuel Wilding's estate, and upon a reference to the Master as to the nature and effect of the indentures of the 13th and 14th of October, 1832, he on the 24th of December, 1844, reported that he found that the indentures were not binding in favour of any parties as between Henry Wilding or his estate and his creditors. To this report Watson filed exceptions, which now came on for argument.

Russell and *Terrell*, for the exceptions, cited *Walwyn* v. *Coutts* (3 Mer. 707); *Garrod* v. *Lord Lauderdale* (8 Sim. 1); and *Acton* v. *Woodgate* (2 Myl. & K. 492).

The VICE-CHANCELLOR.—If the authorities of *Walwyn* v. *Coutts* downwards, including *Walwyn* v. *Coutts*, did not exist, I should perhaps have felt myself bound to give effect to this deed, the trust having been accepted and acted upon, and it not being alleged that the deed was prepared in any manner contrary to the intention of the parties. The state of the authorities, however, binds me to act against my opinion, and it is necessary for me, therefore, to say, that this deed must be considered as a deed not having effect, subject to these qualifications:—all payments made by the trustee before notice of the revocation must be allowed; and as Watson had an interest in respect of the bonds of which he was surety, I wish to hear the other side upon that.

Wigram, *Bird*, and *Rogers*, for the plaintiff.

The VICE-CHANCELLOR.—My previous observations are to be confined to a form of conveyance executed and completed, to a trustee, vesting the legal estate, without communication with the creditors, in favour of creditors—the trustee accepting the trust and acting under it—and there being no other evidence to shew that there was a trust. The aspect of the cases seems to be, that a deed so situated, and purporting to be a trust, is to be considered as something else. I am of opinion that the authorities do not compel me to say that such estate, if any, as became vested in Mr. Watson as trustee or under the surrender, can be taken from him without discharging

him from the bonds. He has an equity to say so, and that equity cannot be taken from him.

Declare that, without prejudice to any question of account, and without prejudice to any allowances which ought to be made, the deeds of the 13th and 14th of October, 1832, cannot be considered as effectual or binding, save that Mr. Watson is not compellable to reconvey or re-surrender any freehold property included in those deeds, or any copyhold estates to which Mr. Watson was admitted in pursuance thereof, until the discharge of the bonds executed by Samuel Wilding and Henry Wilding respectively, for payment of which Watson was their surety. Refer it back to the Master, without affirming or overruling the exceptions. Reserve the costs.

VICE-CHANCELLOR WIGRAM'S COURT.

Thursday, Feb. 19.

ROBERTS *v.* TUNSTALL.

Devise—Power of appointment.

In this case a testator devised his estate to his wife for life, and after her decease in trust for such of his children as should be then living in such proportions as his wife should, by deed or will, direct or appoint. The testator, at the time of the date of his will had five children, by a former wife, all of whom survived him, and also three other children, by his second wife, to whom the power of appointment was given. The estate devised consisted of three undivided fourth parts, and after the testator's death a suit for partition was instituted in the Exchequer by the owner of the other undivided fourth part, and under which proceedings an allotment was made to the devisees under the will. Afterwards the widow purchased of the five children of the testator by his first marriage, their reversionary interest in the property. The widow died, and by her will gave the estate so allotted and purchased by her to her son Benjamin, subject and charged with a legacy to her daughter.

The husband of a daughter of the first marriage subsequently became insolvent, and his assignee filed his bill against Benjamin Tunstall, as the devisee of the estate, and representative of his mother, to set aside the sale of the fifth share of the insolvent's wife to the testator's widow, on the ground that the power of appointment given to her invested her with the character of a trustee, and that the consideration paid by her for the interest of the five children in the estate was considerably below its real value.

Romilly, Q.C. and *Parry*, for the plaintiff.

Tinney, Q.C. and *Kenyon*, for the defendant, contended for the legality of the sale of the interests of the children, they being all of age at the time.

His HONOUR intimated that after so long a period had elapsed the Court would not disturb the transaction. *Cur. adv. vult.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Monday, Nov. 11.

PHILLIPS *v.* SHERVILLE.

Where an insolvent continues on premises after his discharge under the Insolvent Act, 1 & 2 Vict. c. 110, the landlord may distrain upon acquired property of the insolvent found there, although the rent for which he distrains had become due before the discharge of the insolvent under that Act, and the sum so due to the landlord for rent was inserted in his schedule.

This was an action on the case for an excessive distress.

Plea—Not guilty by statute.

Verdict for the plaintiff, damages 13*l* 14s. to be reduced to 40s. if the goods were returned, and with leave reserved for the defendant to move to enter a nonsuit.

Platt, Q. C. obtained a rule *nisi* accordingly.

It appeared that after the rent for which the distress was made had accrued due, the tenant had petitioned the Insolvent Debtors Court, under 1 & 2 Vict. c. 110, and that in his schedule he had inserted 10*l.* as due to the landlord for rent. The distress, which formed the subject-matter complained of in the action, was made for 5*l.* part of the sum so inserted in the schedule, and was made some time after the insolvent had obtained his discharge under the Act. It further appeared that the goods seized were after-acquired property, said to be purchased with money that he had earned.

G. Chilton, Q. C. and *Hugh Hill* now shewed cause.—The landlord had no right to make the distress, as all the property of the insolvent was vested in the provisional assignee of the Insolvent Court by the vesting order made under the 37th section of the Act. It is clear that the landlord could not have maintained an action of debt for his demand; and it is submitted that the effect of the discharge under the Insolvent Act is to protect the person and goods of the petitioner after his discharge from any process to enforce the payment of the debts inserted in his schedule, except by proceedings taken in the manner pointed out by the Act. But then, it is further contended, that this is now a judgment debt, and therefore the landlord is barred by the 91st section of the Act. By the 87th section the insolvent is compelled to execute a warrant of attorney to the provisional assignee to confess judgment for all the debts which he has inserted in his schedule. Now this in effect makes them judgment debts; so that, as in the present case, the rent was inserted in the schedule, the nature of the landlord's demand is changed, and the remedy by distress is merged. *Davis* v. *Syde* (4 Nev. & Man. 623), and *Newton* v. *Scott* (9 M. & W. 435), will be relied on by the other side as to the landlord's power to distrain; but that case is distinguishable, for there the distress was made before the bankruptcy, while here it was made after the discharge of the insolvent, and the property seized was after-acquired property, which, it is submitted, it was the intention of the Act to protect from all the debtors mentioned in the schedule, except the debtor proceeded against the insolvent in the manner pointed out in the 88th section of the Act.

Cases cited: Buller, N. P. 182; *Brodie* v. *Ball* (1 Brown, Chan. Cas. 437); *Davis* v. *Shipley* (1 B. & Ad. 54).

Platt, Q. C. *Pashley*, and *Pearson*, in support of the rule.—It is clear that the goods of a stranger, if they had been found on these premises, might have been distrained; but it is contended here, that the tenant's own goods are especially privileged; that, it is submitted, is not so. *Newton* v. *Scott* is in point, and that case was affirmed in error (10 M. & W. 471). Here the party continues on the premises; the rent remains unpaid, and it is submitted the the landlord had a perfect right to distrain; indeed, constructively, the 58th section of the Act gives him a right to seize, for it merely limits his right to distrain to one year's rent. The statute merely extinguishes the right of action, and not the debt. In *Birchon* v. *Creighton* (10 Bing. 13), which was a case under the then Insolvent Act (7 Geo. 4, c. 57), Tindal, C. J. says, speaking of a discharge under that Act, "The discharge is a statutory answer to the plaintiff's demand, and does not go in discharge of the debt." Here there is no merger. The right to distrain is merely a collateral right, and does not merge.

Cases cited: *Briggs* v. *Sowerby* (8 M. & W. 729; 2 Ves. 131); Roll Ab. Debt exting. A. P.; *Stephens* v. *Wood* (5 Esp. 200); *Mavor* v. *Croome* (1 Bing. 261); *Jacobs* v. *Lotour* (5 Bing. 130). *Cur. adv. vult.*

JUDGMENT.

Lord DENMAN, C. J. delivered the judgment of the Court.—The question in this case was, whether a landlord could, after the discharge of the tenant under the Insolvent Debtors Act, distrain for rent due before the discharge. It was said in the argument that, as the person of the tenant was protected against all proceedings, and as his future effects were protected from process, remedy by distress was also taken away; and that by the operation of the Insolvent Debtors Act, the debt was virtually extinguished. It may be so as far as it concerns remedy by action, but not so far as regards the remedy by distress. It was decided in *Newton* v. *Scott* (9 M. & W. 435), affirmed in error (10 M. & W. 471), that the discharge of a prisoner under the Bankrupt Act does not take away the right of distress. That applies also to the Insolvent Debtors Act. But it was then contended that the right to distrain was merged in the judgment confessed by the insolvent to the provisional assignee under the 87th section of the Insolvent Debtors Act; but there are two answers to this argument; first, that the judgment is not confessed to the landlord, and secondly, that it is not co-extensive with the remedy by distress. For the goods of the debtor alone could be seized under the judgment, whilst not merely the goods of the debtor, but likewise those of any third person, might be seized under the distress, if found upon the premises. In this case, therefore, the rule will be made absolute to enter a nonsuit. *Rule absolute.*

Wednesday, Feb. 12.

REG. *v.* BADCOCK and OTHERS, the Trustees of Taunton Market.

The trustees of a market under a local Act of Parliament, vesting in them the lands and buildings purchased for the purposes of the market, and enacting that, after payment of debts and expenses, "the market-buildings, tolls, rents, &c. were to remain in the trustees in trust as an estate for the benefit of the parish of M.: to be applied by the trustees to the clothing, educating, and apprenticing so many of the children of the poor inhabitants thereof as the trustees should from time to time direct," were held liable to be rated to the poor-rate in respect of such market-buildings, &c.; such a trust not being a trust for a public purpose.

Where two statutes are in pari materiâ, and the latter contains a general clause, providing that all clauses in the former, not by the latter varied or repealed, shall be applied to the latter as fully as if repeated therein, the proper construction of such clause is, that it incorporates into the latter all the general powers and provisions of the former Act only, and not special provisions; such as a provision contained in the former Act pointing out a peculiar mode of rating property vested in trustees by virtue of that Act.

Upon appeal against a poor-rate for the parish of Bishop's Hull, in the county of Somerset, whereby the trustees of Taunton market were rated in respect of the market-house and buildings forming part of Taunton market, and including ten fixed butchers' stalls, the Court of Quarter Sessions ordered the rate to be amended by striking out the assessment upon the trustees for those stalls; but to be confirmed as to the market-house and buildings containing them, subject to the opinion of this Court upon a case; which stated, that by an Act of Parliament passed in the 9th Geo. 3, for erecting a market in the town of Taunton, and preventing the holding of a market in the streets of the said town, &c. power to purchase lands and buildings for that purpose, and to collect tolls, was given to certain trustees, in whom the lands, &c. so purchased were vested, in trust to pay expenses, &c.; and that Act also provided that after the discharge of all debts, expenses, &c., "the market, buildings, tolls, rents, &c. were to remain in the trustees in trust as an estate for the use and benefit of the parish of St. Mary Magdalene, in the said town of Taunton, for ever, and should and might be applied by the said trustees to the clothing, educating, and placing out apprentices, so many of the children of the poor inhabitants of the said parish of St. Mary Magdalene as the said trustees should, from time to time direct and appoint." By that Act it was also further enacted, "that the share and proportion which the several grounds, houses, and buildings, which should be vested in the said trustees by virtue of the said Act, did contribute or pay, or was or were charged with towards the land-tax, the church, and poor rates, in the year 1768, according to the rents of the same as they were then rated, should be for ever paid to the collector or collectors and other proper officers, by the said trustees, &c., and that such payments should be in lieu of all taxes rates, or any impositions of what kind or nature soever, to be paid in respect of the said market-house and other houses and buildings, to be erected by virtue of that Act." By virtue of that Act, in 1768 the trustees purchased ground and buildings and erected a market, all in the parish of St. Mary Magdalene. In 1817, the market being found inconveniently small, an Act (the 57th Geo. 3) was obtained "for enlarging the market-place, &c." which also authorized het trustees to purchase land and buildings, &c., and enacted that the said Act (first above mentioned), and all and every the authorities, powers, provisions, regulations, clauses, matters, and things therein contained, except such of them as were thereby varied, altered, or repealed, or as were repugnant to or otherwise provided for by that Act, should be in full force and effect, and should extend to, and be practised, applied, and put in execution for effecting the purposes of that Act, as fully and effectually, to all intents and purposes, as if all such authorities, powers, &c. were repeated and re-enacted in the body of that Act with relation thereto." Under that Act the premises in question in the parish of Bishop's Hull were bought and converted into a butchery. The revenue of the market was in most years sufficient to meet the expenses and interest on debts, but no surplus had ever existed. If the Court should be of opinion that the trustees were not liable to be rated, or only liable in the share or proportion which the land taken under the 9 Geo. 3 did contribute to the poor-rate in 1768, then the order of sessions to be quashed; if the Court should be of opinion that the trustees were rateable only in the proportion which the land taken under 57 Geo. 3 did contribute to the poor-rate in 1817, then the rate to be amended by substituting 15*l.* as the rateable value of the market-house and buildings in Bishop's Hull, and 6s. 3d. as the rate thereon; and if they should be of opinion that the trustees were rateable according to the 6 & 7 Wm. 4, c. 96, then the order of sessions to be confirmed.

This case was argued on Saturday, Jan. 18, and Wednesday, Jan. 22.

Moody (*Phinn* with him), in support of the rate, contended, 1st, that the trustees had such a beneficial occupation of these premises as rendered them liable to be rated, and that the stat. 9 Geo. 3, under which the market was erected originally, recognized that legal liability. The only ground of exemption was where the property was applied exclusively to public purposes. (*R.* v. *St. Giles, York*, 3 B. & Adol. 573; *R.* v. *Sterry*, 12 Ad. & El. 84; *R.* v. *St. Bartholomew's*, 4 Bur. 2435; *The Governors of the Bristol Poor* v. *Wait*, 5 Ad. & El. 1; *R.* v. *Wallingford Union*, 10 Ad. & El. 259; *R.* v. *Liverpool*, 7 B. & C. 61; *R.* v. *Weaver Navigation*, 7 B. & C. 70, n.) But here the ultimate trust, which was the material one, was for a private purpose of one particular parish only; and the trustees received a pecuniary return from the property which they occupied, and that was all that was necessary

It was true the market yielded no profit; but that was immaterial. (R. v. *Blackfriars-bridge Company*, 9 Ad. & El. 828.) Secondly, that the rating clause in 9 Geo. 3 was not re-enacted in 57 Geo. 3; and therefore did not apply to the premises in question. The first Act did not apply to Bishop's Hull at all; Bishop's Hull had no notice of it when it was introduced, and had no opportunity of opposing it in Parliament. Moreover, where the language would lead to so much difficulty, and was so ambiguous as was the language of that rating clause, the Court would not import it into the second Act. (*R.* v. *Monmouthshire Canal Company*, 3 Ad. & El. 619; *R.* v. *The Leeds and Liverpool Canal*, 7 Ad. & El. 671; *R.* v. *Birmingham Canal Company*, 2 B. & Ald. 570.)

Cockburn (with him *Kinglake*, Serjt., *Carey*, and *Carrow*), contrà, contended, 1st, that the trustees had no beneficial occupation of the premises. (*R.* v. *Terrett*, 3 East, 506; *R.* v. *Salter's Load Sluice Navigation*, 4 T. R. 730.) Here no part of the property could be applied to private purposes; the trustees were to receive and pay as directed by the Act. (*R.* v. *Beverley*, 6 Ad. & El. 645; *R.* v. *The Justices of Worcestershire*, 11 Ad. & El. 57.) This case fell within the principle upon which corporate property was held exempt. (*R.* v. *Liverpool Mayor*, 9 Ad. & E. 435; 1 P. & D. 334; *R.* v. *Exminster*, 12 Ad. & E. 2.) And there could be no doubt that this property was as much applied to a public purpose as property occupied for the purpose of maintaining docks or lighting a town. If the ultimate trust here had not been public, it would have been immaterial, because the case found that there was no surplus after the payment of the expenses of the market; but both the maintenance of the market and the ultimate trust for the poor of the parish, were public purposes. (*R.* v. *Waldo*, Cald. 358; *R.* v. *Wilson*, 12 Ad. & E. 94.) Secondly, that if they were liable to be rated at all, they could only be rated in the proportions in which the property was rated in 1768; all that was not repugnant to the second Act was incorporated into it from the first, the object of the Legislature being to exempt all the property applied to that useful public purpose from any additional burdens; and there could be no difficulty in carrying that into effect. *Cur. adv. vult.*

JUDGMENT.

Lord DENMAN, C.J. now delivered the judgment of the Court.—One point to be decided in this case is, whether the clause in the 9 Geo. 3 is to be considered as re-enacted by and introduced into the 57 Geo. 3; and if that shall be determined in the affirmative, it will not only settle the question of rateability, but will also determine the principle on which the rate is to proceed. It will be convenient to consider that question first. The latter statute provides that all clauses in the former which are not by the latter varied, altered, or repealed, shall be in full force and effect, and shall extend to and be applied to the latter as fully as if they had been repeated and re-enacted in the body of the latter. Excepting the excepted clauses, the clauses of the former Act not only remain in force, but are extended to and applied in carrying the latter into effect. The clause in question does not fall with in the exception, unless it is repugnant to any thing in the latter statute. In the latter statute there is no rating clause provided, nor any form from which it can be directly inferred that the trustees are not to be rated at all; there can, therefore, be no repugnancy between the two statutes, nor does it amount to repugnancy, though there may be some difficulty in the application. This remark, however, does not conclude the matter upon general principles, and thus it may be open to the respondents to contend that, large as the words are, on the exceptions being examined, still the clause in question is not in the latter Act of Parliament. It provides that the property to be vested in the trustees under the Act shall bear and pay the same share or proportion towards the land-tax, and church and poor rates, as in 1768, according to the amount of the same as then rated. In terms this fixes not the amount of the assessment, but the share and proportion which it is to pay towards the general rate, and this is neither an unusual nor inequitable provision. The occupiers must be taken to agree that the then existing proportion was a fair one, even under any alteration which the statute might occasion; still it is obvious that the provision is of a special and limited kind; for what was fair in reference to one may be most unjust if applied to another property, and some change of circumstances may, and in this instance must, prevent its application with any tolerable accuracy. See the observations of the judges in the similar case, in 3 Ad. & E. 619, the *Monmouthshire Canal* case. The framers of the latter statute probably intended to do the same which the former Act had done, with regard to those rates. It is a certain rule of construction, laid down in the Second Institute, that in the construction of general references to Acts of Parliament, such reference must be made only as will stand with reason and truth; and where a provision is limited in respect of time and place, it is to give a meaning contrary to reason to extend it to other times and places. In *Reg.* v. *The Justices of Surrey* (2 T. R.), the question was, whether an appeal lay against a conviction by two justices, under the 25th Geo. 3, c. 72, s. 9; and that depended upon the construction of the 24th section of the Act. There was no doubt that the words were large enough to incorporate the former appeal clause; but upon a review of all the statutes, the Court thought that it was not intended to give an appeal against the decision of the justices; and Ashurst, J. said,—"The fair construction to be put upon this clause appears to be this; that all the general powers given in Acts, *in pari materiâ*, shall be virtually incorporated into this; but that such provisions as are always considered as special provisions shall not." Here, there is even a more special provision in the earlier Act; and we think we are justified in putting such a limitation upon these very general words in the latter Act as shall prevent their applying to this provision. It is necessary, therefore, to consider the general question of rateability; and the general principles on that subject are well settled. To make rateability, there must be occupation beneficial in its nature, that is, a subject-matter producing a valuable return. When such an occupation is established, the occupier is rateable in respect of it, unless he is merely a trustee for the public, receiving no individual benefit, except in common with and as one of the public; in such a case the law does not regard him as an occupier, but the public whom he represents. The cases are numerous, and the dividing line not easily drawn. On the one side a dock company, as in the case of *R.* v. *Liverpool* (7 B. & C. 61), and the trustees of a river navigation, where all the surplus tolls were applicable only to the repair of bridges and such other charges upon the county as the magistrates should order, as in *R.* v. *Weaver Navigation* (7 B. & C. 70, n.), were held not rateable; and with regard to municipal corporations receiving anchorage dues, &c. applicable to specific purposes, with a proviso as to the surplus that it was to be applied under the direction of the council for the public benefit of the inhabitants and the improvement of the borough, as in *R.* v. *Liverpool* (9 Ad. & Ell. 435), those dues have been held not rateable, and it was considered as no ground of distinction that the property in respect of which the rate was imposed was held in a parish out of the borough; that was held in *R.* v. *Exminster* (12 Ad. & El. 2). On the other hand, the governors of the Bristol poor (5 Ad. & E. 1), and the guardians of the union of Wallingford (in 10 A. & E.), were held rateably liable for their occupation; and the latter case was considered as not distinguished from the former by the circumstance that the property in the former case was situate without the parish for which it was taken, but in the latter was within the union. It is unnecessary to advert to more cases; our business is to see within which class the facts of this case bring it; at the same time we may remark that, in all in the first class, the property, as such, was unlimited by the bounds of the county, borough, or parish, and that the public had a substantial and direct interest in the benefit of the application of the funds proposed to be rated. In the latter, the rate-payers, or at most the inhabitants, of certain parishes, were concerned in the benefit, direct or indirect. It seems to us the facts here fall within the latter class. The proceeds of the property are applicable, after payment of the purchase-money, as an estate to the use of the parish of St. Mary Magdalene, and the mode of benefiting it is directed to be by clothing, educating, and placing out as apprentices the children of the poor inhabitants of the parish. Whether the term "poor inhabitants" is limited to those who receive relief or not, we are unable to say. To the public, properly so called, it matters not by whom the poor children are clothed, educated, and apprenticed. We are therefore of opinion, the order of Sessions must be confirmed. As in the *Wallingford* case, so here, we think it is not necessary to make any observation on the intermediate cases of property appropriated to religious and charitable purposes; for we decide this case, as that, on the ground that this property, being beneficially occupied and not devoted to a public purpose, the occupiers are subject to be rated in respect of it. The order of Sessions will, therefore, be affirmed.

COURT OF COMMON PLEAS.

Thursday, Feb. 13.

BITTLESTON AND ANOTHER, Assignees of WILLIAM TIMMIS *v.* JOHN TIMMIS.

To an action for money had and received to the use of the plaintiffs as assignees of one T. a bankrupt, the defendant pleaded that before notice of any act of bankruptcy, and before the fiat issued, the defendant gave credit to the bankrupt in the sum of 148*l.* 10*s. by accepting a bill of exchange without any consideration for his accommodation, which bill of exchange the bankrupt negotiated before his bankruptcy, and the defendant paid before the commencement of the suit, whereby the bankrupt became and still was indebted to the defendant in the said sum of* 148*l.* 10*s. being the sum for which he had so given him credit as aforesaid; that before notice of any act of bankruptcy, and before issuing the fiat, the bankrupt delivered to the defendant two bills of exchange, one for the sum of* 100*l. and the other for the sum of* 20*l. for the purpose and in order that the defendant might obtain and receive the respective amounts for and on behalf and for the use of the bankrupt; and that after the bankruptcy, and before the issuing of the fiat, and before the commencement of the action, the defendant received the said sum of* 120*l. being the amount of the respective bills of exchange, and that the defendant was ready and willing to set off the same against the said sum of* 148*l.* 10*s. so due and owing to the defendant, Held, on special demurrer, that this plea was good, as the defendant was entitled to set off against the claim of the plaintiffs as assignees the amount of the accommodation acceptance which had been paid by him, and that such set-off was properly pleaded by way of confession and avoidance; Held also, that the plaintiffs had properly declared as for money had and received to their use as assignees, but that the same was answered by the plea.*

Indebitatus assumpsit for money had and received by the defendant for the use of the plaintiffs as assignees, and on an account stated.

The defendant pleaded, *thirdly*, as to so much of the cause of action in the said first count of the declaration mentioned as relates to the sum of 120*l.* parcel of the moneys in that count mentioned, and as to so much of the cause of action in the second count of the declaration mentioned as relates to the sum of 120*l.* parcel of the moneys in that count mentioned, that the said sum of 120*l.* in this plea firstly above mentioned, and the said sum of 120*l.* in this plea secondly above mentioned, are one and the same sum of 120*l.* and not different sums; and that the said account in the said second count of the said declaration mentioned, so far as relates to the said sum of 120*l.* in this plea secondly above mentioned, was stated of and concerning the said sum of 120*l.* in this plea firstly above mentioned and not concerning any other or different sum; and the defendant further saith, that before the commencement of this suit, and long before he, the defendant, had notice that any act of bankruptcy had been committed by the said Wm. Timmis, and long before any fiat of bankruptcy issued against the said Wm. Timmis, to wit, on the 4th day of July A.D. 1843, he, the defendant, gave credit to the said Wm. Timmis in a large amount, to wit, in the sum of 148*l.* 10*s.* by accepting for the accommodation of him, the said Wm. Timmis, and at his request, and without any consideration or value given to him, the said defendant, for so doing, a certain bill of exchange in writing, bearing date on the 4th day of July, A.D. 1843, drawn by the said Wm. Timmis upon the said defendant, and by which the said Wm. Timmis required the defendant to pay him, the said Wm. Timmis, or his order, the sum of 148*l.* 10*s.*; which said bill of exchange the said Wm. Timmis afterwards, and before any notice to the defendant of his said bankruptcy, indorsed, negotiated, and transferred for value for his own use and benefit; and the defendant further saith that the credit so given by him, the said defendant, to the said Wm. Timmis was a credit of a nature extremely likely to end in a debt from the said Wm. Timmis to the said defendant; and the defendant further saith, that afterwards, and before the commencement of this suit, to wit, on the 7th day of November, A.D. 1843, he, the said defendant, was called upon, and obliged to pay, and did pay, the said bill of exchange above mentioned to certain persons trading under the name, style, and firm of James Brown and Company, and then being the holders of the said bill; and thereupon and thereby, and before the commencement of this action, the said Wm. Timmis became, and at the time of the commencement of this action was, and still is, indebted to the defendant in a large sum of money, to wit, the sum of 148*l.* 10*s.* being the amount of the said last-mentioned bill of exchange, for money paid by the defendant for the use of the said Wm. Timmis at his request; which said last-mentioned sum of money is the same identical sum in and for the amount of which the defendant had given credit to the said Wm. Timmis as aforesaid. And the defendant further says, that before he, the said defendant, had notice of any act of bankruptcy by the said Wm. Timmis committed, and before the date or issuing of any fiat against the said Wm. Timmis, and before the commencement of this action, to wit, on the 17th day of July, A.D. 1843, the said Wm. Timmis delivered to the said defendant a certain bill of exchange bearing date the 17th day of July, A.D. 1843, drawn upon and accepted by one Michael Briggs, for the sum of 100*l.* payable three months after the date thereof, and a certain other bill of exchange bearing date the 8th day of July, A.D. 1843, drawn upon and accepted by one Thomas Rose, for the sum of 20*l.* payable three months after the date thereof; which said respective bills of exchange, so accepted as aforesaid, he, the said Wm. Timmis, then delivered to the defendant as aforesaid for the purpose and in order that the said defendant might obtain and receive the respective amounts thereof for, and on behalf and for the use of him, the said Wm. Timmis; and the defendant says that afterwards, and after the bankruptcy of the said Wm. Timmis, but before the issuing of any fiat against the said Wm. Timmis, and

before the commencement of this action, to wit, on the day and year last aforesaid, the defendant obtained and received the said sum of 120*l.* being the amount of the said respective bills of exchange; which said sum of 120*l.* so obtained and received by the defendant as last aforesaid, is the same sum of 120*l.* in the first count of the declaration and in the introductory part of this plea firstly above mentioned. And the defendant saith, that the said sum of 148*l.* 10*s.* so paid by the defendant for the use of the said Wm. Timmis to the holder of the said bill of exchange in this plea firstly above mentioned, and so due and owing from the said Wm. Timmis to the defendant as aforesaid, exceeds the damages sustained by the plaintiffs as such assignees as aforesaid by reason of the nonperformance by the defendant of his said promises as to the said sum of 120*l.* in the introductory part of this plea mentioned, and as to the causes of action relating to which this plea is pleaded; and the defendant is ready and willing, and hereby offers to set off and allow to the plaintiffs the full amount of the said damages out of the said sum of 148*l.* 10*s.* so due and owing to the defendant as aforesaid, according to the form of the statute in that case made and provided.—Verification.

Demurrer, alleging as causes of demurrer that the third plea affords no answer in law to the matters and causes of action to which it is pleaded; that it neither traverses nor confesses and avoids these causes of action; that the said 3rd plea, confessing, as it does, the causes of action in the introductory part of that plea mentioned, seeks to set off against those causes of action a debt due from the said Wm. Timmis to the defendant before the bankruptcy of the said Wm. Timmis, and does not shew any debt or sum of money whatsoever to be due and owing to him, the defendant, from the plaintiffs as assignees of the said Wm. Timmis. That the said 3rd plea should have shewn affirmatively that the said Wm. Timmis delivered to the defendant the said bills of exchange in manner and form as in the 3rd plea mentioned, and also that the defendant obtained and received the said sum of 120*l.* being the amount of the said bills, in manner and form as in the said 3rd plea mentioned, before the bankruptcy of the said Wm. Timmis. That the said 3rd plea seeks to set off debts which are not mutual; that the said 3rd plea does not sufficiently shew any mutual credit between the bankrupt and the defendant; that the said 3rd plea attempts argumentatively to deny that the said sum of 120*l.* in the first count, and in the introductory part of the said 3rd plea mentioned, was received by him to the use of the plaintiffs as assignees of the said Wm. Timmis; that the said 3rd plea amounts to the general issue; that the said 3rd plea is double, inasmuch as it argumentatively denies that the said last-mentioned sum of 120*l.* was received to the use of the plaintiffs as assignees of the said Wm. Timmis, and also seeks to shew matter of set-off to the same cause of action, that is to say, to the same sum of 120*l.*

Joinder in demurrer.

Channell, Serjt. in support of the demurrer.—This plea was intended to be framed on that in *Hulme* v. *Muggleston* (3 M. & W. 30); but there the objection which has been here taken was not raised on special demurrer. But assuming this was a debt from the bankrupt which might be set off, still it cannot be set off against a claim, as here, for money received to the use of the assignees, for there is no mutuality. As to this, *Wood* v. *Smith* (4 M. & W. 522) is expressly in point. [Maule, J.—May this not have been money had and received to the use of the bankrupt, and after the bankruptcy to the use of the assignees?] If it amounts to a defence to all, it is in substance a denial that the money was received to the use of the assignees, but on the contrary, to the use of the bankrupt, and this is open to the objection stated in the special demurrer as amounting to the plea of *non assumpsit*. The plea either does not confess, or if it does, it does not avoid. (*Groom* v. *Mealey*, 2 Bing. N. C. 140.)

Talfourd, Serjt. (with him J. W. *Smith*), contrà.—The plea is good, on the authority of the case of *Hulme* v. *Muggleston*; the only difference between the two cases is, that there the bill on which the money was received by the defendant was delivered to him by the bankrupt before the bankruptcy, and in the present case it was delivered by the bankrupt before the issuing of the fiat, and notice to the defendant of any act of bankruptcy, but this is now, since the stat. 2 & 3 Vict. c. 29, identical. There is an error in the marginal note to *Hulme* v. *Muggleston* in saying that the money was received by the defendant before the bankruptcy; the money was not received until afterwards, as appears from the report, 3 M. & W. 32, which makes therefore that case analogous to the present. [Cresswell, J.—There is a mistake in the print of that report in saying that the bill was presented for payment to the drawers, and the money received from the drawers; it should be drawees.(a)] This plea discloses a case of mutual credit. (*Russell* v. *Bell*, 8 M. & W. 277.) The plea gives sufficient colour by shewing that, *primâ facie*, the money was received to the use of the assignees, though it was not so in fact, but arose under such circumstances as to be liable to have set off against it this debt from the bankrupt. It is therefore similar in principle to *Unwin* v. *St. Quintin* (11 M. & W. 277), though that was a case of trover. As to the plea not being multifarious, *Lazarus* v. *Cowie* (3 Q. B. 459) was cited.

Channell, Serjt. in reply. *Cur. adv. vult.*

JUDGMENT.

Tindal, C.J. now delivered the judgment of the Court. His lordship, after stating the pleading, said,—This case was argued before us during last Term, when two points were mainly relied upon by the plaintiffs: that the acceptance of the bill of exchange by the defendant for the accommodation of the bankrupt was not a credit within the meaning of the 6 Geo. 4, c. 16, s. 50; and, secondly, that the plea confessing the receipt of the money to the use of the plaintiffs as assignees, does not avoid the cause of action by shewing a credit given to the bankrupt, and pleading it as a set-off under the 50th section. We are of opinion the plea is good. The acceptor of a bill of exchange for the accommodation of another, gives him credit for the amount which, when paid by the acceptor, may clearly be proved under a fiat issued against the party for whose accommodation the bill was accepted and paid, and may be made the subject-matter of an action under the mutual credit clause, 6 Geo. 4, c. 16, s. 50; as in *Smith* v. *Hodson* (4 T. R. 211); *Ex parte Boyle* (Cook's Bankruptcy Law, 542); and *Ex parte Wagstaff* (13 Ves. 65). These are distinct authorities for that proposition; and although in the case of *Young* v. *Cotton* (1 Deacon's Bankruptcy Cases, and 1 Moore's Privy Council Cases), some of the cases on the subject of mutual credit were treated of as not having been well decided, the authority of the cases above mentioned was left untouched; and *Smith* v. *Hodson* has since been recognized by the Court of Exchequer in *Hulme* v. *Muggleston* (3 M. & W. 30). The plea, therefore, shews, on the one hand, a credit for the 148*l.* 10*s.* given by the defendant to the bankrupt before the defendant had notice of any act of bankruptcy, or a fiat had issued; and on the other hand, it shews that before any such notice, the bankrupt delivered to him two bills of exchange, one for 100*l.* the other for 20*l.* in order that the defendant might receive the respective amounts thereof on behalf and for the use of him, the bankrupt; and the defendant received the same after the bankruptcy, and before the fiat. The defendant, therefore, gave credit to the bankrupt, and the bankrupt to the defendant, before the latter had notice of any act of bankruptcy, and before the fiat had issued: and those credits have resulted in debts, and one demand may be set off against the other by the express words of the 6 Geo. 4, c. 16. But it was contended, secondly, that although the credits were mutual between the bankrupt and the defendant, yet, as the declaration was for money had and received to the use of the assignees, and not to the use of the bankrupt, the debt due to the defendant from the bankrupt could not be set off thus, there not being debts due to and from the same parties, for which the case of *Wood* v. *Smith* (4 M. & W.) was cited. The words of the statute furnish an answer to this objection. The plea, indeed, confesses the receipt of the money to the use of the assignees, but it shews how their title to the money arose, namely out of a credit given by the bankrupt. The 6 Geo. 4, c. 16, s. 50, provides, where there has been mutual credit or where there are mutual debts between the bankrupt and any other person, the commissioners shall state an account between them, and one debt or demand may be set off against another, and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand thereby made proveable against the estate of the bankrupt may also be set off in manner aforesaid against such estate, provided the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of bankruptcy by such bankrupt committed. Now the assignees are suing for money due to the estate, and the defendant's set-off is due from the estate, and there had been mutual credit between the defendant and the bankrupt before the defendant had notice of the bankruptcy; one therefore may be set off against the other by the words of that section. In *Wood* v. *Smith* (4 M. & W.) the plea did not shew there had been mutual credit, or that there were mutual debts between the bankrupt and the defendant, and therefore it is no authority for the decision in this case. In *Southwood* v. *Taylor* (1 B. & Ald. 471), which was an action for goods sold and delivered by the plaintiff, as assignee of the bankrupt, the defendant, who had pleaded the general issue, and given notice of set-off, was allowed by Holroyd, J. to give in evidence a debt due from the bankrupt before any act of bankruptcy, the sale of the goods mentioned in the declaration having been in fact made by the bankrupt after the act of bankruptcy; but more than two months before the date of the commission. A rule *nisi* for a new trial was moved for but refused. It is true Lord Ellenborough, in refusing the rule, after saying the debts were mutual, and therefore the debt due from the bankrupt was the subject-matter of set-off, expressed an opinion that the plaintiff ought to have declared for goods sold and delivered by the bankrupt, because the transaction being perfected by the 46 Geo. 3, was as effectual as if no act of bankruptcy had taken place; and if he had done so no objection could have been made to the set-off. Notwithstanding that dictum, however, we think the plaintiffs, in the present case, have declared properly for money had and received to their use as assignees; but their claim is answered by the set-off which was pleaded. And this disposes of another objection made to the plea, namely, that it is an argumentative denial that the money received by the defendant was received to the use of the plaintiffs as assignees, and therefore amounts to a circuitous general issue. On the whole, then, it appears to us that the money received by the defendant after the bankruptcy was received to the use of the plaintiffs as assignees, and he was entitled to set off against it the amount of the accommodation acceptance paid by him, and such set-off was properly pleaded by way of confession and avoidance of the plaintiffs' cause of action. We therefore think our judgment must be for the defendant.

Judgment for defendant.

(a) See same case, 6 Dowl. 1[illegible], where it is rightly reported as drawees.

Bentley v. Goldthorpe and Another.

In an action by the assignee of letters patent, for an infringement of the patent, the declaration set out a proviso contained in the letters patent, that if the patentee should not particularly describe and ascertain the nature of the invention, and in what manner the same was to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled, within six months after the date of the letters patent, the letters patent were to become void; and the declaration then alleged a performance thereof in the terms of the proviso. The defendants pleaded that the patentee did not particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed according to the meaning of the said letters patent, concluding with a verification:

Held, that the averment in the declaration of performance of the proviso, was a material averment;

Held also, that the plea was not a traverse larger than the allegation in the declaration, but was in substance a denial of such allegation, modo et formâ, and was therefore bad on special demurrer, for not concluding to the country.

Case for the infringement of a patent.

The declaration set out a grant of letters patent from her Majesty of 21 Dec. (5 Vict.) under the great seal, unto one William Carr Thornton, to use, exercise, and vend his invention "of certain improvements in machinery or apparatus for making cards for carding cotton and other fibrous substances," in England, Wales, and town of Berwick upon Tweed, for the term of fourteen years from the date of the said letters patent. And the declaration then stated, that in the letters patent there was contained, amongst other things, a proviso, that if the said William Carr Thornton should not particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, by an instrument in writing, under his hand and seal, and cause the same to be enrolled in her Majesty's High Court of Chancery, within six calendar months next and immediately after the date of the said letters patent, then the said letters patent, and all liberties and advantages whatsoever thereby granted, should utterly cease, determine, and become void, any thing thereinbefore contained to the contrary thereof in anywise notwithstanding, as by the enrolment of the said letters patent, &c. The declaration then alleged that the said William Carr Thornton did afterwards, and within six calendar months next and immediately after the date of the said letters patent, to wit, on the 21st day of June, 1842, in pursuance of the said proviso in that behalf in the said letters patent contained, and of the said letters patent, by an instrument in writing under his hand and seal, particularly described and ascertain the nature of his said invention, and in what manner the same was to be and might be performed, and did afterwards, and within six calendar months next and immediately after the date of the said letters patent, to wit, on the day and year last aforesaid, cause the said instrument in writing to be duly enrolled in her Majesty's High Court of Chancery at Westminster, as by the record of the said instrument, &c.; and that afterwards, and before the committing of the grievances, &c. by a certain indenture then made between the said Wm. Carr Thornton of the one part, and one Joseph Williamson of the other part (*profert of same*), Thornton assigned to Williamson the said letters patent for the residue of the said term of 14 years; and that afterwards, &c. by an indenture between Williamson of the one part and the plaintiff of the other part, Williamson assigned to the plaintiff the said letters patent.

Breach—for making, using, exercising, and vending the said invention.

Further breach—for making, using, and putting in practice the said invention.

Further breach—for making, using, and putting in practice a part of the said invention.

Further breach—for counterfeiting, imitating, and resembling the said invention. Also,

Further breach—for making and causing to be made divers additions to the said invention, and subtractions from the same, whereby the defendants pretended to be themselves the inventors and devisors of the said invention.

To this declaration the defendants pleaded seventhly—That the said Wm. Carr Thornton did not particularly describe and ascertain the nature of the said alleged invention, and in what manner the same was to be performed according to the meaning of the said letters patent; and this the defendants are ready to verify.

Demurrer thereto by the plaintiff, assigning amongst other causes, that the plea neither traverses nor confesses and avoids any material averment of the declaration, and also that it is ambiguous, uncertain, and informal in this, to wit, that whereas the plaintiff does in his declaration distinctly aver that the said Wm. Carr Thornton did, after the making of the said letters patent and within six calendar months next and immediately after the date of the said letters patent, to wit, on, &c. by an instrument in writing under his hand and seal, particularly describe and ascertain the nature of his said invention, and in what manner the same was to be and might be performed, it is uncertain whether by the said plea the defendants intend to traverse the said averment in the declaration, or to confess and avoid the same by force and virtue of some new matter; that if the former, then the last-mentioned plea ought to have concluded to the country, and not with a verification; that if the latter, then the defendants should have set out in the said plea such new matter by force and virtue whereof they, the defendants, seek to avoid the said averment in the declaration; also, that the plea is informal in this, that it ought to have concluded to the country, and not with a verification.

Joinder in demurrer.

Channell, Serjt. (*Spinks* with him) in support of the demurrer.—The case of *Muntz* v. *Foster and Others* (1 Dowl. & Lownd. 737) shews that a compliance with the proviso under which the letters patent are granted is necessary to give the patentee a right thereto, and that an allegation in the declaration like the present, that Thornton did particularly describe the nature of his invention, according to the terms of such proviso, is a material and necessary allegation upon which a traverse might be taken. A plea, therefore, traversing such an allegation as this seventh plea does, without setting up any new matter, ought to have concluded to the country. He was then stopped by the Court, who called on

Manning, Serjt. (with him *Addison*) to support the plea.—It is submitted that the plea ought properly to have concluded to the Court (*Bodenham* v. *Hill*, 7 M. & W. 274), because this allegation in the declaration ought not to have been introduced there. The proviso which is so alleged to have been complied with is, if Thornton should not describe the invention by an instrument in writing, and cause the same to be enrolled in the Court of Chancery within six calendar months, then the letters patent are to become void. This is a proviso which operates only by way of defeazance, and is matter which should, therefore, come from the defendant. (*Thursby* v. *Plant*, 1 Wm. Saund. 234, note c.) Even supposing it is to be considered as a condition, and not a defeazance, still it is a condition subsequent, and not precedent, and no allegation of performance was, therefore, requisite to be made by the plaintiff. (*Wynne* v. *Wynne*, 2 M. & G. 8.) [MAULE, J.—If the plea simply negatives what is alleged, it ought not to conclude with a verification.] The plea of the Statute of Limitations is a negative of the promise as stated in the declaration. [MAULE, J.—If so, such plea would be bad for not concluding to the country.] This plea is a negative of a wider statement than that in the declaration. It is not simply a traverse that Thornton described the invention in the manner and form alleged in the declaration, but it is a denial that he ever described it, and therefore the plea was not required to conclude to the country.

Channell, Serjt. in reply.—It may be that where the plea states new matter, and such statement is in the negative, it may not be required to conclude with a verification; for this *Bodenham* v. *Hill* may be an authority; but where the plea contains, as here, no new matter, it ought to conclude to the country. *Muntz* v. *Foster* shews the allegation was material and proper to be made by the plaintiff in the declaration. The proviso in the letters patent was not a condition subsequent. [ERLE, J.—Has not a patentee a vested interest before the six months? MAULE, J.—There is no allegation that the six months have expired, and it is only upon the non-enrolment within that time that the letters patent are to be void.] It is submitted that the plaintiff ought to shew a compliance with the proviso. When the condition to be performed is something which is to be done within a given time, it cannot be a condition subsequent. Here the specification was to be made and enrolled within six months, and it was necessary for the plaintiff to shew that he had in such respect performed the condition. *Cur. adv. vult.*

JUDGMENT.

TINDAL, C. J. now delivered judgment.—The question in this case is, whether the seventh plea ought to have concluded to the country; and this depends upon the consideration, whether the averment in the declaration, which that plea in terms denies, was a material averment on the part of the plaintiff, for, if material, it follows, from the ordinary rules of pleading, that, as the plea distinctly denies it, there could have been no compelling him to plead over; consequently, the defendants were bound to have concluded their plea of traverse to the country. And we are of opinion, that the averment in the declaration is material. The first objection taken was that the proviso referred to in the conditions contained in the letters patent, was a condition subsequent only, and that the plaintiff had no necessity to allege the performance of it; but that an allegation of non-performance must come properly from the other side. The obvious meaning of this condition appears to be, that if the grantee of the letters patent lets six months elapse without enrolling his specification, the letters patent cease, determine, and become void; if not from the date of the letters patent, at all events at the expiration of six months; and this point has been settled and determined by the Court in the case of *Muntz* v. *Foster* (1 D. & L.) It was secondly objected by the defendant, that as it does not appear upon the face of the declaration that the six months allowed by law to enrol the specification had actually expired before the action was brought, there was no necessity for the averment that such specification was enrolled; but we think it a sufficient answer to such objection, that if this form had been omitted, the plaintiff's right to sue as assignor would have been left in doubt and uncertainty, inasmuch as it would neither appear that the six months had elapsed before the specification had been enrolled, nor that the action was brought within six months next following the date of the letters patent; and the declaration might have been demurred to, and might have been held bad for uncertainty. We therefore think that an averment to prevent this consequence cannot be considered as immaterial. It was lastly argued that the conclusion of the plea with a verification was improper in this case, inasmuch as the traverse is larger than the allegation in the declaration; namely, it contains a denial that the plaintiff ever has, at any time, particularly described his invention; not being pleaded *modo et formâ*, so as to make it a traverse of a particular averment in the declaration. But to this it appears to us a sufficient answer, that it is alleged in the plea, that the grantee of the letters patent did not particularly describe and ascertain the nature of his invention, according to the meaning of the said letters patent. Referring to the declaration, it appears the specification is therein alleged to be filed, and which is upon the face of it according to the meaning of the letters patent; so that in substance the plea seems to have denied the averment *in modo et formâ*. We therefore think that the plea ought to have concluded properly to the country, and judgment must be for the plaintiff. *Judgment for the plaintiff.*

WILLIAMS v. BURRELL and ANOTHER.

A covenant in law differs from an implied covenant in its proper sense. The former is an agreement which the law infers from the use of certain words of grant having a known legal operation, as dedi in a feoffment, or demisi in a lease; whereas the latter is a covenant which is collected by constructive inference from the terms used in the deed.

An implied covenant in its proper sense differs in no respect in its legal consequences from an express covenant; therefore, where there is in a lease such an implied covenant for quiet enjoyment, it is not, like a covenant in law, confined to breaches committed during the estate of the covenantor, but it will extend to those which may occur during the whole continuance of the term intended to be granted.

A tenant for life, with a leasing power, granted two several leases, each for a term of 99 years, if the cestui que vies should so long live; and there was contained in each lease a clause that the lessor, for himself, his heirs, and assigns, the demised premises unto the lessee, his executors, administrators, and assigns, against all persons whomsoever lawfully claiming the same, would, during the said term, warrant and defend. On the death of the lessor, the remainder-man recovered in ejectment possession of the demised premises, by reason of the leases not having been made according to the leasing power.

Held, that the covenant arising from the warranty was not a covenant in law, but an implied covenant in its proper sense, and, therefore, that the lessee could maintain thereon an action of covenant against the executors of the tenant for life.

Held, also, that an executor of the assignee of the lessee could also maintain such action, inasmuch as an express covenant for title or quiet enjoyment will equally pass with the estate as a covenant in law.

By order of the Master of the Rolls, the following case was stated for the opinion of this Court:—

The Right Honourable Charles, Earl of Egremont, by his will bearing date the 31st of July, 1761, gave and devised all his manors, messuages, lands, advowsons, rents, and hereditaments in the several counties of Somerset, Dorset, and Cornwall (comprising, *inter alia*, the premises comprised in the two several indentures of lease hereinafter stated), with their respective rights, members, and appurtenances, unto his, the said testator's, eldest son George, Lord Cockermouth, and his assigns, for and during the term of his natural life, without impeachment of waste, with divers remainders over. The case then set forth a power contained in the will, enabling tenants for life in possession to grant certain leases.

The said testator, Charles, Earl of Egremont, departed this life in or about the year 1763, leaving his eldest son, George, Lord Cockermouth, him surviving, who thereupon became George, Earl of Egremont.

The said George, Earl of Egremont, immediately upon the decease of the said testator, entered upon the said estates, including the said demised premises, as devisee for life, under the said will of the said testator.

The said George, Earl of Egremont, afterwards assumed the name of O'Brien.

On the 24th day of March, 1805, an indenture of lease, in the following words, was duly executed by the said George O'Brien, Earl of Egremont:—"This indenture, made the 24th day of March, 1805, between George O'Brien, Earl of Egremont, of the one part, and John Williams, of ——, of the other part, witnesseth, that for and in consideration of the yearly rent hereby reserved, and the covenants herein contained, he, the said earl, doth hereby demise and lease unto the said John Williams, his executors, administrators, and assigns, all that messuage converted into two dwelling-houses and garden, in Broad-street, in Williton, aforesaid, and adjoining Francis Hale's house, being part of Manwell's tenement, which said two dwelling-houses are in the occupation of the said John Williams and William Wyne, excepting out of this present demise unto the said earl, his heirs and assigns, all quarries, mines, and ores, timber trees, pollards, and saplings, and trees likely to become timber, and lops and tops of maiden trees, coppices, woods, and underwoods, now or hereafter growing upon the said demised premises, with free liberty to fell and carry away the same; to have and to hold the said demised premises unto the said John Williams, his executors, administrators, and assigns, for the term of 99 years, if James Farthing, aged 23 years, Mary Farthing, aged 20 years, and Ann Farthing, aged 17 years, or either of them, shall so long live, the said John Williams, his executors, administrators, and assigns, yielding and paying therefore yearly and every year, during the said term, unto the said earl, his heirs and assigns, the rent of 1*l.* a year, free of all taxes and incumbrances, at Lady-day, Midsummer, Michaelmas, and Christmas, by equal portions. And also yielding and paying for a heriot on the several deaths of the said James Farthing, Mary Farthing, and Ann Farthing (whether they die in succession or otherwise), the sum of 1s. And the said John Williams, for himself, his executors, administrators, and assigns, doth covenant with the said earl, his heirs and assigns, that the said John Williams, his executors, administrators, and assigns, shall and will pay or cause to be paid unto the said earl, his heirs and assigns, the said yearly rent and other payments in manner aforesaid, and shall and will repair and keep the premises hereby granted, with the appurtenances, in and with all necessary reparations, during the said term, and the same, at the end thereof, so well and sufficiently repaired and kept at his and their charges, will leave and yield up, and shall and will perform suit to the Courts of the Manor of Williton Regis, and shall and will, within six months next after notice to him or them, given or left at his or their place of abode for the time being, or on the said premises hereby demised, produce unto the said earl, his heirs and assigns, or to his or their agent, all the said lives if living, or otherwise make it appear to him or them, within the time aforesaid, or within a reasonable time, if they or either of them should happen to be in foreign parts, by a sufficient certificate, that all such persons or person so abroad be living; and if it happen the said yearly rent or other payments aforesaid, or either of them, shall be unpaid, in part or in all, after either of the days of payment aforesaid, then it shall be lawful for the said earl, his heirs and assigns, into the said premises to enter and distrain, and the distress there found to dispose of according to law; and in default of such sufficient distress for satisfaction of the rent and other payments, with all costs and charges thereon; or if the said John Williams, his executors, administrators, or assigns, shall suffer the said premises, or any part thereof, to be ruinous to the value of 40s. and the same shall not repair within six months after notice to him or them given or left at his or their place of abode for the time being, then for all or either of the causes aforesaid it shall be lawful for the said earl, his heirs and assigns, into the said premises, or any part thereof in the name of the whole, to re-enter, and the same to re-possess, as in his or their former estate. *And the said earl, for himself, his heirs and assigns, the said demised premises, with the appurtenances, against him and*

John Williams, his executors, administrators, and assigns, under the rent, covenants, conditions, exceptions, and agreements before expressed, against all persons whomsoever lawfully claiming the same, shall and will, during the said term, warrant and defend. In witness whereof, the parties aforesaid have hereunto set their hands and seals the day and year above said."

A counterpart of the same lease was duly executed by the said John Williams.

The lease was invalid as an execution of the said power by reason that it did not contain the same covenants as were contained in the ancient leases of the same premises.

John Williams had not, at the time of accepting the said lease, any notice of the said ancient leases or any of them, nor was the said John Williams, at the time of accepting the said lease, aware that there was any special power of leasing applicable to the said premises, but the said John Williams believed that the said George O'Brien, Earl of Egremont, was owner in fee of the said premises, and that the said lease was granted by the said earl as owner in fee of the said premises.

The said John Williams entered upon the said demised premises under and by virtue of the lease to him thereof, and enjoyed and possessed the term so granted as aforesaid until the eviction of his tenants as hereafter stated.

One of the lives of the said lease is still living.

By a certain other indenture of lease, bearing date the 25th of March, 1805, and made between the said George O'Brien, Earl of Egremont, since deceased, of the one part, and John Farthing, of Williton aforesaid, labourer, of the other part, and duly executed by the said earl, for the considerations therein mentioned, the said earl did demise and lease unto the said John Farthing, his executors, administrators, and assigns, all that messuage then converted into two dwelling-houses and garden in Long-street, in Williton aforesaid, and adjoining Francis Hale's house, being part of Manwell's tenement, which said two dwelling houses then were in the occupation of the said John Farthing and William Wyne (except as therein is excepted), being also part of the said demised premises, to hold the said demised premises unto the said John Farthing (since deceased), his executors, administrators, and assigns, for the term of ninety-nine years, if James Farthing, then aged twenty-eight years, Mary Farthing, then aged twenty years, and Ann Farthing, then aged seventeen years, or either of them, should so long live, under payment by the said lessee, his executors, administrators, or assigns, of the net yearly rent of 1*l*., and on the several deaths of the said James Farthing, Mary Farthing, and Ann Farthing, of 1s. for a heriot.

The said last-mentioned lease was, in other respects, *mutatis mutandis*, in the same words as the lease hereinbefore set forth.

A counterpart of the said lease to the said John Farthing was duly executed by the said John Farthing.

This lease was invalid as an execution of the said power by reason that it did not contain the same covenants as were contained in the ancient leases of the same premises.

John Farthing had not, at the time of accepting the said lease, any notice of the said ancient leases, or any of them; nor was the said John Farthing, at the time of accepting the said lease, aware that there was any special power of leasing applicable to the said premises; but the said John Farthing believed that the said George O'Brien, Earl of Egremont, was owner in fee of the said premises, and that the said lease was granted by the said George O'Brien, Earl of Egremont, as such owner in fee of the said premises.

The said John Farthing entered upon the said demised premises under and by virtue of the lease to him thereof, and continued in possession thereof until the period of his death as hereafter mentioned.

The said Ann Farthing is still living.

By a deed-poll, under the hand and seal of the said John Farthing (endorsed upon the said last-mentioned indenture of lease), and bearing date the 4th of May, 1808, the said John Farthing, in consideration of 53*l*. 10s. to him paid by Peter Boswell, of Orchard Wyndham, in the parish of St. Decuman's, in the county of Somerset, carpenter, assigned unto the said Peter Boswell, his executors, administrators, and assigns, all and singular the premises comprised in and demised by the said therein-within indenture of lease, dated the 25th day of March, 1805, together with the said indenture of lease, to hold unto the said Peter Boswell, his executors, administrators, and assigns, for all the then unexpired residue of the said term in the said demised premises.

The said Peter Boswell departed this life in or about the month of June 1830, having first duly made and published his last will and testament in writing, bearing date the 14th day of January, 1828, and thereof appointed the said John Williams sole executor, by whom the same was duly proved in the Consistorial Episcopal Court of Wells, on the 20th day of July, 1830.

And the said John Williams, as such executor as aforesaid, entered into and upon, and remained in the possession and enjoyment of the said last-mentioned term, until the eviction of his tenants as hereinafter stated.

The said George O'Brien, Earl of Egremont, duly made and published his will, bearing date the 10th day of September, 1834, and thereof appointed the said defendants and William Tyler (since deceased) executors, and the said George O'Brien, Earl of Egremont, departed this life in or about the month of November 1837, and his said will was duly proved by the defendants in the Prerogative Court of the Archbishop of Canterbury, on or about the 24th day of January, 1838.

Upon the death of the said George O'Brien, Earl of Egremont, the Right Hon. George Wyndham, the present Earl of Egremont, entered upon the estates so devised by the said will of the said Charles Earl of Egremont, and lawfully claimed to be the owner of and entitled to the said several demised premises, discharged from the said several indentures of lease, dated respectively the 24th of March, 1805, and the 25th of March, 1805, as being part of the said estates, on the ground that the said several leases were void, not having been made in conformity with the leasing power contained in the said will of the said Charles Earl of Egremont.

On or about the 10th day of January, 1840, the several tenants then holding under the said John Williams, and then being in the actual possession and occupation of the premises comprised in the said several indentures of lease respectively, were served with declarations in two several actions of ejectment, upon the demise and at the suit of the said George Wyndham, Earl of Egremont, to recover possession of the said demised premises respectively, upon the ground of the said invalidity of the said several leases.

The said John Williams thereupon caused the said executors of the said George O'Brien, Earl of Egremont, to be served with a notice, in writing, to the effect that he was advised by counsel that the said leases were invalid, and that he had no defence to the said actions, and that, acting under the advice of counsel, he should not defend the same; and to the further effect, that the said leases contained an absolute warranty of title on behalf of the said George O'Brien, Earl of Egremont, the lessor, his heirs and assigns, against all persons whomsoever; and that he should require the said executors, in performance of the said warranty, to defend him and his tenants in the possession of the said premises for the residue of the term thereby granted and determinable as aforesaid; and that in case of eviction from the said premises, he should claim and proceed to recover of them, the said executors, the value of the said demised premises, and the rents, issues, and profits thereof, and all other loss, charges, damages, and expenses whatsoever which he, or his said tenants, or any or either of them, or any other person or persons, should or might suffer, sustain, or be liable, or be put unto by or by reason or means of such eviction, or the said action, or any other action, proceeding, cause, matter, or thing whatsoever consequent thereon, or relating thereto.

The solicitor of the said executors, in consequence of such notice, wrote and sent to the said John Williams a notice in writing, to the effect that he was instructed by the said executors of the said late Earl of Egremont, at the expense of his estate, to appear and plead to the said ejectments, but that these, and all other proceedings to be taken towards defending the said ejectments, were to be adopted and carried on without prejudice to the right of the said executors to reject and resist any claim that might be made against them, in respect of the said leases granted by the said late Earl.

The attorneys of the said defendants accordingly appeared to and defended the said actions of ejectment in the name of the said John Williams, and the same were tried at the Somersetshire Spring Assizes for the year 1840, when a verdict was found for the lessor of the plaintiff in each of the said actions, and on or about the 29th day of September, 1842, the said George Wyndham, Earl of Egremont, took lawful possession of the said demised premises, and lawfully evicted the said John Williams and his tenants therefrom.

The said executors paid and discharged the costs taxed of the said George Wyndham, Earl of Egremont, in the said actions of ejectment, but the said John Williams was lawfully called upon to pay, and was forced to pay, and did pay, to the said George Wyndham, Earl of Egremont, the sum of 13*l*. 16s. 1d. for the mesne profits of the said premises, demised by the said indenture of lease of the 24th day of March, 1805, and the said John Williams also incurred certain necessary costs, charges, and expenses in and about the said action, for the recovery of the said last-mentioned premises, amounting to 24*l*. and upwards.

The value of the said premises demised by the said indenture of the 24th day of March, 1805, during the residue of the before-mentioned term therein, which remained unexpired at the period of the eviction aforesaid, amounted to the sum of 75*l*.

The said John Williams was also lawfully called upon to pay, and was forced to pay, and did pay, to the said George Wyndham, Earl of Egremont, the sum of 14*l*. for the mesne profits of the said premises demised by the said indenture of lease, of the 25th of March, 1805. The said John Williams also incurred certain necessary costs, charges, and expenses in and about the said action for the recovery of the said last-mentioned premises, amounting to 25*l*. and upwards.

The value of the said premises demised by the said indenture of the 25th of March, 1805, during the residue of the before-mentioned term therein, which remained unexpired at the period of the eviction aforesaid, amounted to the sum of 80*l*.

The said defendants have received assets of the testator, George O'Brien, Earl of Egremont, more than sufficient for the payment of the several sums hereinbefore mentioned.

The questions for the opinions of the Court are,—

First, whether the said John Williams is entitled to recover from the defendants, as executors of the said George O'Brien, Earl of Egremont, the sums of 13*l*. 16s. 1d., 24*l*., and 75*l*. or any or either, and which of them.

And whether any interest on such sums, or any or either, and which of them.

And secondly, whether the said John Williams, as such executor as aforesaid, is entitled to recover from the said defendants, as executors of the said George O'Brien, Earl of Egremont, the said sums of 14*l*., 25*l*. and 80*l*. or any or either, and which of them.

And whether any interest on such sums, or any or either, and which of them.

The case was argued in Michaelmas Term last by *Byles*, Serjeant (with him *Butt*), for the plaintiff, John Williams, who is the original lessee of the first lease and the executor of the assignee of the second lease so granted by the late George Earl of Egremont, as stated in the case. It is on behalf of the plaintiff contended, first, that the warranty contained in these leases is equivalent to a covenant for title and quiet enjoyment. Secondly, that it is an express one and not an implied one. Thirdly, that it was a covenant extending not merely to the term, which in fact lasted but to the end of the term which was intended to be granted, viz. the 99 years, if the *cestui que vies* should so long live. Fourthly, that the executors, and not merely the real representatives of the lessor, are liable upon the covenant. And it is also further contended, in support of the plaintiff's right as representative of the assignee of the second lease, that the benefit of the covenant runs with the land to the assignee of the term, and also that the assignee may sue thereon though the breach did not happen until the lessor's death. Firstly, the words "warrant and defend" cannot be strictly annexed to an estate for years (Shep. Touch. 8, "Warranty" p. 181); but when annexed to an estate for years, it is a personal covenant. (Shep. Touch. 186, where it is said, "If one make a lease for years of land and bind himself and his heirs to warrant the land, this is no good warranty, neither will it have the effect of a warranty: but this may amount to a covenant on which an action of covenant may be brought." Shep. Touch. 163; and in page 167 it is said, "a warranty in a lease for years shall be taken for a covenant for quiet enjoying.") To the same effect were cited Bac. Abr. "Covenant" C.; and *Wotton* v. *Hele* (2 Saund. 180), and *Pincombe* v. *Rudge* (Hob. 3). Secondly, as to its being an express covenant, Shep. Touch. 167; *Swan* v. *Stransham* (Dyer, 257, a), and *Broderidge* v. *Windsor* (22 Eliz. referred to in Dyer, 257 *b*) are direct authorities.

Next the words "during the said term" meant the term which was intended to be passed. The warranty had reference to the time, and not the interest. (Coke Litt. 45, b; *Wright* v. *Cartwright*, 1 Burr. 282; *Evans* v. *Vaughan*, 4 B. & C. 261 & 267.) There Abbot, C. J. says, "The lessor says by his deed that the lessee shall have the estate for that period for which he purports to grant it, and it is not open to him or any person claiming under him to say that he meant by the words 'during the said term' any other term than that which he purported to pass by his deed."

Fourthly, as to the liability of the executors of the lessor. The heir is not bound in a specialty, unless named; but the executor is, whether he be named or not. (*Lady Cavan* v. *Pulteney*, 2 Ves. 544; *Hyde* v. *Skinner*, 2 P. Wms. 197; Com. Dig. title Covenant, C.; 1 Bro. Ab. "Covenant," pl. 11.) Then, as to the plaintiff's right of action on the second lease, the fourth resolution in *Spencer's* case (5 Rep. 16) shows that upon the word demise, the assignee of the term may sue. As to the last point, this is distinguishable from *Andrews* v. *Pearce* (1 N. R. 158), which will be cited on the other side; for there the assignment was made after the death of the tenant in tail, who had granted the lease; but here it was before the death of the lessor, the tenant for life, and it is not competent for the executors to say that the term ceased by the death of the lessor. (*Evans* v. *Vaughan*, 4 B. & C. 267; *Waller* v. *Dean and Chapter of Norwich*, Brownlow, 81, and S. C. Owen, 134.) But it is also submitted, that this is not merely a covenant for

quiet enjoyment, but also for title; and, if so, the breach then occurred before the death of the lessor, and was a continuing breach. (*Kingdom* v. *Nottle*, 4 M. & S. 57.) With respect to the damages, the claim for interest is abandoned, and the rest is left to the Court to determine on.

Channell, Serjt. (*Hugh Hill* with him) for the defendants, the executors.—It is admitted that a warranty cannot be attached to a lease for years, and Co. Litt. 389, shews the reason on which this is founded; and it is also admitted that, in a certain sense, this is a covenant (Com. Dig. title Covenant, A. 4), but it is for the plaintiff, to maintain this action, to shew that this is an express covenant. The defendants contend that this is only a covenant in law, and therefore is confined to the lessor's own acts or to acts which have taken place during the lessor's own estate. (Roll Abr. "Covenant," C. 518, pl. 3, under the head "What words make an express Covenant;" and *Adams* v. *Gibney* (6 Bing. 656), were cited.) None of the cases which have been cited on the other side interfere with this, being an implied, and not an express covenant, with the exception of the case in Dyer; but that was not a decision; it was only an *obiter dictum*. The cases cited on the other side were nearly all of them cases of express covenant, which make all the difference as to the liability of the lessor. In Shep. Touch. 178 it is said, "If a lessee be ousted by one that hath title, it seems an action of covenant will lie for this ouster against the executor or administrator upon the covenant in law, if he were put out in the lifetime of the lessor, and not otherwise, for if there be tenant for life, the remainder in fee to another, and the tenant for life, by the words demise or grant, doth make a lease for years and die, and after, he, in the remainder, doth enter, and put out the lessee for years; in this case he cannot, upon this covenant, in law charge the executors or administrators of the lessor; but upon an express covenant for quiet enjoying, he may." Here there was no breach in the earl's lifetime, and the obligation only is, that when called upon, he would warrant and defend. This is not an express, but an implied covenant, for it could not be carried out as intended, being annexed to a term for years; the law, therefore, will imply an obligation, which can only be for breaches committed by the covenantor himself, or during his estate. As regards the second lease, to which the plaintiff is entitled as executor of the assignee, an assignee can only sue by reason of his privity of estate; and as here the privity of estate ceased before the breach (the breach not occurring in the late earl's lifetime), the right was gone. As to this *Andrew* v. *Pearce* (1 N. R. 158) does apply. With regard to the damages, the 24*l*. for costs cannot be recovered; a party has no right to defend where he has no defence, and throw the expense of so doing on another, and the defendants here paid their own costs.

Byles, Serjt. in reply, cited *Burnett* v. *Lynch* (5 B. & C. 589); *Holder* v. *Taylor* (Hob. 12); and *Frazer* v. *Skey* (2 Chitty, 646), and called the attention of the Court to the breach in the declaration in the report of *Kingdom* v. *Nottle* as not happening until after the estate of the lessor had ceased.

Channell, Serjt. replied to the new cases cited by *Byles*, Serjt. *Cur. adv. vult.*

The reasons on which the Court had determined the certificate they should send to the Master of the Rolls, were now stated by

TINDAL, C. J.—The material facts out of which the question in law now before us has arisen, are very few. The late Earl of Egremont being tenant in life, with a leasing power, on the 24th of March, 1805, granted a lease to John Williams for 99 years, if the three persons named therein should so long live, which lease was afterwards held to be void by the judgment of a court of law, on the ground that it was not made with a due observance of the leasing power. This lease, which was under the seal of the late Earl, contained a clause that "the said Earl, for himself, his heirs, and assigns, the said demised premises, with the appurtenances, unto the said John Williams, his executors, administrators, and assigns, under the rent, covenants, conditions, exceptions, and agreements before expressed, against all persons whomsoever lawfully claiming the same, shall and will, during the said term, warrant and defend."

On the death of said lessor, the remainder-man brought an action of ejectment against the lessee, and recovered judgment and possession of the demised premises. On this state of facts the question in the first case is, whether the lessee can maintain an action of covenant against the executors of the tenant for life? And in the second place the further question arises, whether the executors of the assignee of the lessee under another lease, similarly circumstanced in all respects with the former mentioned lease, can also maintain such action? It was admitted on the part of the defendants that in the clause above referred to the demise was not a freehold interest for a term of years, and could not be strictly and properly a warranty; and indeed the authority of Coke Litt. 389, is clear upon the point. A warranty in such sense can neither be pleaded in law, nor can the party to whom the warranty is granted vouch, as he may well when it is annexed to a real estate. It was also admitted upon the argument, on the part of the defendants, that though such warranty, when annexed to the demise of a chattel interest, was not strictly and properly a warranty, yet it was a covenant in the nature of a covenant for quiet enjoyment and title. But it was contended on the part of the defendants that such covenant was not an express covenant, but an implied covenant, or more properly a covenant in law only, and therefore extending no further than for quiet enjoyment during the continuance of the interest which passed by law under the demise, that is, during the life of the lessor only. On the part of the plaintiff it was, on the other hand, contended that it imported an express covenant for quiet enjoyment, and, as such, extended to protect the lessee during the whole of the continuance of the term intended to pass by the demise. This is the precise point of contention between the parties, and, according to all the decisions on this point, the result will be, if the covenant is an express covenant, the plaintiff will be entitled to maintain his action; if a covenant in law only, the defendant will be entitled to judgment. It appears to us that some confusion has arisen from the want of distinguishing with sufficient accuracy between *covenants in law* and *implied covenants*, and from the use of these terms, in some instances, indiscriminately for each other. A covenant in law is, properly speaking, an agreement which the law infers, from the use of certain words of grant having a known legal operative force; as the word *dedi* in a feoffment, or *demisi* in a lease; and these terms, after having had a direct operation in creating an estate, have a new and secondary operation given to them by law, and are held to form a covenant by the feoffor or the lessor for the quiet enjoyment of the estate which they have already created. A covenant of this nature and description is sometimes, too, it would seem, improperly called an *implied* covenant; whereas an implied covenant, in its proper legal sense, is a covenant not formally stated in a deed, but which is collected by constructive inference from the terms used in it; and we think an implied covenant, in its proper sense, should not be distinguished in its effects or legal consequence from an express covenant. It is, indeed, a matter of construction in every case, to ascertain whether the intent to covenant in such or such a manner is sufficiently manifest in the words used in the instrument; but the intention once ascertained, the real effect and consequences of such implied covenants are not in any manner affected by the clearness or obscurity of the terms employed; such a difficulty, if once overcome, in arriving at the construction, an implied covenant in its proper sense, differs in no respect from a covenant that is expressed; and we think a covenant arising from the terms of a warranty is not, as contended for by the defendants, a covenant in law, but is, in the proper sense of the word, an implied covenant, to be construed in the same manner, and attended with the same result, as an express covenant for quiet enjoyment. The authorities are in accordance with this view. In *Swan* v. *Stransham* (Dyer, 257, a), though it was said in a demise for years by a tenant for life, an action of covenant could not be maintained, on a covenant in law, against the executors of the tenant for life, because the covenant in law ends and determines with the estate and interest of the lessor, yet it was said, if it had been a covenant in fact or expressed, or warranty of the term expressed, it would be otherwise. In *Pincombe* v. *Rudge* (Hob. 3), a warranty is called a covenant *real* where it is annexed to the freehold in question; but that it is a covenant *personal* where a chattel interest is in question. This case is referred to for this distinction in 1 Roll's Abridgment, 518, where a personal covenant by a warranty where a chattel interest is in question, is classed under express covenants, and not under covenants in law nor implied covenants. In *Wotton* v. *Hele* (2 Saund. 180), an action of covenant for quiet enjoyment was sustained under a warranty for a term of years with a fine; but there no distinction was made between a covenant being expressed or a covenant in law. In Comyn's Digest, "Covenant" A 4, a warranty annexed to a chattel interest is indeed classed under covenants in law as distinguished from express covenants. But the only authorities referred to are *Wotton* v. *Hele*, which does not appear to the point, and *Pincombe* v. *Rudge*, where the same covenant is classed as an express covenant; and where in Hobart it is said a warranty not annexed to a chattel interest will not operate as a warranty, but as a covenant in law, the author was adverting, not to the distinction between an express covenant and a covenant in law, but to that between a warranty, in the strictest sense, and a covenant personal. The other cases, *Swan* v. *Stransham* (Dyer, 257), and *Adams* v. *Gibney* (6 Bing. 656), bear on the question of the liability, with respect to a covenant of law, and not on the question whether an express warranty is a covenant of law only. Therefore, both on principle and authority, we think this is an express covenant for quiet enjoyment, which extends to the term purported to be granted; consequenty, the defendants are liable thereon as executors of the covenantor. In the second case, we think the executor of the assignee of the lessee has the same right of suing on this covenant as the original lessee. In *Spencer's* case (5 Rep. 16), it was held that a covenant in law for title would pass with the estate. There is neither principle nor authority to shew that an express covenant, either for title or quiet enjoyment, would not equally pass and be as available by the assignees of the lessee, or the executors of the assignee; and although in *Andrew* v. *Pearce* (1 N. R. 158), it was held that no action was maintainable upon a covenant for quiet enjoyment, by the assignee of the lessee against the representatives of the lessor, it was expressly on the ground that the lease became absolutely void by the death of the lessor before the assignment.

The point of damages only remains to be considered. As to the mesne profits and value of the term, the liability of the executors is too clear to require discussion. We think, also, that the present defendants are bound to pay the costs of the present plaintiff in defending the action of ejectment, because the defendants, by directing the defence, admitted there was reasonable ground for defending it. From the statement, it appears to us the costs in question were necessary for such defence; but we see no ground for the allowance of interest on any of the sums.

Thursday, Feb. 13.

LUNN *v.* THORNTON.

The plaintiff, by a deed-poll, dated August 1843, bargained and sold to the defendant all his goods, household furniture, plate, linen, china, stock and implements of trade, and all other effects whatsoever, then remaining, or which should at any time thereafter remain, and be in and upon the dwelling house of the plaintiff. Held, that the goods of the plaintiff subsequently acquired from the date of the bill of sale, did not pass under it.

Channell, Serjt. on June 11th, shewed cause why the verdict in this cause should not be set aside, and instead thereof, a verdict entered for the plaintiff.

Byles, Serjt. contrà, citing Perkin's Profitable Book, 65; 2 Rolle's Ab. 48); Bacon's Maxims, Reg. 14. *Cur. adv. vult.*

JUDGMENT.

TINDAL, C. J. now delivered the judgment of the Court.—This was an action for trover and conversion, to which the defendant, among other pleas, pleaded that, except as to certain goods specified in the plea, the plaintiff was not possessed as of his own property; upon which plea issue was joined, and the only question at the trial was, whether certain goods, not included among those which were expressed in the plea, were at the time of the conversion the property of the plaintiff. It appeared at the trial that the plaintiff did by deed-poll, dated the 14th day of August, 1843, in consideration of a sum of money lent and advanced to him by the defendant, bargain, sell, and deliver unto the said defendant all and singular the goods, household furniture, plate, linen, china, stock and implements of trade, and all other effects whatsoever then remaining, or being, or which should at any time thereafter remain and be, in and upon the dwelling-house at Stoney Stratford aforesaid, and also all his other effects elsewhere. The goods in dispute are not the goods remaining, or being in and upon the premises at the time of the execution of the deed by bargain and sale, but were goods which had become the property of the plaintiff, and were also brought upon the premises subsequent to the execution of that instrument, and were remaining thereon at the time of the seizure under the bill of sale. Under these circumstances it was contended by the defendant's counsel that the bill of sale, covered the goods, as being goods remaining and being in or upon the premises at the time of the seizure; and the question is whether the property in these goods passed under this bill of sale? It is not the question whether the deed might not have been so framed as to give the defendants the power of seizing the future goods of the plaintiff so acquired by him and brought upon the premises in satisfaction of the debt; nor does there seem any doubt that such power might have been given. But the question before us arises upon the plea which puts in issue the property in the goods, and nothing else. It amounts to this, whether by law a deed of bargain and sale of goods can pass property in goods which are not in existence, or, at all events, which do not belong to the grantor at the time of the execution of the deed. Upon the part of the plaintiff the authorities are very strong to shew that no personal property could pass by grant other than that which would belong to the grantor at the time of the execution of the deed. Preston, title "Grant," says, "It is a common learning in the law, that a man cannot grant or charge that which he hath not." So in Hobart's Reports, it is said "a man cannot grant all the wool that shall grow on his sheep that may be hereafter; for he hath it neither actually nor in possession;" a distinction which seems to have been adopted by Preston in another place, placet 90,—'that if a man grant to me all the wool on his sheep for seven years, the grant is good;" by which he evidently intended the wool of the sheep which the grantor hath. Still further, the plaintiff relies upon the authority of

of Lord Bacon's Maxims, *Regula* 14, "*Licet dispositio de interesse futuro sit inutilis tamen fieri potest declaratio præcedens quæ sortiatur effectum interveniente novo actu.*" Upon which it is to be observed, Lord Bacon takes the first branch of the maxim; namely, that a disposition of after-acquired property is altogether inoperative as a proposition of law, entirely beyond dispute and only labours to establish the second branch of the maxim, namely, that such disposition may be considered as a declaration precedent, which has the effect of some new act of the party after the property is acquired. For he says, "The law doth not require it of the grantor, except there be a foundation of interest in the grantor; for the law will not except a grant of title of things in action, much less will it allow a man to grant or encumber that in which he has no interest at all but merely *in futuro*." The principal contention on the part of the defendant was that the facts of the case brought it within the exception in Lord Bacon's rules, and that the bringing of the goods upon the premises of the plaintiff, where they were seized at a time subsequent to the execution of the bill of sale, was this new act done by the plaintiff, which gave to the declaration contained in the previous bill of sale its effect. But to us it appears to be an answer that the evidence at the trial is altogether silent upon the subject which accompanies the bringing of the goods upon the premises, so that it is impossible to say whether that be the act of the plaintiff or not. Further, the new act upon which Lord Bacon relies appears in all the instances put, to be an act done by the grantor with the avowed object and view of carrying the former grant or distinction into effect. Lord Bacon's language is, "There must be some new act or conveyance to give life and vigour to the declaration precedent, rendering the rule altogether inoperative." There is an instance given of a feoffment, "as if the disseisee make a charter of feoffment to J. S. and a letter of attorney to enter and make livery and seisin, and deliver the deed of feoffment, and afterwards, livery and seisin is made accordingly; this is a good feoffment, and yet he had nothing other than in right at the time of the delivery of the charter," and so on, as Bacon says, "after there has been a new livery, good in law. So, if I covenant by indenture to purchase land upon a certain day, and before that day I will levy a fine of the same land, and that the same fine shall be to certain uses which I express in the same indenture; this indenture to lead uses, being but matter of declaration and countermandable at my pleasure, will suffice, though the land be purchased after, because there is a new act to be done, namely, the fine after there has been an assignment to me of the land. So, if I demise lands whereof I shall be afterwards seised, and after I purchase lands, and J. S. my attorney, doth demise them, this is a good demise, because the demise by my attorney is a new act done." Therefore this case is not brought within the exception to the 14th rule or maxim, there being no new act done by the grantor indicating his intention that these goods should pass by the former bill of sale; and the case falls under the general rule, that no property in the goods passed to the defendant. We therefore think the verdict on the second plea, which denies the property in the plaintiff, must be entered for him. *Rule absolute.*

COURT OF EXCHEQUER.

Wednesday, Feb. 19.

STOKES *v.* SAVAGE.

Tithes modus.

This case rests entirely upon the facts. It was originally in the form of a case reserved, in which it was agreed that the Court should pronounce a judgment upon the law of facts. Judgment was given for the defendant. A rule was obtained in the nature of an application for a new trial, and argued at great length; but as the judgment states all the facts, it is unnecessary to report them here. This day the judgment was read by the Court.

JUDGMENT.

BARON PARKE.—This was a rule obtained in the nature of an application for a new trial. The case was a case reserved upon an issue under the Tithe Commutation Act, which came on for trial before my Lord Chief Justice, and I directed that all the facts should be stated, and all the documentary evidence in the form of a special case, for the opinion of the Court, who were to perform the office of jurors, and find the facts as they thought they ought to be found. The matter was argued at great length, and occupied two days, and the Court proceeded to deliver its opinion, after taking a short time for deliberation. I pronounced the judgment of the Court, in which I stated the facts of the case, and the difficulty there was of arriving at any certain conclusion upon the ancient documents; but concluded that the strength of the case depended upon the modern usage. The judgment stated that, after all, the main evidence and the important part of the case on the part of the vicar arose out of the collections proved to have been made by a person of the name of Shearman and his father, for the last 80 years. These collections were headed "Commutations for Tithes," and we proceeded to comment on those, and to show that the circumstance of some of the farms being occasionally omitted made no difference, and the result was, that the Court inferred from the modern usage that there had been an endowment of the small tithes of the parish.

The rule to shew cause was obtained on affidavit, stating that this document, upon which so much reliance was placed, had never been in evidence at all. I certainly was rather surprised at the application, because I had a distinct recollection that Mr. Boteler made use of it in a point in reply, and on referring to my notes I find it was so. However, we have been furnished with a copy of the short-hand writer's notes of the whole of the argument, and I find there that the document was brought forward and admitted to such an extent as clearly made it admissible in evidence. I find it is stated in those short-hand notes that when this document was produced, Mr. Jervis objected that that document had not been received in evidence. By the direction of the Lord Chief Justice, the additional facts, besides the documentary evidence, are found by Mr. Ryland, who was to state the facts in a report, which was to be annexed to the special case, and Mr. Ryland stated the evidence of Mr. Shearman, but that he had not produced this document. On its being produced by Mr. Boteler, an objection was taken that it never had been received in evidence. Mr. Boteler stated that it had the initials of Mr. Ryland to it, as if it had been given in evidence before him, and ultimately Mr. Jervis admitted that he must take the document to have been proved to be in the handwriting of Shearman's father, Shearman himself having been collector, and his father before him, and this document stated, that all the payments, amounting to 64*l.*, which were paid by different farms in the parish, were paid on account of compositions for tithes. Then, after this discussion respecting this document, which had been admitted by Mr. Jervis to have been in the handwriting of Mr. Shearman's father, no further objection was taken; it was never said that it was inadmissible in evidence, and the Court considered that that document had been proved. Now it appears to us, therefore, that that document must be considered as having been in evidence. No objection was taken, when it was offered in evidence, to its admissibility, nor could any objection have been taken to it with success, because this is the declaration of a deceased person, stating there were compositions for tithes in the parish, which were at one time set up as a modus; and if reputation is evidence on such a subject, then there is no doubt this document was evidence, and though reputation is now considered not to be evidence on a question of a mere farm modus, it is certainly evidence of a parochial or district modus; and these payments are payments in lieu of all small tithes in the parish, because it was in evidence that no small tithes were payable by any person in the parish. Therefore, we think this document was admissible; and when we come to the other evidence in the case, it being an admitted fact that for the last fifty or sixty years these payments had been regularly made every year, and no small tithes ever paid in the parish, the Court have not the least difficulty in coming to the conclusion that these payments were made as compositions for tithes. Then there is other evidence in the cause, leading to the same result, which leaves no question upon that subject, and no doubt in any of our minds; for instance, there is the answer in the Chancery suit shortly before this question arose, which was to be settled by this issue. There is an answer put in by some of the defendants, which is evidence against them, but is no evidence against any of the other defendants. One of them produces receipts from the year 1761 down to a late period; another from the year 1809 to 1818, annual receipts of payments in lieu of small tithes; so that when we come to the question whether we believe the document, the correctness of the evidence as to this being a composition in lieu of tithes, we can have no doubt about it, because that, in truth, has been proved by the admissions of some of the defendants themselves. Besides that, there is the answer in an old Chancery suit in the year 1682. The question was discussed upon the argument whether it were admissible in evidence or not: if reputation is admissible in evidence, as we think it is in this case, by reason of its extending over the whole of the parish, those answers are very strong evidence to shew that, in 1682, payments were made in lieu of all small tithes. We are all, therefore, clearly of opinion that the judgment which we pronounced was perfectly right. It was founded upon the document which was in evidence, and which, coupled with other evidence in the case, would leave no doubt that all the payments which were proved for such a length of time, as much as fifty or sixty years, or, at all events, fifty years back, and, indeed, were admitted to have been made by the evidence in the other case, that those payments, instead of being a stipend, as contended for on the other side, were, in truth, compositions for tithes; and, therefore, if so, the vicar has been in receipt, for such a length of time, of compositions for tithes, and we must come to the conclusion that it must be referred to a legal origin, and, therefore, we refer it to the endowment of the small tithes; the result of which is, that this rule must be discharged, and the judgment remain undisturbed.

WORTH *v.* TERRINGTON and OTHERS.

In an action of trespass for assault and imprisonment, the defendants pleaded that the plaintiff came into a parish church during divine service, and conducted himself indecently, and so as to disturb the congregation, whereupon the defendants, a Rector and Churchwardens, expelled him, &c. Replication—De injuriâ. The defendants, at the trial, proved their plea, with the exception of the allegation that it was during divine service. Held, that that allegation was material, and could not be rejected as surplusage, and that the plaintiff was entitled to the verdict.

Trespass, for assault and false imprisonment.

Plea, among others, that the plaintiff, heretofore, &c. came riotously into a certain parish church, *during divine service*, and got into the clerk's desk, and there began to sing songs so loudly as to disturb the congregation, and otherwise indecently and unbecomingly conducted himself, and the defendants then justified the putting him out, some of them as Rector and Churchwardens, and the rest as their servants, and by their command.

Replication—De injuriâ.

The case was tried before Alderson, B. at the last assizes at Norwich, when the defendants proved their plea, with the exception of the allegation that the facts occurred during divine service, it appearing, that though the congregation was in part assembled, service had not commenced.

Mr. Baron Alderson thought that that allegation was material, and could not be treated as surplusage. Under his direction, the jury found for the plaintiff.

O'Malley afterwards moved for and obtained a rule *nisi* for a new trial, on the ground that as the churchwardens have authority over the church at all times, as well as during divine service, the allegation might have been left out, and that, as so much of the plea was proved as amounted to a substantial answer to the declaration, the verdict should have been for the defendants.

Byles, Serjt. and *Cowling* now shewed cause.—The plea would be bad without the allegation that the facts occurred during divine service. The churchwardens have no such power as that contended for. They can only turn people out in order to preserve decency and order during divine service; but even if that is not so, the expression is made material here by the whole frame of the plea. The very gist of justification set up is the misconduct of the plaintiff during divine service. The word "congregation" is used in the same sense, and means not a mere collection of persons waiting for any purpose, but persons actually engaged in devotion. A church may be used for a variety of purposes. Conduct would be permissible at an oratorio, or at a parish meeting, which would be highly indecorous during the celebration of divine worship. By striking out the words, the nature of the defence would be materially altered. If they are retained, there is a variance, and the plaintiff is clearly entitled to his verdict.

Prendergast and *O'Malley*, contrà.—The plea would be sufficient without the words "during divine service," and there would then be no variance. The word "congregation" is applicable as well to an assembly waiting for the service, as to one actually engaged in it. The churchwardens have a right to remove persons misconducting themselves at all times.

By the COURT.—We think the learned baron was right in his direction to the jury. The defendants have failed to prove the substantial fact set up by their plea, and there ought to be no new trial. The words "during divine service," which are now sought to be rejected and treated as mere surplusage, are the very essence of the plea, and give a colour to the other allegations, which can only be read with reference to that fact. The word "congregation" must, therefore, be taken to mean an assembly actually engaged in the celebration of divine worship. The defendants having failed in proving that fact, it is not now competent to them to turn round and say that they will strike out that allegation, and charge the plaintiff, for the first time, with misconducting himself under entirely different circumstances from those charged in the plea. There is, as the case now stands, a clear variance between the plea and the evidence, and it by no means appears that there would not still be one, if the plea were altered as the counsel for the defendants suggested, for then the plaintiff would be charged with facts which would appear to have been committed at a time which would still be different from that proved. The rule must be discharged.

Rule discharged.

CHOWNES *v.* BROWN.

Landlord and tenant—Order of reference—Writ of error.

This was an action of *assumpsit*, and the first count alleged, that in consideration that the defendant was tenant of the plaintiff of certain lands, tenements, messuages, and hereditaments, he undertook to use the said lands, &c. in a proper husband-like manner; and concluded with a breach that they were ruinous and

dilapidated, and that he delivered them in an untenant-like and unhusband-like manner. There were other counts besides this special one, to which the defendant pleaded generally *non assumpsit* at the trial before Williams, J. at Huntingdon. The cause was referred to a learned arbitrator by order of *Nisi Prius*, with power to certify, which was exercised in favour of the plaintiff for 193*l*. In Michaelmas Term last this rule was obtained to arrest the judgment so entered, on the ground that the first count was bad for want of an allegation that the defendant became tenant at his request.

Gunning, on a former day, having shewed cause on that point,

Byles, Serjt. and *O'Malley*, were heard contrà; and at the close of the case, *Cur. adv. vult.*

Afterwards, on this day,

PARKE, B. delivered judgment in the following terms:—This case, which was argued a day or two ago, was a motion in arrest of judgment, which the Court took time to consider, and they have found that this motion in arrest of judgment ought never to have been made, because the parties were, under the terms of reference, not to bring a writ of error; and being under terms not to bring a writ of error, they ought not to have moved in arrest of judgment, and therefore the rule must be discharged.

O'Malley then prayed to be heard on that point, which had taken the defendant by surprise.

By the COURT.—The Court is certainly open to great doubt; but, under the circumstances of the case, we do not feel inclined to make your rule absolute. The defendant, however, is left to his writ of error. *Rule discharged.*

JAMES *v.* WILLIAMS.

A plea to an action on a promissory note, that the defendant had delivered to the plaintiff certain bills of exchange for and on account of the debt in the declaration mentioned, ought to shew that the bills so delivered were negotiable instruments.

Action on a promissory note for 100l.

Plea—That the defendant delivered to the plaintiff certain bills of exchange, amounting, to wit, to the sum of 100l.; and also amounting to a large and sufficient sum, for and on account of, amongst other things, the promissory note in the declaration mentioned. Verification.

The defendant had a verdict at the trial.

Chilton, Q. C. afterwards obtained a rule for judgment *non obstante veredicto*, on the ground that the plea was no answer to the action.

E. V. Williams (*Benson* with him) now shewed cause.—Since the case of *Kearslake* v. *Morgan* (5 T. R. 513), it can scarcely be contended that negotiable instruments may not be so delivered, for and on account of a debt, so as to operate as a suspension of it, or that a plea alleging such a delivery is not good. It has become the common practice so to plead. (*Kendrick* v. *Lomax*, 2 C. & J. 405.) [PARKE, B.—The acceptance of a bill of exchange on account is payment if the bill be paid, otherwise not. If it is given in satisfaction, then there is an end of the original debt, whether the bill is paid or not. The acceptance on account is only a conditional payment to the plaintiff or his appointee.] I submit that this does not amount to payment, because it would equally become satisfaction if there were *laches*. (*Mercer* v. *Cheese*, 4 M. & G. 804.) The contest in that case was, whether it was necessary to go on and give the history of the bill, and shew whether it had been paid or not, and the Court decided that it was a good *primâ facie* answer merely to say the bill was given for and on account of the debt. Mr. Justice Maule said, "Whether the bills are due or not, the defendant is liable to be sued upon them, either by the plaintiff or the person in whose hands they are The defendant cannot tell whether they are in the plaintiff's hands or not. [PARKE, B.—You need scarcely occupy the Court with these citations, because that is recognized law. The question here seems to be, whether the bills are shewn to have been of equivalent value to the whole debt.] We take for granted, then, that the averment is good. The plea may be now treated as if it alleged an acceptance in satisfaction. It is then objected, that the allegation being that the bills were given, not merely for the note in the declaration mentioned, but for that among other things, the plea does not shew that the bills were sufficient in amount to satisfy all those matters. This objection is met by the averment in the plea that the bills which were given in satisfaction of the note, among other things, were sufficient in value. After verdict, that must be taken to mean sufficient for both the note and the other matters. If the language of the plea is capable of a construction which will make it good, it will be so construed now. We must have proved their sufficiency at the trial under this issue. (*Avery* v. *Hoole*, 2 Cowp. 825; *Lord Huntingtower* v. *Gardner*, 1 B. & C. 297; *Fletcher* v. *Podsen*, 8 B. & C. 192; *France* v. *White*, 1 M. & G. 731.)

Chilton, Q. C., and *Welsby*, contrà; citing *Galloway* v. *Jackson*, 3 M. & G. 960; *Sard* v. *Rhodes*, 1 M. & W. 153; *Lewis* v. *Lister*, 2 C. M. & R. 706. *Cur. adv. vult.*

JUDGMENT.

ALDERSON, B.—There was a case of *James* v. *Williams*, in which Mr. Chilton moved to enter judgment for the plaintiff *non obstante veredicto*, on the ground that the plea was bad. It appears that the plea stated the defendant had delivered to the plaintiff certain bills of exchange amounting, to wit, to the sum of 100*l*. which was the amount of the promissory note for which the action was brought, and also amounting to a large and sufficient sum for and on account of, amongst other things, the promissory note in question. Now, the rule laid down in *Kearslake* v. *Morgan*, and which has been confirmed in a modern case in this Court, is, that where bills of exchange are stated to have been delivered for and on account of a debt, it must be taken as a conditional payment; but that rule is confined to negotiable instruments alone, and it must appear upon the face of the plea, that the plaintiff takes an interest in these negotiable instruments. Now all that appears upon the face of that plea is, that the defendant delivered these bills of exchange, which are not stated to be for and on account of the debt mentioned in the declaration. There is, therefore, no averment in the plea which calls upon the defendant to shew that these were negotiable bills, and in the absence of that averment, or in the absence of any averment which makes it necessary for the defendant to shew that they were negotiable, if any issue is taken upon it, the plea is bad in substance; and though we agree with the view Mr. Williams took in his argument, that where a party pleads over, you must give to every averment which is not pleaded to a sense which, if it contains ambiguous words, would make the plea good rather than bad; yet in this case there are no such words tending to shew these bills of exchange were negotiable, and consequently there are no words to which that principle can apply. We say nothing upon the question whether or not the other words in the plea upon which Mr. Williams relied would have done; upon that we entertain grave doubts; whether the averment of the bills of exchange, amounting to a large and sufficient sum, would not be enough to have made the plea valid by treating the sufficiency as adequate to discharge, not merely the debt in the declaration mentioned, but also the other things for and on account of which they are alleged in the plea to have been given; we do not say a word as to that, but upon the whole, we think the plea is bad in substance, and that the rule to enter judgment for the plaintiff upon the first issue, *non obstante veredicto*, must be made absolute. *Rule absolute.*

DOE *dem.* DUDGEON *v.* MARTIN CHAPMAN and OTHERS.

According to the practice of the Court, a new trial cannot be had as regards one defendant only; and if one is dissatisfied with the verdict, he should move to set it aside as to all.

Byles, Serjt. and *Willis* shewed cause against a rule obtained by O'Malley to set aside the verdict against the defendant Chapman, and for a new trial. They objected that the rule should have been to set aside the verdict altogether.

O'Malley, contra.

PARKE, B.—The meaning of this rule is, that you ask for a new trial with respect to yourself only, and the Court cannot grant that; therefore, the rule must be discharged. *Rule discharged.*

Friday, Feb. 21.

LESTER *v.* HUNT.

The question whether a note has been altered since it was made, so as to render it inadmissible as evidence, is for the judge at the trial, but the Court will review his decision as they would that of a jury on any other question of fact.

This was an action on a promissory note. There was some evidence at the trial that the note had been originally made by two persons, and that a third had afterwards been added.

Lord DENMAN thought the note inadmissible in evidence at the trial.

Whitehurst, Q.C. who appeared for the plaintiff, refused to be nonsuited, and insisted on the case going to the jury, upon which his lordship directed them to find for the defendant, as the action was on a promissory note, and there was no note before them.

Whitehurst, Q. C. afterwards obtained a rule for a new trial, upon the ground that the question, whether the note had been altered or not was for the jury.

Hill, Q. C. and *Mellor* now shewed cause.

Whitehurst, contrà.

Case cited: *Bartlett* v *Smith* (11 M. & W. 484).

PARKE, B.—There is no doubt that this was a question for the judge, though the Court would review his decision upon the facts, if they thought him wrong, in the same manner as that of a jury. In this case, however, the decision appears to have been right. *Rule discharged.*

LORD STAMFORD *v.* DUNHAM.

Hill, Q. C. and *Cowling* shewed cause against a rule obtained by *Whitehurst* for a new trial. *Rule discharged.*

AMPHLETT *v.* GARBUTT.

Talfourd, Serjt. shewed cause against a rule obtained by *Keating*, to set aside a nonsuit, and for a new trial. *Rule discharged.*

Saturday, Feb. 22.

PITT *v.* HARRISON and OTHERS.

This was a rule to set aside the general verdict for the plaintiff, on the ground that there was no evidence to go to the jury against Harrison, and for a new trial, or to enter a verdict for him.

Alexander and *Graves* shewed cause; and

Talfourd, Serjt. having supported the rule, it was made absolute in the latter alternative. *Rule absolute.*

LEWIS *v.* READ and OTHERS.

Evidence—Trover.

This was an action of trespass for seizing and taking the sheep of the plaintiff, with a count in trover.

At the trial, before Coleridge, J. at Mold, it appeared that the defendant Read was the landlord of John Lewis, and that an order to distrain on his goods for rent on a certain farm had been given to the other defendants by one Owens, the general agent of Mr. Read, who was not personally cognizant of the proceedings. The distress so ordered was made, in fact, as was alleged, on the property of the plaintiff, the brother of the tenant; and the jury found, as to part of the sheep, that they had been taken on the property of the plaintiff, but that, as to the rest, there was no evidence to shew where they were taken. A verdict, however, passed for their whole value, 15*l*.; and this rule was subsequently obtained for a new trial, on the ground that there was no evidence to warrant the finding of the jury on the count in trover as against Mr. Read, who could not be made responsible for the illegal acts of the other defendants, unless his agent had either ordered them in the first instance, or recognized them subsequently through his agent, and ratified them by disposing of the produce of the distress so made.

Wm. Yardley and *Bevan* now shewed cause.

The COURT, without calling on *Welsh* to support the rule, made it absolute. *Rule absolute.*

OSBURNE *v.* BRAMALL.

Whitehurst was heard in support of a rule to set aside the verdict given for the defendant, and to enter one for the plaintiff. No counsel appearing on the other side, the Court made the *Rule absolute.*

BURKEY *v.* FLETCHER.

Townshend shewed cause against a rule which had been obtained for a new trial in this case, on the ground that the verdict for the plaintiff was against the evidence in the cause. The learned judge (Mr. Welsby, the Recorder for Chester) reported, that there was conflicting evidence, and that he would have been better satisfied with a verdict the other way. *Rule discharged.*

BUSINESS OF THE WEEK.

Thursday.

WATSON *v.* BODELL.—*Part heard.*

EKINS *v.* HUNTER.—*Whitehurst*, Q.C. shewed cause against a rule obtained by *Humfrey* for a new trial, or to reduce the damages, on the ground of surprise and on affidavit. *Humfrey*, contrà. *Rule discharged.*

Friday.

WATSON *v.* BODELL.—*Cur. adv. vult.*

HARRISON *v.* WRIGHT. — *Whitehurst*, Q.C. shewed cause against a rule obtained by *Hill*, Q.C. for a new trial. *Rule discharged.*

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Saturday, Feb. 15.

(Before Mr. Commissioner GOULBURN.)

Re DAY.

Officer of the sheriff bound to take notice of protection of the Court on its production to him—Power of Court to punish for contempt and to give costs.

In this case, which it was the intention of the learned Commissioner to have heard in conjunction with Mr. Commissioner Fonblanque, but which, owing to the latter not attending, was taken by himself alone, Griffiths, the sheriff's officer, appeared by Mr. *Cox*, from the office of Willoughby and Jacquet, to shew cause why the officer should not be committed for contempt of Court, for taking the insolvent to the Queen's Prison upon an execution out of the Palace Court, notwithstanding the production to him of the order of protection of this Court immediately after the arrest, and whereby the insolvent was imprisoned and remained in custody all night, but was discharged on the following morning. It was argued, on the part of the officer, that the insolvent, whilst under protection, stands only in the same position as a bankrupt did under statute 6 Geo. 4, c. 16, s. 117, or in the position of a witness or other

person attending a court of justice, who is privileged in consequence of such attendance; and that the officer could have no means of knowing of the petition and proceedings. This Court has the same power as the Lord Chancellor; and in case of *Ex parte Russell* (1 Rose, 278) it was expressly holden that the sheriff is not to judge of privileges, but the party must apply to a court of competent jurisdiction. [COMMISSIONER.—In fact pay no attention to the order of this Court.] The protection puts the insolvent in the same situation as a barrister or witness attending Courts at Westminster, and it is not for the benefit of the insolvent but for the creditors, as under the Bankrupt Act before referred to. It is a settled rule, when there is a protection, the officer cannot judge thereof. And under 7 & 8 Vict. c. 96, s. 6, there should be some rule of this Court by which notice should be required to be given of the protection granted to meet cases of prisoners detained in custody or execution on the insolvent's premises; and under section 29, if any prisoner shall be taken or detained under any process whatever, for any claim or debt in respect of which he is protected from process by his final order, it shall be lawful for the Commissioner to order any officer to discharge him without exacting fee or reward; and surely the protection of the final order is intended to be as great as that granted in the first instance. The final order is conclusive, and can only be reviewed by the Court; and under 5 & 6 Vict. it shall, on proving the signature of the Commissioner thereto, be a plea in bar and protect the party from all debts contained in his schedule; and taking the 6th section of 7 & 8 Vict. c. 96, in connection with the 29th section of the same Act, it is submitted that the interim order places the party simply in the same situation as he would be under the final order.

The Solicitor on the other side was not called on to reply.

The COMMISSIONER.—In this case I do not think it necessary to refer to the power of the Court to commit for contempt. The officer acted *bonâ fide* in the opinion of his solicitor, and the insolvent has been discharged; but I am of opinion that the solicitor labours under a fallacy, in comparing the law, under 6 Geo. 4, to the present state of things. At that time the Commissioners of Bankruptcy were not a court of record. [He then read the section of the statute lastly before referred to, and as to the summons and penalty therein mentioned, he cited the case of *Walters* v. *Reece* (4 Moore, 36), and said]:—The Great Seal discharged him, and it is a fallacy to apply the then law to the present. Great changes were made by the last Bankrupt Act, by the 66th section of which this court is made a court of record, and it clearly distinguishes one state of circumstances from the other. The present question arises under the 29th sec. of the 5 & 6 Vict. and the last Act (7 & 8 Vict. c. 96) refers expressly to the same, and says,—On the creditor presenting his petition, the Court is to give him his protection. It has been said that the protection is no more than that to a barrister or witness under the old law, and, in fact, that the officer is to take no notice of it. That is a position from which I strongly dissent, as the effect of it would be to destroy the law altogether. I would refer the parties to the serious penal consequences which might arise therefrom under the 16th section of the Act for winding up the affairs of certain Joint Stock Banks, and the question thereunder would be, was this an order duly made? It was; and if so, the Act points out the serious consequences attending it. Besides, the question of the power of this Court, being a court of record, to punish for contempt, if the Court had no such power of protection, the Act of Parliament would be set aside, and such a construction as that contended for would take away the great benefit from parties applying. Did the Legislature intend the protection to be set at naught? Certainly not; and I would forewarn other parties against such a fallacious view of the subject; for any other officer acting thereupon, under different circumstances from the present, will meet with serious results. The inconvenience in this case was only temporary, and the Court will not, therefore, punish for the contempt.

Application was made for costs, but the Commissioner refused, saying, although he had the power to give them, as this was the first case, and the officer had acted *bonâ fide* advice, he would not grant them. *Order discharged.*

N.B. There was some question, also, as to proof of the handwriting of the Commissioner being requisite to guide the officer, and in order to obviate any future difficulties arising thereupon, it is understood that protecting orders hereafter will be stamped with the seal of the court.

Monday, Feb. 24.
(Before Mr. Commissioner SHEPHERD.)
Re MOSS, an Insolvent.

Final order cannot be rescinded for non-payment of money pursuant to undertaking.

In this case the insolvent had agreed to pay 100*l.* a year out of his annual income, in liquidation of his debts, and also to keep up a policy of insurance.

A creditor applied to have the final order rescinded, on the ground that the insolvent had neglected to pay the quarterly instalments since April last, and that the Court would order a notice to that effect to be served on the insolvent.

Mr. Turquand, the official assignee, said that the policy had been kept up, but not the quarterly payments.

Mr. Commissioner SHEPHERD, on referring to the 5th and 6th Vict. c. 116, s. 12, said that it only provided for rescinding the final order; if the Commissioner had reason to believe that the petitioner had not, before the making of the order sought to be rescinded, made a full disclosure of his estate, effects, and debts, or since the making of such order had not given notice to the assignees of any property after-acquired by him, there was no provision in the Act for rescinding the final order in the event of an insolvent neglecting to pay the portion of his income stipulated for.* The application must, therefore, be refused.

THE LEGISLATOR.

Summary.

No subject of the slightest professional interest has engaged the attention of the legislature during the past week. Nothing will be done with the Certificate Duty *this* year, but agitation now may secure its removal next session. Hence the necessity for earnest remonstrance, petition, and debate.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.
Friday, February 21.

Property Tax.
Stamp Duties Assimilation.

Tuesday, February 25.

Physic and Surgery Bill—"for regulating the Profession of Physic and Surgery."
Bastardy Bill—"to make certain provisions for proceedings in Bastardy."
Colleges of Physicians and Surgeons Bill—"for enabling Her Majesty to grant new Charters to certain Colleges of Physicians and Surgeons."

Wednesday, Feb. 26.

Justices' Clerks and Clerks of the Peace Bill—"for payment of Justices' Clerks and Clerks of the Peace by Salaries instead of Fees, and for regulating Fees in Criminal Proceedings."

BILLS READ A SECOND TIME.
Thursday, Feb. 27.

Property Tax.
Stamp Duties Assimilation.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.
Friday, Feb. 21.

London and York Railway.

Tuesday, Feb. 25.

Huddersfield and Manchester Railway.
Manchester South Junction and Altrincham Railway.
Thames Navigation Debt.
Caledonian Railway.
Monkland and Kirkintilloch Railway.
Glasgow, Dumfries, and Carlisle Railway.
Nottingham Waterworks.

Wednesday, Feb. 26.

Chester and Holyhead Railway.
Guildford, Chichester, and Portsmouth Railway.
Wakefield, Pontefract, and Goole Railway.
Eastern Counties Railway.
Birmingham and Staffordshire Gas Light.
Taunton Gas.
Birkenhead Company's Docks.
Eastern Counties Railway Ely and Whittlesea Deviation.
Devonport Gas and Coke.

Thursday, Feb. 27.

Huddersfield and Sheffield Junction Railway.
Leicester Freeman's Allotments.
Norwich and Brandon Railway Deviation.
Cromford Canal.
Leeds and Thirsk Railway.
Bridgwater Navigation and Railway.
Barnsley Junction Railway.
Wallasey Improvement.
Whitby and Pickering Railway.

BILLS READ A SECOND TIME.
Monday, Feb. 24.

Manchester Division Stipendiary Magistrate.
Manchester and Leeds Railway.
Ditto (Burnley Branch).
Ashton, Staleybridge, and Liverpool Junction Railway.
Hull and Selby Railway, Bridlington Branch.
Leeds and Bradford Railway.
Pudsey Gas.
Manchester and Birmingham Railway, Ashton Branch.
Leeds and West Riding Junction Railway.
Lancaster and Carlisle Railway.
York and Scarborough Railway.
Kendal and Windermere Railway.
West Yorkshire Railway.
Leeds, Dewsbury, and Manchester Junction Railway.
Kingston-upon-Hull Docks.
Richmond Railway.
London and South-western Railway, No. 1.
Liverpool Docks.
Birkenhead Docks.

Tuesday, Feb. 25.

Cockermouth and Workington Railway.
Sparrow's Herne Road.
Chester and Birkenhead Railway Extension.

PETITIONS.

Repeal of Attorneys' Certificate Duty.
Solicitors of Plymouth.
Ditto of Lincoln.

SESSIONAL PRINTED PAPERS.

Par. Num.
38. Bills—Greenwich Colliery Railway.
50. — Roman Catholic Relief.
54. — Companies Clauses Consolidation, amended.
36. — Parochial Settlement.
58. — Property Tax.
59. — Stamp Duties Assimilation.
33. Navy Estimates.
42. Sugar—Account.
45. Mines, Siberia, &c.—Account.
46. Wheat—Account.
49. Colonies, Population, Trade, &c.—Return.
46. Ordnance Estimates.
47. Stamp Duties, Ireland—Comparative Statement.
52. National Debt—Annual Account.
56. Grain—Return.
27. Portpatrick Harbour—Return.
31. Guernsey and Jersey—Copy of Order in Council.
32. Queen Anne's Bounty—Account.
34. College of Surgeons, Ireland—Copy of the latest Charter.
35. Railways—Minutes of the Board of Trade up to the 17th February.
43. Cattle, &c.—Account.
20. Wheat, &c.—Accounts.
64. Auction Duties—Accounts.
37. Army Estimates.
51. Bank of England—Accounts.
62. Railways, Newcastle to Berwick—Report of the Board of Trade.
66. Jamaica—Copy of the Memorial to the House of Assembly.
71. Window Duty—Copy of Instructions of the Board of Stamps and Taxes.
57. Excise Inquiry, Auctions—Twelfth Report of Commissioners, presented to Parliament in 1835.

HOUSE OF LORDS.

LAW OF DEODAND.

MONDAY, Feb. 24.—Lord CAMPBELL introduced a Bill, of which he had given notice last session for the abolition of deodands, a species of exaction which he characterized as most absurd, capricious, and insufficient.—The Lord CHANCELLOR by no means disputed the justice of these epithets as applied to the system of deodands, but suggested that, as they formed a part of the casual revenue of the Crown, it was expedient that the Royal assent should be obtained before the Bill was further proceeded with. The privileges of the House of Commons were also in some measure affected, and it might be doubted whether those corporations to which deodands accrued would not have a claim for compensation.—Lord CAMPBELL admitted that the royal assent would be necessary, but denied the force of the two other objections to his Bill, which was ultimately read a first time.

DIVORCE.

TUESDAY, Feb. 25.—Lord BROUGHAM gave notice of his intention to present a Bill for the transference of the divorce jurisdiction to the judicial committee of the Privy Council, which was fixed for Thursday week.

HOUSE OF COMMONS.

LAW OF BASTARDY.

MONDAY, Feb. 24.—Sir. JAMES GRAHAM obtained leave to bring in a Bill to make certain provisions for proceedings in bastardy.—The House adjourned at a quarter to one o'clock.

LAW OF BASTARDY.

TUESDAY, Feb. 25.—Sir JAMES GRAHAM brought in a Bill to amend the law of bastardy, which was read a first time. To be read a second time on Monday next.

THE LUNACY COMMISSION.

In answer to a question from Mr. W. O. STANLEY,—Sir JAMES GRAHAM said he had spoken to his noble friend (Lord Ashley), the chairman of the commission, on the subject of the progress made by the commissioners, and his noble friend informed him that drafts of two Bills had been prepared, one relating to the metropolis, and the other to the rest of the country. The Government, however, had not yet received these drafts; and therefore he (Sir James Graham) was not able to give the honourable gentleman any further information upon the matter. He would confer with his noble friend, and hoped they would be able to come to an understanding on the subject.

Crown-Office Feb. 22.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—County of Cornwall, Eastern Division, William Henry Pole Carew, esq. in the room of the Right Hon. Edward Granville Eliot, commonly called Lord Eliot, now Earl of St. Germans, called up to the House of Peers; County of Buckingham, Christopher Tower, esq. in the room of Charles Robert Scot Murray, esq. who has accepted the office of Steward of her Majesty's manor of Hempholme, in

the county of York, County of Tipperary, Richard Albert Fitzgerald, esq. of Muckridge House, in the county of Cork, in the room of Robert Otway Cave, esq. deceased; Borough of Thetford, William Bingham Baring, esq. commonly called the Hon. William Bingham Baring, Paymaster-General of her Majesty's Forces.

THE MAGISTRATE.

Summary.

SIR JAMES GRAHAM has introduced a Bill for the purpose of amending some defects in the Law of Bastardy, and, as we presume, for it is not yet printed, by a retrospective clause, to prevent the alarming consequences that might otherwise result from the flaws in Mr. LUMLEY's forms. A committee is to be appointed to inquire into the operation of the Game Laws. Our opinions on this subject have been stated more than once, and in the progress of the discussion we shall have frequent occasion to return to it.

There is nothing like experience of an evil to convince one of the necessity for reform. We beg to direct the attention of the Magistracy to a case which, we doubt not, is of common occurrence, and might be productive of more inconvenience even than that which resulted on this particular occasion. The times for holding the Quarter Sessions are fixed by statute, with a certain latitude at particular seasons; and the magistrates are empowered to hold intermediate sessions when necessary. These sessions are advertised only in the local newspapers. Consequently, when they are held at other than the days specially appointed by the statute, all who have business there, and who chance to be non-resident, and not to see the two or three local newspapers favoured with the county advertisements, have no means of ascertaining when the sessions will be held, however important the business that requires their presence.

It was this acknowledged inconvenience, so seriously and often so fatally experienced by the Profession, that induced the members of it in many localities to petition the Quarter Sessions to advertise their sessions in the LAW TIMES as well as in the local newspapers, as a medium by which information of such extreme importance to the Profession might be conveyed to all its members at the trifling cost to the county of a few shillings per annum. Many counties, cities, and boroughs, at once acceded to the request, and the announcements of their sessions continue to appear in our columns. But others refused, and counsel, solicitors, and parties having business in those districts, have no means of learning at any central source of information when their attendance will be required.

Among the counties that rejected the application was Devonshire. The letter of a correspondent exhibits the consequences. The magistrates appoint a sessions to be held in the last week in February, five weeks *before* the proper period. This is announced only in the local newspapers. A communication is not even made to the counsel attending the sessions. Our correspondent, resident in London, receives no information of this irregular sessions, nor would he have looked for it at such a season. Consequently, the first knowledge he has of such a sessions being held is a complaint of his non-attendance from the parties by whom he had been retained.

And the same inconveniences must be continually resulting to others, both professional and private persons, and all proceeding from the economy that, for the sake of saving to a whole county some thirty shillings a year, limits to the *local* newspapers an announcement which ought to be made to the entire Profession; for why should it be presumed that none but counsel, attorneys, and parties resident *in the county*, have business at the sessions?

And the case of Devon is the case of other counties. The same inconveniences must be continually occurring. We therefore ask of our readers among the Magistracy to represent the matter to their brethren, and of the attorneys in each county and borough to memorialize their several justices in Quarter Sessions assembled, to follow the example set by Lincolnshire, Yorkshire, Leicestershire, Lancashire, and the other counties that have acknowledged the propriety of announcing their sessions beyond the limits of their respective localities, and have deemed it due to the Profession to convey to *all* concerned the times appointed for business, by inserting them in the LAW TIMES also.

THE NEW SETTLEMENT BILL.

SIR JAMES GRAHAM has introduced his new Settlement Bill. It is printed; but so recently has it come to hand that we are unable this week to do more than announce its appearance. It embodies all the features of Sir JAMES GRAHAM's speech. It behoves the country to examine well its provisions; and we shall be happy to assist in aiding discussion and inter-communication of views on the subject; and shall next week analyse and review the Bill. S.

THE BASTARDY AMENDMENT BILL.

THIS amendment Bill is announced, but not yet printed. We have no reason to suppose that it will do more than legalize Mr. LUMLEY's errors, and probably expressly state that the mother's evidence shall be admissible on the hearing of appeals. S.

REVIEW OF MAGISTRATES' CASES.

HILARY TERM, 1845.

WITH the exception of *Reg.* v. *Justices of Herts*, to which we beg to direct especial notice, the Magistrates' Cases of Hilary Term were neither important nor numerous.

DUTY OF INTERESTED JUSTICES.

Lord DENMAN, in the case of *Reg.* v. *Justices of Herts* (4 Law T. 291) has added one more to the many judgments, which, despite minor failings, are building up for him fame in all time to come. There is in Lord DENMAN a breadth and majesty of mind, and a sense of lofty rectitude and unbending honour incarnate in the man, which truly ennobles the judge; and it were well for the purity of justice, and well for the dignity of the Profession, if the rightful rigour of his behests were applied with tenfold frequency to every branch of the administration and practice of the law. There are few departments of either which more loudly call for the exercise of a chastening and corrective jurisdiction than that of the magistracy of this country. In two recent cases Lord DENMAN has done much to correct abuses of power, and inspire a higher tone of feeling, and a livelier respect for the dictates of honour in that useful and powerful body. Of all conceivable malpractices in judicial functionaries, the very grossest is that of sitting in judgment upon their own cases, and using, or seeming to use, their judicial influence in behalf of their own interests. We have reason to believe that this heinous offence is one of which there have been many instances, attested by the cases which have already been brought before the Court of Queen's Bench, where magistrates interested in the decisions have attended and voted in their own cases. It is extremely shocking to find that any such improprieties have existed even in so large a body; to add that they are confined to a small minority, is merely, in other words, to say that the large body of our magistrates are not destitute of all feelings of honour and discretion. We do not measure, nor do we intend to modify, the terms in which such malpractices can alone be properly denounced and adequately branded. It is mainly owing to the timidity of Lord TENTERDEN, in his unworthy judgment in *Rex* v. *Justices of Monmouthshire* (8 B. & Cres. 137)(a) that abuses have obtained which are among the stigmas of our generation. In a previous case (*Rex* v. *Gudridge*, 5 B. & Cres. 459), an interested magistrate gave his vote, but against his interest. In *Rex* v. *Yarpole* (4 T. R. 71), the Court, though it refused to quash an order of removal, confirmed by interested magistrates, it was admitted that such order of confirmation could not be upheld. Then came the first of the two recent cases which we are about to notify.

The first is that of *Reg.* v. *The Cheltenham Commissioners* (1 Q. B. 467).

The facts were briefly these. One P. S. appealed to the Gloucestershire Quarter Sessions against a rate made under a local Act, 1 & 2 Geo. 4, c. 121, upon houses of his in Cheltenham. The sessions quashed the rate, with costs; and the order was brought up by *certiorari*. The chief objection was, "that several justices voted or took part in the decisions of the Court during the trial of the appeal, and concurred in the order by which the rate was quashed, who were at the time occupiers of or interested in property which was assessed by the rate in question, or were liable thereto, or who were otherwise directly or indirectly interested in the result of the appeal." The facts disclosed were, that on the second day an objection made to certain evidence tendered by the respondents was rejected by a majority of eleven magistrates to eight, three of the magistrates being partners in banking companies, to which belonged certain premises that were assessed in the rate. These partners also occupied the premises, and these three magistrates were among the eleven who constituted the majority. Sec. 136 of this local Act prohibits the removal of any proceeding under it by *certiorari*, and this objection was also taken to the rule. This Lord DENMAN, C.J. thus promptly overruled:—"We have no doubt of our having authority to declare proceedings void where there has been malversation. That point ought not to be open to doubt. A statutory clause taking away *certiorari* must be understood to assume that an order has been made by the proper authority; but that is not a proper authority where there is malversation." So much for the qualms of Lord TENTERDEN, and the temerity of local Acts, often smuggled through Parliament in attempted derogation of the supreme authority vested by the common law of England in the Court of Queen's Bench to supervise *all* inferior jurisdiction. The next point was that of the interested votes of the three commissioners. Lord DENMAN, C.J. said, "It is clear that, on the second day, three magistrates, who were interested, took a part in the decision. It is enough to shew that this decision was followed by an order, and I will not inquire what the particular question was, nor how the majority was made up, nor what the result would have been if the magistrates who were interested had retired. The Court was improperly constituted, and that rendered the decision invalid." Lord DENMAN, however, expressed an intimation that this decision might have been different had the interest been stated, and consent given to the voting of the interested magistrates; and Mr. Justice PATTESON further weakened the force of the judgment, by adding to his concurrence in it, these words:—"I must guard myself, however, by stating that I am not at present prepared to say, that in a case where one magistrate is interested, and fifty others are not, the proceedings will necessarily be invalid." And he went on to say—"I confess that I look with great suspicion at the general proposition that the vote of any interested person must necessarily vitiate the proceedings." These expressions were relied

(a) In which it was held that the Court of King's Bench had no power to review a decision at sessions in which an interested justice had, by his vote, decided the case.

In the last case, *Reg.* v. *JJ. Herts*, for here but one interested magistrate had voted. The case was this:—An order had been made at sessions confirming a previous order for the payment of money to a turnpike trust. One of the magistrates present at the sessions was a mortgagee of the tolls of that trust; the other was one of the justices who had made the order then under appeal. The mortgagee stated on oath, that though he retired with the other magistrates, he did not influence them, but only concurred with those who voted; and he stated facts from which it appeared that his vote did not turn the majority. It now became necessary to reconsider the very case put, and the dictum delivered upon it by Mr. Justice PATTESON, in *Reg.* v. *Cheltenham*. Let the following sentence of Lord DENMAN's noble judgment be recorded in the mind of every magistrate, and blazoned in every Court of Quarter Sessions in the kingdom:—"I AM MOST DECIDEDLY OF OPINION THAT THE PRESENCE OF ANY ONE INTERESTED PARTY VITIATES THE WHOLE PROCEEDINGS."

Henceforth let no justice, who does not wish to make his name a by-word of reproach, remain for one minute in court when any case is called on in which he has any sort of personal interest.

It is due to PATTESON, J. to say that he frankly retrieved his former opinion. "On further consideration," he said, "I am satisfied that the rest of the Court in *Reg.* v. *Cheltenham* were right. The question of the right constitution of the Court depends not upon the degree of influence any one member may have had upon the decision. It is an unsound and uncertain rule. The simple question is, Has he taken part in the proceedings or not?"

A learned and right-thoughted article on this subject appears in the *Justice of the Peace* for Jan. 25, on this case and subject. Its honourable sentiments and sound law form a grotesque contrast to the answers gratis to cases from the country, with which that publication continues to disgrace itself.

MATERNAL SETTLEMENT.

The case of *Reg.* v. *Yelvertoft* (4 Law T. 312) decides that unless there be legal evidence of a husband's being settled elsewhere, the wife or widow and her children may be removed to her maiden settlement, without first shewing that the husband had no settlement. This decision is founded on the authority of *Rex* v. *Harberton* (13 East, 311), where a registry of marriage stated the husband to be born in the parish of A. in Devon; but this was held to be no evidence of the fact, and the case was sent back to the Sessions to be reheard. The old law is to be found in the case of *Rex* v. *St. Matthew, Bethnal-green* (Burr. S. C. 482, Lord Mansfield presiding), where it was held that "the positive law in these cases of settlement is, that the child follows the father's settlement, if the father can be found, and that no recourse shall be had to the mother's settlement till that of the father can be traced no further."

In *Rex* v. *St. Mary, Beverley*, the mother of the pauper's husband gave evidence that he was born in some parish in Ipswich, and BAYLEY, J. said:—"To justify the confirmation of an order of removal, it ought to appear upon the evidence adduced by the respondents, that the party removed is settled in the parish to which the removal is made; if that do not appear, and, *à fortiori*, if the contrary appear, the removal cannot be supported. Now, the evidence in this case does not prove that the person removed is settled in the parish of St. Mary, to which she is removed, but in one of the parishes in Ipswich." It was also held, that in this case the onus of proving in which parish the father was born lay, not on the appellants, but the respondents. "It is enough," said BAYLEY, J. "to disprove, by clear evidence, the obligation of the appellant parish to maintain the pauper." But in *Rex* v. *St. Mary, Leicester* (3 Ad. & El. 644), it was held, that as against a birth settlement it was sufficient for the appellants to prove the mother's maiden settlement, without shewing that the father had none.

In the case of *Reg.* v. *Yelvertoft*, the only evidence of the husband's settlement was in this statement—"I was born, I believe, in London, but in what parish I never heard." This was held to be no legal evidence, and on that ground the Court ruled that the maiden settlement was valid; and they also held, that all the inquiry which was necessary had been made.

It is obvious that, as on many other points, the law of Lord Mansfield's time is not the law now. Neither is it possible to reconcile even the most recent decisions on this subject. In the judgment of the Court in *Reg.* v. *Leeds* (1 Dav. & Mer. and 1 Bit. & Sym. M. C. 52), decided last Michaelmas Term, the same point arose, and that case was strongly urged on the Court in *Reg.* v. *Yelvertoft*. In *Reg.* v. *Leeds*, the wife had been removed to her maiden settlement; her husband's evidence shewed that his settlement could not be ascertained, and it was entitled as "touching *his* lawful settlement," instead of the wife's; which was a ground of appeal. Lord DENMAN, C. J. in his judgment said, "An inquiry into the father's settlement *was necessary in this case, and was the foundation of the proceedings*; for until it appeared that his settlement could not be discovered, the wife's settlement was immaterial." But in *Reg.* v. *Yelvertoft* (1 Dav. & Mer.) Lord DENMAN says, "I think that *Rex* v. *Harberton* ought to govern this case, for there the Court said that evidence of the wife's settlement was *primâ facie* sufficient, and that it lay upon the appellants to rebut it, by giving evidence of the husband's settlement in a different parish. In *Reg.* v. *Leeds*, it appears to have been taken for granted that some inquiry into the place of the husband's settlement was necessary, and the Sessions merely put to us the question, whether there had been sufficient inquiry; and this Court, in effect, did merely what amounts to saying, 'as you put the question, we will answer it; the inquiry was sufficient.'"

We cannot but think that the Court implied more than this in the passage we have cited above.

The rule to be deduced from these cases is, that recourse may be had to the mother's maiden settlement without tracing the father's settlement, so long as there be no legal evidence that the father had one; or no legal evidence inconsistent with that set up.

TENEMENT SETTLEMENT.

The case of *Reg.* v. *St. Lawrence Appleby* (4 Law T. 331). This case, though stated at prolix length, involved nothing more than the point whether land must be held distinctly and separately, as well as houses and buildings, to give a settlement under 6 Geo. 4, c. 57, which provides that no person shall gain a tenement settlement "unless such tenement shall consist of a separate and distinct dwelling-house or building, *or of land*, or of both." It was held of course that "separate and distinct" apply to dwelling-house, and not to land. Mr. ARCHBOLD's argument, who took this point, was nevertheless ingenious, and deserved, we thought, to have been less lightly treated by the Court.

We shall notice the remaining cases next week.

NOTICE OF APPEAL.

In the case of *Reg.* v. *Justices of Warwickshire* (4 Law T. 291) a very interesting question was mooted touching the right to re-enter and try an appeal under certain circumstances, which it is needless to detail, inasmuch as the appellants had actually omitted to aver that they had given due notice of the appeal according to the practice of the Sessions! The case will probably be again brought forward.

MUNICIPAL ELECTIONS.

Reg. v. *The Mayor, Aldermen, and Councillors of Cambridge* (4 L. T. 290). If a corporation of a borough do not proceed within ten days to fill up an extraordinary vacancy in the council, caused by a judgment of ouster against a councillor on a *quo warranto*, as required by 5 & 6 Wm. 4, c. 76, s. 27, the Court will, in its discretion, order the corporation to pay the costs of a *mandamus* obtained by a relator, compelling them to proceed with the election; but inasmuch as these are expenses in an election, the Court will not order them to be paid out of the borough fund; but in this case intimated a strong opinion that the corporation should pay them themselves.

AUDIT OF PARISH ACCOUNTS.

Reg. v. *The Auditor of the Union of Burnham* (4 Law T. 291). We learn from this case that where a writ of *certiorari* is to be applied for to remove the accounts of a union auditor, notice must be given to all the parties, auditors and parish officers as well.

RECOVERY OF SMALL TENEMENTS.

Reg. v. *Justices of Gloucestershire* (4 Law T. 160 & 289) decides that under the following circumstances justices are compellable to grant the usual notice under 1 & 2 Vict. c. 74, to recover possession of a small tenement, and that on refusal a *mandamus* will issue, as it did in this case, in which application was made to two justices, and whilst the landlord's agent was stating the particulars of the case, an attorney's clerk informed the magistrates that his employer's client had a mortgage upon the property. Upon this, the justices declined to proceed, and refused to take any evidence whatever, saying, that it was optionable for them to proceed or not, and that the landlord might bring his action of ejectment.

REPAIR OF HIGHWAY.

The case of *Reg.* v. *Heanor* (4 Law T. 289; 14 Law Jour. M. C. 38) decides, that although the prosecutor is entitled to a certificate for his costs where an indictment has been preferred to try the *liability* of a parish to repair a *certain highway*, he is not entitled to them when it turns out that there was no *such* highway. The right to these costs is given by 5 & 6 Wm. 4, c. 50, s. 95, which provides that where "*the duty or obligation*" of the repair is denied by the surveyor, on the hearing of the usual summons, it shall be lawful for the justices to order an indictment to be preferred to try the question, and that the "costs of such prosecution *shall* be directed" by the judge who tries the indictment or justices of the sessions to be paid out of the rates of the parish where the road is situate. It had been previously held by Mr. Justice PATTESON, in *Reg.* v. *Chedworth* (9 Car. & P. 285) that this section extended only to the case where the liability to repair is in question, and not the existence of the highway itself. This distinction was warmly upheld by Lord DENMAN, C. J. in *Reg.* v. *Heanor*, in which a certificate given by TINDAL, C. J. was set aside, there having been a verdict against the prosecutor, on the ground that it turned out to be a bridle-way, and not a carriage-way. We confess that, notwithstanding our implicit deference to the opinion of the Court of Queen's Bench, we must venture to prefer the discretion of the Lord Chief Justice of the Common Pleas, who, on the application being made to him, heard the point argued, and held that the term "highway" was not to be understood in its strict sense, but as including a road *considered* to be a highway, and that the object of the Legislature appeared to be that the prosecutor should be protected from costs whenever he carried on the prosecution by the direction of the justices. (*R.* v. *Heanor*, 2 Moo. & M. 445; 13 Law Journ. M. C. 144.) May not the obligation to repair be just as much involved in the question of whether a road is a highway or not, as in the question whether it wants repair or not? We cannot but think it is. One raises the question of duty just as

legitimately as the other. Why, then, this distinction? Lord DENMAN says, because a man may vexatiously try to make that a high road which is not one, making the parish pay the cost of the experiment. The right to try the obligation to repair at all is open to the same abuse. That is the fault, if it be one of the statute itself. When the justices order the indictment, it is their act, not that of the prosecutor; and this, with great deference, we think is a sufficient answer to the reasons given for the decision in *Reg.* v. *Heanor*.

In our humble judgment, a very unadvised decision on the same section of this Act was given in *Rex* v. *Aston and Ingham* (1 Greaves' Russ. on Crimes, 374), where it was held by Williams, J. after consulting some of the other judges, that where the defendants pleaded guilty there was no right to costs, because there had been no trial! It is not in the least necessary that there should. The words, "and the costs of such *prosecution* shall be so directed, by the judge of assize *before whom the said indictment is tried*, or by the justices at such Quarter Sessions, to be paid," &c. It is perfectly clear from the fact that the words "before whom the said indictment is tried," are not repeated after the words "justices at such Quarter Sessions," that it was not the intention of the Act to make the completion of the trial a condition precedent to the power of ordering costs. Nothing can be plainer than this; and nothing more thoroughly unjust than to deprive a prosecutor of his costs because he proves to be so very right that the defendant pleads guilty!

CONVICTION UNDER TURNPIKE ACT.

In the case of *Barnes* v. *White and Another* (4 Law T. 333) the plaintiff was convicted under the general turnpike statute, 3 Geo. 4, c. 126, for forcibly passing through a toll-gate situate on a turnpike-road, made under the authority of a local Act, and thereby avoiding the toll due. The plaintiff refused to pay the sum in which he was convicted, and a warrant of distress against his goods was issued. The conviction contained no adjudication of the payment of the penalty, but it was held not therefore bad, since it followed the form given in the schedule to 3 Geo. 4, c. 126.

The conviction also stated the toll-gate to be situate on a turnpike-road; but the warrant stated only the toll-gate to be situate in the particular parish and county, omitting the turnpike-road, and this was held no variance.

And it was also decided that the warrant was not void for not stating that the toll-gate was situate on a turnpike road.

The warrant ordered a moiety of the penalty to be paid to the treasurer of the commissioners for amending the roads and highways in the Isle of Wight, and it was held not to be a misappropriation of the penalty.

BASTARDY ORDERS.

In the case of *Reg.* v. *Justices of Bucks* (4 Law T. 341), it was held, in accordance with the decision in *Ex parte Gray* (1 Bit. & Sym. 116), that an information, charging a man with being the putative father of a bastard child, must be on oath, though the Act does not require it. In fact, all informations should be on oath, whether the statute requires it or not. We know of few cases in which it can be safely omitted. We commented at large on this case at the time it was decided, 4 LAW TIMES, 343. S.

The following buildings are certified as places duly registered for solemnizing marriages, pursuant to the Act of 6 & 7 William IV. cap. 85:—Wesleyan Chapel, Caistor, Lincolnshire; George Marris, superintendent registrar. Baptist Chapel, Quainton, Buckinghamshire; W. Gleadah, superintendent registrar. Roman Catholic Chapel, East Hendred, Berkshire; William Ormead, superintendent registrar.

THE LAWYER.

Summary.

AGAIN are our columns occupied with many important *written* judgments. Three or four long ones are unavoidably postponed until next week. To-day, the Court of Queen's Bench will deliver several. When these are published, the LAW TIMES will have achieved that which was never before deemed to be possible. It will have given to the Profession *verbatim* reports of *all* the written judgments of the Courts of Common Law, from the commencement of Michaelmas to the close of Hilary Terms, comprising half the legal year. The volume that contains them will thus preserve a mass of the most valuable, because the most authoritative, law, the greater portion of which *can be procured nowhere beside*.

PRACTICAL NOTES.

No. I.

WE hope soon to continue our series of Practical Notes upon Statutes, which lately we have not had leisure to do. But, meanwhile, we propose to commence a series of Practical Notes on General Law. This will comprise a great variety of subjects, but our selection will be mainly guided by recent decisions. By grouping these together, and shewing how far they modify or illustrate previous cases, we shall endeavour to render this series a kind of running commentary, or rather annotated digest, of the current reports. The notes will be more extended, than the Summaries which have appeared in these columns, because not limited to any definite period, or given in any regular order. We take for our first subject the case of *Sewell* v. *Evans* (4 Q.B. 626), upon the

EVIDENCE OF IDENTITY.

It is laid down distinctly, as a general proposition, in 2 Phillips on Evidence, 214, that in an action on a bond, or a promissory note, or bill of exchange, and in other cases, some evidence of identity will be necessary to connect the party with the instrument; and the cases cited in support of this proposition shew that the learned author meant the same as Mr. Roscoe, who says, "Mere identity of name is not sufficient." (P. 88, and see p. 207, 5th edition.)

Whitelocke v. *Musgrove* (1 Cr. & M. 511) has always been referred to as a leading case on this subject. That was an action against the defendant, as maker of a note. The subscribing witness—a marksman—was proved to be abroad, but his handwriting was duly proved. No evidence whatever was given to shew that the defendant was *the* Francis Musgrove who made the note. The jury found a verdict for the defendant; Bayley, B. having stated to them that he thought the attestation was no evidence against the defendant. A rule was subsequently obtained by the plaintiff to enter a verdict for the amount of the note, but, after a full argument and time taken to consider, it was discharged. All the cases were there discussed, and although the fact that the maker was a marksman was partly relied upon in the argument, it is important to observe, that the judgment did *not proceed upon that ground*. It was admitted that Lord Tenterden and Lord Chief Justice Best had both acted upon the notion that no evidence of identity was requisite. (See *Page* v. *Mann*, 1 M. & M. 79; *Mitchell* v. *Johnson*, ibid. 176; and *Kay* v. *Brookman*, ibid. 287; and judgments of Vaughan, B. and Bolland, B. inserted pp. 523, 524.) But Lord Kenyon, in *Wallis* v. *Delancey* (7 T. R. 266), seems to have thought differently, and Lord Ellenborough to have been undecided. (*Nelson* v. *Whittal*, 1 B. & A. 21.) The decision was grounded upon the principle that an attesting witness proves every thing which he attests, but nothing more, and consequently his signature alone did not prove that the defendant was the same Francis Musgrave who made the note. It was *not* because the mark of a marksman was no distinguishing sign, but that the proof of the handwriting of the subscribing witness, which is equivalent to direct evidence of the execution, is not sufficient without connecting evidence of identity. Bayley, J. said:—

If the instrument had shewn upon the face of it that it was executed by F. Musgrove, of Beeth, in the county of York, the attestation, according to the authorities, would be evidence of such being the case; but you must shew that the defendant is a person answering such description. If you intrust a witness to attest the execution by the party, and such witness die (or go abroad), you lose the advantage of identifying the party by his testimony; but in most cases you can either shew some acknowledgment, or prove that the party, from his residence, or other circumstances, answers to the description on the face of the note; or you can establish the identity of the party in some other mode.

Lord Lyndhurst, C. B. concurred with the rest of the Court, though absent when cause was shewn; and when the rule *nisi* was moved for, he said, "It would be very extraordinary if some evidence of identity were not necessary." We have stated this case at some length, on account of the language of Lord Denman, C.J. in the principal case. But before stating this, we may refer to three later cases in the same court. In *Jones* v. *Hugh Jones* (9 M. & W. 75), the attesting witness proved that he saw the signature to the note written by a party named Hugh Jones, whose residence and occupation he described, but that he had had no communication with him since, and that the name Hugh Jones was very common in the neighbourhood where *that* Hugh Jones lived, and it was held that there was nothing to go to the jury. Parke, B. said, "This point must be considered as settled by *Whitelocke* v. *Musgrove*," and he cited also Phillips on Evidence. *Greenshields* v. *Crawford* (9 M. & W. 314), however, does not seem reconcilable with the principles laid down in the leading case. The bill was directed to "Charles Banner Crawford, East-India House," and accepted "C. B. Crawford," and a witness stated that it was the writing of a gentleman of that name, who five years before had been a clerk in the East-India House, but that he did not know whether that was the defendant. Lord Abinger, C.B. and Alderson, B. held this to be sufficient evidence of identity to go to the jury, and they refused to disturb the verdict. This clashes with the rule laid down in the text-books on the authority of *Whitelocke* v. *Musgrove*; and the two cases of *Sewell* v. *Evans* and *Roden* v. *Ryde* (4 Q. B. 626) are important to shew what the Court of Queen's Bench consider to be the true rule.

Sewell v. *Evans* was an action for goods sold against William Seal Evans, and it appeared that about five years before action brought, William Seal Evans had been a customer, and had written a letter acknowledging the receipt of the goods. The witness, however, who proved these facts, did not know whether defendant was the same W. S. Evans, nor was any further evidence given upon the fact. *Roden* v. *Ryde* was an action against Henry Thomas Ryde as acceptor of a bill of exchange, and it appeared that a Henry Thomas Ryde had kept cash at the bank where the bill was made payable, and had drawn cheques which the cashier had paid. The cashier knew the party's handwriting by the cheques, and swore that the acceptance was in the same writing, but he had not paid any cheque for some time, did not know the party personally, and could not further identify him with defendant. In both these cases, after full argument and time taken to consider, the Court, consisting of Lord Denman, C. J., Patteson, J., and Williams, J., decided that there was sufficient evidence of identity to go to the jury, and refused to disturb the verdicts.

Lord DENMAN, C. J.—The doubt raised here has arisen out of the case of *Whitelock* v. *Musgrove*, but there the circumstances were different. The party to be fixed with liability was a marksman, and the facts of the case made some explanation necessary. But where a person in the course of the ordinary transactions of life has signed his name to such an instrument as this, I do not think there is an instance in which evidence of identity has been required, except *Jones* v. *Jones* (9 M. & W. 75). There the name was proved to be very common in the country, and I do not say that evidence of this kind may not be rendered necessary by particular circumstances; as, for instance, length of time since the name was signed. But in cases where no particular circumstance tends to raise a question as to the party being in existence, even identity of name is something from which an inference may be drawn.

This seems to be a very vague principle, for how is the Court to take judicial notice of what names are common, or what not? They vary according to locality. What is common in Somersetshire is uncommon in Cumberland, and in transitory actions there is nothing to shew where the plaintiff or defendant lives. However, the decision is as we have

stated it, although we cannot quite concur in the concluding words of the Lord Chief Justice—"The transactions of the world could not go on if such an objection were to prevail. It is unfortunate that the doubt should ever have been raised, and it is best that we should sweep it away as soon as we can." It may still be prudent in the other courts where the witness to the handwriting gives any description of the party, to prove, as for instance by the defendant's attorney, that the defendant answers to the description.

PROMOTIONS, APPOINTMENTS, ETC.

The Queen has been pleased to appoint the Right Hon. Sir James Parke, knt. Sir Edward Hall Alderson, knt. Sir John Taylor Coleridge, knt. the Honourable James Stuart Wortley, Fitzroy Kelly, esq. William Whateley, esq. John Greenwood, esq. Sir William Heathcote, bart. Edmund Denison, esq. and Thomas Grimston Bucknall Estcourt, esq. to be her Majesty's Commissioners for inquiring into the expediency of altering the Circuits of the Judges in England and Wales.

The Lord Chancellor has appointed Edward Hughes, of Ellesmere, in the county of Salop, gent.; and John Alexander Maitley Pinniger, of Chippenham, in the county of Wilts, gent. to be Masters Extraordinary in the High Court of Chancery.

New Queen's Counsel.—Common Law Bar.—Labbeus Charles Humfrey, esq. M.A. of the Midland Circuit, called to the bar 17th June, 1823, by the Society of Lincoln's-Inn. Russell Gurney, esq. (second son of Sir John Gurney, late Baron of the Exchequer), of the Home Circuit, called to the bar 21st Nov. 1828, by the Inner Temple. George Medd Butt, esq. of the Western Circuit, called 25th June, 1830, by the Inner Temple.

Equity Bar.—William Lee, esq. called to the bar 4d July, 1813, by the Inner Temple. John Billingsley Parry, esq. called to the bar 19th November, 1806, by Lincoln's-Inn. William Page Wood, esq. M.A. (son of the late Sir Mathew Wood, bart.), called to the bar, 22nd Nov. 1827, by Lincoln's-Inn.

Admiralty Counsel.—Richard Godson, esq. Q. C., M.P., of the Oxford Circuit, has been appointed counsel to the Admiralty.

The office of Lord Warden of the New Forest, vacant by the death of the Right Hon. W. Sturges Bourne, has been conferred by her Majesty upon his Royal Highness the Duke of Cambridge.

At the Salford Sessions, on Tuesday, John Duncuft, esq. of Westwood House, Oldham, and Andrew Schofield, esq. of Woodfield, Werneth, Oldham, took the oaths, and qualified as magistrates of the county of Lancaster.

THE PROPERTY LAWYER.

MORTMAIN ACT.

It is of great consequence, particularly in the preparation of wills, that the solicitor should have accurately before his mind the state of the law under the 9 Geo. 2, c. 36 (the Mortmain Act), and we will therefore call our readers' attention to two or three recent cases upon the subject. That statute enacted that no hereditaments, or personal estate to be laid out in the purchase of hereditaments, should be given, conveyed, or settled to or upon any persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or encumbered in trust or for the benefit of any charitable uses whatsoever, unless in the method there pointed out. It has been frequently remarked, that seldom have the Courts of Law co-operated so strenuously with the Legislature as in the interpretation which they have put upon this Act. Not only have the obvious cases of copyholds, leaseholds, mortgages, judgment-debts, equitable lien for unpaid purchase-money, canal shares, railway shares, &c. been held to fall within it, but also cases of charges on poor-rates, county-rates, turnpike-tolls (merely the *tolls*), bonds by commissioners for the improvement of the city of Bath, &c. (see 1 Jarm. on Wills, 199), though in some of these cases it is difficult to see how an interest in land was conferred. Sometimes too the language has gone further than the decision, and intimated that whatever might affect land, however remotely, was within the meaning of the Act. That a reasonable restriction is now to be put upon such language will appear from the three cases to which we are about to refer; cases in these share-holding times of no slight importance.

The first case is *Attorney-General* v. *Giles* (5 L. J., N. S. 44). East India stock was given by will, and it was contended that the bequest fell within the Mortmain Act, inasmuch as the company held land to a considerable extent, the profits of which went towards the payment of the dividends; and moreover, as the company was a mercantile partnership on an extensive scale, and if the partnership were dissolved, the shareholders would be entitled to the produce of the landed estates. Lord Cottenham (then Master of the Rolls) decided against the argument, observing that the only land which the company held was for the convenience of their trade, from the profits of which they must pay the dividends; that it would be going further than any other case to hold, that those who are entitled to receive the dividends had an estate in the land held by the company, or that, because the party liable to pay had land for the purpose of carrying on his trade, the persons who were to receive dividends out of the profits of that trade had an interest in the land. "Where," said his lordship, "there is an actual charge on land, or personal estate to be invested in land, in such a manner as in the case of a mortgage, where, if default is made in payment of the money, the mortgagee may at once resort to the land, the statute applies; but to apply it to the present case would be carrying it to an absurd length, and much further than it was ever intended to be carried, and would involve property to a very considerable extent, which has never been considered as coming within the operation of the statute."

March v. *The Attorney-General* (5 Beav. 433), raised a question of immense consequence, viz. whether policies of assurance were within the Mortmain Act when the company had realty. There were three policies in different companies. By the form of the policies, the funds of the companies were expressly charged with the amount insured, and in one of the companies the assured became at once a partner. All the companies held land. The Master of the Rolls (Lord Langdale) held, that the Act did not apply, mainly on the grounds that the grantees had no direct and immediate claim upon the land; that in case of default in payment, they must, in ordinary cases, have recourse to an action at law, and could not touch the land, except upon a judgment in such action; and although, in a special case, a court of equity might interfere and administer the property, this possibility was not sufficient, "within the meaning of the Mortmain Act, to connect a sum of money, payable on a policy of assurance, with the quality of the property held by the grantors;" and Lord Langdale considered that "if the money secured by a policy of insurance is to be deemed to be connected with land, so as to be brought within the Statute of Mortmain, there could be no reason why the same consequence should not attach upon any debt owing by any person who has real restate or chattels real; for though the right of action imports only pure personalty, yet the result of an action may be to obtain payment out of the land or chattels real."

The last case on the subject is *Thompson* v. *Thompson* (1 Col. 381, just published). There a testator had given to charitable uses shares in the London Gas Light and Coke Company, an incorporated company *holding land*, and it was in consequence contended that the Mortmain Act applied, but Vice-Chancellor Bruce decided otherwise. His Honour said:—

"This question relates to shares in a trading corporation, constituted and regulated by a variety of Acts of Parliament, one of which makes the corporation perpetual, and by one or more of which the acquisition of landed property in fee-simple by the corporation is authorized.

"I observe in passing, without saying whether it is important, that this Act does not simply provide that the shares shall be deemed personal estate (which would have been sufficient for the mere purpose of devolution), but it says, 'shall be deemed personal estate, and not of the nature of real estate, and as such personal estate shall be transferable accordingly.' I make the remark in passing, without saying whether I should or should not have decided this case in the same way if those particular words had not been inserted in the Act. At present it is sufficient to say that, in my opinion, the words are not to be disregarded.

"Now, shares thus constituted are the shares in question; they are shares in a joint stock to be contributed by various persons, who are to combine in raising the sum for trading purposes. Being applied to trading purposes, the profits and advantages attending the capital stock that may be derived from trading are to be divided among the contributors. The only connection of this concern with land, beyond the mere circumstance that all trades must be carried on in connection with the earth on which we live, is, that it is to be carried on with the assistance of real property, to be acquired by the corporation. The shareholders are to have no estate in the real property, legal or equitable; but real property is to be held by the corporation as part of the general mass of the corporate property, real and personal, which being held and worked by the corporation, the net profits are to be divided by them among certain individuals, not one of whom has, legally or equitably, any right of possession of the land, or of entry upon any portion of it. Speaking otherwise than technically, this would sound to any unlearned person as little like a landed estate in a shareholder, as foreign, in respect of the shareholders, from any notion of what is called landed property, as any thing that one can well imagine. No man would think, certainly, of calling an extensive holder of gas-light shares a great landed proprietor.

"But it is said, that property of this description, because the profits are acquired by a certain connection with the earth, with the aid of real estate held and managed by the corporate body, who receive the profits, and with them or from them make dividends among the individual shareholders, is, as to the individual shareholders and their interests, a tenement or hereditament, or an estate or interest in a tenement or a hereditament, or a charge or incumbrance upon a tenement or a hereditament, or an estate or interest in that charge or incumbrance.

"Now, it is possible, that, by an exceedingly strict interpretation of the term, property of this description in a shareholder might, in a sense and for a purpose, be brought within a range of a portion of those expressions,—it is possible, but the question is, whether, upon a just interpretation of the Act of Geo. 2, without regarding the title which I do not regard for this purpose,—whether, upon a just and rational collection, from the language of the Act, of its intention, it is a sound construction of this statute to say, that the expressions 'lands, tenements, or hereditaments,' or 'charge or incumbrance affecting lands, tenements, or hereditaments,' or 'estate or interest therein,' as used in it, are words properly applicable to a subject of this description. I am of opinion that they are not; and without saying (nor is it necessary to say, and I hardly understand what the expression means) whether this property is pure personal estate, or not, I am of opinion, without any doubt, that it is property not falling within the range of any of the expressions contained in the statute 9 Geo. 2, c. 36, according to a just interpretation of the language of that Act."

LEGAL INTELLIGENCE.

Mr. Baron Platt.—On Friday, the 21st ult. a sumptuous banquet was given at the Albion, Aldersgate-street, to Mr. Baron Platt, upon his elevation to the bench. The chair was taken by Mr. Serjeant Channell, the leader of the circuit, supported by a very large party, who assembled on this occasion to do honour to the new Judge. After the company had done justice to the entertainment, which was most admirably arranged in every respect by Messrs. Staples, the proprietors of the Albion, and the usual loyal toasts had been duly honoured, the Chairman proposed the health of Mr. Baron Platt, which was received with enthusiasm. The healths of Mr. Serjeant Channell, Mr. Serjeant Shee, and other leading members of the circuit, were then proposed, and the company did not separate until a late hour. An apology was received from the Solicitor-General, expressing his great regret at being unable to attend the meeting.

Important Post-office Notice.—The following notice, issued by command of the Postmaster-General, has just been put up at the General Post-office, the Royal Exchange, and the branch post-offices:—"On and from the 1st of March next an additional rate of 4d. the half-ounce over and above the present postage will be chargeable on all letters, and an additional rate of 2d. on every newspaper, forwarded by the overland mail, whether *viâ* Southampton, or *viâ* Marseilles, to and from places to the eastward of Calcutta, and also to and from the Mauritius, the Cape of Good Hope, Bourbon, or Madagascar, when despatched to such places from ports in India, or *vice versâ*, this sum being levied to defray the charge made by the East India Company for the despatch and receipt of such letters and newspapers. The rate of postage chargeable from the date

above mentioned on letters and newspapers transmitted between the United Kingdom and India, and despatched from ports in India to places to the eastward of Calcutta (as well as those forwarded to the Mauritius, the Cape of Good Hope, Bourbon, or Madagascar), and *vice versâ*, will therefore be as follows:—

On a Letter forwarded.	Weighing a ¼ of an ounce.	¼ of an ounce, and not exceeding ½ an ounce.	Exceeding ½ an ounce, and under ¾ of an ounce.	¾ of an ounce, and not exceeding 1 ounce.	Exceeding 1 ounce, and under 1¼ ounce.	Newspapers.
Viâ Marseilles.	s. d.	s. d.	s. d.	s. d.	s. d.	
British	1 9	1 9	3 6	3 6	7 0	5d.
Foreign	0 5	0 10	1 3	1 8	2 1	
	2 2	2 7	4 9	5 2	9 1	

	Not exceeding ½ an ounce.	Exceeding ½ an ounce, and not exceeding 1 ounce.	Exceeding 1 ounce, and not exceeding 2 ounces.	
Viâ Southampton ..	s. d. 1 4	s. d. 2 8	s. d. 5 4	British Colonies, 2d. Foreign Possessions, 4d.

This charge will apply to letters and newspapers to or from Australia, Bourbon, the Cape of Good Hope, China, Hong-Kong, Java, Madagascar, Mauritius, New Zealand, Sumatra, and Van Diemen's Land. Letters and newspapers, however, addressed to Australia, Bourbon, the Cape of Good Hope, Madagascar, Mauritius, New Zealand, Sumatra, and Van Diemen's Land, must be specially directed *viâ* India, or they will not be despatched by that route. Letters of soldiers and sailors forwarded in conformity with the Act will not be liable to this additional rate."

IRISH STAMP DUTIES.—The actual increase in the Irish stamp duties in the year ending January 5, 1845, was 129,014*l.* 3s. 1½d. Increase in the quarter ended at the same date, 33,282*l.* 16s. 2½d.

The Will with two Codicils of the late Mrs. Elizabeth Barbara Bulwer Lytton, late of Knebworth, in the county of Hertford, and of Upper Seymour street, Middlesex, widow of the late William Earle Bulwer, esq. (after whose death she obtained the Royal sign manual to use the name of Lytton), was lately proved in Doctors' Commons by her son, Sir Edward George Earle Lytton Bulwer Lytton, bart. one of the executors. Power reserved to William Earle Lytton Bulwer, esq. and William Henry Lytton Earle Bulwer, esq. sons also, and to Edward Lytton, esq. the other executors. The will is of some length, dated 21st July, 1840. Directs that she shall not be taken out of her bed till some hours after her decease nor be placed in her coffin until two medical men shall have pronounced that decomposition has taken place. Bequeaths to her eldest son, William Earle Lytton Bulwer, the house, No. 5, Upper Seymour street, with the furniture, &c. (except plate), he enjoying the Norfolk estate under the will of his father. To her second son, William Henry Lytton Earle Bulwer, 1000*l.* a year out of the Knebworth estate, he being well provided for by the will of his grandmother. To her youngest son, Sir Edward George Earle Lytton Bulwer, the estate and mansion at Knebworth, and all the furniture, pictures, statues, books, wine, &c. and appoints him residuary legatee of her personal estate. The plate at Upper Seymour street, and the coins dug out near the Knebworth estate, to go with the estate at Knebworth as heirlooms. Bequests of numerous articles of jewellery, rings, and pecuniary legacies to several of her friends, and small annuities and legacies to domestics in her service. Directs that seven of her horses, which she describes, shall be allowed to run out their days, and be properly fed and provided for, but not be shot or sold; that her dog named Fly should be taken care of by one of her servants, who is to be allowed 5s. a week for that purpose, and provided with an almshouse. Deceased died 19th December, 1843. Personal estate sworn under 25,000*l.*—*Historical Register.*

The Will of the late Right Hon. Sir Gore Ouseley, bart. late of Hall Barn Park, near Beaconsfield in the county of Buckingham, has just been proved in Doctors' Commons by Sir Ralph Abercrombie Anstruther, bart. and Sir Walter Rockcliff Farquhar, bart. the executors according to the tenor of the will, there being no direct appointment of executors, nor any date to the will, but by an affidavit of two of the attesting witnesses and the widow, it is stated to have been made in the spring of the year 1842. He died on the 18th November, 1844. The will is long, and in the deceased's handwriting. He devises his freehold property to his son, provides that his widow may reside at the Hall Barn Park estate as her own home, and makes an addition to her income under marriage settlement. Liberal legacies to his daughters, and various other bequests of annuities and legacies. Gives to his son the gold enamelled plate presented to him by his late Majesty, Fateh Ali Shah, King of Persia, as a mark of royal gratitude for his services in having mediated a peace between him and his late Imperial Majesty Alexander Emperor of Russia, during the period he, Sir Gore Ouseley, was resident at the Persian Court as English Ambassador, and directs that the same shall be preserved as heirlooms in his family as long as any lineal descendant exists. Personal estate sworn under 25,000*l.* (Sir Gore Ouseley sustained losses to the amount of 200,000*l.* by the failure and bankruptcy of two or three individuals, to whom allusion is made in the will.)—*Ibid.*

Special Letters of Administration, with the Will and Codicil thereto annexed, of the late Right Hon. Lady Anne Culling Smith, wife of Culling Charles Smith, esq. of Hampton-court Palace, and sister of the Duke of Wellington, have just been granted to the husband. The will and codicil bear even date, 16th July, 1843; the codicil is in her ladyship's handwriting. Lady Anne died on the 18th December last. By a power of appointment she leaves to her husband the property bequeathed to her by her mother, the late Countess of Mornington, and all other property, with directions for maintaining her title under her mother's will to one undivided third part of property then the subject of an appeal to the House of Lords, in which the Right Hon. Arthur, Viscount Dungannon, is appellant, and her husband and herself, with others, respondents.—*Ibid.*

The Will and Codicil of the late Philip Wynell Mayow, esq. formerly of Gray's-inn, and solicitor to the Excise, but late of 54 Guidford-street, Bloomsbury, also of Hanworth-hall, Norfolk, and of Bray, in the parish of Morval, in Cornwall, who died on the 28th December last, has just been proved in Doctors' Commons by George Wynell Mayow, esq. the Rev. Mayow Wynell Mayow, and the Rev. Philip Wynell Mayow, clerks, the sons and surviving executors. It is dated in 1830. The wife, the other executor, died in the lifetime of the deceased. The personal property was sworn under 7,000*l.* The will is long; and the estates, real, leasehold, and personal, are left among his children. The codicil is dated the 26th April, 1843, referring to provisions on the marriage of his sons.—*Ibid.*

The Will of the late Sir William Nott, K.G.C.B. a Major-General in the Honourable East India Company's Service, late of Carmarthen, who died on the 1st of January, 1845, has just been proved in Doctors' Commons by Lady Rosa Wilson Nott, the relict, one of the executors. A power reserved to Robert Swinhoe, esq. the other executor. The will is short, and was made in the East Indies, dated 9th September, 1843, and is in the deceased's handwriting. Bequeaths to his daughters, Letitia and Charlotte, 80,000 rupees, and appoints his wife residuary legatee in addition to her property under marriage settlement. The will is witnessed by Peter Luke Dore, Captain 3rd or Buffs; George Hollings, Brevet Captain, 38th Regiment, N.I.; and John Dowdeswell Shakespear, Captain, Bengal Artillery. The personal estate in England sworn under 3,000*l.*—*Ibid.*

The Will of his late Majesty, William Frederick, Count of Nassau, formerly his Majesty Willem, otherwise William, King of the Netherlands, Prince of Orange Nassau, Grand Duke of Luxembourg, residing at Berlin, in the kingdom of Prussia, was lately proved in the Prerogative Court of Canterbury by his Majesty William II. King of the Netherlands, Prince of Orange Nassau, Grand Duke of Luxembourg, the son and sole executor. The will is a disposition as far as regards the sum of 101,846*l.* in the Three per Cent. Reduced Annuities in the Bank of England, which was invested in the names of trustees, and over which his Majesty had a power of appointment under the will of his mother, her late Royal Highness Frederica Sophia Wilhelmina, Princess of Nassau, who died in the year 1820, and appointed his Majesty sole executor, with the enjoyment of the dividends for his life arising from the above sum. His Majesty had given and appointed to his late consort, the Princess of Prussia, and Queen of the Netherlands, a moiety of the said dividends for her life, and the other moiety, together with the principal sum, after her Majesty's demise, to their children, their Royal Highnesses the Princess of the Netherlands, the Prince of Orange, and the Prince of the Netherlands. The will is dated the 30th July, 1827, signed "William," with the Royal seal, and bearing the notarial seal and signature of T. A. Holland, notary. Witnesses to the execution: E. W. Hofman, secretary to his Majesty's Cabinet Palace the Hague; and P. Ragay, Colonel Paymaster to his Majesty's household.—*Ibid.*

WILL OF PRINCESS SOPHIA MATILDA.—The original will and fourteen codicils of her late Royal Highness the Princess Sophia Matilda, of which a short extract has appeared, attracts much public attention, and is often inspected in the Will-office, from the number of bequests contained in the codicils, most of which are in her Royal Highness's handwriting.—*Ibid.*

WILL OF JOHN HERMAN MERIVALE, ESQ.—The will of John Herman Merivale, esq. late a Commissioner in Bankruptcy, formerly residing at 18, Woburn-place, Russell-square, Middlesex, but late of Barnton place in the city of Exeter, and of 18, Bedford-square, Middlesex, who died at the latter place on the 25th April, 1844, was lately proved in Doctors' Commons by the executors, George Herman Merivale, esq. and the Rev. Charles Merivale, clerk, the sons of the deceased. The will is dated 23rd February, 1841. The property is disposed of among the family.—*Ibid.*

The Will and Codicil of the late Edward Wood, esq. of Northumberland-Wharf, Strand, and of Hanger-Vale, Ealing, Middlesex, who died at Ealing on the 7th of December last, has just been proved in Doctors' Commons by the executors, Thomas Wood, Thomas Turner, and Edward Theophilus Hood, esqrs. The will is long, and dated 3rd August, 1844. Devises his freehold property to his cousin, George Wood, for his life, and after his decease to Edward Wood (the son of the said George Wood), and his issue. The pecuniary legacies are numerous and large. Mr. George Wood and family are legatees to some amount. The executors have 250*l.* each, for their trouble. The assistants in his business are left legacies varying from 500*l.* and each to be provided with mourning. Mourning also for each of his servants, and a legacy of 50*l.* to those who have been two years in his service, and 20*l.* to those who have been less. The residue of his personal estate he disposes of in ten parts. By the codicil, dated 21st November, 1844, he bequeaths to the seven charitable institutions undermentioned the following sums, free of legacy duty:—To the Westminster Hospital, 1,000*l.*; St. George's Hospital, 1,000*l.*; Middlesex Hospital, 1,000*l.*; Public Dispensary, Bishop's-court, Lincoln's-inn, 500*l.*; Public Dispensary, Charles-street, Westminster, 500*l.*; St. Pancras Female Charity School, 500*l.*; Parochial Schools of St. Martin-in-the-Fields, Westminster, 500*l.* The personal estate sworn under 300,000*l.*—*Ibid.*

WILL OF THE HON. HENEAGE LEGGE.—The will of the Hon. Heneage Legge, late of Stawell-house, in the parish of Mortlake, in the county of Surrey, who died on the 12th December, 1844, has just been proved in Doctors' Commons by the executors, the Right Hon. William Earl of Dartmouth, the brother, and the Hon. Daniel Finch, the cousin of the deceased. Personal estate sworn under 12,000*l.* The will is short, and dated 24th September, 1844. He disposes of his estates, real, leasehold, copyhold, and personal, to his wife and daughter.—*Ibid.*

CORRESPONDENCE.

DEVON SESSIONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I avail myself of your columns to direct the attention of the Magistracy and Profession in Devonshire to the inconveniences that result from the neglect to announce the holding of their sessions in any but the local newspapers, or otherwise to apprise those usually having business there by some direct communication.

Being resident in London, I do not see a local newspaper, consequently I was not informed of the holding of the late sessions at so unusual a period as the month of February. Although having business of importance there, I was entirely ignorant of their occurrence, until apprised by the parties who had received an injury from my apparent neglect.

Surely, Sir, the magistrates of this as well as of many other counties ought to announce their sessions in some journal where they may be seen by the Legal Profession who are interested in them, instead of limiting the notice to the local newspapers.

And whenever a sessions is held at other than the times appointed by the statute, a special notice should at least be sent to the counsel usually practising at such sessions.

I am, Sir, yours, &c.

A BARRISTER.

Temple, Feb. 28, 1845.

SPECIMEN OF THE WORKING OF LORD BROUGHAM'S ACT AS AN INDEMNITY FOR DEBTORS.

TO THE EDITOR OF THE LAW TIMES.

Cullompton, Devon, Feb. 27, 1845.

SIR,—A respectable farmer of this neighbourhood sold a butcher several sheep a short time since for the sum of 9*l.* 13s. When the sheep were taken away, a cheque was given for the amount, payable at an Exeter bank. The following Friday, when the farmer attended the Exeter market, the cheque was presented for payment,—the answer was "No effects." Application was then personally made to the butcher, who was in the market, and he promised to settle on the following Wednesday, but failed so to do; he was then called on at his dwelling-house, and again fixed a day, and again no money. I was then requested to write,

him a sharp letter. Underneath is the answer to my application, which I consider a very rich specimen,—no regret, no petition for time, no promise to pay. It needs no comment, but strongly speaks for itself. So much for the "Rogues' Indemnity Act."

I remain, Sir, your obedient servant,

ALBERT GRIBBLE.

(COPY.)

Thorverton, Feb. 22nd, 1845.

SIR,—I would advise you not to proceed against me relative to Mr. —— debt, as I am protected from all law—consequently all expenses will fall on your client. Yours, &c.

W. W.

If you doubt my word enquire of Mr. ——, Solicitor, Exeter.

Mr. Gribble, Solicitor, Cullompton, Devon.

TO THE EDITOR OF THE LAW TIMES.

Rugeley, Feb. 17, 1845.

SIR,—I am very glad to observe that you are printing some blank forms, of the benefit of which I may probably take advantage.

Notwithstanding what may be generally thought to the contrary, it is a certain fact that professional men are more negligent in their *own affairs*, and what immediately concerns their own interest, than they are in any other matter which comes before them. As evidence of this, let me ask how frequently do we neglect to take written retainers, I verily believe ninety-nine times out of a hundred. I have been in practice near *twenty-five years*, and till the last six months I did not take as many written retainers, and I have lost hundreds in consequence. Sometimes I felt a delicacy in writing out a formal document for a client to sign; but if I had printed paper, I should feel and say that retainers were now become a matter of course, and I think no client would feel the least offence at being asked to sign a retainer if it was printed.

I beg leave to suggest that you should print some retainers, and I take the liberty of inclosing a form, which a skilful hand will make such as may be generally useful.

I think if you had this form settled by some *practical* counsel, it would meet with pretty general approbation. I should be glad to have a hundred.

There are other forms relating to professional men personally I should like to see printed—a form of letter inclosing a bill to a client, and referring thereto as required by the statute, with a polite hint that if not paid by a given day, the writer must, in justice to himself, charge interest thereon. And many others I could mention; but I will not trouble you further, or risk the charge of impertinence.

I continue to have great pleasure in the LAW TIMES. Yours, &c.

JOHN SMITH.

[We thank our correspondent for his suggestion, which shall be adopted. Both forms will immediately be submitted to counsel to settle, and then printed as a portion of the series now in progress.—ED. LAW TIMES.]

SELECTIONS FROM CORRESPONDENCE.

There is a great deal of justice in these remarks of "J. B. B." of Manchester on the ATTENDANCE OF COUNSEL.

I am not aware that any of the writers on this subject have yet touched on what appears to me to be the true source of nearly all the inconvenience alluded to in the above-named discussion. It arises from the habit of many attorneys creating a monopoly of briefs in the hands of a favoured few, who, being deluged with briefs, are unable either to hold or to master the business intrusted to them. I entirely deny this being for the benefit of the client. It is exactly the reverse. Many of the lower class of barristers thus overdone with briefs are notoriously actuated by the meanest motives of jealousy which rankle so largely in the Profession; and you never, I believe, knew an instance of such men giving their supernumerary briefs to any one likely to rise and do credit to the selection as well as the client. Such men are, on the contrary, selected for this purpose who are safe hands, just competent to go through with the work without disgrace, but wholly incompetent to become rivals to those who patronise them. The system pursued by attorneys in thus excluding juniors who do not happen to have much practice is a great evil to both branches of the Profession; men of infinitely greater talent are thus virtually burked, as it were, and rendered eventually incompetent, for want of that practice which stands at the threshold of forensic powers. Much as I esteem the ability and candour with which your journal is conducted, I confess I dissent from you on this point; so far, at least, as to be quite sure that the attorneys have the remedy of the evil they complain of entirely in their own hands. The want of practice in a junior is a drawback *very greatly overrated*, and, at any rate, very easily and quickly remedied. The majority of the judges on the bench invariably favour, as far as justice permits, any juniors who are undergoing the ordeal of their noviciate.(a) High talent and honourable conduct at the bar always will and ought to command a pre-eminence of success and priority of confidence; but that is no reason for the exclusive system I have ventured to denounce. There are counsel of the lowest class who, having attained the hold which this system gives them over attorneys, have even threatened them openly with refusal to hold their briefs if they (the attorneys) employed any other junior counsel. Men mean enough to submit to such insults deserve all they suffer.

We lay the following letter before our readers, some of whom will probably oblige their Northampton brethren with the results of their experience. They might address our correspondent.

SIR,—At a meeting of several of the professional gentlemen, held in this town, on Monday evening last, for the purpose of taking steps to establish a Law Library, it seemed desirable that the meeting should obtain information, if they could, of the working of any other institution of a similar nature.

I told the meeting that you would be the most likely person to afford us information on this point, and if you could, that I was certain you would willingly do so.

I have, therefore, taken the liberty of writing to you on the subject, and if you could afford me any information as to where any libraries of this nature are established, and whether they are considered to be advantageous or otherwise to the Profession, you would much oblige me.

I am, Sir, your most obedient servant,

H. P. MARKHAM.

Northampton, Feb. 26, 1845.

Another correspondent writes:—

The following might be added to the suggestions of P. viz.—

That notices of declaration to defendants at a distance should be sent to them by post, instead of, as now, through the medium of an attorney, for him to deliver at defendant's residence. This, at all events, would be extremely desirable where the debts are under 20*l*.

A COUNTRY SOLICITOR prefers a complaint for the too frequent justice of which we can vouch from experience.

I beg through the medium of your paper to call the attention of the Profession to the practice of many London offices who send down writs into the country for service to solicitors, in neglecting to pay their charges.

In a neighbouring town, one respectable firm have, in consequence of this dishonourable practice, come to the determination to refuse to serve any writs for unknown correspondents, and to return the process.

Several offices in this county have thought of publishing the names of those parties who refuse to pay their charges in the LAW TIMES. A hint from you will perhaps disturb the memories of the conscientious.

"Z." transmits the following remarks upon a matter of very great importance:—

It is with great pleasure I have observed your efforts for the improvement of the Legal Profession, by exposing to public scorn those members thereof who have not conducted themselves in a manner becoming a Profession termed liberal.

But I am afraid, Sir, it will be of small avail to prune the branches, unless something be done to the tree itself.

It is obvious to all, that a profession, to be liberal, must have its members gentlemen, and that, if a person, not a gentleman, be introduced into its ranks, such introduction alone will not make him one.

Now, it is a practice with some solicitors to give articles of clerkship to their writing clerks, often men of no education, and of a very low rank in society, in consideration partly of their services and partly of reduced wages.

Need we then be surprised if some persons in the Profession conduct themselves in a way to bring upon it any epithet but liberal?

If a classical examination were necessary before the admittance of an attorney, the above remarks would be out of place; but until such time, attorneys ought, I think, to make it their practice not to receive any as their articled clerks, but such as are able to support themselves during the five years without wages.

The rank in life of the applicants would then be some guarantee of their having received some education, and of their future conduct in the Profession.

I believe the above practice is a source of much evil, and have therefore brought the subject under your consideration.

(a) I have attended the courts a great deal, and have frequently seen lenience and indulgence extended in matters of importance to juniors in this position, which most unquestionably would not have been shown to a senior.

To Readers and Correspondents.

A SUBSCRIBER (Bath).—*We had previously received similar communications from other quarters.*

J. R. (Mildenhall).—*The suggestion will receive attention.*

A REGULAR MAN *is too long for our crowded columns; but we quite assent to his very able argument.*

TO SUBSCRIBERS.

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at* 5*s.* 6*d. each, if forwarded to the Office; with the Solicitor's name and abode lettered on the cover,* 1*s. extra.*

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N. B.—*For Scale for Estate Advertisements, see* JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, MARCH 1, 1845.

SOLICITORS' BANK.

A PROSPECTUS has been submitted to us of a scheme now in progress for the establishment of a Solicitors' Bank.

The plan is ingenious, and certainly promises to supply a recognized *want* of the Profession; therefore its success appears to be very probable.

The proposition is based upon the fact that solicitors are continually requiring temporary loans on the deposit of title-deeds and non-negotiable securities. To cite a case of frequent occurrence: a client contemplates a mortgage; commonly he has immediate need for the money; if his own solicitor cannot accommodate him with advances previously to the completion of the mortgage, he will go to some other office, whose wealth thus enables them to monopolize the greater portion of this most profitable branch of practice. Probably the less wealthy solicitor is thus not only deprived of the particular business, but loses his client altogether.

The contemplated Solicitors' Bank is designed to meet this acknowledged inconvenience, and it seems to be well adapted for its purpose.

It proposes the establishment of a Joint Stock Banking Company, with a sufficient capital, whose operations shall be simply those of a bank of deposit and loan, both to be limited in time, but not in any manner a mercantile bank, neither keeping accounts, nor discounting, nor dealing in *negotiable* securities.

A solicitor having money awaiting a purchase or mortgage, will be enabled to deposit it in the Solicitors' Bank until the completion of the transaction, receiving for it in the meanwhile a higher rate of interest than is allowed by other banks, and dating from the day of deposit to the day of payment, without the tedious forms relating to time and notice required by the existing banks.

A solicitor having a mortgage or sale to complete, will be enabled to deposit the title-deeds, and obtain for his client a loan thereon, until the conveyances can be perfected.

The advantages of this to the Profession are so

manifest, and alike to both the parties engaged in transactions relating to real property, that they need but be named to be acknowledged.

But the question that will be asked by those who may contemplate becoming shareholders is, What is to be the source of profit?

The profits will arise from the difference between the interest paid upon deposits and that received for loans.

The amount of profit will of course depend upon the amounts of deposits and loans; and if these should bear any reasonable proportion to the total amount of all conveyancing transactions throughout the kingdom, they must be very great indeed.

A rough estimate may be made thus:—

Suppose 100,000*l.* of paid-up capital. This will be invested in Government securities as a guarantee-fund, which will of course *secure* to the shareholders the ordinary *funds'* rate of interest for their money.

To this, the profits of the bank, after paying the cost of conducting it, will be a clear *addition* of interest.

Suppose the average amount of deposits and loans to be very nearly or quite equal; that an interest of 2 per cent. be paid upon the deposits, and an interest of 4½ per cent. received upon the loans. If the average amount of these were to shew a floating business of 500,000*l.* the profits would be 12,500*l.* per annum, and deducting for expenses, say 3,500*l.* there would remain to be added to the 3 per cent. interest from the capital invested in the funds the sum of 9,000*l.* per annum, equivalent to a further interest of nine per cent., making a total interest of twelve per cent. upon the capital.

But reduce this estimate one-half, to make assurance doubly sure, and then a dividend of six per cent. will remain, a very handsome profit now-a-days, especially where loss is almost impossible.

Such is the plan which has been submitted for our consideration. We have given to it the consideration it undoubtedly deserves, and are bound to report that it meets our entire approval. The parties by whom it has been projected are, we know, of foremost respectability; they are actuated solely by a desire to advance the importance and improve the resources of the Profession. Believing it to be well adapted to remedy an existing evil, to supply an existing want, and to be substantial and *bonâ fide* in its character and connection, we do not hesitate thus explicitly to lay it before the readers of the LAW TIMES, and to render it such support as in our maturest judgment it appears to deserve.

The Prospectus will appear shortly; but in the meanwhile, as it is desirable to ascertain what is the opinion entertained of it by the Profession, who are willing to take part in it and support it, and to hear suggestions for its improvement, we have so far developed it as to stimulate our readers to give it their attention; we hope that they will communicate to us freely their various views, which we will, if desired, submit to those by whom the plan is in preparation.

THE RECENT PROMOTIONS.

THE LAW TIMES would neglect its duty were it to pass unnoticed a matter that is the topic of conversation in all legal circles, and which has engaged the attention of that portion of the press sufficiently indifferent to the affairs of the Profession.

There is nothing which it behoves the members of that Profession, in all its branches, to watch with so much jealousy as the distribution of the honours which are the rewards of Professional merit. There is not a lawyer in the three kingdoms, however humble and obscure, who is not interested in the due distribution of those honours. The reputation of the Profession forms no small portion of the reputation of every one of its members, and that reputation is not a little dependent upon the manner in which its patronage is distributed, so as to insure that its highest rewards be given to its best men. Therefore it is that all legal promotions are not only proper topics for examination in a legal journal, but it is the bounden duty of such a journal to review them with reference to their bearing upon the interests of the Profession it represents, and fearlessly to avow, on their behalf, its sense of any wrong done or rightful claim unheeded in the awarding of legal honours.

Such an instance has just occurred on the Home Circuit, and has excited a louder complaint and a deeper sense of indignation, not only among the members of that Circuit, but throughout the Profession generally, than has been elicited by any incident since the commencement of the labours of the LAW TIMES.

The facts must be sufficiently known to our readers; but lest any should chance to be ignorant, we will briefly recapitulate them.

Practising on that Circuit are, Mr. Serjeant CHANNELL, Mr. CHAMBERS, and Mr. RUSSELL GURNEY; the latter being the junior in standing, and (we speak of it merely as a *fact*, without reference to the *merits* of the several parties) having a considerably less amount of practice on the Circuit than either of those his seniors.

The removal of Mr. Baron PLATT almost necessitated the giving of a silk gown upon that Circuit. According to all acknowledged professional claims, Mr. CHAMBERS, as the senior in standing, and having by far the largest amount of leading business, and beyond doubt the man who would be selected for the vacant leadership by the Profession, was entitled to the honour.

But to the amazement of the Profession, it has been conferred upon Mr. RUSSELL GURNEY, who was thus lifted over the heads of his seniors, without either of the claims that justify such a departure from rule—the enjoyment of a larger practice, business of a more leading character, or seniority.

Of course nobody would complain of any honour conferred upon Mr. RUSSELL GURNEY, who, we believe, is a very estimable man, provided that honour was not conferred upon him at the price of an injustice done to another. So far as Mr. Serjeant CHANNELL is concerned, that injustice was repaired by a patent of precedence. But it is very hard that Mr. GURNEY's promotion should be purchased at the expense of Mr. CHAMBERS. It must be remembered, in forming a judgment upon this matter, that the legal honour in question has this peculiarity, that it confers something more than honour upon the party receiving it—it is profit also—a direct pecuniary advantage is given to him; and that is not simply a gift to him from the Government, but it is *a gift to him at the expense of somebody else*. Thus the silk gown bestowed upon Mr. GURNEY lifts him over the head of his senior, Mr. CHAMBERS, gives to him precedence, and entitles him to the higher practice and the higher fees which Mr. CHAMBERS had previously enjoyed, and which, whenever they chance to be engaged on the same side, Mr. GURNEY will henceforth take instead of Mr. CHAMBERS, who will thus be virtually *degraded* from his place as senior to the inferior post of junior, and that by a gentleman who would not certainly claim even for himself any right to such a position save that which has been given him by the interference of power.

So much for the wrong inflicted upon Mr. CHAMBERS. But he is not the only injured party. The Profession—we allude more especially to the attorneys practising on his Circuit—have equal cause for complaint.

They have—whether rightly or wrongly we will not venture an opinion—chosen to prefer Mr. CHAMBERS to Mr. GURNEY, and to select him as one of their leaders. The silk gown bestowed upon the latter is, in truth, a reversal of their judgment; it is as if they were told, "You are wrong, Mr. GURNEY is your man; he *shall* be your leader; you *must* take him." True it is that the attorneys cannot be commanded in this matter; if they still prefer Mr. CHAMBERS, they may still make him their leader, by avoiding to retain Mr. GURNEY with him. But the attempt is not the less to be resented; and it is a practical injury that they who might reasonably desire to *continue* Mr. CHAMBERS as their leader, and Mr. GURNEY as their junior, should be prevented from so doing by an act which has denied honour to one who has every claim to it, that another may be set above him, who, whatever his claims, undoubtedly has not an *equal* title with him to whom it has been denied.

We trust that in these remarks we shall be understood as throwing not the slightest reflection upon Mr. GURNEY, or in any manner disparaging him. We say not that he has no title to the honour he has received, we contend only for that which we are sure he would be himself the first to admit, that *professionally*, Mr. CHAMBERS has a far better title, and that the preference shewn to him is not merely a *benefit withheld*, but a *wrong done* to Mr. CHAMBERS.

Nor can we quit this painful topic without referring to a rumour which appears only to be too probable. Mr. R. GURNEY is, as our readers know, a son of the learned judge who has recently retired from the Bench. It is said that there is between that event and the one we are reviewing, the relationship of cause and effect. It is whispered, that a seat on the Bench was desired for Mr. PLATT, and that the bargain with the father for his retirement was the silk gown for the son. What truth there may be in this story can never be ascertained: but it has too much an air of probability not to find ready credence. At all events, few will doubt that if Mr. RUSSELL GURNEY had not been Mr. Baron GURNEY's son, he would never have been lifted over the head of Mr. CHAMBERS.

We have termed this affair a painful one, for it disappoints some very bright hopes we had entertained that the days of jobbing in legal patronage had passed away for ever. The appointment of Mr. ERLE had widely spread a confidence, that henceforth professional merit alone was to regulate the distribution of professional honours.

Already that dream of halcyon days is dissipated, and but one hope remains to us—that the proceeding which has occupied our attention in this article is not the act, and has not the sanction, of the head of the Government, or even of the Chancellor, but that it was done during some moment of forgetfulness, from which the greatest can no more escape than the least.

Aliquando bonus dormitat Homerus.

Unluckily, when Chancellors nod, they are apt, not only to point the mace at the wrong man, but to inflict an awkward blow upon the right one.

VERULAM SOCIETY.

BY an accidental error of the press last week Nos. 7, 8, and 9 of *Magistrates' Cases* were announced as ready. Nos. 7 and 8 are in the press, but wait the judgments to be delivered to-day.

No. 4, and Part I. of *Criminal Law Cases*, are now ready; they have been hastened for use upon the pending circuits.

No. 4 and Part I. of *Practice Cases*, comprising those of Trinity and Michaelmas Terms, are also published.

Nos. 7 and 8 of *Real Property and Conveyancing Cases*, completing Part II. will be delivered on Wednesday next.

They will be followed by Nos. 7 and 8 of *Magistrates' Cases*, and No. 5 of *Practice Cases*.

It will be seen by the advertisement, that considerable progress has been made with the *Verulam Society's Forms*. During the past week the following have been added to the supply for the use of the members.

COMMON LAW FORMS.

No. 5. Letter for Payment of Debt.
No. 6. Affidavit of Service of Writ.
No. 7. Warrant of Distress.
No. 8. Notice of Appraisement.

In pursuance of recommendations from members, the following are under consideration:—

Warrant to sue.
A Conditional Surrender of Copyholds.
Bankruptcy and Insolvency Forms.
The Common Covenants in Conveyancing.

Suggestions of useful additions to the list will oblige, and specimens of forms that have been found practically useful in offices will be of great service.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bruin, E. plate printer, first, 9½d. Graham, London.—*Caldecott* and *Co.* mercers, final, 8¾d. first and final, 4s. 8¾d. to new proofs, and first and final of R Caldecott, 2s. 5½ Fraser, Manchester.—*Chapman*, R. innkeeper, first and fin. 3s. Hope, Leeds.—*Dickson*, T. draper, first, 5s. to new proofs, second, 3d. to old proofs. Freeman, Leeds.—*Firth*, J. merchant, first, 9s. to new proofs, second, 8d. to old proofs. Freeman, Leeds.—*Green*, J merchant, second, 6¾d. Edwards, London.—*Johnsons* and *Mann*, bankers, first, 3s. 6d. Follett, London.—*Lang*, R. tallow chandler, 3s. 2d. Hope Leeds.—*Leaver*, T. baker, first, 6s. 6d. Edwards, London.—*Mather* and *Co.* ironfounders, final, 3s. 6¼d. and first and final, 15s. 6¾d. to new proofs. Fraser, Manchester.—*Murray* and *Co.* millwrights, first of Murray, 12s. 11d. Bird, Liverpool.—*Newall* and *Co.* grocers, final, 2¼d. Pott, Manchester.—*O'Neil* and *Co.* shipowners first, 2s. 6d. Follett, London.—*Orchard*, G. B upholsterer, final, 0¾d. Kynaston, Bristol.—*Russell*, R. provision merchant, first and final, 2s. 4¼d. Young, Leeds.—*Saunders* and *Co.* woollen manufacturers, third joint, 1½d. sep. of T. H. Saunders, 9¼d. Edwards, London.—*Sharman*, F. shoe factor, second, 2¾d. Edwards, London.—*Shepherd* and *Co.* merchants, final, 24d. Young, Leeds.—*Sorby*, J. steel manufacturer, first, 2s. 6d. to new proofs, second, 1d. to old proofs. Freeman, Leeds.—*Tristram*, J. beer-house keeper, first, 13s. 4d. Young, Leeds.—*Wigney* and *Co.* bankers, second of C. Wigney, 8s. 3d second of I. N. Wigney, 4s. 3d. second joint, 5d. and first and second, 1s. 2d. Edwards, London.—*Williamson*, C. hosier, second 1¼d. Follett, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Feb. 18.

Scott, J. linendraper, Bath, Dec. 24. Trusts. E. Solomon, jeweller, Bath, and C. Lewis, wine merchant, Bath. Sol. Teague, Crown-court, Cheapside.

Gazette, Feb. 25.

Pryor, G. brazier, Baldock, Feb. 4. Trusts. W. Rogers, ironmonger, Hitchin, and J. M'Minnies, ironmonger, Biggleswade. Sol. Wade, Baldock.—*Sillett*, J. innkeeper, Bramfield, Feb. 11. Trusts. J. K. Hooper, wine merchant, Queenhithe, and W. A. Higham, maltster, Bramfield. Sols. Crabtree and Cross, Halesworth.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Feb. 21.

BENNES, WILLIAM, marble and stone merchant and sculptor, Osnaburgh-street, New-road, Middlesex, Feb. 28, at twelve, April 4, at half-post eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Lawrence and Plews, Bucklersbury, sols. Date of fiat, Feb. 19. Bankrupt's own petition.

CRABB, JAMES, bricklayer, builder, victualler, and butcher, Great Tey, Essex, March 4, at half-past twelve, April 2, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Bell, Bedford-row, sol. Date of fiat, Feb. 15. J. Willsher, farmer, Great Tey, pet. cr.

CRANSWICK, FRANCIS, innkeeper, Bridlington-quay, Bridlington, Yorkshire, March 4, April 8, at eleven, Leeds, Com. West; Young, off. ass.; Taylor, Bridlington, and Blackburn, Leeds, sols. Date of fiat, Jan. 28. F. Allerston, wine merchant, Bridlington-quay, pet. cr.

DALE, WILLIAM, boot and shoe maker, 109, London-wall, Feb. 28, at eleven, April 4, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Pryer, Pavement, sol. Date of fiat, Feb. 17. E. Stow, pawnbroker, London-wall, pet. cr.

DANKS, JOHN, wharfinger, Birmingham, March 3 and April 12, at twelve, Birmingham, Com. Daniell; Bittleston, off. ass.; Messrs. Whateleys, Birmingham, sols. Date of fiat, Feb. 11. R. Ruscoe, on behalf of the proprietors of the navigation from the Trent to the Mersey, Etruria, pet. cr.

DOLBELL, LAWRENCE DANIEL, dyer, Ravensbury-mill, Lower Mitcham, March 5, at eleven, April 4, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Beart, Bouverie-st. sol. Date of fiat, Feb. 19. Bankrupt's own petition.

FRANSS, THOMAS, grocer, Wootton Bassett, March 7 and April 4, at twelve, Bristol, Com. Stephen; Kynaston, Bristol, off. ass. Date of fiat, Dec. 26. Bankrupt's own petition.

GEORGE, LEWIS, shawl warehouseman and furrier, 217, Regent-st. Feb. 28, at half-past eleven, April 4, at eleven, Basinghall-st. Com. Shepherd; Graham off. ass.; Young and Co. St. Mildred's-ct. sols. Date of fiat, Feb. 17. S. Woods, eplaster, Vicarage-terrace, Stratford, pet. cr.

LANGSTON, THOMAS, share broker and agent, Manchester, March 4 and 24, at one, Manchester, Fraser, off. ass.; Hitchcock and Co. Manchester, and Johnson and Co. Temple, sols. Date of fiat. Feb. 12. W. F. Hoyland and W. F. Seebohm, share brokers, Manchester, pet. crs.

RANSFORD, CHARLES, grocer and cheesemonger, Stoneley, South Tottenham, Feb. 28, at eleven, April 2, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Kempster, Kennington-lane, sol. Date of fiat, Feb. 15. J. Wilkinson, grocer, Union-st. Southwark, pet. cr.

REEVES, WILLIAM, coach builder and harness maker, 34 and 35, Belvedere, Walcot, Somersetshire, March 7 and April 4. at eleven. Bristol, Com. Stephen; Hutton, off. ass; Gray, Bristol and Bath, sol. Date of fiat, Feb. 15. Bankrupt's own petition.

SAMSON, GERARD, corn dealer, Weymouth and Melcombe Regis Dorsetshire, March 4 and April 1, at one, Exeter, Com Bere; Harnaman, off. ass.; Phillips, Weymouth, Combe, Staple-inn, and Terrell, Exeter, sols. Date of fiat, Feb. 11. Bankrupt's own petition.

TAYLOR, JAMES, farmer and provision dealer, Higher Walton, Cheshire, March 6 and 27, at twelve, Manchester, Hobson, off. ass.; Johnson and Co. Temple, and Needham, Manchester, sols. Date of fiat, Feb. 17. J. Worthington, corn dealer, Manchester, and J. Hall, farmer, Bowden, pet. crs.

THORNTON CHARLES, stationer and bookseller, Huddersfield, March 3 and 24, at eleven, Leeds, Com. Boteler; Fearne, off. ass; Clark and Cooper, Old Bailey, and Floyd and Booth, Huddersfield, sols. Date of fiat, Feb. 11. Sir J. Williams, bart. W. Cooper, C Boyle, W. Cooper, jun. and T. Cooper, wholesale stationers, West Smithfield, pet. crs.

WELLS, JAMES, common carrier and coal merchant, Winchcomb, Gloucestershire, March 5, at twelve, April 15, at eleven Bristol, Com. Stevenson, Miller, off. ass; Prenfield, Winchcomb, sol. Date of fiat, Feb. 14. W. Roberts, carpenter, and A. Roberts, widow, Winchcomb, pet crs.

WYAT, ALFRED, out of business, Babmaes-mews, Well-st St. James's formerly of Highworth, Wiltshire, Feb. 28 at one, April 9, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Taylor, South-place, Finsbury-square, sol. Date of fiat, Feb. 20. Bankrupt's own petition.

Gazette, Feb. 25.

BROWN, JAMES, wholesale, retail, and manufacturing perfumer, and an occasional dealer in seed, wheat, corn, and other grain, formerly of No. 46, Cheapside, and now of No. 2, Skinner-street, Snow-hill, March 7 at two, April 8 at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Torkington, New Bridge-stret, sol. Date of fiat Feb. 2. Bankrupt's own petition.

DANSDAY, JOHN HENRY, tailor and trowsers maker, No. 4, Glasshouse-street, Regent-street, March 7, at one, April 8, at eleven, Basinghall-st. Com Fane; Whitmore, off. ass.; Sutcliffe New Bridge-st. sol Date of fiat, Feb. 14. J. W. Gabriel woollen draper, Regent-st. pet. cr.

DAVIS, LOVEL, wine and spirit agent, Ewhurst, Sussex, March 5 and April 9, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Gregson and Kewell, Angel-court, Throgmorton-st. and Young, Battle, sols. Date of fiat, Feb. 19. Bankrupt's own petition.

GRAY, JAMES, upholsterer, Manchester, March 10, at one, March 31 at twelve, Manchester; Stanway, off. ass.; Soles and Tanner, Aldermanbury, and Todd, Manchester, sols. Date of fiat, Feb. 20. W. Smee, wholesale upholsterer, Finsbury-pavement, pet. cr.

LEE, CHARLES, miller, Wakes Colne, Essex, March 3, at half-past twelve, April 4, at twelve, Basinghall-st. Com. Shepherd; Graham, off. ass.; Marriott, New-inn and Colchester, sol. Date of fiat, Feb. 22. B. Scott, corn dealer, Colchester, pet. cr.

MUSCOTT, CORNELIUS, factor and coal dealer, now or late of Birmingham, March 7 and April 4, at half-past twelve, Birmingham; Christie, off. ass.; Tyndall and Sons, Birmingham, sols. Date of fiat, Feb. 13. G and T. Attwood and I and R. Spooner, bankers, Birmingham, pet. crs.

SUMNER, WILLIAM HOLMES, grocer and tea dealer, No. 51, High-st. Hoxton Old-town, March 5, at one, April 8, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Murray, London-st. sol. Date of fiat, Feb. 18. W. Smith, tea agent, Fenchurch-st. pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, Feb. 18.

Blodget, S. C. and *Hinrichsen*, N. ship chandlers, Liverpool, Aug. 12. Debts paid by Blodget.—*Broadbent*, K. and *Whitcomb*, A. milliners, Sackville-st. Jan. 15. Debts paid by Whitcomb.—*Chantrell*, J. B. and *Shaw*, T. architects, Leeds, Feb. 15.—*Dobson*, G. and *Handley*, G. colliers, Pontefract-park district, Yorkshire, Feb. 15. Debts paid by Dobson.—*Fowler*, W. *Summers*, F. and *Walker*, J. H. cloth dressers, Farnley, near Leeds, so far as regards J. H. Walker, Feb. 12. *Gates*, W. S. and C. grocers, Uxbridge, Feb. 17. Debts paid by W. S. Gates.—*Harman*, R. and *Bayley*, W. merchants, Hastings, Feb. 11.—*Hollands*, J. and C. carriers to, from, and through Tenderden, Wittersham, Rolvenden, Maidstone, London, and other places, Feb. 12. Debts paid by J. Hollands.—*Hood*, R. W. and B. W. linen drapers, Church-st Hackney, Feb. 14.—*Julian*, R. and T. coach builders, Cork, Feb. 1. Debts paid by R. Julian.—*Leigh*, W. and E. glass dealers, Liverpool, Feb. 14. Debts paid by Leigh.—*Lloyd*, L. and *Birchall*, J. J. commission agents, Manchester, Feb. 15. Debts paid by Lloyd.—*Mitchell*, J. and *Scott*, J. coal fitters, Monkwearmouth Shore, Feb. 11. Debts paid by Mitchell.—*Phillips*, J. and *Harris*, J. C. Bristol, Jan. 28.—*Piper*, J. D. and *Baker*, E. printers, Hadleigh, Jan. 1. Debts paid by Piper.—*Redmond*, E. J. and *Duggan*, M. T. milliners, Conduit-st. Regent-st. Feb. 8.—*Ridgway*, J. W. *Ford*, H. and *Ridgway*, H. E. attorneys, Manchester, so far as regards H. Ford, Dec. 24. Debts paid by the remaining partners.—*Stanley*, J. and *Schofield*, J. colliers, Broadway-lane, near Oldham, Feb. 3.—*Street*, J. and *Howe*, W. zinc workers, Norfolk-st. Middlesex, Feb. [illegible]—*Whalley*, B. and *Scarlett*, S. W. printers, Bradford, Feb. 12. Debts paid by Walker.—*Williams*, C. C. and G. [illegible], New-crane, Shadwell, Feb. 15.—*Woodward*, W. and T. cabinet makers, Worcester, Feb. 14. Debts paid by W. Woodward.

Gazette, Feb. 21.

Archer, J. and W. flour dealers, Wavertree-road, near Liverpool, Feb. 11. Debts paid by J. Archer.—*Bagshaw*, J. *Coulthard*, J. and *Blumer*, L. ship builders, Harwich, Feb. 14 Debts paid by Bagshaw.—*Barley*, J. G. and A. grocers, March, Feb. 12.—*Bond*, W. H. and *Gurney*, C. bottle beer merchants, Bow-lane and Bread-st. Feb. 19.—*Brown*, R. and T. wholesale dealers in china, St. Martin's-lane, Jan. 1.—*Coombes*, H H. *Murray*, J. J. and *Graham*, T. J. warehousemen, Goldsmith-st. Dec. 31.—*Dickinson*, W. and *Harling*, J. painters, Birkenhead, Feb. 7. Debts paid by Harling.—*Edwards*, C. and R. haberdashers, London, Feb. 15.—*Edwards*, J. and J. cordwainers, Nottingham, Feb. 19.—*Higginbottom*, A. and *Brooks*, J. attorneys, Ashton-under-Lyne, Jan. 4.—*Jones*, E. and *Walley*, E. earthenware manufacturers, Cobridge, Feb. 19. Debts paid by Walley.—*Jones*, J. C. and *Humphreys*, W. jun. Liverpool, Jan. 1.—*Langshaw*, J. and *Croxton*, G. poulterers, Manchester and Chorlton-upon Medlock, Feb. 15.—*Lanham*, W. and T. baker, St. George's-row, Pimlico, Feb. 1.—*Layfield*, C. and *Harker*, J. earthenware dealers, Richmond, Yorkshire, Jan. 24.—*Marshall*, W. and *Eddells*, J. C. tailors, Piccadilly, Dec. 24.—*Martin*, J. and *Cocks*, J. corn dealers, Chiswell-st. Dec. 31.—*Nour*, W. and *Hargreaves*, J. fustian manufacturers, Manchester, Feb. 10.—*Pearmine*, G. and *Hutchinson*, J. mast maker, Shadwell, Feb. 3. Debts paid by Hutchinson.—*Porter*, H. and A. cigar merchants, Ipswich, Feb. 14. Debts paid by Porter.—*Redman*, G. C. jun. and *Fuller*, G. ship brokers, Lime-st. Jan. 1. Debts paid by Fuller.—*Rigby*, M. and T. rope manufacturers, Freckleton, Feb. 15. Debts paid by T. Rigby.—*Robinson*, J. and *Blagg*, T. ale brewers, Sutton and Tytherington, Nov. 28. Debts paid by Robinson.—*Rockliff*, R. and *Ellis*, W. booksellers, Liverpool, Feb. 14.—*Taylor*, H. and R. M. commission agents, Manchester, Feb. 20.—*Woolley*, H. and *Lofthouse*, W. turpentine distillers, Liverpool, Feb. 19. Debts paid by Lofthouse.—*Wright*, A. *Chowne*, J. A. and *Taylor*, H. W. coal merchants, Charing-cross and Millbank, Feb. 15.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Feb. 18.

Abbott, J. upholsterer, Judd-st. Brunswick-sq. Feb 24, at half-past eleven.—*Adams*, D. mealman, Canterbury, March 3, at half-past eleven.—*Beris*, J. clerk, Circus-road, St. John's-wood, March 3, at twelve.—*Cole*, J. milliner, Northampton, Feb. 21, at twelve.—*Colis*, A. S. butcher, Tottenham-court-road, March 3, at one.—*Colyer*, W. grocer, Tottenham High Cross, March 3, at half-past eleven.—*Day*, T. clerk, Three Crown sq. Southwark, Feb. 22, at eleven.—*Dugan*, W. H. plumber, Portsea March 3, at eleven.—*Gibbs*, W. stonemason, Andover, March 3, at half-past one.—*Hart*, J. clothier, Canterbury, Feb. 26, at twelve.—*Husk*, J. bricklayer, King's Lynn, March 3, at eleven.—*Martin* T. sen. wheelwright, New-cross, March 3, at eleven.—*Pontifex*, S. clerk, Bloomfield-terrace, Ranelagh-road, March 7, at half-past eleven.—*Smith*, J. dye sinker, New-st. City-road, March 7, at eleven.—*Stanley*, G. secretary, Milbrook, March 4, at eleven.

Country—Gazette, Feb. 18.

Blackford, J. weaver, Bewdley, March 3, at half-past ten, Birmingham.—*Birks*, S. bobbin turner, Preston, March 4, at twelve, Manchester.—*Carthorn*, J. March 11, at twelve, Birmingham.—*Fisher*, H. poulterer, Manchester, Feb. 27, at twelve, Manchester.—*Kennedy*, G. draper and grocer, Aspatria, March 13, at half-past twelve, Newcastle.—*Jones*, T. publican, Chester, Feb. 26, at twelve, Liverpool.—*Oakley*, R. March 11, at twelve, Birmingham.—*Pate*, R. butcher, Birkenhead, Feb 28, at twelve, Liverpool.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Feb 21.

Bentley, J. out of business, North-st. Westminster, March 5, at half-past eleven.—*Birch*, R. labourer, Ipswich, Feb. 27, at one.—*French*, T. dealer in straw plait, Redbourn, March 17, at eleven.—*Goldthorp*, J. grocer, Manchester, March 6, at twelve, Manchester.—*Lloyd*, S. coffee-house keeper, Lime-st. March 6, at one.—*Parry*, M. straw plait manufacturer, Haverhill, March 6, at twelve.—*Pratt*, T. R. beer-shop keeper, Mitcham, March 7, at eleven.—*Short*, G. I. clerk, Totten-st. Stepney, March 5, at twelve.—*Stevens*, J. foreman to a paper manufacturer, River, March 15, at eleven.—*Yardley*, W. attorney, Nelson-terrace, Stoke Newington, and Christopher-st. Hatton-garden, March 6, at one.

Country.—Gazette, Feb. 21.

Andoe, A. spinster, Liverpool, Feb. 28, at twelve, Liverpool.—*Bland*, G. H. dancing master, Leicester, March 17, at eleven, Birmingham, to aud.—*Burke*, P. butcher, Liverpool, March 4, at half-past eleven, Liverpool.—*Carver*, M. grocer, Walsall, March 17, at eleven, Birmingham, to aud.—*Cozens*, L. tailor, Bath, March 11, at eleven, Bristol.—*Ewing*, F. publican, Sheffield, March 25, at eleven, Leeds.—*Griffiths*, E. commission agent, Liverpool, March 6, at twelve Liverpool.—*Goodfellow*, J. schoolmaster, Stoke-upon-Trent, March 17, at eleven, Birmingham, to aud.—*Hardy*, R. victualler, Nottingham, March 5, at half-past ten, Birmingham.—*Hunt*, S. joiner, Leek, March 3, at half-past ten, Birmingham.—*Seward*, J. surgeon, Liverpool, March 4, at twelve, Liverpool.—*Townsend*, T. L. out of business, Sidmouth, March 4, at eleven, Exeter.—*Watkins*, W. box maker, Lower Redbrook, March 11, at half-past eleven, Bristol.

From the Gazette of Friday, February 28.

Bankrupts.

Welch, J. licensed victualler, Kingcross, Holloway.—*Green*, J. and C. corn dealers, Borough-road.—*Gordon*, J. B. and R. coopers, Orchard-house, Poplar.—*Dees*, W. and J. and *Hogg*, J. builders, Newcastle-upon-Tyne.—*Rawlings*, M. and F. J. cabinet makers, Cheltenham.—*Ralph*, J. innkeeper, Bath.—*Dutton*, J. joiner, Salford, Lancashire.—*Bayley*, E. apothecary, Cheswardine, Shropshire.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. HUGHES, Esq. of the Inner Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York, and Liverpool, by J. B. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLEPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. JASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER HABINGTON, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

Equity Courts.

LORD CHANCELLOR'S COURT.

Dec. 13, 14, *and* 21.

EDWARDS *v.* JONES.

Production of documents—Pleading—Denial of plaintiff's title—Case of Fisher v. Adams.

Where a list of documents is set out in the schedule to an answer, and it is expressly and distinctly denied that such documents evidence or relate to the plaintiff's title, such documents will not be ordered to be produced. That is the whole extent of the decision in Adams v. Fisher. But to avoid such production, the answer must contain a full, direct, and positive denial of the plaintiff's title.

This case was reported in the LAW TIMES of the 4th of January, 1845, upon the question of admitting affidavits on an interlocutory motion, to verify facts neither admitted nor denied by the answer; and which, it was decided, could not be admitted. The case then proceeded on the general question, whether the defendants were bound to produce documents referred to in a schedule to the answer, but which they intended to deny to relate to the plaintiff's title. The defendants, by their answer, "admit that the documents, papers, and memorandums set forth in the schedule to their answer do relate to the matters in question in the cause, except the death of Howell Powell;" and afterwards, in a subsequent passage of the answer, they say, "save as aforesaid, the defendants deny that they have any documents relating to the matters in the bill mentioned, or by which the truth of such matters will appear."

Renshaw, for the plaintiff, contended that the passage in the answer did not deny with sufficient distinctness that the document in the schedule to the answer would shew the time of the death of Howell Powell, which was the point whereon the plaintiff's title turned. He cited and referred to *Adams* v. *Fisher* (3 Myl. & Craig, 526); Wigram on Discovery, 105, 2nd ed.; *Smith* v. *Duke of Beaufort* (1 Phill. 209); Mitford on Pleading, 310; *Harris* v. *Harris* (before V. C. Wigram, 16th Nov. 1844, 8 Jurist, 978). The defendant must positively negative that the documents he seeks to withhold do relate to the plaintiff's title, or they must be produced.

Temple and *Craig*, for the defendants, contended that the denial in the answer was sufficient.

Renshaw, in reply, relied on *Smith* v. *Duke of Beaufort*, *suprà*.

During the argument, the LORD CHANCELLOR said—The point is upon the form of the answer, whether the defendants swear that the documents do not make out the plaintiff's title. If a defendant sets out a list of the deeds in his possession, he may reserve his defence to producing them until a motion is made for their production. If the bill asks that the defendant may set out a list of documents in [illegible] possession, it is sufficient to give a schedule of such deeds; but where the bill states that the deeds relate to the plaintiff's title, the defendant must either deny that they do relate to or evidence the plaintiff's title or that they are confidential communications, &c.; otherwise, on motion, they must be produced. The defendant says—I have certain documents in my possession relating to the matters in the cause except [illegible] particular matter, and afterwards he says—I have no other documents relating to the matters in the cause except those I have before described. Is not that in the substance an averment that he has no documents which relate to the time of the death of Howell Powell? The question is, whether an express denial in terms is necessary.

Renshaw.—In *Harris* v. *Harris*, *suprà*, this sort of answer was deemed a negative pregnant with admission. There must be a positive statement that the documents do not evidence the plaintiff's title.

The LORD CHANCELLOR.—The title here depends upon one fact, and that is excepted.

His lordship then delivered his opinion against the admission of affidavits to verify facts and documents not admitted or denied by the answer, and reserved the principal point as to production of the documents.

JUDGMENT.

The LORD CHANCELLOR.—Ellen Jones, one of the defendants, is the administratrix and one of the next of kin of John Owen, an intestate. Howell Powell, her brother, and the other next of kin of the intestate, is stated in the grant of administration, if alive, to be out of the jurisdiction, and that therefore administration was granted to Ellen Jones as the only next [illegible] within the jurisdiction. It is admitted by the answer of the defendants that if Howell Powell was alive at the time of John Owen's death, he was one of the next of kin. The sole question in the cause, therefore, is, whether Howell Powell was alive at that period. The defendants say they do not know whether he was then alive or not, that they are entirely ignorant of the fact of his death, or when he died, that is the state of the pleadings. There are certain documents admitted in the answer [illegible] the defendants' possession, of [illegible] schedule, and a motion [illegible] plaintiffs for their production [illegible] that they relate to their title; and the question is whether these documents ought to be produced. The plaintiffs offered affidavits to prove the handwriting of one of the defendants to a letter which it was alleged had been written by him, in which the time of the death of Howell Powell was admitted to have been long subsequent to that of the intestate John Owen. I was of opinion such affidavits could not be received, because they were in opposition to an allegation of the defendant in his answer that he had never to the best of his recollection, written [illegible] affidavit [illegible] also offered for the purpose of proving the fact of the death of Howell Powell, and that he was alive at the time of the death of John Owen, the intestate. I am of opinion that such evidence cannot be received. I consider that when a party neither admits nor denies the fact charged the rule is that on an interlocutory motion, such affidavits cannot be admitted. Various authorities were referred to, and there appears to be some discrepancy amongst them, but the result of the whole is to establish the rule as I had stated it, and I see no reason for any alteration.

Then, whether upon the bill and answer there is sufficient to induce the Court to order the production of these documents. The defendants say there is not, and they rely upon the case of *Adams* v. *Fisher*. In *Fisher* v. *Adams* it was said, "All that the plaintiff asks is, that the defendant may set forth a schedule of the documents. Can you except, because he has set out the documents in the schedule instead of in the bill? You did not ask that they should be set out in the bill. If that had been asked, the defendant must have defended himself in the regular way, and shewn that he was not obliged to comply with your demand. But if the defendant sets them out in the schedule to his answer, the question is upon the whole record, whether the plaintiff has such an interest in them as entitles him to call for their production. *Here the defendant has denied the plaintiff's interest;* he has on the record stated that which, in my opinion, excludes the plaintiff from instituting this suit against him. As long as that stands, I think the plaintiff is not entitled to see the documents." During the argument of that case Lord Cottenham asked Mr. Anderdon, the counsel of the plaintiff, "Is the plaintiff, as a matter of course, to ask for all the documents in the possession of the defendant which relate to any of the matters introduced in the bill? I want to know how far you carry the principle; whether, as a mere matter of course, documents, which, if the defendant's allegation is true, have nothing to do with proving the case made by the bill, are to be produced for the plaintiff's inspection." And afterwards, in the judgment, the learned judge refers to the previous question, saying, "I took leave to ask Mr. Anderdon how far he carried the principle; and he very properly limits it within its due bounds, that is, he admits, as to every document not necessary to make out the plaintiff's equity, that the plaintiff is not entitled to see it." It appears, therefore, that in *Adams* v. *Fisher* the defendant denied that the documents at all related to or would prove the plaintiff's title: his interest was denied. In the present case, the defendants do not deny the plaintiffs' title; but they state that they are wholly ignorant whether the fact was as stated by the bill or not. One material question is, whether the answer sufficiently states that the documents, of which production is sought, do not relate to the plaintiffs' title, for if the answer does not sufficiently make that denial, the case does not fall within the principle of *Adams* v. *Fisher*.

The question turns upon the fact of whether Howell Powell was or was not alive at the time of the death of the intestate. The answer says "that the documents do relate to the matters mentioned in the bill, except the question of the death of Howell Powell," and then, in a subsequent part of the answer, it goes on to say, "save as aforesaid, the defendants deny that they have any documents, &c. relating to the matters in the bill mentioned, or by which the truth of such matters will appear." The effect of these passages, as I understand them, is, that the defendants say they have no documents except such as have been before described; and the documents before described are admitted to relate to the matters mentioned in the bill, except the question of the death of Howell Powell. I think that is not a sufficient denial in the answer; the documents do not relate to the title of the plaintiffs, because the documents might relate to the title of the plaintiffs, without in strictness and in terms relating to the question of the death of Howell Powell. For instance, they may contain an admission that the defendants are liable to account to the plaintiffs; the answer, therefore, is not a sufficient denial of the plaintiffs' title. The case of *Adams* v. *Fisher*, therefore, does not apply, and the defendants are bound to produce the documents. My first impression was, that the answer was sufficient, for it is drawn with great skill and dexterity, and that is all that can be said. The documents must be produced, the costs of the motion will be costs in the cause.

Re WATTS, a Lunatic.

Heir-at-law—Application to attend the execution of the commission.

[illegible] supported a petition by the son and heir-at-law of the lunatic, which prayed that he might be at liberty to attend the execution of the commission, for the purpose of carrying back the date of the lunacy beyond the period at which the alleged lunatic was believed to have executed a will adverse to the interests of the heir-at-law. The petitioner had filed an affidavit stating that Watts had been insane from the year 1821, and that, as petitioner had been informed and believed, he had, in 1822, executed a will to the prejudice of the petitioner as the heir-at-law, which will was then or had lately been in the possession of Mr Baker, an attorney of Andover. In answer to that affidavit it was sworn, on the part of the lunatic's wife, who had the carriage of the commission, that the present petitioner was acting in collusion with the mortgagee, whose previous application to attend the inquiry without being bound by the result, had been refused, as is reported in the LAW TIMES. In reply to that affidavit, the petitioner expressly denies such collusion.

There were several authorities for such an order. The first was *Re Frank*, in 1805: and it appears, from the order-book in the lunacy office, that there was a deed or settlement executed at a time subsequent to the alleged date of the lunacy, and the heir-at-law was allowed to attend the commission.

The next was *Re Whittaker*, reported in the Law Journal in 1839; but a more accurate note had been furnished by the secretary of lunatics. There, as in the present case, the wife of the lunatic was the pe-

titioner, and the heir-at-law sought to carry back the finding to an earlier date than the wife did. The order for the heir-at-law's attendance was made.

The case of *Re Bushnell*, May 1829, in Shelford on Lunacy, was also in point.

Wright, contrà, remarked that the solicitor did not deny collusion, or make any affidavit upon the subject. In *Frank's* case, though the lunacy was fixed at a date prior to that of the deed, yet the deed was afterwards established. In *Re Bushnell* the heir-at-law was ordered to produce the lunatic. It was the interest of the petitioner to carry back the lunacy to as early a period as possible, and it could only create much additional expense to authorize the heir-at-law to attend the execution of the commission.

The LORD CHANCELLOR.—The affidavit as to the execution and existence of a will is only as to information and belief. That is common in this court, but is never allowed in affidavits by the courts of common law. I do not think that there should be an order for the heir-at-law to attend. This does not practically preclude the heir-at-law from attending the execution of the commission, and suggesting any questions to the commissioner. The commissioner will attend to any suggestions the heir-at-law may make, but he must not produce witnesses, or interfere otherwise than through the medium of the commissioner, with the witnesses examined.

Wednesday, March 5.

IN THE MATTER OF THE INCORPORATED LAW SOCIETY.

Sealing a charter of incorporation—Caveat—Petition—Practice—Crown Office.

There is no instance of a caveat against the affixing the great seal to a charter of incorporation; but the Lord Chancellor, in exercising his official discretion as to the contents of the charter, will receive any information or objections respecting it: and such information must be regularly brought before him by petition.

Jas. Russell and *Adams* moved to remove a *caveat* which had been entered at the Crown Office against the sealing of a new charter of the Incorporated Law Society, which had been approved of by the Attorney and Solicitor-General, and only awaited the Lord Chancellor's final sanction. The new charter was to be granted upon the surrender of the old one, which surrender had actually been made.

James Parker, for Mr. Ripley, a member of the society, and who objected to the transfer of the property of the society from the old trustees to others appointed by the intended new charter, contended that the entry of a *caveat* in the Crown Office was the right course to adopt to stay the sealing of a charter. He cited *Ex parte O'Reilly* (1 Ves. jun. 112), before Lord Thurlow.

The LORD CHANCELLOR.—The charter comes before me in the regular way, having been approved by the Attorney and Solicitor-General. Before I affix the great seal, I have to consider whether the charter is proper to be granted, and if there is any objection made I am ready to hear it. But there is no instance of any *caveat* against a charter being sealed to be found in the Crown Office. Any person may give information to me upon the subject, which I will then consider.

Parker.—The objection involves the question, whether a majority of the society may disregard the constitution of the society under the original charter.

The LORD CHANCELLOR.—I am at present to take it that the old charter has been properly surrendered; and the question is, whether a new charter shall be granted.

Russell.—The Crown officers have approved of the new charter; it has been conducted through all its stages, and only now requires the affixing of the great seal.

Parker.—Two members of the society filed a bill to restrain the society by injunction from surrendering the old charter, and that injunction was granted, but in the eleventh hour the plaintiffs in that suit withdrew their opposition to the surrender of the charter, and the injunction was dissolved. Mr. Ripley is in the same situation as those parties. He has a definite share in the property of the society vested in the trustees under the old charter, and by the new charter the property will be conveyed to new trustees, and his right of property destroyed.

The LORD CHANCELLOR.—This matter must come before me upon a petition presented in the regular way, as in a case where I am a visitor. There may be cross petitions presented, by the society praying that the great seal may be affixed to the new charter, and by the objecting party. There has been a formal charter of incorporation granted to this society, which has been surrendered, a new charter has been approved by the law officers and enrolled, and a *caveat* has been entered at the Crown Office against affixing the great seal. But a *caveat* is not the proper course. Some ground of objection has been stated into which I cannot now enter. All the facts must be brought before the Court, and the most convenient course will be by petition. The society can present a petition, which shall be answered immediately. I will hear it immediately after the conclusion of the Ludlow Charity Case; I will take it on Wednesday next, if that case is concluded. Under the new charter the society has some new duties to perform with respect to examinations; the power to perform those duties is now in suspense, and therefore it is desirable that the matter should be heard as soon as possible.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Saturday, Jan. 18.

Re THE GUARDIANS OF THE BROMLEY UNION.

Vendor and purchaser—Purchaser under an Act of Parliament—Costs of conveyance under the Act.

The 5 & 6 Wm. 4, c. 69, being "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes, and of incorporations or unions of Parishes, in England and Wales," contains a provision with regard to the application of money paid on behalf of persons labouring under disabilities, and there be no person capable of giving a sufficient discharge for the same, that it shall be paid by the guardians and overseers into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Exchequer, as therein directed. And, further, "That in case of such purchase and payment into the Bank of England and application to the Court of Exchequer, as aforesaid, it shall be lawful for the said Court to order the expenses attending such purchase, payment, or application, or any part thereof, to be paid by such guardians or overseers, who shall accordingly pay the same as and when the Court shall direct, and the money so paid shall be a charge on the poor-rates of such parish or such union, as the case may be."

A negotiation had been entered into under the Act for the sale of certain property by a party having only a life interest, to the guardians of the B. union, both sides acting under the supposition that the vendor had the fee-simple in the property, and certain expenses had been incurred in such negotiations, from May 1843 to March 1844, when a regular conveyance was made by the tenant for life and a trustee, who joined in conveying the fee-simple. But in the meantime the tenant for life had, in ignorance of the effects of the Act of Parliament, consented to take those costs only that are usually paid between vendor and purchaser. Held, that notwithstanding the faulty proceedings up to the time of the conveyance, and the vendor's stipulation as to costs waiving the provisions of the statute, he was nevertheless entitled to its benefit, and that, therefore, the vendors were entitled to the costs relating to the contract—making out and evidencing the title—the perusal and execution of the conveyance, and those incident to the present application.

This was a petition under the above Act, of George Robert Morgan (the surviving trustee of the marriage settlement of a Mr. John Skeggs) and of the said John Skeggs. John Skeggs, who, under the above settlement, was a tenant for life only, contracted with the guardians of the poor of the Bromley union, in Kent, to sell them part of the settled property situate in the parish of Farnborough, for the purpose of the union, for the sum of 300*l.* The title to the property having been approved of by the guardians, a conveyance thereof was, in April 1844, made to them by Morgan and Skeggs, by virtue of the above Act of Parliament, with the approbation of the Poor-law Commissioners. But in consequence of the marriage settlement above mentioned not containing any trust or power of sale, the petitioners were not able to give a sufficient receipt for the purchase-money, and that, therefore, the guardians, in pursuance of the Act, in the month of June 1844, paid the sum of 300*l.* into the Bank of England, in the name of the Accountant-General, to the credit of the mother of the petitioner, G. R. Morgan, as such surviving trustee as before mentioned. The petition stated, among other things, that they were desirous that the said sum of 300*l.* should be laid out and invested in the purchase of Three per Cent. Consols, until a favourable opportunity occurred for investing the same in the purchase of land, under the provisions contained in the said Act. The petition therefore prayed the said sum of 300*l.* might be so laid out and invested as aforesaid; to tax the petitioner's costs of and *relating to the contract for sale, and making out and evidencing the title of the petitioners* to the said piece or parcel of land and hereditaments, and the perusal and execution of the said conveyance executed by them to the guardians, and also of and incidental to the present application, and that such costs, when taxed, might be paid by the said guardians.

It seems that various communications were had between Mr. Skeggs alone and the guardians, between the month of May 1843 and March 1844, and in consequence of such communications he delivered certain abstracts of title to the solicitors of the guardians. A verbal stipulation was also entered into by Mr. Skeggs, relating to the costs of the purchase, the effect of which was that the usual costs, as observed between vendor and purchaser, should only be paid, and not such as might, under the Act, be demanded by the vendor. During all this negotiation, Morgan, the trustee, knew nothing of what was passing between the other parties, whilst the guardians for some time laboured under a mistaken notion, that in treating with Skeggs they were dealing with a person who had in himself a good title to the property in question, as to an estate in fee-simple. The estate was, however, conveyed by Morgan and Skeggs to the guardians as before stated, in the month of April following.

The question now raised was whether the guardians, having been led into an error by the conduct of Skeggs, the tenant for life, with reference to his limited interest, and having regard also to his dealings with them as to the costs of the conveyance, were bound to pay the expenses as required by the Act, or only such costs as were usually enforced as between vendor and purchaser.

The case of *Ex parte Earl of Albemarle, re Guiltcross Prison*, heard in the Equity Chamber before Lord Abinger (7 Law Journ. N. S. 1, 63), was relied on by the petitioners as a case in point.

Stuart and *Bilton*, for the petitioners.

Bethel and *Platt*, for the respondents, submitted that the tenant for life having been held out as the only person who could give a perfect title to the fee-simple, and as such for a considerable time had dealt with the guardians, in the course of which divers expenses were incurred, ought not to claim the costs of such faulty proceedings, the more especially as a stipulation had been made between the parties, the result of which was that the costs allowed by the Act of Parliament should be waived, and only those incident to and ordinarily paid as between vendor and purchaser, should be demanded by the present vendor. Moreover, there would be no hardship upon him in not being paid the full costs which he claimed under the Act, seeing that he was not compelled to enter into the contract, as he would have been in case the property in question had been required for a railroad.

The VICE-CHANCELLOR.—I do not think that any erroneous ideas which a party may entertain respecting his rights will destroy those rights. I can easily conceive of a person releasing or giving up his interest in an estate; but will his mere ignorance therein affect such interest? The decision of the Court of Exchequer, urged in favour of the petitioner, appears to be in point. But as it regards the waiving any part of the Act of Parliament, it is iniquitous to take advantage of the ignorance of a party when the transaction is to be completed in accordance with the provisions of that Act, and the costs and expenses are to be paid in pursuance of the same; therefore, whatever former costs were incurred, they must be borne by the guardians.

Costs according to the prayer of the petition.

ROLLS COURT.

Tuesday, Feb. 18.

Wednesday, Feb. 12.

ROBERTSON *v.* MORRICE.

Stock was bought in the name of one person as trustee for others, in certain proportions, and intimation thereof was duly given by him to the others. He afterwards sells out a large part of it, but subsequently replaces some of it through the agency of his confidential clerk, and the entries of the newly purchased stock are made in the same account and in the same manner as at the first. Held, that this was sufficient to prevent the stock from being general assets on his death.

Mr. Morrice was consignee of certain persons, and was by them directed to invest certain moneys in stock in his own name, in trust for them, in certain proportions. He bought the stock accordingly, and duly notified the same to his employers. He had also some stock standing in his own name. This last he sold out, and afterwards sold also a part of that belonging to the others. Being on his death-bed, he became very anxious to make good the amount, and desired his clerk to buy in to the full amount. He accordingly bought in a considerable sum, but not the whole, and it was entered to the same account and exactly in the same manner as the original purchase. On his death intestate, his administratrix was advised she could not safely pay the sum so standing in the deceased's name otherwise than in a general course of administration, and accordingly this suit was instituted to have a declaration that the stock in question was not general assets.

Bacon, for the plaintiffs.

Burge and *Bagshawe*, for the administratrix.

The MASTER of the ROLLS.—The representative of the intestate has done no more than her duty. The case can be decided on obvious principles. Morrice having money of others in his hands, laid it out in stock, with money of his own, and carried all to an account in his own name, and so the moneys of all the parties were mixed up. The evidence and memorandum shew clearly who were the owners of the stock, and it is admitted that the stock did belong to certain persons in certain proportions. Mr. Morrice has himself stated that the persons were himself and others named. There is a sufficient declaration of trust of the stock sold out. When he sold out his own, he did nothing wrong; but when he went farther and

sold out that of the others he was not acting in the discharge of his duty. Well, then, what was his duty in the next place? Why, to replace it. He took steps to do so, and did do so to a considerable extent. He purchased stock and carried it to the very same account as before; it ought to be presumed, therefore, he meant to do it in performance of his duty. It is clear from the clerk's evidence that he was anxious to do more than he did. The question is, whether this stock so purchased in discharge of his duty, but not entirely replacing the original amount, is to be considered general assets, because it is standing in his name. I should have had some doubt if it had not been so standing from the first moment of the trust. As it is, I think it is a trust for the plaintiffs, and is not general assets.

Thursday, Feb. 13.

BEAUCLERK *v.* ASHBURNHAM.

By a power of sale to trustees of a marriage settlement, "to sell out the trust funds and invest the produce thereof, and they were thereby authorized and required, at the request of husband and wife, and of the survivor, so to do, in freehold or copyhold or leasehold hereditaments, or terms for years, having at least 60 years to run, and of sufficient value, and situate in a convenient place," they are bound to sell and invest in town leasehold houses, and the only discretion they have is to see that they are of the value and description intended.

The whole question in this case turned on the construction of a power of sale in the marriage settlement of Mr. Beauclerk, the plaintiff, with Lady Catharine Ashburnham, which took place in May 1838. Certain property, partly belonging to Lady Catharine and partly to Mr. Beauclerk's father, was settled on trusts for the ultimate benefit of Mr. Beauclerk the younger, his wife and children, Mr. Beauclerk the elder having a life interest in part. There were several discretionary powers vested in the trustees (Mr. Ashburnham and three others), but the one which gave rise to the present application was a proviso, "that it should be lawful for the trustees, &c. and they and he were thereby authorized and *required*, after the marriage, by and with the consent of Mr. Beauclerk the father, as to part, and by and with the consent of the intended husband, and wife, as to all, during their joint lives, and that of the survivor, to sell, &c. the trust funds, &c. and lay out and invest the produce thereof in the purchase of freehold, copyhold, or leasehold hereditaments, or terms for years, having not less than 60 years to run, and of full value, and situate in a convenient place." Mr. Beauclerk the father died, and so also did Lady Catharine, in April 1839, leaving one daughter. Mr. Beauclerk the son, having incumbered his life interest, gave notice to the trustees, that he wished to invest upwards of 7,000*l.* in leasehold houses, in Chatham-place and Lyall-street, near Belgrave-square, which were held for a term of above 60 years to run. Two of the trustees were willing, and the other two, Mr. Ashburnham, the uncle of the infant, and Mr. Viner, were unwilling to exercise the power. It was suggested to them that they might retire from the trusts, or that Mr. Beauclerk would himself take the conveyance and afterwards convey to the trustees, with a bond of indemnity, so as to relieve them from liability on the covenants, &c.; but this proposal was not acceded to.

Kindersley (with him *Bayley*), for the plaintiff.—The opinion of counsel was taken by the trustees, and they were told it was a "wild and wasteful" exercise of the power to which they were called upon to submit; and *Stickney* v. *Sewell* (1 Myl. & Cr. 8) was relied upon. But this case does not at all apply. The question is, not whether the trustees are justified, but whether they *must* not exercise the power. It is said the property will be deteriorated during the life of Mr. B. who is only 32; but that interest was given by the grandfather, father, and mother of the infant, who were competent to give it to the extent to which it is given, or any other extent.

Sidebottom, for Mr. Ashburnham.—There are two objections to this exercise of the power. First, it is a bad investment for the infant; and, secondly, the trustees ought not to be subject to liabilities which they did not undertake at the settlement. We do not deny this is a power not purely discretionary, though it is admitted that some degree of discretion is to be used. The trustees have not refused absolutely; they only submit to the Court in their answer, as the property on which the investment is to be made is hereditaments, whether they mean houses. In other places "messuages" is the term used. It is discretionary also as to locality,—"and a convenient place." The personal objection does not weigh so much with Mr. Ashburnham as that in reference to his niece. He finds Mr. Beauclerk will have an increase in his life interest, to the loss of the infant, and that the incumbrancers concur of course. The liabilities for ground-rent, &c. and the covenants as to insurance, repairs, &c. are such as he should not be called on to undertake. Besides, he would be obliged to give a constant watchful attendance to the tenants. Then, as to the indemnity proposed, no man is bound to accept it. It is a bond and assignment first to Mr. B. and then to the trustees; and the only purpose it can serve is to let in Mr. B.'s debts *in transitu*.

Bacon, for Viner, another trustee.

Hyam, for the consenting trustees.

Roupell (with him *Law*), for the infant.—The power, if imperative, must be to the extent of the trustees shutting their eyes to the title, &c. [The MASTER of the ROLLS.—The other side say the trustees may look into any thing pointed out in the power, as value, &c. It might be the subject of reference.] There is no evidence of its value, it being in a fashionable part of the town, and, therefore, of a value fluctuating with caprice.

They cited *Stuart* v. *Stuart* (10 Law J. 148).

Turner and *Whitbread*, for the incumbrancers.

Kindersley, in reply.

The MASTER of the ROLLS.—These trustees have to lay out all in leaseholds, and the question arises whether the leaseholds proposed are in all respects proper to be fixed upon by them in the performance of their duty, whether they are of the proper value, &c. all of which, though the exercise of this power is imperative, they are bound to consider. Now, here is a young man with his property incumbered wishing to increase his income. The trustees have a right to hesitate as to the exercise of the power; I do not blame them. The refusal, however, cannot be rested on the question of the leaseholds merely, as the term "leasehold hereditaments" includes town houses. Neither can the liabilities to be incurred form an objection, for they were contracted for by the settlement; but they should be as small as possible. There may be a reference to the Master, if the trustees wish to consider the situation, &c. of the property. But if the trustees are satisfied, I am satisfied, not otherwise. It may stand over for consideration in that respect.

Saturday, Feb. 15.

FULTON *v.* GILMORE.

An executor directed to invest in real or sufficient securities is liable for loss sustained by leaving the assets in a firm even of which his co-executor is a partner.

Dividends received in respect of part of the estate of a testator being in the hands of the agent of one executor, and part of the estate being in a firm of which his co-executor is partner, but which is or is expected to be insolvent, the agent cannot demand a general release as a condition of payment of a share of such estate to a legatee.

This case (of which the principal facts may be found in 4 Law T. pp. 231 and 329) now came on for hearing. It is sufficient to mention, in addition to what is stated in the pages referred to, that the father of the defendant Gilmore was partner in the firm of Gilmore and Co. and at his decease the defendant, as his executor, drew out his own share of the funds, and took securities for the portions thereof belonging to other branches of his family, but took no security for a sum belonging to Mr. Fulton, also in the hands of the firm. William Stewart Smith, the co-executor of Mr. Gilmore under Mr. Fulton's will, was a partner in the house of Gilmore and Co. After the bankruptcy of Ferguson and Co. Gilmore, the defendant, proved for the debt due to his testator's estate, and paid the dividends to Messrs. Colville, Gilmore, and Co. whom he constituted his agents for payment thereof. In 1840 the plaintiff came of age, as did her brother Robert in 1841. He applied to Colville, Gilmore, and Co. and they paid him the moiety of the sums for which they were constituted agents. The other three legatees having been paid off before the bankruptcy of Ferguson and Co. On the 2nd of August, 1842, the plaintiff's solicitor applied to Colville and Co. and in reply, they stated they had paid Robert, and were willing to pay Miss Fulton her share upon receiving a general release of all claims, and also offered to produce accounts. In 1842, and at the time of the demand of the release, Gilmore and Co. were insolvent. The bill was originally filed for the recovery of the dividends paid on the debt from Ferguson and Co. and the whole of the sum standing in the hands of Gilmore and Co.; and it treated the defendant as a person coming under the protection of the Act as to insolvents. But in his answer, he repudiated the protection thus extended to him, and stated he was insolvent in 1833, and was discharged under the Act then in force, that is, the 9 Geo. 4, c. 73. The plaintiff then amended her bill, and charged him with the whole of the debt due from Ferguson and Co., and the defendant, in answer, still treated himself as discharged under the Act in force in 1833. The cause was then set down for hearing before the long vacation, and the plaintiff would have been entitled to recover the whole amount from the defendant, if the cause had been heard. However it was not so, and a supplemental answer was put in, correcting the defendant's mistake, and substituting the year 1836 for 1835. The cause now came on for hearing.

Turner (with him *Toller*).—So far as relates to the dividend from Ferguson and Co. we are satisfied to take it as originally intended. It would involve much fruitless expense to take an inquiry; we therefore do not insist. But as to costs, we are clearly entitled, as the whole was caused by the defendant's mistake. As to the fund in the hands of Gilmore and Co. and the delay in recovering it, we must deal with that as a breach of trust. The defendant's insolvency did not relieve him from that liability, for it is a continuing breach up to 1842. He did not obey the directions of his testators' will, nor did he act by that fund as he did by that of his father. They cited *Buckeridge* v. *Glasse* (1 Cr. & Ph. 125).

Kindersley (with him *Tennant*), contra.—As to the first point it is fair to give it up, and the justice of the case obviously requires that there shall be no costs on either side. As to the delay, it is to be observed, Miss Fulton was not the youngest of the five, and her brother Robert, who came of age a year after her, applied and got his share paid. Colville, Gilmore, and Co. made no reference to Gilmore and Co. All they said was, give us a release and we will pay you your moiety. [The MASTER of the ROLLS.—They asked a general release. What was the time of the insolvency of Gilmore and Co.? That may be important, if Colville and Co. knew it at the time of the refusal to pay without a release.] It must be admitted the insolvency was then known; but the question is, did the correspondence refer to Gilmore and Co. at all? As to the liability, the co-executor had that part of the funds under his care, and Gilmore the other, and each had a right to act as best he could. The bill is not to administer the estate, only to charge the defendant with a particular sum of money in transactions in which loss has arisen. The security was a good one, and the co-executor then solvent. The costs of course follow the liability.

Turner, in reply.

The MASTER of the ROLLS.—These cases all depend upon their peculiar circumstances. The testator, in this case, directed all his estate to be invested in real or sufficient securities in India or Britain, and to be divided into five shares, of which the plaintiff was to have one. She came of age in 1840. The property was partly in the hands of Ferguson and Co. of which Gilmore was a partner, and partly in Gilmore and Co., in which Smith, the co-executor, was a partner. After the insolvency of Ferguson and Co. the defendant proved as executor, and received the dividends upon his debt and placed them with Colville, Gilmore, and Co. In 1840, application was made on behalf of plaintiff for an account and payment of what was due, and the account was not objected to, but they required a general release on payment of the balance. Now, that might have been the dividends only, and the intention might have been to ask a release for that only; but a general release would include the claim on Gilmore and Co. then insolvent. As far as I can see, the offer to pay was made conditional upon the giving of the general release, to which the plaintiff was not bound to submit, and she was therefore justified in filing her bill, which, accordingly, she did file soon after, but only for the dividends. [His Lordship here stated the facts up to the present hearing.] The plaintiff is therefore now entitled to no more than she was on refusal to pay without a general release. She is only exonerated from the costs, for all the accuracy as to facts was on her side. The plaintiff did not secure the money left in the hands of Gilmore and Co. and left India several years ago, thinking that Smith, his co-executor, was responsible, and himself relieved from all further trouble. Such is not the case; he is a trustee as well as an executor, and ought to have taken care to make every thing right. He did so with his own, but left Smith to do so with the plaintiff's. Smith is now dead, insolvent, and the defendant therefore is the only one to apply to. He must make good the sum in the hands of Gilmore and Co. and pay the costs of the hearing; but he will be entitled to the dividends to be paid on Gilmore and Co.'s estate.

ROLFE *v.* WRIGHT.

A sum of money being given under a will to such of a class of persons as should be surviving at the death of a person having a life interest therein, one of the class went to sea, and was not heard of for many years before the death of the life tenant (which was in 1825) nor since. His share of the fund, which was very small, was ordered to be paid to the survivors of the class, on the presumption, from the evidence, of his death before the life tenant.

William Manning had a life-interest in 750*l.* Consols, under the will of Elizabeth Manning, bearing date September 182[illegible], and after his death the fund was to be distributed among such of a class as should then be living. The class consisted of six persons, one of whom, Philip Rolfe, left Harwich and went to sea on the 5th December, 1809, in the Royal Navy, being then 32 years of age, and was last seen in the company of a sailor about 32 years ago. Since that time he has not been heard of, though his father advertised, with a view to find him. This suit was accordingly instituted for the payment of his share, being about 179*l.*; the shares of the other five out of the six entitled having been paid to them on the death of William Manning, in 1825. The Court was now asked that it might be considered that Philip Rolfe died in the lifetime of

William Manning, and the money should accordingly be paid to the other five.

Kindersley, *Sheffield*, and *Gunning*, for the several parties.

The MASTER of the ROLLS was not quite satisfied that he had before him the best evidence which might be obtained as to the time of the death of Philip Rolfe. But the sum being small, and the lapse of time great since he was last heard of, he was disposed to make the order upon a petition, supported by affidavit, stating the further evidence which might, he thought, be obtained. This, he was of opinion, ought to be procured by inquiries at the Admiralty and from other persons who knew him.

The cause to stand over for that purpose till the first day of causes in Easter Term.

Wednesday, Feb. 19.

RADBURN *v.* JERVIS.

Though annuities are expressly charged on the real estate in aid of the personalty, they will not be ordered to be raised out of it, by the purchase of the annuities with a sum borrowed thereon, but they must be paid by the life tenant of the estates.

Sir Thomas Clarges gave an annuity of 300*l.* to Harriet Catherine Cock, secured by a bond for 5,000*l.* conditioned to be void on due payment of the annuity. He gave other annuities also to her mother and brother. Sir Thomas died on the 17th of February, 1834, seised of certain estates, which he devised to trustees in trust as to part, to sell for payment of debts, legacies, annuities, &c. and as to the residue, in trust for General Hare, for life, and his children, in tail, but subject to his debts, &c. if the provision already made should not be sufficient, with remainder to his right heirs. Then, after giving the trustees a power of sale, &c. he expressly confirmed the annuities and bonds already given, and bequeathed to H. C. Cock an additional annuity of 200*l.* to be paid in the same way, and charged in the same way as before mentioned. The cause coming on upon further directions, the point now for consideration was, whether the life tenant should pay the annuity, or a sum should be raised out of the estate to purchase a government annuity of the amount, and the interest of the charge should only be paid by the life tenant, General Hare, who has no children.

Willcock, for General Hare, insisted that it was not a simple gift of an annuity, and a charge with it, but the annuity is given first, and then it is afterwards charged conditionally. Under the bond it is a debt; under the will it is a legacy. The only case bearing on this point is *Bulwer* v. *Astley* (1 Phil. 422). The life tenant should only be obliged to keep down the interest of the purchase-money of an annuity of that amount; not pay the annuity itself.

Kindersley and *Bacon*, for the defendant Jervis, the heir-at-law of Sir T. Clarges.

The MASTER of the ROLLS.—Your object is to convert a temporary into a permanent charge. The life tenant must pay the annuity.

Thursday, Feb. 20.

HARGRAVE *v.* HARGRAVE.

Motion by the defendant to take an issue pro confesso against the plaintiff (who withdrew the record, and did not proceed with his action at the proper time) refused under the circumstances; but the plaintiff was put upon terms favourable to the defendant, and was obliged to pay the costs of the motion.

In this cause an issue had been sent out to be tried as to whether the infant plaintiff was the son of John Hargrave or not. The defendant was prepared for trial, which might have come on on the 7th February instant. On the 30th of January the solicitor of the plaintiff wrote to the solicitor of the defendant, asking him to make the issue a remanet, which he refused to do, and declared his intention of moving to take the issue *pro confesso* against the plaintiff. The defendant's solicitor wrote again, assigning as his reason for wishing to make the issue a remanet, the absence of material evidence, and the defendant again refused.

The plaintiff withdrew the records.

Kindersley, for the defendant, moved to take the issue *pro confesso*, and cited *Casborne* v. *Barsham* (5 Myl. & Cr. 113); *Bearblock* v. *Tyler* (1 Jac. & Walk. 125); 2 Fowl. Exch. Prac. 196.

Turner (with him *Kyle*), contrà.—In *Casborne* v. *Barsham* no cause was shewn, but only that the party making default did not like the particular judge who was to try the issue; here the ground is the absence of a material witness. The defendant has a bill to perpetuate testimony in the Vice-Chancellor of England's court; so there is no danger of his sustaining any injury.

Kindersley, in reply.—The reason assigned in the second letter was the absence of material evidence, and does not in the least apply to the parts of the case as they now appear, viz. the illness of two of their witnesses since the 30th of January; that they had not, nor could they have, in their minds. Their whole object is delay. They know our witnesses can prove that the plaintiff is not the son of the person it is pretended he is; and they wish to delay on the chance of their dying off, and in the hope that one of them who is going abroad, may not be available to us. He is expected to go in April. They have taken on themselves, moreover, to withdraw the record, without coming here and asking leave; but that they had no right to do. Now Providence has given them a reason in the illness of their witnesses.

The MASTER of the ROLLS.—The question is, whether I shall order this issue to be taken *pro confesso*, or not. It might have been tried on the 10th of February in regular course. It appears that two material witnesses were ill, and could not have attended on that day; and, therefore, either the court of common law must have postponed the trial, or the issue could not have been satisfactorily tried. The evidence is, that the witnesses were material, and could not attend. If an issue is to be tried at a definite time, and if, by the default of one party, unexcused, the issue be not so tried, it is to be taken *pro confesso* against that party. I say *unexcused*, for, on proper grounds shewn, indulgence will be extended to the defaulting party. In this case the trial might have come on on the 7th February, and a notice was sent on the 30th January, asking the other party's consent to its being a remanet, without any reason assigned. Then, in a second letter, the absence of witnesses was assigned; but no particulars of that were given. There may have been reasons, but the only thing that was said was, If you do not consent to make it a remanet, I will withdraw the record. The gentleman who penned that letter forgot that this was an issue sent out by the Court of Chancery, and that it was not for him, therefore, to take upon himself to do any such thing. He, however, did withdraw it, and this issue cannot be tried now till after Easter Term. In the mean time, a principal witness for the defendant may be taken away. The delay is much to be regretted; but I cannot make up my mind to allow this motion, more particularly as the witness may yet be able to attend. I must, however, impose conditions which will redress the injury to the other party. The costs of this motion must be paid by the party making the application here necessary. The defendant must have his costs and such terms as may secure him from injury. Mr. Turner's client must submit to every examination to elicit the truth. The next friend of the infant must pay the expenses of this application.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, March 1.

WILKINSON *v.* LLOYD.

LEMAN *v.* LLOYD.

The vendor of shares in a public company, to complete the transfer of which an entry in the books of the company, with the consent of the directors, is necessary, is bound to obtain this entry, and to do all that is necessary to invest the plaintiff with the property of the shares; and therefore, on the vendor's default, the vendee may bring an action for money had and received to recover the purchase-money, as upon a total failure of consideration, before returning the deed of transfer.

A verdict had been obtained for the plaintiff in this case, which was an action for money had and received under the circumstances stated in the judgment. A rule *nisi* had been granted in Trinity Term 1844, to set aside the verdict, which was argued (see 3 Law T. 138) by *Knowles*, Q. C. and *Addison*, in support of the rule, and *Martin*, Q. C. *Cowling*, and *Ruffles*, contrà.

JUDGMENT.

PATTESON, J. now delivered the judgment of the Court.—This case was argued before my brothers Coleridge and Wightman last Trinity Term, and stood over on account of the doubt they entertained on one of the points taken by the defendant. The plaintiff had purchased from the defendant certain shares in a public company, and had paid the purchase-money to the defendant; the defendant on his part had executed the transfer, and nothing remained to be done but to obtain the consent of the directors, and that an entry of the transfer should be made in the books of the company; and when that consent was obtained, and the entry of the transfer duly made, according to the provisions of the deed of settlement, the transaction between the plaintiff and the defendant would have been completed. In consequence of some dispute between the defendant and the directors, no consent could be obtained from the latter, and consequently the transfer never was completed, and the plaintiff never was put into possession of the shares, and never became the legal owner of them. The plaintiff, without returning the transfer executed by the defendant, but which had been procured by the plaintiff, brought an action for money had and received, to recover the amount paid by him, as upon an entire failure of the consideration; and, upon the trial, obtained a verdict, with leave for the defendant to enter a nonsuit if the Court should think that, under the circumstances, the plaintiff was not entitled to rescind the contract or treat the consideration as having wholly failed. For the defendant it was insisted he had done all he was bound to do, and ought not to be prejudiced by the acts of the directors; that the plaintiff could not rescind the contract, as the shares had fallen in the market, and the parties were not placed in *statu quo*; and that the plaintiff ought, at all events, to have returned the transfer executed by the defendant before he could be entitled to treat the contract as rescinded. We are, however, of opinion that the plaintiff is entitled to maintain his verdict, and with respect to the first point, we think the defendant was bound to procure the assent of the directors, and to do all that was necessary to invest the plaintiff with the property in the shares. The cases decided with respect to the obligation of a vendor of a lease to obtain the landlord's consent to the assignment, where the lessor requires it, apply to this: a purchaser has a right to require the seller to give him the possession, or the means of obtaining possession, of the things purchased, or the consideration fails. The second point, that the contract could not be rescinded because the shares had fallen, cannot apply where the complaint of the plaintiff is, that he never has had the shares he purchased at all; though it might have been urged in case the plaintiff had actually received the shares, but proposed to rescind the contract on some other ground; the plaintiff had received no part of the consideration, and it is on that ground he seeks to recover back his money. Upon the last objection we entertain considerable doubt; and inconvenience and difficulty might be occasioned to the defendant if the transfer executed by him were not returned and cancelled; but we think the returning and cancelling the transfer is not a sufficient condition precedent to the plaintiff's right to require possession of the things sold. The instruments of transfer are collateral to the contract and the subject-matter of the sale; and though the defendant may be entitled to require redelivery of them to him, we think the non-completion of the transfers such a failure of consideration as entitles the plaintiff to recover in this action, although the instruments executed by the defendant have not been returned. The case of *Scurfield* v. *Gowland* (6 East, 241) is in accordance with this view of the question. The rules, therefore, in this case, and in the other case, that of *Leman* v. *Lloyd*, which seems to bear on the same point, must be discharged.

DOE *dem.* MUSTON *v.* GLADWIN.

However harsh an ejectment may be, no Court will refuse to give effect to a proviso for re-entry in case of a breach of covenant. A parol license from the landlord will not justify a breach of covenant, therefore an ejectment is maintainable by the assignee of the reversion against the lessee for not insuring in the names of the landlord and the tenant, as covenanted in the lease, notwithstanding that he has insured in his own name, and the original landlord had expressed himself quite satisfied with the insurance.

Ejectment.—*Bovill* had obtained a rule *nisi*, calling upon the lessors of the plaintiff to shew cause why a verdict should not be entered for the defendant, on the ground that the breach of the covenant had been waived, against which

Peacock (Feb. 8) shewed cause, and

Bovill was heard in support of the rule.

The facts are fully stated in the judgment. The following cases were cited in the argument: *Doe dem. Flower* v. *Peck* (1 B. & Ad. 429); *Doe dem. Ambler* v. *Woodbridge* (9 B. & C. 376); *West* v. *Blakeway* (3 Sc. N. R. 199, 9 D. P. C. 846); *Doe* v. *Rowe* (R. & M. 343, 2 Car. & P. 246); *Doe dem. Pitman* v. *Sutton* (9 Car. & P. 706); *Doe dem. Shephard* v. *Allen* (3 Taunt. 78); *Blake's* case (6 Rep.); Com. Dig. Accord, A. 1 and 2; *Duppa* v. *Mayo* (1 Saund.); *Pickard* v. *Sears* (6 A. & E. 469); *Doe* v. *Meux* (4 B. & C. 606). *Cur. adv. vult.*

JUDGMENT.

PATTESON, J. now delivered the judgment of the Court.—This was an ejectment on a forfeiture on a breach of covenant to insure in the joint names of landlord and tenant. The right of recovery was clear, unless the lessor of the plaintiff had, by his conduct, barred himself from proceeding. The reversion in the property in question changed owners in 1837; it was conveyed to a person of the name of Oliver on the 14th of January, 1843, and was conveyed by him to the plaintiff. A policy was effected by the defendant on the 28th of January, 1836, in the sole name of the defendant (it was not according to the covenant, which would have been in the name of the landlord and tenant), which policy was kept alive by the payment of an annual premium. At Christmas 1842 the regular premium was paid for the ensuing year. There was no insurance in the joint names at all. The demise was laid in May 1843. The defendant's son-in-law proved at the trial that on the very day that Oliver parted with this property to the lessor the owner paid Oliver the rent up to Christmas; he also proved that the policy effected had been previously shewn to Oliver, who expressed himself perfectly satisfied with it. Therefore there was a waiver by payment up to Christmas 1842 on the part of Oliver. Under these circumstances, this ejectment must be considered unusually harsh, and it is impossible for any Court to lend itself willingly to enforce that proceeding. The expression that the law abhors a forfeiture was never

more appropriate. But we must not forget that the rights of parties are all we have power to deal with; even the Court of Chancery has refused to enjoin in proceedings of law on a breach of covenant to insure. It was so held in *Green* v. *Bridges* (4 Sim. 96); and on occasions like the present, Lord Tenterden was in the habit of saying, "We are bound to give all instruments their natural construction, and attach to them their legal consequences, whatever our inclinations may be." This course may operate seriously in particular cases, but its general effect seems no doubt to consist in teaching all that they must fulfil their engagements, and by giving certainty to their mutual relations. Since this lease contains a proviso for re-entry, in case of a breach of this covenant, as well as that of others which might be thought more important, we have only to inquire whether it has been broken, so that the landlord might maintain an action of covenant for the breach. That it has been broken is unquestionable; but the present landlord is said to have been bound by the act of the former, who caused it to be understood that he would not require the performance of the covenant, but that he would be satisfied with the substitution of a different mode of insuring. The case was likened to that of *Pickard* v. *Sears* (6 A. & E. 469), (*a*) and some others, where it was held, that a party may, by his conduct, so mislead another, and so affect his interest, as to deprive himself of the right to complain of what was afterwards done, under the impression of what he himself produced; and the recent case of *Doe dem. Pitman* v. *Sutton* was particularly brought forward. It seems, however, sufficient to observe, that no case has gone the length of intimating that a breach of covenant may be justified by a parol license to break it. This would be to go to confound every well-established legal principle. The last case (*Doe dem. Pitman* v. *Sutton*, 9 Car. & P. 704), which was cited as applicable to the present, is very plainly distinguishable when examined. There the covenant to insure on the tenant's part was qualified by the option given to the landlord to insure if the tenant made default, and to add the amount of premium to his rent; and the evidence shewed the landlord had represented to the tenant that he had availed himself of this power by insuring. This representation would naturally induce the belief that the insurance was actually effected according to the terms of the lease, in the manner in which the landlord proposed. Against an action of covenant the tenant might have defended himself, by shewing that the landlord prevented him from insuring by representing that he had himself insured; and, in fact, that peculiar covenant was not broken, if the landlord's statement was true. The case of *Doe* v. *Rowe* (R. & M. 343) was also much pressed on us in argument; but there the landlord had misled the tenant, by delivering to him a deficient abstract of the lease; but in the present case there is nothing but the mere verbal evidence that a landlord had said he would be satisfied though the covenant should be broken, which it indisputably was, during the whole time the premises remained uninsured according to the covenant. But the waiver, by the acceptance of rent, could not operate beyond Christmas, up to which time it was accepted; and this being a continuing covenant, a subsequent breach entitled the lessor, the plaintiff, to re-enter, as was held in 1 B. & Ad. 428, in the case of *Doe dem. Flower* v. *Peck*. We therefore think this rule must be discharged. *Rule discharged.*

COURT OF EXCHEQUER.

Thursday, Feb. 20.

D'ARNAY *v.* CHESNEAU.

Assignees of insolvent — Pleading — Title — Vesting order.

Debt, for money lent, and on account stated.

Plea, that plaintiff had taken the benefit of the Insolvent Act, and that his estate and effects had vested in his ass gnees.

Replication, that before the plaintiff's imprisonment the plaintiff was indebted to one T. V. R. to wit, in the amount in the declaration mentioned, that T. V. R. held an I O U of the defendant as a security, whereby defendant acknowledged that he owed plaintiff, to wit, the amount in the declaration mentioned, and that plaintiff then agreed with T. V. R. that if he did not pay him his debt by the 20th January, the I O U was to become the property of T. V. R. and he was to have no further claim on the plaintiff, and the plaintiff then, on those conditions, transferred the debt to T. V. R.; that plaintiff did not pay the debt to T. V. R. on 20th January, and that this action was brought by him as trustee for T. V. R.

Rejoinder, that plaintiff was not indebted to T. V. R. modo et formâ.

Held, that the amount of the debt to T. V. R. was immaterial; and that the replication was supported by shewing a debt less than that in the declaration mentioned.

Quære, whether the replication is good?

Willes, on a former day, moved for a rule to enter a nonsuit, or a verdict for the defendant, or for a new trial, on the ground of misdirection.

The pleadings and facts of the case are fully mentioned in the judgment below.

Martin and *Peacock* shewed cause, citing the following cases: *Carruther* v. *Burnes* (4 B. & Ad. 382); *Said* v. *Rhodes* (1 M. & W. 153); *Crowfoot* v. *Gurney* (9 Bing. 372); *Parnham* v. *Hunt* (8 M. & W. 743).

Willes, in reply, relied on *Scott* v. *Surman* (Willes, 400); *Carpenter* v. *Marnell* (3 B. & P. 40); *Dangerfield* v. *Thomas* (9 Ad. & El. 222); *Sumpner* v. *Cooper* (2 B. & Ad. 223); Jarman's Conv. 126; *Tibbetts* v. *George* (5 Ad. & El. 107); *Leslie* v. *Guthrie* (1 B N. C. 697); Smith's Mercantile Law, 617, 3rd ed.

Cur. adv. vult.

JUDGMENT.

PARKE, B. now delivered judgment.—This case was argued a day or two ago. It was an action brought for the sum of 150*l.* for money lent, and on an account stated, and then there was a special plea, stating that the plaintiff had taken the benefit of the Insolvent Act, and that all his estate and effects had been by the vesting order vested in the assignees. To that there was a replication, that before the commencement of the imprisonment of the plaintiff, mentioned in the plea, the plaintiff was indebted to one T. V. Raby in a large sum of money, to wit, to the amount of the moneys in the declaration mentioned; that as a security for repayment thereof there was deposited with T. V. Raby an instrument in writing, called an I O U, signed by the defendant, whereby the defendant acknowledged that he owed to the plaintiff a large sum of money, to wit, the amount of the sum of money in the declaration mentioned, and then that he consented and agreed with T. V. Raby, that if on the 20th January then next he was unable to pay him the said debt then due to Raby, the said I O U was to become the property of F. V. Raby, in consideration of which T. V. Raby should have no further claim upon him, and that the plaintiff thereby transferred and assigned the debt in the declaration mentioned, and every part thereof, to Raby, on the terms and conditions aforesaid, of all which premises the defendants had notice; and then the replication proceeded to aver that the money was not paid on the 20th January, nor the 25th April, to which day the time of the payment of the debt was extended; and also that the action was brought by the plaintiff as a trustee for T. V. Raby; and the issue upon that is that the plaintiff was not indebted to the said T. V. Raby, in the replication mentioned, in manner and form as in that replication is alleged. The case was tried before me, and I directed a verdict for the plaintiff, subject to certain questions for the opinion of the Court. Upon the trial it appeared that the defendant was indebted to the plaintiff in the sum of 110*l.* for which sum he gave an I O U, and on the 20th October, before the commencement of the plaintiff's imprisonment, and before the title of the assignees accrued, he deposited the I O U with Raby, together with a patent as security for a sum of 90*l.* due to Raby, and agreed that if the 90*l.* was not paid before the 20th January, the I O U should become the absolute property of Raby, and that the debt should be extinguished. I left the question to the jury whether any debt was due at the assignment of the debt, and the jury found that 90*l* was due, and I then directed a verdict for the plaintiff on the issue, reserving leave to the defendant to move to enter a verdict for the defendant. The case was fully argued two days ago, and all the questions bearing upon the right of assignees under the Bankrupt and Insolvent Acts, and with respect to assignments by way of mortgage or security, were ably and elaborately commented upon; but the only question which arises in the present stage of the proceeding is whether in the allegation that the plaintiff was indebted to Raby in a large sum of money, to wit, the sum of money in the declaration mentioned, the amount which is stated under a *videlicet* is material or not. If there had been an absolute sale of the debt to Raby before the assignees' title accrued, it is true it would be immaterial what was the amount of the debt which was the price of it; but this is not altogether an absolute, it is only a conditional purchase of that debt; for it is provided by the agreement that if the plaintiff should not pay his debt of 90*l.* on or before the 20th of January then next, the said I O U was to become the property of Raby, and in the meantime the debt due to the plaintiff is assigned as a security only for the amount due from the plaintiff to Raby. Now before that time, and before it was determined whether there should be a purchase or not, it is necessary to inquire whether the title of the assignees accrued. Was, then, the right to sue for this debt transferred to the assignees, or not, by the vesting order? It was argued, and we think rightly, that if the debt to be assured was less than the debt assigned, and if it was only a simple assignment of the debt as a security, the right to sue would vest in the insolvent's assignees. In that case they would have an interest in the property for the benefit of the creditors, and they would not have to refund to the *cestui que trust*. The proper criterion of this case appears to us to be whether they had a right to sue or not. This is decided by the cases of *Carpenter* v. *Marnell* (3 B. & P.); *Scott* v. *Surman* (Willes, 400), and *Parnham* v. *Hunt* (8 M. & W. 743). It was argued by the defendant that if the debt were assigned, then the assignees of the insolvent had no claim, as they would have no interest, and would be bound to pay the whole over to the assignee of the plaintiff, and if this exposition be correct, the amount due under the *videlicet* is material, and the verdict should be for the defendant. We do not think, however, the amount of the debt at the time of the assignment was of any importance; it is still an assignment by way of security only; and if the assignees, by the order of the Court, lend the money on other security, there would be a surplus applicable to the insolvent's creditors, and the possibility of that surplus would vest a title to recover in the assignees. In this case the only question was whether the debt was due to Raby at the time of the assignment, and not at the time of the vesting order, when the title of the assignees accrued, and their right to the debts and effects of the insolvent determined. Admitting, for the sake of argument, that the debt accrued at the time of the vesting order, when the defendant's title accrued, there would be an answer to the assignees' *primâ facie* right to the debts due to the insolvent; but that is not the case if the debt accrued at the prior period. We are of opinion that the right of the assignees to sue is the same whether the sum is less, equal to, or greater than the debt assigned, consequently the amount mentioned under the *videlicet* is immaterial, and the verdict was rightly found for the plaintiff. The case of *Dangerfield* v. *Thomas* (9 Ad. & El. 293) was cited to shew that if the debt due to the plaintiff was equal to or greater than the debt assigned, the title to sue would continue in the assignees; but it does not appear that the arguments at the bar there raised the points in this case, and the assigning of the debt at the time of the bankruptcy was not averred. Whether that circumstance would make any difference in this case—whether, in a simple assignment of the debt, the assignees have no power to sue, it is unnecessary now to determine; nor is it necessary to determine whether the replication is good upon the face of it. To raise that question the defendant must bring a writ of error. —— *Rule discharged.*

Jan. 17 *and* 18.

WOOD *v.* LEDBITTER.

Conveyance of interest in land—License, when revocable.

A right to pass into and through, and to remain upon the lands of another, cannot be created except by deed.

A mere license, though under seal, is revocable.

A license, together with a grant, invalid for want of a seal, is a mere license, and therefore revocable.

A license coupled with a grant, though not under seal, the grant in its nature not requiring a seal, is irrevocable.

When A, in consideration of a certain sum paid by B, gives B a card, licensing him to enter upon, to quit, and to re-enter, or to remain upon land of A during a specified time: A may, before the expiration of such time, determine the license, and may eject B as a trespasser, without returning the consideration upon which the license was granted.

Quære, could B maintain an action for breach of contract against A, or against those who issued the card under his authority? (*a*)

A rule having been obtained for a new trial, cause was shewn against the rule by

Kelly, Q.C. *Wortley*, Q.C. *Martin*, Q.C. and *Peacock*, on behalf of the defendant.

Jerris, Q.C. *Humfrey*, and *Petersdorff* were heard in reply.

The arguments are embodied in the judgment of the Court. *Cur. adv. vult.*

JUDGMENT.

Afterwards (22nd January) the judgment of the Court was delivered as follows, by ALDERSON, B.—In the case of *Wood* v. *Ledbitter*, which was heard before Rolfe, B. the Lord Chief Baron, and myself. This was an action tried before my brother Rolfe at the sittings after last Trinity Term. It was an action for an assault and false imprisonment. The plea (upon which alone any question arose) was, that at the time of the alleged trespass the plaintiff was in a certain close of Lord Eglinton's, and the defendant, as the servant of Lord Eglinton, and by his command, laid his hands upon the plaintiff in order to remove him from the said close, using no unnecessary violence.

The replication was, that at the time of such refusal the plaintiff was in the said close by the leave and license of Lord Eglinton. The leave and license was traversed by the defendant, and issue was joined on that traverse. On the trial, it appeared that the

(*a*) In delivering the judgment of the Court, Lord Denman, C. J. there said, "The rule of law is clear, that where one, by his words or conduct, wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time."

(*a*) See *Carrington* v. *Roots* (2 M. & W. 248; Sug. Ven. and Pur. 139, 140); *Jones* v. *Flint* (10 Ad. & E. 753).

place from which the plaintiff was removed by the defendant was the inclosure attached to and surrounding the Great Stand on the Doncaster Racecourse; that Lord Eglinton was steward of the races there in the year 1843; that tickets were sold in the town of Doncaster at one guinea each, which were understood to entitle the holders to come into the stand and the inclosure surrounding it, and to remain there every day during the races. These tickets were not sealed, nor were they signed by Lord Eglinton, but it must be assumed they were issued with his privity. It further appeared that the plaintiff, having purchased one of these tickets, came to the stand during the races of the year 1843, and was there or in the inclosure while the races were going on. And while there, and during the races, the defendant, by the order of Lord Eglinton, desired him to depart, and gave him notice that if he did not go away force would be used to turn him out. It must be assumed that the plaintiff had in no respect misconducted himself, and that if he had not been requested to depart, his coming upon and remaining in the inclosure would have been an act justified by his purchase of the ticket. The plaintiff refused to go, and thereupon the defendant, by the order of Lord Eglinton, forced him out, using no unnecessary violence. My brother Rolfe, in directing the jury, told them that, assuming the ticket to have been sold to the plaintiff under the sanction of Lord Eglinton, still it was lawful for Lord Eglinton, without returning the guinea, and without assigning any reason for what he did, to order the plaintiff to quit the inclosure; and that if they, the jury, were satisfied that notice was given to the plaintiff requiring him to quit the ground, and that before he was forcibly removed by the defendant a reasonable time had elapsed during which he might have conveniently gone away, then the plaintiff was not, at the time of the removal, on the place in question by the leave and license of Lord Eglinton. On this direction the jury found a verdict for the defendant. In last Michaelmas Term *Jervis* obtained a rule *nisi* to set aside the verdict, for misdirection, on the ground that, under the circumstances, Lord Eglinton must be taken to have given the plaintiff leave to come into and remain in the inclosure during the races; that such leave was not revocable, at all events, without returning the guinea, and so that, at the time of removal, the plaintiff was in the inclosure by the leave and license of Lord Eglinton. Cause was shewn during last Term, and the question was argued before my Lord Chief Baron, my brother Rolfe, and myself, and on account of the conflicting authorities cited in the argument we took time to consider our judgment, which we are now prepared to deliver. That no incorporeal inheritance affecting land can either be created or transferred, otherwise than by deed, is a proposition so well established that it would be mere pedantry to cite authorities in its support. All such inheritances are said emphatically to lie in grant, and not in livery, and not to pass by the mere delivering of the deed. In all the authorities and text-books upon the subject, a deed is always stated or assumed to be indispensably requisite: and though the older text-books speak of incorporeal inheritances, yet there is no doubt but that the principle does not depend on the quantity of interest granted or transferred, but on the nature of the subject-matter. A right of common, for instance, which is a profit *à prendre*, or a right of way, which is an easement, a right in nature of an easement, can no more be granted or conveyed for life or for years without a deed than in fee-simple. Now, in the present case, the right claimed by the plaintiff is a right during a portion of each day, for a limited number of days, to pass into and through, and to remain on, a certain close belonging to Lord Eglinton—to go and remain where, if he went, he would, but for the ticket, be a trespasser. This is a right affecting land at least as obviously and extensively as a right of way over the land; it is a right of way, and something more, and if we had to decide this case on general principles only, and independently of authority, it would appear to us perfectly clear that no such right could be created otherwise than by deed. The plaintiff, however, in this case, argues that he is not driven to claim the right in question strictly as grantee. He contends that, without any grant from Lord Eglinton, he had license from him to be in the close in question at the time when he was turned out, and that such a license was, under the circumstances, irrevocable. And for this he relies mainly upon four cases, which he considers to be expressly in point for him, viz. *Webb* v. *Paternoster* (reported in five different books, namely, Palmer, 71; Rolle, 143 and 152; Noy, 98; Popham, 151; and Godbolt, 282); *Wood* v. *Lake* (Sayer, 3); *Taylor* v. *Waters* (7 Taunt. 374); and *Wood* v. *Manley* (11 Adol. & El. 34).

As the argument of the plaintiff rested almost entirely on the authority of these four cases, it is very important to look to them minutely, in order to see the exact points they severally decided. Before, however, we proceed to this investigation, it may be convenient to consider the nature of a license, and what are its legal incidents, and for this purpose we cannot do better than refer to Lord Chief Justice Vaughan's elaborate judgment in the case of *Thomas* v. *Sorrell*, as it appears in his Reports. The question there was as to the right of the Crown to dispense with certain statutes regulating the sale of wine, and to license the Vintners' Company to do certain acts, notwithstanding these statutes. In the course of his judgment the Chief Justice says, a dispensation or license properly passeth no interest, nor alters or transfers property in any thing, but only makes an action lawful which, without it, had been unlawful; as a license to hunt in a man's park, to come into his house, are only actions which without license had been unlawful; but a license to hunt in a man's park and carry away the deer killed to his own use,—to cut down a tree in a man's ground and to carry it away the next day after to his own use, are licenses as to the acts of hunting and cutting down the trees; but as to the carrying away the deer killed and the tree cut down, they are grants. So to license a man to eat my meat, or to fire the wood in my chimney, to warm him by; as to the actions of eating, firing my wood and warming him, they are licenses, but it is consequent necessarily to those actions that my property be destroyed in the meat eaten and in the wood burnt. So as in some cases by consequent, and not directly, and has its effect; a dispensation or license may destroy and alter the property.

Now attending to this passage in conjunction with the title License in Brook's Abridgment, from which, and particularly from paragraph 15, it appears that a license is in its nature revocable, we have before us the whole principle of the law on this subject. A mere license is revocable; but that which is called a license is often something more than a license, it often comprises or is connected with a grant, and then the party who has given it cannot in general revoke it so as to defeat his grant to which it was incident. It may further be observed, that a license under seal (provided it be a mere license) is as revocable as a license by parol, and, on the other hand, a license by parol coupled with a grant, is as irrevocable as a license by deed, provided only that the grant is of a nature capable of being made by parol; but where there is a license by parol coupled with a parol grant, or pretended grant, of something which is incapable of being granted otherwise than by deed, there the license is a mere license, it is not an incident to a valid grant, and it is therefore revocable.

Thus a license by A to hunt in his park, whether given by deed or by parol, is revocable. It merely renders the act of hunting lawful, which, without the license, would have been unlawful. If the license be, as put by Chief Justice Vaughan, a license not only to hunt, but also to take away the deer when killed to his own use, this is in truth a grant of the deer with the license annexed to come on the land; and supposing the grant of the deer to be good, then the license would be irrevocable by the party who had given it. He would be estopped from defeating his own grant or act in nature of a grant. But supposing the case of a parol license to come on any land, and there to make a watercourse to flow on to the land of the licensee; in such a case there is no valid grant of the watercourse, and the license remains a mere license, and therefore capable of being revoked. On the other hand, if such a license were granted by deed, there the question would be on the construction of the deed, whether it amounted to a grant of the watercourse, and if it did, then the license would be irrevocable.

Having premised these remarks on the general doctrine, we will proceed to consider the four cases relied on by Mr. Jervis for the plaintiff. The first was *Webb* v. *Paternoster*. That, as appears from the report in Rolle, was an action in trespass, brought against the defendant for eating by the mouth of his cattle the plaintiff's hay. The defendant justified under Sir William Plummer, the owner of the fee of the close in which the hay was, averring that Sir William Plummer leased the close to him, and, therefore, as lessee, he turned his cattle into the close, and they ate the hay. The plaintiff replied, that, before the making of the lease, Sir William Plummer had licensed him to place the hay on the close till he could conveniently sell it; and that before he could conveniently sell it, Sir William Plummer leased the land to the defendant. The defendant demurred to the replication.

From the arguments as given in Rolle, it appears that the plaintiff's counsel, who was first heard, contended, first, that the plaintiff's license being a license for profit, and not merely for pleasure, and being also for a certain time only, namely, till he could sell his hay, was not revocable; and, secondly, if the license was revocable, still that the lease to the defendant was no implied and not an express revocation, and therefore was inoperative against him without notice; and for this he referred to *Molloy's* case (5 Reports, 111). To this latter proposition the Court appears to have assented; but Dodderidge, J. suggested that, even if the license was in force, still the licenser did not by such a license preclude himself, nor consequently his tenant, from turning cattle on the land, and that the licensee ought to have taken care to protect the hay from the cattle; as to this, however, the Chief Justice expressed a doubt.

The defendant's counsel was heard some days afterwards, and he alleged that it appeared by the record the plaintiff had had two years to sell his hay before the defendant's cattle had eaten it; and he argued that the Court would say, as a matter of law, that this was more than a reasonable time, and to this the Court assented.

The plaintiff's counsel, in reply, adverted to the distinction between a license for profit and a license for pleasure; but Dodderidge denied it, and said, that a license to dig gravel, though a license for profit, is revocable; and he said that the true distinction was between a mere license and a license coupled with an interest. Houghton, J. said, that a license executed was irrevocable; but a license executory was revocable. Judgment was eventually given for the defendant, on the ground that the plaintiff had had more than reasonable time to sell the hay. It will be seen, therefore, that the only two points decided were, first, that the question of reasonable time was for the Court, and not for the jury; secondly, that two years was more than a reasonable time.

The decision, therefore, itself has no bearing on the point for which it was cited; and the only support which the case affords to the doctrine contended for by the present plaintiff is from what is said in the report of the case in Popham to have been agreed by the Court, namely, that license for profit for a time certain is not revocable—a proposition to which, with the qualification we have already pointed out, we entirely accede. It is, moreover, by no means certain that the license in *Webb* v. *Paternoster* was not a license under seal.

The defendant's counsel appears, from the report in Rolle, to speak of the plaintiff as grantee of the liberty to stack hay, &c. an expression not very appropriate, if used in respect of a party who had a mere parol license, and the Chief Justice, according to the report in Popham and Palmer, says, that the plaintiff had an interest which charged the land, into whose hands soever it should come. And Dodderidge, J. according to the report in Palmer, arguing that the lessee certainly might turn his cattle into his own field, and was not bound to stop their mouths, says, "It was the folly of the plaintiff that he did not, together with the license, take a covenant that it should be lawful for him to fence the hay with a hedge." From these expressions (and there are others to the various reports of the case, having a similar aspect), it certainly seems possible that the license was under seal, and then the only point would be, that which alone was in fact decided, namely, whether, supposing the plaintiff to have acquired by grant a right to stack his hay on the land for a limited time, that limited time had expired. Even supposing the license to have been a mere parol license, yet the strong probability is, that Webb had purchased the hay in question of Sir William Plummer, as a growing crop, with liberty to stack it on the land, and then the parol license might be good, as a license coupled with an interest. Be this, however, as it may, the decision, as we have already pointed out, has very little or rather no bearing on the case before us; and the judgment of Dodderidge, J. as given both in Rolle and Palmer, is in strict accordance with what was afterwards laid down by Vaughan, C. J. and which we consider to be consonant both to reason and authority.

The next decision in order of time is that of *Wood* v. *Lake* (in Sayer, page 3).

There the defendant had, by a parol agreement, given liberty to the plaintiff to stack coals on the defendant's land for a term of seven years: after the plaintiff had enjoyed this privilege for three years, the defendant locked up the gate of the close.

No report is given in Sayer of the argument at the bar, but, from a manuscript of the same case referred to by Lord Chief Justice Gibbs, in the case of *Taylor* v. *Waters*, we have had an opportunity of consulting, through the kindness of the representatives of the late Mr. Justice Burroughs, it appears that the argument turned only on the point whether the privilege of stacking the coals did or did not amount to a lease; for if it did, then the defendant contended it was void after three years, under the Statute of Frauds, as not being in writing. Lee, C. J., and Dennison, J., held it to be no lease nor uncertain interest in land; but Foster, J. doubted, and desired time to consider. On the last day of Term the Court gave judgment for the plaintiff (Foster *non dissentiente*), thus establishing the license to be irrevocable during the seven years.

Supposing the Court to have been right in deciding that this was not a lease (which, however, is doubted by Sir E. Sugden; see 1 Vendors and Purchasers, last edition, page 139), yet no grounds are stated on which it could be held good as an easement originating merely by parol.

Up to this case not a single decision is to be found giving countenance to any such proposition, and we are compelled to say that we do not think it can be supported.

The next case on which the plaintiff relies is *Taylor* v. *Waters*, reported in 7 Taunton, 374. It was an action by the plaintiff against the doorkeeper of the

Opera House, for preventing him from entering the house during the performance of an opera. It appeared that one William Taylor, being in possession of the Opera House, as lessee for a long term of years, by a deed dated the 24th August, 1792, assigned his interest therein to trustees, on various trusts for creditors and other claimants, and ultimately in trust for himself.

After the execution of this deed, Taylor continued in possession by permission of the trustees, and he carried on and managed the concerns of the theatre. In March 1799, he, by deed, granted to one Gourgas, for valuable consideration, six silver tickets, entitling the holders to admission to the theatre. One of these tickets was sold by Gourgas to the plaintiff, in July 1799, but no deed of assignment to him was executed.

In 1800 Taylor's trustees took possession of the theatre. The plaintiff, however, was allowed to attend the theatre by virtue of his ticket, until the year 1814, when the defendant Waters, as servant of the trustees, prevented him from entering the theatre, and for this obstruction the action was brought. The cause was tried before Chief Justice Gibbs, and a verdict was found for the plaintiff, and that verdict was afterwards upheld by the Court of Common Pleas. The grounds of the judgment were that the right under the silver ticket was not an interest in land, but a license irrevocable to permit the plaintiff to enjoy certain privileges therein; that it was not required by the Statute of Frauds to be in writing, and, consequently, that it might be granted without a deed. The Chief Justice, in support of that doctrine, relied on *Webb* v. *Paternoster*, which, he said, shewed that a beneficial license to be exercised upon land might be granted without deed, and could not be countermanded, at least, after it had been acted upon. The same case, he added, shewed that the interest was not such an interest in land as was required by the Statute of Frauds to be in writing, as to which last point all doubt, if there remained any, had been removed by the case of *Wood* v. *Lake*. This judgment is stated by the learned reporter to have comprised the substance of the argument on both sides, and which, therefore, he does not give in his report. We must infer from this that the attention of the Court was not called in the argument to the principles and earlier authorities to which we have adverted. Brook, in his Abridgment, Dodderidge, in the case of *Webb* v. *Paternoster*, and Lord Ellenborough, in the case of *Rex* v. *Hawdon-on-the-Hill*, all state, in the most distinct manner, that every license is, and must be in its nature, revocable, so long as it is a mere license. Where, indeed, it is connected with a grant, there it may, by ceasing to be a naked license, become irrevocable; but then, it is obvious that the grant must exist independently of the license, unless, indeed, it be a grant capable of being made by parol.

Now, in *Taylor* v. *Waters* there was no grant of any right at all, unless such right was conferred by the license itself. Chief Justice Gibbs gives no reason for saying the license was a license irrevocable, and we cannot but think he would have paused before he sanctioned a doctrine so entirely repugnant to principle and to the earlier authorities, if they had been brought before the Court.

Again, the Chief Justice is represented as saying that the interest of the plaintiff was not an interest in land within the Statute of Frauds, and that consequently it might be granted without deed. How the circumstance that the interest was not an interest in land within the Statute of Frauds shewed it to be grantable without deed, we cannot discover. The precise point decided in *Webb* v. *Paternoster* is not adverted to, and it is assumed without discussion, that the license there must have been a parol license and a naked license, unconnected with an interest capable of being created by parol. With all deference to the high authority from which the judgment in *Taylor* v. *Waters* proceeded, we feel warranted in saying that it is to the last degree unsatisfactory, an observation which we have the less hesitation in making in consequence of its having obviously been doubted by the Court of Queen's Bench and Mr. Justice Bayley, in the case of *Hewlins* v. *Shippam*.

The fourth and last case relied on by Mr. Jervis was the recent case of *Wood* v. *Manley*, in the Queen's Bench (11 Adol. & El. 34). That was an action of trespass *quare clausum fregit*. The plea was that the defendant was possessed of a large quantity of hay, being on the plaintiff's close, and that by the leave of the plaintiff he entered on the close in question to remove it. The replication *de injuriâ*. It was proved at the trial that the hay in question was sold in January 1838, by the plaintiff's landlord, who had seized it on a distress for rent. The conditions of the sale were that the purchaser of the hay might leave it on the close until Lady-day, and might, in the meantime, come on the close from time to time as often as he should see fit to remove it. These conditions were assented to by the plaintiff. The defendant became purchaser, and afterwards and before Lady-day the plaintiff locked up the close. The defendant broke open the gate in order to remove the hay. A verdict was found for the defendant, Erskine, J. telling the jury that the license to come from time to time to remove the hay was irrevocable. Mr. Crowder moved to set aside this verdict, on the ground that the license was necessarily revocable, and was in fact revoked, but the Court of Queen's Bench refused to grant a rule, and we think quite rightly. This was a case not of a mere license, but of a license coupled with an interest. The hay, by the sale, became the property of the defendant, and the license to remove it therefore became, as in the case of the tree and the deer put by Vaughan, C. J., irrevocable by the plaintiff, and the rule was properly refused. It appears, therefore, that the authorities really supporting the present plaintiff in the proposition for which he is contending are confined to the two cases of *Wood* v. *Lake* and *Taylor* v. *Waters*, in neither of which was the real difficulty discussed or even stated. It was in both cases taken for granted that if the Statute of Frauds did not apply, a parol license was sufficient, and the necessity of an instrument under seal, by reason of the interest in question being a right in nature of an easement, was by some means kept entirely out of sight; and for these reasons, even if there had been no conflicting decisions, we should have thought these very cases to be very unsafe guides in leading us to a decision on an occasion where we are called on to lose sight of the ancient land-marks of the common law.

We are not, however, driven to say that we shall disregard these cases merely on principle, giving to them the full weight of judicial decision. They are met by several others which we must entirely disregard before we can adopt the arguments of the plaintiffs. In the cases of *Fentimore* v. *Smith* (4 East, 107) and *Rex* v. *Hawdon-on-the-Hill* (4 Maule & Selwyn, 565), which were before *Taylor* v. *Waters*, Lord Ellenborough and the Court of Queen's Bench expressly recognized the doctrine that a license is no grant, and that it is in its nature necessarily revocable; and they further declare that, in order to confer an incorporeal right, an instrument under seal is essential; and in the elaborate judgment of the Court of Queen's Bench, given by Mr. Justice Bayley in *Hewlins* v. *Shippam* (5 Barn. & Cress. 221), the necessity of a deed for creating an incorporeal right was expressly recognized, and formed the ground for the decision. It is true that the interest in question in that case was a freehold interest, and on that ground Mr. Justice Bayley suggests that it might be distinguished from *Wood* v. *Lake* and *Taylor* v. *Waters*; but in an earlier part of that judgment he states, conformably to what is clear law, that in his opinion the quantity of interest made no difference; and the distinction is evidently adverted to by him, not because he entertained the opinion that it really was of importance, but only in order to enable him to decide that case, without in terms saying that he did not consider the case of *Taylor* v. *Waters* to be law. The doctrine of *Hewlins* v. *Shippam* has since been recognized and acted upon in *Bryan* v. *Whistler* (8 Barn. & Cress. 288); *Cocker* v. *Cooper* (1 Cromp. Mees. & Ros. 418); and *Wallace* v. *Harrison* (4 M. & W. 538); and it would be impossible for us to adopt the plaintiff's view of the law without holding all those cases to have been ill decided. It was suggested that in the present case a distinction might exist by reason of the plaintiff having paid a valuable consideration for the privilege of going on the stand; but this can make no difference. Whether it may give the plaintiff a right of action against those from whom he purchased the ticket, or those who authorized its being issued and sold to the plaintiff, is a point not necessary to be discussed. Any such action would be founded on a breach of contract, and would not be the result of his having acquired by the ticket a right of going upon the stand in spite of the owner of the soil; and it is sufficient on this point to say that in several of the cases which we have cited (*Hewlins* v. *Shippam*, for instance, and *Bryan* v. *Whistler*), the alleged license had been granted for a valuable consideration, but this was not held to make any difference. We do not advert to the cases of *Winton* v. *Blackwell* (8 East, 308) and *Liggins* v. *Hinge* (7 Bing. 682), or other cases ranging themselves in the same category, as they were decided on grounds inapplicable to the case now before us, and were, in fact, admitted not to bear upon it. In conclusion, we have only to say that, acting on the doctrine relative to licenses as we find it laid down by Brooke, by Dodderidge, J. and Vaughan, C. J. and sanctioned by *Hewlins* v. *Shippam*, and the other modern cases proceeding on the same principle, we have come to the conclusion that the direction given to the jury at the trial was correct, and consequently that this rule must be discharged.

EXCHEQUER CHAMBER.

CLARKE v. THE LEICESTERSHIRE CANAL COMPANY.

Mandamus—Construction of private Acts.

The question whether the Court had authority to grant a mandamus, which is set out on the record, may be raised at any stage of the proceedings.

When mandamus sufficiently discloses the legal ground of complaint.

This case was argued some time since. As it turns almost entirely upon the construction of private Acts, it will be unnecessary to set out the argument. The following was the written judgment of the Court.

JUDGMENT.

TINDAL, C.J. delivered the judgment of the Court. —This was a writ of error upon a judgment given by the Court of Queen's Bench in favour of the defendants. The prosecutor had sued out a *mandamus* directed to the company, commanding them to make a uniform rate or toll along the whole line of the canal described in the *mandamus*, and that they should demand and take only a certain amount of toll therein also specified. To this *mandamus* the defendants had made their return, and the prosecutor had traversed several of the facts in such return; and upon a replication to the traverse, the Court of Queen's Bench had given judgment for the defendants, upon the ground that the matter discussed in the writ itself was insufficient to support such writ. Upon the argument before us, it was objected, on the part of the plaintiff in error, that at this stage of the proceedings it was not open to the defendants to fall back upon the writ of *mandamus*, and to rely upon any insufficiency of the writ itself; and the case of *Green and Others* v. *Pope* (Lord Raymond, 125) was relied upon as an authority for that point. The case cited, however, differs entirely from that which is before us. The case cited was that of an action brought in the Court of Common Pleas for a false return to a *mandamus* issued out of the Queen's Bench; and all that is observed by the Court upon that objection being made was, that the question whether the *mandamus* would lie or not was not before the Court; for that it must be taken *pro confesso* that the *mandamus* had been granted, and that a false return had been made; and in that case the plaintiff would have been entitled to damages only, not to a peremptory *mandamus*, as he would have been if the action had been brought in *Banco Regis*, in which court, however, if the first *mandamus* was defective, no peremptory *mandamus* would have gone. But here we are called upon to say whether the Court of Queen's Bench had authority to give the *mandamus* which is set out upon the record itself, and the case of *Rex* v. *The Margate Pier Company* (3 B. & Ald. 220) we think a decisive authority that such question may be raised in any stage of the proceedings. And upon the question whether the *mandamus* does or does not upon the face of it disclose the legal ground of complaint, as we agree in the conclusion at which that Court has arrived, it will be unnecessary to do more than to state shortly the view we take of the mandatory part of the writ, when compared with the provisions of the statutes upon which it professes to be founded. The writ calls upon the proprietors of the canal company to do one out of two things, namely, either to make a uniform rate of tolls to be taken along the whole line of the canal, or to demand and take rates for the tonnage of all coals and coke which may be carried and conveyed upon the navigation and collateral cut from Leicester to Market Harborough only, equal in proportion to the rate which the company demand and take for the tonnage of coals and coke carried and conveyed from Leicester to Gumley upon the said navigation (within certain limits of toll mentioned in the writ). But as to the first of these proposed alterations, we are of opinion, referring to the provisions of the statutes 33 Geo. 3, and 51 Geo. 3, the company are not bound to comply with the exigency of the writ when so framed; for by the 67th section of the former Act, under which the canal from Leicester and the cut to Market Harborough were originally empowered to be made, the company are authorized to take a mileage toll of two-pence-halfpenny per ton per mile on all coals and coke to be navigated and conveyed upon the said navigation, canal, or collateral cut; and no authority is given to take any other than a mileage toll. It is unnecessary to refer to the statute 45 Geo. 3, recited in the writ, any further than to observe that although it varies the line of the navigation, it makes no alteration in the tolls to be taken thereon. But it is upon the 51 Geo. 3, c. 122, that the prosecutor relies as an authority to call upon the company to make a uniform rate of toll along the whole line of the canal. The Act itself, however, appears to us to bear no such construction. The mileage duty given by the first Act, from Leicester to Gumley, is nowhere repealed by it; on the contrary, the power of repealing such mileage toll is recited in the 70th section of this Act, which is stated to amount to 3s. 9d. per ton from Leicester to Gumley; and the statute, after reciting, further, that the company or proprietors of the Leicestershire and Northamptonshire Union Canal had agreed to reduce that toll from 3s. 9d. per ton to 2s. 6d. on coals and coke passing from that canal into the Grand Union Canal, and carried along the same any distance not exceeding ten miles; and 2s. 1d. per ton on coals and coke passing from their canal into the Grand Union Canal, and carried along the same more than eighteen miles, that section enacts that in the respective cases mentioned, the Leicestershire and Northamptonshire Union Canal Company shall not take more than those sums. Had it been intended that a corresponding reduction should be made in other cases, it would no

doubt have been provided for; and, in the absence of any such provision, it appears to us that, notwithstanding the restriction put upon the rights of the company in the two cases specified, their rights in all others remained unaltered. Moreover, this very clause sanctions the taking of two different amounts for coals, &c. carried the same distance along the Union Canal, namely, from the north end to Gumley, and is altogether inconsistent with the idea that the legislature intended to impose on the company the necessity of making an equal mileage toll in every case. If the Union Canal Company had continued to exact the maximum in each of the two cases provided for by the section above referred to, they would still have been taking less than the mileage toll originally granted and exacted in other cases; but it would have been impossible to maintain that they were bound to make a corresponding reduction in all cases. If bound to reduce the toll in all cases, must the reduction have been from 3s. 9d. to 2s. 6d. or from 3s. 9d. to 2s. 1d.? The granting of those two different sums in respect of the same distance rendered the principle of an equal mileage duty inapplicable to the cases specified, and a reduction in those cases could not make a reduction necessary in others; and as each of those sums is mentioned as a maximum, and not a fixed amount to be always levied, the company had power to reduce them; and the principle of a mileage duty was no more applicable after such reduction than before. And as to the second branch of the mandatory part of the writ, it appears to us, as it did to the Court below, to be virtually and substantially the same as the first branch, and therefore that it must receive the same answer as the first. We therefore think that, by reason of the insufficiency of the writ, judgment should be given for the defendants in error.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Thursday, Feb. 27.
(Before Mr. Commissioner HOLROYD.)
Re CLARKE.
Bill of sale.

An insolvent having given a bill of sale of his household goods, furniture, and stock in trade, and contracted a subsequent debt, does so without reasonable assurance of being able to pay, and is not entitled to the benefit of the Act.

This case had been adjourned from a former day, in order that the insolvent might file a copy of a bill of sale which had been given by him to a Mr. Nash, about four years ago, whereby he had assigned all his household goods, furniture, stock in trade, &c. for securing the sum of 100*l.* and interest, such bill containing a clause that he (the insolvent) was to continue in possession until he should have received one month's demand of the principal money and interest, and that, in default in payment, Nash was to enter and take possession.

The insolvent was supported by *Galsworthy* and *Nichols*, and opposed by *Cranch* (solicitor) on behalf of a creditor named Cobb.

It appeared that the insolvent had contracted this debt with Mr. Cobb at or about the time notice was given to the insolvent by Nash of default in payment, and that it was his intention to enter the premises under the power contained in the bill of sale. He did so enter at the expiration of the month, and took possession of everything belonging to the insolvent. It was submitted by the opposing solicitor, that the insolvent having contracted this debt to Mr. Cobb during the time this bill of sale was hanging over his head, he could have had at that time no reasonable expectation of being able to pay, and consequently he had no right to come to the Court for the benefit of the Act of Parliament.

His HONOUR having stated the substance of the bill of sale, said that although the Act of Parliament of which the insolvent sought the benefit had not been passed at the time of the execution of the bill of sale, still there were certain other matters requisite to give the insolvent a *locus standi* in this court; and that the insolvent having, by the bill of sale, parted with his interest in his furniture and stock in trade, had contracted this debt without a reasonable assurance of being able to pay the same, and consequently his case must be adjourned *sine die*.—Adjourned accordingly.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.
(Before Mr. Commissioner Serjt. STEPHEN.)
Monday, Feb. 24.
Re JOHN JONES.

All blanks in an insolvent's petition must be filled up before presentation, otherwise they constitute a fatal objection.

An opposing creditor is entitled to call for an adjournment of a case, where insolvent has omitted to file copies of deeds under which he has an interest.

Where an insolvent has mortgaged all his property, and kept no copy of the mortgage, opposing creditors cannot insist on the attendance of the mortgagee, at the insolvent's expense, but must summon him to produce the mortgage as their own witness, and at their own cost.

In this case, the insolvent, who had been discharged from custody by an order of the Commissioner, came up for his first hearing.

Homes, for the creditors, pointed out a blank which had been left in that clause of the petition where the insolvent should have inserted the value of his estate: this might be considered a fatal objection, if insisted on (see *Re Adams*, p. 378, *antè*); but as the opposing creditors wished to punish insolvent without allowing his estate to revest in him, they would consent to the blank being filled up now.

His HONOUR.—It is a mistaken notion, that where an estate is of no value, the blank left in the form of petition prescribed by the Act (7 & 8 Vict. c. 96) need not be filled up: *all* the blanks must be filled up: where an estate is worth nothing, it should be stated in the petition as worth *nothing*. In future, no petition will be received with any blanks left unfilled up; but in the present instance, as the creditors consent, the blank may be filled up.

Homes then stated that the insolvent had mentioned in his schedule that he was entitled to some interest in a cottage held under a lease from the Duke of Beaufort, and to a reversionary interest in property under a marriage settlement; copies of these documents should have been filed with the petition, so that the creditors might have examined them before the hearing. He asked for an adjournment until these copies were filed.

His HONOUR.—You are entitled to an adjournment of the case on this ground—the copies must be filed ten days before the day of adjournment.

Homes then mentioned that it appeared by the schedule that the insolvent, shortly before his petition, had mortgaged all his property, of every description, to Mr. Philip Price, his attorney, for securing a sum of 486*l.* He applied for an order that a copy of this mortgage should be filed, and that Mr. Price, the mortgagee, should be produced at the expense of the insolvent.

The insolvent swore that he had kept no copy of the mortgage; that he had applied to the mortgagee for a copy, who had refused to give it, or to attend without having his expenses first paid; and that he had no money whatever.

His HONOUR.—Under these circumstances, I cannot order the insolvent, at his own expense, to bring the mortgagee here; for he swears that he is worth nothing; and if that statement be true, such an order would be tantamount to adjourning his case *sine die*; indeed it would be ordering him to perform an impossibility. Unless the creditors can shew that the insolvent has property, they must summon the mortgagee at their own expense to produce the mortgage as their witness. *Adjournment accordingly.*

Monday, March 3.
Re OLIVER and HASTINGS.
Bankrupt's balance-sheet.

This was a meeting for the last examination of the bankrupts. *Stone* appeared to support them, and *Homes* attended on behalf of the assignees.

On the debtor side of the balance-sheet, after inserting the amount of capital brought by each of the bankrupts into their business, the next item was as follows:—

"1840, July 20, to 1844, July 4.
"To amount of debts contracted for valuable considerations during this period, and remaining unpaid upon the latter day £2,852 11 3

and on the creditor side of the balance-sheet, the first item was as follows:—

"1844, July 4.

"By amount of good debts due to the estate at this time	£654 12 7¼	
By bad debts . . .	412 1 2	
By doubtful debts . . .	70 3 4½	
		1,136 17 2"

but no reference was made to any accompanying lists setting out the various particulars of the debts included in the foregoing items, nor were any such lists filed with the balance-sheet.

Homes objected to the balance-sheet on account of this defect; wherever a bankrupt in his balance-sheet inserts, in one item, the aggregate amount of a number of items, a list should be annexed to the balance-sheet, which list must contain full particulars of all the smaller items.

His HONOUR.—That is the correct course; the bankrupts must furnish the assignees with full lists of the various debts included in the two items of 2,852*l.* 11s. 3d. and 1,136*l.* 17s. 2d.; the one list must contain the dates, creditors' names, residences, and amounts; the other list must contain the dates, debtors' names, residences, amounts, and statement as to each debt being good, bad, or doubtful.

Homes then pointed out an item on the debtor side of the balance-sheet of

"Profits of business for four years . £1,300."

The bankrupts had inserted their trade expenses on the creditor side, so that if the above profits of 1,300*l.* were ascertained by deducting the trade expenses from the gross receipts, the bankrupts would have the advantage of such trade expenses being twice taken into their account.

His HONOUR.—It appears from the examination of the person who made out this balance-sheet, that the item of 1,300*l.* was ascertained as the *net profits* of the business, by deducting the capital and trade expenses from the gross receipts. That being the case, those expenses must be taken to be included in the item of profits, and the bankrupts cannot again take credit for them in the balance-sheet; that would be crediting themselves with the same payments twice over. The trade expenses must be taken out of the balance-sheet, or the gross receipts must be inserted in the place of the above item of net profits.

Adjourned to file a new balance sheet.

Nisi Prius.

COURT OF EXCHEQUER, GUILDHALL.
(*Sittings after Hilary Term.*)
Monday, Feb. 17.
MOLYNEUX *v.* OVERSTONE.

Change in the ordinary form of referring causes to arbitration in this Court.

In assumpsit where plaintiff, by his particulars, claims a balance, and the defendant pleads a set-off, the Court, where the items of an account are very numerous, will allow the plaintiff to stop when he has proved an amount equal to the balance claimed. The defendant then proves as much as he can, and the plaintiff may again proceed with additional evidence to neutralize the amounts proved by defendant.

This was an action of assumpsit to which a set-off, with other pleas, was pleaded. The particulars claimed a certain balance of an account running over a considerable period of time, and consisting of many minute items. The defendant resisted every attempt that was made to have the cause referred.

Martin and *Lush*, for the plaintiff, having proved an amount equal to the balance claimed, were about to give evidence of the whole account.

POLLOCK, C. B.—You have, Mr. Martin, proved more than your balance, and I shall now let you stop. The defendant may begin, and may prove as much as he can, and then the plaintiff may commence afresh.

Granger and *James*, for the defendant, complained of the inconvenience to which their client would be subjected by having the case thus laid before him piecemeal.

POLLOCK, C. B.—That cannot be avoided. It is impossible that I can permit the public time to be wasted by continuing proof of items such as these, when possibly such proof may, in the end, not be necessary. If your client refuses to refer a cause so more fit for an arbitrator than for a jury to decide, he must submit to the consequences.

The defendant, after some further hesitation, consented to refer, and

POLLOCK, C. B. observed:—I wish to suggest the expediency of altering the usual form of reference in this court, and that it should be declared sufficient for the arbitrator to decide the cause generally for the plaintiff or the defendant, without requiring a decision on each specific issue, unless either of the parties should call for it. A number of awards were set aside last Term for no other reason than that they did not follow the requisition of the order, that each individual issue should be separately decided.

Circuit Reports.

WESTERN CIRCUIT.
HANTS LENT ASSIZES.
(Before Mr. Justice ERLE.)
REG. *v.* CHRISTANCE and CHARDET.

Evidence of the deposition of a prisoner being a marksman.

Semble, that an indictment for stealing so many pounds of copper will not be supported by proof that copper nails were stolen.

In this case, after the prisoners (Dutchmen) had been asked, through an interpreter, if they would be tried by a jury *de medietate*, but had declined, and an interpreter had been duly sworn,

Sewell, for the prosecution, in the course of the evidence proposed to put in a statement made by one of the prisoners before the magistrate. It was signed by the magistrate, but only had the mark of the prisoner. A person present at the examination deposed, that the clerk took the statement down in writing, and that afterwards the prisoner put his mark to it.

Rawlinson objected that a paper could not be identified by a mark.

Proof was then given of the signature of the magistrate; but

Rawlinson still objected this was insufficient, for the identity of the statement produced was not proved.

It was then proved that the statement was in the handwriting of the clerk of the peace, who was since dead; and that, when finished, it was handed over to the prisoner, and that he put his mark upon it; but the witness would not swear to the mark.

Rawlinson still objected that the proof was insufficient.

ERLE, J. then called the interpreter who had been present at the examination, and had translated to the prisoner all that took place. The interpreter, after reading the examination over, stated, in answer to questions put by his lordship, that he heard the prisoner make a statement in Dutch, that he translated it, and saw the clerk write the translation down, and, to the best of his belief, the words in the statement produced were the English words. His lordship then read the following passage from Russell on Crimes, vol. ii. 885:—"In *Smith's* case (2 Lew. 139), a writing, purporting to be the examination of a prisoner, and to bear his mark, was tendered in evidence, and the magistrate's signature proved by a bystander, who stated that the clerk was writing when the prisoner was examined, and when the examination was finished he repeated to the prisoner, apparently from the paper, what the prisoner had said; the prisoner then put his mark to the paper; but whether the prisoner's statement was taken down correctly, or at all, he had no means of judging. *Rex.* v. *Chapell* was cited, but Parke, B. was disposed to admit the examination, as he thought there was sufficient *primâ facie* evidence that the prisoner's examination was taken down in fact as the law requires, and if so, it must be presumed to have been taken down correctly, and read over correctly, until the contrary was proved." His lordship then admitted the deposition.

Rawlinson, at the end of the case for the prosecution, objected that the indictment was bad, for it charged the prisoner with stealing ten pounds of copper, and it appeared that the articles were copper nails, and they should have been so described, citing Archl Cr. Laws, 48.

ERLE, J. was inclined to hold the objection good, but suggested that as they were foreigners, and there seemed little evidence against them, it would be more satisfactory that the case should go to the jury, reserving the full benefit of the objection if it should become necessary.

Rawlinson, on the part of the defendants, assented to this, and the prisoners were found

Not Guilty.

THE LEGISLATOR.

Summary.

THE business of Parliament, though having great public moment, is still without professional interest.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Tuesday, March 4.

Field Gardens—"to promote the letting of Field Gardens to the Labouring Poor."

Wednesday, March 5.

Smoke Prohibition—"to prohibit the nuisance of Smoke from furnaces or manufactories."

Consolidated Fund, 8,000,000*l.*—"to apply a sum out of the Consolidated Fund to the service of the year 1845."

BILLS READ A SECOND TIME.

Thursday, March 6.

Bastardy Bill.

Consolidated Fund, 8,000,000*l.*

BILLS READ A THIRD TIME AND PASSED.

Tuesday, March 4.

Companies Clauses Consolidation.

Companies Clauses Consolidation, Scotland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, February 28.

Manchester, Bury, and Rossendale Railway.

York and North Midland Railway, Bridlington Branch.

Britten's Divorce.

Monday, March 3.

Newcastle and Darlington Railway.

Eastern Counties Railway.

Southampton Docks.

Tuesday, March 4.

Newcastle and Berwick Railway.

Manchester and Salford Waterworks.

Scottish Central Railway.

Harwell and Streatley Road.

Belfast and Ballymena Railway.

Lynn and Ely Railway.

Edinburgh and Glasgow Railway.

Wednesday, March 5.

Ulster Railway Extension.

Bradford Gas, York.

Scarborough Water.

Sheffield Waterworks.

Surrey and Sussex Roads.

York and North Midland Railway.

Forth and Clyde Navigation.

Cambridge and Lincoln Railway.

Oxford and Rugby Railway.

West Cornwall Railway.

Thursday, March 6.

Trent Valley Railway.

BILLS READ A SECOND TIME.

Monday, March 3.

Cromford Canal.

Bridgwater Navigation and Railway.

Chester and Holyhead Railway.

Thames Navigation Debt.

Manchester South Junction and Altrincham Railway.

Caledonian Railway.

Huddersfield and Manchester Railway.

Monkland and Kirkintilloch Railway.

Plymouth and Stonehouse Gas.

Devonport Gas and Coke.

Great Grimsby and Sheffield Junction Railway.

Glasgow, Dumfries, and Carlisle Railway.

London and York Railway.

Wakefield, Pontefract, and Goole Railway.

Nottingham Waterworks.

Birmingham and Staffordshire Gas.

Guildford, Chichester, and Portsmouth Railway.

Norwich and Brandon Railway.

Birkenhead Company's Docks.

Tuesday, March 4.

Huddersfield and Sheffield Junction Railway.

Whitby and Pickering Railway.

Leeds and Thirsk Railway.

Barnsley Junction Railway.

Wallasey Improvement.

Blackburn, Barnsley, Accrington, and Colne Railway.

Manchester, Bury, and Rossendale Railway.

Wednesday, March 5.

Britten's Divorce.

York and North Midland Railway, Bridlington Branch

PETITIONS.

Repeal of Attorneys' Certificate Duty.

Attorneys of North Allerton.

RETURNS ORDERED.

Clerks of the Peace—Address for "Return of the names of the Clerks of the Peace and deputy Clerks of the Peace, in every county in England and Wales, stating their profession (if any), the dates of their respective appointments, and by what Lord Lieutenant they have been appointed or sanctioned; the amount of money received by them from the county rates in each of the years ending the 20th day of January, 1841, 1842, 1843, 1844, and 1845; also the amount received from other sources in each of those years; the amount of money allowed by the Clerks of the Peace to their deputies in each of those years, or the amount of money allowed by the deputies to the Clerks of the Peace, as the case may be; also the names of the persons employed by them to draw bills of indictment, stating their profession, if any, and the amount paid by them for the same; stating whether the whole amount allowed for indictments by the county has been paid to them or not."—(Mr. Barneby.)

SESSIONAL PRINTED PAPERS.

Par. Num.

67. Bills—Physic and Surgery.
69. — College of Physicians and Surgeons.
75. — Justices' Clerks and Clerks of the Peace.
68. — Bastardy.
28. Mint—Account.
53. Medical Officers, Poor Law Unions—Return.
55. Wheat, Canada, &c.—Account.
60. Education in India—Papers.
72. Post-office—Return.
80. Sugar—Account.
639. (2) Session 1844 Trinity House, Deptford Strond—
41. Union Workhouses—Return.
61. Railways, Manchester and Leeds District—Report of the Board of Trade.
79. Royal College of Surgeons.
63. Bankruptcy—Annual Statement.
81. Auctions—Account.
82. Railway Bills—First Report of Committee.
23. Railways, South Eastern District—Map of Proposed Lines.
74. Steam Vessels—Return.
76. Lighthouses—Return.
83. (1.) Railways (Berks, Hants, Wilts, Dorsetshire, and Somersetshire)—Report of the Board of Trade.
83. (2.) Railways (Worcester, Wolverhampton, &c.)—Report of the Board of Trade.
85. Private Bills—Lists for Committees.

Occupation of Land in Ireland—Evidence, Part I.

70. Prisons, Scotland—Returns.
84. Northern Lights—Annual Account, &c.
88. Railways, Norfolk and Suffolk—Report of the Board of Trade.
89. Railways, Cornwall and Devonshire—Report of the Board of Trade.

PARLIAMENTARY PAPERS.

SUITORS' FUND.

The following is the Return from the Accountant-General of the Court of Chancery, pursuant to 5 Vict. c. 5, s. 63, from the 2nd October, 1843, to the 1st October, 1844.

PAYMENTS.	£	s.	d.	CASH. £	s.	d.
Paid Lord Chancellor's salary	..	..	..	10,000	0	0
Vice-Chancellor Knight Bruce	..	..		5,000	0	0
Vice-Chancellor Wigram	..	..	..	5,000	0	0
Eleven Masters' Salaries, at 2,500*l.* per annum (exclusive of one quarter of one Master's salary, due but not paid, 1st October, 1844)	26,875	0	0			
Accountant-general's salary as Master	600	0	0			
Total Masters				27,475	0	0
Accountant-general's salary	900	0	0			
Expenses of office, office-keeper, rates, stationery, &c.	450	0	0			
Twenty-two Clerks' salaries	6,010	0	0			
Pension to a retired Chief Clerk, 600*l.* and to a retired Clerk, 400*l.*	1,000	0	0			
Total Accountant-general's office				8,960	0	0
Two Examiners' salaries (in part), remainder being charged on the Suitors' Fee Fund	600	0	0			
Retired Examiner's Pension	200	0	0			
Retired Examiner's Clerk's Pension	100	0	0			
Total Examiners				900	0	0
Clerk of Affidavit's increased salary	..	..	..	300	0	0
Three Clerks to assist in the Report-Office	..	..	..	300	0	0
Officers of the Lord Chancellor's Court—						
Usher	300	0	0			
Court-keeper	90	0	0			
Persons to keep order	160	0	0			
Tipstaff	90	2	2			
Serjeant-at-arms	1,183	11	1			
Officers of the Vice-Chancellor of England—						
Secretary	500	0	0			
Usher	200	0	0			
Trainbearer	100	0	0			
Officers of Vice-Chancellor Knight Bruce—						
Secretary	300	0	0			
Usher	200	0	0			
Trainbearer	100	0	0			
Court-keepers	80	0	1			
Officers of the Vice-Chancellor Wigram—						
Secretary	300	0	0			
Usher	200	0	0			
Trainbearer	100	0	0			
Court-keepers	80	0	0			
Total Officers of the Court				3,983	13	4
Solicitor to the Suitors, in lieu of Costs	600	0	0			
Disbursements	123	15	7			
				723	15	7
Surveyor	..	..	..	77	13	4
Costs of Contempt, under Sir Edward Sugden's Act	..	..	.	133	2	5
Compensations to the late Officers of the Court of Exchequer	..	.	..	9,230	10	0
Expenses of Courts, Registrars' Office, Masters' Offices, Report and other Offices, for Repairs, Rates, Stationery, Coals, Candles, Servants' Wages, &c.	.	..	..	3,410	5	6
Surplus Interest invested	..	..	..	10,000	0	0
				85,494	0	2

RECEIPTS.	CASH. £	s.	d.	STOCK. £	s.	d.
Balance on the Account, 1st October, 1843	11,220	3	6	2,895,019	18	2
Stock purchased with Surplus Interest	..	..	..	10,471	4	1
Stock purchased with Suitors' General Cash	..	..	..	302,159	11	2
Dividends received during the year	85,927	4	11			
Received of the Accountant-general, under the 5 Vict. c. 5, s. 61	150	0	0			
	97,297	8	5	3,207,650	13	5
Payments	85,494	0	2	..	..	..
Balance on the Account, 1st October, 1844	11,803	8	3	3,207,650	13	5

JUDICIAL OFFICERS, AND OFFICERS OF COURTS OF LAW AND EQUITY.

(*Concluded from page* 283.)

NAME.	OFFICE, PENSION, &c.	£ s. d.	AMOUNT PER ANN. £ s. d.
	SALARIES.		
Robinson,*a* Charles Francis	Clerk in Court of Queen's Bench	.. .. ..	2090 0 0
Richards,*b* S.	One of the Masters of the Court of Exchequer	.. .. ..	1870 5 9
Richards, Right Hon. John	Third Baron of the Court of Exchequer, Ireland	.. .. ..	3688 12 4
Radcliffe,*c* Rt. Hon. John	Judge of the Prerogative Court	.. .. ..	3000 0 0
Rae, Sir William	Her Majesty's Advocate, Scotland, Salary	1387 10 0	
	Allowance in lieu of Fees for criminal business	1000 0 0	
			2387 10 0
Shadwell, Right Hon. Sir L.	Vice-Chancellor	.. .. ..	6000 0 0
Sherwood,*d* Thomas	Chief Clerk to the Masters of the Common Pleas. Salary and Fees received as Registrar	.. .. ..	2249 0 0
Sanders,*e* G. W.	Chief Secretary to the Master of the Rolls	.. .. ..	1371 11 6
Sturgis, Samuel	Provisional Assignee of the Insolvent Debtors' Court	100 0 0	
	Fees	1172 7 9	
			1272 7 9
Sugden, Right Hon. Sir E. B.	Lord High Chancellor of Ireland	.. .. ..	3000 0 0
Stewart,*f* William	Registrar of the Prerogative Court, Ireland	.. .. ..	2417 17 6
Senior,*g* Nassau William	One of the Masters of the Court of Chancery	.. .. ..	2500 0 0
Skirrow, Walker	Commissioner of Bankruptcy	.. .. ..	1800 0 0
Stephen, Henry John	Ditto	.. .. ..	1800 0 0
Stephenson, Richard	Ditto	.. .. ..	1800 0 0
Tindal, Rt. Hon. Sir N. C.	Chief Justice of the Court of Common Pleas	.. ..	8000 0 0
Turner,*h* R.	One of the Masters, Civil side, Court of Queen's Bench	.. .. ..	1200 0 0
Torrens, Robert	Second Justice of Court of Common Pleas, Ireland	.. .. ..	3688 12 4
Townsend, John	Master in Chancery, Ireland		2769 4 8

NAME.	OFFICE, PENSION, &c.	£ s. d.	AMOUNT PER ANN. £ s. d.
	SALARIES.		
Vincent, H. W.	Queen's Remembrancer, Court of Exchequer	.. .. ..	1200 0 0
Wigram,*i* Right Hon. Sir James	Vice-Chancellor	.. .. ..	5000 0 0
Williams, Sir C. F.	Commissioner of Bankruptcy	.. .. ..	2000 0 0
Williams, Sir John	One of the Puisne Judges of the Court of Queen's Bench	.. .. ..	5000 0 0
Wightman, Sir William	Ditto ditto	.. .. ..	5000 0 0
Wingfield, W.	One of the Masters of the Court of Chancery	2500 0 0*j*	
	Compensation under 3 & 4 Wm. 4, c. 94	725 0 0*k*	
			3225 0 0
Wilson, Sir Giffin	One of the Masters of the Court of Chancery	2500 0 0*l*	
	Compensation under 3 & 4 Wm. 4, c. 94	725 0 0*m*	
			3225 0 0
Walker,*n* Robert Onebye	One of the Registrars of the Court of Chancery, salary	1800 0 0	
	Compensation	350 0 0	
			2150 0 0
Wood, Hugh	One of the Registrars of the Court of Chancery, salary	1500 0 0*o*	
	Compensation	350 0 0*p*	
			1850 0 0
Walker,*q* Edmund	One of the Masters of the Court of Exchequer	.. .. ..	2054 19 7
Walton,*r* W. H.	Ditto ditto	.. .. ..	1200 0 0
Wright, Thomas Guthrie	Auditor of the Court of Session, Scotland, salary	700 0 0	
	Compensation	319 12 0	
			1019 12 0
West, Martin John	Commissioner of Bankruptcy	.. .. ..	1800 0 0
Winslow,*s* Edward	Secretary of Bankruptcy, salary	1200 0 0	
	Fees, annual average receipt	300 0 0	
			1500 0 0

PENSION - JUDICIAL SERVICES.

Alexander,*t* Sir William	Late Chief Baron of the Exchequer	2812 10 0
Avonmore, Viscount	Late Principal Registrar, Court of Chancery, Ireland	4199 19 0
Adlington, Thomas	Late Side Clerk of the Court of Exchequer	1160 7 8
Brougham and Vaux, Lord	Late Lord Chancellor of England	5000 0 0
Bushe, Right Hon. C. K.	Late Chief Justice Court of Queen's Bench, Ireland	3507 13 10
Cottenham, Lord	Late Lord Chancellor of England	5000 0 0
Cross,*u* Francis	Retired Master of the Court of Chancery	1500 0 0
Chilton, G.	Late one of the Masters of the Court of Exchequer	1400 0 0
Campbell, Sir Archibald	Late a Lord of Session, and Justiciary, Scotland	1050 0 0
Cranstown, George	Ditto ditto	1500 0 0
Dunfermline, Lord	Late Lord Chief Baron of Exchequer, Scotland	2000 0 0
Dwyer, Francis	Late Six Clerk, Chancery, ditto	1088 10 8
Ellenborough, Lord	Late Chief Clerk Court of Queen's Bench	7700 0 0
Edgell, Henry	Late Clerk of the Errors, Court of Exchequer	2338 17 8
Hudson, Thomas	Late one of the Prothonotaries of the Court of Common Pleas	2034 1 0
Hope, Right Hon. Charles	Late Lord President of the Court of Session, Scotland	3600 0 0
Johnson, William	Late Justice of Court of Common Pleas, Ireland	2100 0 0
Jardine, Sir Henry	Late King's Remembrancer, Scotland	1100 0 0
Kenyon, Hon. Thomas	Late Filacer, Court of Queen's Bench	5496 5 4
Kenyon and Ellenborough, Lords	Late Custos Brevium, ditto	2089 17 4
Littledale, Sir Joseph	Late one of the Judges of the Queen's Bench	2625 0 0
Moore, Arthur	Late Justice Court of Common Pleas, Ireland	2400 0 0
Moneypenny, David	Late a Lord of Session and Justiciary, and one of the Lords Commissioners of the Jury Court, Scotland	2400 0 0
Miller, Sir William	Late a Lord of Session, ditto	2250 0 0
Platt, Samuel and Joshua	Late Joint Clerk of the Papers, Court of Queen's Bench	1551 7 4
Plunkett, Lord	Late Lord Chancellor of Ireland	3692 6 1
Wynford, Lord	Late Chief Justice Court of Common Pleas	3750 0 0
Watlington, George	Late one of the Prothonotaries of the Court of Common Pleas	2005 11 4
White, Thomas	Late Side Clerk of the Court of Exchequer	1114 1 0
Wellesley,*v* the Marquis of	Late Chief Remembrancer of the Court of Exchequer, Ireland	5193 7 6

a Paid out of fees. *b* Ditto. *c* Since deceased. *d* Paid from fees. *e* From fees receivable under Lord Hardwick's order, and the order of 21st December, 1833. *f* Derived from fees paid by the public. *g* From the Suitors' Fund. *h* Paid from fees. *i* From the Suitors' Fund. *j* Ditto. *k* From the Suitors' Fee Fund. *l* From the Suitors' Fund. *m* From the Suitors' Fee Fund. *n* Ditto. *o* From the Suitors' Fee Fund. *p* Ditto. *q* From the Fee Fund. *r* Ditto. *s* Mr. Winslow did not hold the office for a whole year, though the whole year's receipt is here stated. *t* For part of the year, since deceased. *u* From the Suitors' Fund, since deceased. *v* Since deceased.

THE MINT.—A Parliamentary paper has just been printed, pursuant to the Act 7 Vict. c. 9, s. 1 3 and 4, containing an account of all supplies remaining in the mint, of advances for purchase of bullion for coinage, sales of coin, seigniorage arising therefrom, and repayments into the Exchequer on account of advances, &c. We proceed to give a few statements respecting the mint operations of last year. The supplies remaining in the mint on the 31st of December 1843, amounted altogether to 189,901*l*. consisting of 105,918*l*. silver bullion uncoined, at 66s. per lb. troy; 26,461*l*. copper bullion at 224*l*. per ton; 1,332*l*. silver coin in the stronghold; 3,909*l*. copper coin in the same place; and 10,067*l*. cash balance at the Bank of England. The sums issued out of the Consolidated Fund for the purchase of silver and copper bullion for coinage during the course of the year 1844 amounted altogether to 550,000*l*. The purchase value of silver bullion and dollars bought up during the same period for the purposes above mentioned amounted to 559,744*l*. making together with 1,389*l*. 17s. of gold procured by refining process from silver ingots purchased for coinage, a sum total of 561,134*l*. The market price of the silver varied from 57¾d. to 60⅜d. per oz. The mint value at 66s. per pound troy (or 5s. 6d. per oz.), amounted to 608,308*l*. The loss on the purchase of worn silver for coinage amounted to 5,462*l*. and the seignorage (the difference between the market and mint value) to 64,026*l*. The silver thus purchased consisted chiefly of dollars and bars, with old shillings and sixpences. The amount of copper bullion purchased (from Syms, Willyams, and Co.) was 39*l*. 17s. 2d. purchase value, and 109*l*. 4s. mint value (at 224*l*. a ton), leaving a seignorage of 69*l*. 6s. 10d. The total amount of silver coin or moneys, delivered into the Mint-office during the year 1844 was 627,670*l*.; and that of copper coin, 7,246*l*. The receipts on the cash account for silver and copper coin amounted, during the year, to 531,893*l*. and the payments made into the Exchequer out of the cash received for silver and copper moneys, to 560,068*l*. including 501,389*l*. on account for repayment of advances out of the Consolidated Fund for purchase of bullion, and 58,678*l*. paid on account of seignorage. The annual accounts of the master of the mint with her Majesty's Exchequer, up to December 31 1844, close the list of returns. It appears that the total receipts from the mint (for which the master was debtor) amounted to 794,031*l*. 6s. 10d. and the total payments (by which he was creditor), to 565,588*l*. leaving an amount of assets in the mint, on the 31st of December 1844, of 228,448*l*.; consisting chiefly of silver and copper bullion uncoined, silver and copper coin, and dues from the Paymaster-General for silver and copper coin. The cash balance amounted to 15,282*l*.

PUBLIC PETITIONS TO PARLIAMENT.—The Select Committee of the House of Commons on Public Petitions have just issued their fifth report to the members of that assembly. It hence appears that there are now on the table, amongst others, three petitions for arranging the differences now distracting the Church of England, signed by 194 persons; three petitions for encouragement to the Church Education (Ireland) Society, signed by 94 persons; 17 petitions for a repeal of the duty on malt, signed by 1,384 persons; 16 petitions against a renewal of the Property-tax Act, signed by 1,175 persons; seven petitions from sugar-refiners for time to dispose of their stock on hand, signed by only 140 persons; eight petitions for a repeal of the window duty, signed by 2,536 persons: eight petitions in favour of local courts, signed by 938 persons; seven petitions against the new Medical Practice Bill, signed by 290 persons; 53 petitions in favour of an alteration in the Medical Practice Bill signed by 1,893 persons; 10 petitions against any increase in the naval and military establishments of the country, signed by 850 persons; 25 petitions for diminishing the number of public-houses, signed by 4,812 persons; and seven petitions for a redemption of the tolls upon Waterloo, Southwark, and Vauxhall bridges, signed by 2,454 persons.

Bills in Progress.

BAIL IN ERROR ON MISDEMEANORS.

The following is the Lord Chancellor's Bill to stay execution of judgment for misdemeanors upon giving bail in error.

1. That in every case of judgment for a misdemeanor where the defendant or defendants shall have obtained a writ of error to reverse such judgment, execution thereupon shall be stayed, or in case execution shall have issued, all further proceedings upon such execution shall be suspended, until such writ of error shall be finally determined; and in case the defendant or defendants shall be imprisoned under such execution, or any fine shall have been levied, either in whole or in part, in pursuance of such judgment, the said defendant or defendants shall be entitled to be released from imprisonment, and to receive back any money levied on account of such fine, until such final determination as aforesaid: Provided always, that no execution upon any such judgment shall be stayed

or suspended unless and until the defendant or defendants shall become bound by recognizance, to be acknowledged either in the same court in which the judgment shall have been given, or before any one of the judges of her Majesty's superior Courts, with two sufficient sureties, to be approved of by such Court or judge, in such sum as such Court or judge shall direct, to prosecute the writ of error with effect, and in case the judgment shall be affirmed, to pay the amount of any fine which may have been imposed on the said defendant or defendants by the said judgment, and to render the said defendant or defendants to prison, according to the said judgment, where imprisonment shall have been adjudged.

2. That where judgment upon such writ of error shall be affirmed, and imprisonment shall have been adjudged, the period for its continuance in pursuance of such judgment, if such imprisonment shall not have commenced under such execution, shall be reckoned to begin from the day when such defendant or defendants shall be in actual custody under such judgment; and if the defendant or defendants shall have been released from imprisonment in manner hereinbefore provided, such defendant or defendants shall be liable to be imprisoned for such further period as, with the time during which such defendant or defendants may already have been imprisoned under such execution, shall be equal to the period for which such defendant or defendants was or were so adjudged to be imprisoned as aforesaid.

3. That if the Court in which any such writ of error shall be pending shall upon motion in that behalf decide that the defendant or defendants by whom it shall be brought has or have wilfully delayed or neglected to prosecute the same with effect, it shall be lawful for such Court to order the writ of error to be quashed, and thereupon the defendant or defendants who brought such writ of error shall be liable to execution upon the judgment; and if the defendant or defendants be not forthwith rendered as aforesaid to the custody of the proper officer, the recognizance shall be forfeited in the same manner as if the judgment had been affirmed.

THE NEW PAROCHIAL SETTLEMENT BILL.

The following is an abstract of the principal provisions of a new Bill "to consolidate and amend the Laws relating to Parochial Settlement, and to the Removal of the Poor," which was prepared and brought into the House of Commons a short time since by Sir J. R. G. Graham, bart. and Mr. H. M. Sutton, M.P. the Secretary and Under-Secretary of State for the Home Department. It contains just 50 clauses.

Clause 1 enacts the repeal of so much of former Acts of Parliament as relates to settlement in parishes, and to the removal of the poor, whether English, Scotch, or Irish, or of the isles of Man, Scilly, Jersey, or Guernsey.

Clauses 2 to 5 inclusive relate to "settlement." Persons born before the passing of this Act are to retain their settlements. Other settlements are declared,—1, Birth settlement; 2, Father's settlement; and 3, Mother's settlement.

No settlement to be derived from a grandfather, grandmother, or more remote ancestor. The place of birth must be proved by a reference to the register of birth or baptism. Children born in union workhouses to be settled where their mothers are chargeable; and those born in district asylums, hospitals, prisons, &c. are not to have a birth, but the mother's settlement.

Clause 6, relating to "chargeability," enacts that unsettled persons shall be relieved at the charge of the parish where they are destitute, until lawfully removed.

Clauses 7 to 18 relate to the subject of "removals." Persons chargeable to a parish in which they are not settled are declared liable to be removed to the parishes of their settlement, with a reservation in favour of 1. Married women, who are not to be removed from their husbands. 2. Legitimate children, which are not to be removed from their father's parish. 3. Legitimate and bastard children, which are not to be removed from their mothers. 4. Widows and their families, not to be removable for a year after the husband's death. 5. Widows, who are not to be removed from the place of their husband's settlement and death. 6. Persons chargeable through sickness, not to be removed until they have received relief for forty days.

No removal is to be made until forty days' notice to the other parish, unless the removal be previously submitted to. In cases of appeal, the removal must remain suspended until the appeal be decided.

Clauses 19 to 24 provide for appeals against warrants of removal, &c.

Clauses 27 to 32 provide for the removal of the poor born in Scotland, Ireland, and the various island dependencies of the kingdom.

We now approach the most important portion of the Bill, commencing at clause 33, which enacts that the Poor Law Commissioners shall, as soon as may be, without any such agreement by the guardians as is required by the 33rd section of the Act 4 & 5 William 4, c. 76, proceed, by an order under their hands and seal, to declare every union of parishes constituted, or to be hereafter constituted, under the said Act, a union for the purposes of settlement, and shall specify in every such order the day, being not less than fourteen days after the date thereof, when the same shall come into force.

To carry out the Government scheme of centralization to the fullest extent, clause 35 enacts, that "it shall be lawful for the said commissioners, if they see fit, but not otherwise, to declare any union of parishes under any local Act, to be a union for the purpose of settlement, in the same manner and with the same consequences as if such union were constituted under the provisions of the Act 4 & 5 William 4, c. 76."

Thenceforward all the parishes in every union declared for the purposes of settlement will become as one parish for the purposes of settlement and removal, and every pauper who would otherwise be deemed to be settled in any parish in the union will be deemed to be settled in such union, and not in any parish.

The declaration of such union is to be notified to the clerks of the peace, and published in the *London Gazette*. The guardians are empowered by clause 38 to proceed and act in matters of settlement and removal, and to take up proceedings (by clause 39) commenced before the declaration of the union.

Clause 40 contains a proviso, which seems to confer an important, if not unconstitutional power, upon the Poor Law Commissioners. It enacts, "That the said commissioners shall, before declaring any union for the purposes of settlement, ascertain the amount of poor-rate levied in each parish in the said union for the seven years ending on the 25th day of March, 1845, and, after deducting from such amount all sums actually paid for county, borough, or police rate, or for contributions in the nature of county, borough, or police rate, they shall, by an order under their hands and seal, fix and declare the said average amount of rates levied for each parish in each union." The expenses are thenceforth to be charged according to the averages declared by the commissioners. The overseers are strictly required to assess, levy, and collect the sums ordered by the guardians.

Relief is to be given by the overseers in sudden and urgent necessity, and to be charged to the parish.

The guardians of parishes are to have the like powers, as to settlement and removal, as the guardians of unions.

This and the Poor Law Act are to be construed as one Act. This Act is limited to England and Wales, except so far as relates to the removal of paupers born in other parts of the United Kingdom.

HOUSE OF LORDS.

COMMON LAW COURTS PROCESS.

MONDAY, March 3.—Lord CAMPBELL moved the second reading of three Bills to enable actions to be carried on in the three divisions of the United Kingdom—England, Ireland, and Scotland—without the necessity of personal process within the jurisdiction of the Courts respectively.—Viscount MELBOURNE hoped that care would be taken that the parties served should have due notice. The LORD CHANCELLOR and Lord CAMPBELL said, that a clause to that effect was introduced into the Bills.—Lord BROUGHAM was exceedingly friendly to the principle of the Bills, but objected to some of the details. He should therefore give his assent to the second reading. The Bills were then read a second time.

COURTS OF COMMON LAW PROCESS BILLS.

Lord CAMPBELL moved the orders of the day for going into committee upon the three Bills (for England, Ireland, and Scotland) upon this subject. The noble and learned lord intimated that he had made an amendment, by which he proposed that the service of process abroad must be by a British subject.—Lord BROUGHAM said that that alteration removed, in a great degree, his objection to that part of the Bill. Notaries in France, and many parts of Germany, were highly respectable men, but that might not be the case in other parts of the continent of Europe: and it would not do for parties to suffer judgment against them, perhaps to an immense amount, before they even knew that proceedings at law had been commenced against them through the perjury of persons who were not within the jurisdiction of British tribunals. He would consult with his noble and learned friend whether some such course as this might not answer the object, that a judge should give an order indicating in what way service should be made, as, for example, if the party were in France, or say any spot where the intervention of a notary on the spot would be satisfactory, that there service might be made by such notary; but if the party were in a place where such a course might not be deemed safe, that then the service must be made by a British subject.—The LORD CHANCELLOR suggested, as the subject was one of great importance, that the report upon the bill should be deferred until after the Easter vacation. He wished to see what the operation would be in regard to the courts of equity.—Lord CAMPBELL assented, and after a few words from Lord Ashburton, the House went into committee upon the three bills respectively, and the reports were ordered to be received on the first day after Easter.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—Borough of Shaftesbury, Richard Brinsley Sheridan, esq. in the room of Henry Howard, esq. commonly called Lord Howard, now Earl of Effingham, called up to the House of Peers; County of Kent, Eastern Division, William Deedes, esq. of Sandling, in the county of Kent, in the room of the Right Honourable Sir Edward Knatchbull, Bart. who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

THE MAGISTRATE.

Summary.

No topic claims special notice this week.

REVIEW OF MAGISTRATES' CASES.

GAME ACT—CONVICTION.

IN the case of *Fletcher* v. *Calthorpe and Another* (14 Law Jour. M. C. 49), the principle of previous decisions was strongly affirmed and illustrated, to the effect that it is not always sufficient in a conviction or indictment founded upon a statute, to pursue its exact terms. It has been so held in Paley on Convictions. The safer rule is that it is sufficient to follow the terms of the statute, *only* where they are themselves sufficient; which virtually removes all exclusive dependence on them. In Lord DENMAN's words in the judgment before us—"Whenever a certain act is made punishable by summary conviction, which act may be lawful if performed under certain circumstances, these circumstances ought to be negatived in the conviction. None of us doubt that when the proof must negative such circumstance, the allegation in the instrument of conviction ought to do the same. This principle is well expressed on a similar, although not exactly the same occasion, in *Reg.* v. *Baines* (2 Ld. Raym. 1265)."

In the Game Act, 9 Geo. 4, c. 69, s. 1, it is merely declared, that "if any person, &c. shall, by night, unlawfully enter, or be in any land, whether open or inclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, such offender shall, upon conviction thereof," &c. Now this does not happen to specify any offence at all, or rather does not specify that which the Act intends to make unlawful, for a man might do all the words specify, and enter upon land, &c. with intent to cross over it for the purpose of taking game, *not there*, but elsewhere, *and on his own land*. In the case in point the conviction merely followed the words of the statute, omitting entirely to aver that it was *there*, in the said land, that the defendant meant to take the game. An action of trespass was brought for the arrest and imprisonment on this conviction; the conviction in the words of the statute was pleaded in defence, and in the case before us held bad, on the ground we have stated. It was argued, indeed, that the facts of the case might be supplied in evidence, and that so it might be shewn that the defendant had, in fact, committed the act intended to be declared unlawful; but the Act cannot extend the protection of its omissions to those of a conviction, and Lord DENMAN said, "Proceedings in cases of this nature, which are to deprive a man of his freedom in a summary way, without letting him be tried by his peers, are always to be construed strictly, and never supplied by intendment of matter which does not appear on the face of them." This is a useful rule for the observance of all persons concerned in this branch of magisterial jurisdiction. The mere averment of its being an unlawful act is not enough. It was expressly ruled in this case that that would not suffice. "We do not know," says the judgment, "in what sense that word was used. The justices

may have thought it unlawful to enter into the close with the remotest purpose of killing game, or they may possibly mean that the entry was unlawful, as a trespass on the land of another. If such was their meaning, the fact ought to have been averred."

PAUPER LUNATICS.

There was a Bail Court decision last Term, which it may be worth while to note (*Reg.* v. *The Justices of Cornwall*, 14 Law Jour. M. C. 46), to the effect that justices for a borough have not jurisdiction to send a pauper lunatic, who is chargeable to the borough, to a county lunatic asylum, under 9 Geo. 4, c. 40, s. 38; and that orders to pay a certain sum to the treasurer of the asylum must shew that such was the sum fixed on.

THE NEW SETTLEMENT BILL.

THE new Settlement Bill is, to a certain extent, substantially the same as the last, to which, during the Long Vacation, we directed the notice of our readers; and we believe it was through the influence of the remarks we then made that some objectionable provisions of the defunct Bill were denounced by the country, and have been abandoned by the Government.

Passing by without comment those parts of this Bill which are a repetition of the last Bill, and dwelling only on its novelties, we proceed to give an analysis of the entire measure.

REPEAL.—The first section repeals all the existing statute laws of settlement.

SETTLEMENT.—Sec. 2 provides that "every person who was born on or before *the day of the passing of this Act* shall, *on the day succeeding the passing of this Act* be deemed to be settled by this Act in the parish in which he was, or would have been lawfully settled if this Act had not been passed." Lawfully settled when? Does it mean at the time the Act passes, so that people are to retain the settlement they then had? If so, why, in the name of common sense and our mother tongue, is it not so stated? One side of this alternative in the clause is stark nonsense—"the parish in which he *was* lawfully settled if this Act *had not been* passed. Is there any new tax recently imposed in plain English that the concocters of Bills cannot be induced to use it? We guess that they meant in this clause to say "that all persons born on or before the day of the passing of this Act shall thenceforth have and retain the settlement they lawfully possessed on the day of the passing of this Act, and shall thenceforth acquire no other settlement." The operation of the clause as it stands is confined by its express terms to the day succeeding the passing of the Act; it has no force or effect either before or after the day! Between the "was" and the "would have been," there is practically no difference, and the distinction exists, if at all, in the brain of the writer, supposing him to have had any definite idea of what he meant himself, which we much question. We do not apologize for thus stopping to censure the imbecility of the persons who are employed thus to dabble in legislation. It is a great, grievous, and growing evil, and a scandal of no small magnitude, which we feel bound to reprobate. Bills are constantly being passed into statutes which (to say nothing of their immethodical arrangement) are written in language and grammar which would discredit the lowest class in a ladies' boarding-school.

Several of the succeeding sections, being substantially the same as in the preceding Bill, we shall merely recapitulate them.

Sec. 3 provides that hereafter there shall be, 1st, Birth Settlement; or, 2nd, Father's Settlement; or, 3rd, Mother's Settlement. No settlement to be derived from grandfather, grandmother, or more remote ancestor. Sec. 4. That the place of birth shall be proved by Register of Birth or Baptism. By sec. 5 it is provided that children born in union workhouses shall be settled where their mothers are chargeable; and that children born in district asylums, hospitals, prisons, &c. or while their mothers are under orders of removal, shall not have a birth settlement, but shall take their parent's settlement.

Next, as regards Chargeability:—Sec. 6 declares that unsettled persons are to be relieved at the charge of the "parish" where they are destitute, as if they were settled there, until they are lawfully removed, or their destitution there is lawfully at an end.

With respect to Removal, sec. 7 renders persons chargeable to a "parish" in which they are not settled liable to be removed to the parishes of their settlement, with a reservation in the cases of—1. Married women, who are not to be removed from their husbands. 2. Legitimate children, who are not to be removed from their father's parish. 3. Legitimate and bastard children, who are not to be removed from their mothers. 4. Widows and their families, who are not to be removable for a year after the husband's death. 5. Widows are not to be removed from the place of their husband's settlement and death. 6. Persons chargeable through sickness are not to be removed until relieved forty days. Sec. 8 declares that, except as excepted, no person shall be removable to any other parish than that in which they are settled. Sec. 9 gives power to overseers to admit settlements, and agree to amicable removals. Sec. 10 provides for the summons of persons liable to be removed; their examination; the warrant for their removal; and for the examination of persons who cannot attend the summons. This replaces in substance the previous law. Sec. 11 provides that no removal be made until after forty days' notice, unless the removal be previously submitted to. In case of appeal, the removal is not to be made until such appeal is ended, which replaces the existing law. By sec. 12, overseers, or persons employed by them, may execute the warrant of removal. And by sec. 13, parish officers procuring removals without warrant are made subject to penalties of from forty shillings to five pounds, in all cases where they induce bribe or procure poor persons to go to other parishes and there become chargeable. This clause, if better worded, will do great good. Sec. 14 provides for the delivery of paupers under warrants of removal, at the workhouse of a parish or Union, which is to be regarded as delivery to the overseers. Sec. 15 provides for suspension of the removal and recovery of the charges incurred by such suspension; appeal where such charges exceed *ten* pounds. By sec. 16, overseers may abandon a warrant of removal, paying the costs caused to the other party. By sec. 17 the, clerk of the justices to transmit a duplicate of every warrant of removal, and the original depositions to the clerk of the peace. By sec. 18, the clerk of the peace, on application, is to furnish copies to the overseers of the parish to which the removal is directed to be made.

(*To be continued.*) S.

We have received the following from our valued correspondent, upon the subject which we had suggested for the consideration of our readers:—

TO THE EDITOR OF THE LAW TIMES.

SIR,—You confess surprise at the great increase of appeals relating to cases of parochial settlement within the last four years, and wish for some explanation from your correspondents as to the cause thereof. If you refer to the LAW TIMES of the 18th January last, you will find my letter thereon to contain the leading features to the explanation you require; for, as the present law stands, the appellants and respondents cannot, on the trial, give any evidence beyond what is contained in the pauper's examination and the grounds of appeal; and so many objections have arisen, and are continually taken, on the legal and clerical errors and defects relating to these examinations, and grounds of appeal, and the orders of removal, that little reliance can be placed on the real merits affecting the pauper's settlement, *consequently a very great number of appeals are prosecuted solely on these grounds of objection.*

It is next to impossible, in the limits of a letter, to trace all the causes of increase in appeals; suffice it, that after the passing of the late Poor Law Act in 1834, for the first five or six years. these appeals were reduced into a small compass; but after the decisions in *Ex parte Broseley* (7 A. & E. 423), and *Clint v. Bristwith* (10 A. & E. 685, and 11 A. & E. 624), with some other similar cases, the attention of counsel was drawn to the defectiveness of this law; the consequence was, they have ever since been raising and prosecuting ingenious. and very frequently successful, objections to the *examinations* and *grounds of appeal*, and *the circumstances connected therewith.* This has caused such a great degree of uncertainty, as unquestionably to have given rise to the increase in appeals.

I observe you class the determinations of the appeals in certain positions, which shew a considerable proportion thereof to be on the actual merits; but this calculation would be found, if it were possible to arrive at the real facts, very erroneous; for instance, I have mentioned two cases in my letter, viz. *Ex parte Broseley*, and *Clint* v. *Bristwith*; in both these cases the respondents went into the real merits on which their case relied; on the cross-examination of witnesses, the appellants *elicited proofs contrary to the pauper's examination*, simply as to the year of service, viz. in 1810, instead of 1813, and the holding of a farm in 1826, and not in 1827, and which were in both instances considered fatal by the Court, and *the orders were quashed, refusing a case;* consequently, although in fact the decision of the Court was on objection taken to clerical *errors or a variance between the evidence and the pauper's examination;* yet as no grounds for such decision were assigned, the appeals were considered to be ended on the merits: and a very considerable number of the cases included in your number of 547, if the real facts could be ascertained, would, I have no doubt, bear this construction. In fact the uncertainty of parochial appeals is such, that it is impossible to define it. You will see that in all cases where the respondents' case is fully gone into, if the orders are quashed by the Court, *without assigning the grounds on which they determine* (which very frequently occurs, and almost invariably if a case for the Court of Queen's Bench is refused), then the case assumes the character of being decided on the merits, although it is as clear as noon-day that the real cause arises from such defects as I have pointed out, and which the Court of Quarter Sessions refuse to particularise, for the express purpose of avoiding further litigation; for without doing so their determination is final.

MIDDLESEX SESSIONS HOUSE.—Mr. Edmondes, who has long officiated as deputy clerk of the peace, has been compelled, through ill-health, to vacate his appointment, and has been succeeded by Mr. Arthur Grey Maude, who has been called to the bar, on the recommendation of the assistant judge, to enable him to fill the situation.

James Allan Maconochie, esq. Sheriff of Orkney and Shetland, died last week in his 56th year. He was called to the Scotch Bar in 1813, and, in various capacities, has rendered important public services.

The *Gazette* contains notices that the following places have been duly registered for the solemnization of marriages therein:—Baptist Chapel, Kingsbridge, Devonshire; Wesleyan Methodist Chapel, Guiseley, Yorkshire; Independent Chapel, Kenilworth, Warwickshire; Baptist Chapel, South Shields, Durham.

THE LAWYER.

Summary.

THIS week enables us to complete the written judgments of the Common Law Courts, and until the beginning of next Term, we shall again have space to bring up some of the heavy arrears of matter which have accumulated during the necessary preference given to the reports. To clear off a portion of these arrears we abbreviate the usual commentaries, merely referring the reader to the very important judgments published to-day.

PROMOTIONS, APPOINTMENTS, ETC.

DOWNING-STREET, March 1.—The Queen has been pleased to appoint Hutchinson Hothersall Browne, esq. to be Registrar of the Court of Requests for the territory of New South Wales.

The Queen has been pleased to constitute and appoint Charles Neaves, esq. Advocate, to be Sheriff Depute and Steward Depute of the Sheriffdoms or Stewartries of Orkney and Zetland, in the room of James Allan Maconochie, esq. deceased.

The Lord Chancellor has appointed Robert Marsh, of Ickles, near Rotherham, in the county of York, gent, and John Whidborne, of Teignmouth, in the county of Devon, gent. to be Masters Extraordinary in the High Court of Chancery.

A commission has passed the Great Seal, appointing the Right Honourable Sir Edward Ryan, Thomas Starkie, esq. Q.C., Robert Vaughan Richards, esq. Q.C., Harry Bellenden Ker, esq. and Andrew Amos, esq. to be her Majesty's commissioners for digesting the criminal law, and appointing James John Lonsdale, esq. to be secretary to the commission.

Commission signed by the Lord Lieutenant of the county of Cumberland—Charles Jolliffe, esq. to be Deputy Lieutenant.

LEGAL INTELLIGENCE.

The Attorney-General and Lady Follett, accompanied by their two eldest daughters, arrived in Park-street, on Saturday last, from Italy. The learned Attorney-General's health has greatly improved, indeed, we may say, been restored. He came from Italy by way of Marseilles and Paris.

Privileges of a Felon.—At the Middlesex Sessions last week, a gentleman of highly respectable appearance (whose name we could supply) claimed exemption from serving on the jury on the ground of having been convicted of felony, and tendered documentary evidence to that effect amidst roars of laughter. Mr. Serjeant Adams held the objection good, but observed he was only surprised that any person should disgrace himself by pleading such an unenviable privilege.—*Globe.*

Will of the Earl of Limerick.—Probate of the will, limited to property in England, of the Right Hon. Edmund Henry, Earl of Limerick, late of Mansfield-street, in the parish of Marylebone, Middlesex, and of South-hill park, in the county of Berks, who died on the 27th December, 1844, has just been proved in the Prerogative Court of Canterbury, by the executors, the Hon. Edmund Sexten Pery, the son; the Right Hon. Thomas Spring Lord Monteagle; and George Lake Russell, esq. of Lincoln's-inn, the son-in-law; power reserved to Matthew Barrington, esq. of Dublin, to prove hereafter. The personal estate in England, and within the province of Canterbury, is sworn under 30,000*l.* To his wife, Alice Mary, Countess of Limerick, he leaves his house in Mansfield-street, together with the furniture and all things therein (except plate, pictures, and securities), and that she may also select what plate, pictures, ornaments, and jewellery she pleases from the houses at Mansfield-street and South-hill-park, and furniture from the latter, for her own use absolutely. He directs his estates to be sold, except the house at Mansfield-street; and after bequeathing pecuniary legacies to the Countess and to his daughter, Lady Caroline, and 500*l.* to each of his executors, leaves the residue to the Countess for life. —*Historical Register.*

Will of Sir George Grey.—The will and codicil of the Hon. Sir Henry George Grey, G.C.B. a general in her Majesty's army, formerly of Falloden, in the county of Northumberland, and late of Hertford-street, May-fair, in the county of Middlesex, who died at the latter place on the 11th of January last, at the age of seventy-nine, has just been proved in Doctors' Commons by Lady Grey, widow, the relict, and sole executrix. The trustees are his nephews, the Right Hon. Sir George Grey, bart. and Lord Viscount Howick. Lady Grey is to receive the interest, dividends, and proceeds arising from the trust-moneys for life; then to his nephews, the said Sir George, and William Grey, the son of his brother, the Hon. Lieut.-Col. William Grey. The will is dated 23rd November, 1842; the testator then speaks of his being of infirm body, though of sound mind. The signature to the will is in the handwriting of Mr. Bromley, at the desire of the deceased, and in these words, "Henry George Grey, by William Bromley, expressly directed and authorized by him;" with testator's seal attached. The codicil was made in September, 1844, by which he leaves to his wife's brother, Lieut.-Colonel Benfield Des Vœux, the sum of 2,400*l.* which had been invested in the funds, being part of the fortune he received with his wife. This codicil is signed, in the deceased's name, by Lady Grey, at the direction and in the presence of the deceased. The personal estate within the province of Canterbury is sworn under 120,000*l.*—*Ibid.*

Will of Thomas Read Kemp, Esq.—The original will and three codicils of the late Thomas Read Kemp, esq. formerly of Brighthelmstone, in the county of Sussex, but late of the city of Paris, who died in that city in December last, has been transmitted to this country, and is now deposited in the Registry of the Prerogative Court of Canterbury. Probate was granted on the 29th January, 1845, to Frances Margaretta Kemp, widow, the relict and sole executrix. The will is dated 21st September, 1835, was executed in Brighton, and witnessed by the respective signatures of Messrs. George, Henry, and W. John Faithful, solicitors of that town. He leaves to his wife the leasehold dwelling in which the family have resided at Paris, and directs that when any part of his real and personal estate or other property in England is sold, the same, with all other unemployed capital, shall be invested in good securities, to accumulate and form a fund for a period of ten years, as a means to pay off the charges on the Brighthelmstone estate, and that no further charges shall be made thereon; devises his estate at Brighthelmstone to Frederick Shakerley Kemp, his son by his present wife, and bequeaths to him a legacy of 5,000*l.*; the like sum to any after-born children; and bequeaths to the nine children by his first wife, Frances, the daughter of — Baring, esq. a sum exceeding 42,000*l.* out of his real estates. The first codicil is dated 2nd August, 1839, and witnessed by the Hon. and Rev. Lord Edward Chichester, and his son, Mr. George Chichester, and brother-in-law, R. S. Grady, 14th Regiment. The personal estate is of small amount. —*Ibid.*

The Will of the late Sir Charles Frederick Williams, Knight, of No. 46, Hyde-park-square, Paddington, late one of the Commissioners in the Court of Bankruptcy, who died on the 17th of January last, has just been proved in Doctors' Commons by Lady Elizabeth Wylde Williams, widow, the relict and sole executrix. He bequeaths the Goose-ham or Gorsham estate, in the county of Cornwall, and about twenty acres of land contiguous thereto, to which he had lately succeeded, to Lady Williams and her heirs for ever. The will is dated 6th January, 1845, and very short; it is in Sir Charles's handwriting; witnesses to the execution, James Manning, serjeant-at-law, and W. H. Hadding, surgeon. Personal estate sworn under 4,000*l.*—*Ibid.*

Lord Western.—The will and four codicils of the Right Hon. Charles Callis, Lord Western, Baron Western, of Rivenhall, Essex, but late of Felix Hall, in the same county, who died on the 4th of November, 1844, have just been proved in Doctors' Commons by the executors and trustees, the Rev. Sir John Page Wood, bart. clerk, of Cressing, Essex, and James Western, esq. of Great James-street, Bedford-row, Middlesex; power reserved to Henry Carlton Tufnell, esq. of Cavendish-square, Middlesex, to prove hereafter. Personal estate sworn under 35,000*l.* The will and first codicil bear the same date, 27th April, 1844. He devises his manors, advowsons, &c. and all farms, lands, tenements, and real and personal estate, after payment of several annuities and legacies, to Thomas Burch Western, esq. one of the sons of the late Admiral Western, and to his issue; bequeaths by the codicils numerous small annuities and legacies; among others, to his book-keeper a legacy of 200*l.* and an annuity of 50*l.* for his life, and 30*l.* a-year for the life of his wife, expecting him to assist his trustees in making out their accounts; to his bailiff, a legacy and an annuity of 20*l.*; to his shepherd, 20*l.* a-year, to be continued to his wife if she survives him; to his servants, a year's wages; and to his ploughmen and out-door labourers a legacy of a few pounds each. His lordship appears, by the number of legatees named in his will and codicils, to have remembered all persons in his employ and service, leaving to them by name some kind of bequest.—*Ibid.*

Right Hon. Frederick St. John.—The will and two codicils of the Hon. Frederick St. John, late of Roe-heath Cottage, near Lewes, in the county of Sussex, a general of her Majesty's forces, who died on the 19th November, 1844, have just been proved in Doctors' Commons by the executors, Charles George Beauclerk, esq. of St. Leonard's Lodge, Sussex, and Thomas Baverstock Merriman, esq. solicitor, Marlborough. Personal estate sworn under 14,000*l.* The chief bequests are to his wife; and his books to his daughter, Mrs. Goring. His estates in Sussex and Middlesex to be sold; [illegible] sums under settlements, and all other claims on his estate, leaves the residue to his wife for life, and after her decease two-thirds to go to his son, Robert William St. John, and the remaining one-third to his other sons, Henry St. John and Welbore St. John. The will is dated August 11, 1841, and contained in sixteen sheets of paper; the tenth sheet, giving to the amount of two legacies of 100*l.* each being written thereon in pencil, has been re-copied since applying for probate, bearing the signatures of two notaries at the foot thereof. The codicils are in the deceased's handwriting, the first of which, dated the 1st September, 1842, has a portion of it cut out by the the testator just above his signature in the middle of the page, and beneath the space in the page underneath is written by the testator these words:—"This slip of paper cut out by me subsequent to the execution of my codicil."

[The twenty-first section of the Act provides for this:—"The will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or on some other part of the will opposite or near to such alteration."]—*Ibid.*

CORRESPONDENCE.

LAW OF SETTLEMENT.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I observe, by the newspapers, Sir James Graham meditates proposing a Bill to amend the Act of the 7 & 8 Vict. c. 101, so far as that Act relates to orders of affiliation.

I take the liberty of addressing you on this subject, and I avail myself of the opportunity of humbly offering to you some remarks on the drafting and getting up Acts of Parliament, a subject which seems to be taking fast hold of public attention.

Any Act which has reference to the poor ought to be framed with unusual care, for this reason, that it relates to a class who have no money and little power to get legal relief for wrongs which, as in this case, may amount to total misery and absolute privation.

First. The Act in question begins with a repeal of all former power on the putative father, so that all illegitimate children born one hour before the six months preceding the 9th August, 1844, have now no remedy whatever.

It is true that by the operation of the 4 & 5 Wm. 4, c. 76 (practically but little alleviated by the 2 & 3 Vict. c. 85) this remedy was, perhaps, a mockery of justice, but it ought not to have been destroyed in this summary and reckless manner.

I submit that this amending Act may safely and justly give a retrospective effect for a period of two years, provided there be proof that, during that period, the father has made any payment in support of his offspring.

Secondly. The third section gives the woman, before birth, no remedy whatever. The Act is absurd in this respect, for the while it states that a woman with child may make application, and the magistrates issue a summons, it contains no power to make any order until after birth, or to secure the appearance of the putative father after that event has happened. I submit that the re-enactment of some such provisions as those of the 49 Geo.3, c. 68, would be useful, and, indeed, is indispensable in this respect.

By this same section the order cannot be enforced until after one month from the date of its making. Why should not the order be capable of enforcement within twenty-four hours? It is a monstrous and unnecessary hardship on the mother that, after being deprived for months of all means of subsistence, save, probably, from charity, she would have to wait a month for any retribution. This show of consideration towards the father seems to be singularly misplaced and unfair, when, by clause 6, the woman neglecting to maintain the child is at once liable to be committed to the house of correction, under the Vagrant Act.

Thirdly. With respect to the form of order, I would suggest that the amending Act should give a form. This mode, indeed, of constructing Acts of this sort, relating to persons of the humbler classes of society, is particularly necessary, and, indeed, there should be a clause generally to the effect that no proceeding should be void for defect of form provided the substantial fact or matter was alleged in such form.

Litigation on these subjects on points of law or mere matters of form is not only very absurd, but positively very cruel. The woman has not the means to defray even the magistrates' clerk's fees, much less to meet all the chances of an appeal to the Quarter Sessions, or, as in a recent case, to the Court of Queen's Bench.

The point of trial, in whatever court it may happen to be, should be simply one of the fact of paternity. Of course, I do not mean to suggest that there should be an absence of all form; and for that reason I suggest that the form should be given in the Act. It is impossible not to read the case of *Rex v. Justices of* [illegible] (as very ably reported in the Law Times of the 1st of February), and not to be struck with the gross libel on all common sense and honesty which that case developes. There is an order (one of the Lumley orders so called) made as intentional and as plain upon the Act as words can be well made to import the meaning of ideas—a string of objections is spun upon it at an expense probably of some twenty or thirty pounds!!! and the unfortunate woman gets ruined upon a matter of form utterly *dehors* any real fact or merit of the case. I would suggest that the amending Act gives a retrospective power to make new orders in all the cases which have occurred under the statute. Mr. Lumley is one of the assistant Poor Law Commissioners, who, of course, promoted the very Act in question; he publishes, with all the weight of his authority, the forms of orders which have been universally adopted, and they are found "fatally defective!!!"—and possibly all those poor persons for whose relief they were made may now be without means of attaining it, as it may be doubtful how far any order already made can be superseded or abandoned, and another substituted.

I should guard myself against its being supposed that I mean one word of offence towards Mr. Lumley. He went the Oxford circuit, was a revising barrister on this circuit, and, to my own knowledge, is an able, accomplished, and most kindly disposed man. In my own humble judgment, the objections against his order were so many mere crotchets, and hardly to be tolerated in the year 1845. Still as such objections always will be raised, and as judges are perplexed when cases are found to support them (whatever their own more enlightened views may be), it is highly important in all matters of controversy relating to poor persons who have not one farthing wherewith to defend themselves, that they be not the subjects or the victims of such wordy subtleties. And now allow me to address some few observations on the mode of drafting Bills and carrying them through a committee of the House of Commons. I say the House of Commons, for in point of fact most important Bills originate and are settled there.

(*To be concluded next week.*)

COSTS OF COUNTRY ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The complaint of "a Country Attorney" in your last number respecting the practice of London attorneys sending down writs and other agency business to be done, and generally requesting immediate attendance to it, and then forgetting to pay your

charges, is of too frequent occurrence, I am sorry to say. At the end of their letter they generally add, "your charges shall be paid as directed." This complaint, however, applies to country equally as well as London firms.

It is my custom, on sending in agency charges, always to request the solicitors to send me a post-office order for their amount by return of post, but I very seldom receive one. I sincerely trust that parties owing small agencies will take the hint from your valuable paper, and pay up the same; always bearing in mind that short reckonings make long friends.

I am, Sir, your most obedient servant,
George John Parsons.
Haslemere, March 6, 1845.

LORD BROUGHAM.

TO THE EDITOR OF THE LAW TIMES.

Sir,—For reasons best known to himself, Lord Brougham last night appears to have denied the paternity of the Act 7 & 8 Vict. c. 96. I beg, however, to state, that when the printed Bill was first issued from the Parliament Office, it bore this indorsement—"Presented by the Lord Brougham and Vaux." This fact is an answer, as I humbly conceive, to his lordship's assertion.

I am yours, &c.
City, March 5, 1845. H. Grainger.

SELECTIONS FROM CORRESPONDENCE.

"An Attorney" (Dorchester) throws out the following suggestions on "The Rogues' Indemnity Act."

A very appropriate title indeed is the above which, in your Law Times of the 22nd Feb. last, you have given to Lord Brougham's Act for the abolishment of imprisonment for debts under 20*l.*

Some immediate remedy must, however, be given for this great evil; otherwise ere long the little tradesmen and shopkeepers will be ruined. All are inquiring how they are to *recover* debts under 20*l.* This question puzzles even the lawyers; they can inform their clients what are the proceedings, but as to recovering under the existing law, that is another question. If an action is commenced, and judgment obtained by default, nine times out of ten, the debtor gets rid of his effects in the interim. I have known them dispose of the same by auction on being served with notice of declaration, &c. The creditor is thereby saddled with costs, in addition to the loss of his debt, and gets laughed at by his debtor into the bargain. Oftentimes a plea is filed without a shadow of defence, in the hope that the creditor will not incur the expense of a trial.

Might not this latter step be prevented, by requiring an affidavit, in all cases before a defendant is allowed to plead, that he had a good defence on the merits? If he had such defence, where would be the hardship? And if he had not, why should a defendant be allowed vexatiously to drive a plaintiff to trial?

Your correspondent "P." asks why particulars of plaintiff's demand should not be served with the writ. For my part, I never could see that any benefit resulted to a plaintiff or defendant by the writ; but that it only unnecessarily increased costs, as in very many instances it gives no information whatever to the defendant.

Could not all actions be commenced by declaration (as in ejectment), with a notice and particulars, &c. with a demand of plea within eight days from notice? A defendant would then at once know what the plaintiff was suing for. Let there be three copies—one to be filed in the Declaration-office, one to be served, and the other to keep. At the expiration of the eight days, in default of plea, the plaintiff to have the power of signing final judgment. If this should be thought too quick a proceeding, let such judgment be interlocutory only; and in the latter case, empower a judge at chambers, upon production of the copy declaration and affidavit of personal service, to make an order *nisi* for final judgment, unless cause shewn within a certain period, and in default thereof judgment to be signed and execution issued. The costs of a proceeding like this would not be much.

You suggest that power should be given to a plaintiff, in all actions for debts under 20*l.*, upon a return of *nulla bona* by the sheriff to any *fi. fa.* issued, to summon his debtor before the Court of Bankruptcy; but with all due deference to you, I would ask why he should not be enabled to do this in the first instance upon judgment, if he choose to select that mode? as driving a plaintiff to issue execution where there were no goods, would only entail unnecessary delay and expense upon him.

I would observe, that Lord Brougham seems to have taken the "rogues" in an especial manner under his care; for although a plea be vexatious, &c. yet if by any sad mishap to the plaintiff a verdict should go against him by the "glorious uncertainty of the law," the debtor can still take his plaintiff in execution for the costs only; but if a plaintiff obtains a verdict for both his debt and costs, he has no such remedy. Surely it would have been but equitable that a plaintiff should have had the same remedy where a defendant drives him to trial, even if it had been taken away in cases wherein defendant lets judgment go by default.

I do not know whether Lord B. sees your paper weekly or not. If he does not, I think it would not be amiss for us to subscribe to have it sent to him, as the acknowledged organ of that Profession he so much delights to injure.

"Another Country Solicitor" writes thus. The hint is excellent:—

The complaint of a "Country Solicitor" in your last number relative to the frequent nonpayment by London practitioners of the charges made by the country solicitors, to whom they may have sent process for service, appears one for which a simple and efficacious remedy may be devised. Instead, then, of the country solicitor returning the process to the office whence he received it, let him forward the same (stating the amount of his charges) to his own London agent, who will, *on receiving that amount*, hand over to the attorney issuing the process the writ and affidavit, &c. The general adoption of the hint thus thrown out would put an end to the practice so justly complained of by your correspondent.

"An Articled Clerk" would feel obliged to any reader who could assist him with his experience under the following circumstances:—

Would you, or any of your subscribers, favour me with a reply to the following questions?—

By sec. 6 of the 6 & 7 Vict. c. 73, I find any person who may be bound by contract to serve as a clerk to a practising attorney or solicitor for the term of five years may, either by virtue of any stipulation in such contract, or with the permission of such attorney or solicitor, serve one year with a barrister or special pleader, and in addition thereto, or instead thereof, with a London attorney or solicitor.

I was bound by contract in the country, and served two years and a half, when the person to whom I was articled was declared bankrupt, and between whose bankruptcy and the assignment of my articles to a London solicitor a period o. four months elapsed.

I have one year unexpired of my articles. Could I serve that time with a barrister or special pleader, with such consent as specified in the above Act, or should I serve the four months that I lost?

Can an objection be taken to the service under my articles if I do not serve the four months beyond the expiration thereof?

My articles being dated in Feb. 1841, can I be examined in Easter Term 1846?

A Subscriber relates the following incident:—

At the Middlesex Sessions on Friday, the 28th ult. Mr. Prendergast, as counsel for an appellant against an order in bastardy, took the objection that the information did not appear to have been made upon oath; but neither he, the learned Chairman, nor any of the Bar, was aware of the decision in *Reg.* v. *Justices of Bucks* (reported in 4 Law T. 341), until informed thereof by me, when the chairman directed the matter to stand over, until a report of the case could be obtained.

The last number of the Jurist, *fresh from the press*, was shortly afterwards handed to the Chairman, in which the case was reported, and the order was thereupon quashed. I think it but just that the vast superiority of the Law Times in conveying the earliest information on these points should be known; the case quoted having been decided on the 30th of January, and reported in that publication on the 1st of February last.

"A. T. P." submits the following hint on a subject upon which the country attorneys appear, and not without reason, to be somewhat sore:—

In reference to a remark in the Law Times of Saturday last from a country solicitor, complaining of the practice so frequently pursued by solicitors in London in neglecting to pay agency charges for service of process, &c. I beg to offer the following suggestion to those country solicitors who may be injured by the practice, viz. that they should, after their costs have remained unpaid for a certain time (say six months), and a proper refresher afforded to the memory of the defaulter, send his name to the Law Times, which journal, consistently with its invariable zeal for the promotion of honourable and fair practice amongst the Profession, would, without doubt, readily publish it. And to render this an effectual punishment to the dishonourable practitioners, solicitors in the country should make a point of refusing to serve process for those who have been so exposed. The habit of thus treating country agents is by no means confined to those who are esteemed the pettifogging class, but is well known to extend to many firms from whose standing in the Profession much better ought to be expected.

To Readers and Correspondents.

A Regular Man.—*His letter on Mr. Bateman's case is excellent in tone, and truthful; but it is much too long for our columns at this busy season.*

S. *must keep twelve Terms. His letter is unnecessary. The objections of M. A. are so palpably fallacious that they could deceive nobody.*

G. W. (Rochdale).—*We regret the error, but it is very difficult to correct such minute figures.*

E. J. S.—*Thanks for the precedent. It shall be used as soon as leisure permits.*

G. W.—*If we were to notice all the malicious and spiteful things said about Attorneys we should fill our paper with them. Let us Lawyers answer popular error by honourable conduct.*

W. H. A. (Cheapside).—*We would gladly insert the names of the Attorneys in each case, but there is no means of procuring them.*

Alpha.—*The argument is good, but the subject has been so often treated in our columns that it must give place to others of more moment.*

A Purchaser (Saffron Walden).—*The Verulam Reports are published as often as there is sufficient matter to fill a number. Unfortunately, at present there is not encouragement for an edition of the Statutes. Not 200 orders in all were received, and less than 500 would not meet the cost.*

W. P. P.'s *note has been forwarded to our contributor, who is on circuit.*

NOTICE.

The Publisher of the Law Times *has made repeated application to persons to whom the paper had been supplied at the addresses named. Unable to obtain a reply or any intelligence of the parties, he will be obliged to the reader who will inform him in confidence if there be such persons, and whether there be any hope of recovering the debts.*

	£	s.	d.
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THE LAW TIMES.

SATURDAY, MARCH 8, 1845.

LAW OF DEBTOR AND CREDITOR.

The inefficient state of the Law of Debtor and Creditor, as left by Lord Brougham's legislative Frankenstein of last session, has at length fairly roused the mercantile classes in the City to a sense of the insecurity of their properties shaken by the tinkering of the noble lord. Suddenly they have found all debts below 20*l.* to be irrecoverable, and their debtors laughing at them, and they have taken the alarm, and are doing that which the Profession should long ago have urged upon their clients. They are about to appeal to Parliament for a revision of the Rogues' Indemnity Act, and a reform of the entire law of debtor and creditor. To this end an association has been formed, comprising members of many of the most respectable mercantile

firms in the City, who have liberally subscribed to defray the cost of bringing the matter before Parliament; in furtherance of which object the heads of a Bill have been prepared, and are now being circulated among the trading classes for approval and suggestion. The following are the proposed provisions:—

In order to save time and expense, it is proposed—

First. That all that shall be necessary for the good service of a copy of a writ be, *that it be left at once at the house of the debtor*. This would save much of that trouble and expense which are now incurred by the debtor being intentionally out of the way—playing at hide-and-seek—and during which time he is often making away with his property, and preparing his schedule.

Second. That in all debts under 20*l*. the writ shall be returnable in four days.

Third. That if no appearance be put in at the expiration of four days, the plaintiff shall be sworn to his debt, and judgment shall proceed forthwith on the property of the defendant.

Fourth. That, in order to save the time and expense which are now incurred so frequently, by suitors being day after day with their witnesses in the superior courts, waiting for their case being called on, it is proposed that Courts of Requests shall have jurisdiction over all debts under 20*l*. and that the Sheriffs' Courts have jurisdiction over all debts under 100*l*.

Fifth. That a difference shall be made between a debt on a dishonoured bill of exchange, and other debts. That upon the affidavit of the holder of a dishonoured bill of exchange, before a proper officer, four days after the dishonouring of such bill, that it is *bonâ fide* what it professes, and that the dishonourer has had three days' notice of the dishonouring of such bill, execution upon the property of such dishonourer shall proceed at once.

Sixth. That judges shall have the power of attaching for the benefit of judgment creditors such portions of the salaries of servants—the pay or half-pay of military and naval officers—the pensions of pensioners—annuities of annuitants—or other known periodical receipts of debtors, as they shall deem fitting to the claim of such judgment creditors.

Seventh. That in order to prevent the bringing of frivolous, vexatious, and dishonourable actions for debt, and to prevent frivolous, vexatious, and dishonourable defences being set up against just and good actions, parties so bringing or defending shall, upon the certificate of the judge to that effect, suffer incarceration in a criminal prison, for a period hereafter to be determined.

Eighth. That in order to prevent collusion between landlord and tenant, to the injury of the common creditor, it is proposed that the landlord shall make affidavit before any magistrate of the amount of rent actually owing before the sheriff satisfy his claim.

Ninth. That such part of the Act, commonly called "Lord Brougham's Act," as authorizes the granting of "*the interim order*," and "*a protection from process*" to the debtor be repealed; so that when he comes up for his hearing, he may come up in custody, as before the passing of that Act.

Tenth. That in order to prevent any hostile, obstinate, or grasping judgment creditor or creditors forcing the rest of the creditors not having judgments to make the debtor a bankrupt, at great expense and sacrifice of property, in self-defence, it is proposed, that upon a representation to a judge, that the majority of creditors, both as to numbers and amount of debts, accede to the offer of a composition from the debtor, or to other arrangements, it shall be lawful for any judge, on application, to nullify such judgment or judgments, and thereby reduce such obstinate, hostile, or grasping judgment creditor or creditors to the necessity of coming in with the rest. Creditors will then get what is now swallowed up by law.

Eleventh. That no debtor be allowed to take the benefit of any Act for the relief of insolvent debtors more than once in *seven* years.

These propositions are of grave importance, and we purpose to consider them *seriatim*, in hope that our comments, which will be purely practical, and suggested by experience, may attract the notice of the parties engaged in the preparation of the measure, as also of those to whom it will be submitted for ratification in Parliament.

The first proposal, that a writ shall be served by leaving it at the house of the debtor, is excellent. But why should a writ be necessary at all? Why not at once serve declaration with a bill of particulars, and, if desirable, extend the time for pleading?

This would dispense with provisions two and three.

The fourth proposition is very objectionable. If the debt be disputed *bonâ fide*, the courts of requests would be wretched tribunals to try questions of such importance. If the defence be purely frivolous and vexatious, the defendant should be subjected to some direct punishment for his fraudulent attempt to evade payment of a just demand.

The same objection applies to sheriffs' courts. They are, for the most part, wretched mockeries of justice, and should not be intrusted to decide even questions of 20*l*. value, much less of 100*l*.

The *fifth* provision, giving summary judgment and execution on dishonoured bills, is a vast extension of power to the creditor; but inasmuch as a bill is an admission of a debt, there can be nothing objectionable in principle to treating it as a settled matter, and, unless cause be shewn to the contrary, to let execution go upon it. Perhaps it would be an improvement were the creditor in such case to be required to give four days' notice, to enable the debtor, on good cause shewn to a judge, in chambers to stay proceedings.

All the remaining provisions are unexceptionable in themselves.

But we would respectfully submit to the Association the plan which we have publicly urged upon the Profession, and privately proposed to the author of the mischief, a plan which would supersede many of the above provisions, and meet every case and every difficulty. We repeat it once more: it is this.

That, upon return of *nulla bona* by the sheriff after execution issued, the defendant shall be deemed an insolvent, and be subject to all the laws affecting insolvents.

That thereupon the judgment-creditor, or any other creditor, shall be empowered to summon the debtor before the Commissioner of Bankrupts within whose district he dwells; if he do not appear, he shall be liable to arrest and punishment for contempt; on appearance, he shall be deemed to be in the custody of the Court until he shall have entitled himself to protection by a full disclosure of his estate and satisfying the Court that his debts were honestly contracted.

The Court shall then proceed with him precisely as with any other bankrupt, taking an assignment of his estate and effects, and if he have acted fairly, grant him a final order.

But if he do not faithfully reveal his effects, or be guilty of any fraud, or it shall appear that his debts were fraudulently contracted or without reasonable prospect of being able to pay them, he shall be subject to such term of *imprisonment for the fraud* (not for the debt) as the Court shall award, of course limiting its powers.

We believe the above to be the outline of a plan which would effect all that the creditor has a right to demand, nothing of which the debtor could complain; which would attain the ends of justice to both parties, and this not only without restoring the imprisonment *for debt*, which has been mitigated, but permitting its entire abolition, because it provides a substitute vastly more efficient.

May we hope that it will be *added* to the Bill in course of preparation by the society?

PROFESSIONAL MALPRACTICES.

THE following report of a scene at the Essex Insolvent Court has been sent to us. The scheme of conducting a profession in the name of an attorney resident far away, is not confined to Chelmsford; and we hope, wherever it is exhibited, it will be met by the same spirited opposition as was given to this by Mr. DURRANT, and for which he deserves the hearty thanks of the Profession.

ESSEX INSOLVENT DEBTORS' COURT.

(Before Mr. Commissioner LAW.)

Professional malpractices.

Mr. *Durrant*, solicitor, of Chelmsford, said he wished to bring under the notice of the Court a practice which he believed to be highly improper, namely, that of a practitioner from London having his name on the door of a house in Chelmsford, where he does not reside—and, to the best of his (Durrant's) information, never did; but having an agent or clerk here, by whom cases were carried through this court in his name. The attorney's name was *Dennes*, and the clerk's *Old*. A similar matter had been brought under the notice of Mr. Serjeant Ludlow by a committee of the Manchester Law Association. The Commissioner had paid particular attention to their observations, and the Court had subsequently strongly condemned the practice. He (Durrant) had stood forward in this case, because, as he was a member of the Metropolitan and Provincial Legal Association—and he believed the only one in the town—it might seem proper he should do so. The grievance was, that Mr. Dennes, being resident in London, and not in Chelmsford—although he had a person here who acted for him—it was impossible his clients could have the fair benefit of his advice. The Court of Queen's Bench had decided that it was illegal for an attorney to practise in this way. He (Durrant) would call attention to two reported cases. In *Hopkinson* v. *Smith* (1 Bing. 13), where a person not an attorney carried on business in the plaintiff's name, at a town five miles from the plaintiff's residence, where the attorney shewed his face only once a week, and never interfered in the business, it was holden he could not recover. In that case the attorney appears to have merely lent his name in consideration of receiving a part of the profit. But when the attorney stationed his *articled clerk* in a town at a distance from him, and all the business was transacted by the clerk, the result was the same. (*Taylor* v. *Glassbrook*, 3 Stark. 75.) Now, in this case, not only did Mr. Dennes not shew his face in Chelmsford once a week, but he (Durrant) hardly knew if he did once in twelve months—in fact, he believed he never was here except when he came down to sign necessary documents for, and to submit them to, this Court. However, Mr. Old was now present, and could, if called on, give some explanation on that subject, and of the nature of his connection with Mr. Dennes. Independently of the general reasons for objecting to the principle of an attorney residing in one town being allowed to practise in another by means of a clerk, it was a particular hardship as it related to this court, because the learned Commissioner would remember that, according to its present practice, the Court would only allow a limited number of attorneys in each provincial town to practise in it for insolvents; and, therefore, while the name of Mr. Dennes remained on the list as an attorney of this court practising in Chelmsford, it formed, to a certain extent, an obstacle to others who might be willing to do so. He (Durrant) was sure the Court would watch over the interests of the practitioners, and, if an improper practice prevailed, would take some steps to put an end to it. He meant to bring this matter before the Council of the Metropolitan and Provincial Legal Association; but he mentioned it now, that it might not be said to him, "Why did you not bring this before the commissioner in the country?" and that the parties might have an opportunity of giving him (the learned commissioner) any explanations they might think proper.

The COMMISSIONER.—How long has Mr. Dennes practised here?

Old (his clerk).—Between four and five years.

The COMMISSIONER asked, if notice had been given to Mr. Dennes of bringing this matter forward?

Durrant said he gave him notice of it in the morning, but he had left the court. His agent carried on a small general business in the town, and his name was over the shop on one side, and then on another door there was "Mr. Dennes, Solicitor," so that parties might go in there thinking it was his residence, but there was no one there to be seen but Mr. Old.

The COMMISSIONER (to Mr. Old).—Does Mr. Dennes live in Chelmsford or not?

Old said, he had resided at Ilford and occupied a first-floor there, but he lived in London at present.

The COMMISSIONER.—Did Mr. Dennes ever live in Chelmsford?

Old.—He occupies an office and room in my house.

Mr. Dennes here entered the court, and the Commissioner asked him if he lived in Chelmsford or in London?

Dennes.—Occasionally at both. I should say I live more in London than in Chelmsford; but I take out a certificate for Chelmsford. Sometimes I come and stop three or four days, and then go away.

The COMMISSIONER.—How often in the year?

Dennes could not say how often.

Old.—He stops sometimes at Chelmsford three or four days, if business calls him. He has been a week, but that is seldom.

The COMMISSIONER.—Before to-day, how long ago is it since he was here?

Old.—About a fortnight, and he then stopped three or four days.

The COMMISSIONER.—Where is his office in London?

Dennes.—I have no office in London.

The COMMISSIONER.—Where is your residence?

Dennes, after some hesitation, said, in Ironmonger-street, St. Luke's.

The COMMISSIONER.—You seem to have some doubt.

Dennes.—No doubt at all; it is No. 5.

The COMMISSIONER.—Are you rated in Chelmsford?

Dennes.—No.

Old.—I am rated.

The COMMISSIONER.—When Mr. Dennes comes to stay, do you charge him?

Old.—He pays me for the office and room 10*l.* a year.

The COMMISSIONER.—How much do you pay him?

Old.—Nothing; I have a regular salary from him.

The COMMISSIONER.—What is it?

Old.—1*l.* a week.

The COMMISSIONER.—If an insolvent does not pay his account, who is the loser?

Old.—Mr. Dennes: I am certain of that.

The COMMISSIONER.—I shall mention the subject to the other commissioners; but there is no difficulty now in saying this,—that if any other gentleman wishes to practise in this court, the circumstance of Mr. Dennes's name being on the list will be no impediment to the admission of another. That is quite certain.

SHAM LAWYERS.

HERE is another letter from one of this tribe, boldly demanding the 5s. costs. Let the Law Society see to him.

Manchester, Feb. 21st, 1845.

SIR,—I am instructed by Mr. John Nuttall, of this town, to apply to you for the sum of 2*l.* 1s. due from you to him; and if the same be not immediately paid to him, together with the costs of this application, I shall issue a writ for the recovery thereof without further notice.

Yours, &c.

THOS. NEILD.

Debt . . .	£2	1	0
Costs . . .	0	5	0
	£2	6	0

ADVERTISING ATTORNEYS.

THE following advertisement appears in the *Newcastle Journal* of March 1st. If we remember rightly, Mr. WANLESS, on some former occasion, repudiated such practices, when charged with them in our columns.

TO TRADESMEN AND OTHERS.

Mr. Wanless, solicitor, Newcastle, has removed his offices from No. 19, Dean-street, to No. 2, Sandhill (opposite the Fish Market), where he continues to recover book-debts, &c. on the same liberal terms as formerly, viz. a commission of 10 per cent.

A BAR CLUB.

THE propriety of forming a Bar Club has been repeatedly urged upon us. When almost every other profession has its club, surely the Bar might advantageously establish one for its own members exclusively, having all the usual accommodations of a club with the added conveniences of a law library, and other special arrangements, which will doubtless suggest themselves as the plan is matured.

We see many benefits that might accrue from such a club, and undoubtedly to no class would it be more practically useful than to barristers.

An early opportunity will be taken to submit a specific prospectus; but in the meanwhile it will be desirable to ascertain if the suggestion be approved; we shall, therefore, be obliged if those who are willing to join it will communicate their names *in confidence*, addressed to the editor of the LAW TIMES.

A Provisional Committee will be the first step, and we hope soon to announce its formation.

VERULAM SOCIETY.

The fourth numbers of the *Criminal Law Cases* and of *Practice Cases* have been issued, completing the *first part* of *both* series.

An accident has delayed the fifth and sixth numbers of the *Real Property and Conveyancing Cases*, but we hope they will be issued early in the ensuing week.

The fifth and sixth numbers of *Magistrates' Cases*, completing the last Term, will follow immediately.

Having thus disposed of arrears, unavoidable in the commencement of a scheme dependent upon the co-operation of a great number of persons, we hope in future to keep pace with the Terms. Until tried, it would be impossible to conceive the difficulty of working machinery so complicated as that by which only such extensive works as the LAW TIMES and the VERULAM REPORTS can be produced.

The following Forms have been added to the Society's List:—

Notice of Declaration and Bill of Particulars.
Writs of Summons. (Parchment.)
Affidavit of Service of Summons.
Ditto of Summons and Attendance.

A number of additional forms will go to the lithographers on Monday, and will be duly announced next week.

The returns of the circular are now so slow (scarcely averaging one a day) that we shall wait no longer, but next week state the result, and which, if any, of the works proposed have been adopted.

LECTURES ON MEDICAL JURISPRUDENCE.

BY ALFRED S. TAYLOR.

Delivered at Guy's Hospital, 1844.

LECTURE IX.

Poisoning by arsenic—White arsenic.

In this morning's lecture we have to speak of poisoning by arsenic. The term *white arsenic* is generally applied to arsenious acid. The arsenic acid, is another compound, which is never used for poisoning. Orpiment, the sesqui-sulphuret of the chemist, is commonly called *yellow arsenic.* It is highly poisonous. Thus there are three kinds of arsenic, the *white*, the *yellow*, and the *red*. The yellow arsenic is commonly called orpiment, and is occasionally used as a poison. The red arsenic (Realgar) is a proto-sulphuret; it is met with in the arts, but it does not often form the subject of criminal investigation. The yellow sulphuretted derives its poisonous property from a quantity of arsenious acid mixed with it.

Let us first speak of the white arsenic, or arsenious acid. This is commonly seen in the form of a white powder, or in opaque white masses. It is described as an acid from its power of forming salts with alkaline bases, but a solution of it has a very feeble re-action on the test paper. White arsenic is described generally as an antiseptic, from its being supposed to have an acrid taste; but this is an error, as it possesses, in fact, very little taste, which may be decided very easily by experiment, the result of which will shew that it has a faint sweetish taste.

Arsenic is an irritant poison. It does not seem to possess any corrosive properties; that is, the changes met with in the alimentary canal of a person poisoned by it are to be referred to the effects of the inflammation excited by the poison, and not to any chemical action. The symptoms vary according to the dose in which the poison has been administered. The usual time at which they come is from half an hour to an hour after the poison has been swallowed. The individual first experiences faintness, nausea, and sickness, with an intense burning pain in the region of the stomach, which is increased by pressure. The pain in the abdomen becomes more and more severe, and there is violent vomiting of a brown turbid matter, mixed with mucus, and sometimes streaked with blood. These symptoms are followed by diarrhœa, which is more or less violent; there is a sense of constriction of the throat, with intense thirst, which is generally very remarkable. The pulse is small, very frequent, and irregular, sometimes wholly imperceptible; in some cases being at 132. There are, besides these symptoms, palpitation of the heart and syncope. The skin is cold and clammy, in a state of collapse, and sometimes very hot. The respiration is painful, from the tender state of the abdominal parietes. Before death we find coma, with tetani, convulsions, and spasms in the muscles of the extremities. Such is the ordinary character of the symptoms in an acute case of arsenical poisoning, where from half an ounce to an ounce of the poison has been taken; but if the individual recover from the first effects, then we may have other symptoms; for instance, redness and inflammation of the conjunctivæ; irritation of the skin and the occasional appearance of a peculiar herpetic eruption. Among the secondary symptoms is salivation. These symptoms chiefly occur in cases where small doses of the poison have been taken for a long time together, and they differ in cases where a large quantity has been taken for one dose. The average period for the commencement of the symptoms is half an hour after the substance has been taken; but they occurred in a quarter of an hour, in a case which proved fatal in this hospital. Dr. Christison mentions a case in which the symptoms took place in eight minutes; but a case occurred in the north of England in 1834, in which they came on almost immediately after the poison had been taken. The latest period appears from a case reported by Orfila, to be five hours. This was in a case which occurred in France, wherein three drachms were taken. All the symptoms I have mentioned may not be met with in every case. Thus the pain, which is usually excruciating, like a fire burning within the body, is sometimes wanting. In a case which occurred in the hospital three years ago, there was scarcely any pain just before death. In those cases where there is an absence of pain, death is commonly rapid. The symptoms of alvine irritation, where there is vomiting, are seldom absent. Intense thirst is a common symptom, but this is sometimes absent.

There has been much speculation as to the mode in which arsenic destroys life. Most deaths occur in from eighteen hours to three days, and probably the average period for ordinary doses is about twenty-four hours; but it may destroy life in a much shorter time. There are numberless instances in which it has proved fatal in six hours. In one instance death took place in two hours and a half, and in another case, communicated to me by Mr. Foster of Huntingdon, life was destroyed in two hours. Dr. Borland has mentioned a case in which two ounces were taken, and the patient died within two hours afterwards. This case was remarkable in another point of view; there was neither pain, vomiting, or diarrhœa; the woman died from a fit of syncope, from the sympathetic influence of the poison. Another material question connected with this subject relates to the quantity of arsenic required to destroy life. According to Dr. Christison, the smallest fatal dose on record, in an adult, is stated to have been thirty grains of the powder of arsenious acid; but undoubtedly a much smaller quantity than this will suffice to kill. Facts of this description can only be elicited by accident, as in cases of murder or suicide so much more of the poison than is necessary is commonly taken. Children are killed by a smaller dose than adults. The smallest fatal dose of arsenic, in a state of solution, amounted to four grains and a half, and the child who took it died in six hours. But there is no doubt that a smaller quantity would suffice to kill a child. Four or five years ago some interesting cases occurred, which enable us to estimate pretty accurately the quantity of arsenic required to kill a human being. A case occurred in London, in 1839. At a large dinner party, it was observed that three persons who had partaken of the port wine on the table, were seized with symptoms of poisoning. The wine was suspected to contain poison, and it was sent to me for examination. It was clear, of the usual colour and odour, and possessed all the characters of good wine; but there was a small quantity of a reddish white sediment at the bottom of the bottle. From the account of the symptoms, the wine was suspected to contain arsenic: this was found to be the case, and the quantity of poison dissolved, amounted to about 42 grains in each fluid ounce. The following were the facts:—a child, aged sixteen months, took a quantity of the wine, containing about one-third of a grain of arsenic. In twenty minutes this child became sick, vomited violently for three hours, and then recovered. A lady, aged fifty-two, took a quantity of wine, containing rather less than *two grains* of arsenic. In about half an hour she experienced faintness. Violent vomiting came on, and lasted four hours, but there was no pain. She then gradually recovered. A gentleman, aged forty, took a quantity of the wine, containing rather more than *two grains* of the poison. The symptoms in him were similar, but more severe; and had he taken another glass of the wine, it is probable he would have been killed. It may be proper to observe that although this wine was perfectly saturated with arsenic, not the least taste was perceived by

any of the parties. From the result of these cases, I think we might safely say that an adult person might be killed by a dose of from four to six grains of the acid; this may be considered as the average. As to the *post mortem* appearances, they are generally confined to the stomach and the intestines. They are commonly well marked, in proportion to the largeness of the dose, and the length of time which the individual has survived after taking the poison. Our attention must first be directed to the stomach. Arsenic seems to have a specific effect on this organ; for however the poison may have entered the system, whether through a wounded or ulcerated surface, or by the act of deglutition, this organ has been found inflamed.

A case has recently occurred, in which a quack has been tried on a charge of manslaughter, from his having caused the death of a woman by applying arsenic in a plaster to her breast, which was in a diseased state (Liverpool Winter Assizes, 1844). In this case the stomach was found much inflamed. The mucous membrane of the stomach is commonly found red and inflamed; the colour varies considerably. When the body is first opened, the mucous membrane is of a dull or brownish red tint, but after exposure to the air it becomes of a florid red, by the effects of the atmosphere. The redness is usually more strongly marked at the great extremity; in one case it may be found spread over the whole mucous surface, giving to it the appearance of red velvet; in another it will be chiefly seen on the prominences of the rugæ; and in another we meet with its action at the pyloric end of the stomach. The stomach often contains a mucous liquid of a dark colour, tinged with blood. The mucous coat of the stomach is very rarely found ulcerated, and still more rarely gangrenous. Perforation of the coats is so uncommon a result of arsenical poisoning, that there are only three instances on record. The duodenum and rectum are those parts of the intestines which have been generally found inflamed, and traces of inflammation are occasionally seen in the pharynx and œsophagus. The inferior portion of the intestinal canal escapes the action of the arsenic. Where a person has died rapidly under symptoms of coma, inflammation of the stomach and intestines has been very slight; but these are exceptional cases. The mucous glands of the stomach have been found enlarged; but this is by no means an unusual morbid appearance, without reference to poisoning; any cause of irritation will do it. You may be asked, what is the earliest period of time at which inflammation may be produced in the stomach after taking arsenic? The answer to that question will be, that the earliest period is two hours, for within two hours after the poison has been swallowed, the stomach has been found extensively inflamed. Then again you may be asked, what is the earliest period at which ulceration of the stomach may be met with? The earliest period in a case of criminal poisoning was *ten* hours. Ten hours after swallowing the poison the individual died, and the stomach was found ulcerated. Various morbid appearances are said to have been met with in the lungs, heart, brain, and urinary organs; but they do not appear to be characteristic of arsenical poison. It is, doubtless, to the stomach and intestines that a medical jurist must look for the basis of medical evidence in regard to *post mortem* appearances in cases of arsenical poisoning. Sometimes a large quantity of mucus is found in the stomach, and the mucous coat is detached by the violent action.

Now with regard to the treatment. If vomiting do not already exist, as a direct effect of the poison, sulphate of zinc may be exhibited, and the emetic effects promoted by mucilaginous drinks, such as linseed tea. When sulphate of zinc cannot be procured, a good substance for an emetic is powdered mustard, in the proportion of from one to two teaspoonfuls in a glass of water, administered at intervals. The stomach-pump may be usefully employed, if time be not lost in its application, and care should be adopted in its employment. Unless the patient is seen early, remedial measures are seldom successful in saving life. With regard to the stomach-pump, in several cases that I have examined, not the smallest trace of poison has been found in the stomach; thereby shewing how completely the poison had been removed by vomiting and purging. But it is not the poison found in the stomach that kills, but what is found in the body; so that the mere absence of the poison in the stomach amounts to nothing. It is because of the quantity absorbed in the body that it produces fatal effects.

Various antidotes have been suggested in cases of poisoning by arsenic, and latterly we have heard much of the sesqui-oxide of iron, which is prepared by precipitating the persulphate of iron by ammonia. There is great difference of opinion as to the efficacy of this remedy. Many eminent medical jurists have found that giving oxide of iron to animals destroys the effect of the remedy. It is considered by some persons that it acts by combining with the arsenious acid to form an insoluble arsenite of iron; but it has been proved beyond dispute that this is a poison. But this is not the explanation; for something more is necessary than the formation of an insoluble arsenite of iron. According to this view, if an ounce of arsenic has been swallowed, and none of the poison ejected, twelve ounces of the oxide of iron should be given immediately in order to produce any good effect; and this is on the assumption that the poison is in a perfect state of solution in water. But we find that the poison is almost always taken in the form of powder, and is very little soluble in water, and therefore its insolubility prevents this chemical action. If persons were in the habit of taking arsenic dissolved in water, this would be a great means of separating it in an insoluble form, but that is not the way in which it is taken. If the poison were swallowed in the state of a filtered aqueous solution, the oxide of iron might combine with it; but there its antidotal effects are so imperfect as to render it altogether impracticable. With regard to its action, numerous recoveries are said to have occurred from its use; but so far as I have been able to ascertain, in severe cases, emetics and the stomach-pump were freely used, and in the lighter cases recovery would probably have taken place without it. The treatment, in a case of poisoning by arsenic, should consist of washing out the stomach thoroughly with the stomach-pump, promoting vomiting, and exhibiting a viscid mucilaginous liquid, thickened starch or gruel, and it is to this that we may rely for success if it is administered in time. The experiments I have made seem to shew that the oxide of iron does not possess the power of combining with powdered arsenic acid, the only form in which we commonly have to deal with the poison, in a way to act as a chemical antidote; and that if recoveries have really taken place from its use, it must have some other mode of operation.

We now proceed to the chemical analysis of this body. We meet with arsenic in two forms; in a state of white powder, or in semi-vitrous lumps. The powder is called very often mercury, and sold for mercury.

It is often mentioned on trials as mercury. With regard to the properties of arsenic, the first point we attend to in cases of poisoning is the action of water. Arsenic is a very insoluble body in cold water, but when a small quantity is boiled in water it floats on the water in a sort of film. It is like plaster of Paris in its effect on water, and is much about as soluble in cold water. No other poison assumes this form. Organic matters interfere with its solubility; hence it is less soluble in tea and coffee, and other substances, than it is in water. It is very soluble in alkalies, and forms with caustic potash arsenite of potash. With regard to its volatility, if you put a little of it with charcoal or flux into a tube and heat it, it is decomposed, and a ring of metallic arsenic is deposited in the glass; this may be volatilized by a moderate heat, and it then forms octohedral crystals of arsenious acid, which, by the light of the sun, present a very resplendent character. When the powder is moistened with a solution of hydrosulphuret of ammonia no change of colour takes place as with other metallic poisons; on heating the mixture the white powder dissolves, and on continuing the heat until the ammonia is expelled, a rich yellow or orange-red film is left, which is a sesquisulphuret of arsenic. Various methods of reducing arsenic have been adopted;—by condensing it with hydrogen, by metals, and by galvanism: and various agents have been proposed;—charcoal, black flux. The calcined acetate of soda is the best agent, and the black flux is objectionable; but carbonate of potash is deliquescent, while carbonate of soda is not so. It is said that other metals are reducible by this means, such as mercury and cadmium; but the sublimate of arsenic differs from that of these metals in its dark iron-grey lustre, and other remarkable properties.

THE CRITIC.

New Books.

The Law Review.

The Law Magazine.

We now proceed, according to promise, to present to our readers some specimens of the contents of these periodicals, which we shall continue from time to time, as space will permit.

From the *Law Review* we take the following, said to be written by Lord Brougham:—

MEMOIR OF MR. BARON GARROW.

Mr. Garrow was, in a certain line of the legal profession, without an equal, certainly—in a portion of that line, without a rival. He had early in life devoted himself to the practice of the criminal law, and he arrived in a short time at considerable eminence. By attending almost exclusively to this branch of business, and exercising upon it his great powers of steady attention, extraordinary quickness in apprehension, and a singular circumspection, he soon reached the lead of the Old Bailey practice, and domineered without a competitor at the bar, and with little control from the bench. He had the good fortune to acquire the friendship of the late learned Mr. Shelton, then clerk of the arraigns in that court, and perhaps the most accomplished criminal lawyer of his day. This gentleman, it was well known, freely unfolded to him his vast stores of knowledge, and where any complicated case arose, filled his mind both with principles and authorities. Such was the great experience of Mr. Shelton, and such the confidence reposed in him by the judges, that his opinion was solicited even by the most learned of their body in cases of much difficulty.

In consequence of some opening upon the Home Circuit, which Mr. Garrow travelled, and which is easily combined with the Old Bailey (then only held eight times a year, but now twelve times, ever since the establishment of the great Central Court), he gradually became a candidate for civil business, and attended regularly in Westminster Hall. His success here was far more rapid than any one expected the "*Old Bailey Solicitor*" could attain. His talents were found to be perfectly well suited to the Nisi Prius business in general, and he before long had so large a share of it, that, having given up the Old Bailey some time before, he was soon raised to the rank of King's Counsel.

There have probably been few more ignorant men in the profession than this celebrated leader. To law, or anything like law, he made no pretence. What little he could have known was rather mechanical than scientific. He began as Assessor at the great Bedford County election in 1784, under the patronage of the Whigs, to whose party he appertained, without probably knowing very distinctly the meaning of the term, and with certainly no notion of the division in principle which distinguished the Whig from the Tory. The knowledge of a few statutory provisions being all that an assessor has to regard, he could go through the routine of that election safely enough, if not very respectably. Then the little criminal law required at the Old Bailey he could pick up by a few months' attendance there, and for any out-of-the-way point he must trust to the suggestion, or rather the prompting of the moment from his junior or his client.

The practice of evidence, that is, of examination of witnesses, he soon acquired, without rule or the notion of principle, by use and observation, till he knew by sure and unerring instinct what questions might and what might not be put; and when a rare matter presented itself, he must here again be primed or prompted for the nonce. Then with so slender a provision of law, his ignorance of all beside, of all that constitutes science, or learning, or indeed general information, nay even ordinary information, was perfect; and yet one important branch of knowledge had become familiar to him—his intercourse with prisoners, with juries, above all, with witnesses, had given him extensive knowledge of human nature—though not certainly in its higher, more refined, or even more respectable forms.

With all these great deficiencies, with this confessedly slender stock in trade, Mr. Garrow was a great, a very great advocate. To describe him as merely quick, clear-seeing, wary, prompt, nimble, bold, in every sense of the large word, skilful, would be too general, though it would be quite correct if each of these phrases were extended to the superlative degree. But more is wanting to portray distinctly his extraordinary merits. The giddy and superficial vulgar—meaning by this the vulgar of the legal order—would admire without stint his cross-examination. It was, no doubt of the matter, very brilliant; in every sense, striking. He seemed every now and then to destroy, almost to annihilate, an adverse witness; and often he would, without effort and unperceived, be winding about him, throwing a net round, gradually contracting it into a noose, or drawing after him or towards him the witness, his appointed but unconscious prey, all else already seeing the fate that awaited him, and then would on a sudden pounce forth upon him, and tear him in pieces. But, generally speaking, his cross-examina-

He had this great defect, that he treated to attacking the witness hostilely, and made war upon him far too soon, Now, be a counsel ever so expert, there is one limit necessarily appointed to the success of such a hostile operation. If the witness is calm, or confident, or well trained, above all, if, without being honest, he is cool and self-possessed, he may bid defiance to any cross-examination. But in most cases a great deal may be obtained by gentle treatment—by calmly throwing him off his guard—by kindly treating him—by presenting things to his mind without the warning which a hostile attack always gives an acute witness; and of this Mr. Garrow far too seldom availed himself. Men said his Old Bailey practice, by making him familiar with the lower and more tutored kind of witnesses, had spoilt him in other particulars. It is more likely that he could not resist the temptation of making a great impression on the jury and on the bystanders. Those bystanders—and the profession, we again must observe, are not to be excepted from the number—never failed to commit the mistake of supposing a loud and angry examination to be a successful one; and they constantly supposed that the credit of a witness had been demolished when his person had only been scolded.

And here, as to the uses of cross-examination, we may make an extract from Mr. Butler's "Reminiscences." "Cross-examination," says that gentleman, "is sometimes abused, but it is certainly the surest method of eliciting truth that has been devised. When the affair of the necklace of the late Queen of France was in agitation, a person observed to Lord Thurlow that the repeated examinations of the parties in France had cleared up nothing. 'True,' said his lordship, but Buller, Garrow, and a Middlesex jury would, if such a matter had been brought before them, have made it all in half an hour as clear as daylight.'"

But Mr. Garrow's real forte was in truth his examination in chief, which was unrivalled, and which is, indeed, a far more important and not a less difficult attribute than the cross-examination which so captivates the ignorant. It requires the most perfect knowledge of the facts, and the most skilful leading of the witness through them, so as to make him tell the story clearly, connectedly, and strikingly, and to avoid the parts of the case, which, being tender, it would be perilous to let him come too near. But it also demands the most vigilant attention to every word, tone, look, gesture of the witness, because from this close and wakeful survey it will frequently appear how far the instructions may be relied on, how far the same things are likely to be told upon oath and in public, which were before related by the witness privately and unsworn to the client. No description can give the reader an adequate idea of this eminent practitioner's powers in thus dealing with his witnesses. They who had lying before them the instructions on which his examination proceeded, saw a case brought out which they scarcely seemed to have read before. How different the mechanical examinations of ordinary barristers, yawning over their briefs, pursuing the order of the written statement line by line, and only turning into a question, not seldom a leading or irregular question, the short sentences which the attorney has given as what "*this witness will say!*" Then, when the fire of cross-examination had shaken the credit of the evidence, how admirably did the great tactician, in re-examination, restore, comfort, set it up! These were things which the *connoisseur's* understanding could relish; they were to the vulgar audience as "a stumbling-block, or perhaps foolishness."

It may easily be supposed that his statement, his narrative, was of a high order. No man more clearly, more continuously presented a picture of his case to those he was addressing. His language was plain, but it was well strung together. He reasoned little, he jested less; he not rarely declaimed, and he had sufficient force to produce his effect. He was worst when he tried to tell some long story of his feelings for his learned friend on the other side, or when he ventured to indulge in the pathetic. But his voice was powerful, and it was pleasing when raised: his action was good and moderate; his countenance, though not very refined, was expressive enough when he was roused; his whole manner was successful. His discretion, his perfect judgment, and entire self-command, exceeded that of most men. Among the other singular anecdotes of his professional life, we used to be told, that going on a special retainer to defend a gentleman charged with a capital offence (it was murder, indeed), he sat in court during the whole trial, and of course watched each word, look, and gesture of each witness, as well as of the prosecuting counsel, and the judge, and the jury, with the eyes of an eagle, and never once uttered a word from the beginning to the end of the proceeding.

Mr. Garrow's ignorance of law, except the most ordinary matters which are of hourly occurrence at Nisi Prius, has been often mentioned with astonishment. But the real wonder was this, that he could suddenly take up a point from his learned coadjutors, and state his objection or answer his antagonists, as clearly, tersely, and accurately as the best special pleader or mercantile lawyer of the day. You generally found him quite to seek, if the same point arose a few weeks, possibly days, after. It seemed as if he had no niches in which to store, no pegs on which to hang the shreds and scraps of law which he was constantly obtaining, as the pressure of the moment made him turn round to his junior, and stoop down to pick them up. Indeed, it was perhaps better that he should not keep them at all; had he retained them, having no means of understanding and arranging them, a kind of patchwork would have been formed of no use for any future emergency, and the poor *chiffonnier*(a) must have again exercised his humble trade as before.

He was sufficiently aware of his own deficiencies to shun the occasions which might display them. Accordingly, he avoided, when in high office, appearing to argue legal questions before the House of Lords; and on one occasion Lord Eldon, then presiding there, had the cruelty to insist upon his attendance, when some peerage question was in the House. Being told that Mr. Attorney was engaged in the Court of Queen's Bench, he asked "if it was in a horse cause," and if he could not leave it to attend his duty in that House. The case was postponed to let him come another day.(b) He had gotten an argument prepared for him, which he read word for word at the bar; and, unable to give the citations which were made by Mr. Nolan (the writer of the paper) in the most abbreviated form, he read them as written, to the great amusement of the malicious Chancellor, who did not soon forget the legal authorities he had that day been introduced to, such as *one Lev.* and *Cro. Jac.* Nor did Lord Eldon confine his jocularity on this subject to the House of Lords. "Two days afterwards (says Sir Samuel Romilly, in his Diary), in the Court of Chancery, on a question whether a manager of a theatre could discharge the duties of his office without personal attendance, I, who had to argue that he could not, said that it would be as difficult as for a counsel to do his duty in that court by writing arguments and sending them to some person to read for him. The Lord Chancellor interrupted me by saying, 'In this court, or in any other?' and, after the Court rose, he said to me, 'You know, I suppose, what I alluded to? It was Garrow's written argument in the House of Lords.' So little respect has his lordship for an Attorney-General whom he himself appointed because he was agreeable to the Prince." It must, indeed, be confessed that all others had better right to laugh on this occasion than Lord Eldon. He it was who had promoted to the head of the Profession a person plainly ignorant of its most common and best-known learning, and he had placed him in a position which gave him an irresistible claim to a seat on the bench, though wholly incompetent to fill it. It was Lord Eldon's duty, however, to resist that claim, and prefer offending Sir William Garrow to outraging justice by so unfit an appointment. We were accordingly fated to hear the unlearned baron, in an equity suit, commend Lord Eldon as the parent of the doctrine of Trusts in Equity. When told of this numerous progeny so unexpectedly put upon him, as it were dropped at his door, his lordship thought it quite sufficient to join heartily in the laugh, as he had formerly done upon the presentation to him of *Cro. Jac.*

His ignorance was, as we have already said, not confined to his own profession; he seemed as a man without education, probably because he had not been educated; he seemed as a man who never read, probably because books formed no portion of his reading. He now and then saw a play, or went to church; and he heard the Erskines, the Laws, the Dallas's, the Gibbs's, expatiate on various points of learning. From thence he might pick up a few phrases and fewer ideas; but he was most cautious in their application, for fear of awkward mishaps; he was far from adventurous out of his own line, within which his boldness was as remarkable as his prudence was consummate; he hardly ever soared from the ground he loved, dreading a quick fall. Instances are recorded, no doubt, of his yielding to the temptation of visiting higher regions; as when he would discourse of the connection between the mind and the body, on some will-cause which raised the question of sanity. The topic was not judiciously chosen, for it was among the more obscure and indeed inscrutable points of metaphysical science. Nor will future inquirers derive much aid from his effort, in promoting these psychological researches. "You see, gentlemen, the mind and the body have a close, an intimate, I may say, an inseparable connection. Gentlemen, they chum together." Probably he speedily perceived some hint in the judge's face—as when he asked Mr. Gaselee, indulging in a similar barn-door flight—if "we weren't getting into the high sentimental latitudes?"—for the metaphysician came quickly down to the matter before him, and went on with his luminous and plain statement of the case he should prove by witnesses—there being none, we should imagine, to the point of the commorancy and joint occupancy of the two tenants above mentioned.

On the Bench, and especially in the Criminal Court, where he found himself at home, he occasionally ventured on these very perilous oratorical experiments. A flight of his on the Oxford circuit, when passing sentence of death on an unhappy sheep-stealer, will not be soon forgotten. At Stafford, after expatiating at great length and with much solemnity on the heinousness of the offence, he assured the offender that all hope of mitigation was illusory. "I have, however (added he), one precious consolation—this is not the final trial which awaits you—you will ere long appear before another and all-merciful Judge, who will hear with patience all you have to say, and *should he feel a doubt, will give it in your favour.*" It is, perhaps, right to add, that he afterwards recommended a mitigation of the sentence, as indeed was his custom where he felt at liberty to indulge the natural humanity of his disposition. It was, however, by no means unusual with him, perhaps by way of admonition to the bystanders, to excite apprehensions which he never intended to realize.

The success of so consummate an advocate, when he had once made up his mind to quit the Old Bailey and dwell in Westminster-hall, was rapid, and though he never was popular with his contemporaries, like Erskine, the darling, as the pride of the gown, yet did they not at all grudge his progress, so plainly were his extraordinary merits perceived, and so willingly admitted. It may be questioned if either Erskine or Gibbs ever had such hold as Garrow of the common business of the court. It is certain that he retained it far longer than either of them; for he must have been nearly thirty years in the lead both at Westminster and Guildhall, and his business, like Mr. Scarlett's, abode by him to the last. Those who have witnessed it cannot easily forget the struggles between him and Gibbs, after he had fairly driven out of the field, Mingay, an artist of a very inferior description. He was often, indeed, on ordinary cases, an overmatch for Erskine himself; but Erskine could afford to sustain this defeat, or this overreaching, and his temper was sweet as his nature was noble. Not such the temper of Sir Vicary. When Garrow would "run round him," get verdicts from him, beat down his damages by coarse clamour, or horse-laughing, even make points against him, or take them from him (*filch* them, as he was wont to phrase it); the bystander saw such bitterness manifested in the defeated face, that he could not have wondered at seeing him cry from mere vexation. The business, however, especially at Guildhall, was admirably managed by these three great leaders, to whom Mr. Park and Mr. Topping may be added. They conducted it, too, so as to greatly save the public time. They would confer previously, or as the cause was trying. Abandoning on either side, and at once, the untenable points, they would bring the others at once forward, so as to obtain the opinion of the judge on the law, or of the jury on the fact, and a new cause was called. It was thus, and it was in such times as these, when leaders were strong and briefs were concentrated in a few hands, that Lord Ellenborough was enabled to meet a cause list of six hundred at one sitting. Lord Mansfield having complained of his entry once reaching sixty. But of this despatch much also depended on the presiding and animating vigour of the judge. After being away, towards the end of his life, for a few weeks, and having his place supplied by a puisne judge, Lord Ellenborough came back and disposed of eighteen defended causes in a day. We are, however, very far from holding up such examples as worthy of all imitation. Causes were more fully if not so brilliantly tried before Lord Tenterden, especially during his last seven or eight years. In his great predecessor's time the saying was, in describing the two sides of the hall, or rather the passage which then led into it, and on one side of which Lord Ellenborough judged, while on the other Lord Eldon sat—that the one was the Court of *oyer sans terminer*, and the other of *terminer sans oyer*.

The placing of Sir W. Garrow upon the Bench has been adverted to. He was far, indeed, from a brilliant judge, except at Nisi Prius, and there not clearly a very good one. Perhaps he was seen to most advantage when presiding in the Criminal Court, with the routine of which he had been so long familiar. Even at Nisi Prius there was a perpetual *fidgettiness* observable, arising, no doubt, from a consciousness that some legal point might at any moment occur, calling for a decision to which he felt himself inadequate. But no such apprehension disturbed his self-complacency when he had the dock before him. After the counsel on both sides had exhausted their questions, it was his custom to luxuriate in an examination of his own, and here he often evinced his perfection in the art of which he was an admitted master. Nor did he shrink at times from, as it seemed, lowering his dignity, by the most lavish display of that peculiar knowledge which can only be acquired at the school in which he had studied. There was no mystery in the profession of the "*appropriators*," in which he

(a) The rag-gatherer in Paris, who rakes among the dust for his small fragments of cloth, or silk, or trinkets.

(b) The question arose on a claim to the earldom of Airlie; and the point to be decided was, whether a Scotch entailed title of honour was forfeited by its devolving on an attainted person, subsequent to his attainder: or whether it was merely suspended during his life, and, on his death, came to the next heir of entail. The same question was again raised and argued before the *House of Lords* in 1831 on the Lovat Peerage, and has never yet been decided.

was not an adept. There was no term of art in the vocabulary of crime with which he was not familiar. At times the effect produced by him was most amusing. None who were present will forget the impression thus made upon an unhappy coiner, tried before him on the Oxford circuit. This man conducted his own defence, and did so with much skill and more effrontery. The judge seemed quite absorbed in admiration of the prisoner's ingenuity, and contrived to fill him with the delusion that he was so—a delusion from which there was soon to be a fearful waking. "My lord," he vociferated, "there were only two bad half-crowns found upon me. If I was making a trade of it, it stands to reason I'd have had more;" and he looked up to the bench quite confident of its sympathy. Garrow's white eyes glared upon the culprit, and in a tone which assured him all their secrets were in common, playfully replied, "Perhaps, sir, the WALLOP was exhausted." The word and the tone of its enunciation, at once unnerved the prisoner—he felt he had before him a professor of his craft, whom it was quite useless to attempt to mystify, and he resigned himself to his fate. "Gentlemen (said Garrow blandly to the jury, who shared in the ignorance of all around them), a WALLOP is a term of free-masonry amongst coiners. It means the hidden heap of counterfeits to which they resort for a supply when the exigencies of the profession may require one." The Court of Exchequer, then composed of Chief Baron Richards, and Barons Graham, Wood, and Garrow, used to be thus rather more wittily than correctly described, as consisting of one who was a lawyer and no gentleman; another a gentleman and no lawyer; a third, both the one and the other; and a fourth neither. The truth of the description is here sacrificed, as usual, to the point of the epigram.

In Parliament, it needs scarce be observed, this very celebrated advocate had little or no success. Indeed he cordially hated the place, and was with difficulty induced to enter it, or having entered, to address it. Speak, however, he did; and he began to say that he had made, on entering Parliament, a covenant with himself not to speak, against which he was now compelled to act. His speech was a very bad one, and Mr. Windham, inheriting from Mr. Burke his dislike of lawyers, began his comment on this expression, as in a declaration; he "complained of covenants broken." "Many parties," he observed, "had a right to complain of the breach which had been committed—the House—the subject—himself—but the party most entitled to complain," he added, "was the *covenantee*, he with whom the covenant had been made." Unlike the epigrammatic description which has been quoted above, the truth of this remark was fully as manifest as the wit.

In private life Mr. Garrow was not only blameless, but every way to be commended. In all its relations he was unimpeachable; and beside the kindly nature of his social intercourse, he was to be admired for extraordinary generosity to all who wanted his aid. He gave and he lent large sums of his hard-earned gains to assist those who were in embarrassment or in distress. It is singular, that, probably from never having frequented good society, or, indeed, almost any society at all, he was in private one of the most shy and bashful men, though very, very far otherwise in public.

NECROLOGY.

LORD WYNFORD.

To the list of illustrious and celebrated individuals who since the commencement of the present year have ceased to be numbered among the living, we have to add the name of William Draper Best, first Baron Wynford. His lordship expired on the 3rd instant, at his seat, Leesons, Kent, aged 78, having been born in 1767.

The deceased peer was a native of Somersetshire, and received the rudiments of education at the grammar school of Crewkerne, in that county. As the church was the profession for which he was destined, he was removed at the age of fifteen to Wadham College with a view to obtain a fellowship, but after he had resided at the University two years he became entitled, by the death of a first cousin, to the remaining part of a considerable estate, the whole of which had been once in the possession of his branch of the family. He then relinquished all thoughts of entering into orders; and in his 17th year left Oxford. Having determined on adopting the law as his future professional career, he was entered of the Society of the Middle Temple, and was called to the bar in Michaelmas Term, 1789.

The first cause in which Mr. Best attracted notice was that of *Peppin* v. *Shakspeare*, the brief in which fell into his hands owing to the absence of a learned gentleman who was engaged in the cause. The question to be argued was, "the rights of a lord of a manor in respect to the appropriation of the wastes." Lord Kenyon, then Lord Chief Justice, in delivering the judgment of the Court, paid many compliments to the "talents and industry" which Mr. Best had shewn in the management of the argument. So flattering a eulogium from so justly eminent a judge was the sure precursor of future fame. Mr. Best soon got into extensive practice both on the home circuit, which he selected for his provincial career, and in Westminster-hall. The case of Sinclair, on the prosecution of De Colonne; that of Capt. Innis, for shooting a French prisoner, which he argued before twelve judges; also *Rex* v. *Astlett* and *Rex* v. *Despard*, with other important civil and criminal cases, which will be found in the reports of that period, shew that Mr. Best was in full practice of the very first-rate and most profitable description.

Aspiring to still higher eminence, Mr. Best, by the advice of his friends, assumed the coif in Hilary Term, 1800, and chose for the motto on his ring, "Libertas in Legibus." The Legislature was next the object of his aim, and at the general election in 1802 he was returned for Petersfield. In May, 1803, the King's message relative to France had been delivered to the House, and the question of peace or war with that country gave rise to an animated debate. Sergeant Best spoke on that question; declaring that "if the smallest spot on earth were demanded of us in the manner, and under the circumstances, that France had demanded Malta, he would refuse it, because he would consider it as essentially connected with the safety and the interest of the British empire." In July, 1803, we find Mr. Sergeant Best in opposition to the Magistrates' Protection Bill, and also to some other measure introduced towards the close of Mr. Addington's administration. On June 18, 1804, we find his name in a minority of 223 to 264 on Mr. Pitt's Additional Defence Bill; and he also divided, in Feb. 1805, with 106 to 313 on Mr. Grey's amendment to the address to the throne on the Spanish war. In the same year we find him voting with 217 members who pronounced on the culpability of Viscount Melville; and a few days afterwards he vindicated the commissioners of naval affairs. Amongst other things he moved "for an account of all pensions granted by the Crown from the 1st of May, 1804, to the 1st of April, 1805; for an account of all augmentations of salaries by sign manual, letters-patent, or warrant; and for the appointment of a committee on the eleventh report of the naval commissioners." In an able introductory speech he maintained that some of the fundamental laws of the constitution had been grossly violated, as appeared from the facts disclosed in that important report. Among other matters of serious import, he charged that money had been raised by the Government without the consent of Parliament, by means of Exchequer Bills. Mr. Serjeant Best also introduced and carried through Parliament a Bill for improving the livings of the metropolitan clergy, who expressed their approbation and gratitude by the donation of a magnificent piece of plate, bearing a suitable inscription.

From these facts it will be seen that the deceased nobleman's early politics were of a Liberal tendency. In March, 1809, Mr. Sergeant Best was elected Recorder of Guildford, in the place of Lord Grantley. In the following year he was counsel for the Earl of Leicester against the *Morning Herald*, for a libel published in that journal upon that individual, the odious circumstances of which have been recently revived by proceedings in Parliament, in connection with the title and estates of the Townshend family. The damages nominated by the verdict were 1,000*l*.—a result chiefly owing to the speech of "the silver-tongued" advocate. We believe, however, that they were never paid. An intention to move the court for a new trial had the effect of inducing the plaintiff to retire from the litigation.

In 1813 Mr. Sergeant Best was returned to Parliament for Bridport. We no longer find him among the advocates of Liberal opinions; his votes and occasional speeches were henceforward in entire conformity with the desire of the minister. In 1819 Sergeant Best received the first instalment of the reward for his services to the Tory administration. He was raised to the bench as one of the Judges of the Court of King's Bench, and received the honour of knighthood. Shortly after he was made Lord Chief Justice of the Commons Pleas, which he held till 1825, when he retired upon his pension, and was elevated to the peerage by the title of Baron Wynford. As a judge, his lordship's conduct has been the subject of severe remark. During the latter part of his parliamentary career, he had gradually relinquished his early Liberal predilections, and had become a high Tory. On the bench, his political prejudices were not always kept in subordination to the strict impartiality which ought to mark the judicial office. Such was his frequent intemperance in summing up a case, that he obtained the *sobriquet* of "the Judge-Advocate;" and his conduct was brought under the notice of Parliament, Mr. Creevy having made it the subject of complaint in the House of Commons.

The circumstances which led to the retirement of Sir William D. Best from the chief seat in the Common Pleas are not generally known. We believe the following statement contains the true version, and will not now be read without interest. When Sir Charles Wetherell vacated the attorney-generalship, ministers found themselves in some perplexity, shewn by the unusual time which elapsed before the nomination of a successor to the post. After having once before suffered another to be put over his head the first law-officer, Sir Nicholas Tindal (then Solicitor-General) could not, without being a party to his own degradation, again submit to such an indignity. To have promoted him to the attorney-generalship would have involved the necessity of an appeal to his constituents; which, if disastrous, as it was likely it would be, and following upon Mr. (now Sir Robert) Peel's rejection at Oxford, it would have been not only disagreeable, but probably fatal to the Government. A vacancy was therefore created for him on the bench. Sir N. Tindal would have preferred to have been made Chief Baron of the Exchequer; and it was actually proposed to Chief Baron Alexander that he should retire upon a peerage; but the proposition was rejected. The Chief Baron had no claim to a pension, and had no disposition to resign the solid advantages of his post for the empty honours of a peerage. The next application was to Chief Justice Best, who had already thrown out hints of a desire for a coronet. The prospect of obtaining the object of his hopes had such an effect upon a constitution already impaired by hereditary gout, as to bring him at once within the meaning and intent of the Acts of Parliament regulating the retirement and pensions of the judges. His case was decided as being within the statutory provisions; and his lordship retired with a pension of 3,750*l*. But, although compelled to withdraw from the bench, no longer able to perform its duties, and under a statute which requires that the judge to whom the pension is granted shall be afflicted with "a permanent bodily infirmity disabling him from the due execution of his office," Lord Wynford was nominated to the office of deputy speaker of the House of Lords—in direct violation of the terms, as well as the spirit, of the wholesome statute. On the formation of the Grey administration in 1830, this disgraceful job was set aside. The disappointment inflicted on Lord Wynford was never forgiven.

The deceased peer married, in 1794, the second daughter of Jerome Knapp, esq. who has been some years dead, and by whom he had ten children, four of whom only, however, survive him, namely, the Hon. William Samuel, who succeeds to the title, born 1798, and married the youngest daughter of William Hoytt, esq. of Berkshire; the Hon. Captain Thomas Best, R.N. married to the second daughter of Lord Kenyon; the Hon and Rev. Samuel Best, rector of Abbott Ann, Hants, and married to the youngest daughter of Sir James Burroughs, late one of the judges of the Common Pleas; and the Hon. Grace Anne, married to Philip Luke Godsal, esq.—*Globe*.

Lord Wynford was a man of many and varied accomplishments — a scholar, an orator, a lawyer, a man as highly distinguished for his conversational as for his Parliamentary talents; a man of pleasure, and yet a severe student; one whose days seemed given to the engrossing profession of the law, and his nights to the business of legislation; yet he always found time to mingle in gay society, and to be more a man of the world than members of the legal profession are generally supposed to be. He was a man of sudden impulses, but of kindly feelings; of very warm temper, but in general of most amiable deportment. It is no flattery to say of him, that he was an able advocate, an upright though hasty judge, in many respects an enlightened senator, and most certainly an accomplished gentleman. Though endowed with great intellectual power, he never trampled on a fallen opponent. No man better understood or seemed more heartily to love that of which Englishmen are justly proud—their maintenance of "fair play." Easily excited to indignation against crime, he always seemed to regard the offender with feelings of deep compassion. The bench where he presided was one of justice, but it was also one of mercy.—*Times*.

MR. BARON GURNEY.

We regret to announce the death of Sir John Gurney, late one of the Barons of her Majesty's Court of Exchequer, which took place on the 1st instant, at his residence in Lincoln's-inn-fields, in the seventy-eighth year of his age. In 1793 he was called to the bar, and in 1797 he married the daughter of W. Hawes, Esq. M.D. In 1816 he was appointed a King's counsel, and in 1832 he was promoted to the bench, on which occasion he received the honour of knighthood. It will be recollected that the learned judge resigned his judicial office on account of ill-health a few weeks since. The name of Gurney is associated in the mind of almost every reader with acts of enlarged munificence. The habits of Sir John Gurney were in perfect harmony with the reputation for benevolence which so many members of his family enjoy. It is said that his clerk was in the habit of dispensing several hundreds a-year in small donations upon cases carefully selected and liberally relieved. The deceased judge was a man eminent for his attention to religious duties, and it is believed equally eminent for the practice of many Christian virtues. On religious subjects, however, he was a man who not only thought for himself, but

more than once changed his opinions. In early life he was a member of an Independent congregation at Clapham, of which the Rev. G. Browne was the minister. As he advanced in years he manifested an evident leaning towards Unitarian opinions; but before his elevation to the bench he joined the Church of England. It need scarcely be added that his life and character caused him to be regarded as one of its most worthy members.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bird, J. watch manufacturer, 5s. 5d. Johnson, London.—*Blandell*, A. harp maker, none made. Green, London.—*Bayley*, C. B. draper, second 1s. 1d. Alsager, London.—*Blake*, N. linen draper, second, 6d. Alsager, London.—*Button* B. pawnbroker, second, 5½d. Alsager, London.—*Cox and Roalfe*, horse dealers, sep. Roalfe, 20s. Groom, London.—*Cox*, S. horse dealer, 20s. Groom, London.—*Cuttell*, J. clothier, first and final, 2½d. Fearne, Leeds.—*Dod and Bent*, ship brokers, none made. Johnson, London.—*Edmeads and Co.* bankers, final, 0½d. Green, London.—*Eldridge*, T. coach builder, 8s. Groom, London.—*Ellis*, A. grocer and draper, first and final, 3s. 10d. Fearne, Leeds.—*Gough*, W. B. grocer, 6s. 10d. Johnson, London.—*Holland*, J. draper, 2s. Pennell, London.—*Isaacs*, I. army clother, first, 9d. Alsager, London.—*Lawrence*, B. merchant, 1s. Follett, London.—*Marsh*, T. miller, 1½d. Whitmore, London.—*Mearns*, W. A. brewer, 1s. 3d. Groom, London.—*Megarey*, T. coal merchant, adjourned. Belcher, London.—*Miles*, H. woollen draper, second, 9d. Alsager, London.—*Mitchell*, R. merchant, 9d. Green, London.—*Owen and Co.* merchants, first joint, 2s. 6d. sep. J. and S. Owen, 20s. Young, Leeds.—*Piggott*, J. jun. cabinet maker, second, 6½d. Alsager, London.—*Pledge*, J. bricklayer, second, 4s. 6d. Alsager, London.—*Richards*, livery-stable keeper, 3s. to new proofs. Groom, London.—*Rossiter*, G. jeweller, first, 2s. 4d. Alsager, London.—*Shaw* H. M. jeweller, 8s. 7d. Bell, London.—*Sly*, S. engraver, final, 3½d. Gibson, London.—*Walker*, E. auctioneer, first, 3s. 8d. Alsager, London.—*Wilson*, T. W. linen manufacturer, first and final. 2s. 1d. and 7-12ths of 1d. to new proofs, and third and final, 7-12ths of 1d. to old proofs. Fearne, Leeds.—*Woollams*, J. silk throwster, 1s. Pennell, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Feb. 28.

Dobson, C. woollen draper, Sydney-alley, Leicester-sq. Jan. 30. Trusts. E. Harvey, warehouseman, Bow Church-yard, and F. Harrison, warehouseman, Bow Church-yard Sols. Reed and Shaw, Friday-st.—*Fennell*, C. grocer, Tooley-st. Dec. 28. Trusts. J. Craven, wholesale grocer, Lawrence Pountney-hill, and J. W. Kolland, gent. Marchmont-st. Sol. Jervis, Lawrence Pountney-hill.—*Fice*, W. mahogany dealer, Plymouth, Feb. 24. Trust. W. J. Skardon, auctioneer, Plymouth. Sol. Taunton, jun. Plymouth.—*Higgins*, J. innkeeper, Barthomley, Cheshire, Feb. 17. Trusts. W. Ellison, wine merchant, Nantwich, J. Harding, maltster, Weston, and H. Higgins, merchant, Northampton. Sol. Flesher, Northampton.—*Wilkinson*, J. yeoman, Loweswater, Cumberland, Jan. 1. Trusts. T. Furnass, hat manufacturer, and R. Whiteside, spirit merchant, both of Whitehaven. Sols. Atkinson and Son, Whitehaven.

Gazette, March 4.

Baskett, C. innkeeper, Aberystruth, Feb. 28. Trusts. J. Davies, wine merchant, Chepstow, and J. Jones, maltster and brewer, Abergavenny. Sol. Baker, Abergavenny.—*Haworth*, G. C. fustian manufacturer, Manchester, Feb. 4. Trusts. J. Cheetham, fustian manufacturer, Oldham, and J. Lancaster, dyer, Salford. Sols. Sale and Worthington, Manchester.—*Pyle*, J. builder, Tiverton, Jan. 2. Trusts. G. Rossiter, druggist, and J. Shopland, innkeeper, both of Tiverton. Sol. Loosemore, Tiverton.—*Roberts*, T. farmer, Presteigne, March 1. Trust. J. Mattey, auctioneer, Leominster. Sol. Hammond, Leominster.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Feb. 28.

BAYLEY, EDWARD, apothecary, Cheswardine, near Market Drayton, Salop, *March* 6 and April 12, at eleven, Birmingham, Com. Daniell; Bittlestone, off. ass.; Hammond, Furnival's-inn, and Brown, Wem, and Hodgson, Birmingham, sols. Date of fiat, Feb. 21. Bankrupt's own petition.

DALTON, JAMES, joiner and builder, Salford, Lancashire, March 14, at one, April 3, at twelve, Manchester, Pott. off. ass.; Woodburne, Manchester, and Richards and Walker, Lincoln's-inn, sols. Date of fiat, Feb. 24. Bankrupt's own petition.

DEES, WILLIAM and JAMES, and HOGG, JAMES, builders and carpenters, Newcastle-upon-Tyne and Darlington, March 10, at half-past two, April 15, at two, Newcastle, Com. Ellison; Wakley, off. ass.; Williamson and Hill, Verulam-buildings, and Bates and Dees, Newcastle, sols. Date of fiat, Feb. 21. Bankrupt's own petition.

GORDON, JAMES BRODIE and ROBERT, coopers, Orchard-house, Poplar, March 17, at half-past one, April 15, at half-past eleven, Basinghall-st Com. Holroyd; Groom, off. ass.; Stevens and Co. Queen-st. sols. Date of fiat, Feb. 28. A. Clarke, widow, Orchard-place, Poplar, pet. cr.

GREEN, JAMES and CHARLES, corn dealers and cab masters, Borough-road, Southwark, March 11 and April 16, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Smith, Barnard's inn, sol. Date of fiat, Feb. 26. C. Herring, coach builder, Asylum-buildings, Westminster-road, pet. cr.

RALPH, JOHN, innkeeper, Walcot-st. Bath, March 11, at half-past eleven, and April 8, at eleven, Bristol, Com. Stephen; Kynaston, off. ass.; Gray, Bristol and Bath, sol. Date of fiat, Feb. 21. Bankrupt's own petition.

RAWLINGS, MARY, and FRANCIS JOHN, cabinet makers and upholsterers, Cheltenham, March 12, at half-past eleven, April 8, at twelve, Bristol, Com. Stephen; Hutton, off. ass.; Brookes and Farmer, Tewkesbury and Cheltenham, Peters and Abbott, Bristol, and Talbot, Kidderminster, sols. Date of fiat, Feb. 20. G. Talbot, jun. and H. and F. Talbot, carpet manufacturers, Kidderminster, pet. crs.

WELCH, JAMES, licensed victualler and cattle dealer, Coach and Horses, Ring-cross, Holloway, and Chalgrave, Bedfordshire, March 7, at one, April 19, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Wollen, Bucklersbury, sol. Date of fiat, Feb. 25. Bankrupt's own petition.

Gazette, March 4.

CLARK, ROBERT, the younger, out of business, late of Mann's wharf, Montagu-close, Southwark, but now of 12, Paradise-row, Rotherhithe, March 14, at half-past twelve, April 6, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Young and Hancock, Tokenhouse-yard, sols. Date of fiat, March 1. Bankrupt's own petition.

CROWTHER, ELY WALKER, woollen cloth manufacturer, Scammonden, Huddersfield, March 17 and April 4, at eleven, Leeds, Com. Boteler; Hope, off. ass.; Meggison and Co. Bedford-row, and Messrs. Sykes, Huddersfield, sols. Date of fiat, Feb. 27. T. and D. Schofield, dyers, Almondbury, pet. crs.

HARDWICK, WILLIAM, draper, Holborn, March 14, at half-past twelve, April 15, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Soles and Turner Aldermanbury, sols. Date of fiat, Feb. 11. S and J. Wreford, and W. Dustan, warehousemen, Aldermanbury, pet. crs.

HART, JAMES, builder, Circus-st. Greenwich, Kent, March 11, at half-past eleven, April 15, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Yates, Bury-st. sol. Date of fiat, Feb 21. J. Towne, chocolate manufacturer, George-st Spitalfields, pet. cr.

METCHER, THOMAS, plumber and glazier, Southampton, March 11, at two, April 12, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass; Hindmarsh and Son, Jewin-crescent, sols. Date of fiat, March 1. C. B. Warner, J. Warner, sen. and J Warner, jun. brass founders, Crescent, Jewin-st. pet. crs.

NICOLAY, LEWIS JOHN, draper, St. George's-fields, Woolwich, Kent, March 11 and April 15, at eleven, Basinghall-st. Com. Fonblanque; Pennell, off. ass., Ashurst, Cheapside, sol. Date of fiat, Feb. 26. M. Capper, J. Capper, and R. Morley, warehousemen, Watling-st. pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, Feb. 25.

Brinkworth, J. H., *Silcock*, A. and *Eyres*, W. coal merchants, Chippenham and Langley Burrell, Wilts, Feb 11.—*Bromley*, J. and *Drake*, J. window glass cutters and dealers in lead, Oxford-st. Feb 1. Debts paid by Bromley.—*Brook*, E. and A grocers, Wakefield Jan 31. Debts paid by E. Brook.—*Bunnett*, W J. and *Bunnett* A. blind manufacturers, Newington-causeway, Jan. 1.—*Byrne*, J. and T. A silk manufacturers, Manchester, Feb. 6. Debts paid by Byrne.—*Dakeyne*, T. and *Jones*, S. tanners, Ave Maria-lane, and Cross-st. Bermondsey, Feb 21. Debts paid by Jones. *Dakeyne*, T. *Jones*, S. and *Waters*, G. W tanners, Saint Andrew's-road, Newington, so far as regards Dakeyne, Feb. 21. Debts paid by the remaining partners.—*Dowsing*, F. and *Crispin*, S. tobacconists, Carlton st. Regent st. Dec. 26—*Eyres*, W and *Silcock* A. iron founders, Langley Burrell, Chippenham, Feb 20.—*Firth*, R and J. Cleckheaton and Birstal, Jan. 1. *Green*, J *Watson*, W and *M'Dougall*, A. H wine merchants, Pall-mall and Craven-st. Jan. 29.—*Hammill*, J. and *Thompson*, W. merchants, Liverpool, Feb. 22.—*Haysom*, J and F builders, Upper Belgrave-place, Pimlico Feb. 24 Debts paid by F. Haysom. *Mason*, H. and *Fawcett*, S. stuff manufacturers, Bradford, Feb. 31. Debts paid by Mason *Neale*, W. and *Wright*, H. carpenters and joiners, Leicester, Feb 13.—*Parker*, W and *Houghton*, W. builders, Birmingham, Feb. 21.—*Rollet*, G. H. and *Newmarch*, E cabinet makers, Gainsburgh, Feb. 20.—*Rose*, W. jun. and *Searby*, J. woollen drapers, Spilsby, Lincolnshire, Feb. 3.—*Sandbach*, J. sen. and jun. wine merchants, Chorlton-upon-Medlock, Dec. 31. Debts paid by Sandbach, jun.—*Sharer*, J. *Sharer*, P *Gibson*, J. and *Stokoe*, J mercers and drapers, Sunderland, Feb. 1. Debts paid by Gibson and Stokoe.—*Stubbs*, J. and *Rollings*, C. attorneys, Birmingham, Feb. 19.—*Whinney*, T. and *Whinney*, B. T. job masters, Piccadilly, Feb. 11.—*Whitehead*, M. and J. joiners, Sheffield, Feb. 21. Debts paid by M. Whitehead.—*Wilson*, J. *Pilling*, A. and *Milner*, W woollen cloth manufacturers, Huddersfield, Dec. 31 Debts paid by W. Milner and A. Pilling.

Gazette, Feb. 28.

Aspland, C and *Morton*, R. A tailors, Boston, Jan. 1.—*Balmer*, S. and T engineers, Abbey-st Bermondsey, Feb.—*Barber*, R. and *Fownes*, W. omnibus proprietors, Clapham, Feb. 22.—*Bartlett*, G. a. B. and *Farrell*, W. ship chandlers, Liverpool, Feb 24. Debts paid by Farrell.—*Bennett*, T. H. and *Upward*, J. G. drapers, Blandford, Feb. 26. Debts paid by Bennett.—*Benson*, W J. C. and W. A. sailmakers, Shadwell, Feb. 1. Debts paid by W. A. Benson. *Defries*, N and *Levy*, J. dry gas meter manufacturers, St. Martin's-lane, Feb 21. Debts paid by Defries.—*Dyer*, W. and *Maitland*, D. druggists, Manchester and Halifax, Feb. 10. Debts paid by Maitland, Manchester and Dyer, Halifax.—*Fiske*, R. and *Baber*, W. tallow chandlers, Abergavenny, Feb. 17. Debts paid by Baber.—*Grainger*, E. and W. iron founders, Warrington, Feb. 22.—*Griffiths*, R. and *Lowndes*, C. china manufacturers, Shelton, Feb. 11. Debts by Griffiths.—*Harvey*, B. *Nichols*, J. and *Matthews*, W. Knigtsbridge, Feb. 21, so far as regards Matthews.—*Horsey*, H. and *Edmondson*, T. braziers, Bridge-st. Southwark, Feb. 13.—*Lane*, T. and *Underwood*, R. solicitors, Hereford, Nov. 10. Debts paid by Underwood.—*Mack*, J. *Downs*, H. *Brown*, I. B. and A. brewers, King-st. St. Luke's, Feb. 22.—*Martindale*, W. and *Tweddle*, W. soap manufacturers, Liverpool, Jan. 20.—*Martin*, S. *Laycock*, H. and *Bairstow*, S. stuff merchants, Badford, Jan. 20. Debts paid by Laycock.—*Naylor*, J. and *Flint*, M. linen drapers, Blackfriars-rd, Feb. 28.—*Neal*, R. and *Arden*, H. H. wine merchants, Brighton, Feb. 28.—*Priest*, W. and *Prichard*, J. upholsterers, Providence-row, Finsbury, Feb. 26.—*Radenhurst*, C. B. and *Turnbull*, H. general merchants, Montreal, Dec. 14.—*Ramsbottom*, W. and *Akroyd*, T. H. dyers, Halifax, Dec. 31.—*Robson*, J. and E. brewers, Newcastle upon Tyne, Feb. 22. Debts paid by Robson.—*Rutter*, W. and *Atkinson*, T. pawnbrokers, Salford, April 20.—*Taylor*, T. and E. awnbrokers, Manchester, Aug. 1.—*Waterfall*, T. and *Glass*, P. tin plate workers, Bermuda-st. and St. Vincent-st. Stepney, Feb. 27. Debts paid by Glass.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Feb. 25.

Bailey, S. victualler and tobacconist, Middlesex-st. and Church-lane, Whitechapel, March 12, at twelve.—*Chapman*, J. pork butcher, Fore-st. Cripplegate, March 15, at eleven.—*Lowe*, H. J. cowkeeper, Alfred-st. Stepney, March 12, at twelve.—*Milburn*, G. W. A. attorney, Red Lion-sq. Feb. 27, at twelve.—*Phillips*, J. B. law writer, Cook's-court, Carey-st. March 11, at eleven.—*Rayner*, J. carter, Halstead, March 14, at eleven.—*Shipley*, J. G. saddler, Bruton-st. March 15, at half-past eleven.

IN THE COUNTRY.

Atkinson, J. H. bricklayer, Sheffield, March 12, at eleven, Leeds.—*Buckley*, W. carpet manufacturer, Birstal, March 12, at eleven, Leeds.—*Colling*, G. joiner, Ryton-lane-head, Durham, March 10, at two, Newcastle.—*Durbin*, R. labourer, Nailsea, March 17, at twelve, Bristol.—*Hartley*, R. W. potato salesman, Sheffield, March 12, at twelve, Leeds.—*Heeley*, W innkeeper, Almondbury, March 12, at eleven, Leeds.—*Jones*, W. farmer, Sellattyn, March 7, at twelve, Birmingham.—*Perkins*, H. perfumer, Derby, Feb. 28, at twelve, Birmingham.—*Shields*, T. labourer, Barton, March 12, at eleven, Leeds.—*Sperring*, R. B. shoemaker, Langley Burrell, March 17, at eleven, Bristol.

MEETINGS AT BASINGHALL-STREET.

Gazette, Feb. 25.

Ball, R. S. T. house painter, Devonshire-st. Queen-square, March 17, at a quarter past twelve, to aud.—*Bunker*, J. out of business, Northampton, March 17, at three quarters past one, to aud.—*Cumberland*, S clerk, Arundel-st. Strand, March 17, at a quarter past eleven, to aud.—*Dixon*, S. assistant to a cheesemonger, Broadley-terrace, Blandford-square, March 17, at three quarters past twelve, to aud.—*Farnell*, J. T. schoolmaster, Norwich, March 17, at a quarter past one, to aud.—*Fowler*, G. hair dresser, Portsmouth, March 19, at eleven, aud. and div.—*Girling*, J. M. veterinary surgeon, Nottingham, March 17, at half-past eleven, to aud.—*Kummell*, C. clerk, Pilgrim-st. Kennington, March 17, at half-past one, to aud.—*Mitchell*, G. clerk, Manchester-buildings, Westminster, March 17, at half-past twelve, to aud.—*Parrott*, W. gentleman's servant, Woodstock-st. St. Marylebone, March 17, at two, to aud.—*Price*, J. jun. grocer and cheesemonger, Cotton-st. Poplar, March 17, at three quarters past eleven, to aud.—*Sidders*, J. A. fruiterer, Brighton, March 17, at one, to aud.—*Snagg*, D. whitesmith, Winchester, March 17, at twelve, to aud.

MEETINGS IN THE COUNTRY.

Hilton, J. surgeon and apothecary, Croston, March 19, at eleven, Liverpool.

PETITIONS TO BE HEARD AT BASINGHALL-STREET

Gazette, Feb 28.

Bass, C (alias G. P. *Warde*), comedian, Half Moon-st. Piccadilly, March 17, at half-past two.—*Burgess* W. baker, Woolwich, March 13, at eleven.—*Clough*, J. pork butcher, Salisbury, March 12, at twelve.—*Corney*, C. out of business, Spring-st Paddington, March 13, at one.—*Fisher*, E. butcher. Stratford, March 13, at eleven.—*Goff*, J. foreman to a silk manufacturer, Friar-st. Shoemaker's-row, March 13, at half-past twelve.—*Goldie*, J. out of business. Brick-lane, Spitalfields, March 15, at half-past eleven.—*Harrison*, J. broker, Chatham, March 15, at half-past twelve.—*Hone*, W. coach proprietor, Reading, March 12, at one.—*Mills*, J. plasterer, Cambridge, March 13, at one.—*Moore*, R. plasterer, Somer's-town-ter. March 17, at half-past eleven.—*Morgan*, E. clerk, Dorchester-terr. New North-rd. March 17, at twelve.—*Parsons*, T. cooper, Brighton, March 12, at one.—*Ralph*, J. butcher, Wapping-wall, March 15, at twelve.—*Shorthouse*, W. hawker, Martha-st. Haggerstone, March 13, at one.—*Smith*, C. locksmith, St. Helens, March 12, at one.—*Why*, J. shoe dealer, Hayes, March 13, at eleven.

IN THE COUNTRY.

Blundell, H. slater, Liverpool, March 6, at eleven. Liverpool.—*Cole*, L. horse dealer, Odcombe, March 14, at one. Exeter.—*Evans*, E. cheesemonger, Caerphilly, March 19, at twelve. Bristol.—*Holland*, J. assistant to a spirit vault keeper, Manchester, March 15, at twelve. Manchester.—*Law*, J. beer retailer and file manufacturer, Wolverhampton, March 7, at twelve, Birmingham.—*Snelson*, J. servant, Minera, March 6, at twelve. Liverpool.—*Wells*, T. shepherd, Lyncombe and Widcombe, March 14, at one. Bristol.

Country.—Gazette, Feb. 28.

Botley, J. linen draper, Cheetham, March 24, at twelve, Manchester, to aud.—*Busham*, H. G. road repairer, Stroud, March 20, at twelve, Bristol, to aud.—*Bird*, E. attorney, Henstledge, March 20, at half-past eleven, Bristol, to aud.—*Broad*, G. butcher, Batheaston, March 20, at half-past twelve, Bristol, to aud.—*Burge*, J. jun. tailor, Weston-super-Mare, March 20, at eleven, Bristol, to aud.—*Day*, E. E. surgeon, Bristol, March 20, at one, Bristol, to aud.—*Sweet*, J. cabinet maker, Bruton, March 20, at half-past one, Bristol, to aud.

From the Gazette of Friday, March 8.

Bankrupts.

West, F. bootmaker, Southampton.—*Spencer*, W. brewer, Wallingford, Berkshire.—*Jacobs*, C. fruit salesman, Farringdon-market.—*Wilson*, J. bootmaker, Jermyn-st. St. James's.—*Struckett*, J. grocer, Wye, Kent.—*Herring*, J. S. builder, Cecilia-place, Spa-road, Bermondsey.—*Salmon*, G. timber merchant, No. 15 Wharf, City-road basin.—*Cawthorn*, W. jun. wine merchant, Salisbury-wharf, Salisbury-st. Strand.—*Hardy*, J. and G. grocers, Wisbech St. Peter, Cambridge.—*Corbell*, T. K. bookseller, Bedford-place, Commercial-road, Middlesex.—*Day*, J. R. licensed victualler, White Hart-st. Drury-lane.—*Mackay*, D. merchant, Liverpool.—*Butterill*, W. grocer, Sheffield.—*Whittenbury*, W. C. cheese factor, Leeds.—*Pell*, W. linen-draper, Newcastle-upon-Tyne.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. HUGHES, Esq. of the Inner Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister at-Law.

NORTHERN CIRCUIT, York, and Liverpool, by J. B. ASPINALL, Esq. Barrister-at-Law The other parts of the Circuit, by G. F. H. OLIPHANT, Esq. Barrister at Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN [illegible], Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

(Present, Lord BROUGHAM, Lord LANGDALE, the MASTER of the ROLLS, Vice-Chancellor SIR JAS. KNIGHT BRUCE, the Right Hon. Dr. LUSHINGTON, and the Right Hon. Mr. PEMBERTON LEIGH.)

JOHN COUNTER, Appellant, v. JOHN M'PHERSON, SAMUEL CRANE, and ALEXANDER FERGUSON, Respondents.

Where appellant had entered into a contract to demise certain premises for a term to the respondents, and previously to the commencement of the term to repair the old premises and build a new warehouse; and the respondents entered accordingly at the day agreed upon; but before the appellant had completed the building and repairs, and before the lease was executed, and a fire soon after destroyed the premises:

Held, that the respondents were not bound to execute a lease and rebuild the destroyed premises, the appellant not having completed [illegible] contract, and that till such completion the premises were at his risk.(a)

This was an appeal from a decree of the Executive Council of the province of Canada, bearing date the 20th day of February, 1843, whereby the decree of the Court of Chancery for the province of Upper Canada, pronounced by the Vice-Chancellor, and bearing date the 9th day of December, 1841, was reversed, and the bill of complaint of the present appellant was dismissed with costs.

The object of the suit, which was instituted by the present appellant on the 27th day of July, 1840, was the specific performance of an alleged agreement entered into between him and the present respondents for a lease, to be granted by him to the respondents for five years, from the 1st of April, 1840, of a wharf and warehouses in the town of Kingston, which after the 1st of April, 1840, but before the appellant had duly performed the agreement on his part, were destroyed by accidental fire. By the agreement, which appears to have been only partially reduced into writing, the appellant was under an obligation to erect, according to a plan agreed upon, a new warehouse upon part of the ground to be demised, and to put the old stores or warehouses into repair; and the amount of the rent was to be determined with reference to the amount of the appellant's expenditure in erecting the new warehouse. One of the principal grounds of the resistance, on the part of the respondents, to a specific performance of the agreement insisted on by the appellant was, that at the time of the fire the appellant had not completed the building and repairs, which, according to the alleged agreement, he had agreed to execute; and was not therefore in a condition to call upon the respondents to accept a lease, or to execute a counterpart, containing the usual covenants to repair, and for payment of rent.

The agreement was contained in a series of letters between the appellant and the respondents.

The counsel for the appellant were, *Bethel* and *Shabeen*, for the respondents *Kindersley*, *G. Turner*, and *E. J. Lloyd*.

The case was some time ago argued at great length on both sides; and the judgment of the Lords of the Privy Council was delivered on Monday last by Mr. PEMBERTON LEIGH.

As the judgment, which is of great length, contains a review and history of the whole case, and of the arguments on each side, the judgment only is reported.

JUDGMENT.

In this case a bill was filed by the appellant in the Court of Chancery in Canada, seeking the specific performance of an agreement entered into by the respondents. The Vice Chancellor made a decree in favour of the plaintiff. From this decision the respondents appealed to the Governor-General in Council, who reversed the decision of the Vice-Chancellor, and dismissed the plaintiff's bill, with costs. From this order the present appeal is brought.

The terms of the agreement between the parties are to be collected from a correspondence which began in the month of August 1839, and terminated on the 3rd of January, 1840. That these letters constitute a valid agreement is not disputed by the respondents, although it has been contended on their behalf at the bar that the contract is one with respect to which a court of equity ought not to interfere, and that the parties should be left to their legal rights and remedies.

The case appears to be this:—The appellant was the owner of a wharf and three stores at Kingston, in Upper Canada. Upon part of the property the appellant carried on what is called a "forwarding business." One of the stores was in the occupation of a Mr. Jackson, and another in the possession of the respondents, under a sub-contract with a public company, who had taken a lease from the appellant, and whose interest would expire on the 1st of April, 1840. In this state of circumstances the respondents entered into a negotiation for a lease of the whole of the premises for a term of five years from the 1st of April, 1840. After much discussion, it was finally agreed between the appellant and respondents, that the appellant should put in order the existing stores, and should build a new store, or warehouse, according to a plan referred to in the correspondence, but not proved in the cause; that these works should be completed by the 1st of April, 1840, and that the respondents should then take a lease for the term of five years from that day, at a rent of 250*l.* per annum, if the sum expended by the appellant in the erection of the new buildings should not exceed 600*l.*, and if the sum so expended should exceed 600*l.* then at an additional rent, calculated at the rate of 1[?] per cent. upon the excess. Possession of the whole of the property was to be delivered to the respondents on the 1st of April, 1840, and they were to engage to restore the premises at the end of the term in as good a condition as that in which they were when possession was taken. It appears also that the appellant was to relinquish his "forwarding business" in favour of the respondents. In pursuance of this arrangement, the building of the new warehouse was commenced, but when the 1st of April arrived, it is admitted on all hands, that the warehouse was far from being completed, and the evidence shews, in our opinion, that the necessary repairs to the old buildings had not been done; and as to part of these buildings had not been commenced. No complaint, however, or at all events no objection to the completion of the contract, was made on that ground by the respondents, and if time was of the essence of the contract, we have no doubt that all right of objection on that score was waived by them. They continued in possession of that part of the premises which they previously held, which, but for the contract, they should have given up on the 1st of April, and the works in progress were continued with their approbation.

In this state of things, on the 1st of April, 1840, the rights of the parties stood thus. The appellant was bound by his contract to perform his agreement by putting the old stores in order and completing the new building in reasonable time; and upon this being done, the respondents were bound to accept a lease according to their agreement. But they could not be required to accept a lease until the works were done, nor could the rent, until that time, be ascertained. If the appellant refused to perform the works, or neglected to do so within a reasonable time after notice, the respondents would be at liberty to put an end to the agreement. The obligation on the defendants to accept the lease was conditional on the appellant's putting the premises into the state in which he had contracted to demise them to the respondents. The waiver of the respondents extended not to the works being done, but only to the time within which they were to be completed. After the 1st of April the appellant accordingly continued the works which had been begun, and commenced repairs upon the old buildings; but while the works were in progress an accident occurred which has given rise to the present litigation. On the 18th of April, 1840, a fire broke out upon the premises, which destroyed or materially injured all the stores. The appellant insisted that the respondents, at their own expense, should rebuild and restore what had been destroyed or injured, and accept a lease on the terms of their agreement. This the respondents refused to do, and on the 27th of July, 1840, the present bill was filed.

It is material to attend to the allegations of the bill, and the relief sought by it, in order to understand the real nature of the question, and of the only question which it raised. After stating the correspondence and some other matters with respect to which there is no dispute between the parties, it alleged that "the respondents, in the month of April 1840, entered into possession of the premises, and continued in possession up to the time of filing the bill." It stated that, "in the same month of April, part of the premises were destroyed by fire, and other parts materially injured thereby, and that the appellant had applied to the respondents specifically to perform their agreement, and to accept a lease upon the terms of such agreement, and to rebuild and repair the said premises accordingly," which they refused. After some charges, not material to the present purpose, the bill charged, "that the said warehouse was erected and fit for occupation, on the 1st day of April, or within a few days thereafter, and that the respondents had actually taken possession of the said warehouse for many days before the same was burnt down and destroyed, and had actually caused the inside thereof to be boarded up or lined for the reception of wheat in bulk, and had erected, or were erecting, machinery to convey wheat in bulk to the upper stories, whereby the appellant was prevented from completing the said warehouse. And the bill charged that the respondents received goods as custom-house warehousemen after the 1st of April 1840, and deposited the same in the said warehouse, and also deposited therein a considerable quantity of flour, and not less than 4,000, 3,000, or 2,000 barrels, and accepted, took, and retained the possession of the key of the said warehouse."

These allegations, though not perhaps in all respects quite consistent with each other, appear to amount to this, that previously to the fire, the appellant had substantially performed his agreement, by erecting and making fit for occupation the new warehouse; and the bill accordingly contained no suggestion of any thing remaining to be done in that respect by him.

The prayer of the bill was, that the said agreement might be specifically performed and carried into execution, and that the said respondents might be decreed to accept a lease of the said premises from the said appellant, and to execute to the said appellant a counterpart thereof upon the terms of the aforesaid agreement, the said appellant being ready and willing and thereby offering to execute such lease, and in all other respects to perform his part of the said agreement; and that an account might be taken, by and under the direction and decree of the Court, of all sum and sums of money paid, laid out, and expended for or on account of the said improvements, and that in the said lease the rent of the said premises might be fixed and determined at the said sum of 250*l.* and together with an addition thereto, at the rate of 12 per cent. per annum, upon such sum of money as should appear to have been expended upon the said improvements over and above the said sum of 600*l.*; and that the said respondents might be decreed to repair and rebuild the said premises, and to enter into all usual and necessary covenants, and to keep and leave the same in good and sufficient repair, and for general relief.

(a) As to the decisions at law on this subject, see the case of *Walton* v. *Waterhouse* (2 Wms. Saund. 421), and the notes).

The respondents denied that they had ever taken possession of any part of the property under the agreement, and they insisted that they were not bound under the circumstances either to rebuild the stores or warehouse, or to accept any lease with that obligation. Upon a record so framed the substantive question between the parties was this—which of them was to suffer by the fire which had taken place; and unless the appellant was justified in requiring the restoration of the property by the respondents at their own expense, he was not entitled to any relief upon his bill.

With respect to the only questions of fact in dispute, namely, the condition of the buildings when the fire took place and the acceptance of possession by the respondents, the parties went into evidence the result of which appears to us to be as follows:— We think that, after the 1st of April, the possession remained very much as it had done before; the respondents continued in the occupation of that portion of which they were previously in possession, although their old title to such possession had ceased. The appellant remained in possession of that part which he held, and a part seems to have been unoccupied. The old buildings had not been repaired, and the new warehouse was so far from being completed and fit for occupation, that at the time of the fire it had neither doors nor windows, the floor of the second story was not laid, and that of the first was not complete.

On the other hand, it appears that the delay had arisen in part from some alterations in the plan which had been suggested by the respondents, to which the appellant had assented, provided they were done at the expense of the respondents. Of the unfinished building (as far as any possession could be had of it), both the appellant and the respondents seem to have had the use, by placing under the shelter of the roof such goods as they found it convenient to deposit there. Upon this state of the record and of the evidence, the Vice-Chancellor pronounced the following decree:— That the agreement contained in the letters set forth in the bill, and bearing date the 19th day of August, 1839, the 29th day of August, 1839, the 20th day of August, 1839, the 1st day of January, 1840, the 2nd day of January, 1840, the 3rd day of January, 1840, and the 3rd day of January, 1840, ought to be carried into execution, save and except the putting in order of the stores therein mentioned before the commencement of the lease thereby agreed to be executed, which was waived by the defendants, and did decree the same accordingly; and it was ordered that it be referred to the Master of the said court to inquire and state to the said Court what amount was expended by the plaintiff on the new buildings in the pleadings mentioned, beyond the sum of 600*l.*; and it was further ordered that a lease should be executed by the appellant to the respondents of the premises in question in the said cause, for the term of five years, from the 1st day of April, 1840, at the yearly rent of 250*l.* and 12 per cent. per annum on such sum as the said Master should find to be expended by the plaintiff on such new building as aforesaid beyond the sum of 600*l.*; such lease to contain a covenant on the part of the defendants for the payment of the said rent during the said term, and to restore the said premises at the expiration thereof in the same plight and condition as the same were at the commencement of the lease, and such other provisions as should be conformable to the said agreement, save as afore-said; and the said respondents were to execute a counterpart of the said lease, and they were thereby enjoined from shewing in any action at law that such lease was not delivered on the day of the date thereof. And it was further ordered, that the said lease should be settled by the Master in case the parties should differ about the same, and that the respondents should pay unto the appellant, or his solicitor, the costs of the said suit, to be taxed by the said Master.

An appeal was brought by the present respondents against this decision to the Governor-General in Council, who, on the 20th day of February, 1843, reversed the decree, and dismissed the bill, with costs. The propriety of this last order we have now to consider.

The case was argued on both sides before us with great ingenuity and ability. On the part of the appellant it was contended, that he was entitled to have the buildings restored by the respondents to the condition in which they were when the fire broke out; but as upon the evidence it was impossible to argue that the appellant had completed the works which he had contracted to perform, it was admitted, that after the respondents had restored the buildings to their imperfect state, the obligation of completing them would rest with the appellant.

The appellant's claim was rested on the principle that a party who has entered into a binding contract for the purchase of an estate, becomes in equity the owner of it, and is entitled to any profit, and subject to any loss which may afterwards occur to it; and it was said that in this case, although the period at which the works were to be done had passed before they were completed, yet, that the respondents having waived any objection on that score, the contract was still subsisting, and the principle was to be applied. The case of *Pain* v. *Miller* (6 Ves.) was particularly relied on. In that case the defendant had contracted for the purchase of a house; the house was destroyed by fire after the period had passed within which the title was to be made out and the contract completed; but further time to make out the title had been allowed by the purchaser, who had accepted it before the fire took place, and, under these circumstances, the purchaser was held bound to pay his purchase-money. The more familiar cases of the purchase of a life annuity, and the annuity dropping before the assignment, and the purchase of estates held upon a life, and the life dropping, were also referred to. (*Mortimer* v. *Capper*, 1 Bro. 156; and *Kenny* v. *Wexham*, 6 Mad. 355.) We have carefully examined these cases and several subsequent authorities on the same subject, the last of which is *Vesey* v. *Ellgood* (3 Drury & Warren, 76).

Of the general doctrine so stated we apprehend that there is no doubt; but the question is, whether that principle, or any doctrine to be found in any of the authorities, maintains the appellant's claim in this case. In ordinary cases of absolute and unconditional contracts, the risk is the risk of the purchaser, because that which is the subject of the risk is in equity considered to be the property of the purchaser. But treating the contract to take a lease as a contract to purchase, the warehouse was never in that sense purchased by the lessees until it was completed by the lessor; and until that had been done, therefore, it was not the property of the lessees. They had never contracted to take an unfinished warehouse; they had never engaged to do any repairs, or to accept or restore any unfinished or dilapidated buildings; and although after the 1st of April, 1840, the contract was still binding in equity, provided the appellant performed it on his part, yet until he had so performed, no obligation attached on the lessees. They could not object that the lessor had not performed his engagement within the time limited, but they had a right to require that he should perform it before they were called on to accept a lease. They were to receive a complete building at the commencement of the term, and to restore a complete building at the end of it, and to pay a rent calculated upon the amount of the expenditure. The accident of the fire interrupted and delayed the completion of the work, but it could not relieve the appellant from his obligation to complete it. It was said that this case was decided by the judges of appeal upon some rules acted upon by courts of common law, but inconsistent with the principles of courts of equity. We are not aware that upon the main question in this case there could be any difference between the decision of a court of law and a court of equity. The question is, was it or not incumbent on the appellant to repair the old buildings and complete the new before he could require the respondents to accept a lease according to their agreement? If he was so bound, there is, in our opinion, nothing in the circumstances of this case which could relieve him from that obligation. The fire could have no such effect, nor would the circumstance that the delay in the completion of the building was in part attributable to the appellant's compliance with the suggestions of the respondents. The contract, in equity, was subsisting, although by the omission of the appellant to complete his part of it by the time stipulated, it might have become void at law; and if the appellant had been willing to restore the buildings, the obligation of the respondents to accept a lease might have been differently determined in law and in equity. But the construction of the contract, or the liability of the appellant within *some* time to perform what he had engaged to do before he called upon the respondents to accept a lease, was not at all altered.

Had our opinion upon the main question been different from that which we have found, it would have been necessary to consider several points of great importance which have been discussed at the bar, and in particular, as has been contended on the one hand, that the Court ought so to modify the relief prayed by the bill, or could so modify it, as to do substantial justice between the parties; or whether, as has been insisted on the other hand, having regard to some of the terms of this contract, the alleged want of mutuality of remedy, and the difficulty (or as it has been called, impossibility) of placing the parties by any decree in the situation in which they ought by the contract to stand, the appellant should have been left to any legal remedy which he might have.

The view which we take of the rights of the parties makes it unnecessary for us to enter into any discussion of these questions, further than as an examination of the relief which it has been proposed to ask appears to us to elucidate the principle upon which our decision is founded.

It was said that there were two modes in which substantial justice might be done; one was by decreeing a lease to be executed, dated on the 1st of April, 1840, containing covenants by the appellant to repair and complete the buildings, and by the respondents to keep in repair and restore them at the end of the term, and it was said that there would then be a subsisting lease, and an action against the appellant for the non-performance of his engagement to build and repair.

But, in the first place, the respondents never entered into any such engagement, they never agreed to accept the appellant's covenant to do the work after the commencement of the term; and if they had, the obligation on the appellant to complete the building, notwithstanding the fire, would have remained precisely the same. Another mode suggested was this; that the lease should be dated as on the day of the fire, and that the respondents should be considered as taking the premises as they stood before the accident on that day, and should undertake, by some covenant, an obligation to restore them to that condition; and that the appellants, on the other hand, should covenant to complete them when restored. Now, it is obvious, that this is to impose upon the parties a contract which they never entered into, either by expression or implication; and although where a binding contract is subsisting, the completion of which, in its exact terms, becomes impossible through accident, without any default of the party seeking relief, a court of equity will struggle with points of form, it cannot, for that purpose, alter the substance of the agreement, or impose upon either party obligations totally different from those which by the agreement he had contracted to perform.

In this case, there is no reason why the Court, upon any principle of moral justice, should at all desire to interfere. Both parties are equally innocent; and the only question is, upon which of them the loss arising from an inevitable accident is to fall. The claim to relief has accordingly been very fairly rested in argument by the appellant upon the general principle that the buildings, when the fire took place, were, in equity, the property, and therefore standing at the risk, of the respondents.

For the reasons assigned, we are of opinion that this principle is not applicable to the case, and that the decision appealed from is right, and must be affirmed.

With respect to the costs, as there have been conflicting decisions below, the case was very naturally brought here by appeal; but we think that, upon the main question, the respondents have, from the beginning, been right; and that some material allegations of the bill, which must have been within the knowledge of the appellant, are directly contradicted by the evidence; we do not think, therefore, that there is any reason for excepting this case from the ordinary rule, and we think that the appeal must be dismissed with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

Dec. 4, 1844, *Feb.* 11, 1845.

THE MARQUIS OF HERTFORD *v.* LORD LOWTHER.

Construction—Cumulative or substitutional legacies—Exceptions.

The testator had a certain kind of foreign stock, and by two different codicils refers in terms to that stock, and disposes of it to the same person by both codicils: Held, to be a specific legacy, and that the second gift was a substitution for the first, and not cumulative. But where two different sums of money were given by the same codicils, though in some degree connected by expression with the specific gift, those pecuniary legacies held to be cumulative, there being no sufficient indication of intention to overturn the general rule.

This question arose upon the construction of two of the codicils to the will of the late Marquis of Hertford. By a codicil dated the 17th of September, 1835, executed at Boulogne, the Marquis of Hertford, after some other bequests and directions, proceeded thus: "To Matilda, Countess Berchtoldt, besides Austrian metalliques for one hundred and four thousand florins, I give five thousand pounds." After making several intermediate codicils not affecting the present question, the Marquis of Hertford, by another codicil, dated the 27th day of January, 1837, made the following bequest and statement:—"This is a codicil to the will of me, Francis Charles, Marquis of Hertford. Whereas I have by indorsement on two little parcels, containing one hundred and four Austrian bonds of one thousand florins each, given them to Matilda, Countess Berchtoldt, I confirm the said disposition, and add to it twenty thousand pounds English currency." The Master had reported that the Austrian bonds mentioned in the second codicil referred to the same thing as the Austrian metalliques mentioned in the first codicil, and the Countess Berchtoldt having excepted to that report, the Master of the Rolls disallowed the exception. From that decision the Countess appealed. It appeared that at the time of the death of the Marquis of Hertford he had no such Austrian securities as those mentioned in the two codicils, and, consequently, unless the gift in the first codicil should be held a general legacy, it had been adeemed by the testator, he having disposed of the specific securities in his lifetime.

Burge and *Tripp*, for the Countess Berchtoldt, cited a case in Godolphin, p. 438, 4th edition.

The LORD CHANCELLOR.—The first codicil is quite consistent with his having made up two little parcels containing one hundred and four thousand florins, and then he afterwards makes his will, and says, "Besides the Austrian metalliques, I give 5,000*l*." That is quite consistent. It is material to know whether Austrian metalliques are the same thing as Austrian bonds. Does not metallique mean the stock, the bond the evidence which enables the holder to receive the interest, and ultimately the principal, at Vienna? In this country, if you sell stock, you transfer it, in order to enable the receipt of the interest.

Burge.—It was intended to give the Austrian metalliques as a specific gift. It does not appear that the same sort of securities is intended in both codicils.

The LORD CHANCELLOR.—If the parcel had contained Spanish dollars, what would that be?

Burge.—The presumption of law is that he intended that particular description of stock.

The LORD CHANCELLOR.—I feel a little in the dark as to what Mr. Burge has said of the difference between Austrian bonds and Austrian metalliques. There is nothing before me upon which I can rely in point of statement as to the nature of the property. If there is no identity between the two, there is an end of the question. It is better that the parties should agree on some statement. If there is something generally known as metalliques, the first codicil would pass that; and if the bonds in the second codicil are something different, then the legacies are cumulative. It is unsatisfactory to come to any decision on this matter in the absence of accurate information as to the nature of these stocks. Let it stand over to make inquiries.

Tuesday, Feb. 11.

Tripp contended, that if the gift in the codicil of 1835 had stood alone, it would have been a general gift, and might have been satisfied by the purchase of so much Austrian metalliques; that it was a demonstrative legacy; and that there was no safe ground to satisfy the Court that the gift of Austrian bonds in the second codicil was a substitution for the gift of Austrian metalliques in the first codicil. It was said on the other side, in the court below, that this was no gift at all.

Tripp cited *Robinson* v. *Addison* (2 Beav, 515); *Onions* v. *Tyrer* (1 P. Wms. 343); *Gage* v. *Sharp* (1 Myl. & Keen. 529).

Sir *C. Wetherell* and *Schomberg* contrà, contended, that it was a gift, with a descriptive reference to something besides the will, namely Austrian metalliques, the existing documents which represent 104,000 florins. It had reference to a physical gift. Here there was enough to control the effect of the word "besides." There is no case in which the Court has held foreign stock in the way it has English stock, as equivalent to money. In the first codicil, the testator gave Austrian metallic stock; by the second, he refers to the documents which relate to the title to that stock.

The LORD CHANCELLOR.—It appears that the Marquis of Hertford did purchase 100 bonds of 1,000 florins each, which were in his possession at the time making both the first and second codicils.

Schomberg cited *Ashton* v. *Ashton* (3 Peere Williams, 387); *Bethune* v. *Kennedy* (1 Myl. & Cr. 114); *Lord Powis* v. *Lord Mansfield* (3 Myl. & Craig, 359).

The LORD CHANCELLOR.—I think the case stronger than when before the Master of the Rolls. The affidavit of Mr. Hopkinson states, that he often bought and sold securities of this kind. The Master of the Rolls seems to have considered the gift to have referred to some specific object. If a person has 3,000*l*. in the Three per Cents. and he makes a gift and refers to that sum, it will be specific, unless circumstances shew that it is demonstrative.

Tripp, in reply.

The LORD CHANCELLOR.—The testator had in his possession 104 bonds for 1,000 florins each of Austrian metalliques, when he said, "Besides Austrian metalliques for 104,000 florins, I give 5,000*l*." I conceive that he referred to these Austrian bonds, which he had bought a few years before. Besides this, two years afterwards, when he was still in possession of these bonds, he makes another codicil, in which he says in effect, that he has put in a parcel and given to the Countess of Berchtoldt the same sum of Austrian bonds. This points to the same legacy, and throws light upon it; and when he says, "I confirm that disposition," it is obvious that he means the same thing. I have no doubt that the disposition in the second codicil is a substitution for the first codicil. There is a distinct reference in each codicil to the same subject-matter. The decision of the Master of the Rolls is right, and the Master decided the appeal must be dismissed.

Exceptions had also been taken by the plaintiff to the Master's report, which stated that the legacy of 5,000*l*. in the first codicil, and that of 20,000*l*. in the second codicil, were cumulative. The Master of the Rolls had disallowed that exception, and the plaintiff appealed.

Sir *Charles Wetherell* and *Schomberg* contended that the gift in the second codicil, where the testator said, "I confirm that gift and add to it 20,000*l*. English currency," was an entire gift, and operated as a substitution for all the benefits given by the first codicil, the 5,000*l*. as well as the metalliques. They cited *Hurst* v. *Beach* (5 Maddock, 351).

Tripp, contrà.

Sir *C. Wetherell*, in reply.

The LORD CHANCELLOR.—There are certain rules for construing bequests of this nature, one of which is, that where two different sums are given, the legacies are held to be cumulative. That may of course be moulded by other circumstances which indicate a contrary intention. But I think in these codicils to the will there is not sufficient indication of intention to overturn the general rule. Here, in two different instruments, he has given two distinct sums, and there is no indication sufficient to displace the general rule which renders such gifts cumulative. The costs of both appeals will come out of the testator's general personal estate. The will is framed as if the testator had directed a general reference of a large sum to the distribution of the Master.

Wednesday, Feb. 19.

Re BANNISTER, a Lunatic.

Perishable property of the lunatic—Practice in lunacy—Maintenance.

The next of kin of this lunatic presented a petition praying that the property of the lunatic, which consisted entirely of Long Annuities, producing an income of 350*l*. might be sold, and the produce invested in Three per Cent. Consols. The cost of maintaining the patient at the lunatic asylum, where he had resided for several years, amounted to 250*l*. a year, and it was shewn that the property, when invested in Consols, would produce more than that amount of income. The lunatic is sixty five years of age, and consequently, should he live fifteen years, or to the age of eighty, the Long Annuities would then expire, and he would be without any means of subsistence.

Amphlet supported the petition.

The LORD CHANCELLOR.—If the sum of 250*l*. a year is sufficient for his maintenance, the sum of 100*l*. a year can be laid by to accumulate, and thus supply a fund for his maintenance should he survive the termination of the Long Annuities. This will amount to the same thing as selling the annuities and reinvesting in Consols. There is no necessity for any reference as to the propriety of selling the Long Annuities. Upon the production of an affidavit from the people at the asylum that the sum of 250*l*. is sufficient to insure the lunatic all necessary comforts, I will reduce the allowance for maintenance to that sum without a reference. The affidavit must be very full and distinct, so as to satisfy me that the lunatic's comforts will not be lessened.

Re OTTE, a Lunatic.

Practice in lunacy—Non-completion of securities by the committee of the estate—Costs.

Lowndes supported a petition by the committee of the estate, who was the brother of the lunatic, praying that he might now be allowed to perfect his securities. He had been ordered to complete them by the 4th of Nov. last, but had been unable to do so; he was, however, now prepared to give in sufficient sureties.

Lloyd, for the committee of the person, the sister of the lunatic, would state the circumstances, and leave it to his lordship to consider whether the committee was a fit person to be continued in that office. The commissioner made a report approving of Mr. Otte as committee of the estate, on the 14th of June, 1843; and an order to confirm that report was made on the 4th of July, 1843, by which the committee was directed to complete his securities by the 1st of Sept. in the same year. Nothing, however, was done, and urgent representations by committee of the person were made to Mr. Otte to proceed, and much inconvenience resulted in the lunacy from the allowance not being provided for out of the proper funds. Another petition was presented by the committee of the person to the same effect as the previous one, and stating the change of circumstances which had occurred, which was heard on the 24th of July, 1844, which fixed the 4th of November following for the completion of the committee's securities. Mr. Otte then applied to the commissioner for an enlargement of the time for putting in his securities; but up to the 27th of December he did nothing more than execute the bond. A further unexplained delay up to the 8th of January, happened, and then one of the sureties approved of refused to execute the bond, or make the necessary affidavit. The commissioner, seeing the effect of the delay was to affect prejudicially the comfort of the lunatic, directed that a warrant should be taken out for the appointment of a new committee, and Mr. Golding was appointed. It was for his lordship's consideration whether the petitioner was a fit person, having shewn himself so remiss, to be appointed to manage the estate of another person. At all events, the committee of the estate must pay all the costs to which the estate of the lunatic had been subjected by his delay.

The LORD CHANCELLOR.—Does Mr. Otte know what these costs will be? He must make good to the estate all the costs which have been occasioned by his delay.

Lowndes, in reply.—The petitioner had been informed that he must pay all the costs of the petition.

The LORD CHANCELLOR.—The costs are not limited to the costs of that petition, for the estate has suffered loss, and he must indemnify it against all costs. Not to enter into any detail as to the costs, if the committee had completed his securities, no such state of circumstances as the present would have existed. He now applies for leave to complete those securities, and he must make good all the costs occasioned by reason of his not having before completed them. I have stated the principle, but of course it will not apply to costs improperly incurred, if there have been any such. I understand there is no imputation on Mr. Otte's character, and that he is a proper person to be appointed committee of the estate. But he has by his delay occasioned injury and loss to the lunatic and her estate, and he must indemnify that estate. The question still remains open to the commissioner to consider whether he is a proper person under the circumstances to be appointed committee. I should like to know how he explains this delay.

Lowndes.—A Chancery suit was pending, in which a fund had been ascertained in which the lunatic was interested. Some money had to be paid in by a trustee.

The LORD CHANCELLOR.—Is he to be an actor in the suit? if so, the delay may be of serious consequence. If the fund has been actually carried over, the delay may not be of much consequence.

Lloyd.—The affidavits shew that the proceedings in the cause had been stopped by the delay.

The LORD CHANCELLOR.—What is the cause of the delay?

Lowndes.—The trustee ordered to pay in money only did so in July 1844. Having resided for many years abroad, Mr. Otte had but a limited acquaintance in England. Sufficient sureties for the sum required (1,600*l*.) have now been found, who are willing to enter into the necessary obligations. The estate of the lunatic consists solely of a sum of 16,000*l*. in the funds; so that the business of the committee of the estate will consist only of receiving the dividends and handing them over.

The LORD CHANCELLOR.—Considering the relationship of the parties, let him be appointed, on his indemnifying the estate of the lunatic, and Mrs. Golding, the sister, against all costs, charges, and expenses properly incurred in the lunacy by reason of the delay in perfecting the committee's securities. It would only add to the expense to refer the matter to the commissioner. If any difficulty occurs, the commissioner will communicate with the taxing officer.

Lloyd.—The petitioner should not be appointed until the costs are paid.

The LORD CHANCELLOR.—That would cause delay. He has been let in upon the terms of paying the costs, and if he shall not pay those costs, he is liable to be turned out. The securities are to be completed in a fortnight.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Thursday, Feb. 13.

BAKER *v.* WETTON.

Practice—Mortgage—Right to redeem—Statute of Limitations—Demurrer.

S. B. in the year 1819 made a conditional surrender of certain copyholds of which she was seized, according to the custom of the manor of E. to C. C. W. to secure the repayment of a sum of money. In 1837, C. C. W. was, in default of payment, as he alleged, admitted tenant of the premises according to the custom in fee, subject to the equity of redemption, upon payment of the sum advanced by him, and interest.

The bill stated that the said C. C. W. shortly after the date and execution of the mortgage (i. e. 1819), entered into possession, or into the receipt of the rents and profits, and was then in possession of the property, or receipt of rents, and that out of the rents and profits, and from various sums of money received from the said S. B. during her lifetime, he had been more than repaid the principal and interest. S. B. died in January 1810, a widow, and intestate, leaving C. B. the wife of W. B. her only child and heiress-at-law, and heiress according to the custom of the said manor of E. her surviving, and therefore W. B. and C. B. his wife, the plaintiffs, claimed to be entitled to the equity of redemption in the premises. The bill prayed for an account of the principal and interest paid by the defendant C. C. W. on the execution of the mortgage, and of the interest since accrued due thereon. Also of the sums of money received by him during the mortgagor's lifetime, and of the rents and profits received by him, the said C. C. W.; and that the same might be applied in the first place to pay the interest, and in the second place to sink the principal, and the residue, if any, to be paid to the plaintiffs. But if any thing should appear to be due to the mortgagee, then upon payment of the same, that he might surrender the mortgaged premises to the use of the plaintiff C. B. or as he should direct.

To this bill the defendant put in a demurrer; first, for want of equity, the bill shewing that the defendant had been in possession for more than twenty years; secondly, for want of parties, the personal representative of S. B. deceased, not being upon the record.

Demurrer, for want of equity, overruled, allowed as to want of parties, with liberty to amend.

The bill was filed 7th January, 1845, and it appears that one Sarah Boucher, sometimes called Sarah Cranham, late of the parish of Egham, Surrey, widow, made a conditional surrender, by way of mortgage, of certain copyhold property, held according to the custom of the manor of Egham, to C. C. Wetton, of the same place, for the purpose of securing to him the repayment of the sum of 180*l.* with interest, on a certain day therein named, but long since past.

The bill stated that the said C. C. Wetton was, on or about the 27th of November, 1837, in default of payment (as he alleged) of the said sum of 180*l.* and interest, at the time appointed for payment thereof by the condition, admitted tenant of the hereditaments according to the custom of the said manor, to hold to him, the said C. C. Wetton, his heirs and assigns, subject nevertheless to the equity of redemption thereof upon payment of the said sum of 180*l.* and interest. It moreover stated that the said C. C. Wetton, *shortly after the date and execution of the said surrender* by way of mortgage, entered into possession of the said mortgaged hereditaments, or into the receipt of the rents and profits thereof, and that the said defendant had ever been and was then in such possession or receipt, and had received the same rents and profits to a very considerable amount in the whole; and that he had received from or on account of the said Sarah Boucher in her lifetime, various sums of money on account and in satisfaction of the said principal sum of 180*l.*; and that by means of the rents and profits of the said hereditaments which had been received by the said defendant, and of the several sums of money from time to time, and of the several sums of money from time to time paid to or received by him, the said defendant, from or on account of the said Sarah Boucher in her lifetime, the said defendant had been greatly more than repaid the principal sum of 180*l.* and all interest thereon.

Sarah Boucher, the mortgagor, died in the month of January, 1840, a widow, and intestate as to the said copyholds, and left the plaintiff, Caroline Baker, then and now the wife of the plaintiff, W. Baker, her only child and heiress-at-law, and heiress according to the custom of the said manor of Egham, her surviving, and therefore the plaintiffs claimed, in right of the plaintiff Caroline Baker, to be entitled to the equity of redemption of the said hereditaments. The bill prayed that an account might be taken of the principal money advanced by the defendant to the said Sarah Boucher, deceased, on the execution of the mortgage, and of the interest which had since accrued due thereon. Also an account of the sums of money which were received by the defendant from, or on account of, the said Sarah Boucher in her lifetime, and also of the rents and profits of the mortgaged premises which had been received by, or on behalf of, the defendant; and that what should, upon taking such accounts, be found to have been from time to time received by the defendant on account of the said rents and profits or otherwise from, or on account of, the said Sarah Boucher, might be applied in the first place in payment of the interest, and then in sinking the principal, and the *residue* (if any) *might be paid over to the plaintiffs* by the defendant. And that the defendant, in such case, or if it should appear that anything was remaining due to the defendant on the mortgage, then, upon payment of what should be found due, might be decreed to surrender and assure the mortgaged hereditaments to the use of the plaintiff, Caroline Baker, her heirs and assigns, or otherwise as she should direct; and the defendant might deliver up possession to the plaintiffs, together with all deeds, &c.

To this bill the defendant put in a demurrer for want of equity, and for want of parties; it appearing on the bill that a legal personal representative of Sarah Boucher in the bill named was a necessary party, but that no such person had been made a party to the bill.

Bethel and *Heathfield*, for the demurrer, contended that, under the 3 & 4 Wm. 4, c. 27, s. 28, no suit can be brought to redeem a mortgaged estate after twenty years from the time when the mortgagee entered upon possession, or from the last written acknowledgment.(a) That here there was no acknowledgment in writing, nor were the accounts alleged to have been signed by the mortgagee. The want of equity was therefore clear; for the bill stated that *shortly after* 1819 the mortgagee entered into possession, that is, shortly after twenty-five years ago. It could not mean to embrace four or five years; and if the term "shortly" was of vague signification, it ought to be interpreted in favour of the defendant, and not to assist the plaintiff. Moreover, the plaintiffs had alleged, upon taking the accounts, it would appear that the defendant had been overpaid; therefore, the personal representative of Mrs. Boucher ought to have been a party to the bill.

Cases for the defendant: *Vernon* v. *Vernon* (2 M. & C. 145; *Kemp* v. *Prior* (7 Ves. 237).

The Vice-Chancellor.—I will not trouble the plaintiff as to the equity; to that extent I overrule the demurrer.

Bilton, in support of the bill, as to the demurrer for want of parties, contended that the plaintiffs had a right to file their bill without bringing the personal representative of Mrs. Boucher before the Court. Moreover, he was informed that there was no personal representative of that lady in existence.

The Vice-Chancellor thought that, according to the allegations contained in the bill, the personal representatives ought to be brought before the Court; for as the facts were stated, the personal representatives might say, you (the defendant) have been overpaid, and thus subject the parties to a second suit.

Demurrer for want of parties allowed with costs. Leave to amend by adding parties, or otherwise, as plaintiffs may be advised.

(a) By the 7 Wm. 4 & 1 Vict. c. 28, after reciting that doubts had been entertained as to the effect of the above-mentioned statute of 3 & 4 Wm. 4, c. 27, so far as it related to mortgages, it provides that persons entitled to or claiming under any mortgage of land, &c. may make an entry, or bring an action at law or suit in equity, to recover such land, &c. at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry, or bring such action or suit in equity, shall have first accrued.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Nov. 9 and 18.

Churchill v. Marks.

Will—Construction—Restraint upon alienation—Forfeiture—Insolvent—Costs.

A testator gave to A B, for his natural life, the dividends upon a sum of 5,000l. stock, and directed that if he should die or become bankrupt the dividend should be paid to his wife for her life, she to lay it out for the good of his children, and upon the youngest of the children becoming of the age of twenty-one years, the stock to be sold and the money to be divided between such of the children as should be then living equally, but no one of the said children should be allowed, or should ever sell or part with his or her share or interest in the said money until it should be divided; if on proof of any one or more of them having done so, then his or her share should from that time become the property of the other children. After the death of A B, and during his wife's life, and before the youngest of his children attained twenty-one, one of the children took the benefit of the Insolvent Debtors Act, and it was held that the restraint upon alienation was effectual, and that the insolvent's share went among the other children, and that the costs of the assignee must be obtained by him out of the insolvent's estate, if any.

James Churchill, by his will dated the 1st of Jan. 1830, gave to his brother, George Churchill, for his natural life, the interest or dividends from 5,000*l.* New Three-and-a-Half per Cent. stock. The will then proceeded in these words:—"He shall never sell or part with the said interest or dividend in any way whatever during his lifetime until it becomes due; and if the said George Churchill should die or become a bankrupt, then the said dividend shall be paid to his said wife, if she shall then be living, for her life. She is to lay it out for the good of his children; but if she should be the longest liver and get married again, then she shall have nothing more to do with the money; the executors or executor shall then have full control over the money, and shall lay it out as they shall think best for such of the children as remain under age; and when the youngest child becomes of the age of twenty-one years, then the said 5,000*l.* shall be sold, and the money shall be then equally divided between such of the said George Churchill's children as shall then be living equally, share and share alike; but no one of the said children shall be allowed or shall ever sell or part with his or her share or interest in the said money until it shall be divided; if on proof of any one or more of them having done so, then his or her share will from that time become the property of the other children; and when the said stock shall become sold, his or her share shall be divided between those other children who shall not have sold: this stock to stand in the name of my executors." The testator died on the 15th of October, 1831, and on the 10th of January, 1836, George Churchill, the brother, died, leaving his widow and six children him surviving.

On the 27th of July, 1840, James Churchill, one of the children of George Churchill, was arrested for debt, and on the 7th of August, 1840, he presented a petition to the Insolvent Debtors Court, under the 1 & 2 Vict. c. 110. Upon that petition the vesting order was made by the Insolvent Debtors Court on the 8th of August. The insolvent's schedule was signed on the 3rd, and filed on the 4th of September, 1840, and on the 27th of February, 1841, he was discharged. Robert Marks, one of the defendants in this suit, was appointed assignee on the 29th of March, 1841. George Churchill's widow died in the month of May 1843. On the 16th of January, 1844, the youngest of George Churchill's children attained the age of twenty-one years, and at this time four only of the children were living, one of them being James Churchill, the insolvent. The object of this suit was to ascertain who was entitled to the fourth share, which, but for his insolvency, would have been the property of James Churchill.

Simons, for the plaintiffs, cited *Brandon* v. *Aston* (2 Y. & C. C.C. 24), and *Martin* v. *Maugham* (V. C. of Eng. 17th July, 1844).

Koe and *Tripp*, for the defendant Marks, the assignee, cited *Ross* v. *Ross* (1 J. & W. 154); Co. Litt. 206 b, sec. 334; 222 b, sec. 360, and 223 a, sec. 360, and *Doe* v. *Carter* (8 Term Rep. 74).

Amphlett, for another defendant.

The Vice-Chancellor said that his present impression was that by the insolvency there had been a parting with the property within the meaning of the will. The next question then would be whether the clause in the will was effectual.

Nov. 18.—The Vice-Chancellor.—The language of the will of the testator, James Churchill, is more brief and restricted than that which I had to construe in *Brandon* v. *Aston*, but I remain of opinion that by means of the petition presented by the insolvent and the vesting order upon it, he parted with his interest, if any, under the will within the meaning of that expression contained in it. It has been stated and admitted that these proceedings took place after the deaths of the testator and the insolvent's father, while the insolvent's mother was living, and the widow of his father, and while one of the children of the insolvent's father was a minor. It has not been suggested that the widow did not duly perform the duty imposed upon her by the words "she to lay it out for the good of his children," words which I think certainly cannot be considered as extending beyond the income during her life; and except such interest as the insolvent might have in the application of the income during her life, he had not, under the circumstances which I have mentioned, according to the true construction of the will, acquired, in my judgment, any vested interest in any part of the fund in question at the time of the presenting the petition or of the vesting order. I repeat that I do not consider *Brandon* v. *Aston* to have been wrongly decided. I now wish to have the question argued whether the restraint on alienation was effectual.

Koe and *Tripp*, for the assignee, then argued against the validity of the restraint, and cited *Bradley* v. *Peixoto* (3 Ves. 323); and *Green* v. *Harvey* (1 Hare, 428).

The Vice-Chancellor.—I am at present of opinion, that, whatever might have been thought of this case 250 years ago, the decisions uniformly recognized as binding for more than a century have rendered it necessary to hold that this clause, worded as it is, is in effect valid. They do not, perhaps, decide it in terms, but they decide it in substance and effect; and therefore, construing this will as I do, I must hold that this clause of forfeiture, shifting clause, or whatever it ought to be called, worded as it is, and with reference to this particular will, must be decided by me to be valid.

Koe then applied for the costs of the assignee out of the testator's estate, but

The Vice Chancellor said that he should make no order for him either to pay or receive costs, but he must get his costs out of the insolvent's estate, if any.

March 3 and 4.

Foster v. Breynton.

Injunction—Reference for impertinence—Impertinence. Motion for injunction to stay trial, there being a reference to the Master upon exceptions for impertinence in the bill, refused with costs.

Where an agreement was set out in verbis, and there being many transactions to be stated in the bill, the plaintiff, some time after the setting out the agreement, repeated a part of the agreement as an introduction to a branch of the transactions, such repetition was held not to be impertinent.

This was a suit for the specific performance of a contract for sale, and also to restrain an action of trespass, commenced against the plaintiff, on account of acts done by him and his agents upon taking possession of the property. On the seventh day after the defendant's appearance, he filed forty exceptions to the bill for impertinence, and an order of reference to the Master upon the exceptions was obtained; the venue being laid in Staffordshire, and the commission day being the 14th instant.

Wigram and *Osborne* now moved for an injunction to stay the trial, notwithstanding the exceptions, which they alleged were put in for the purpose of delay.

Bilton, for the defendant.

The Vice-Chancellor refused the motion for the injunction, with costs; but said that he would hear the exceptions himself.

March 4.—The exceptions for impertinence were

gone through, and in every instance, excepting two, overruled at once.

Bilton, for the defendant.

Osborne, for the plaintiff.

The VICE-CHANCELLOR.—The third and twenty-fourth exceptions stand thus: the plaintiff seeks the specific performance of an agreement for the purchase of an estate; the title is accepted, or all but accepted: various negotiations occurred during the progress of the examination of the title; and ultimately a question about the possession led to an action of trespass. Whether the plaintiff should ultimately appear or not entitled to stop this action, it must be remembered that he is entitled so to frame his bill as to make the answer to it serviceable to him in the action. Independently of this, the authorities of this Court upon specific performance contain cases in which the right to a specific performance has been affected by the conduct of the parties, and therefore, where discovery in such a suit is sought, it is highly relevant that the circumstances under which possession was taken should be accurately stated, and it is therefore that I have held the bill in all other respects but these two not impertinent. These two remaining exceptions stand thus. An agreement is set out *in verbis*, in a bill, long, but not over long, the transactions not being few; some way on in the bill, for the introduction of some head of the transactions, and to call attention to it, the plaintiff states, unnecessarily I agree, that the agreement provides so and so, though the agreement was before fully stated. Such a thing may be done improperly and oppressively, but if done to make the statement more clear and intelligible, I think it would be harsh and wrong to say that it would be necessarily impertinent, and I therefore hold the bill in these respects to be pertinent, considering the manner in which, and the object for which, this statement is introduced. I have received a communication from one of the judges of this Court, whose opinion I have asked upon the question, and that learned judge says, that he considers the repetition is not impertinent, if not improper to make the statement clear.

Costs reserved.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, March 1.

HART *v.* STEVENS.

A husband who receives interest on a promissory note given to his wife dum sola, is a competent witness, on an action brought upon the note by his wife's administrator, to prove the payment of the interest on the note in order to take it out of the Statute of Limitations.

Assumpsit on a promissory note by administrator of a married woman.

Plea—the Statute of Limitations.

On the trial, the plaintiff put in the husband's evidence to the effect that he had received payment of the interest on the note, and that it was thereby taken out of the Statute of Limitations. The note had been given to the wife before her marriage, and it was contended, for the defendant, that the note had been reduced into possession by the husband by the receipt of the interest, and that it vested in him, and, therefore, he had a direct interest, and could not be a competent witness under the 6 & 7 Vict. c. 85. The learned judge, at the trial, held otherwise, and there was a verdict for the plaintiff, which it was now sought to set aside and enter a nonsuit.

Jervis, Q.C. shewed cause.

Godson, Q.C. (with whom was *Pashley*), contrà.

Cases cited: *Macneillage* v. *Holloway* (1 B. & Ald. 218); *Philliskirk* v. *Pluckwell* (2 M. & S. 393); *Gaters* v. *Madeley* (6 M. & W. 423); *Sherrington* v. *Yates* (13 L. J. 249); Co. Lit. 1 Ins. 351 a; *Mitchinson* v. *Hewson* (7 T. R. 348); 1 Wm. Saun. 210; *Nash* v. *Nash* (Madd. 137); *Wills* v. *Nurse* (1 Ad. & Ell. 65); *Howman* v. *Corrie* (2 Ves. 190); *Bent* v. *Baker* (3 T. R. 27); *Thomas* v. *Bird* (9 M. & W. 68); *Hoyle* v. *Coupe* (9 M. & W. 450); 2 Kent Com. 142; *Palmer* v. *Costerton* (4 Q. B. 525.)

Cur. adv. vult.

JUDGMENT.

PATTESON, J. now delivered the judgment of the Court.—This was an action on a promissory note by the administrator of a woman to whom it had been given before marriage; the plea was the Statute of Limitations. The only witness called was the husband, who proved repeated payments of interest to himself in his wife's lifetime. She objected to his receiving interest, and it was argued on the judgment of the Court in *Macneillage* v. *Holloway*, that he himself had become the owner or rather the holder of the note, having reduced it into his possession by the receipt of interest. For this latter proposition, we think there is no foundation: the decision in that case is wholly inapplicable here. The observations of Lord Ellenborough in giving judgment are undoubtedly too strong, and have been much corrected and modified by this Court in *Richards* v. *Richards*, and by the Court of Exchequer in *Gaters* v. *Maddeley*. But even if they were in strict accordance with the law, they would not avail the defendant in this case, for they suppose the reduction into possession by the husband during his wife's lifetime, of which his merely receiving interest in the way stated in this case is not even any evidence. We have no doubt that the husband was a competent witness under the late Act, notwithstanding his possible benefit from his wife's estate. It was further argued that, if competent, his evidence did not avail for the purpose for which it was given, namely, the taking the note out of the Statute of Limitations; but it was clear that it did, for if he receives the interest, not in his own right, but as the agent for his wife, which he clearly did, the interest must be paid to her. Therefore this rule must be made absolute. *Rule absolute.*

Bankrupt and Insolvent Courts.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

Friday, March 7.

(Before Mr. Commissioner Serjeant STEPHEN.)

Re JOHN JONES.

Statement in petition of the value of insolvent's estate must include all his estate, whether incumbered or or unincumbered, notwithstanding the word "unincumbered" in the form of petition.

What is a vexatious defence?

Having defended an action with reasonable grounds for doing so is no ground of opposition, but if the defence was vexatious, the final order will be refused.

This insolvent came up for his first hearing by adjournment from the 24th February (see *ante*, p. 436), when it appeared that he was entitled to several properties *charged with mortgages*, and that the values of these several equities of redemption were not inserted in the petition.

Bridges stated that the words in the form of petition, required by 7 & 8 Vict. c. 96, were so ambiguous as to leave it uncertain whether the value of *incumbered* property was to be inserted in the petition. The words were, "That your petitioner is desirous that his estate should be administered under the protection and direction of this honourable Court; and that he verily believes such estate is of the value of £ —, at the least, *unincumbered*, and beyond the value of his wearing apparel, &c." The insolvent has not added the value of property which he has mortgaged, because he could not say that such property was *unincumbered*.

His HONOUR.—The meaning is not very clearly expressed: but the word "unincumbered" in the form relates to the word "value," and not to the estate; consequently the *value* of these equities of redemption must be obtained and inserted. The first hearing must be adjourned for that purpose.

Homes, for the assignees, had no objection to this course; but as he was instructed to endeavour to get the interim protection withheld, he hoped in a few minutes to make out a sufficient case of vexatious defence to call for such punishment.

It was then proved that insolvent had joined in a promissory note with one D. Jones, for the payment of 500*l* to Mr. Morgan; that he had defended an action brought by Morgan for the recovery of the note, pleaded several special pleas, and driven the plaintiff to trial, by which the costs, which would have been about 10*l*. if judgment had gone by default, had been increased to upwards of 80*l*.

Homes, for the execution creditor, Mr. Morgan, submitted that this vexatious defence was a sufficient ground for refusing to name a day for the final order, or, at all events, for a suspension of the protection. (*Re McNeir*, 2 Law T. 76.)

His HONOUR.—There are some circumstances in this case which lead me to infer that the insolvent did not *vexatiously* defend this action. I perceive that Mr. Baron Alderson dismissed a summons to strike out one of the pleas, because the insolvent had satisfied him that a distinct *bonâ fide* defence was intended to be set up under each plea. As this case is to be adjourned, I shall, at the adjourned hearing, require the insolvent to satisfy me that he had reasonable grounds for defending the action in the manner he has done. He may have his protection renewed until the adjourned hearing, but if he does not then satisfy me that he was justified in pleading these several pleas to the action, I shall certainly refuse him his final order. *Adjournment accordingly.*

Circuit Reports.

SPRING ASSIZES.

WESTERN CIRCUIT.

Salisbury, Monday, March 10.

(Before Mr. Justice COLERIDGE.)

REG. *v.* ANDREWS and OTHERS.

A constructive arming sufficient under 9 Geo. 4, c. 69, s. 9, and therefore if any one of the party is proved to be armed, that will be sufficient evidence that they were all armed.

The prisoners were indicted under the 9 Geo. 4, c. 69, s. 1. The indictment was as follows:—"J. A. (then naming the other prisoners), late of the parish of *Foffants, otherwise called Fofant, otherwise called Forant*, in the county, &c. together with divers other persons to the jurors unknown, being to the number of three or more together, on the 25th of February, A.D. 1845, at the parish aforesaid, about the hour of three in the night, *being respectively armed with guns and other offensive weapons*, did then and there together, by night as aforesaid, unlawfully enter into certain land *called Foffants, otherwise called Fofant, otherwise called Forants*," &c. continuing the indictment to the close in the usual form.

It was proved on the part of the prosecution that two only of the men were armed with guns, the rest having sticks only. The close was proved to be called Fovant, and that it was known by no other name.

For the prisoners it was contended that all of them but the two armed with guns must be acquitted, and the case of *Reg.* v. *Davis* (8 C. & P. 759) was cited, which, it was said, was an express decision by Mr. Justice Patteson on this point. There it was held that a *constructive* arming was not sufficient; and as two of the prisoners were averred in that indictment to be armed, and it was proved they were not, Mr. Justice Patteson directed the jury to acquit them. Then all the prisoners were alleged to be armed with guns and other offensive weapons. The prosecution need not have averred this so widely, but should have specified such as were armed, which would have been sufficient under the statute. But having thought proper to allege that they were *respectively armed*, &c. he was bound to have proved them so.

Secondly, the indictment was uncertain as to the parish and as to the wood, since they were both described under three several names.

COLERIDGE, J. said he should direct the jury, in opposition to the case of *Reg.* v. *Davis*, from which (with several of the other judges) he dissented. At the same time, if necessary, out of respect to Mr. Justice Patteson's opinion, he would reserve the point for the consideration of the fifteen judges. He did not consider there was any thing in the other objection, as all the names were *idem sonans*.

The prisoners were convicted.

Merewether, for the prosecution.

Hodges and *Edwards*, for the prisoners.

Tuesday, March 11.

(Before Mr. Justice ERLE.)

REG. *v.* HICKS.

It is no objection to an indictment under the 7 & 8 Geo. 4, c. 29, s. 58, that the indictment charges that the prisoner received the money, &c. not then having caused the offender to be apprehended, sed quære.

The prisoner was indicted under the 7 & 8 Geo. 4, c. 29, s. 58, which enacts that every person who shall corruptingly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted as aforesaid, shall (*unless he cause the offender to be apprehended and brought to trial for the same*) be guilty of felony, &c.

The indictment charged the offence as follows:—"Feloniously did receive of A B certain money and reward, to wit the sum of two shillings and sixpence, upon account then and there of helping the said A B to certain goods, &c. lately before feloniously stolen, &c.; the said (prisoner) not *then* having caused the offenders by whom, &c. to be apprehended."

Bull, for the prisoner, objected that the indictment was insufficient. The statute specified no time when the party taking the money was bound to cause the offender to be apprehended. At any rate, he must be allowed a reasonable time to do this before the provisions of this very penal statute would operate against him. But, as this indictment was framed, a party convicted upon it would have rendered himself liable to all the penalties of the statute because he had not apprehended the felon at the very moment when he took the money, an injustice which the statute never contemplated. The words of the indictment are, that the prisoner received the money upon account, &c. not *then* having caused the offender to be apprehended.

ERLE, J.—I do not think the objection can be supported.

The prisoner was convicted and sentenced to six months' imprisonment.

MIDLAND CIRCUIT.

Northampton, Tuesday, March 4.

(Before Mr. Justice MAULE.)

DOE *dem.* BEALES *v.* STIMPSON.

Ejectment—Several demises—Election.

Declaration in ejectment, containing two demises, one by the testator, and the other by his devisees in trust.

The title of the trustees under the will having been proved,

Flood, for the defendant, submitted that the lessor

of the plaintiff must elect on which demise he would take the verdict.* It was clear that the defendant ought to have the verdict entered for him upon one of them.

Whitehurst and *Barlow*, for the lessor of the plaintiff, contended that this was not a case of two contemporaneous inconsistent demises, and that, therefore, they were not bound to elect.

MAULE, J. however, said he thought they were bound to elect; and the learned counsel then elected to take the verdict upon the second count, stating a demise by the devisees in trust.

GARRETT *v.* DRYDEN, Bart.

Sheriff—False return—Landlord's rent.

Case against the sheriff for a false return.

The plaintiff had been co-tenant with one Gudgeon, of a farm at Milton, in the county of Northampton, to Dr. Henderson, who, also being in possession of certain warrants of attorney against the plaintiff, had entered up judgment upon them, and issued execution thereon. *The* sheriff, *in fact*, levied a *sum of* 380*l.* but he returned a smaller amount, deducting about 60*l.* as arrears of rent due for the farm, and another sum of about 40*l.* due for the rent of other premises, and which had been secured by a bill of sale of a certain stack, forming part of the property seized and sold. The rent was paid by the sheriff to Gudgeon; but it ultimately came into the hands of Dr. Henderson.

Humfrey and *Miller*, for the defendant, contended that, upon these facts, the plaintiff must be called; and cited *Wintle* v. *Freeman* (11 Ad. & E. 539), and *Lewis* v. *Musgrove* (reported in a recent number of the LAW TIMES), for the proposition that if the goods seized under a *fi. fa.* are exhausted by payment of the landlord's rent, expenses, and the sum due on a prior writ, the return of *nulla bona* is proper. The stack was the property of Dr. Henderson under the bill of sale, and he only consented to the sale of it on the condition of his debt being paid.

Hill and *Waddington*, for the plaintiff.—This is a different case; first, the rent was not paid to the landlord by the sheriff; and secondly, the landlord was the party issuing the execution; and, therefore, the full sum levied ought to have been returned. As to the stack, the debt charged upon that was in respect of rent due for other premises; and that sum, therefore, ought not to have been deducted.

MAULE, J. was of opinion that *Wintle* v. *Freeman* governed this case, and that it made no difference whether the party at whose suit the writs were issued was or was not the landlord, or whether the money retained as rent was handed over immediately to the landlord, or mediately through a third person. In the present case no doubt Gudgeon was in the position of surety for Garratt, and Dr. Henderson looked to him, and therefore it was that the money passed through his hands to Dr. Henderson, the landlord.

The plaintiff was accordingly nonsuited.

Lincoln, Monday, March 10.

(Before Lord Chief Justice TINDAL.)

If an attorney delays to sue out a writ in an action against a constable until after the expiration of the time within which the action must be brought, or if he omits the words "by statute" in entering the defendant's plea upon the record, in consequence of which omission a verdict given for the plaintiff is subsequently set aside: these are such instances of negligence as will afford a good defence to an action brought for the recovery of his bill of costs.

Assumpsit on an attorney's bill.

Plea—Non assumpsit.

The defence was, that the plaintiff had so negligently conducted the defendant's business that he had derived no benefit from his services (see *Templer* v. *M'Lachlan*, 2 N. R. 136; *Huntley* v. *Bulwer*, 6 Bing. N.C. 111; *Bracey* v. *Carter*, 12 Ad. & Ell. 373); and it appeared that, having received authority from the present defendant to commence an action against one Green, a constable, the plaintiff did sue out a writ against him in an action of trespass within the six months limited by stat. 24 Geo. 2, c. 44, s. 8, but took no proceedings upon that writ; that afterwards, and after the expiration of the six months, he sued out another writ, upon which he proceeded; that in that action the defendant Green pleaded "Not guilty, by statute;" but the present plaintiff, in making up the record, neglected to copy the words "by statute;" and the defendant at the trial, being unable consequently to give the special matter in evidence, the plaintiff (defendant in the present action) obtained a verdict, which was, however, set aside, and a new trial granted upon motion to the Court above. Upon that, the present plaintiff declined to proceed further, and consented that a nonsuit should be entered. The costs incurred in the course of these proceedings formed the principal part of the plaintiff's bill; and credit was given in the particulars of demand for an amount larger than the residue.

TINDAL, C. J. in summing up, told the jury that he was of opinion that the neglect to bring the action in proper time, and to copy the defendant's plea correctly on the record, exhibited a degree of negligence which disentitled the plaintiff to recover his costs, that negligence having rendered his services wholly useless to the defendant; and as to that portion of the bill which was not open to the same objection, the credit given in the particulars of demand might be applied to that, and was more than sufficient to cover it.

The jury accordingly found a verdict for the defendant.

Clarke, Serjt. and *Wildman*, for the plaintiff.

NORFOLK CIRCUIT.

Aylesbury, Monday, March 10.

(Before PARKE, B.)

REGINA *v.* WILLIAMS.

Indictment—Property—Sale, joint and special.

The indictment charged that the prisoner stole three trusses of hay, the property of T. Morris, then being in a barge on a certain canal.

Gunning, for the prosecution, called a witness, who stated that, being the owner of a barge, he was employed by the prosecutor, who lived at Coventry, to take some coal to Warwick, and to bring back some hay, and that Morris was to pay him for so doing. On cross-examination, the witness stated that he knew one Ridley at Coventry, and that Morris had told him that he and Ridley had bought the hay in question, which was in a stack, between them; and he added, that he knew from that circumstance that the hay was the joint property of both Morris and Ridley; on this,

Power, for the prisoner, submitted that the case had failed in proof, for it now appeared that the hay was the joint property of Morris and Ridley, whereas the indictment laid it as the sole property of Morris. It was the duty of the prosecutor to make out the case as laid, and his own witness had disproved it.

Gunning, contrà.—The property is well laid in Morris alone; for he alone is answerable to the boatman for the carriage to Coventry, which confers on him such a special property in it as is sufficient to sustain the indictment. Besides this, however, it does not appear by legal evidence that the hay is the joint property of the prosecutor and another, for what Morris may have said to the witness on that subject is not properly receivable.

PARKE, B.—That is so. I think the case must go on; there is certainly such a special property in the prosecutor as is sufficient for the purpose of the indictment, and the sole property is, therefore, well enough proved, for the conversation with Morris and the witness is not evidence.

Guilty; three months' imprisonment.

THE LEGISLATOR.

Summary.

THE only doings of the week at all interesting to the Profession are, the appointment of a Committee to investigate the Game Laws; and the second reading of the Justices' Clerks Bill, which appears to meet with much opposition.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, March 7.

Infeftment, Scotland—"to simplify the form and diminish the expense of obtaining Infeftment in Heritable Property in Scotland."

Heritable Securities, Scotland—"to facilitate the transmission and extinction of Heritable Securities for Debt in Scotland."

Tuesday, March 11.

Sugar Duties.
Customs Export Duty.

Wednesday, March 12.

Calico Print Works—"to regulate the Labour of Children in the Calico Print Works of Great Britain and Ireland."

BILLS READ A SECOND TIME.

Wednesday, March 12.

Sugar Duties.
Customs Export Duties.
Justices' Clerks and Clerks of the Peace.

BILLS READ A THIRD TIME AND PASSED.

Tuesday, March 11.

Consolidated Fund.

Wednesday, March 12.

Property Tax.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, March 7.

London, Worcester, and South Staffordshire Railway.
Foulmire Inclosure.
Glasgow Junction Railway.
Glasgow, Paisley, Kilmarnoch, and Ayr Railway.
Amicable Society Assurance.

Monday, March 10.

West of London and Westminster Cemetery.
Bridgetown Municipal and Police.
Edinburgh and Howich Railway.
North British Railway.

Tuesday, March 11.

Huddersfield Waterworks.
South Devon Railway.
Launceston and South Devon Railway.
York and North Midland Railway, Harrogate Branch.
Staley Bridge Waterworks.
Claughton-cum-Grainge Church.
Clydesdale Junction Railway.
Berks and Hants Railway.

Wednesday, March 12.

London and Greenwich Railway.
York and North Midland Railway, Doncaster Extension.
Oxford Mileways.
Sheffield and Tinsley Canal.
Sheffield and Lincolnshire Junction Railway.
Glossop Gas.
Black Sluice Draining and Navigation.
Blackburn and Preston Railway.
St. Helen's Improvement.
Liverpool Guardian Gas.
Newark and Sheffield Railway.
Paisley Gas.
Newport and Pontypool Railway.
Sheffield, Ashton-under-Line, and Manchester Railway.
Calton and Bridgetown Police.
Hartlepool Pier and Port.
Southwark and Vauxhall Water Company.
Shelsley Road.
London Orphan Asylum.
Falmouth Harbour Improvement.
Bristol Bridge.
Watermen's Company.
Kidwelly Inclosure.

Thursday, March 13.

Newcastle-on-Tyne and North Shields Railway.
Newcastle-on-Tyne Port.
Brighton, Lewes, and Hastings Railway.
Windwick Rectory.
Blackburn, Darwen, and Bolton Railway.
St. Helen's Canal and Railway.
Blackburn Waterworks.
Manchester, Bury, and Rossendale Railway.
Newcastle-upon-Tyne Coal Turn.
Crediton Small Debts.
Clerkenwell Improvement.
Great Southern and Western Railway, Ireland.
Nottingham Inclosure.
Kendal Reservoirs.
London and South Western Railway, No. 2.
Birmingham Improvement.
Duddestone and Nechells Improvement.
Bedford, London, and Birmingham Railway.
Midland Railways, Ely to Lincoln.
Shrewsbury, Oswestry, and Chester Junction Railway
Stoke-upon-Trent Market.
Hemel Hempstead Small Tenements.

BILLS READ A SECOND TIME.

Friday, March 7.

Newcastle and Darlington Railway.
Eastern Counties Railway.

Monday, March 10.

Manchester and Salford Waterworks.
Bradford Gas.
Scarborough Water.
Scottish Central Railway.
Surrey and Sussex Roads.
Forth and Clyde Navigation.
Lynn and Ely Railway.
Ulster Railway Extension.
Cambridge and Lincoln Railway.
York and North Midland Railway, Goole Branch.
Southampton Docks.
Edinburgh and Glasgow Railway.
Oxford and Rugby Railway.
Newcastle and Berwick Railway.
West Cornwall Railway.
Eastern Counties Railway, Cambridge and Huntingdon Line.
Fisher Lane Improvement.
Belfast and Ballymena Railway.

Tuesday, March 11.

Trent Valley Railway.

Thursday, March 13.

Leicester Freemen's Allotments.

PETITIONS.

Repeal of Attorneys' Certificate Duty.
The Attorneys of Leicester.
Justices' Clerks and Clerks of the Peace Bill, petitions against—from Justices' Clerks and Members of the Justices' Clerks Society, and Cheltenham.

RETURNS ORDERED.

Clerks to Attorneys—Return ordered, "of the number of Articles of Clerkship of Attorneys, and of Assignments thereof, filed in her Majesty's Court of King's and Queen's Bench, in each year, from the first day of Easter Term to the present time, distinguishing those of University Graduates (in continuation of Parliamentary Paper, No. 350, of Session 1833)."—(Mr. Aglionby.)

County Rates—Return ordered, "of the Expenditure of the Grants made by Parliament in each year from 1835, in aid of the County Rates, distinguishing the proportion for expenses of prosecutions, and for conveyance of convicts; shewing the amount paid for each county, and the total amount in each year."—(Viscount Marsham.)

SESSIONAL PRINTED PAPERS.

Par. Num.
105. Bills—Infeftment, Scotland.
107. — Heritable Securities, Scotland.
94. — Smoke Prohibition.
104. — Bastardy, amended.
110. — Sugar Duties.
111. — Customs, Export Duties.
112. — Lands Clauses Consolidation, amended.
86. Sugar—Returns and Papers.
87. Railway Bills—Resolutions.
91. Lunacy—Account.
96. Potato and Beet Root Sugar—Return.
97. Sugar, Import and Export Duties in France, &c.—Paper.
98. Sugar, Venezuela—Order in Council.
61. Railways, Manchester and Leeds District—Map of competing Lines.
Prisons, Scotland, Sixth Report of the General Board of Directors.

62. Railways, Newcastle to Berwick—Map of competing Lines.
103. Montreal—Copies or Extracts of Despatches.
39. Acts of Parliament—Account.
78. Convicts—Abstract Return.
100. Westminster New Palace—Copy of Architect's Report, &c.
108. New Zealand—Copies of Letters.
83. (2) Railways, Worcester, Wolverhampton, &c. Division—Map.
101. Legacy Duty, &c.—Return.
106. House of Keys, Isle of Man—Copies of Memorials.
113. Private Bills—Resolution and Order.

HOUSE OF COMMONS.

SMALL DEBTS.

MONDAY, March 10.—Mr. H. BERKELEY gave notice, that on an early day (we understood) after Easter, he would call the attention of the House to the Act of the last session, for the abolition of imprisonment for small debts, with the view to the introduction of a Bill for the more easy recovery of small debts, and for giving to creditors for small sums greater protection against fraudulent debtors.

COUNTY RATES.

TUESDAY, March 11.—Sir J. YARDE BULLER obtained leave to bring in a Bill to amend the laws relating to the assessing, levying, and collecting of county rates.

BASTARDY BILL.

WEDNESDAY, March 12.—Sir J. GRAHAM moved the order of the day for the committal of this Bill.—General JOHNSON observed that the present Bill did not appear to remedy a defect in the Bill of last session, which gave the power to summon the putative father before the birth of the child, but not to deal with the party when summoned.—Sir J. GRAHAM said the object of the present Bill was rather to correct certain errors in form, than to deal with the substance of the Bill of last session. The summons was issued before the birth, but, of course, no order could be made until after the birth of the child. But the object was, that if the father should not then be forthcoming, the order might be made in his absence.—Mr. WAKLEY asked whether the right honourable baronet was aware of any instances in which the magistrates had refused to afford this opportunity of establishing paternity before birth?—Sir J. GRAHAM had heard of no such cases.—The House then went into committee, and the several clauses were agreed to.—Sir J. GRAHAM moved the following clause:—"And be it enacted, that when any order made under the provision of the said Act shall, prior to the passing of this Act, have been quashed for any defect therein, and not upon the merits, it shall be lawful for the mother of the bastard child, in whose favour such order shall have been made, to take proceedings for the obtaining of another order, according to the provisions of the said Act, at any time within the space of three calendar months after the passing of this Act, although the period limited for her application to the justice under the said Act shall have expired." He proposed also to add a proviso to the effect, "that when the putative father has given notice of appeal against the order made upon him, and fails in his recognizance, notice shall be given to the mother, to save her the inconvenience and expense of appearing."—Agreed to.—Sir J. GRAHAM then brought up the following clause:—"And whereas power is given by the said Act to the putative father to appeal against an order made upon him by the justices in petty sessions assembled, giving notice of appeal as therein specified, and also sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace: be it enacted, that the condition of any such recognizance shall be for the appearance of the said putative father at such general quarter sessions of the peace as is required by the said Act, and his trial of the appeal thereat, and the payment of such costs as he shall be then and there ordered to pay; and if at any time before the hearing of the appeal the putative father, who shall have entered into any such recognizance, shall give notice in writing of his abandonment of the appeal to the mother of the child, in whose favour the order shall have been made, and to the justice or justices before whom the said recognizance shall have been taken, and shall pay or tender to the said mother all sums then due under the said order, and such costs and expenses as she shall have incurred by reason of such notice of appeal, the said recognizance so entered into by the said putative father shall not be estreated, nor in any manner put in force, or otherwise proceeded with."—The clause went through the several stages and was agreed to.

JUSTICES' CLERKS BILL.

Sir J. GRAHAM then moved the second reading of the Justices' Clerks and Clerks of the Peace Bill.—Captain EGERTON pointed out the great expense which this Bill would occasion, not only to the counties, but also to the magistracy of the different counties. He suggested to Sir J. Graham the propriety of postponing it, in order that it might receive further consideration.—General JOHNSON hoped that Sir J. Graham would divide this Bill into two, and would separate that part of it which related to clerks of the peace from that which related to the clerks to the magistrates. The one was an ancient office, and the other a mere modern creation.—Mr. DARBY was also afraid that this Bill, so far as it regarded the clerks to magistrates, would create additional expense to counties. He also thought that the machinery of it was too complicated, and that it would not be advantageous even to the poorer classes, for whose benefit it was intended; for, as the fees were now to be carried to the county stock, they could not be remitted by the magistrates, as they were at present.—Mr. BROTHERTON hoped that Sir James Graham would not consent to postpone the second reading of this Bill. The Bill was a very good one, and people were only sorry that it did not go further. He thought that instead of being a burden, it would be a saving to the counties.—Mr. DICKINSON hoped that Sir J. Graham would listen to the application which had been made to him to divide the Bill into two parts. If he did not, and if several changes were not made in the Bill in the committee, he should be compelled to vote against it on the third reading.—Mr. HENLEY doubted whether the duty of magistrates' clerks would be equally well performed when they were paid by salaries as they were now, when they were paid by fees. The plan of remunerating them by fees might also lead to a very hasty and careless administration of justice before local magistrates.—Sir J. GRAHAM: The objections which had been made to the Bill were rather to its details than to its principles; but the two were so blended that they could scarcely be separated. Now, this was the occasion for discussing the principles of the Bill, and the chief one was, that justice was better administered by public servants receiving salaries than by public servants receiving fees. He then proceeded to shew that the ends of justice would be better answered, and the interests of the rate payers would be better advanced, by the details of this Bill than they were by the law at present. As to the difficulty which, it had been suggested, would arise from the magistrates having no longer any power to remit the fees to which parties were liable who came before them, because those fees were to be carried in future to the county stock, he had only to observe that he had no objection to consider in committee a proposition for giving the magistrates the power of remitting such fees. The Bill would not occasion any additional expense to the counties; but even if it did, it would be better that such were the case, than that the monstrous injustice should continue of levying fees from innocent persons unjustly accused of crime on their discharge from custody before a magistrate.—After a few words from Mr. Turner and Captain Pechell,—Mr. B. ESCOTT said he was sure that his friends who had objected to the details of the Bill could not be aware of the enormities which it removed. He shewed that clerks to the magistrates had taken many fees to which they had no legal title, and to which parties had been rendered liable for no other purpose than to expose them to annoyance and oppression, and concluded by warning the House not to measure the amount of compensation to be granted to these officers in the shape of salary by the amount of their peculations.—Mr. W. MILLS thanked Sir J. Graham for having introduced this Bill, and vindicated the magistrates' clerks from the sweeping charge of having appropriated to themselves many heavy fees to which they had no legal right, and which Mr. B. Escott had therefore denounced as peculation.—Mr. HAWES expressed his gratitude to Sir J. Graham for having introduced a Bill which would be so eminently useful in improving the administration of justice.—After a few words from the Solicitor-General,—Mr. WAKLEY gave Mr. B. Escott high credit for the labour and assiduity with which he had ferreted out all the enormities connected with the fee system in our subordinate courts, and trusted that he would turn his attention to the fee system in the superior courts at Westminster. A magistrate some time ago had filed a criminal information against him. He was served in consequence with a piece of paper which told him nothing. Wishing to know what he was accused of, he applied to his legal adviser, who informed him that he could not learn the nature of the accusation against him until he had paid a fee of 3*l.* or 4*l.* to some officer of the court for the affidavits filed against him. He afterwards found that he had to pay a still heavier fee before he could file the affidavits necessary to his own defence. He denounced such a system as obnoxious to the free and impartial administration of justice.—The Bill was then read a second time.

THE LAW OF DIVORCE.

THURSDAY, March 13.—Lord BROUGHAM presented a Bill for giving to the Privy Council jurisdiction in cases of divorce. The noble lord said he should defer making any statement on the subject until the second reading.—The Bill was then read a first time.

REPORT OF SELECT COMMITTEE ON RAILWAY BILLS.

The select committee appointed to inquire into the best mode of constituting committees on railway bills in the present session of Parliament, and of the most expedient manner in which railway bills, having relation to similar objects, may be brought under the consideration of the same committee; and who were empowered to report from time to time to the House;—have considered the matters to them referred, and have agreed to the following resolutions:—

1. That a committee of five members be appointed, to be called the Classification Committee of Railway Bills, and that three be the quorum of such committee.

2. That copies of all railway bills presented to the House, and a list of all projected railways, of which plans and sections have been deposited in the private bill office, be laid before the said committee, together with all reports and minutes of the Board of Trade upon such projected railways, which shall have been laid, or which shall from time to time be laid, before the House.

3. That the Committee of Classification shall form into groups all railway bills or projects which, in their opinion, it would be expedient to submit to the same committee.

4. That committees on railway bills during the present session of Parliament shall be composed of a chairman and four members, to be appointed by the Committee of Selection.

5. That each member of a committee on a railway bill or bills, shall, before he be entitled to attend and vote on such committee, sign a declaration that his constituents have no local interest, and that he himself has no personal interest, for or against any bill or project referred to him; and no such committee shall proceed to business until the whole of the members shall have signed such declaration.

6. That the promoters of a railway bill shall be prepared to go into the committee on the bill on such day as the Committee of Selection shall, subject to the order that there be seven clear days between the second reading of every private bill and the sitting of the committee thereupon, think proper to appoint, provided that the classification committees shall have reported on such bill.

7. That the Committee of Selection shall not appoint an earlier day for the first meeting of the committee on any group of bills than the twenty-sixth day after the presentation to the House of the reports of the Board of Trade on all railway projects included in this group, unless all the petitions for bills relating to such projects shall have been sooner presented.

8. That the Committee of Selection shall give each member not less than fourteen days' notice of the week in which it will be necessary for him to be in attendance for the purpose of serving, if required, on a railway bill committee.

9. That the Committee of Selection shall give each member a sufficient notice of his appointment as a member of a committee on a railway bill, and shall transmit to him a copy of the fifth resolution, and a blank form of the declaration therein required, with a request that he will forthwith return it to them properly filled up and signed.

10. That if the Committee of Selection shall not within due time receive from each such member the aforesaid declaration, or an excuse which they shall deem sufficient, they shall report to the House the name of such defaulting member.

11. That the Committee of Selection shall have the power of substituting, at any time before the first meeting of a committee, another member for a member whom they shall deem it proper to excuse from serving on that committee.

12. That power be given to the Committee of Selection to send for persons, papers, and records, in the execution of the duties imposed on them by the foregoing resolutions.

13. That no member of a committee shall absent himself from his duties on such committee, unless in the case of sickness, or by leave of the House.

14. That if the chairman shall be absent from the committee, the member next in rotation on the list (who shall be present) shall act as chairman.

15. That committees shall be allowed to proceed so long as three members shall be present but not with a less number, unless by special leave of the House.

16. That if on any day, within one hour after the time appointed for the meeting of a committee, three members shall not be present, the committee shall be adjourned to the same hour on the next day on which the House shall sit which had been fixed for that day.

17. That in the case of a member not being present within one hour after the time appointed for the meeting of the committee, or of any member absenting himself from his duties on such committee, such member shall be reported to the House at its next sitting.

18. That each committee shall be appointed to meet on each day of its sitting, not later than twelve o'clock, unless by the regular vote of the committee.

19. That parties promoting railway projects which have been grouped together by the Classification Committee, shall be permitted to appear before the com-

mittee on a railway bill belonging to such group, and to offer evidence either against the bill immediately under the consideration of the committee, or in support of their own projects.

20. That in committees on a bill or bills, when such evidence has been given, it shall be within the competency of a committee to adjourn their proceedings until the bill or bills for such other projects shall be before them, care being taken by the Committee of Selection that in all such cases the bills for the so opposing projects shall be referred to the committee by which the first bill or bills had been considered.

21. That as soon as the Committee of Classification shall have determined what railway bills or projects are to be grouped together, they shall report the same to the House, and all petitions against any of the said bills or projects shall be presented to the House three clear days before the meeting of the committee thereon.

22. That as soon as the committee on a group of railway bills or projects shall hear, so far as may be necessary, parties appearing in support of such petition, so as to receive without interruption the whole of the evidence on the general merits of all the bills or projects before them, and also on the details of the bill or project, or bills or projects, which they shall be of opinion ought to be adopted, in order that if the committee should consider that a bill or bills not yet read a second time at the time of inquiry, ought to be preferred, they may be enabled, when that bill or bills shall be formally committed, to dispense with receiving any further evidence, and to confine their proceedings to making such amendments in the clauses as their previous investigation may have shewn to be necessary.

PARLIAMENTARY PAPERS.

Legacy Duty, &c.—Mr. Hume has obtained, by order of the House of Commons, his usual annual return of the capital on which legacy duty has been paid, and of the amount of revenue received in the United Kingdom for stamp duty on legacies, in the year ending the 5th of January last. This return, which was consigned to the printing-office of Parliament on the 6th instant, affords the following information:—It appears, in the first place, that the gross total amount of capital on which the several rates of legacy duty have been paid in Great Britain during the year 1844, was 44,393,887*l*., of which amount the sum of 24,117,769*l*. was paid at the rate of 1*l*. per cent.; 107,262*l*. at the rate of 2*l*. 10s. per cent.; 13,708,061*l*. at the rate of 3*l*. per cent.; 11,317*l*. at the rate of 4*l*. per cent.; 1,496,230*l*. at the rate of 5*l*. per cent.; 362,472*l*. at the rate of 6*l*. per cent.; 10,593*l*. at the rate of 8*l*. per cent.; and, lastly, 4,580,179*l*. at the extreme rate of 10*l*. per cent.; shewing, thus, that the general rates—that is, those from which the largest amount accrues to the revenue—are those of 1 and 3 per cent. The abstract of the gross total amount under all these rates since the year 1797 gives a sum of 1,293,819,797*l*. sterling, of which 638,687,437*l*. was under the 1*l*. per cent. rate, 333,764,984*l*. under the 3*l*. per cent. rate, and 139,191,122*l*. under the 10*l*. per cent. rate. A return from Ireland, which follows, shews that the total amount of capital in the sister kingdom on which the several rates of legacy duty have been paid in 1844, is 2,140,021*l*. of which 1,274,772*l*. was paid at the rate of 1 per cent. and 564,552*l*. at the rate of 3 per cent. The total amount of legacy duty received on this capital was 53,618*l*. being in round numbers at the average rate of 2*l*. 10s. per cent. on the capital paying the duty. The total amount of the duty on probates and administrations received in Ireland during the year 1844-45 was 61,031*l*., making, with the duty received on legacies, a grand total revenue of 114,649*l*. It further appears, on examining the other portions of this return, that the gross total amount of revenue received in Great Britain during the year 1844 was, for stamp duty on legacies, 1,198,552*l*. and for stamp duty on probates, administrations, and testamentary inventories, 966,852*l*. In Ireland the same amounts were respectively 53,618*l*. and 61,031*l*. It follows that the revenue of the United Kingdom was enriched to the amount of 2,280,053*l*. from these stamp-duties alone, on legacies and probates, &c. The office accounts do not admit of any distinction of the duties received on direct or reversionary bequests. The gross total amount of duty received since the year 1797 in the whole of the United Kingdom was, on legacies 38,396,923*l*. and on probates, administrations, and testamentary inventories, 30,719,090*l*. The last branch of the return informs the reader that the total amount of duty received in Ireland, from 1797 to 1845, a period of 48 years, was, on legacies, 767,869*l*. and on probates and administrations, 1,116,853*l*. In Scotland, the duty received on legacies since 1797 amounts to the sum of 2,111,641*l*.; and that received on probates, administrations, and testamentary inventories to the sum of 1,456,329*l*.

New Bastardy Bill.—A new measure has just been introduced by Sir J. Graham, entitled, "A Bill to make certain provisions for proceedings in Bastardy." Upon taking up the printed edition of this Bill it appeared to be bulky; but the enactments are by no means extensive, as they are comprised in three clauses, the remainder of the letter-press being appropriated to a number of forms, for the purposes of the Act, annexed in a schedule. The preamble observes, that divers questions have been raised as to the validity of certain orders in bastardy, made by justices under the Act of the last session (the 7 & 8 Vict. c. 101), entitled "An Act for the further amendment of the Laws relating to the Poor in England," which questions are wholly beside the merits of the cases; and that it is desirable to remove such questions, and to prevent the recurrence of the same or similar questions in future. The Bill then proceeds to enact, that where any proceedings have been had or taken before the passing of this Bill, or shall hereafter be taken, in matters of bastardy, under the provisions of the recited Act, and shall have been set forth according to the forms in the schedule, the same shall, so far as relates to the form of such proceedings, be taken respectively to have been and to be valid and sufficient in law; with a proviso that nothing shall apply to orders which have been quashed on appeal to any General Quarter Sessions of the Peace, or by the Court of Queen's Bench. The mother of the bastard child is to be examined by the Court of Quarter Sessions, on appeals against an order in bastardy, but no such order shall be confirmed, unless her evidence shall have been corroborated in some material particular by other testimony. The parties may be heard at the Petty Sessions by counsel or attorney.

Bankruptcy.—The following is a brief summary of a return just made to an order of the House of Lords for an account of the "various balances owing by Peter Harris Abbot at the period of his default as official assignee." The first is a summary of the deficiencies under commissions, of which the following are the totals:—Amount of deficiencies under commissions where moneys have been received since an audit or dividend (subsequent to Peter Harris Abbot's appointment) and where funds have been retained in hand without audit or dividend being called for, 49,717*l*. 7s. 11d.; amount of ditto being small balances retained at audit, or dividend in hands of official assignee, 657*l*. 12*l*. 10d.; amount of ditto, being small sums received by Peter Harris Abbot under various old estates, extracted from his private ledger, and included in a return made to the House of Commons in 1839, 1,188*l*. 19s. 4d.; total, 51,564*l*. 4s. The next is a summary of deficiencies under fiats.—amount of deficiencies under fiats, being composed of balances and subsequent receipts, 28,514*l*. 11s.; amount of deficiencies under fiats, being composed of small balances, which appear to have been in the hands of Peter Harris Abbot, 2,118*l*. 8s. 7d.—30,632*l*. 19s. 7d. Thus, under commissioners total deficiencies were 51,564*l*. 0s. 1d. and, under fiats, they were 30,632*l*. 19s. 7d.; making together a sum of 82,196*l*. 19s. 8d. The return is made by Mr. William Pennell, official assignee.

Court of Session (Scotland).—A return of the number of causes instituted and decided in the Court of Session, from the 1st day of January, 1844, to the 1st of January, 1845, has just been presented to Parliament, and printed by order of the House of Commons, pursuant to the Act 1 Wm. 4, c. 69. There appear to be five Lords Ordinary—Lord Cunninghame, Lord Murray, Lord Ivory, Lord Wood, and Lord Robertson. In the "outer house," as it is called, the number of causes enrolled for the first time before all the Lords Ordinary amounted to 1,457, the number of decrees in absence to 476, the number of final judgments pronounced in litigated causes to 800, of which 267 were pronounced by Lord Cunninghame, 25 by Lord Murray, 73 by Lord Ivory, 229 by Lord Wood, and 206 by Lord Robertson. The total number of causes ready for debate, but not heard, amounts to 94, and the total of causes *ad avizandum* to 18. In the "inner house" the number of reclaiming notes presented against judgments of Lords Ordinary in the course of the same year amounted to 289, viz. 207 in the first, and 82 in the second division. The number of incidental and summary applications presented during the same period amounted, in the first division, to 580, of which 558 passed as matters of form; and in the second division to 362, of which 330 passed as matters of form. The number of final judgments pronounced in litigated causes, without the intervention of a jury, amounted to 122 and 96 in each division respectively. The number of causes tried by jury to 25 and 23 respectively. The number of causes ready for judgment on hearing counsel or otherwise amount, in the first division, to 59, of which 19 are to be tried by jury; and in the second division, to 34, of which 15 are to be tried by jury.

Petitions of the People.—The seventh report of the select committee of the Commons' House, which issued on Wednesday, states that there are altogether 37 petitions for encouragement to the Irish Church Education Society, signed by 3,103 persons; 11 petitions against the contemplated union of the dioceses of Bangor and St. Asaph, signed by 558 persons; 17 petitions for relief from taxation (to be granted to the agricultural interest), signed by 6,896 persons; 19 petitions for a repeal of the duty on malt, signed by 3,666 persons; 23 petitions against the re-imposition of the property and income-tax, signed by 1,815 persons; 20 petitions in favour of a County Courts Bill, signed by 2,642 persons; 57 petitions for an alteration in the Medical Practice Bill, signed by 2,026 persons; 13 petitions against any increase in the naval and military establishments of the empire, signed by 1,241 persons; and 60 petitions against the nuisance of public-houses, signed by 10,305 persons.

Convicts.—By a return (published on Monday last) it appears that there are 2,397 convicts confined in prisons in the United Kingdom, of which number 145 were, on account of their health, unfit to be removed.

THE MAGISTRATE.

Summary.

The second reading of the Justices' Clerks Bill involved a warm discussion—the opposition to it appears to be formidable. The objections to its provisions were very contradictory, and it will doubtless be much altered in Committee.

Many Magistrates having intimated their intention to take the Law Times at the commencement of the next volume, the present Subscribers will perhaps oblige by informing their brother Justices that the *fifth* volume will *begin* on the 5th of April.

BILL TO AMEND THE BASTARDY ACT.

When, in a late number, we stated our belief that this bill was designed to legalize the Lumley blunders, and provide for receiving the mother's evidence on appeals, some thought us premature, and that the announcement should have been reserved for the first of April. Not a bit of it. Here is the Bill itself, and here are its own words:—

> Whereas divers questions have been raised as to the validity of certain orders in Bastardy, made by justices under the Act of the last session of Parliament, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," which questions are wholly beside the merits of the cases; and it is desirable to remove such questions, and to prevent the recurrence of the same or similar questions in future; Be it therefore enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That where any proceedings have been had or taken before the passing of this Act, or shall hereafter be had or taken, in matters of bastardy, under the provisions of the said recited Act, and shall have been set forth according to the forms in the schedule hereunto annexed or to the like effect, the same shall, so far as relates to the form of such proceedings, be taken respectively to have been and to be valid and sufficient in law.

To the Bill is attached a schedule containing the Lumley forms.

The preamble requires a slight modification. It reads better thus:—"Whereas divers perplexing questions have been raised touching the invalidity of certain orders of bastardy made by our well-beloved Golden Lumley, Esq. under the Act, &c. which questions, though held fatal to the said orders by our justices of the Court of Queen's Bench are held to be vexatious and wholly beside the merits of the said orders by the said Golden Lumley himself, to whom it is extremely desirable to remove such questions and prevent their recurrence in future, as well as to relieve him, the said Golden Lumley, from the necessity of learning the rudiments of law before he administers it; Be it therefore enacted," &c.

The form of order attached to the Act wholly omits all mention of the evidence either of the woman or the corroborating witnesses being taken before the petty sessions upon oath, which, according to *law*, is requisite. Thus the Bill is expressly intended to uphold Lumley instead of law. We regard this as a remarkably pleasant instance of the utility of Parliament; a fit and proper application of the powers of the Constitution! Queen, Lords, and Commons put into motion to the rescue of Golden Lumley from the results of his own blunders! And then the philanthropy and

benevolence of the Constitution towards this favoured official is quite touching. We know of nothing half so motherly in fact or fiction, except *Mrs. Hardcastle* and her *Tony Lumpkin*. The Bill provides that "nothing herein contained shall apply to any order made or professed to have been made under the said Act, which shall have been quashed on appeal to any General Quarter Session of the Peace or by the Court of Queen's Bench."

We recommend all the putative fathers to appeal *en masse* forthwith, before this delectable Bill shall have passed, and by this means they may rid themselves of the intended favour of having illegal orders fastened upon them.

The Bill makes no provision for fresh orders where bad ones have been quashed. S.

THE NEW SETTLEMENT BILL.

WE resume our review of this Bill.

APPEAL AGAINST WARRANT OF REMOVAL. Section 19 provides that the parish aggrieved by a warrant of removal may appeal, giving notice of the grounds of appeal. The appeal is to be respited only on affidavit of special circumstances. Warrants of removal made before the passing of the Act may still be appealed against, as if the Act had not been passed. As to statement of periods of appeal, 4 & 5 Wm. 4, c. 76, s. 81. By section 20, overseers may have access to the pauper touching his settlement. Section 21 fixes fourteen days' notice of appeal in all cases. This is a great improvement on the present law, which leaves the period to the discretion of each court of sessions. By section 22, on the trial of the appeal, the duplicate of the warrant, and the original depositions transmitted to the clerk of the peace, may be referred to, in order to see if the witnesses made certain statements therein, and to supply their evidence if since dead; but then follows the same provision to do away with all objection to the illegality and insufficiency of the evidence on which the removal has been made, to which we directed animadversion last year:

Provided nevertheless, that on the trial of any such appeal no warrant of removal shall be quashed or set aside, either wholly or in part, on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained raises an objection to, the warrant or the statement of the grounds of removal except when such objection to the warrant or statement arises upon depositions given in evidence, in consequence of the death of the party making such depositions, and in that case such objection shall have the same weight and effect as if it were raised by the oral evidence of such party.

That is to say, "All you parishes who have a mind to speculate at the expense of your neighbours, in getting rid of your troublesome poor, be under no further scruple as to proving your right to remove before you make the experiment! Don't trouble yourselves to inform the parish you wish to burden of the grounds of your attack upon it; let your evidence be as insufficient as you like, the information it conveys as scanty or deceptive as suits your purpose; be as informal and incorrect as you choose; give full indulgence to your ignorance and indolence; for here is a clause for your protection, declaring, in express terms, that insufficient evidence shall suffice; and that no objection shall be made to it. We, the Legislature, therefore invite you to make removals and cast charges on other people, throwing on them the burden of disproof, without giving yourselves any trouble in first proving your own right to make the attack. The incidence of the *onus probandi*, and a rule of law as old and sacred as law itself, shall be and hereby is reversed for the special benefit of parochial stupidity, trickery, and fraud." We think it probable enough that there are some, if not many, of our readers, who may think it, at first sight, a fine thing to be saved from the snares of technicality, and rescued from the clutches of the *Queen v. Clint* (11 A. & Ell. 624), but we believe that they will soon have practical reason to lament their liberty, and appreciate, when it is too late, the judgment and discretion which prompted Lord DENMAN to utter in that case these memorable words:—"The removing parish must be cautious in sending notice of the settlement which is to be relied upon; and the appellants have a right to bind the respondents to that settlement. It is said that this is hard and unjust; but *I think there would be more hardship in allowing experimental removals on imperfect statements, which might leave one party free to prove any case, and wholly mislead the other.*" We really think that Sir JAMES GRAHAM is bound to shew cause for overruling the judgment before he throws a license into the law of removals which neither exists elsewhere, nor carries on its face any sort of justification. The sole pretext for it is the inconvenience of being just, and the trouble of being legal. This requires prompt censure from the country. Let it be well considered that there is a principle involved in this matter. Justice imperatively requires full, accurate, and plain information to a party whom it is intended to charge with a burden, or affect with a detriment, against which the law gives him an appeal. Parishes ought not to surrender this on the ground of some fancied gain in the trouble of drawing up documents, which, at a trifling cost, they can get legally drawn for them.

By sec. 23, costs incurred by reason of notice of removal, or of appeal, and costs of trial, and costs caused by statements of frivolous or vexatious grounds of removal or appeal, are to be awarded and certified by the Court: recovery of such costs. By sec. 24, costs may be taxed by the proper officer at any time, although the Court be not sitting. The case of *Reg. v. Long* (1 Q.B. 740) ruled otherwise. The clause is to amend the objection.

MAINTENANCE OF PAUPERS UNDER WARRANTS OF REMOVAL AND DURING APPEAL. —This section (25) merely replaces the existing law.

SERVICE OF NOTICE.—Sec. 26 provides that these may be sent by post.

REMOVAL OF POOR BORN IN SCOTLAND, IRELAND, AND THE ISLANDS OF MAN, SCILLY, JERSEY, AND GUERNSEY.—Secs. 27 to 31 inclusive mainly replace the existing law and repeat the provisions of the last Bill. Sec. 32 provides that guardians of unions in Ireland, and the heritors and kirk session or borough magistrates in Scotland, may appeal against such warrants. The removing parish may abandon its warrant, on payment of all costs incurred, including those of sending the pauper back to such parish.

THE CONSTITUTION OF UNIONS FOR SETTLEMENT.—This is the important new feature of this Bill. The 33rd section, after reciting the provision in the present Act, 4 & 5 Wm. 4, c. 76, s. 33, *permitting* guardians of parishes to agree that such parishes shall be considered as one for the purposes of settlement, enacts,

That the Poor-Law Commissioners shall, as soon as may be, without any such agreement by the guardians as is required by the said recited Act, proceed, by an order under their hands and seal, to declare every union of parishes constituted or to be hereafter constituted under the said recited Act, a union for the purposes of settlement, and shall specify in every such order the day, being not less than fourteen days after the date thereof, when the same shall come into force.

Sec. 34 then provides,

That the said commissioners shall, in declaring such unions for the purposes of settlement, as aforesaid, have regard to the expediency or propriety of any alteration to be made in such union before the same is declared, and may delay the declaration of the same, or the coming in force of their order, when it is necessary to effect any such alteration.

Sec. 35 extends the same provision to unions under a local Act. Sec. 36 then enacts that unions shall be as one parish for the purposes of settlement, from the day of the declaration that they are so, and that

Every pauper who would otherwise be deemed to be settled in any parish in the union, shall be deemed to be settled in such union, and *not in any parish*, and every pauper who would otherwise be liable to be removed from or to any parish in the union shall be liable to be removed from or to such union, and not from or to such parish, and no pauper shall thereafter acquire or be deemed to have any settlement in any parish of such union, or shall be liable to be removed from one parish in such union to another parish in such union.

We shall conclude our comments next week.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As I see that you have the proposed Bastardy Amendment Bill in consideration in your columns, I venture to offer one suggestion on the subject.

I would suggest that no woman, who can be shewn within a given time to have cohabited with more than one man, or who can be proved to be a person of lewd life, ought to be permitted to obtain an order on any person for the maintenance of her bastard.

One reason for this is, that she is required to swear to the father, and this in the great majority of cases no such woman can do without perjury, inasmuch as she can not possibly herself know to whom the honours of paternity should justly be given. I might adduce medical authorities for this, but it is evidently a subject the details of which would be disgusting to your readers. I will, therefore, only advise that if any reader doubts it, he should forthwith obtain the opinion of some respectable accoucheur on the point.

A second reason for such a regulation is, that it is contrary to the spirit of our laws and to common sense, that the strumpet should be enabled to fix on some one person (probably the man who can either pay best or has refused to bribe her to silence) out of her many admirers, to bear the burden of her and his vice.

The English law recognizes no action for seduction even, much less does it encourage the arts of the harlot, by permitting her to extort from the person *she* has seduced, a premium for her wickedness. It even refuses to recognize a bond entered into by the victim on an immoral consideration.

Two cases have recently come under my notice exemplifying the injustice of the present law. In one, the woman was shewn to have cohabited with several men about the time she stated the child was begotten, and to have behaved generally in an indecent manner; but the magistrate said, that if she swore to one, they were bound to believe her, unless her evidence was disproved, and this, although she had distinctly contradicted herself on oath in some of the circumstances she alleged.

In the second, the woman, a common prostitute, was shewn to have had connection with other men; and it appeared that she had used every art to induce the alleged father, a lad of about nineteen, to be connected with her; notwithstanding which the order was made.

I do not at all impute any improper motive to the justices in these cases, who, though I think they were mistaken, evidently acted against their own feelings, under an idea that their duty required them so to do; but I mention the circumstances to shew the evils which result from the law as it at present stands.

That the woman who is seduced should have every facility afforded her for obtaining the poor redress of the maintenance of her child I fully admit; but that a common strumpet should be permitted to make the consequences of her vice a scource of profit is a disgrace to the law of the land.

I am yours, &c. J. D.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I wish to draw your attention, and by means of your paper, that of my professional brethren who hold the situation of magistrates' clerks, to a Bill lately introduced to the House of Commons by Sir James Graham, for payment of justices' clerks by salaries instead of fees.

The principle stated in the title of the Act is undoubtedly good, but the Act contains a clause which, in my opinion, will very unjustly affect as well those who now hold the situation as the public, and will also convey a serious reflection on the magistrates throughout the country.

The 12th section enacts "That no clerk shall be concerned, either by himself or any partner, or in any manner directly or indirectly, as an attorney or agent in any matter brought or to be brought before the justices whose clerk he is, or in any prosecutions arising out of or consequent on any proceedings before the justices whose clerk he is, under a penalty of 50*l*."

By this clause a magistrate's clerk will be prevented from undertaking any criminal prosecution, or from being concerned either for the appellant or respondent in any appeal against any order or conviction by the magistrates whose clerk he is, even although those magistrates might be desirous of employing him to defend any proceedings taken against them in consequence of any such order or conviction. Again, several cases may arise where magistrates have the power of directing proceedings to be taken against

certain parties, particularly under the Highway Acts, and yet in these cases their own clerk will be prevented from being employed by them in the matter; and numerous examples could be adduced where the magistrates' clerks will be deprived of a large portion of their legitimate practice, because certain Acts of Parliament (in many cases local Acts) have directed some preliminary proceedings to be adopted before two magistrates.

With respect to criminal prosecutions, I submit that it is not only unjust on the magistrates' clerks to prevent them from being concerned in such matters, particularly in large towns, where the magistrates' clerk has hitherto devoted the most of his time to that line of business, and from his engagements with the magistrates may have had no time to cultivate a connection in other business; but it is also calculated to affect the public injuriously, inasmuch as all criminal prosecutions will devolve on those who have had little, and in some cases, no experience in that line of their profession; and by thus depriving magistrates' clerks of all employment in criminal matters, the public will be injured in another view, because the magistrates have a right to expect that their clerk will be able to advise them as to the latest decisions, and to inform them of the *leaning* of the courts from time to time, which information they cannot acquire unless they are in the constant habit of attending the criminal trials at the assizes.

The proposed enactment also conveys a serious reflection on the magistrates, as it infers that they do not decide the matters brought before them according to their own sense of right and justice, but according to the sinister influence of their clerk, exerted by him in proportion to the hope he may entertain of gaining some pecuniary advantage from the adoption of ulterior proceedings.

The clause will also restrain the liberty of the subject, by compelling a party not to employ a certain solicitor in particular cases, even although that solicitor may, in all other cases, be the confidential adviser of such party, and who might consider him, of all others, the most competent to undertake that particular business.

If it is considered right in principle thus to restrain the practice of the magistrates' clerks, such alterations ought to be limited to those who accept the office hereafter; but to compel the present holders of the office either to resign their situations, or to submit to a deprivation of their income, will only afford another proof of the tyrannical omnipotence of Parliament. The proposition is one which few persons would have expected to emanate from a "Conservative" Government.

I am yours, &c.

T. T. Trevor.

Gisbro, Yorkshire, 13th March, 1845.

THE LAWYER.

Summary.

No incident claims special notice. We have but to refer the reader to the various contents of this day's journal, and especially to the summary of the decisions of the last Term.

REVIEW OF THE CASES DECIDED IN ALL THE COURTS OF COMMON LAW

During Hilary Term and Vacation, 1845.

Pursuant to our custom, we now lay before our readers the decisions of the greatest practical importance during the last Term. Some, as *Wood* v. *Ledbitter*, and *Williams* v. *Burrell*, will be regarded as leading cases, but the majority of the points presented for judicial decision seem to become daily more technical.

Attorneys and Solicitors.—We cannot but express our extreme satisfaction at the decision and language in *Ex parte Bateman* (4 Law T. 331.) We regard it as of the utmost importance to the character of the *whole* Profession that there should be no opportunities afforded for unfair influence of the one branch upon the other. Lower the character of the Bar, and assuredly the character of the attorneys as a body will suffer. Lord Denman, C. J. than whom there does not exist a more liberal-minded judge, saw the full force of this, and, without casting the slightest imputation in the particular instance, he decided, with the concurrence of the rest of the Court, that no one shall avail himself of service as an articled clerk to an attorney whilst he continues a barrister, for the purpose of being admitted as an attorney. "The only inquiry," said the Lord Chief Justice, "we have to make is—is it a course that ought to be allowed to exist?—I think it ought not. The danger to the character and honour of the Profession is great and manifest."

Taxation of bill.—An outlaw cannot obtain taxation of a bill. (*Re Mander*, 4 Law T. 355.)

ARBITRATION.

An award should find upon all the issues.—In our summary of the decisions of Michaelmas Term, 1843 (2 Law T.), we stated, that when a cause was referred and the costs were to abide the event, the arbitrator was bound to find upon each issue. In the last Term this rule has again been distinctly laid down in the Court of Exchequer, and its propriety recognized by the Court of Queen's Bench. In *Kilburn* v. *Kilburn* (4 Law T. 375), the defendant in the cause referred had pleaded *non assumpsit*, payment, and set-off, and the arbitrator had awarded that the defendant ought to pay a certain sum, and that judgment should be entered for the plaintiff for that amount, and the award was held bad. In *Morgan* v. *Thorn* or *Thomas* (4 Law T. 339; 9 Jur. 92), the award was upset for a similar defect. But, in consequence of these decisions, Pollock, C. B. suggested in the last case, and also at Nisi Prius (*Molyneux* v. *Everstone*, 4 Law T. 436), that in *all cases where a cause is referred by order of reference, a condition should be introduced that it should be sufficient for the arbitrator to award in favour of the plaintiff or defendant generally, unless either party shall request him to find some particular issue, or issues.* A finding of this sort in *Waddle* v. *Downman* (12 M. & W. 562) was held good because the terms of the reference were held to mean that a verdict was to be entered generally for the defendant. We would here remark that there is no real discrepancy between the decisions of *Bourke* v. *Lloyd* (10 M. & W. 550) and *Cooper* v. *Langdon* (9 M. & W. 60). In the latter case a general verdict was directed to be entered for the defendant, and as there were no distributable issues, the *non assumpsit* being a traverse of a special promise, the Court held that this was substantially a direction to enter a verdict on each issue, and it was accordingly so entered, and the plaintiff brought error on the very ground that all the issues were so found; but it was decided that there was no inconsistency amounting to error in finding for the defendant upon *non assumpsit*, and other pleas admitting a contract, such as a plea that the contract was rescinded in favour of the defendant (10 M. & W. 785). The case that does clash with *Cooper* v. *Langdon* is *England* v. *Davison* (9 D. P. C. 1052), but that was the decision of Mr. Justice Coleridge, sitting alone, and the other, of the full Court of Exchequer. *Pearson* v. *Archbold* (11 M. & W. 477) supports *Bourke* v. *Lloyd*; and we think that *Cooper* v. *Langdon* is within the language of Pollock, C.B. in *Kilburn* v. *Kilburn*, for it could be "clearly inferred from the finding in which way the issues were found." An award, therefore, generally, in favour of the defendant, may still be good if there is no plea on the record, which, like the general issue in *indebitatum assumpsit*, could be found partly for the plaintiff and partly for the defendant. Still, in future, we should always advise, in the absence of the clause suggested by Pollock, C.B. that the arbitrator find on each issue.

Finality and uncertainty.—In *Mair* v. *Parrott* (4 Law T. 290), the award was set aside because it directed a certain thing to be done according to the most approved method. "An arbitrator," said Lord Denman, C.J. "incurs great risk if he does not acquaint himself scientifically with the work he undertakes to award upon."

Setting aside award for improper reception of evidence.—Again we have to report a case (*Clewes* v. *Middleton*, 4 Law T. 332, and 9 Jur. 160), in which, like that of *Dobson* v. *Groves*, *suprà*, 219, the arbitrator thought proper to depart from the course required by every principle of justice, and examine a witness in the absence and without notice to the other party. Most properly the award was set aside. Here, as in the case that cannot be too often quoted, *Reg.* v. *Justices of Herts* (4 Law T. 291), the enlightened judges who sit in the Court of Queen's Bench are fully alive to their especial duty of watching over the whole administration of justice, and sanctioning no precedent, however innocently intended, which may lay the foundation for the practice of drawing justice from *impure* sources.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Acceptance of foreign bill.—The distinction in favour of a foreign bill, which allows an acceptance thereof either verbally or by a promise set out on the face of the bill, is well established; and it may now be also considered as settled, that when such promise of acceptance has been made to a person by whose direction and on whose account the bill was drawn, it cannot be cancelled so as to deprive the drawers of their remedy even with the consent of the person on whose account it was drawn. (*Grant* v. *Hunt*, 4 Law T. 313.)

BANKRUPTCY AND INSOLVENCY.

What promise made by a bankrupt before his certificate is sufficient to render him liable after he has obtained his certificate.—It has been long established that no new consideration is necessary to support a promise in writing, since 6 Geo. 4, c. 16, by a bankrupt after his certificate to pay an old debt. The cases of *Roberts* v. *Morgan* (2 Esp. 736), and *Brix* v. *Braham* (1 B. 281), and others, seemed also fully to bear out the position laid down in the text books that there was no difference between a promise made before and one made after the certificate. A doubt, however, on this point was raised in *Kirkpatrick* v. *Tattersall* (4 Law T. 398), but now it may be considered as settled. Parke, B. in delivering the judgment of the Court of Exchequer, said—

> The only difference between a promise to pay before and after the certificate is, that in the former case it would be more doubtful whether the debtor meant to pay notwithstanding he was discharged under his bankruptcy, but it is clear that the promise is equally binding. The promise before certificate is more open to suspicion and more likely to be void; but that does not arise in this case. The only question is, whether there was a distinct and unequivocal promise by the bankrupt binding him to pay notwithstanding the certificate.

Accordingly it was held in that case that a written agreement by the bankrupt, a few days before his certificate, to pay the whole of his debt to the plaintiff by instalments, was a sufficient promise.

Discharge under Insolvent Acts does not release rent due.—*Phillips* v. *Sherville* (4 Law T. 412) is an important decision, as it shews that the Insolvent Acts do not operate in derogation of the rights of landlords any further than the Bankrupt Acts. It was decided in *Newton* v. *Scott* (9 M. & W. 434) and in Error (10 M. & W. 471), in accordance with the dictum of that very learned judge, Mr. Baron Parke, in *Briggs* v. *Lowry* (8 M. & W. 760), that the certificate does not operate as a release of a debt for rent, and consequently does not bar the landlord of the remedy by distress; and in the principal case this doctrine was held to apply to an insolvent, and therefore that after-acquired property remaining upon the premises might be distrained, notwithstanding that the sum due to the landlord for rent had been inserted in the schedule. The judgment confessed by the insolvent to the assignee was relied on as distinguishing the cases, because the rent was thereby become a judgment debt; but this was answered by the Court of Queen's Bench in two ways—first, that the judgment is not confessed to the landlord; and, secondly, that it is not co-extensive with the remedy by distress, since under the judgment only the debtor's goods could be seized, while by the distress any goods upon the premises would be seizable.

Power of commissioners to remand after refusal of final order under 7 & 8 Vict. c. 96. Construction of proviso at the end of s. 28.—The Court of Exchequer have taken the same view of these points as the Court of Queen's Bench, and in the same case, the prisoner Partington having been dissatisfied with that judgment. (*Re Partington*, 4 Law T. 356.) It may be, therefore, considered as fully settled, that the commissioners have power to remand independent of the 24th section, and that the proviso in sec. 28, limiting the term of imprisonment to twelve months, applies only to imprisonments after the refusal of the final order, and not to persons imprisoned for any period of time prior to that refusal. (See the judgment, 4 Law T. 172 and 220.) (a)

CONTRACT.

Duty of vendor to register a transfer.—The cases of *Wilkinson* v. *Lloyd* in the Queen's Bench (4 Law T. 432), and *Fullarton* v. *Mittleholgzer*, in the Exchequer Chamber (4 Law T. 376, and see 3 Law T. 75), seem at first sight to clash with each other; but, we think, upon examination,

(a) This case is also reported in 9 Jurist, p. 92; but although the learned counsel, who made the application, handed to the Court the Law Times, where alone the former case was reported, our cotemporary has thought proper to omit all notice of this circumstance in its report. We need hardly remind our readers that *we* constantly cite the Jurist, and that we shall continue to do so.

the distinctions between them will quite justify the difference in the judgments. In the first, it was held that an ordinance made in the colony of Berbice, in pursuance of a statute by which it was declared that "no instrument whereby the services of any apprenticed labourer should be transferred should be good or valid in law to pass, or convey, or affect such service, unless an annotation or memorandum of such instrument should be recorded in a book to be kept for such purpose in the colonial register's office of each of the respective districts in the said colony within one month after executing such instrument," did not render a contract not so registered void, or compel the vendor to give it efficacy by duly annotating it; but that that duty was imposed upon the vendee, and, notwithstanding his neglect, the vendor could sue upon a breach of the terms of the contract. In the other case, it was held, that the vendor of shares in a public company, which, by the deed of settlement, cann t be transferred without an entry in the books of the company, with the consent of the directors, is bound to prove such entry, and that the vendee, on the vendor's default, may recover the purchase-money, as upon a total failure of consideration. We apprehend that the distinction here is, that in the first case a statutory regulation was introduced, which all persons were bound to take notice of, and to act in accordance with it, and that the vendee knew that the services would not pass without a due registration of the deed by which they were intended to be sold, and nothing but the mere performance of the formality was requisite, which, by the possession of the deed he was fully able to effect. So it is the duty of the grantee of an annuity to enter the memorial; nor does it seem to be in the power of the grantee, *mero motu*, without any act on the part of the grantor repudiating the grant, to avail himself of the defective memorial (*Weddel* v. *Lynam*, 1 Esp. 309; *Davis* v. *Bryan*, 6 B. & C. 651; *Faircloth* v. *Gurney*, 1 D. P. C. 724.) But in *Wilkinson* v. *Lloyd*, the contract of the vendor of the shares was rather resembling a promise to make the vendee a partner in his stead; he (the vendor) being fully aware, from the terms of the settlement deed to which he had voluntarily become a party, and under the authority of which he was endeavouring to obtain a sum of money for the transfer of these shares, that he had, by being a party to the deed, declared that, without the consent of the directors, they should not be transferred. There was privity between him and the other shareholders, represented by the directors, but the vendee was a stranger to them until the proper entry was made. The vendee here had neither the possession, nor the means of possession, of what he had purchased; whereas in *Fullarton* v. *Mittleholyzer*, the vendee could at any time within the month have acquired the full title to the possession. The real point of difficulty in *Wilkinson* v. *Lloyd* was, whether the vendee was not bound to redeliver the deed of transfer, the inchoate title, before he could treat the contract as rescinded, and sue for the purchase-money; but the Court decided that this was not a condition precedent, following the analogy of the case of *Scurfield* v. *Gowland* (6 East, 211), where the grantee of an annuity secured by several securities, one of which had been declared to be void, because the memorial of the annuity was defective, was held entitled to sue for the consideration money, without a prior delivery of the other deeds, which had thus been shewn to be invalid and useless, although not specifically set aside by the Court.

Money had and received.—Under this head we have to notice a case of considerable interest to the profession, as it involves the question of the relationship in which the town agent of an attorney stands with respect to the client. (*Cobb* v. *Becke*, 4 Law T. 394.) The question at issue was, whether the client in the country could have any remedy against the town agents for omitting to pay money which the country attorney had transmitted to them for the purpose of liquidating a claim of third parties against the client. It was contended that, either from the peculiar position of the parties, or from the fact that the town agents knew that the money belonged to the client, they were liable in an action for money had and received. But the Court of Queen's Bench held that the mere relation of the parties to each other constituted no privity between them, and that the country attorney was, in fact, the agent of the client to pay the money, and he could not delegate that agency to his town agents. They said, however, that if it could be shewn that the country attorney was merely employed as the hand to forward the money to the defendants, and that he had been specifically instructed to forward the money to the defendants, the town agents, then the action might have been maintained. It would follow from this decision that the country attorney, after remitting the money under the circumstances of this case, which, we apprehend, is the usual course of practice, would be liable to the client, from any cause, the money was lost in the hands of the town agent.

COSTS.

Certificate under 3 & 4 Vict. c. 24.—If there were no other circumstances than those stated in the report of *Petty* v. *Walker* (4 Law T. 295), it is hardly reconcilable with the previous decisions. It seems to decide that the judge who does not give the certificate in open court immediately after the verdict, must at least state that he will take time to consider, to render a certificate subsequently given good, although no extraneous matter has been presented to the mind of the judge. We would, however, refer to *Thompson* v. *Gibson* (9 D.P.C. 717), where a certificate given by the judge after he had adjourned to his lodgings was held to be within the word "immediately." So in *Nelmes* v. *Hedges* (2 D.N.S. 350), where the jury in another cause had been sworn before it was given, because given within reasonable time. (See Prac. Notes, 3 Law T. 173.)

The 3 & 4 Vict. c. 24, bars the plaintiff of costs on any issues.—The Profession will really be indebted to Mr. New on for the numberless points of law he causes to be settled by his own cases. We have to add two this term on the question of costs. In *Newton* v. *Rowe* (4 Law T. 333), it was settled if it was ever open to a reasonable doubt, that where, in an action on the case for libel, there are issues on the general issue, and also on pleas of justification, and the plaintiff obtains a verdict on all the issues, with only a farthing damages, he is not entitled to costs on any of the issues.

General costs of the cause.—In *Newton* v. *Holford* (4 Law T. 332), the defendant was held to be entitled to the general costs of the cause if a verdict was found for him on the general issue, notwithstanding that he had failed on a plea of justification, and to which the evidence at the trial principally related.

Liability of pauper to pay costs of amendments.—In *Foster* v. *Bank of England* (4 Law T. 351), it was sought to claim for a plaintiff suing *in formâ pauperis*, the right to amend his pleadings, without payment of costs, but this strange privilege was instantly repudiated by the Court.

COVENANT.

Where the legal interest is joint, all the covenantees must sue.—During the last Term there were two cases upon the nature and construction of covenants, which will be frequently referred to in future arguments, from the full consideration which was given to them, and the importance of the points decided. The first, *Hopkinson* v. *Lee* (4 Law T. 395), fully confirms the rule which, prior to the *dicta* in *Sorsbie* v. *Park* (12 M. & W. 146), was considered to be established by the cases, and shews that the Court of Queen's Bench, at least, will not support the qualification suggested by Mr. Preston (Shep. Touch. 166). The action must, in fact, follow the legal interest, without regard to the words of the covenant; for, in the principal case, the express insertion of the words "as a distinct covenant," were held to make no difference, and the plaintiff, who had sued alone, was nonsuited. The *dicta* of the learned judges (Lord Abinger and Parke, B.) in *Sorsbie* v *Park* were beside the question before them; and from this instance the student may learn the useful lesson to regard *dicta*, even of the highest authorities, as of little weight, when the particular points have not been fully argued and considered. There the leading case of *Anderson* v. *Martindale* (1 East, 497) was entirely overlooked both by the counsel and the judges, as it had been by Mr. Preston; and hence a doubt was thrown upon what was a sound and correct principle. In the conclusion of the judgment in *Hopkinson* v. *Lee*, Lord Denman, C. J. referred to *Foley* v. *Addenbrooke* (4 Q. B. 197), and the following passage from the judgment in that case deserves to be read in connection with the present:—

The result of the cases appears to be this—that where the legal interest *and cause of action* of the covenantees are *several*, they should sue separately, though the covenant be joint in terms; but the several interest and the several ground of action must distinctly appear, as in the case of covenants to pay separate rents to tenants in common upon demises by them, or as in the instance cited from *Slingsby's* case (5 Rep. 18 b), in note (1) to the case of *Eccleston* v. *Clipsham* (1 Wms. Saund. 165), where a man by indenture demised Blackacre to A, Whiteacre to B, and Greenacre to C, and covenanted with them and each of them, that he had good title, each might maintain an action for his particular damage by a breach of that covenant. On the other hand, it appears from several cases, that *if the cause of action be joint*, the action should be joint, though the *interest* be *several*. (*Coryton* v. *Lithebye*, 2 Saund. 115; *Martin* v. *Crump*, 1 Ld. Raym. 34 a; *Wilkinson* v. *Hall*, 1 B. N. C. 713.)

Implied covenants and covenants in law.—The other case in covenant is that of *Williams* v. *Burrell* (4 Law T. 115), arising out of the somewhat too notorious actions of ejectment brought by the present Earl of Egremont, on account of the leases granted by the late earl not having been strictly and in every particular in accordance with the leasing power. We rejoice to find that in two instances, at least, the parties have been able to recover from the executors of the deceased earl. Probably all the leases contained the same form of warranty the construction of which was the subject of the case now under notice. The warranty was as follows:—"And the said Earl, for himself, his heirs, and assigns, the said demised premises, with the appurtenances, unto the said John Williams, his executors, administrators, and assigns, under the rent, covenants, conditions, exceptions, and agreements before expressed, against all persons whomsoever lawfully claiming the same, shall, and will, during the said term, warrant and defend." It was contended by the defendants, that although this was a covenant in the nature of a covenant for quiet enjoyment and title, it was only a covenant in law, and, therefore, extended no farther than the period of the lessor's own estate, which, in this instance, terminated with his life, and that the executors, therefore, were not liable thereon, in consequence of the ejectment brought by the succeeding tenant. Tindal, C. J. in delivering the judgment, pointed out that confusion had arisen from not distinguishing between *covenants in law and implied covenants*, which were essentially different. And he thus defined them:—

A covenant in law is, properly speaking, an agreement which the law infers from the use of certain words of grant having a known legal operative force, as the word *dedi* in a feoffment, or *demisi* in a lease; and these terms, after having had a direct operation in creating an estate, have a new and secondary operation given to them by law, and are held to favour a covenant by the feoffor or the lessor for the quiet enjoyment of the estate which they have already created. A covenant of this nature and description is sometimes too, it would seem, improperly called an implied covenant, whereas an implied covenant, in its proper legal sense, is a covenant not formally stated in a deed, but which is collected by constructive inference from the terms used in it; and we think an implied covenant, in its proper sense, should not be distinguished in its effects or legal consequence from an express covenant.

And he further said, that the authorities shewed that a covenant arising from the terms of a warranty is not, as contended for by the defendants, a covenant in law, but is, in the proper sense of the word, an implied covenant, to be construed in the same manner, and attended with the same result, as an express covenant for quiet enjoyment. The identity in the results of an implied and an express covenant thus being established, it followed that the executor of the assignee of the lessee could maintain an action upon breach of the warranty during the term intended to be passed, as an express covenant for title or quiet enjoyment passes with the estate. (*Spencer's* case, 5 Rep. 16, 4th resol.) The ejected tenants recovered the mesne profits, which they had been compelled to pay, and the value of the term, and also the costs of defending the ejectment, as it had been defended by the direction of the executors. This decision will no doubt lead to numerous other claims upon the executors; for we understand that even yet there are several similar ejectments pending.

DISTRESS.

Privileged goods.—Carriages upon the premises of a commission-agent for the sale of carriages are privileged from distress. (*Findon* v. *M'Laren*, 4 Law T. 355.) This decision falls under the second head of exemption specified in the leading case on the subject, *Simpson* v. *Hartopp* (Willes, 512), viz.

things delivered to a person exercising a public trade, to be carried, wrought, or managed in the way of his trade or business, and shews that exceptions, although not favoured, may arise from time to time, as a new trade, or new system of carrying on a particular trade, becomes established and known to the public.

Payment of rent by under-lessee to superior landlord, under threat of distress, gives no right of contribution from another under-lessee.—This somewhat novel point was decided in *Hunter* v. *Hunt* (4 Law T. 374). A lessee had underlet two separate portions of the demised premises to two separate tenants, and one of them having been compelled to pay the superior landlord the rent due from the lessee for the whole, he sought, in an action for money paid, to obtain contribution from the other under-tenant. The Court of Common Pleas held, however, that there was no community of interest between the parties, and that the action could not lie. The fallacy of the plaintiff's case seems to have been the assumption that a mere accidental liability to pay was equivalent to a duty. As the Court suggested, there would have been equal ground for an action against a stranger whose goods happened to have been on the premises, and not to have been distrained.

EVIDENCE.

Hilary Term is not usually prolific of decisions on points of evidence; still there are a few which deserve to be noticed.

Material evidence after change of venue.—In *Linley* v. *Bates* (2 C. & J. 659), proof of the posting of a material letter, within the county, was considered to a fulfilment of the undertaking; and in *Gilling* v. *Dugan* (4 Law T. 292), proof of the receipt of a material letter, was held sufficient.

Prochein amy is an admissible witness, under Lord Denman's Act.—This point was raised and decided in the affirmative in *Sinclair* v. *Sinclair* (4 Law T. 338); for although a *prochein amy* is liable to the costs, he is not the party upon the record. He is "an officer of the Court, specially appointed to look after the interests of the infant." (Per Parke, B. in *Morgan* v. *Thorne*, 7 M. & W. 408.) The precise objection in the principal case was to the wife of the *prochein amy*, the exception in the statute extending to the actual parties and their wives.

Evidence of declaration by auctioneer.—If there is no written contract by the signature of the auctioneer, or otherwise, for the purchaser of goods at an auction, the statements of the auctioneer at the time, correcting the printed particulars, are admissible, in cases where the Statute of Frauds does not apply. (*Eadon* v. *Blake*, 4 Law T. 318.)

Variance.—A plea that goods were warranted "fit for roofing or building," is not proved by an invoice in which part of the goods are described as "material," and part as "roofing." (*Camac* v. *Warriner*, 4 Law T. 397.) W.

(*To be continued.*)

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs, will oblige by regularly forwarding the names and addresses of all new Magis . tes who may qualify.]

St. James's Palace, March 5.—The Queen was this day pleased to confer the honour of knighthood upon Captain John Hamilton, late of her Majesty's packet service.

Foreign-Office, March 7.—The Queen has been pleased to approve of Mr. Joseph Gordon as Consul at Jamaica for his Majesty the King of Prussia. The Queen has also been pleased to approve of Mr. Robert P. de Silver as Consul at Port Louis, in the Isle of France, for the United States of America.

Whitehall, March 6.—The Queen has been pleased to present the Rev. T. B. Paget, A.M. to the Vicarage of Welton-cum-Melton, in the county and diocese of York, void by the death of the Rev. H. W. Champneys.

Whitehall, March 7.—The Queen has been pleased to constitute and appoint Charles Neaves, esq. Advocate, to be Sheriff Depute and Steward Depute of the Sheriffdoms or Stewartries of Orkney and Zetland, in the room of James Allan Maconochie, esq. deceased.

Election of City Pleader.—The poll took place in the Court of Common Council on Thursday last, at one o'clock, and closed at two. The only candidates who finally went to the poll were Sir Walter Buchanan Riddell and Mr. John Locke, all the other candidates having retired. The numbers at the close of the poll were - for Mr. Locke 111, for Sir Walter Riddell 91. The Lord Mayor thereupon declard the election to have fallen upon Mr. Locke, who, being called within the bar by his lordship, took his seat among the law officers of the corporation.—*Observer.*

Alteration of the Circuits.—It is announced in the *London Gazette* that her Majesty has appointed commissioners for inquiring into the expediency of altering the circuits of the judges in England and Wales. They are as follow:—

Mr. Baron Parke.	Mr. Whateley, Q.C.
Mr. Baron Alderson.	Mr. John Greenwood.
Mr. Justice Coleridge.	Sir William Heathcote, Bart.
The Hon. James Stuart Wortley.	Mr. Edward Denison.
Mr. Fitzroy Kelly, Q.C.	Mr. T. G. B. Estcourt.

Crown Office, March 6.

Member returned to serve in this present Parliament.—Borough of Shaftesbury.—Richard Brinsley Sheridan, esq. in the room of Henry Howard, esq. commonly called Lord Howard, now Earl of Effingham, called up to the House of Peers.

THE PROPERTY LAWYER.

NOTES ON CONVEYANCING CASES.

The numerous cases which occur in reference to the transfer of property are so important to the Profession and the public, that an attempt to note their practical operation will, we trust, receive the reader's approbation. Under this head it is our purpose to remark on reported cases, or points occurring in practice, by which the application of established rules of construction, or the elucidation and development of such as are novel, may be brought to the attention of practitioners. We shall embrace questions arising in respect of personal as well as real property, and upon wills and testamentary dispositions, as well as upon instruments *inter vivos*. It will be obviously impossible to classify such cases, or to discuss such points in any pre-arranged order, we must follow the course of decision, and mark the solution of doubts and difficulties as they arise. Here we may meet with an isolated point which, having been mooted, is settled at once, and for ever. There we shall probably find groups of questions, more or less dependent upon each other, which may require frequent discussion and repeated determinations before the rules of law by which they are to be governed can be taken as well established. But whether a point be single, or whether its aspects be various and its relations many, it will be our endeavour to define and limit each decision within its just and exact boundaries. Perhaps the commonest source of error amongst lawyers is the attributing to decided cases a wider operation than, when closely examined, their circumstances justify. Again, in other cases, we shall find the current of authority arrested, and an arbitrary line drawn between old and new decisions, where, but for decision, the practitioner would deem the cases closely analogous, if not identical in principle. With these indications of the scope and objects of these notes, we commit them to the reader's indulgence, believing that, however imperfectly executed, the design of subjecting the cases on this great branch of the law to a rigid examination will be deemed useful. We all, of necessity, act much on first impressions of the effect of recent decisions, and, therefore, it becomes of primary importance that such impressions should be accurate, or, at least, the result of careful consideration.

Execution of deeds.—A point which lately occurred in our own practice may perhaps be worth mentioning, more from the fact of its having been raised and sustained by gentlemen of experience—though not, perhaps, in this particular branch of the law—than from any real difficulty upon the subject. The question was this: An executor was, in right of his testator, the creditor of a person who had been discharged under the Act for the Relief of Insolvent Debtors, and he had been appointed assignee of the insolvent's estate. All the insolvent's debts, except that due to the testator's estate, had been long since paid, and an agreement had been made by the executor to release his testator's debt in consideration of a sum of money; and it was also agreed that the executor, in his character of assignee under the insolvency, should reconvey the insolvent's property. This was done by a deed, which first released the debt of the testator's estate, and then, by a distinct witnessing part, re-assigned the effects vested in the executor as assignee. In order to vacate the judgment, and remove the schedule from the file of the Insolvent Debtors Court, it was necessary to apply to that Court, when it was objected by the officer of the Court that *the deed was insufficient, because the person sustaining the double character of executor of a deceased creditor, and assignee under the insolvency, had only executed the deed once.* The learned commissioner admitted the objection in the absence of a case to the contrary, and the counsel in that court submitted.

As it was supposed some inconvenience might arise from the necessity of procuring the deed to be again executed, the parties consulted their conveyancer, who at once said the objection was frivolous; so much so, that no case directly in point wherewith to satisfy the learned commissioner could be found. In looking for such a case, the following, which comprised incidentally that point, were however met with.

"If A be bound in an obligation to B, and afterwards B delivers it to A, in lieu of an acquittance of money, and A after, and before any cancelling of the obligation, delivers the same obligation to B for another duty, this is void, because it continues his deed by force of the first delivery, at the time of this second delivery, and so the second delivery is void. (1 Hen. 7, 14 b.)"

Again:—

"Where once a deed takes effect, a second delivery will not make it good. (Br. Ab. Faits, pl. 28, cites 8 Hen. 6; 6 pl. 64, cites 1 Hen. 7-14, per Vavisor, Perk. S. 154.)"

So again:—

"If a writing by the first delivery takes effect as a deed, though it be void in operation, yet a second delivery at a time when it may operate in law, shall be void, and shall not make it good. (8 Hen. 6, 61; 39 H. 6, 376. These cases, and other , will be found in 13 Viner's Abridgment, 25, tit. Faits."

And it is quite plain that the second delivery, or execution of a deed, is mere surplusage. In the instance we refer to, the whole of the deed, according to its expressed intention, becomes *the* deed of the party executing it, on the execution. It was then his deed as an executor, and operated as an effectual release of the debt due to the testator; and it was no less his deed as assignee under the insolvency, to effect a reassignment of the estate. A second execution could not make it more his deed than it was at first. Neither could it form any indication of intention to execute in any particular character, as that must depend upon the intention to be gathered from the deed itself. Though it was probably from some hasty recollection of cases, wherein the general words used in a deed, which, taken by themselves, would be sufficient to pass the whole interest, have been controlled and modified by the particular purpose indicated by the whole scope of the instrument, that the objection was first raised. Upon a second application, the cases above mentioned and the distinct opinion of conveyancers having been brought to the attention of the Insolvent Court, the objection was no longer sustained.

Gifts within the Mortmain Act.—As an instance of cases in which the course of decision has been stayed, two recent decisons under the Mortmain Act may be mentioned.

Thus it has been held that devises, not merely of land, but of any property "savouring of realty," were bad if given for charities. Under that term charitable bequests of money secured by mortgage or otherwise upon land; the benefit of a grant from the Crown to lay down chains in the Thames for mooring ships (*Negus* v. *Coulter*, Amb. 367); mortgages of turnpike tolls (*Knapp* v. *Williams*, 4 Ves. 430 n.); bonds of commissioners for the improvement of the city of Bath (*Howse* v. *Chapman*, 4 Ves. 542); money secured on poor-rates (*Finch* v. *Squire*, 10 Ves. 41); a judgment debt paid out of real estate (*Collinson* v. *Pater*, 2 Russ. & Mylne, 344), were severally held to savour of the realty, and to be incapable of passing to a charitable use under the statute. On the other hand, there was the case *The Attorney-General* v. *Giles*, before Lord Cottenham, when Master of the Rolls, in 1835 (not reported), in which it was decided that East-India stock, although the Company held real estate for merely trading purposes, might be well given for charitable purposes; and a similar decision occurred in *Bligh* v. *Brent* (2 You. & Col. 268). Then came the two recent cases to which we have referred, *March* v. *The Attorney-General*, in 1842, before the Master of the Rolls (5 Beav. 434); and *Thomson* v. *Thomson*, in 1844, before Vice-Chancellor Knight Bruce

(1 *Real Property and Conveyancing Cases*, 1 Ver. Rep. 113). In *March* v. *The Attorney-General*, several sums of money were bequeathed to charities, which consisted of money secured by a mortgage of a policy of assurance from the Society of Equitable Assurances, a sum received upon a policy of the Amicable Life Assurance Society, another sum secured by a policy in the Law Life Assurance Office, and a sum received on a policy from the Economic Life Assurance Society. The Master, on a reference to inquire the nature and particulars of the personal estate, reported that "the sums received upon or secured by policies of insurance were personal estate connected with land, according to and in the proportion which the funds properly subject to the payment thereof, which consisted of estates or securities on real estates, bear to the funds and property subject to the payment thereof, which consisted of pure personal estate." But Lord Langdale, M. R. held that the sums mentioned were not within the Mortmain Act, and that they might be well bequeathed for charitable purposes. The following passages from his lordship's judgment shew the grounds upon which the decision proceeds. He said—

The grantees of the policies contract for a sum of money to be paid on a future count. Whatever may be the property possessed by the grantors, the grantees have not, by their contract, any immediate control over it, or lien upon it. The grantors, or their trustees, continue to have the entire control or management over the whole fund; the real estate or chattels real may be sold and converted into pure personalty, and the pure personalty may be converted into chattels real. This state of things may continue, not only during the contingency upon which payment depends, but after the contingency has determined; for the grantee acquires no specific lien after payment has become due. Even in default of payment when due, the grantee cannot, by reason of such default only, resort immediately and at once to land or chattels real, but must resort to legal process, which will not affect the land possessed by the office at the time of the contract, although it may, in its final result, affect such land as the office may have at the time when the process is executed.

And his lordship said that a state of circumstances might be conceived in which the Court would take possession of the property, and apply it for the benefit of all the persons having claims upon it; yet that such a bare possibility of interference would not connect the money payable on the policy with the quality of the property held by the grantors, so as to bring it within the meaning of the Mortmain Act.

After referring to some of the decisions as to mortgages on turnpike tolls, and poor and county rates, we have mentioned, he proceeded:—

There are other cases which have scarcely met with approbation; but this case does not appear to come within the Act, or within any of the decided authorities; and it seems, that if the money secured by a policy of assurance is to be deemed to be connected with land, so as to be brought within the Statute of Mortmain, there would be no reason why the same consequence should not attach upon any debt owing by any person who has real estate or chattels real; for though the right of action imports only pure personalty, yet the result of an action may be to obtain payment out of the land or chattels real.

And when we recollect that by the late statute 1 & 2 Vict. c. 110, a judgment is made a direct charge upon the real estate of the debtor, the consequence, and the legitimate consequence, of the prior decisions upon the Statute of Mortmain would be, that debts due from a person having real estate could not be bequeathed for charitable purposes. The latest case on this subject, *Thomson* v. *Thomson*, would, in the absence of a distinct adjudication, have appeared within the principle of several of the decided cases. There the testator had bequeathed shares in the London Gas-light Company, and by the Act of Parliament under which the company was established, it was declared a corporation; and by the 5th section it was provided that

All and every person or persons, by or for whom any subscription shall be made or accepted, his, her, or their executors, administrators, and assigns respectively, *should have and be entitled to a share of and in the capital stock of the said corporation*, in proportion to the moneys to which he, she, or they should have so contributed towards making up the same, and to a proportional share of the profits and advantages, &c.

By another clause it was declared the shares should be deemed personal estate, "and not of the nature of real estate;" and the company was expressly authorized to break up the soil and pavement of the streets for the purpose of laying mains of pipes.

By a subsequent Act for enlarging and amending the powers given to the company by the former Act, it was enacted that by their corporate name they should have power "to purchase and hold any lands, with houses, buildings, messuages, tenements, and erections thereon, for the purposes of the said Acts, not exceeding the extent of ten acres in the whole, without incurring or being liable to any of the penalties or forfeitures of the Statute of Mortmain; and to sell and dispose of or exchange any lands so purchased." By another and later Act, persons were authorized to sell land to the company in the manner therein mentioned; and it provided that, in certain events, amounting to a failure of the company, the property of the company should be sold and the produce divided amongst the proprietors. The Vice Chancellor also held these shares not to be within the Mortmain Act. His Honour, after stating the facts and referring to the Acts of Parliament for the establishment and regulation of the company, said—

I observe, in passing, without saying that I rely upon it, that by the terms of the section (5th), it is provided, not simply that the shares are to be personal estate; it contains, further, a negative clause, "and not in the nature of real estate." I make that remark in passing, without saying I rely upon those words, and without saying that I should not have decided the case as I do, if they had not been there. It is sufficient to say that the words are here, and form an important portion of the section. The *shares thus constituted, then, are shares of a joint stock, to be raised for trading purposes*, and the profits to arise from trading are to be divided among the proprietors. The shares, then, can only be connected with land, as the business is carried on in connection with the earth, as all business, to a greater or less extent, must be, *and also with real property to be purchased by the corporation.* The *landed property* is held by the corporation as part of the general stock, which is to produce certain profits of trade, which, when produced, are to be divided. Speaking untechnically, this would be as foreign to the idea of real property as possible. The words of the Mortmain Act are, "any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, &c." *Now, it is possible, that by an excessively strict and far-fetched interpretation of these words, this case might be held to be within them.* The question is, however, upon a just and rational comparison of the language of the Act, with the intent to be collected from the whole Act or otherwise, these are words properly applicable to a case of this description. I am of opinion that they are not. Without saying that these interests may be within the term "pure personalty," I am of opinion that they are not interests falling within a just interpretation of the Mortmain Act.

It would seem that these decisions exclude the vast mass of property which is now invested in the shares of public companies from the operation of the Mortmain Act, and that even in the instance of a railway, wherein the whole undertaking is based upon the possession of land. If any of the older cases we have named are to stand, the distinction must be, that where there is a charge "affecting, or to affect lands," directly, the interest is within the Mortmain Act; but where land forms the stock, or part of the stock, of a trading company, by means of which profits are made, the interests of the shareholders in that stock, and the recipients of those profits, are capable of being bequeathed in mortmain. This may be a just interpretation of the Mortmain Act, but it is scarcely consistent with the principle of earlier decisions. And, notwithstanding the cases of *March* v. *The Attorney-General*, and *Thomson* v. *Thomson*, the question at present seems scarcely to rest on a satisfactory basis. W.

LEGAL INTELLIGENCE.

COURTS SELECTED BY THE NEW QUEEN'S COUNSEL.—It is understood that Mr. Hodgson intends to devote himself to the Rolls Court. We do not hear that Mr. Parry has announced his decision; but there is, we believe, some probability that Mr. Lee will ultimately give his principal attendance in the Lord Chancellor's Court. Mr. Wood is said to have intimated his intention of selecting the Lord Chancellor's Court and one of the Vice Chancellor's. We do not, however, vouch for any of these reports; indeed we rather suspect that one of them at least is erroneous.—*Legal Observer.*

SCOTS LAW CHANGES.—We understand that, by the appointment of Charles Neaves, esq. advocate, to the sheriffship of Orkney and Shetland, on the death of Mr. Maconochie, Charles Baillie, esq. will be the new Advocate Depute, in place of Mr. Neaves; and that Archibald Boyle, esq. son of the Lord Justice General, will succeed Mr. Baillie, as junior counsel to the officers of state for Scotland.—*Edinburgh Paper.*

CRIMINAL LAW.—Before the grand jury were dismissed at the recent assizes at Salisbury, they handed in the following presentment.

"The grand jury assembled and sworn at the assizes held at Salisbury in the county of Wilts, on Wednesday, the 5th day of March, 1845, beg leave respectfully to submit to the hon. the judges (for the consideration of the Commission for Criminal Law), that they are fully impressed with the extreme hardship which frequently falls on those persons who are brought before the magistrates, charged with depredations on agricultural produce, wood and other property of the same description, in those cases where a previous severance has taken place, and consequently where, under the present law, they must be committed (unless bailed) until the next assizes or quarter sessions, that the term of this previous imprisonment frequently exceeds that which would probably have been inflicted by the court if the parties charged should be found guilty. That in consideration of these previous commitments, the sentences of those courts are necessarily very slight, and to the public apparently inadequate. That some degree of invidious reflection is thrown on the petty sessions by such commitments, when scarcely any distinction, except the fact of previous severance, can be perceived from those cases where the statute law permits a summary conviction. That the business of the courts of assize and quarter sessions is greatly increased by the trials of such cases, the present calendar presenting about 20 indictments of this kind. For these reasons the grand jury submit for the consideration of the judges and the other commissioners, whether the process of summary trial and sentence before magistrates at petty sessions might not be advantageously extended to those cases of depredation before mentioned,* where the person is not charged with entering a dwelling-house or curtelage for that purpose, or with any other circumstance of aggravation."

(Signed by the foreman of the grand jury.)

In consequence of the decease of Lord Wynford and Sir J. Gurney, pensions to the amount of nearly 7,000*l.* a year revert to the public, Lord Wynford having received a pension of 3,500*l.* a year, as late Chief Justice of the Common Pleas, and Sir J. Gurney had just been granted 3,250*l.* a year, as a retired Baron of the Exchequer.—*Observer.*

MARQUIS OF DONEGALL.—The will of the Most Honourable George Augustus, Marquis of Donegall, late of Ormean, in the county of Down, in Ireland, who died on the 5th of October last, has just been proved in the Prerogative Court of Canterbury by the Most Honourable Anna, Dowager Marchioness of Donegall, widow, the relict and sole executrix, to whom is devised all the freehold and personal estate, cattle, and stock of every description, and to her heirs and assigns absolutely. The effects sworn to in this country are of small amount. The will, dated 11th September, 1844, is contained in a few words, and concludes thus—"to which I have subscribed my title of honour and affixed my seal. (Signed) Donegall."—*Historical Register.*

HONOURABLE MRS. REID.—The will and codicil of the Hon. Caroline Reid, late of Runnymede, in the parish of Egham, in Surrey, widow, who died on the 9th of November last, have just been proved in Doctors' Commons by the surviving executors, Colonel George Alexander Reid, 2nd Regiment of Life Guards, and John Gillebrand Hubbard, esq. of Sussex-square. She desires that she may be buried in the vault in Old Windsor churchyard, by the side of her late husband; gives 50*l.* to the poor of the parish of Old Windsor, and directs that her subscriptions to the charities of that parish be continued as long as her executors shall think proper; leaves specific legacies of plate, &c. to her children. It is her wish that those of her children who are under age should live together and have a general home at the house at Runnymede, or elsewhere, as the executors may select, who are to farm land and provide horses, carriages, &c. for the health, welfare, and comfort of her children; the residue of the estate is left amongst them. Personal effects sworn under 2,000*l.*—*Ibid.*

WILL OF GEORGE HASTINGS KEPPEL, ESQ.—The will of the late George Hastings Keppel, esq. of Princes-street, Mansion-house-street, near the Bank of England, late Common Councilman for the ward of Broad-street, who died on the 4th of February last, has just been proved in Doctors' Commons by Louisa Keppel, widow, the relict, and Adam Bittleston, esq. of the Inner Temple, barrister-at-law, the executors according to the tenor of the will, there being no direct appointment. The will is very short, dated 9th September, 1843, and in the deceased's handwriting. Leaves a moiety of the rents, interest, and dividends arising from his real and personal estate to his wife for her life, and the other moiety to the children, who are to receive the whole of the property at her death. Personal estate under 25,000*l.*—*Ibid.*

Curious Will.—John Moore, esq. son of Archbishop Moore, by his will, which was proved in Doctors' Commons on Wednesday last, under 300,000*l.* which is the amount of the personal estate only, has left some interesting specific bequests and directions, of which we give the following:—To Earl Howe he gives his equestrian bronze statue, in remembrance of his attached friend "Old Johnny" (the testator); to John Lewis Wyndham, esq. he gives 500*l.* for "Auld lang syne;" to Sir J. Hyde Parker (his messmate), a cup he won at the Weymouth regatta; to Spencer de Horsey, esq. he gives his Reindeer yacht; to Mr. Slater, master of the yacht, 200*l.*; to George Cooper, the late master, an annuity of 20*l.* for his life; and to Valentine Lewis, the coxswain, 5*l.* a year. Gives directions that he may be buried in the nearest churchyard to which he may happen to die; his body to be placed in an oak coffin, which is to be filled up with quick lime, but no leaden coffin, and that he should be borne to the grave by labourers, sailors, or stablemen (no hearse); and if he should die in London, to lie near his brother Charles. The will is in his own handwriting, and he has added two memoranda—one is, that his charities should be continued for two years; the other, that his favourite horses should be shot. He leaves his landed property in Essex to his godson, George B. Moore; his Calcraft estate to his nephew, John Moore; his house in which he dwelt, at Charles-street, and the whole of the furniture, he leaves to the wife of his brother Robert, for her own absolute use and disposal. The executors are the Rev. George Moore and the Rev. Robert Moore, clerks (the brothers), and Frederick Capes, esq. the godson of the deceased. The deceased was registrar of the province of the Archbishop of Canterbury, and principal of one of the seats in the Prerogative Office, Doctors' Commons.

CORRESPONDENCE.

LAW OF SETTLEMENT.

(*Concluded from page 442.*)

All instructions for important Bills should be placed in the hands of some person who is not only to *draw* such Bills, but be in the House of Commons when they are discussed. The practice, I believe, now is for such instructions to be placed before what is called a "Parliamentary draftsman," and the Bill, when prepared by him, is brought in by some member of the Government, and conducted by him with what assistance he may get.

Bills relating, as in the present instance, to criminal jurisprudence, are introduced by the Secretary, or Under-Secretary of State, and if made the subject of party fight, or any other strong opposition, the Attorney or Solicitor General is at his post, not only to support the principle of such Bills, but, what is equally important, see that the words of them are safe and clear to carry out such principle. But, after all, in this way the work is of a very piebald, unsafe, and, as experience proves, of a very incomplete description.

The first Poor Law Act, viz. 4 & 5 Wm. 4, c. 76, is notoriously a mass of crudity and blundering. The one which is the subject-matter of this letter is sufficiently shewn to be so. The Act for the appointment and payment of parish constables, viz. 5 & 6 Vict. c. 109, is not only absurd in its principle, but is so very miserably deficient and clumsy in its clauses, as to be either utterly thrown aside, or observed as a mere matter of senseless form.

The Act to improve the law of transfer of real property, viz. 7 & 8 Vict. c. 76, is so faulty, that the Profession deem it dangerous to adopt it, and the Chancellor has given notice to amend it, and thus, probably, make confusion more confounded. In fact, legal composition in the country is at once its curse, its bane, and its disgrace. It begins warmly to excite the attention and indignation of the country. Essays are written on it in reviews, leading articles in newspapers, speeches made upon it in Parliament, and elsewhere; the judges themselves declaim against it; the enormity of the evil is shewn up and admitted by everybody; and the only question is—*What's the remedy?* I submit that the drafts of all important Acts of Parliament should be drawn by some person who, if not to introduce them, can be on the floor of the House to superintend, and, I may say, protect their progress through the House. The Attorney or Solicitor General is the person legitimately to be looked to and selected for this most important task; but here, again, as these officers are members of a political party, they have their own private, extensive, and responsible duties to attend to, and really have not the time, or the mental or physical capability of attending to this duty. That in the year 1845 any thing in the shape of a judge, as the Lord Chancellor; or legal officers, as the Attorney and Solicitor General, should be the mere ephemeral beings of party breath, is a fact which can only be looked at with astonishment and disgust.

The Attorney and Solicitor General should be persons selected from the Bar purely for their high professional attainments, and that character of personal honour and caste which commonly attends such attainments. They should have salaries of ample extent, and be utterly independent of all cause of removal, save a vote of the House of Commons, or the prerogative of the Crown. They should compose all Government Bills, and, without being members of Parliament, be allowed to assist in the superintendence and conduct of such Bills. I humbly submit to you that a change of this sort in the character and practice of these high officers would soon work as a successful remedy to the evil of which the public does so loudly and so justly complain.

Possibly it may be very presumptuous in me to speak thus boldly, but I do not conceive it fair to utter complaints and shrink from the suggestion of remedies. That is a fashion in public speaking and public writing of a very easy, very plausible, but very disingenuous description. You only grapple, or, at least, attempt to grapple with an evil, by suggesting one or the other mode to remedy it, and, at all events, that is the most honest, as clearly the most useful, way of discussing the very subject itself.

It is manifest that the monstrous nuisance in question cannot longer be tolerated, and in my humble opinion, until you have some one in the House of Commons who can superintend, as a distinct matter of business, the verbiage of our Bills on legal subjects, *ab initio ad finem*, that evil will continue to exist.

I venture to suggest a remedy which, I trust, is not far wide of the mark; but, at all events, I may say,

"Si quid novisti rectius istis
Candidus imperti; si non, his utere mecum."

I am, yours, &c. G. E. W.

Cheltenham, March 3, 1845.

COUNTY COURT PRACTICE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In answer to your correspondent on plaintiffs being compelled to attend the County Court to swear affidavits before the county clerk in court, I beg to refer him to Finch, 117, and *In re Flint* (2 D. & R. 407; 1. B. & C. 254), which proves an attorney is the proper person to swear affidavits in the County Court, as, before the courts at Westminster were erected, the County Courts were the chief courts, and justice was administered to people at their own doors. And while upon this subject, it may be worth notice that Michael Dalton, "On the Office and Authority of Sheriffs," page 176 states that no under-sheriff, sheriff's clerk, &c., shall be an attorney in any of the King's courts during the time that he is in any such office with any sheriff; and the sheriff is bound to have a care hereof, and prevent the same as well by the statute as by his oath; and no under-sheriff or sheriff's clerk shall abide or tarry in his office above one year under a forfeit of 200*l.* yearly as long as such person shall occupy such office, contrary to the effect of the said statute; and then follows the mischief, viz., by reason of which continuing in office, &c., the under-sheriff, sheriff's clerks, &c., grow so cunning in their several places, that they are able to deceive, and may well be feared that many of them do deceive, both the King, their high sheriff, and country; and *Rex* v. *Bull* (1 Wilson, 93; and 42 E. 3, C. 9). By inserting the above you will oblige, Sir,

Yours, &c.,

Twyford, March 8, 1845. George Elkins.

SELECTIONS FROM CORRESPONDENCE.

A "Subscriber" submits the following:—

In the number of your valuable journal for 1st March, 1845, there is a report of the judgment of Tindal, C.J. in the case of *Lunn* v. *Thornton*, which decided that where a party bargains and sells "all his goods, furniture, implements of trade, and all other effects whatsoever *then remaining, or which should at any time thereafter remain, and be in and upon his dwelling-house,*" any goods which he acquires subsequently to the date of the bill of sale do not pass under it. But the learned Chief Justice says, it is not the question whether the deed might not have been so formed as to give the defendants the power of seizing the future goods of the plaintiff so acquired by him, and brought upon the premises, in satisfaction of the debt; *nor does there seem any doubt that such a power might have been given.* Now, Sir, I should be much obliged to any of your subscribers and correspondents if they would give their opinions, through the pages of your journal, as to the manner and the form in which a creditor might be empowered to seize after-acquired goods in satisfaction of his debt, trusting that the importance of the question will be an excuse for trespassing upon your pages.

"J. J." thus answers "An Articled Clerk":—

It is an invariable practice with "honourable men," that an articled clerk may serve the last year of his clerkship with the agent of the solicitor to whom he is articled, or he may complete his clerkship by serving that year with a barrister (with the consent of the solicitor), but a proviso to that effect is best inserted in the articles to ensure it.

It is a misfortune in letting so long a period as four months elapse between the bankruptcy of the solicitor to whom you were articled, and the engagement with, or assignment over to another solicitor; that period must most certainly be made up.

In the first place, it is the fault of the legislature in not making a provision for such emergencies as yours; in the next place, the solicitor should have immediately assigned you over to his town agent, and, generally speaking, there should always be a proviso to that effect in the event of any interruption happening on the part of the solicitor, which might disturb the progress of your clerkship; and again, the assignee to the bankrupt's estate is bound to see to your interest, and on due notice given, is liable to make good loss or damages sustained. By the cessation of time (without extension) your articles would not be complete, and in consequence of this lapse you certainly cannot be examined in Easter Term next.

To Readers and Correspondents.

X. Y. Z.—*Prideaux's Law of Churchwardens. We do not know the price.*

G. J. W. (Aberayron.)—*We have referred the letter to our contributor.*

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THE LAW TIMES.

SATURDAY, MARCH 15, 1845.

LAW OF DEBTOR AND CREDITOR.

It has been formally admitted in the House of Lords that the existing law is ineffective for the protection of creditors against dishonest debtors. Even Lord Brougham acknowledged this, and was re-echoed by Lords Campbell and Cottenham. But Lord Brougham endeavoured to remove from his own shoulders the responsibility of having so unsettled the law, asserting that the clause abolishing imprisonment for debt under 20*l.* was not introduced by him, but by Lord Cottenham.

It is fair that praise and blame should be distributed where they are due, and, on the part of the legal Profession, we cannot permit Lord Brougham thus to shift the *onus* of his own acts. Therefore we will briefly recal the circumstances.

A Bill was introduced by Lord Cottenham wholly abolishing imprisonment for debt, but substituting for it most efficient provisions for reaching the property of debtors. By this Bill it was proposed that *every* debtor unable to meet his creditor's claims should be liable to be summoned before the Commissioners of Bankruptcy, and there compelled to reveal his property, and subjected to punishment

of imprisonment for any fraud in the contraction of his debts which might be proved against him.

This measure, so excellent in its conception, so perfect in its framing, so adapted to meet the exigencies of the case, so just in its provisions, so entirely avoiding the difficulties which had hitherto stood in the way of abolition of imprisonment for debt, in the impossibility of discriminating between the honest and the dishonest debtor, was destined to encounter the hostility of Lord BROUGHAM. What the motive, we will not venture to surmise; but the fact is certain, that Lord COTTENHAM'S Bill was immediately subjected to his inveterate hatred.

It was impossible to attack this measure upon its merits. It was too obviously just to admit of any *popular* argument against it. But, unfortunately, the noble lord knew the prejudices of the assembly in which he sat, and with a generalship worthy of a better cause, he availed himself of them to defeat the scheme of his rival.

"My lords," he said, in substance, "this Bill abolishes imprisonment for debt, and substitutes for it a searching process against property, and a severe punishment for fraud. As the law stands, to imprisonment for debt your lordships are not liable. This Bill, therefore, affords no relief to your lordships. But, if it be permitted to pass, consider the consequences. If any of your lordships should be unable or unwilling to meet your creditors, who have now no remedy against you, they will by these provisions be enabled to summon any one of your lordships before a Commissioner of Bankrupts, and compel you to pay your debts, or to shew why you cannot do so. The inconvenience of such a law is so palpable, that your lordships cannot hesitate to reject it."

Such, in substance, was the argument of Lord BROUGHAM, and it was as successful as might have been anticipated. His lordship brought in a rival bill of his own framing, prevailed upon the peers to submit both to a select committee, and out of both the present law was framed, a scrap being taken from one and a scrap from the other, and the result was the wretched abortion that is now vexing the country. Instead of abolishing imprisonment for debt altogether, it was limited to debts above 20*l.* and all the provisions that were to operate as a substitute for it, the processes against property, and the punishments for fraud, were swept away.

The consequences are now painfully felt by all the industrious of the community. By the operation of this law of Lord BROUGHAM'S making, the honest have been suddenly deprived of their properties, the rogue has been released from his obligations.

But the wrong is at length acknowledged. There is to be an amendment of the law. So far good. But care must be taken that the amendment is sufficient for its purpose. To that the Profession and the public should look with jealous watchfulness. They have been imposed upon once, they may be so again. Nothing less will secure creditors than a power to treat all debtors who do not pay, either after a certain notice, or after judgment, as that which in fact they are, insolvents; and subjecting them to the same examination, the same liabilities, the same privileges, with added power of punishment for proved fraud in the contracting of their debts.

Let this be done, and imprisonment for debt may be abolished altogether, and with advantage. But nothing less than this will be a substitute for it, even in case of a debt under 20*l.*

Since the above was written, we have received from the committee of the Association of the Mercantile Classes, formed to procure an amendment of the Law of Debtor and Creditor, their printed address, in which we are delighted to see that they have adopted the suggestion which we last week took the liberty of submitting to them. The following has been added to the resolutions :—

Twelfth. That in order to render, on the score of expense, small estates available for bankruptcy as well as large ones, it is proposed that any creditor to any amount under one hundred pounds, shall have the power of making his debtor a bankrupt, by first giving him four days' notice to appear before the Insolvent Court, and that if the said debtor do not arrange with his summoning creditor within seven days after the expiration of such notice, he shall be made a bankrupt on the eighth day, and that the commission shall be worked by the Insolvent Court, at such a moderate expense, as shall deprive creditors of but a small and proportionate share of the property.

It should be observed that this resolution is not very explicitly set forth; but in framing a legislative enactment, of course all details necessary to its efficient working will be provided for; into these, therefore, we need not enter now; when the Bill is before us we shall take an early opportunity carefully to scrutinize its provisions with a view to its practical working. In the meanwhile, the gratitude of the country is due to the society for the exertions they are so successfully pursuing to procure an amendment of the Law of Debtor and Creditor.

CURIOUS COINCIDENCE.

WE hasten to do justice to a gentleman—a *real* Attorney, whose misfortune it is to have in the same town a *sham* Attorney, possessing, or assuming, the same Christian and surname, and with whose doings the respectable Solicitor in question is not unfrequently saddled by persons ignorant of the fact.

It was in such ignorance that we published in the LAW TIMES of the 8th inst. an application for a debt by the *sham* Attorney, THOMAS NEILD, which has been taken to be the production of the *real* Attorney of the same name. Of course had we known the fact of the double personality, we should have taken care, by explanation at the moment, to prevent a mistake of the individual; and having received the information, we now hasten to diffuse it, lest by any possibility the good and true man be mistaken for the sham letter-writer whose doings we had published.

VERULAM SOCIETY.

WE submit to the members the result of the circular proposing certain works for publication.

There are now 768 members. Of these not quite 400 have made any return.

Of those returned, some have ordered one work, others another; the consequence is, that the utmost number of orders for any one work proposed amounted only to 304.

As we stated when the circular was issued, orders for 500 copies were the least which, at the low prices of the Society, would meet the cost of writing and printing.

Consequently neither of the publications proposed in the last circular can be proceeded with.

We propose next to make trial of the series of Text-Books on THE PRACTICE OF THE LAW. It is probable that they may be deemed of more utility. As soon as the next Term begins, it is purposed to issue a prospectus of these to the members, and try what support they can hope for.

In the meanwhile, we are happy to say that the FORMS are receiving very general approval, and most of the members are availing themselves of the advantage of thus cheaply supplying their offices with these necessary aids to business. Some new ones have been added to the list during last week, of which the advertisement contains particulars. In pursuance of many suggestions, a skilful Conveyancer is now preparing for the Society a form of *Conditions of Sale*. The form of *Retainer* will be ready on Thursday, and some will be sewn into books for convenience of preservation.

Nos. VII. and VIII. of *Real Property and Conveyancing Cases*, forming Part II. will be ready on Tuesday, and Nos. VII. and VIII. of *Magistrates' Cases*, completing Hilary Term, are in the press. This will bring up all arrears.

A COURSE OF LECTURES ON THE LAW OF CONTRACTS,

BY PROFESSOR CAREY.

Delivered at the University College.

LECTURE I.

Of Contracts generally — Definition Classification of Contracts—Proceedings for Breach of Contract—Cohses in Action.

WHEN Sir William Blackstone wrote his *Commentaries*, the science of law in all that relates to contracts, was left almost without cultivation; still more was this the case in the time of Sir Edward Coke. Let us for a moment see what is the explanation of a contract offered by Sir Edward Coke: "In every contract," he says, "there must be a *quid pro quo; for contractus est quasi actus contra actum.* (Co. Litt. 47, b.) Nearly of the same merit is the interpretation of the word *agreement*, contained in a learned argument, reported by Plowden: "agreeamentum est *aggregatio mentium* in re aliquâ factâ vel faciendâ." (Plowden, 17, a.) This etymological attempt was by Lord Chief Baron Comyns deemed sufficiently happy to be inserted in his Digest. (Com. Digest, Agreement, A). From the time of Sir Edward Coke, down to the end of the 17th century, I am not aware of any work that treated expressly of contract. In the year 1737 there was published *A Treatise of Equity*, a considerable portion of which was necessarily devoted to the consideration of this subject. This treatise was published anonymously, and a second edition of it was published in 1820, by Mr. Fonblanque, and the work is frequently quoted as *Fonblanque's Treatise on Equity*. The author is supposed to have been a Mr. Ballow, who was called to the bar in 1728. "What was his then age," says Fonblanque, in the second edition; "or what had been his previous course of education and study, are points upon which the editor feels himself particularly anxious to procure information; as a knowledge of the course of reading which had produced so profound a work, before its author was of ten years' standing at the Bar, might have stimulated, as well as directed, the industry of the student." The author having explained his idea of the nature of justice, proceeds: "Our present inquiry is restrained to that first sort of justice which governs contracts; for, as an action or suit, the remedy the law hath provided for obtaining justice is but a legal demand of some right, and all civil rights must arise from obligations, and these obligations are founded on compacts; it follows of necessity that the proper subject of the law is contracts, and that justice is the chief end of law which teaches the performance of them."

Now contracts are either *voluntary* or *involuntary*. The voluntary contracts are, *buying* and *selling*, *letting* and *hiring*, *deposits* and *interest of money*, and the like; the involuntary are, *theft*, *murder*, *rapine*, and all other heinous offences, whether secret or violent. But we shall waive the treating of those any further here, since it is the voluntary contracts only that we shall have occasion to consider, and such especially as are most in use amongst us." (Fonblanque on Equity, s. 2.) This description of the nature of contracts appears uncouth to English ears. That which the writer terms an "involuntary" contract, we are apt to consider no contract at all; and the first feeling produced by reading that passage is, to join with the editor in a wish to discover the course of study by which it appears the author has arrived at conclusions so little in unison with our ordinary knowledge. The author does not give any references. The first object of the editor (as he tells us) was to supply this omission; in the present instance the references he has suggested are altogether futile. In point of fact, the whole of the introductory part of the treatise was taken from the fifth book of Aristotle's *Ethics*. Aristotle defines justice to be "equality." That breach of justice which, in the language of modern jurisprudence, would be called private law (justice between man and man), consists, according to Aristotle, in restoring that equality which has been broken. He terms it *corrective* justice—justice which sets

the thing straight. When a man refuses to fulfil a contract, the equality between the parties is broken; the one who breaks the contract has more than his own, and the other is left in possession of less than he is entitled to: justice, by taking from one and giving to the other, restores the equality. The man who has bought goods and not paid, for them has more than his own; the man who is not paid has less than he is entitled to; justice, by taking the price of the goods from one and giving it to the other, restores the equality: and therein, says Aristotle, consists justice. Again: when one man commits a wrong towards another, Aristotle considers in this case the equality between the parties to be broken; the one who does the wrong retains more than his due, and the party who suffers the wrong has less than he is entitled to: justice, by taking from the wrongdoer and giving to the other party, restores the equality between them. When an assault has been committed, the man who suffers from the assault has less than he is entitled to, because he is entitled to damages; and the man who has committed the assault has, says Aristotle, more than he is entitled to: justice, by taking from the man who committed the assault, and giving to the other who has suffered the injury, restores the equality between them.

These are the two great branches of moral law. There is a great analogy between them, and Aristotle applies to them both the term συνάλλαγμα. That term, in the more strict sense, is confined to contracts only; but it is here applied in a more comprehensive sense. Whenever one party has a claim upon another, he designates by this term the legal relation which is thereby created between them. In the one case it is the legal relation of debtor and creditor; in the other, it is the legal relation of the person who seeks for compensation for an injury and the person whose duty it is to pay it. The two legal relations are very analogous, and are both termed *synallagma*. A contract he calls a voluntary *synallagma*, because the relation is created by the consent of the parties; a wrong he calls an involuntary *synallagma*, because it is against the will of one at least of the parties. The description he gives of contracts is almost the original from which the words in the treatise on equity are translated.

In examining what Aristotle says of justice, it is clear that his ideas on the subject of jurisprudence were far in advance of the language he was compelled to use; but with the progress of legal science the language has also been developed. In the Roman law we find no such terms as those of "voluntary" and "involuntary" contracts. To the one of these the term *contractus* is appropriated; to the other is given the term *delictum*. Under these terms the distinction between the two, pointed out by Aristotle, is preserved, and at the same time the connection clearly maintained. When a legal relation is created between two persons, whether the result of a contract or the result of a wrong, then, in the language of the Roman law, an *obligatio* is incurred by the one in respect to the other. The party who having entered into a contract fails to perform it, is said to incur an *obligatio ex contractu*; this, in the language of Aristotle, is a voluntary *synallagma*: the party who has committed a wrong incurs an *obligatio ex delicto*; and this, in the language of Aristotle, is an involuntary *synallagma*. In the language of Aristotle there is no distinction in the terms between the contract and the wrong on the one side and on the other, and the legal consequence resulting from the breach of the contract or the commission of the wrong. In the language of the Roman law these are properly distinguished: on the one side, the *contractus*, the contract entered into; and *delictum*, the wrong done, on the other side—the legal result or liability arising from the breach of the contract or the commission of the wrong.

A contract is described by Aristotle, in another place, as a law made between the parties: it confers on the party to whom the promise or undertaking is made a right which he did not possess before, which the law alone could not have given; it imposes on the party who makes the promise a corresponding duty—a duty which, without that act, would not have been imposed. I purchase a horse for 50*l.* and thereby undertake to pay that sum; the contract confers on the seller a right to the price, and it imposes on me the duty to pay it.

The following is an important distinction pointed out by Mr. Austin, once a Professor of Jurisprudence in this college, in his lectures on the Province of Jurisprudence:—Rights are divided into two classes—such as are valid against all the world; and such as are valid only against certain specified individuals. A right valid against all the world is one that exists by virtue of the law itself,—such as the right of personal security. It is the duty of every man not to assault me: the right not to be assaulted is a right valid against all men. Supposing this right to be infringed, if a man assaults me, I acquire a new right—the right to compensation. The man who assaulted me has made himself subject to a new duty,—the duty of making compensation. In the language of Aristotle, the legal relation—*synallagma*—is created between me and the man who assaulted me. My right is one that I can enforce by action; it is a right of action. The duty of the man who assaulted me is one he can be compelled to perform; it is a liability, in the terms of the Roman law, an *obligatio* (*ex delicto*). In the case I put of my purchasing a horse for 50*l.* the right of the seller to the 50*l.* is a right valid against me only. I am the only person whose duty it is to pay the price. It is a right, not existing merely by virtue of the law, but created between him and me by the contract which has been made. The contract having, as far as we ourselves are concerned, the binding effect of law, but having no operation on other persons, it is, according to the description of Aristotle, *a law made between the parties*. The effect of the contract is that the seller has a right to the price; it is my duty to pay it; a legal relation is created between us, and if I fail in the performance of my duty, there results a right of action on his side, and a liability on mine. This result might be diversified through all the various ways in which a contract can be created between two parties. And this is the simple effect of a contract, and you will see at once how faulty is the arrangement of Blackstone when he introduces contract under the head of "*title to things personal*." True, title to things personal may be made by contract, and such is necessarily the effect of a contract of sale, when carried into execution. If I purchase goods, by the performance of the contract the goods become mine, and so far it is a mode of transferring property. If I purchase a horse, the horse I have purchased becomes my property; the price, if ever I pay it, becomes the property of the seller. But the ultimate effect of the contract of sale is of secondary importance as a matter of jurisprudence, in comparison with the legal operation of the contract itself.

The legal operation of every contract is this: if I fail to perform that which I had promised, the party to whom I made the promise has a right of action against me. It is not necessary that the acquisition of property should form any part of the contract on either side. "If you will mow my field of hay in the summer, I will reap your field of corn in the autumn," is, in the law of England, a perfectly valid contract. If you perform your part, you may require me to perform mine; and if I refuse or neglect, you have a right of action for any damages that justice will award you. Supposing the thing to be performed, even the contract can, under no circumstances, be a *title to property*. In this case the contract gives no title to property whatever. The breach of the contract on my part gives you a claim to compensation; but though compensation in money may be awarded and given, the contract no more founds a title to the sum recovered than an assault does to the damages you may recover in an action of trespass.

I have observed that, in the language of Aristotle, the agreement, and the legal consequences of the agreement, are both comprehended under the term *synallagma*; in the language of the Roman law, the legal consequences of an agreement are distinguished in terms from the agreement itself. The agreement is denominated *contractus*, and the legal consequences of the agreement *obligatio*. In the language of our own law a further distinction is brought out more prominently than in the Roman law. Even in the Roman law it is clear the *obligatio* is not the result of the contract alone; the liability does not arise from the *contract made*, but from the *contract broken*. The right of action depends upon the contract being broken; this we denominate the *breach* of the contract; the breach of the promise, &c.

When a claim is founded on a contract, we have three points to consider—first, the promise or engagement; secondly, the breach; and, thirdly, resulting therefrom, the right of action.

A contract is defined by Blackstone to be "an agreement, upon sufficient consideration, to do or not to do a particular thing." I propose to alter the definition thus:—"A contract is an agreement to do or not to do a particular thing, which agreement *must either be on sufficient consideration or made with certain prescribed formalities*." A contract is an agreement to do or not to do a particular thing. It is an agreement wherein one of the parties promises, undertakes, or agrees to do or not to do the thing in question. The terms "contract" and "agreement" include the engagement entered into on both sides. The terms "promise" and "undertaking" are applicable to the engagement entered into by one of the parties, without reference to any corresponding engagement which may have been entered into by the other party. I purchase a horse for 50*l.*; the seller promises or undertakes to let me have the horse; I promise or undertake to let him have the price; the engagements entered into on both sides, taken together, constitute the contract or agreement. From this meaning of the words it follows, as I shall have occasion to mention again hereafter, that if an Act of Parliament, requires an agreement, or a note of an agreement, to be in writing, it is necessary that the writing should shew what both parties have engaged to perform; if it only sets forth the promise or undertaking of one of the parties, that is not a compliance with the statute. (*Wain* v. *Warlters*, 5 East, 10; *Sanders* v. *Wakefield*, 4 B. & Ald. 595.)

Every contract contains a promise or agreement to do or not to do a particular thing. If the party who has made the promise does not do that which he has promised to do, or if he does that which he has promised not to do, he incurs a liability to make good to the other party the *damage* he has occasioned by the breach of the promise. If the thing to be done consists in the payment of a sum of money to be paid by one of the parties to the other, that sum of money, as soon as it is payable by the terms of the contract, constitutes *a debt*. An action lies to recover the *damage* on *the debt*. The form of the action depends mainly on the nature and partly on the form of contract. In point of form, contracts are divided into two classes; *special* contracts and *simple* contracts. A special contract is an agreement made by deed or instrument under seal; or, more correctly, a written instrument sealed and delivered; such as a deed of covenant, a deed of sale, or a bond. A bond is an instrument whereby one party, called the obligor, binds himself to pay a certain sum to the other, called the obligee. This binding or obligation is usually subject to a condition, such as the payment of rent, the repayment of money borrowed, or the like. If the debtor performs the condition, the bond becomes of no effect; but if he fails to perform it, then it comes into operation: the bond *is forfeited*, and the sum in which the party is bound becomes *a debt*. (Com. Dig. title Fait, A, and 2 Black. Com. 295—308, and 3 ib. 340.)

A simple contract is an agreement made without the formalities of a special contract. It is created merely by the consent of the parties, either expressly given, or to be inferred from their conduct. This consent might, at common law, be in all cases given by word of mouth. Agreements of this kind are denominated, therefore, *parol* contracts; and whether the agreement be in fact verbal, or whether the terms of it are put down in writing, and this (as far as regards the nature of the contract) is perfectly immaterial, it is, in such case, a simple contract, or a parol contract. This extends even to cases where it is provided by Act of Parliament (*e. g.* the Statute of Frauds), that an agreement or promise cannot be enforced unless it be in writing and signed by the party. In this case, as in every other, if the agreement is not executed with the formalities of a deed, it is only a parol contract or a simple contract, governed by the same rules as all other parol contracts.

All contracts are distinguished into agreements by specialty, and agreements by parol, nor is there any such third class as contracts in writing. (*Ryan* v. *Hughes*, 7 T. R. 350, note (a).) Besides special contracts and simple contracts, there is sometimes said to be a third class, namely, such as are by *record*. Thus, when any specific sum is adjudged to be due from the defendant to the plaintiff on an action or suit at law; this is described by Blackstone as being a contract of the highest nature. In the same class he ranks debts or recognizances, together with statutes merchant and statutes staple. "Since," to use his

words, "the contract on which they are founded is witnessed by the highest kind of evidence, namely, by matter of record." (2 Bl. Com. 464, 465.) When by the sentence or other judicial act of a court of judicature, a sum of money is adjudged to one of the litigant parties, that sum of money constitutes a debt; the judgment is so far ot the same nature as a contract, that it has the effect of creating *a debt*. A debt which is thus established by a court of record has many privileges over any debt created either by parol or by specialty. By a judgment, when obtained, the lands of a debtor are barred. And, for instance, if the debtor dies in the distribution of the estate, the debts of record must be paid in preference to any debt of either of the other two classes. Another effect of the judgment (in which it differs from any other agreement between the parties) is, that it enables the creditor to issue execution against the debtor. For this reason, when one person is indebted to another, it is often agreed that the debtor shall give an acknowledgment of the debt by a cognovit, in an action brought against him by the creditor, or shall grant a warrant of attorney authorizing the person therein named to appear for him in an action, and allow judgment to pass against him. In such case the creditor having the judgment in his favour, or the means of obtaining such, may issue execution against the debtor. Hence a cognovit is frequently given as a security for a debt, and thus the subject of debts of record is intimately connected with the consideration of contracts.

For every breach of contract, as we have already seen, an action will lie; an action of *covenant*, if the contract is under seal; an action of *assumpsit*, if the contract is not under seal; and where the breach of contract consists in the non-payment of an ascertained sum of money due from one of the parties to the other, an action of *debt* will lie, whether the contract be under seal or not. Thus it appears that the ordinary remedy of law for the breach of a contract lies in the recovery of money in the shape either of the debt itself or the damages. This, however, is not absolutely true without exception. For instance, where a man is under a contract to deliver goods, he may, according to the common law, be sued for the goods themselves in an action of *debt* on the *detinet*, which is an action similar in its nature to the ordinary action of debt brought for the recovery of a sum of money. There is such an action in the *Year Book* (12 Edw. 2, 375). But even in this action recovery of the goods themselves cannot be enforced. It is in that respect like the action of *detinue*, which in other respects it much resembles. Though the plaintiff demands the goods, he will obtain damages merely. This action is, however, in practice, superseded by the action of *assumpsit*, wherein the party who has broken the contract is sued for the damage he has occasioned by not delivering the goods.

It is obvious, that the agreement may be of such a nature that the mere payment of damages will be a very inadequate compensation. When this is the case, the party injured may apply to a court of equity, and if the breach of contract consists in not doing that which he has undertaken to do, the Court will compel him to do it by a *decree of specific performance*. Thus, if a man has contracted to deliver goods, a perfect remedy may, in ordinary cases, be obtained by damages. But where a man has contracted to convey a landed estate, it is considered that damages, calculated on the general money value of the land, may not be a complete remedy to the purchaser, to whom the land may have a peculiar and special value, and for this reason a court of equity will decree a specific performance of the contract. (*Adderley* v. *Dixon*, 1 Sym. & Stuart, 607.) This was a specific performance, decreed at the suit of the vendor, on a contract for sale of debts, proved under a commission of bankruptcy. It was argued, that this, not being for the sale of land, the Court could not grant specific performance. "Courts of equity," says the Vice-Chancellor, "decree the specific performance of contracts, not upon any distinction between realty and personalty, but because damages at law may not, in the particular case, afford a complete remedy. Thus a court of equity decrees performance of a contract for land, not because of the real nature of the land, but because damages at law, which must be calculated upon the general money value of land, may not be a complete remedy to the purchaser, to whom the land may have a peculiar and special value. So a court of equity will not generally decree specific performance of a contract for the sale of stock or goods, not because of their personal nature, but because damages at law, calculated upon the market price of the stock or goods, are as complete a remedy to the purchaser as the delivery of the stock or goods contracted for; inasmuch as, with the damages, he may purchase the same quantity of the like stock or goods. In *Taylor* v. *Neville* (cited in *Buxton* v. *Lister*), specific performance was decreed of a contract for sale of 800 tons of iron, to be delivered and paid for in a certain number of years, and by instalments; and the reason given by Lord Hardwicke is that such sort of contracts differ from those that are immediately to be executed. And they do differ in this respect, that the profit upon the contract having to depend upon future events, cannot be correctly estimated in damages, where the calculation must proceed upon conjecture. In such a case to compel a party to accept damages for the non-performance of his contract is to compel him to sell the actual profit which may arise from it at a conjectural price." So, likewise, where the breach of the contract consists in doing that which the party has undertaken not to do, if the breach of the contract be such as to occasion irreparable mischief, or such as cannot be compensated by damages, a court of equity will prevent it by an injunction.

But, leaving out of our consideration these proceedings in equity, we must now bear in mind that the legal operation of a contract is, that the party who undertakes has a right of action, in case of its not being performed, to recover the debt or damages. The debt or damages to which he is thus entitled constitute a *chose in action*. The term *chose in action* is one of frequent occurrence. When a person has incurred a legal liability, upon which damages are recoverable, whether the claim be founded on a contract or a tort, that which is to the one party a liability, is to the other a *chose in action*. It is a claim *made* by the one party, *to be satisfied* by the other. But when goods belonging to one person are wrongfully in the possession of another, even though the other, in order to regain them, may be driven to an action, yet these goods do not constitute a *chose in action*. The confusion in which this subject is involved appears in no small degree occasioned by the incorrect expression of Blackstone and other text writers. *Things* are represented as being divided into *things in possession*, and *things in action*. If this division were correct, it would follow that things of which you demand possession, and of which you have therefore not possession, must necessarily be in action. Now property which is yours, and which you demand possession of, is not a *chose in action*. Therefore that division appears to be incorrect. The following appears to me to be the more correct distinction. A *chose in action* is a CLAIM, and as such it is distinguished from *property*. When a man wrongfully detains my goods, those goods are still my property, and therefore do not constitute a *chose in action*. When a man has contracted to supply me with goods, those goods are not my property; but if he fails to supply them, I have a claim to compensation: that claim is a *chose in action*. The great distinction between a thing in which you have a property and a *chose in action*—between that which is yours, and that to which you have a claim, is, that the thing in which you have a property, and which is yours, you can transfer to another; but a *chose in action* cannot, by the strict rules of common law, be assigned or conveyed over to another. The reason why a *chose in action* cannot be assigned over to another is, that "it was thought a great encouragement to litigiousness if a man were allowed to make over to a stranger his right of going to law." (2 Black. Com. 442.) To this rule the King is an exception, and other exceptions are in the cases of bills of exchange and other mercantile securities. In bills of exchange, the claim to the sum for which it is made may be transferred by one person to another by indorsement, or the delivery of the bill itself, as the case may be; and even with respect to other claims arising from contracts, our courts of equity will protect the assignment of a *chose in action* as well as things in which a property is actually vested. Still, in compliance with the ancient principle, the form of assigning a chose in action is in the nature of a declaration of trust, and an agreement to permit the assignee to make use of the name of the assignor in order to recover possession. And therefore, when, in common parlance, a debt or bond is said to be assigned over, it is to be sued at law, in the original creditor's name; the person to whom it is transferred being rather an agent or attorney than an assignee. Formerly a *chose in action* could not be taken in execution, but, by the Act for the Abolition of Arrest on Mesne Process (1 & 2 Vict. c. 110), the sheriff's bailiff is authorized to take all securities for money, and apply them to the use of the creditor. It is said by Blackstone (2 Com. 397) that contracts are the only regular means to acquire a *chose in action*; and all property in action depends on contracts express or implied. Mr. Chitty (General Practice, 99) apprehends that the term *chose in action* includes also the right to recover damages for a tort; and the same view is adopted in 2 Kent's Commentaries, 351, where it is said that "things in action are personal rights not reduced to possession." He does not distinguish between *things* in possession and *things* in action, but he calls *choses* in action "*rights*." "Things in action," he says, "are personal *rights*, and reduced to possession, but recoverable by suit-at-law. Money due on a bond, damages for a breach of covenant, detention of chattels, or for torts, are included under this head." This appears to be a more correct view than that of Blackstone (2 Stephen Com. 74), though the point is of no great importance, as the class that arises from contracts is the only one on which questions are likely to arise in practice; at all events, it is the only one in which we are concerned in this course of lectures.

THE CRITIC.

New Books.

An Abridgment of the Law of Nisi Prius. By WILLIAM SELWYN, of Lincoln's-Inn, Esq. one of her Majesty's Counsel, &c. Eleventh Edition, with Alterations and Additions. London, 1845. Stevens and Norton.

A BOOK that for so many years has received the almost undivided patronage of the Profession; which is acknowledged as an authority in the Courts; has passed through *eleven* editions, on each opportunity receiving improvement, addition, and correction, is not a subject for review. It is beyond the province of criticism, and only the easy and agreeable task devolves upon us of recording the fact of a new edition, as an event in the legal history of the year, and informing the Profession what are the changes and improvements apparent in its pages.

In the first place, all the decisions and statutes since the last edition have been imported into their proper places in this. All those portions of the work which were inconsistent with the existing law have been carefully expunged, save such only as were necessary for explanation.

The matter of the volumes has thus been unavoidably increased, but this has been effected without material enlargement of bulk, by means of an enlarged page and a careful economy of space. A list of abbreviations of the reporters cited has been added, and the general index has been rendered very much more copious.

We have not found leisure to test any of the references, but the preface is very emphatic in its assurances that much labour has been bestowed to secure accuracy in this important particular.

Some notion may be formed of the huge mass of learning gathered into these volumes, when we inform the reader that the table of cases cited occupies no less than 64 pages of double columns, or, at 124 cases in each page, a total of 7,936 cases abstracted and arranged in their appropriate places!

Many law-books are useful only to barristers; but this one is almost indispensable to the attorney also. The law of *Nisi Prius* is that upon which he is most frequently required both to advise and act; and it is important that he should have at hand a trustworthy guide to give him the latest and safest information.

Such *Selwyn* has ever been deemed; and this new edition will give it new claims upon the regards of the Profession.

Of course it is not a work that requires or permits of extract.

The Juryman's Guide. By Sir GEORGE STEPHEN. London, 1845. Knight and Co.

SIR GEORGE STEPHEN is an amusing writer, whatever the subject he treats, whether it be *Adventures in Search of a Home*, *Adventures of an Attorney in Search of Practice*, or a treatise on the office and duties of a juryman. The volume before us is in fact a clever, lively, half serious, half satirical essay on the famous "Trial by Jury," in-

the course of which the author treats of all sorts of incidental matters suggested by his main subject; devoting a chapter to "The Judicial Mind," another to "The Jury-Box," and so forth. In the course of his labours, the author touches upon topics that might well deserve each one a volume of itself, instead of the compressed notice unavoidable in a little book like this. In the five chapters devoted to the subject of Damages, questions of the utmost moment are raised and decided with an off-hand promptitude which may serve well enough in a work addressed to the juryman, and intended to contain practical directions for his guidance, but which involve principles of vast moment, and on which no small difference of opinion would exist.

We regret that, in our crowded columns, we cannot give to his various suggestions and propositions the consideration they deserve; we can only, at this busy season, remark that these pages contain food for thought which might have appeared in a less humble form. The manner of the writing will recommend it to every reader, whether professional or otherwise; and though we see in it much from which we dissent, there is a great deal of observation in which we heartily concur. A few passages will exhibit the peculiarly lively and agreeable style of Sir George Stephen:—

THE JUDICIAL MIND.

What then is intended by the words "the judicial mind?"

The minds of judges are assuredly of the same description as the minds of ordinary people, though usually more acute and better informed. It must be confessed that instances have not been wanting, even since the days of Jefferies, when the ermine has been sullied by the open indulgence of passion. We have seen anger add its fierceness to the judicial eye; we have watched the ear-trumpet of political prejudice unconsciously insinuating itself below the judicial wig; we have observed the quivering of the judicial nerves under the rude assaults, scarcely cloaked by mock deference, of a forensic bully. Yet more frequently, and certainly with far more sympathy, have we detected judicial impatience and judicial indignation, when irritated by the sophistries of unscrupulous counsel, or the reckless perjury of an audacious witness.

But making all just allowances, it must be owned that the facility with which our judges divest themselves of prejudice and passion, as soon as they invest their persons with the official robe, is most extraordinary. When Mathews, in his celebrated monologues some few years since, changed his costume as rapidly as his gloves, it was almost miraculous with what ease he at the same time changed voice, feature, and even sex, and with what truth and fidelity he sustained the new character which he thus assumed; but our judges effect the same metamorphosis every day, and with equal success. You may walk to Westminster Hall arm-in-arm with his lordship, and be at a loss ten minutes after to recognize on the bench the same individual with whom you perambulated the park; at all events, the recognition will not be mutual, should you then meet his eye in the witness-box. He has substituted for the friendly courtesy of domestic acquaintance the calm frigidity of indifference; the icy stoicism of the magistrate scarcely bends to acknowledge the customary salutations of the Bar. "Brother Wilde," and "Brother Talfourd," and "Mr. Attorney," are severally greeted with stately tranquillity, and return the greeting with the puppet bow of Punch in a raree-show. The dignified machine performs its part with the stiff accuracy of an automaton, varied only by the occasional inclination of the head to the right or left, to catch the hints or doubts whispered by the brother automatons with which it is surrounded. Sometimes, though rarely, a Sardonic grin will slightly elevate the angles of the mouth, if some very clever witticism is perpetrated, and now and then the voice is raised, and the brow is furrowed in a stern rebuke to a too forward or too reluctant witness. Human infirmity compels a retreat for ten minutes between one and two o'clock, to snatch a sandwich and a glass of sherry in the private room; but with this exception, his lordship sits unmoved and immoveable for seven hours at a stretch, passionless, nerveless, regardless as a marble statue. It was quite a relief to watch the late Lord Tenterden make an occasional parade up and down the floor of the judicial seats, like an officer on the quarter-deck of a man-of-war; it argued that the animation of humanity was only suspended, not actually extinguished, by the dignity of office.

These are only the outward and visible signs of the assumption of "the judicial mind;" they serve to shew that it has been taken with the wig out of the wig-box; but it is expedient to notice them, for they in some measure expound the quality itself. It may be defined as an abstraction of thought from all but official duty: nothing is permitted, even momentarily, to interfere with the peculiar occupation of the hour; the judicial mind knows nobody and nothing but the matter immediately presented to it, and even that must be duly presented in accordance with certain prescribed and accustomed forms. While thus occupied, the judge, though moulded in ordinary flesh and blood, common to himself and to inferior mortals, appears to enjoy a temporary extrication from such vulgar trammels; his essence is, at it were, resolved for a time into its elements: mind and mortality are disengaged from each other during the sitting of the court, so that personal identity becomes lost, and Lord Denman, the Chief Justice of England, in Westminster Hall, is not the Lord Denman of Portland-place. Could we suppose the Lord Denman of Portland-place to be examined as a witness, or arraigned as an offender before his counterpart lordship at Westminster Hall, the latter would not deign to acknowledge consanguinity or acquaintance. "Personal identity" is gone.

The judicial mind is absolutely governed by rules and precedent: it confesses to no influence, but the influence of recognized principles. It reduces all matters to avowed system: every thing is said and done by the square and the plumb. It allows no control of circumstances; no compulsion founded on peculiar necessity; no directing power that is not defined by the books: it labours under strict responsibility to authority, but only the authority of predecessors in the same seat.

The judicial mind is conscious of no weakness: it abjures the sensibilities of nature, not only as matters with which it has no connection, but which it cannot even comprehend. It is devoid of amiabilities; it declares itself callous and insensible; it has vitality, for it is observant, meditative, vigilant, and decisive; but, in other points, it is only the vitality of a toad in a block of marble. It is absorbed by the determined energy of self-will from all the cares, anxieties, feelings, and pursuits of life, in the single and important work that lies before it, and that work is performed in silent and inflexible obduracy of attention.

THE FORENSIC MIND.

The same temporary assumption of artificial character is generally exhibited by the bar, though in a less perfectly abstracted form; it here ought to be termed the forensic, rather than the judicial mind; but it is so similar in its general features, that we class them together. The advocate, as well as the judge, finds himself compelled to lay aside all feelings that are personal in their nature, except only so far as the accidents of business may chance to bring him into cases that involve passion or prejudices in strict accordance with his own. His politics may happen to square with his client's case; he may be pleading for redress of wrongs, similar to those which he has himself endured; he may be prosecuting an offender at whose hands he has himself sustained injury; he may be supporting a title under which his own property is held. In all these and many similar instances, instead of separating *himself* from his duty, it is natural and probable that he will identify himself with the client whose interests he is supporting; and so far as it stimulates his energy, and lends power to his oratory, he is not blameable for so doing. Yet even in such cases it is far more desirable to put a constraint on his natural inclination, and to affect an indifference which it may be very difficult to feel. The old saying, that every man who is his own lawyer has a fool for his client, is verified in some measure by any counsel who adopts his client's case as his own; it deprives him of the coolness and sedateness which are not less necessary then zeal to secure professional success; but it is yet more obvious that when a barrister is retained in a cause involving interests and feelings at variance with his own, he must totally abandon self before he can hope to do justice to his client. It is also highly probable that when his business becomes extensive, he will be engaged to-morrow in advocating views which it is equally his duty to oppose to-day. He may be required to unsay every word which he has said only a few hours previously; to question a verdict which he has just been most eloquent in obtaining; to contend that that is fair criticism which he has within an hour reprobated as a malicious libel; to palliate as venial infirmity the conduct which he has not long since denounced as heartless seduction. In the one case or the other, he must necessarily utter sentiments at variance with his own; hence his aim, no less than the judge's, is always to assume a character for the forum.

Sir George Stephen indignantly denounces a practice to which counsel too often lend themselves, and which we cite, hoping that it may be read by some at least of our rising advocates, and induce them to avoid a proceeding so tempting, but so unjust.

ABUSE THE ATTORNEY.

We may also advert under this head to another absurdity, of which we daily see instances; it is a favourite phrase with the counsel for defendants, "this is an attorney's action," and even the judges occasionally descend so far as to deal in similar insinuations to the prejudice of the plaintiff. If men in their exalted position can be thus overcome by vulgar prejudice and forget their official duty, we cannot wonder at the self-stultification which we too often see in jurymen. The issue to be tried is not whether the action is the attorney's, but whether according to the evidence the plaintiff has sustained damage from the defendant in the form alleged; if the devil himself were the attorney on the record, it would not alter the issue nor affect the damages; we think, therefore, that the counsel who attempts on this ground to divert the juryman from his duty, or the juuge who allows, without marked caution against its effect, such an appeal to be made to vulgar prejudice, is morally guilty of seducing the juryman to forget his duty.

"I will a true verdict give, according to the evidence, so help me God! and *therefore*, because the plaintiff is obviously too poor to be able to pay costs, and the attorney must necessarily look to my verdict, even for indemnity, and much more for profit, rather than he shall obtain sixpence towards either, I will allow this miserable pauper to be insulted, abused, and injured, without redress, and give him a farthing damages, to spite his attorney, and teach him never again to be such a villain as to lend his gratuitous aid to the wretched."

We rest our protest against this system on the high ground of respect to the juror's oath: if the evidence proves damage, a juryman is bound to find it, as he regards his welfare here or his salvation hereafter; the character of the attorney, whether good, bad, or indifferent, is no proof of his client's complaint being groundless; if it sways the juryman's decision, then the verdict is *not* according to the evidence, and the juryman is perjured: the contingency has happened on which he has invoked the wrath of the Almighty on himself: we are unwilling to abandon this high ground; but yet we may ask the juryman, what can be more cruel than thus to intimidate professional men from giving assistance to those who most require it? what can be more unjust than thus to stigmatize the characters of attorneys, who are not allowed to speak in their own vindication, or to meet a charge which is not in issue on the record? what can be more impolitic than thus to sanction the idea, that poverty may not claim protection from the law against the wanton injuries of wealth? We could mention a case not of very remote occurrence, in which a very eminent man in the profession was thus libelled by the most powerful journal in the world, having on the previous day been similarly abused in open court, for no other reason than that he had given his services to a hapless and injured foreigner, under circumstances so painfully severe that counsel acted with the same liberality, and advised and encouraged, and commended the action: but the jury was governed by this prejudice, and not by the evidence; one of them afterwards acknowledged it with remorse.

We could quote another case, where an attorney, equally eminent, was exposed to similar obloquy for bringing an action for a libel imputing swindling to an honourable man, but so poor that his family was all but destitue of the necessaries of life: the same vulgar trap was laid: "it was the attorney's action," and accordingly nominal damages only were given; one of the sapient jury afterwards admitted that he had been deceived by a similarity of names, and believed that the attorney was another member of the Profession, whom he knew to be a rascal!! With what reason can it be expected that either of these gentlemen will again come forward in the chivalrous enterprise of redressing the wrongs of those who are reduced by misfortune to poverty, and exposed by unmerited poverty to insult and outrage? Yet this is the natural result of such ungenerous conduct on the part of counsel and jurymen.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Abraham.—On the 8th inst. at Exeter, the lady of Augustus B. Abraham, esq. barrister-at-law, of a son.

Dugmore.—On the 7th inst. at Brighton, the lady of William Dugmore, esq. of Lincoln's-inn, barrister-at-law, of a son.

MARRIAGES.

Adamson, James, esq. of Balloch, Forfarshire, and of Lincoln's-inn, barrister-at-law, to Florence, fourth daughter of Charles Gustavus Whittaker, esq. of Barming-place, Kent, on the 11th inst. at St. Giles's in the Fields.

Aitchinson.—On the 11th inst. at St. Clement Danes Church, by the Rev. Joshua Frederick Denham, M.A., F.R.S. Rector of St. Mary-le-Strand, Robert Aitchinson, esq. Tollington Park, Hornsey, youngest son of the late William Aitchinson, esq. of Edinburgh, to Elizabeth, second daughter of George Trewhitt, esq. solicitor, of Cook's-court, Lincoln's-inn, and Long Lodge, Finchley.

Gates, William, esq. to Mary Cameron, daughter of the Hon. Lord Robertson, one of the judges of the Court of Session in Scotland, at St. Peter's.

Girdlestone, Mr. J. B. solicitor, Pontefract, to Catherine, second daughter of Mr. Edward Bailey, of Mount-street, Grosvenor-square, on the 11th inst. at St. George's, Hanover-square.

Masterman, Henry, esq. son of John Masterman, esq. M.P. to Ellen, second daughter of N. S. Chauncey, esq. on the 11th inst. at St. James's, Paddington.

DEATHS.

BOLINBROKE, William James St. John, third son of the late Viscount Bolinbroke, at Boulogne-sur-Mer, on the 9th inst.

BRENTON, Edward Brabazon, esq. Judge of the Supreme Court of the Island of Newfoundland, at Leamington Spa, on the 11th inst. aged 82.

FOX, Hon. Caroline, niece of Charles James Fox, and sister of the late Lord Holland, at her residence, Little Holland-house, Kensington, on the 12th inst.

GROVE, Edward, esq. for many years a deputy-lieutenant, and an active magistrate for the counties of Stafford and Warwick, at his residence, Shenstone-park, near Lichfield, on the 7th inst. aged 76.

HAY, E. W. A. Drummond, esq. her Majesty's Agent and Consul-General, at Tangier, on the 28th ult.

MATTHEWS, Mr. John, many years of Doctors' Commons, and resident in Charles-st. Somers-town, at Belgrave-place, Tuffnell-park-road, Holloway, on the 5th inst. aged 50.

SMITH, Robert, esq. brother of the late Rev. Sydney Smith, and formerly M.P. for Lincoln, at 20, Saville-row, on the 8th inst. aged 74.

SMITH, R. esq. of Bridge-st. Southwark, one of the Benchers of the Middle Temple, and one of the magistrates of the county of Surrey, and formerly the Receiver-General of Taxes for the county of Surrey, on the 6th inst. aged 81.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.
For every succeeding 30 words . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	99¾	99½	99¾	99¼	99⅞	99⅞
Three per Cents. Reduced	100⅛	100⅛	100⅛	100⅛	100	100⅛
New Three-&-a-quarter per Cts	103⅜	103½	103	103¼	103¼	103¼
Long Annuities..	12⅛	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	214½	215¼	215¼	216	216	217
India Stock	281	282	282¼	282	282¼	282¾
India Bonds, prem...........	70	69	70	68	69	70
Exchequer Bills, prem.	46	67	67	68	68	68
FOREIGN.						
Spanish Five per Cents.......	29¾	29¾	30	29¾	29¾	29¾
Spanish Three per Cents.	40¾	40¾	41	40¼	40⅝	40⅞
Russian	119¾	119½	119½	119¾	120	119¾
Peruvian.....................	32½	32⅝	32½	32¾	33	33
Portuguese	66¼	66	66½	66½	66¼	66¼
Mexican	36½	36¾	36½	36½	36½	36½
——— Deferred	16⅛	16⅞	16¾	16⅛	16⅞	16⅛
Dutch Two-and-a-Half per Cents.......................	63⅝	63⅞	63⅝	63½	63½	63½
——— Five per Cents.	99¼	99¼	99¼	99¼	99¼	99¼
Danish	90	90¼	90½	90½	90¼	91
Colombian	14¾	14¾	14¼	14⅛	14½	14¾
Chilian	101⅛	101⅛	101⅛	102	102	102
Buenos Ayres	43½	43¾	43½	43½	43½	44
Brasilian....................	90	90½	90½	90½	90½	91
Belgian	101¼	101¼	101¼	101¼	101¼	101¼

NEW PROJECTED RAILWAYS.

(From the *Gazette* of Tuesday, March 11.)

RAILWAY DEPARTMENT, BOARD OF TRADE, WHITEHALL, MARCH 11, 1845.

Notice is hereby given, that the Board constituted by the minute of the Lords of the Committee of Privy Council for Trade, for the transaction of railway business, having had under consideration the following schemes for extending railway communication between London and York, and in the immediate districts to the east of the present lines of railway, viz:—

The Barnsley and Goole,
The Bedford, London, and Birmingham,
The Cambridge and Lincoln,
The Direct Northern,
The Eastern Counties—Cambridge and Huntingdon,
The Eastern Counties—Ely and Lincoln Extension,
The Eastern Counties—Brandon and Peterborough Deviation,
The Eastern Counties—Hertford and Biggleswade Junction,
The Ely and Lincoln,
The Goole and Snaith,
The Great Grimsby and Sheffield,
The Hull and Gainsborough,
The London and York,
The Lincoln, York, and Leeds,
The Midland Railway—Syston to Peterborough,
The Midland Railway—Nottingham and Lincoln,
The Midland Railway—Swinton to Lincoln,
The Rotherham, Bawtry, and Gainsborough,
The Sheffield and Lincolnshire,
The Tottenham and Farringdon-street Extension,
The Wakefield, Pontefract, and Goole,
The York and North Midland, and Doncaster,
The York and North Midland and Goole;

have determined on reporting to Parliament in favour of the

Bedford, London, and Birmingham,
Cambridge and Lincoln,
Direct Northern (as to the portion between Lincoln and York),
Eastern Counties — Brandon and Peterborough Deviation,
Eastern Counties — Hertford and Biggleswade Junction,
Great Grimsby and Sheffield,
Midland Railway—Syston and Peterborough,
Midland Railway—Nottingham and Lincoln,
Midland Railway — Swinton to Lincoln (as to the portion between Swinton and Doncaster),
Tottenham and Farringdon-street Extension,
Wakefield, Pontefract, and Goole;

and against the

Barnsley and Goole,
Direct Northern (as to the portion between Lincoln and London),
Eastern Counties—Cambridge and Huntingdon,
Eastern Counties—Ely and Lincoln Extension,
Ely and Lincoln,
Goole and Snaith,
Hull and Gainsborough,
London and York,
Lincoln, York, and Leeds,
Midland Railway—Swinton to Lincoln (as to the portion between Doncaster and Lincoln),
Rotherham, Bawtry, and Gainsborough,
Sheffield and Lincolnshire,
York and North Midland, and Doncaster,
York and North Midland, and Goole.

DALHOUSIE.
D. O'BRIEN. G. R. PORTER.
T. CODRINGTON. S. LAING.

SALE OF ADVOWSONS.—On Friday a sale took place, by public auction, at the Auction-Mart, of the advowson and next presentation to the valuable vicarage of Melton Mowbray, with the hamlets of Burton Lazars, Sysomby, Welby, and Freeby, to each of which there is a church or chapel of ease. The population amounted to about 3,937 persons, and the extent of the parish, exclusive of the hamlets, was about 2,500 acres. The tithes had been commuted for a rent-charge of 515*l*. per annum, the surplice fees, Easter-offerings, &c., produced upwards of 40*l*., and with the vicarage-house and glebe, the gross income was estimated at 595*l*. per annum, which was subject to a deduction of 50*l*. for rates and taxes, and 100*l*., the stipend of one curate. The benefice is within the diocese of Peterborough, and the archdeaconry of Leicester, and the value of it in the *King's Books* was 16*l*. 18s. 9d. It was sold for 2,900*l*. The next presentation to the rectory of Idlecote, in the county of Warwick, was then offered for sale. The population amounted to about 82, the extent of the parish to about 1,500 acres. The benefice, which is within the diocese and archdeaconry of Worcester, and in the *King's Books* of the value of 13*l*. 6s. 8d., was estimated at 300*l*. per annum, the tithes having been commuted to that amount. This was sold for 1,475*l*. Another sale took place of the perpetual advowson and next presentation to the vicarage of Chidham, in Sussex. It contained 1,200 acres, and a population of about 320. The benefice, which is within the diocese of Chichester, was worth only 128*l*. per annum, the tithes paying 1s. 6d. an acre, but which have not been commuted. It was bought for 640*l*. Several other advowsons have, during the last few weeks, been privately sold and disposed of by public competition, the cause being attributed to the unfortunate differences in the church.

Public Sales.

[In future the results of such sales only as are advertised in the LAW TIMES will be published in this list, and reference will be given to the advertisements, it being found that, without the particulars, the results of sales are of no practical value. As sale by auction will in future be generally resorted to, auctioneers in town and country advertising in LAW TIMES are requested regularly to forward the results of the sales so advertised.]

By Messrs. SHUTTLEWORTH and SONS.

The next presentation to the rectory and church of Idlicote, in the county of Warwick, comprising a parsonage house and 2 and 3 acres of glebe land; the tithes have been commuted at 300*l*. per annum; the purchaser will be entitled to the presentation upon the decease of the Rev. Wm. Godfrey Huet, now in the 73rd year of his age, provided a young gentleman, in the 11th year of his age, shall survive him—1,405*l*.

The above property was sold pursuant to an order of the High Court of Chancery in the Cause between "Henry Peach Keighly Peach *v*. Charles Edward Pigou and others."

The advowson and next presentation to the vicarage of Melton Mowbray, with the hamlets of Burton Lazars, Sysonby, Welby, and Freeby, to each of which there is a church or chapel of ease, situate fifteen miles from Leicester. The vicarage-house is in excellent order; the glebe, including the churchyard, site of buildings and garden, comprise between two and three acres; the estimated value is 40*l*. per annum; the tithes have been commuted for a rent-charge of 515*l*. per annum, subject to rates and taxes—2,900*l*.

The advowson and the next presentation to the vicarage of Chidham, in Sussex, producing an income of 128*l*. per annum; the tithes have not been commuted, but a large increase in the income of the vicar is expected when they are settled—640*l*.

The absolute reversion to one-sixth part of 2,000*l*. Three-and a Quarter per Cent. Reduced Bank Annuities, on the decease of a lady, now in the 71st year of her age—148*l*.

The reversion to one-sixth part of 1,200*l*. Consolidated Customs Fund, should a lady, now aged 23, survive her mother, a lady now in the 70th year of her age, with benefit of survivorship in the other five shares—100*l*.

The present and reversionary interest in 1,298*l*. 11s. 4d. being one-seventh of a sum of 9,089*l*. 19s. 8d. invested in the names of trustees on mortgage of a colliery or coal mine situated in her Majesty's Forest of Dean, in the hundred of St. Briavel, Gloucester—500*l*.

By Messrs. HOGGART and NORTON, at the Mart.

Freehold and copyhold estates situate near Ipswich, Suffolk, lying well together, with good farm-houses, and 14 cottages, barns, and out-buildings—the whole containing 446a. 1r. 36p. of arable and pasture land; let at rents amounting to 164*l*. 10s. per annum—16,000*l*.

A house, No. 11, Salisbury-place, New-road; held for 44 years, at 6*l*. per annum; underlet for a term of 14 years, at the yearly rent of 80*l*.—890*l*.

A house and shop, No. 1, Frederick-place, Hampstead-road; held for 41½ years, at 6*l*. 6s. per annum, and an additional rent of 2*l*. 2s. per annum for the front court; underlet for the whole term at 46*l*. per annum—560*l*.

A house and shop, No. 55, Upper Marylebone-st. St. Pancras; held for 29¼ years, at 6*l*. 6s. per annum: underlet for 2¾ years, at 72*l*.—640*l*.

A house and shop, No. 26, New Compton-street, St. Giles's; held for 29 years, at 8*l*. per annum; let for 9¾ years, at 40*l*.—300*l*.

A house, No. 55, Warren-street, Fitzroy-square; held for 29¾ years, at 4*l*. 4s. per annum—540*l*.

A house, No. 3, Great Woodstock-street, Seven Dials; held for 20 years at 5*l*. 5s. per annum; let at 45*l*. per annum—340*l*.

A ditto, No. 55, Upper John-street, Fitzroy-square; held for 29¼ years, at 6*l*. 6s. per annum; let at 55*l*. per annum—430*l*.

A ditto, No. 57, ditto—410*l*.

A ditto, No. 58, ditto, let at 52*l*. 10s.—420*l*.

A range of stables and coach-houses in London-mews, Fitzroy-square; held for 29¾ years, at rents amounting to 44*l*. per annum—370*l*.

The above 10 lots were sold pursuant to an order of the High Court of Chancery in the case of "Milroy *v*. Milroy."

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Aarons, E. L. oil merchant, none made. Edwards, London.—*Adams*, E. livery-stable keeper, final, 3s. Belcher, London.—*Alsop*, R. grocer, first and final, 14s. 8½d. to new proofs, final, 2s. 8½d. Fraser, Manchester.—*Altazin*, C. upholsterer, final, 4¾d. Turquand, London.—*Armfield*, R. button manufacturer, 3s. 8d. Belcher, London.—*Ashwell*, E. butcher, none made. Edwards, London.—*Barry*, F. miller, final, 2s. Belcher, London.—*Baxter*, R. farmer, 4d. Johnson, London.—*Braddick*, J W. farmer, second, 3d. Acraman, Bristol.—*Broome* and *Hardy*, drapers, joint, 3s. 2d. Groom, London.—*Charters* and *Co.* tea dealers, first, 2s. 10d. Miller, Bristol.—*Clough*, W. C. apothecary, 2½d. Whitmore, London.—*Cock*, W. grocer, final, 0½d. Follett, London.—*Coles*, J. jeweller, first, 8s. 1d. Graham, London.—*Collier*, R. draper, final, 3s. 10d. Turquand, London.—*Copper*, W. grocer, final, 2d. Belcher, London.—*Davies* and *Davies*, drapers, 1s. 8d. Bell, London.—*Davies*, E. blacksmith, 2s. 7d. Turner, Liverpool.—*Dewe* and *Dewe*, booksellers, final joint, 1s. 11½d. sep. of S. Dewe, 1s. 9½d. Belcher, London.—*Dore*, W. L. innkeeper, first and final, 4s. 2½d. Green, London.—*Dunn*, T. grocer, first and final, 6s. 5½d. Baker, Newcastle.—*Eccles* and *Co.* cotton manufacturers, first of Eccles, 8s. 4½d. first of Ridings, 1s. 4½d. first joint, 9s. 6d. Pott, Manchester.—*Eldridge*, T. coach builder, first, 8s. Groom, London.—*Garnett*, J. merchant, third, 4d. and 2-5ths of a farthing. Turner, Liverpool.—*Graham*, E. music seller, 1s. 5d. Belcher, London.—*Hawkes*, J. silk mercer, final, none made.—*Heron*, E. butcher, first, 1s. Wakley, Newcastle.—*Hoskins*, F. wine merchant, 3s. 6d. Belcher, London.—*Kelson*, W. G. builder, 6d. Turquand, London.—*Lanhorn*, J. banker, first, 10s. Baker, Newcastle.—*Lett*, A. timber merchant, final, 4s. 10d. Whitmore, London.—*Marshall*, J. merchant, 1s. Turquand, London.—*Martin*, M. upholsterer, first, 9d. Miller, Bristol.—*Masterman*, C. S. grocer, 2s. 3d. Groom, London.—*Mearns*, W. A. brewer, first, 1s. 3d. Groom, London.—*Morgan* and *Co.* merchants, none made.—*Nutter*, J. miller, 1d. Turquand, London.—*Oliver* and *Co.* coal masters adjourned. Whitmore, London.—*Oliver* and *York*, bankers, final, adj. Whitmore, London.—*Palmer*, R. B. watch maker, first, 3s. 4d. Miller, Bristol.—*Parr*, T. painter, first, 1s. 6d. Cazenove, Liverpool.—*Pettigrew*, R. jun tailor, 12s. Whitmore, London.—*Pledge*, J. builder, final, 4s. 6d. Alsager, London.—*Postan*, T. G. auctioneer, final, 3s. 2½d. Turquand, London.—*Roberts*, T. draper, 3s. 10d. Whitmore, London.—*Robinson*, R. coal merchant, first, 2s. Groom, London.—*Senior*, W. M. hardwareman, 3s. 4d. Groom, London.—*Skinner*, S. brewer, final, sine die. Follett, London.—*Skinner*, T. butcher, sine die. Alsager, London.—*Sparham*, J. miller, sine die. Follett, London.—*Taylor*, J. bookseller, 2s. 4d. Edwards, London.—*Thorn*, T. G. builder, adj. Graham, London.—*Vardy*, M. W. bookseller, first, 8s. on new proofs, second, 3d. Graham, London.—*Wacey*, J. bookseller, final, 9s. 8d. to new proofs. Belcher, London.—*Webb*, J. G. mineral water manufacturer, 5s. Groom, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, March 7.

Greenhill, T. shopkeeper, Upper Brailes, Feb. 25. Trusts. F. Badger, grocer, and S. Richardson, hat manufacturer, both of Shipston-upon-Stour. Sol. Bannister, Shipston-upon-Stour.—*Harris*, R. butcher, Hertford, Feb. 19. Trusts. T. Harris, sen. butcher, and J. Cole, schoolmaster, both of Hertford. Sols. Longmore and Sworder, Hertford. -*Hodgskins*, G. S. grocer, Maidstone, March 3. Trust. J. H. Hodsoll, grocer, Maidstone. Sol. King, Maidstone.—*Husband*, G. T. innkeeper, Pembroke-dock, Feb. 27. Trusts. W. Llewellin, draper, and J. Tombs, merchant, both of Haverfordwest. Sol. Lock, Pembroke.—*Williams*, J. carpenter, Abergavenny, Feb. 18. Trusts. H. Morgan, carpenter, and J. Hoskins, tyler, both of Abergavenny. Sol. Gabb, Abergavenny.

Gazette, March 11.

Fairweather, C. wine and spirit merchant and farmer, Kirton-in-Lindsey, Feb. 20. Trusts. W. L. Sharpe, merchant, Gainsborough, W. Whitfield, brewer, Thorne, and H. Robinson, wine merchant, Gainsborough. Sol. Bellamy, Gainsborough.—*Holland*, J. skinner, Leftwich, Cheshire, Feb. 25. Trusts. J. Occlestone, tanner, Runcorn, and W. Stubbs, grocer, Leftwich. Sols. Barker and Cheshire, Northwich.—*Lloyd*, W. hosier, Strand, March 17. Trust J. S. Wilson, warehouseman, Maiden-lane. Sols. Soles and Turner, Aldermanbury.—*Nott*, W. woollen draper, Basinghall-st. Feb. 4. Trust. W. Green, draper, Skinner-st. Sol. Moger, Paternoster-row.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, March 7.

BUTTERILL, WILLIAM, grocer and flour dealer, Sheffield, York, March 20 and April 10, at eleven, Leeds, Com. West; Freeman, off. ass.; Tattershall, Great James-st. Broadbent, Sheffield, and Blackburn, Leeds, sols. Date of fiat, Feb. 25. G. Walker and G. Wall, wholesale grocers, Sheffield, pet. crs.

CAWTHORN, WILLIAM, the younger, wine merchant, Salisbury-wharf, Salisbury-st. Strand, Middlesex. March 17, at half-past two, April 18, at half-past eleven, Basinghall-st. Com. Holroyd; Groom off. ass.; Lawrence, Old Fish st. sol. Date of fiat, March 3. J. Watkins, fishmonger, Princes-st. Leicester-sq. pet. cr.

DAY, JOHN ROCK, licensed victualler, late of the White Hart public-house, White Hart-st. Drury-lane, Middlesex, March 14 and April 16, at two, Basinghall-st. Com. Evans; Bell, off. ass; Smith, Barnard's-inn, sol. Date of fiat, Feb. 24. C. Harriss, gent. Upper Stamford-st. pet. cr.

GORBELL, THOMAS KEWELL, bookseller and stationer, Bedford-place, Commercial-road, March 14, at half-past two, April 18, at one, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Turner, Mount-place, Whitechapel-road, sol. Date of fiat, March 4. Bankrupt's own petition.

HARDY, JOHN and GEORGE, grocers and copartners, Wisbech St. Peter, Cambridge, March 14, at two, April 18, at twelve, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Jenkins and Abbott, New-inn, sols. Date of fiat, Feb. 27. T. Cunnington, builder, Wisbech, pet. cr.

HERRING, JAMES STEPHEN, builder, No. 1, Cecilia-place Spa-road, Bermondsey, Surrey, March 15, at one, May 3, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Rippon, Blackfriars-road, sol. Date of fiat, Feb. 27. M. and E. Reddeh, contractors, Holland-st. Blackfriars road, pet. crs.

JACOBS, CHARLES, fruit salesman and dealer in fruit, Farringdon-market, London, March 14, at half-past eleven, April 18, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass; Overton and Hughes, Old Jewry, sols. Date of fiat, March 5. J. S. Noldwitt and C. Coe, Custom-house agent, Custom-house-court, Beer-lane, pet. crs.

MACKAY, DANIEL, master mariner, Liverpool, March 18 and April 8, at twelve, Liverpool. Com. Ludlow; Bird, off. ass.; Sharp and Co. London and Miller and Peel, Liverpool, sols. Date of fiat, March 5. Bankrupt's own petition.

PELL, WILLIAM, linen draper, Newcastle upon Tyne, March 15, at eleven, April 29, at two, Newcastle, Com. Ellison; Baker, off. ass.; Griffith and Crighton, Newcastle, and Griffith, Raymond's-buildings, sols. Date of fiat, March 1. Bankrupt's own petition.

SALMON, GEORGE, timber merchant, No. 15 Wharf, City-road-basin, March 22, at eleven, May 3, at one, Basinghall-st. Com. Goulburn; Follett, off. ass.; May, Queen-square, sol. Date of fiat, March 5. J. Roberts, Billeter-st. pet. cr.

SPENCER, WILLIAM, common brewer, Wallingford, Berks, March 18 and April 22, at half-past eleven Basinghall st. Com. Fane; Alsager, off. ass.; Smith, Golden-sq. sol. Date of fiat, Feb. 26. J. Smith, Maidenhead, pet. cr.

STRUCKETT, JOHN, grocer and cheesemonger, Wye, Kent, March 14, at two, May 3, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Palmer and Co. Bedford-row, and King, Maidstone, sols. Date of fiat, Feb. 13. W. and T. Lawrance, grocers, Maidstone, pet. crs.

WEST, FREDERICK, boot and shoemaker, Southampton, March 18 and April 22, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Mackey and Girdlestone, Southampton, and Smith and Atkins, Serjeant's-inn, sols. Date of fiat, March 5. J. Banger, leather cutter, Southampton, pet. cr.

WHITTENBURY, WILLIAM CORNELIUS, cheese and bacon factor and provision dealer, Leeds, York, March 19 and April 14, at eleven, Leeds, Com. Boteler; Fearne, off. ass.; Messrs. Rushworth, Staple-inn, and Sanderson, Leeds, sols. Date of fiat, March 3. Bankrupt's own petition.

WILSON, JOSEPH, boot maker, 114, Jermyn-st. St. James's, Westminster, March 14 and April 15, at half-past twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Wright and Co. Golden-square, sols. Date of fiat, Feb. 20. H. Wilson, spinster, 20, Saville-row, Hanover-square, and M. A. Wilkinson, currier, 22, Silver-st. Golden-sq. pet. crs.

Gazette, March 11.

GREEN, ALBERT, apothecary, 7, Grand-parade, Brighton, March 25, at half-past two, April 22, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Freeman and Co. Coleman-st. and Freeman and Cornford, Brighton, sols. Date of fiat, March 6. H. Holtham and J. J. Rogers, drapers, Brighton, pet. crs.

GRIFFITHS, THOMAS, auctioneer and dealer in timber, Blaeniferd, Llandugwydd, Cardigan, March 18 and April 5, at twelve, Bristol, Com. Stevenson; Miller, off. ass.; Smith, Cardigan, sol. Date of fiat, March 1. Bankrupt's own petition.

HARDISTY, WILLIAM, whitesmith and ironmonger, Wakefield, March 26 and April 15, at eleven, Leeds, Com. West; Young, off. ass.; Fiddey, Temple, and Brown, Wakefield, sols. Date of fiat, March 5. J. and J. Holdsworth, ironmongers, Wakefield, pet. crs.

HOLDFORTH, DAVID, grocer and cheesemonger, 14, Turnpike-row, Stratford, March 19, at half-past two, April 23, at twelve Basinghall-st. Com. Evans; Johnson, off. ass.; Wright, Cook's-court, Carey-st. sol. Date of fiat, March 7. Bankrupt's own petition.

KNOTT, ALFRED, out of business, Brighton, March 20, at two, April 22, at eleven, Basinghall-st. Com. Shepherd; Graham off. ass.; Soles and Turner Aldermanbury, sols. Date of fiat, March 7. Bankrupt's own petition.

ROBERTS, JOHN, dealer in potatoes and slates, Liverpool, March 24, April 23, at twelve, Liverpool, Com. Phillips. Cazenove, off. ass.; Sharpe and Co. Bedford-row, and Moss, Liverpool, sols. Date of fiat, March 5. Bankrupt's own petition.

TAYLOR, JOSHUA, draper, Whittlesea, Cambridgeshire, March 22, at two, May 5, at one, Basinghall-st. Com. Goulburn; Green, off. ass.; Soles and Turner, Aldermanbury, sols. Date of fiat, March 4. W. Hitchcock, R. Llewellin, and C. Truman, warehousemen, Wood-st. pet. crs.

PARTNERSHIPS DISSOLVED.

Gazette, March 4.

Bagshaw, W. and *Rogers*, T. timber dealers, Liverpool, Feb. 25. Debts paid by Bagshaw. *Bath*, J. and *Estwick*, W. paper stainers, Charles-st. Drury-lane, Feb. 28.—*Brabner*, S. and *Atkinson*, J. attorneys and notaries public, Liverpool, Feb 26.—*Cripps* J. and *Kemp*, drapers, Leicester, March 1.—*Cross* C. and W. J. commission agents, Manchester, Feb. 28.—*Gibson*, T. C. and *Burnett*, G. coal fitters, Newcastle-upon-Tyne, Feb 13. *Glanville*, G. and *Plummer*, G. linen drapers, Leeds, March 1. Debts paid by Glanville. *Inglo*, J. *Doeg*, W. *Pratt*, R. and *Haswell*, W. S. ship brokers, Newcastle, Feb. 28.—*Ironside*, C. and *Napier*, J. Bahia, Jan. 8. *Leach*, R. and *Taylor*, S. cotton waste dealers, Bury, Feb 27. Debts paid by Taylor.—*Maxey*, J. and *Doughty*, W. cabinet makers, Maidenhead, Feb. 13.—*Moore*, W. and *Gatliff*, J. share brokers, Huddersfield, Feb. 28. Debts paid by Gatliff. *Ormiston*, J. and *Backhouse*, T. carriage and harness makers, Sheffield, Feb. 27.—*Passman*, J. and *Storey*, J. curriers, Stockton-upon-Tees, Feb. 28. Debts paid by Passman.—*Rawlins*, W. and *Adkins*, R. coach makers, Leighton Buzzard, June 24, 1843.—*Silcock*, J. and *Lowe*, N. plane manufacturers, Birmingham, Feb. 28.—*Taylor*, T. and H. booksellers, Liverpool, Feb 26.—*Sutton*, T. M. and H. G. insurance brokers, Liverpool, Dec. 31.—*Thomas*, W. and *Rees*, D. limeburners, Swansea, and elsewhere, Feb 26.—*Turner*, E. P. sen. and jun. coal merchants, Birmingham, July 1.—*Walker*, J. and *Boddington*, W. F. surgeons, Chesterfield, March 1. Debts paid by Boddington. *Wilson*, G. and *Nettle*, J. T. ironmongers, Hartlepool, Feb 15. Debts paid by Wilson.

Gazette, March 7.

Badger, S., J., and T. millers and corn factors, Birmingham, Feb 27. *Baldwin*, R. and *Arrowsmith*, M. spade makers, Balderstone, Lancashire, Oct. 21.—*Brampton*, I. sen. and jun. and J. glove manufacturers, Leicester, March 6. *Burne*, H. and *Farrant*, H. drapers, Exeter, March 4.—*Caffieri*, P. C. and H. St. C. wine merchants, Cheltenham, or elsewhere, March 1. Debts paid by H. St. C. Caffieri.—*Cannell*, J. and *Graham*, D. grocers, Great Newport-st. Westminster, Feb. 25.—*Cooper*, R. and *Ravenscroft*, W. silk mercers and haberdashers, Liverpool, March 1.—*Darnbrough*, C. and *Wright*, T. druggists, Winslow, March 4. Debts paid by Darnbrough.—*Donkin*, G. R., and W. drapers, Beverley, March 3.—*Dudding*, J. and *Danby*, J. W. attorneys, Lincoln, March 3.—*Haslam*, W. J., and S. chymists and booksellers, Thaxted, Essex, Feb. 27. Debts paid by S. Haslam.—*Holt*, J. C., *Critchley*, J. and *Greaves*, J. coalminers, Batley, so far as regards Holt, Jan. 1. Debts paid by the remaining partners. *Hotchkiss*, J. sen. and jun. victuallers, Blackfriars-rd. March 1.—*Kay*, T. H. and *Walker*, J. dyers, Leeds, Jan. 28. Debts paid by Walker.—*Kearley*, J. S., *Morecroft*, T. L. and *Hardman*, R. J. brokers, Liverpool, Dec. 31.—*Ledsam*, D., *Ledsam*, J. F., *Capper*, C. H., *Dixon*, M., *Murran*, J., *Reynolds*, J., *Warner*, A., *Steel*, W., *Winfield*, R. W. and *Potts*, W. metal rollers, Birmingham, so far as regards Warner and Steel, Feb. 21.—*Oliver*, D. jun. and *Noble*, W. wholesale grocers, Newcastle upon-Tyne, March 4. Debts paid by Oliver, jun.—*Richards*, F. E. and *Meggitt*, R. C. starch manufacturers, Hessle, Yorkshire, March 4. Debts paid by Richards.—*Simpson*, J., *Tomlinson*, G., *Brooke*, J., *Whittaker*, J., *Day*, J., *Fox*, D. and P., *Butterworth*, J., *Spedding*, M. and *Dean*, W. cloth finishers, Batley, so far as regards Spedding and Dean, Jan. 24. Debts paid by the remaining partners.—*Syer*, J. J. I. and *Sanders*, E. A. New Bridge-st. Blackfriars, Jan. 18.—*Taylor*, W. and *Millichamp*, H. patent axle pulley manufacturers, Birmingham, March 6. Debts paid by Millichamp.—*Tooker*, J. S., *Cipriani*, A. J., *Mead*, G., *Mitchell*, A. and *Dennistoun*, R. merchants, New York and Liverpool, so far as regards Tooker, Mead and Co. Nov. 30, and so far as regards Mitchell, Tooker, and Co. Dec. 31.—*Tooler*, A., *Shickle*, H. C. and C. W. merchants, Norwich and Friday-st. so far as regards Shickle, March 3.—*Walker*, S. and T. millers, Bingham, Feb. 27. Debts paid by S. Walker.—*Williamson*, T. and *Scott*, E. farmers, Walkeringham, Dec. 31.—*Yoxall*, J. *Holding*, W., and *Hoyle*, J. masons and contractors on the Lancaster and Carlisle Railway, March 3. Debts paid by Yoxall and Hoyle.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, March 4.

Dore, G. bookbinder, Guildford-place, Clerkenwell, March 19, at twelve.—*Johnson*, S. carpenter, Deptford, March 7, at one.—*Neale*, R. shoemaker, Headington, March 19, at twelve.—*Warrand*, A. attorney, Skinner-st. Snow-hill, March 18, at eleven.—*Wheeler*, J. cheesemonger, Shepherd's-bush, March 19, at half-past eleven.—*White*, F. J. lieutenant, Christ's Hospital, Newgate-st. March 7, at one.

IN THE COUNTRY.

Atkinson, G. shoemaker, Bursea, March 19, at eleven, Leeds.—*Bromley*, R. out of business, Manchester, March 18, at twelve, Manchester.—*Causfield*, A. joiner, Eccleshill, March 19, at eleven, Leeds.—*Gammon*, S. blacksmith, Brace Meole, March 17, at one, Birmingham.—*Hainsworth*, W. hair dresser, Dewsbury, March 11, at eleven, Leeds.—*Jackson*, J. coachmaker, Dewsbury, March 19, at eleven, Leeds.—*Key*, L. L. out of business, York, March 11, at eleven, Leeds.—*Longston*, T. and *M'Knight*, A. stonemasons, Glossop, March 15, at twelve, Manchester.—*Morgan*, R. miller, Newland, March 18, at eleven, Bristol.—*Needham*, W. innkeeper, Doncaster, March 19, at eleven, Leeds.—*Southcott*, T. out of business, Topsham, March 14, at one, Exeter.—*Wardle*, E. auctioneer, Wigan, March 18, at twelve, Manchester.—*Watson*, S. cutler, Sheffield, March 11, at eleven, Leeds.—*Weldon*, J. shopkeeper, Sheffield, March 11, at eleven, Leeds.

Gazette, March 7.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Billing, J. plumber, Lambeth-walk, March 11, at eleven.—*Fenton*, J. P. butcher, Dennington, March 25, at eleven.—*Goudge*, J. coffeehouse keeper, Little New-st. shoe-lane, March 25, at eleven.—*Holton*, J. butcher, Salisbury, March 24, at eleven.—*Horn*, H. carpenter, Friern Barnet, March 26, at half-past eleven.—*Mitchell*, J. furrier, Great Pearl-st. Spitalfields, March 28, at half past one.—*Peters*, J. tailor, Gillingham, March 28, at one.

IN THE COUNTRY.

Bailey, T. basket maker, Newcastle-upon-Tyne, March 17, at twelve, Newcastle.—*Booth*, R. victualler, Ashton-under-Lyne, March 21, at twelve, Manchester.—*Cooke*, T. husbandman, Red-house, near Redworth, March 17, at half-past eleven, Newcastle.—*Lea*, S. milk seller, Ardwick, March 20, at twelve, Manchester.—*Mildren*, W. innkeeper, Saint Hilary, March 25, at one, Exeter.—*O'Brien*, J. late provision dealer, Liverpool, March 14, at twelve, Liverpool.—*Phillips*, J. R. labourer, Wellington, March 11, at half past ten, Birmingham.—*Poole*, R. auctioneer, Hulme, March 24, at twelve, Manchester.—*Roberts*, J. butcher, Hartlepool, March 17, at one, Newcastle.—*Robinson*, A. husbandman, Shap, March 17, at half-past twelve, Newcastle.—*Thomas*, S. farmer, Colwick, March 22, at twelve, Birmingham.—*Trowman*, M. chain manufacturer, Dudley, March 20, at twelve, Birmingham.—*Turner*, W. tailor, Bath, March 31, at twelve, Bristol.—*Turner*, W. cotton band maker, Salford, March 20, at twelve, Manchester.—*Walker*, J. draper and hatter, Hartlepool, March 17, at twelve, Newcastle.

MEETING IN THE COUNTRY.

Croughton, the Rev. R. F. vicar, Melton Mowbray, April 3, at eleven, Birmingham.

From the Gazette of Friday, March 14.

Bankrupts.

Cole, F. L. wine merchant, Fenchurch-st.—*Painter*, C. M. grocer, Great Peter-st. Westminster.—*Green*, J. wine merchant, Pall Mall.—*Howard*, T. N. D. merchant, Adelaide Hotel, London-bridge.—*Mills*, W. H. wine merchant, Mark-lane, London.—*Wagner*, G. draper, Bloomsbury-sq. Middlesex.—*Meek*, W. ironmonger, Southampton.—*Thompson*, J. cheesemonger, Wigmore-street, Cavendish-sq.—*Hard*, S. hardwareman, Rochester.—*Debney*, W. victualler, Mistley, Essex.—*Botcherby*, J. coal owner, Darlington, Durham.—*Kewley*, J. tailor, Liverpool.—*Dix*, T. shoe dealer, Liverpool.—*Marshall*, S. builder, Kingston-upon-Hull.—*Hope*, C. D. foreign broker, Manchester.—*Rowe*, J. S. draper, Newcastle-under-Lyne.—*Lane*, T. coal merchant, Hereford.—*Smith*, J. money scrivener, Rugely, Staffordshire.—*Lane*, J. licensed victualler, Bristol.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS-CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. HUGHES, Esq. of the Inner Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York, and Liverpool, by J. B ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLEPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DARENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY. Short-hand Writer.

Equity Courts.

LORD CHANCELLOR'S COURT.

Feb. 11 *and March* 8.

SAUMAREZ v SAUMAREZ.

General residuary clause, carrying freehold estate—General devise of freehold not qualified by a codicil not so attested as to pass real estate.

This was a petition presented in the cause to obtain a declaration as to the construction of the will of the testator, Admiral Richard Saumarez, with respect to a house at Bath, which had been assumed at the hearing, and on a subsequent appeal, to have been leasehold, but which had since been discovered to be freehold.

By his will, the testator directed that his wife should have the offer of his house and premises at Bath for her life, with the books, furniture, linen, china, plate, &c. at the annual rent of 150*l.*; which rent he desired should be equally divided between his son Richard and his two daughters Carteret Gimingham and Martha De Havilland, and he directed that an inventory should be taken of the books, furniture, &c. and that, after his wife's decease, they should be appropriated to his said son and daughters; and, in case his wife should decline the offer of renting the house, then his executors were to be at liberty to dispose of it, and were to divide the produce of it between his said son and daughters, subject to the conditions thereinafter specified. The testator then directed that the sums which he had advanced to his daughters on their respective marriages should be brought into hotch-pot, and be accounted as part of their shares of his residuary property. He then made provisions for the payment of annuities for the benefit of two lunatic sons, and he declared that, in the event of their recovery, they were to have their shares of his property made equal to those of their brother Richard and their sisters. The will then proceeded, "And, as regards my son Richard, I give and bequeath to him the freehold land which I possess in Dorsetshire. And I direct that the residue of the property which I may leave at my death may be divided between him and his two sisters in equal proportions, the shares which they received as a marriage portion included, but subject to the following restrictions." He then went on to direct that his son Richard's share should be placed in the names of trustees, the interest paid to him for life, and after his death to be divided amongst his children. Should his son die without issue, the whole of the portion which may have been placed in trust for him was to devolve to his two sisters during their life, in equal proportions, and, after their death, to their children. By a subsequent codicil, Mrs. Gimingham's and Mrs. De Havilland's shares were expressly limited to their children after their respective deaths, but that codicil was not attested by two witnesses, the testator having died before the 1st of January, 1838. A bill had been filed for the administration of the testator's estate, in which Richard Saumarez and his children, and Mrs. De Havilland and Mrs. Gimingham were plaintiffs, when the Master of the Rolls declared that Richard Saumarez, the son, was entitled to an estate for his life only in the freehold land in Dorsetshire, and that, under the residuary clause, he and his two sisters were entitled to the reversion of that estate in fee-simple, in equal undivided third parts. Against that part of the decree Richard Saumarez appealed, and Lord Cottenham, C. after having directed a supplemental bill to be filed, in which Richard Saumarez and his children should be made defendants, held that the reversion in fee in the Dorsetshire estate passed by the residuary clause to Richard and the two daughters, and that it was subject to the same trusts and limitations as the rest of the property comprised in that clause

Since that decree was pronounced, it has been discovered that the house at Bath, which was assumed to be personal estate, was, in fact, freehold. The object of the present petition was to bring the new facts under the notice of the Court.

Koe and *Rudall*, for Mrs. De Havilland, contended that the fee-simple in the house at Bath passed under the residuary clause; and that the decree made by Lord Cottenham did not prejudice the question, which was still open to the decision of the Court

Purvis, for the children of Mrs Gimingham, contended that the shares of the testator's daughters were intended to be settled upon their children, as well as the share of his son. That was the fair construction of the whole will, taking the different parts together. The direction to sell the house was absolute, and, therefore, the produce was limited by the subsequent codicil, though not so attested as to pass real estate. There was no devise of the house, but only a power to the executors to sell it. That there was a clear indication throughout the will to settle the shares of all his children.

Bagshawe, for Mr. and Mrs. Gimingham.

Simpkinson, for the administrator of Mr. De Havilland

Montague, for the children of Richard Saumarez.

Romilly, for Richard Saumarez.

Faber, for the lunatic sons.

Koe, in reply.

The LORD CHANCELLOR.—I will read the will and give my decision. The Master of the Rolls came to no decision on this house as a freehold. The question is, whether, without the codicil, there is enough to qualify the general words of the will.

JUDGMENT.

March 8. The LORD CHANCELLOR.—When the decree was pronounced in this cause, it was assumed that the house at Bath, mentioned in the testator's will, was of leasehold tenure, and it was dealt with in the decree on the footing of its forming part of the personal estate. That has since been discovered to be an error, and that it is freehold, and belonged to the testator in fee. The trustees were directed by the will in certain events to sell the house at Bath. That was if the widow did not choose to occupy it. It was only in that event it was to be sold; but that not having occurred, there was no disposition of that house expressly directed by the will. On the construction of the residuary clause of the will, the decision of the Chancellor was, that the Dorsetshire estate passed to the testator's son, Richard Saumarez, and his daughters, Mrs. De Havilland and Mrs. Gimingham, each taking a third. According to the residuary clause, the remainder of his property was to be equally divided between his son Richard and his daughters Carteret and Martha. That is the expression in the residuary clause.

The question is, what estate Mrs. Gimingham and Mrs. De Havilland took in the freehold house at Bath? The son Richard and the two daughters are to take, under the residuary clause, all the residue of the property the testator might leave at his death. Then what is the residue but that which has not been disposed of, or of which the disposition fails? So far as relates to Richard, his share is afterwards limited to him for life, and to his children in remainder.

Nothing is said in that restriction as to the shares of Mrs. De Havilland and Mrs. Gimingham; possibly he may have meant it, but he has not said so. There is nothing to guide the discretion of the Court. It is possible he may have supposed he had limited their interests, because he had made a codicil in which he gave to Mrs. Gimingham and Mrs. De Havilland life estates with remainder to their children; but the terms of that codicil do not affect real estate. I am of opinion, therefore, that Mrs. De Havilland and Mrs. Gimingham took their shares of the freehold house at Bath in fee. Among the restrictions was this, which was not mentioned at the bar, on certain contingencies, his sons Paul and Frederick are to have their shares made equal to those of their brother Richard, and their sisters. That was, they were in an infirm state of mind, but they were to have their shares increased if they recovered, and the capital required for that purpose was to come out of the residue. Now they may recover, and then this contingency will be a charge upon the whole residue.

As to the shape of the record, the Chancellor decided rightly under the form in which it then stood; but the question as to the real estate was not decided, because Richard, who was the testator's heir-at-law, and his children, were plaintiffs in the suit; and the supplemental bill which was filed on the suggestion of that defect, relates only to the Dorsetshire estates. I can decide nothing as to the share of Richard, because he has not appealed; but I presume the settlement of his share will be the same as that of his share of the personal estate. The supplemental bill and answer may be amended in order to insert the house in Bath, and the decree may then be dated after such amendments. The contingency of the recovery may be provided for as has been done in respect of the personal estate.

Feb. 20 *and* 21.

ENGLISH v. JENKINS.

Inrolling decree taken pro confesso—Surprise—Caveat—Practice.

Where a decree has been taken pro confesso, and the plaintiff proceeds to inrol it with all the speed the practice of the court allows, and without making any statements to the defendant calculated to mislead, there is no ground for vacating the inrolment; nor is there any difference with respect to inrolment between decrees pro confesso and others.

But if representations have been made to induce the opposite party to believe that the decree would be inrolled, that would form a reason for vacating the caveat.

Notice of motion to set aside a decree pro confesso is not analogous to a petition of rehearing, and does not prevent the inrolment of the decree.

This motion was made to vacate the inrolment of a decree taken *pro confesso* upon two grounds. First, that the defendant had been surprised by the acts and misrepresentations of the plaintiff; and, secondly, that a step analogous to the presentment of a petition of appeal, and service of the order thereon, had been taken by the defendant before inrolment. It was alleged on the part of the defendant, that the inrolment of decrees taken *pro confesso* is altogether unusual, and that circumstance alone forms such a surprise on the defendant as would entitle him to have the inrolment vacated.

On the 29th of April, 1844, an order was made for setting down the cause to take a decree *pro confesso*, for want of an answer.

On the 30th of April (the next day), the defendant filed his answer. On the 22nd of May a motion was made to take the answer off the file, for irregularity, on the ground that the answer had been filed the day after the order for setting down the cause to be taken *pro confesso*. That motion was successful, and the order to take the answer off the file was made in the following June. That order was left to be entered on the 25th of June, and upon the same day the costs of the motion were paid.

On the 27th, according to the defendant's affidavits, the clerk to the plaintiff's solicitor stated to the defendant's solicitor, that he (the clerk) did not know whether the plaintiff would actually proceed to take the answer off the file; yet, towards the end of the same day, the answer was taken off the file. On the 28th of June the cause was in the paper to take the bill *pro confesso*, and such a decree was made, after the bill had been read, on the next day, the 29th of June.

On the 2nd of July the defendant gave notice of motion before the Vice-Chancellor of England, to discharge the decree *pro confesso*; but no *caveat* against its inrolment was entered, and on the 11th of July the decree *pro confesso* was inrolled.

Cooper and *Jenkins*, for the defendant in support of the motion, argued that a notice of motion to discharge the decree *pro confesso* was tantamount to a petition of rehearing, service of the order, and setting

down the cause to be reheard. In *Charman* v. *Charman* (16 Ves. 115) a distinction is shewn to exist at law between setting aside a judgment obtained by default and on the merits; but that in this court there was no general rule, the decision of each case depending on its own circumstances. They cited also *Kemp* v. *Squire* (1 Ves. sen. 205-6); *Anonymous case* (1 Ves. sen. 326); *Benson* v. *Vernon* (3 Bro. P. C. 626); *Henroff* v. *Fitzgerald* (1 Drury & Warren, 72); *Dearman* v. *Wych* (4 Myl. & Craig. 550); *Richards* v. *Wood* (2 Myl. & K. 621). There is no instance of a decree *pro confesso* having been inrolled, and such an inrolment is so unusual, that it amounts to a surprise. That the Court had a discretionary power in such a case as this, in order to do substantial justice.

The LORD CHANCELLOR.—The defendant gives notice of motion as the only way of bringing the matter before the Court; and it is unusual to inrol decrees taken *pro confesso*. The question is, whether he has been in any way misled. Slight circumstances, in a case of this kind, would be sufficient to induce the Court to let him in.

Wakefield, for the plaintiff, read affidavits in contradiction of the statements of those filed by the defendant with reference to the conversations. The plaintiff declined all treaty, and stated he would act strictly.

Cooper, in reply.

The LORD CHANCELLOR.—There is no fact stated with reference to the conversation alleged to have misled the defendant which has not been contradicted on the other side. A party has a right to proceed straightforward in his course as quickly as the practice of the Court allows; but if he proceeds sharply, and does any thing to mislead the opposite party, that might be a ground for such an application as this. But the law serves the vigilant. The plaintiff is not bound to attend to any thing the defendant may say, provided, without deceiving, he has pursued only the practice of the Court. The circumstance that the plaintiff having been expeditious, if he has not been more so than the practice of the Court allows, forms no reason to set aside this inrolment. The defendant might have entered a *caveat* on the 2nd of July, when he gave his notice of motion. From the time of the decree he had an entire week to enter a *caveat*. Why did he not do so? The petition of appeal must be actually answered and served, as decided in the case of *Barnes* v. *Wilson* (1 Russ. & Myl. 486), in order to prevent the inrolment of the decree. There is no distinction between a decree *pro confesso* and other decrees, with respect to inrolment. The defendant had time, and might have entered a *caveat*. The plaintiff has been active and vigilant, but no more; but there is not proof that the defendant has been misled. A defendant, having been misled by a plaintiff, will be let in on that or other reasonable grounds; but here there has been nothing more than strict practice pursued. The motion must be refused with costs.

Nov. 14, 1844, *and Feb.* 17, 1845.

ST. VICTOR *v.* DEVEREUX.

Irregularity—Waiver—Delay—Practice—Order to sue in formâ pauperis—Special application—Demurrer—Interlocutory application—Costs.

Where the common order to sue in formâ pauperis has been obtained at the Rolls in a cause depending before the Vice-Chancellor, and the other party contends that such an order ought, under the circumstances of the cause, only to have been obtained on special application to the Vice-Chancellor, who had possession of the cause, and urges that as an irregularity, no application will be entertained to discharge the pauper order unless it is made as early as practicable after the party has notice of the irregularity.

Where an interlocutory application has been made in a cause, afterwards a demurrer being put in, the interlocutory application is directed to stand over until after the demurrer has been disposed of, it is no objection to a subsequent proceeding on the interlocutory application, that by the demurrer the cause is out of court.

Where a petition is presented in two causes, in one of which the petitioner has an order to sue in formâ pauperis, but not in the other, the costs of such petition, on its being dismissed, may be apportioned.

This was a motion to discharge an order of the Master of the Rolls, by which the common order to sue *in formâ pauperis*, which the plaintiff had obtained at the Rolls, the cause being before the Vice-Chancellor of England, was discharged for irregularity. The plaintiff filed his bill on the 6th of May, 1843, and obtained the usual pauper order; and on the 12th of July following he presented a petition in this cause, and in the cause of *The Commissioners of Charitable Donations in Ireland* v. *Devereux*, praying that the transfer of a large fund in court in the latter cause might be restrained. *Subpœna* and order were served on the 12th of July, 1843. The defendant then became fully aware of the case made by the plaintiff, and, if he had objected to the regularity of the order to sue *in formâ pauperis*, he might at once have raised the question. The point upon which the order was objected to as irregular was, that it was at all events a question apparent on the bill whether the plaintiff was suing in his own right or as an agent for others. The Charitable Commissioners, who were also defendants in this suit originally, demurred; they also presented a counter-petition. Nothing was done before Long Vacation except direction that the petition should stand over until the demurrer had been disposed of. On the 13th of November, 1843, the demurrer was allowed, and a month's time was given to the plaintiff to amend his bill, which was done on the 13th of December. On the 14th of December the petition was heard, and various other proceedings were had, which are not necessary to be stated for the purposes of the report of this appeal. In February 1844, the order now appealed from was made by the Master of the Rolls.

Cooper and *Lee*, for the plaintiff.—The defendant's solicitor stated, in his affidavit, that he became aware of the irregularity of the pauper order during the Long Vacation, but that he took no steps in consequence of the pending demurrer, because he believed that, after the opinion the Vice-Chancellor had expressed on the case, the plaintiff would not have amended his bill. If the defendant insists that the order to sue *in formâ pauperis* is irregular, he ought to have moved to discharge it in July.

The LORD CHANCELLOR.—The general rule is, that when you come to discharge an order for irregularity, you must come promptly.

Cooper.—The Master of the Rolls said, that there being a question whether the plaintiff was suing as a trustee for others or in his own right, there ought to have been a special application to sue for part of the fund *in formâ pauperis*. They referred to 11 Hen. 7, c. 12, as the foundation of the practice of suing as a pauper, which had been modified only in the instance of executors and administrators. They mentioned *Paradise* v. *Sheppard* (1 Dick, 126); *Oldfield* v. *Cobbett* (3 Beav. 432). In Dean's Book of Practice at the Rolls, *Paradise* v. *Sheppard* is fully reported. *Hill* v. *Holland* (24 March, 1745). The argument turned much on the effect of an instrument executed in France by persons natives of that country, authorizing the plaintiff to sue for the fund in question on their behalf, and giving him one-fourth of it for his labour, &c. in the matter. The plaintiff by his bill only sought to establish his own title to the one-fourth, which he alleged to be an absolute gift to him. He had made the other parties entitled to the fund as defendants. On this part of the question they also cited and mentioned 2 Archbold's Practice, 2nd ed. p. 518; 1 Dan. Ch. Pr. 42; 1 Smith's Ch. Pr.; *Thompson* v. *Thompson* (1 Turn. & Ven. 513); *Robinson* v. *Milner* (5 Beav. 49); *Hooper* v. *Paver* (6 Beav. 173).

Wakefield and *Beavan*, contrà, contended that the plaintiff had practised an imposition on the Court by obtaining the common order to sue *in formâ pauperis*, and that this was an inherent defect in the order, not a mere irregularity, and, therefore, not capable of being waived.

The LORD CHANCELLOR.—According to the judgment of the Master of the Rolls, the order has been obtained in an irregular manner, but it is not suggested that any imposition was practised on the Court. The defendant's counsel contend for this proposition, that if an irregularity, and ever so long time has elapsed, yet no step taken to get rid of the irregular proceeding, and the opposite party is allowed to go on incurring expense, still the irregularity may be insisted on. The plaintiff might not have incurred the expense of a petition had the defendant applied promptly to discharge the order to sue *in formâ pauperis*. He might not have gone on with the cause. He is described in the petition as a pauper.

Thursday, Feb. 27.

JUDGMENT.

The LORD CHANCELLOR.—In this case the plaintiff filed his bill in May 1843, and at the same time, on the common affidavit, applied for and obtained the common order of the Master of the Rolls for leave to sue *in formâ pauperis*. The subpœna was served in July following, and at the same time a copy of the order to sue *in formâ pauperis* was also served. A petition was presented in this cause and in another cause, the object of which was to prevent the transfer of funds in court, standing to the credit of the other cause, and which formed the subject-matter in dispute in this cause, without notice to the plaintiff. The petition stood for hearing two or three times in the paper of the Vice-Chancellor, but nothing was done. The defendant then filed a demurrer, and the Vice-Chancellor ordered the petition to stand over until after the demurrer had been disposed of. The Long Vacation then intervened, and the demurrer was set down for argument in Michaelmas Term. It was argued on the 9th, 10th, and 11th of November; on the 13th of November the demurrer was allowed, and leave was given to the plaintiff to amend within a month. Immediately after the demurrer, the petition came on before the Vice-Chancellor; counsel appeared, and, after some discussion, it was arranged that the hearing of the petition should stand over until after the 15th of December, being the expiration of the month allowed for the plaintiff to amend his bill. The plaintiff did amend his bill immediately afterwards, and two demurrers were put in, one by the defendant Devereux, and one by the Commissioners for Charitable Donations in Ireland. These demurrers were [illegible] February. The demurrer having been allowed, the bill was out of court. Immediately afterwards, on the 15th of February, the defendant applied to the Master of the Rolls to discharge the order by which the plaintiff was allowed to sue *in formâ pauperis*, and, after argument, the order was held to be irregular, and was discharged by the Master of the Rolls for irregularity. The ground upon which the order was discharged was, that it had been obtained upon the common affidavit, whereas the suit was of such a nature that the order to sue *in formâ pauperis* should have been obtained on a special application, and that not to the Master of the Rolls, but to the Vice-Chancellor, before whom the cause was depending. That was the state of the proceedings. It is not necessary to consider whether the application ought to have been made to the Vice-Chancellor, or whether it should have been a special application at all, for it is clear the order of the Master of the Rolls cannot be sustained. The irregularity occurred in May 1843; it is admitted by the solicitor for the defendant that he knew of that irregularity early in that year, and the defendant should have applied to discharge the order on that ground in Michaelmas Term. But he made no such application until the 15th of December. It is a fixed rule in all cases of irregularity that any party knowing of the irregularity, and suffering the other party to proceed and incur expense, shall not afterwards take advantage of the irregularity. It is not reasonable that he should do so, for if the irregularity had been made an objection in the proper time, the subsequent proceedings were unnecessary. It was said the defendant's solicitor did not know of the irregularity until the Long Vacation, but in that case he should have made the application at the commencement of Michaelmas Term. Then it was also said that the defendant did not think the plaintiff would amend his bill; but the defendant had no right to speculate on that, and the plaintiff did in fact amend his bill. Again it was urged that Mr. Devereux took no active proceeding after his solicitor was aware of the irregularity; but counsel appeared in November, expenses were incurred, and order was made dismissing the petition, and the costs fell upon the plaintiff. If, early in November, the defendant had applied to discharge the order for leave to sue *in formâ pauperis*, the plaintiff would not have been put to the costs of that proceeding. I am of opinion that, on the ground of delay, the defendant had no right to discharge the order to sue *in formâ pauperis* for irregularity.

Then it was said that the suit was out of court, that the demurrer having been allowed, the plaintiff is not in a condition to proceed upon the petitions. It is true the cause was out of court, but before the demurrer had been allowed by which it was put out of court, the matter was depending; it is an interlocutory proceeding independent of the merits. There is no foundation for that objection. Another question is this: up to the period of the allowance of the demurrer, the plaintiff has had the benefit of the order to sue *in formâ pauperis*. What is to be done for the future? But if the plaintiff is not entitled to sue *in formâ pauperis*, it is not the object of the present motion to dispauper him, it is merely to discharge the order of the Master of the Rolls. The parties must consider whether they will make an application to dispauper the plaintiff, when the Court will know how to treat the case, and will consider whether, according to the case stated on the record, the plaintiff is entitled to sue *in formâ pauperis*. In his judgment the Master of the Rolls gave no opinion upon the question whether the plaintiff was entitled to sue *in formâ pauperis*, he only stated that, looking at the record, it raises a question whether the party had a right to decide for him by getting the common order to sue *in formâ pauperis*, or whether he should not have made a special application to the Vice-Chancellor, who was in possession of the cause, and would have decided upon the propriety of such an order.

I must discharge the order of the Master of the Rolls, the effect of which is to set up the former order. The plaintiff will be free from costs up to this time.

Another point insisted upon by Mr. Wakefield was, that in November, when the petition was dismissed, such petition being entitled in two causes, it made no difference to the plaintiff, because he must at all events have paid the costs in respect of the other cause, wherein there had been no pauper order. But there is no foundation for that objection, for if he was bound to pay the costs in respect of that cause in which he had not been admitted to sue *in formâ pauperis*, in that in which he had been so admitted there would have been no costs against him. But then Mr. Wakefield said that the costs could not be marshalled; that there could be no apportionment of the costs of the petition between the two causes. I have, therefore, applied to the Taxing Master, and I am informed that such costs could have been apportioned; that is a complete answer to that argument.

Lee, for the plaintiff, [illegible] costs of the appeal, [illegible] that had been done [illegible]

The Lord Chancellor.—I don't think in this case the plaintiff should be allowed any costs.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Friday, Jan. 31.

Stow v. Feel.

Practice—Notice of motion—Hearing of the same.

Although the Court will only hear opposed motions on seal-days, yet the notice of motion may be given for any day during the Term, provided the usual time is allowed to intervene between the service and hearing.

Dillon moved on behalf of the plaintiff for the usual order, upon affidavit of service, for the production of documents admitted by the answer to be in the defendant's possession. The notice of motion had been given for the previous day (Thursday), that being considered the usual motion-day in every week during the Term. Friday, however, happening to be the last day of Hilary Term, motions were not taken on the Thursday previous. The Vice-Chancellor made the order, stating that a notice of motion may be given for any day during Term, provided the usual two clear days were allowed to intervene; but the Courts, for the sake of convenience, will hear them only on seal-days. His Honour observed, moreover, that it was the practice in Lord Eldon's time for the Court to hear motions, although opposed, every day in Term after the other business of the Court had been gone through.

Friday, Feb. 14.

Amies v. Skillern.

Will—Personalty—Joint tenancy.

S. S. the testator, after certain bequests, gave to his executors all the residue of his personal estate, after paying his debts, &c. upon trust to invest the same in the 3 per cent. Consols, or at interest on real estates, and pay the annual dividends thereof amongst all the children of his brother for their respective lives. The testator then proceeds: "And after the deaths of my said brother's children, as they shall respectively die, I give the principal of their respective shares to their respective children; and if any of my said brother's children shall die without leaving any child, then I give their shares to their surviving brothers and sisters for life, and afterwards to their respective children." One of the brother's children, A. married and had three children: the plaintiff A. M. who survived her mother, and two others, who died in the life time of their mother; one an infant and unmarried, but the other married, leaving a daughter, one of the defendants. Held, that upon the decease of A. her surviving child, A. M. took the share of A., there being a joint tenancy between the respective children of the brother's children (the tenants for life) living at their respective deaths.

The testator, Stephen Skillern, by his will bearing date the 14th March, 1797, after making certain dispositions therein mentioned, gave and bequeathed as follows:—"I give my house, and all the rest and residue of my estate and effects, to my executors in trust to sell the same, and to collect my debts, and thereout in the first place to pay off the mortgage on my leasehold estate, and other my just debts, legacies, and funeral expenses, and to invest the clear surplus of my said residuary estate and effects in the Three per Cent. Consolidated Bank Annuities, or at interest on real security of freehold estates, as my executors shall think best, and pay the annual dividends and interest thereof, as the same shall be received, to and among all the children of my brother Isaac, for their respective lives; and the shares of daughters, to be for their separate uses, free from the debts and control of their husbands." The testator then proceeded in the words following, viz.:—"*And after the deaths of my said brother's children, as they shall respectively die, I give the principal of their respective shares to their respective children; and if any of my said brother's children shall die without leaving any child, then I give their shares to their surviving brothers and sisters for life, and afterwards to their respective children, the same as their original shares of such residue are given.*" The testator then appointed his said brother Isaac, and George Blake and John W. Dent, executors of his will.

Isaac Skillern had five children living at the decease of his brother, the testator; four daughters and a son; but had one child born afterwards. Sarah, one of them, died several years since the testator's death a spinster, leaving her three sisters and brother her surviving. Ann, another of the daughters, married George Boyer, since deceased, by whom she had three children; namely, Ann Margaret Amies, who was the only one that survived her mother; a son, who died an infant of a year old; and a daughter, Frances Elizabeth, who married John Kempster, and died some time ago, in her mother's lifetime, leaving her said husband and one child, Frances Margaret Kempster, two of the defendants, her surviving. The bill was filed by William Amies and Ann Margaret, his wife, against the trustees, and John Kempster and Frances Margaret, the husband and daughter of Ann M. Amies's deceased sister, for the purpose of having it declared that the plaintiff, Ann Margaret Amies, upon the death of her mother Ann Boyer (one of the children of Isaac), became entitled to the entirety of one-fourth of the trust funds, as the only child of her mother living at her decease.

Rogers and *Rolt*, for the plaintiff, contended for a joint tenancy amongst the children of each respective child, and that, as there had been nothing done to sever the joint tenancy, the entire one-fourth, upon the events that had happened in Mrs. Boyer's family, survived to her daughter.

Caley Shadwell and *Wood*, for the defendant, John Kempster, contended that there was a tenancy in common between the children of Mrs. Boyer, and that the words "to the respective children" were contrary to the notion of a joint tenancy. Moreover, one of the children came into *esse* after the testator's decease, whereby one of the constituent unities necessary for a joint tenancy was wanting, for the estate became vested at different periods.(a) (*Woodgate* v. *Unwin*, 4 Sim. 129.)

L. Shadwell, for the defendant Frances Margaret, the daughter of Mrs. Kempster, submitted that although there was originally a joint tenancy between the children of Mrs. Boyer, yet the marriage of one of them with Kempster caused a severance of the tenancy and converted it into a tenancy in common. (Co. Litt. 185 b.; *Bracebridge* v. *Cook*, Plowd. 418.)

The Vice-Chancellor.—I am of opinion that the bequest is a mere chose in action, it being a pure estate of personalty after the payment of the testator's debts. That the words "to their respective children," following the sentence "the principal of their respective shares," only proved that the children of each of Isaac's children would, as *classes*, take as tenants in common; but there existed no evidence to prove that the children of any particular child of Isaac were, as *among themselves*, to take otherwise than as joint tenants. That the death of the mother was the period to ascertain who of her children took as joint tenants, none of them having a vested interest viz. in her share, till her decease. Therefore the surviving child of Ann Boyer, who is the plaintiff, takes the whole of her share. *Decreed accordingly.*

Thursday, March 13.

Barry v. Disney.

Pension, assignment of—Injunction.

F. C. had assigned a pension to Sir W. R. to secure the payment of an annuity which the former had sold him. Upon the decease of Sir W. R. his executors applied to have the pension appropriated to pay the arrears. Held, that the pension was assignable.

This was a motion on the part of the executors of the late Sir W. Rawlins for an injunction to restrain the defendant, James Cathron Disney, from receiving the quarterly payments of a pension of 187*l.* per annum, which had been granted to him in the year 1817 as a compensation, in consequence of the Transport Office, in which he held the situation of clerk, being abolished. Disney had made an assignment of this pension to Sir W. Rawlins, for the purpose of securing to him the payment of an annuity of 140*l.* which the defendant had sold him. This annuity had fallen into arrear and ceased to be paid ever since the year 1837, and Sir W. Rawlins dying in 1839, his executors applied to have the pension set apart to pay the arrears, and to prevent the defendant from receiving the quarterly payments.

James Parker appeared in support of the motion.

Shebbeare for the defendant, opposed the application, on the ground that the pension was not assignable, and that the Attorney and Solicitor-General had given their opinion to that effect. Moreover, that the pension itself, forming only one out of several other securities of a different character that had been given by Disney to the testator, the pension could not be appropriated until it was ascertained that all the rest had fallen short of satisfying the claim (of this, however, there was no evidence), and that therefore the Court could not grant the present application.

His Honour the Vice Chancellor stated that he saw no reason why the pension should not be assignable, and gave the usual direction for the injunction to issue.

ROLLS COURT.

Friday, Feb. 21.

Greenwood v. Churchill.

Under conditions of sale to pay the purchase-money into court at a fixed time, and that if, from any cause whatever, it should not be paid at that time, the purchaser should thenceforth pay interest thereon, at 5l. per cent. the latter condition must be complied with, though neither at the time of sale nor for long after was there any thing like a title shewn, and though the abstract was not delivered at the time, and the best part of it not till long after.

This was an application to obtain payment into court within a month of 11,785*l.* with interest thereon from the 11th of October, 1839, at 5*l.* per cent.

Samuel Churchill was seised of certain estates at Deddington, in Oxfordshire, which were greatly incumbered, and he conveyed to his brother Benjamin, to sell and pay all the debts, amongst others, that of Mrs. Greenwood. An order for sale having been made in the cause, the premises were put up to auction, in lots, at Banbury, on the 8th of June, 1839, under certain particulars and very stringent conditions of sale; amongst others, "that the purchaser should, on or before the 9th of November, 1839, pay his purchase-money and the amount of any valuations into the bank to the credit of the cause, and should be entitled to the rents and profits of the lot purchased, from the 11th of October preceding; but if, *from any cause whatever*, the purchase-money and valuations should not be paid by the time stipulated, the purchaser should thenceforth pay interest thereon at 5 per cent." There was also a provision for the valuation of timber, and delivery of abstract in twenty-one days from the day of sale. Objections to be delivered in sixty days or to be precluded. On lots of less than 200*l.* value, vendors to give only thirty years' title; and they were not to identify lands in respect of which allotments had been made; and they were to produce no evidence or title to inclosures prior to the award of the Commissioners, except to a certain portion therein specified. William Cotton Risley became the purchaser of lots 1, 2, 3, 9, and 10, at the sum of 11,785*l.* in all. He was in possession of two of the lots at the time of the sale, a third was unimportant, and the other two he took possession of after the sale, and exercised rights of ownership therein pending the investigation of title. A long discussion arose as to the title, and much time and expense were bestowed upon the matter. No abstract was delivered at the time stipulated, nor was there any thing that could be called a useful document produced till full a year after; and at the end of two years and a half even the abstract was unsatisfactory. Ultimately Mr. Risley consented to accept the title, though still unmarketable; but he objected to pay the interest on the purchase-money, as stipulated, under the circumstances; and this was a motion to compel him.

Hodgson (with him *Cole*).—The purchaser ought to shew that he is not bound to pay interest notwithstanding the stipulation. Whatever is a bargain actually entered into, the Court will leave to its own operation, and will not inquire into its prudence. (*Esdaile* v. *Stephenson*, 1 Sim. & St. 122.) Now the stipulation here was to pay 5*l.* per cent. and the purchaser knew what he was about, and the state of the title in 1839. But the purchaser entered into possession, and exercised rights of ownership, cutting down timber, altering the surface, &c.; he is therefore barred now from objecting. As to the allotments, they are a good commencement of title. (*Cassamajor* v. *Strode*, 5 Sim. 87; 2 Myl. & K. 706; *Phillips* v. *Maile*, 7 Bingh. 133.)

Turner (with him *Stinton*), for Lord Carrington, an incumbrancer.—The purchaser cannot retain possession and receipt of rents and profits, and also the purchase-money. He came into possession of two lots after the sale and under the contract; he therefore adopted the contract, and cannot resist paying in the purchase-money as demanded. (*Cutler* v. *Simons*, 2 Mer. 103.)

Kindersley (with him *Chandless*), for the purchaser.—The purchaser does not refuse to pay the money into court; but we ask that it shall be in two months instead of one. The question is, whether he is entitled to pay interest. In *Esdaile* v. *Stephenson*, the money was paid in with interest, but in all the cases where interest has been paid, the vendor has had a title of some kind; but here the vendor had not a scrap of paper to shew, nor a single conception of a title, or how it could be made out. The whole foundation of the claim fails, for there was not a particle of abstract or a notion of title to begin with. [The Master of the Rolls.—Suppose that to be so, and that the particular obstructions thereby caused were the occasion of the delay, is not that comprehended within the particular stipulation, "If for any cause whatever?"] Yes, but he did not shew title to any thing.

The Master of the Rolls (after stating the facts).—The purchaser objects to paying the interest of his purchase-money, because at the time of the sale the vendor was unable to make a title, and was even ignorant of it altogether. It is unnecessary to say that the vendor ought not to proceed to a sale without looking to his title, and seeing that he is able to make one; but suppose the vendor to have failed in this, the question is, whether such failure is a reason for altering the terms of the contract; and I think it is not. There it is, and the parties must abide by it. The purchaser has been put to expense by the vendor, and it is, no doubt, hard upon him; but that is a question of compensation, not a reason for a variation of the contract, which the purchaser seems to claim. Though he has reason to complain, he had an opportunity of applying to the Court to relieve him, and means would have been used to do so. Nothing has been said of costs, nor is it in the notice of motion. The purchaser may apply to get his expenses paid out

(a) Although there are four circumstances necessary to constitute a joint tenancy—1, unity of interest, 2, unity of title, 3, unity of time, and 4, unity of possession (2 Blac. 183), yet Lord Coke states several exceptions to the rule that an estate must vest at one and the same time to create an estate in joint tenancy. (Vide Co. Litt. 188 a. *Har.* and *But.*)

of the money in court. No costs of this application, but let them be costs in the cause, without prejudice to the payment of the costs and expenses occasioned by the investigation of the title.

PLOMER v. M'DONNELL.

Practice—5th General Order of April 1828—Exceptions referred—Time.

This was a motion in this cause, which was in the court of the Vice-Chancellor of England, to discharge an order referring to the Master exceptions to the answer for irregularity. The exceptions were filed on the 17th of January last, and the order for referring them was obtained on the 27th of January, but not served till the 1st of February.

Rogers, for the motion, contended that the order was too late, not being served till the 15th day after the exceptions were taken, and being therefore too late, according to the 5 h General Order of April 1828. The reference ou ht to have been on the 14th day, and not on the 15th. (*Taylor* v. *Harrison*, 1 Myl. & Cr. 874; *Dalton* v. *Hayter*, 4 Law T. 211.) And the order, must not only be obtained, but served, to complete the reference. The order is therefore irregular, and ought to be discharged.

Elderton, contrà.—My friend is quite wrong. The application is to discharge an order which we had obtained in time. The serving of it is a different question. The cases on the subject are *Peace* v. *Hodgson* (7 Sim. 347); *Attorney-General* v. *Clark* (1 Myl. & Cr. 367); and *Hunter* v. *Capron* (5 Beav. 93). This is an application to discharge, not for irregularity in the order but the true ground is, it is not effective, because of its not being served in time. As to *Taylor* v. *Harrison*, I fall back and say, the application to discharge the order is irregular, the order being quite regularly obtained.

Rogers, in reply. [The MASTER of the ROLLS.—This is a cause attached to the Vice-Chancellor of England's Court; and it is only on an irregularity in the order itse f that I can act. Point out the irregularity. It is true the order is not served in time, but it was not irregularly obtained. Did not the order and service together in *Taylor* v. *Harrison* make what the General Order calls a reference to the Master?] No doubt it applies to orders irregularly obtained. [The MASTER of the ROLLS.—To nothing else? Was this irregularly obtained?] Why, in the result, yes; *i. e.* it was not regularly prosecuted. [The MASTER of the ROLLS.—The whole order consists of two parts, the obtaining and the serving; I have only to deal with the obtaining of the order here. Now the officer is not wrong, the order being quite regular. It is only the service that is irregular, with which I have nothing to do, but only the Vice-Chancellor.] I am afraid it is so.

The MASTER of the ROLLS.—There is no reference; the answer is sufficient, and the exceptions are abandoned.

Elderton asked for his costs, which were given him.

Monday, Feb. 24.

Re PERKINS and GEPP.

It is irregular for one of two executors who is beneficially interested to obtain an order for taxation of a solicitor's bill of costs, for conveyancing, &c. done for the executors, as between the solicitor and the executor, and not as between him and the executors.

This was a motion to discharge an order for taxation of a solicitor's bill of costs, which had been delivered to two executors; and one of them had obtained the order as between herself (being beneficially interested in the testator's estate) and the solicitor.

Rogers, for the motion.

Elderton, contrà.—It is not the accurate mode of proceeding, but the submission is such as to induce the Court to grant the taxation notwithstanding. [The MASTER of the ROLLS.—She comes here on an allegation that she is the person between whom and the solicitor the bill is to be taxed, whereas there are two persons.] Yes, but they were irregular too. They first gave notice to vary the order, and then to discharge it. [The MASTER of the ROLLS.—They thought better of it.] We have no right to be put to expense in that way.

The MASTER of the ROLLS.—Discharge the order with costs on the one side and drop the notice to vary, with costs, on the other side. Thus the loss will be mutual.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Monday, Nov. 4; Saturday, Nov. 9.

TILY v. SMITH.

Will—Construction.

A testator gave to trustees real and personal property upon trust, "that, as soon as convenient after his decease, they should pay all his just debts and expenses; secondly, it was his will his said trustees should permit and suffer his wife to hold one of his houses, with the garden, for her use, to bring up their children, viz. E. and M. and at their arriving at the age of twenty-one years, then it was his will all his estates, real and personal, should be sold and converted into money, and the proceeds to be equally divided between his said wife and as many children as she might have at his decease; thirdly, it was his will that the public-house be let as soon after his decease as possible, and all rents arising from his estates to be paid to his wife, for the bringing up and support of his wife and children. E. died in the testator's lifetime a minor and unmarried. M. died a minor and unmarried, in the lifetime of the widow, who married again.

Held, that the whole estate of the testator passed by his will, and that M. did not take any real estate descendible, or capable upon her dying intestate of devolving, from her to her heirs.

Joseph Dunn, the testator in this cause, by his will, dated the 25th of August, 1811, gave unto trustees, "in trust for the purposes herein mentioned, that is to say, that when it shall please Divine Providence to remove me from works of rewards, they shall take to and possess themselves of all my premises of Lower Esson, and elsewhere, with all moneys, household furniture, and stock I may be possessed of at my decease, for the purposes hereinafter mentioned, that is to say, that as soon as convenient after my decease, that they shall pay all my just debts and expenses; secondly, it is my will my said trusts shall permit and suffer my wife to hold one of my houses with the garden for her use, to bring up our children, viz. Elizabeth and Mary, and at their arriving to the age of twenty-one years, then it is my will all my estates, real and personal, to be sold and converted into money, and the proceeds to be equally divided between my said wife and as many children as she may have at my decease; thirdly, it is my will that the public-house be let as soon after my decease as possible, and all rents arising from my estates to be paid to my wife, for the bringing up and support of my wife and children; and her receipts shall be a sufficient discharge to my said trusts." The testator died in October, 1811, leaving his widow and one child only, Mary, surviving; and the widow took out letters of administration with the will annexed, on the 9th of March, 1812, and entered into possession of the real estate, in which possession she continued until her death.

Mary Dunn, the daughter, died in September 1824, under 21, intestate and unmarried, and her mother, then the wife of Thomas Smith, obtained letters of administration of her effects on the 29th of March, 1825. In November 1842 Mary Smith died, and her husband, Thomas Smith, obtained letters of administration of her effects, and also of the effects unadministered of Mary Dunn, the daughter. No part of the real estate of the testator having been sold or disposed of, Thomas Smith entered into possession of it, and this bill was filed by the heir-at-law of Joseph Dunn and of his daughter, Mary Dunn, alleging a title to the real estates devised by the will. To this bill the defendant Smith demurred for want of equity.

Schomberg, for the demurrer, cited *Boraston's* case (Fearne's Contingent Remainders, 242); *Manfield* v. *Dugard* (1 Eq. Ca. Ab. 195); *Warter* v. *Hutchinson* (1 B. & C. 721); *Wright* v. *Wright* (16 Ves. 188); *Smith* v. *Claxton* (4 Madd. 484); and *Emery* v. *Fitzgerald* (Jac. 468).

Wigram and *Rasche*, for the plaintiff, cited *Skipps* v. *Ankers* (Cl. & Fin.); *Shouldham* v. *Smith* (6 Dowl.); *Walker* v. *Denne* (2 Ves. jun. 169); *Jessop* v. *Watson* (1 M. & K. 665); *Hereford* v. *Ravenhill* (5 Bea. 51); *Bennett* v. *Foster* (8 Jurist, 415); *Cogan* v. *Stevens* (1 Bea. 482); *Oliver* v. *Elwin* (8 Ves. 546); and *Pelly* v. *Seymour* (2 Y. & C. Exch. Ca. 700).

Schomberg, in reply, cited *Bromfield* v. *Crowder* (1 New Repts. 313; Fearne's Cont. Remrs. 247).

Saturday, Nov. 9.

The VICE CHANCELLOR, after stating the circumstances, and reading the will, said that the question which had arisen was, whether the plaintiff, as the heiress of the testator or of his surviving daughter, had, by descent, any interest, legal or equitable, in the real estate devised by the will. The will was untechnically and illiterately worded, and not very clearly expressed, and it might well be supposed to have been made by the testator without professional assistance. It exhibited, however, with sufficient certainty an intention to give his whole property in some manner for the absolute benefit of his wife and such of his children as should be living at his death. His Honour thought that effect might and ought to be given to that intention, and that the wife and the surviving daughter should therefore be considered to have taken in some manner the entire beneficial interest in his real and personal estate. This, however, they would in some manner have done if Dunn had died intestate; but the particular question for decision here is, whether the real estate was so devised as to prevent the daughter from taking in it, by gift or descent, any interest beyond the period of her life, except an interest transmissible, and to be treated as personal estate. This question would render it necessary to determine the meaning and effect of the direction to sell and convert into money. Were the phrase "at their arriving to the age of 21 years" to be construed literally, it would not apply to the case of one only of several children attaining that age. The testator might have had children born after the date of his will, though it happened that he had not. The will did not exclude any such children, the words being, "to be equally divided between my said wife and as many children as she may have at my decease." The will did not require the attainment of any age as a qualification for taking under this gift. Had the testator left several daughters and a son, who all died minors, leaving issue, could it have been maintained that the son should exclude the daughters from participation in the corpus of th. realty? It was consistent with authority and principle to hold that if the testator, in using the words "at their arriving to the age of twenty-one years," meant more or less than what would have been correctly expressed by the words "subject thereto;" he meant to say when there shall not be a child alive under twenty-one; the clause that he calls the third being to be read substantially as if it had preceded or formed part of the commencement of the second clause.

His HONOUR said that, in his opinion, the testator shewed himself to have intended that in the event which happened, of his wife and also one or both of his daughters surviving him, there should be positively and absolutely at some time a sale of the real estate. That time, his Honour thought, arrived at or before the widow's death, and if the surviving daughter had any interest in the rents that accrued between her own decease and the decease of her mother, it was not, in his Honour's opinion, an interest capable of devolution from the daughter, through her intestacy, upon her heir. He must hold, therefore, that the daughter did not take by devise or descent from the testator, legally or equitably, any descendible real estate, and that therefore her heiress-at-law could not in that character have any claim.

Demurrer allowed without costs.

Thursday, Feb. 20.

HOLCOMBE v. TROTTON.

Practice—Revivor.

An order upon the death of the plaintiffs in a suit, made on the motion of a defendant, that the surviving plaintiff should, within fourteen days after service of the order, cause the suit to be revived, or in default thereof that the bill should be dismissed for want of prosecution, with costs, is not irregular, though a better form is, that the surviving plaintiff within fourteen days file a bill of revivor, &c.

The original bill in this suit was filed in the Court of Exchequer in April 1830 by three co-plaintiffs. Two of these plaintiffs having died, an order was made on the 10th Feb. 1845, at the instance of one of the defendants, that the surviving plaintiff should, within fourteen days after the service of the order, cause the suit to be revived, or in default thereof that the plaintiff's bill should stand dismissed for want of prosecution, with costs. This order was made in the absence of the plaintiff, upon an affidavit of service of notice upon him.

Wigram and *Cole*, on behalf of the plaintiff, now moved to have this order discharged for irregularity; they cited *Chowick* v. *Dimes* (3 Bea. 290).

G. L. Russell, for the defendant, contended that the order was regular, and according to the established form. (*Bernal* v. *Duke of Wellington*, 6 Sim. 461; and *Chichester* v. *Hunter*, 3 Bea. 491.)

Wigram, in reply.

The VICE-CHANCELLOR.—I cannot say that this order is plainly irregular, because orders have been, and still are, drawn in this form, though they are also drawn in another form, which I think better. This order is not without precedent, and the notice of motion gave the parties notice of the order which would be asked for; the costs of this motion must, therefore, be paid by the plaintiff.

Saturday, March 1.

COOPER v. PALMER.

Will—Construction—"Surviving," when to be construed "other."

It is incumbent on those who contend that the word "surviving" is to be construed "other," to point out words in the context which authorize such a construction.

This suit, which was an amicable one, was instituted to obtain the opinion of the Court upon the construction of the will of Joseph Palmer, dated in July 1803. By this will the testator, after the death of his widow, gave shares of his property to his children, but if they should die, then the share of him or her so dying was to be equally divided between his surviving children. The question which had arisen was, whether the words "surviving children" were to be taken in their natural sense, or whether they were to be taken as meaning "other children," so as to vest shares in children dying before the period of division.

Spence, *Lewin*, *Cooper*, *Craig*, *Russell*, *K. Parker* and *Shapter*, were for the several parties.

Numerous cases were cited; they are all collected in Mr. Jarman's Treatise on Wills, vol. [illegible], p. [illegible], *et seq.* and need not be enumerated here.

The VICE-CHANCELLOR said that it was incumbent upon those who contended that the expression

"surviving children," when it occurs in a will, is to be construed "other children," and not according to its literal meaning, to point out words in the context which would authorize the Court to adopt such a construction. In the present case he could not find such words, and though he feared he was defeating the testator's intention, he must hold that none but surviving children could take.

VICE-CHANCELLOR WIGRAM'S COURT.

Saturday, March 8.
HUNTER *v.* DANIELL.
Champerty—Solicitors.

Demurrer to a bill for the specific performance of an agreement on the ground of champerty, it appearing that the plaintiff, being the solicitor in a cause, had agreed for the purchase of the defendant's rights and interests therein. Held, that the demurrer be overruled, as a party having an interest in a suit may lawfully assist in conducting its defence.

His HONOUR gave judgment in this cause, which was a suit instituted for the performance of an agreement for the purchase of the interest of the defendants in certain property, the subject of another suit, which arose out of the following circumstances. In 1816 William Woodruffe, being in possession of the property, and claiming therein an estate of inheritance in fee-simple, effected a mortgage for a large sum of money. Upon his decease, his brother took possession, and repudiated the mortgage, claiming under a settlement, which he contended gave him a title paramount to that of his brother, the mortgagor. Certain proceedings at law were the result of this position, and in 1837 a bill was filed to establish such title. Subsequently, in 1841 (*pendente lite*), an agreement was entered into between Hunter, the plaintiff, a solicitor of the court: and the defendants, for the purchase of their interest under the mortgage security, by which agreement the plaintiff was, as a consideration for the purchase, to pay certain sums of money, at various times, to the defendants, also to purchase them a government annuity, and to indemnify them in respect of the costs of past and future proceedings, both at law and in equity. To the plaintiff's bill for a specific performance of this agreement the defendants demurred, on the ground (among other things) that such agreement was void, as being of the nature of a champerty transaction. His Honour said that, according to the case of *Findon* v. *Parker* (11 Mee. & Wels. 675), it was now established law that a party having, or believing that he had, an interest in the litigation, might lawfully assist in the prosecution or defence of the action or suit. This was the plaintiff's position, and therefore he was of opinion that the transaction in question was free from the imputation of champerty, and that the demurrer must be overruled.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Monday, March 17.
Ex parte YOUNG, *re* WORTH.
Bankrupt—Costs.

Upon a petition by an assignee for leave to bid at the sale of property under the fiat, the bankrupt, who had been served with the petition, was allowed his costs of appearance.

This was an application by an assignee for leave to bid at the sale of property under the fiat.

Bichner, for the petitioner, desired that the course pursued in the case of *Ex parte Hollyman, re Stokes* (see *antè*, vol. 2, p. 405) should be adopted here.

Smythe appeared for the bankrupt, and consented, and asked for his costs. The bankrupt's appearance was necessary on such a petition as this. (*Ex parte Page*, 4 Mad. 459.)

The CHIEF JUDGE.—You must have your costs; the petitioner must pay them. Without deciding the service to be right, I assume it to be right.

Ex parte MILLER, *re* MILLER.
1 & 2 Wm. 4, c. 56, sections 46 and 55—Official assignee.

Where no choice of assignees has been made, the sums of 20l. and 10l. are not payable under the above sections.

Adjourned meetings for the choice of assignees are within the exceptions of the 55th section.

Upon the annulling a fiat, upon the petition of the bankrupt, with the consent of the creditors, before a choice of assignees had been made, the official assignee held entitled to remuneration for his services.

This was a petition by the bankrupt to annul the fiat, with the consent of all the creditors. There had been no choice of assignees, and the only difficulty which occurred was in consequence of the sums of 20l. and 10l. not having been paid to the official assignee as required by the 46th and 55th sections of the 1 & 2 Wm. 4, c. 56; and also on account of the claim of 2l. made by the official assignee under the 55th section, for two extra meetings. The first meeting under the fiat was on the 31st of January, when the adjudication was made; there was afterwards a meeting for the choice of assignees on the 18th of February, which was adjourned to the 26th of February, but no choice was made.

Bird, for the petitioner.

Rolt, for the official assignee, argued that the meetings excepted from the operation of the 55th section were those meetings only at which the choice of assignees was actually made. In *Ex parte Diamond* there was no estate, but here there was estate.

The CHIEF JUDGE.—I am of opinion that the 20l. does not, and the 10l. does not become due until the choice of assignees is made in the usual way, and consequently they have not become payable in this case. I am of opinion that the adjourned meeting for the choice of assignees is within the one pound clause as to the meeting for the choice of assignees. I think, therefore, that the 32l. is not payable. It must be referred to the commissioner if the parties differ, to take an account of all proper expenses incurred by the official assignee under the fiat. It must also be referred to the commissioner to allow to the official assignee such, if any, sum as the commissioner shall think fit as a remuneration for his services, which I do under the impression that the 57th section remains part of the law of the land.

Wednesday, March 19.
Ex parte NEWLANDS, *re* NEWLANDS.
7 & 8 Vict. c. 96—Court of Review—Jurisdiction.

A B, being in contempt of the Insolvent Debtors Court for disobedience to an order made by that Court, upon an application for his discharge under the Insolvent Debtors Acts, petitioned the Court of Bankruptcy for his discharge under the 7 & 8 Vict. c. 96, and obtained an interim order; but upon application for his final order, the commissioner, by an order stating the circumstances of the case, remanded him to his former custody. Held, upon petition to the Court of Review, that the Court had no jurisdiction, as a Court of Appeal, from the commissioner's order.

In this case, upon an application for the prisoner's discharge upon a writ of *habeas corpus*, the prisoner Newlands presented a petition to the Court of Review, praying the reversal of the order of remand of Mr. Commissioner Fane.

C. P. Cooper, for the petitioner, contended that the Court had jurisdiction in the case as a court of appeal from the commissioner. He cited several sections from the 5 & 6 Vict. c. 116, and the 7 & 8 Vict. c. 96. He also contended that the reason appearing upon the order for remand was insufficient.

Tripp, for the respondent, was not heard.

The CHIEF JUDGE.—It does not, I apprehend, follow of necessity, that upon a new jurisdiction, not in bankruptcy, being conferred on the commissioners, that is subject to any particular or any appeal. Whether a state of circumstances can be considered possible in which this Court would have jurisdiction, by way of appeal, in anything done by a commissioner under either of these Acts not in bankruptcy, I do not give any opinion, nor do I give any opinion whether the reason appearing on this order of Mr. Commissioner Fane is or is not valid and sufficient. I am of opinion that the matter of this order is not one which the Legislature has rendered it the duty of this Court to review.

COMMISSIONERS' COURTS.

Saturday, March 8.
(Before Mr. Commissioner GOULBURN.)
Re —.
Expenses of witnesses.

The expenses of town witnesses summoned to prove an act of bankruptcy, but not examined, cannot be allowed.

In this case a question arose whether witnesses summoned to prove an act of bankruptcy were entitled to their expenses. One was an attorney, and the other an auctioneer, both residing in town, and both claimed their expenses for two days' attendance.

Mr. Commissioner GOULBURN was of opinion that the witnesses must be paid if their testimony was required.

The attorney to the fiat strenuously urged that they were bound to attend, and to give evidence.

The matter was referred to the taxing-master, who was of opinion that the parties were entitled to a guinea a day. They again came into court, and again the attorney resisted payment, as they were town witnesses. He produced a case decided before Lord Tenterden.

The attorney procured other witnesses, who made out an act of bankruptcy, and he did not require the assistance of the two persons summoned. He had previously declined to pay them, and stated his intention to appeal to the Court of Review.

At the termination of the business one of the parties, an auctioneer, applied to the Court. He wished to know whether he had no remedy against the person who had summoned him. He had been obliged to postpone a sale he had to-day, and had been put to great inconvenience.

Mr. Commissioner GOULBURN was of opinion that, as the parties had not been required to give evidence, they were not entitled to payment. They resided in town, and he was afraid that they had no remedy. If, however, they had been required to give evidence, he should have ordered payment to have been made in the first instance; but as their testimony had been dispensed with, he had no power to grant the application.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEVENSON.)
Friday, March 14.
Re WELLS.

If any one of an insolvent's debts, however small, has been incurred in the manner pointed out in 7 & 8 Vict. c. 96, s. 24, as a disqualification, the Court has no discretion, but must dismiss the petition.

This insolvent came up for his first hearing.

Higgins, solicitor, of Bath, opposed, and produced the record of an action, by which it appeared that a judgment had been recovered against the insolvent *for an assault*. This was one of the cases expressly provided for under the 24th sect. of 7 & 8 Vict. c. 96.

Homes, for the insolvent, stated that the damages were very trifling; that he was prepared to prove that the plaintiff in the action richly deserved the chastisement he had received, which was the assault complained of; that this Court was not bound by the verdict of a jury in every case, but might go into the merits, and if the assault was justifiable, the Court would not preclude an honest insolvent from receiving the benefit of these Acts, merely because a jury had given 40s. damages against him.

His HONOUR.—The record is conclusive evidence that one of the debts in the insolvent's schedule was contracted by reason of a judgment in an action for an assault. This then is one of the cases expressly mentioned by the 24th section, where I am precluded from naming a day for the final order, o renewing the protection. The Court has no discretion in the matter, and the petition must be dismissed.

Petition dismissed.

Re DRURY.

Where an insolvent has been ordered to file an account ten days before the next hearing, and has neglected to file it until the morning of the sitting, opposing creditors are entitled to an adjournment, although the neglect originated, not with insolvent, but his attorney.

The insolvent came up for his adjourned first hearing.

Stone opposed, and stated that at the last sitting in this matter, the Court had ordered an account of all the insolvent's purchases since the 15th of September last, to be filed *ten days at least* before the present hearing. The insolvent had not complied with that order, but had only filed the account on the morning of the present hearing. He submitted that this was a contempt of the Court, for which the petition ought to be dismissed, or at all events, the case must be adjourned.

Homes, for the insolvent, said, the Court would not punish for an apparent contempt, without being satisfied that it was wilful. He then called the insolvent and examined him, when it appeared that he had furnished his attorney with the particulars of the required account three weeks ago, and believed that it had been filed in time, in obedience to the order.

The attorney was examined, when it appeared that he had directed his clerk to do what was necessary, and the clerk had called at the court with the account to file, but the usher was not in attendance.

Homes then submitted that the Court, under these circumstances, would not put the insolvent to the expense of an adjournment. The account required only contained one item, namely, an item of a purchase of thirty-six gallons of beer, and the creditors could ask any questions upon that now, as well as at an adjourned meeting.

Stone.—The insolvent is answerable for the neglect of his attorney. The account should have been filed in time for the creditors to have obtained a copy and inquired into its correctness. It makes no difference whether the account contains one or many items; the creditors may, on inquiry, be able to shew that there have been other purchases by the insolvent besides that which is mentioned in the account. We are not prepared with such evidence now, but we probably might have been, had the account been furnished in proper time.

His HONOUR.—The creditors are clearly entitled to time to examine into and test the accuracy of the account. The first hearing must be again adjourned for that purpose.

Adjourned accordingly.

PREROGATIVE COURT.

Wednesday, Feb. 26.

BIGGE v. BIGGE and OTHERS.

Will, presumptive revocation of.

A will was written upon very brittle paper. Testator had given instructions for a new will, but died before it could be executed. The former will was found in a box tied up with a draught of the new will, divided in the middle, but without any other indication of having been cancelled, the seal and signatures remaining.

Held, that these circumstances did not afford a sufficient presumption that the paper was torn by the deceased for the purpose of revoking it, but that the possibility and probability was, that it was occasioned by the wear and tear of a brittle paper.

This was a question arising as to the will of Mr. John Thomas Bigge, formerly one of the commissioners of colonial inquiry, and subsequently chief justice of Trinidad, in consequence of its plight and condition when discovered, which raised a doubt, under the circumstances, whether it was not revoked whereby he would have been dead intestate, in respect to considerable property, amounting to 40,000*l.* in the province of Canterbury, 6,000*l.* in that of York, besides a freehold estate. It appeared that the deceased left a brother, Mr. Charles William Bigge, a sister, Mrs. Sawbridge, wife of Mr. Henry B. Sawbridge, of the English bar, and four children of a deceased brother, the parties who would be entitled in distribution of the personal estate in case of intestacy. He had, at various times, made different wills, being in the language of these courts, a "will-maker;" but he had adhered to that of November 1840 (the will in question), till July 1843, when he suggested to his solicitor, Mr. Plumtre, of the Temple, that he desired to make certain alterations therein, and gave him various instructions for a new will. Under the will of 1840, the surviving brother of the deceased (Mr. Charles Bigge) took no benefit except the cancellation of certain bonds or debts due by him to the deceased, the amount of which did not appear. The residue of the property, amounting to about 20,000*l.* was given by that will to Mrs. Sawbridge absolutely, but without being secured to her separate use. The chief alteration related to this residue, which by the new will was to be secured to the sole use of Mrs. Sawbridge for her life only. An additional executor (Mr. Arthur Bigge, a nephew of the deceased) was likewise appointed, with a legacy of 500*l.* The deceased had various communications with Mr. Plumtre, personally and by letter, on the subject of this new will, from July 1843, to the 16th of December in that year, when he came up from Dover, where he resided, and conferred with him at his office, and most, but not all, of the blanks were then filled up. Before this was completed, and the will could be executed, the deceased was taken ill on the 20th of December, and died suddenly on the 22nd. Search was made for a will for some time without effect, and an administration was taken out. At length, that of 1840 was found in a red box (one of the official boxes), together with the draught of the new will. The former, however, was divided in the middle, but without any other indication of having been cancelled, the seal and signatures remaining. The result of an intestacy would be that the personal property would go in three parts, of about 15,000*l.* each, of which the brother and sister would take one each, and the other would be divided amongst the four children of the deceased brother, and the surviving brother would take the real estate. The questions were, whether the paper had been torn by the deceased, and if so, whether the act had been done *animo revocandi.*

Dr. *Addams* and Dr. *Twiss*, in support of the will propounded, argued that before the question of presumptive revocation arose, there must be proved to have been a tearing of the will; whereas, here it was evident, upon the face of the instrument, that the paper, which was of a brittle and glossy kind, had merely parted asunder by wear and frequent unfolding. There was a fold in the margin which had nearly separated. In the middle of the paper was another breakage at right angles with the other; whereas, if it had been torn, the rent would have been at an acute or obtuse angle. The deceased being a professional man, if he had intended to cancel his will, would not have left the act ambiguous; he would have torn off the seal, or erased the signature. There was nothing to raise the remotest presumption that he intended to remain intestate all the time between July and December 1843; on the contrary, there was an apparent anxiety on his part that he should not die without a will.

Dr. *Phillimore* and Dr. R. *Phillimore*, for the eldest brother, contended that it was clear from the correspondence between the deceased and Mr. Plumtre that he had abandoned the will of 1840, which was very materially departed from in the new will. Had the latter been of the same tenor as the former, the presumption that he adhered to that of 1840 provisionally might have had some weight. The wills, however, when analysed, were not the same, and the old will being found in the depositories of the deceased "torn," one of the modes of revocation specified in the statute, the Court must hold, with reference to all the circumstances, that it was done by the deceased, and with the intention of revoking it.

Sir H. JENNER FUST.—The question is, whether this paper was torn by the testator, or by some other person by his direction, with the intention of revoking it, and that intention must be proved by the act itself, or by extrinsic evidence. The Court, however, has no evidence whatever, but is left to conjecture from the circumstances of the case, the probability or improbability of the act. It is quite clear that the deceased intended to make a new will; but after all that was done, it is the paper itself, and the plight and condition in which it was found, that give rise to any question. Now, it is probable that the deceased had this paper frequently under his consideration, and looking at the kind of paper, which is brittle, and which will not bear much handling, and at the division, which occurs at the fold, I do not think it a natural presumption that the paper was torn by the deceased intentionally for the purpose of revoking it. I think it more probable that its condition was the result of wear and tear. The act is equivocal; there is nothing to shew that it was done by the deceased, and the possibility and probability is, that it was occasioned by wear and tear. I therefore revoke the administration granted on the supposition that the deceased had left no will, and pronounce for the validity of this paper.

Nisi Prius.

COURT OF EXCHEQUER, GUILDHALL.

(Sitting after Hilary Term.)

Tuesday, Feb. 18.

FARWIG v. COOPER.

Proof of handwriting by comparison with other documents.

Assumpsit on bill of exchange.

To prove the signature of the acceptor, a witness was called who had never seen him write, but who had received letters from him and acted on them; and he was about to take them from his pocket to compare them with the acceptance on the bill, when

Whitehurst, Q. C. for the defendant, objected to his so doing, though it was not easy to say what was the last ruling on the subject.

POLLOCK, C. B.—What I take to be the proper course is this; the witness may look at the previous writing as long as he pleases, for the purpose of refreshing his memory, and that even while he is in the witness-box, but he must put them away from him before he looks at the signature to be proved, and upon which he may then give an opinion. An immediate comparison is allowed to none but the jury, and even they can only institute it as between the signature in question and such documents as have been put in as evidence in the cause.

Circuit Reports.

SPRING ASSIZES.

NORFOLK CIRCUIT.

Aylesbury, Thursday, March 14.

(Before Mr. Justice PATTESON.)

REG. v. STONNELL.

Certificate of previous conviction, form of.

A certificate of a previous conviction for felony is not admissible, unless it sets forth, not only the fact of the prisoner's conviction, but also the judgment of the Court thereon.

The prisoner having been convicted on the principal charge in an indictment, which further charged that he had been previously convicted of felony at a certain Quarter Sessions for the county, the certificate of the clerk of the peace was produced in support of the latter part of the indictment, which simply alleged that he had been convicted of felony at that time and place.

Sanders, for the prisoner, objected that the certificate could not be read in support of that branch of the case, as it was defective in not setting forth the sentence of the Court on the occasion referred to. The principle of the Act was to afford proof of a conviction, followed by a sentence and punishment, and its words were very plain. The stat. (7 & 8 Geo. 4, c. 28, s. 11) says that "in an indictment for any such felony committed after a previous conviction for felony, it shall be sufficient to state that the offender was, at a certain time and place, convicted of felony, without otherwise describing the previous felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed, &c. shall be sufficient evidence of the previous conviction." These words require something more in the certificate than in the indictment, for the substance and effect of the previous conviction ought to be contained in the former, and that can only be complied with by setting forth the sentence and punishment which followed upon the conviction. That view of the Act had been taken by Cresswell, J. in the case of *Reg.* v. *Ackroyd* (1 C. & K. 158), when a certificate in the same form as that now produced was rejected.

Power, contrà, relied on *Burgess* v. *Bornetefeur* (8 Scott, N. R. 294), where the Court of Common Pleas had, in some measure, thrown doubt upon that decision. If it was enough to state the simple fact of the conviction in the indictment, it might well be so in the certificate.

PATTESON, J.—It certainly appeared to me on former occasions to-day, that the certificates which have been produced have deviated from the usual form, in omitting all mention of the sentence. Now that the objection has been expressly raised in this case, it seems that my brother Cresswell has given an opinion that such certificates do not comply with the Act, and I am inclined to agree with that learned judge's ruling, for it is evident to me that the Act required more particularity in the certificate than in the indictment. There it is expressly stated to be sufficient to allege that the offender was previously convicted of felony at a certain time and place; but the certificate, which is made the proof of that fact, is required to contain the *substance and effect* only of the indictment and conviction for the previous felony. The question, therefore, is, what is required by the words "substance and effect?" Now, they must mean not only the fact of the conviction by the jury, but also the sentence of the Court, for till judgment there is no perfect conviction. There must be the finding of the Court as well as that of the jury, and that is what is meant by the "substance and effect of the conviction." The case of *Reg.* v. *Ackroyd* is very short and clear; and I see that the ruling is put on the ground, that as the judgment might be arrested, there might be a conviction by a jury, and yet, in such a case, no effect could have followed on it. That case is quite in point, and is followed by one immediately after in the same volume, where it was objected, in consequence of that decision, that an indictment, simply charging that the prisoner had been duly convicted of a previous felony, was insufficient, as it ought to have gone on to set forth the sentence of the Court. But there the same learned judge takes the distinction already adverted to as existing in the terms of the Act between an indictment and a certificate, and overruled the objection which had assumed the shape of a motion in arrest of judgment. These cases are to me, mind quite conclusive, and I shall act on them now; for, though it has been urged that *Reg.* v. *Ackroyd* was questioned in *Burgess* v. *Bornetefeur*, yet, as I have not that case before me *in extenso*, I cannot say to what extent it may militate against it. I think, therefore, that this certificate is not such a certificate as was contemplated by the Act, and I cannot receive it; but the defect may be altered in future cases by the clerk of the peace, by simply inserting the sentence of the Court.

CENTRAL CRIMINAL COURT.

JANUARY SESSION.

January 7th and 9th.

REG. v. KENRICK.

Indictment under the 5 & 6 Vict. c. 122, charging a bankrupt with not surrendering for the purposes of his examination—Such indictment must contain an averment that notice in writing has been served upon the prisoner—Query whether such service must be at his place of abode—Semble, that where a bankrupt has once surrendered, any subsequent omission to attend an adjourned meeting is not within the Act.—Where there is a palpable defect on the face of the indictment, the Court will direct an acquittal, where no objection to such a course is made by the counsel for the prosecution.

The prisoner was indicted under the 32nd sec. of the 5 & 6 Vict. c. 122, for not surrendering under a fiat of bankruptcy which had issued against him. That section enacts "That if any person adjudged bankrupt after the commencement of this Act, shall not upon the day limited for the surrender of such bankrupt and before three of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing, to be left at the usual or last-known place of abode or business of such person, or personal notice, in case such person be then in prison, and notice given in the *London Gazette* of the issuing of the fiat and of the sittings of the Court authorized to act in the prosecution of the fiat against him, surrender himself to such Court, and sign or subscribe such surrender, and submit to be examined before such Court from time to time on oath, &c." The indictment charged, That before the committing the offence hereinafter next mentioned, to wit, on 10th June, 6 Vict. T. Kenrick, horse dealer and livery-stable-keeper, being a trader within the meaning of the laws relating to bankrupts, was indebted to John Forster in a certain sum of money exceeding the sum of 50*l.* to wit, 52*l.* 10*s.* being the amount of a certain bill of exchange, dated London, May 27, 1843, drawn by one Samuel Lazarus Lawrence, upon and accepted by the said T. Kenrick, payable to the order of said S. L. Lawrence, 14 days after the date thereof, and by the said S. L. Lawrence indorsed to the said John

Forster, which said bill was not paid when said became due, and afterwards, to wit, on the 4th July, 7th Victoria, still remained unpaid and owing to the said John Forster, and that the said T. Kenrick, so being such trader and indebted as aforesaid, afterwards on the day last aforesaid, did commit an act of bankruptcy: that is to say, by wilfully refusing and omitting to attend before the Court of Bankruptcy, in the city of London, on 30th June in the year last aforesaid, for the purpose of enabling the said Court to ascertain, in manner and form prescribed by the statutes in that case provided, whether or not he the said T. Kenrick admitted the said debt and demand of the said John Forster, although he the said Thomas Kenrick was duly summoned by Robert George Cecil Fane, Esq., one of the commissioners of the said Court, on said 16th June, to appear at said Court of Bankruptcy, on said 30th June, for the purpose aforesaid. That afterwards and within the space of two months next after filing in the said Court of an affidavit of the truth of the said debt and particulars relating thereto, to wit, on 3rd July, a fiat in bankruptcy was in due form of law granted and issued against the said Thomas Kenrick, and the said fiat was duly transmitted to the said Court of Bankruptcy, and afterwards, on the 4th of July, the said Court did adjudicate upon the said fiat, and said T. Kenrick, by said Court, and in pursuance of said fiat, in due form of law, adjudged and declared to be and then was a bankrupt, within the meaning of the several statutes in that case provided, or one of them, of all which notice in writing, together with duplicate of such adjudication, on 4th of July was served on said T. Kenrick, by delivering same to said T. Kenrick personally. That afterwards, on said 4th of July, the said T. Kenrick did personally surrender himself under said fiat to said Court of Bankruptcy, and notice was, by consent of said Thomas Kenrick, given in the *London Gazette* of the issuing of said fiat, and that commissioners of said court had appointed two public sittings of said Court, to be respectively holden on 11th of July and on 9th of August in the year last aforesaid, at the said Court of Bankruptcy, to surrender and conform to the said fiat. That said T. Kenrick having been duly summoned in that behalf on 11th July then next at the said court and on said 9th August respectively, did duly appear at the said court, and did duly surrender himself to be examined at said sittings respectively held under and in pursuance of said fiat before J. S. M. Fonblanque, Esq. then being one of the Commissioners of said Court of Bankruptcy, and having lawful power and authority to hold and preside at the said sittings. That on 9th August the further examination of said T. Kenrick under said fiat, was by order of said J. S. M. Fonblanque, esq. the commissioner presiding at said meeting aforesaid, duly adjourned to 14th September, to be further proceeded with at said adjourned meeting, of which said adjournment he, said T. Kenrick, on said 9th August, had personal notice, and said adjournment was duly indorsed by said J. S. M. Fonblanque, esq. on summons, by which said T. Kenrick had been summoned to surrender and conform under said fiat as aforesaid. That on said 14th September said adjourned meeting was duly held under said fiat, and said Thomas Kenrick duly appeared at said adjourned meeting at said court, and was then examined in pursuance of said fiat. That at said adjourned meeting as aforesaid on 14th September at said Court of Bankruptcy, in presence and hearing of said T. Kenrick, he, the said T. Kenrick, was, by said J. S. M. Fonblanque, esq. being such commissioner as aforesaid, allowed further time for finishing his said examination under said fiat, and there upon said J. S. M. Fonblanque, esq. in presence and hearing of said T. Kenrick at the meeting last aforesaid, appointed 8th Dec. then next at the hour of one o'clock in forenoon of the said day as the said day and hour which the said Court allowed said T. Kenrick for finishing his said examination, and said last-mentioned meeting was thereupon in the presence and hearing of said T. Kenrickd adjourned to said 8th Dec. at the hour of one of same day, to be holden for said Court, of which limitation, appointment, and adjournment, he, said T. Kenrick, on said 14th September, at the Court aforesaid, had personal notice. That said T. Kenrick being such bankrupt as aforesaid, and well knowing the premises on said 8th Dec. knowingly, wilfully, unlawfully, and feloniously did not, at the hour nor upon the day allowed him for finishing his said examination under the said fiat as aforesaid, to wit, on said 8th Dec. at the hour of one o'clock, surrender himself to be examined before said Court, but on the contrary thereof, unlawfully, wilfully, knowingly, and feloniously did wholly neglect and refuse to attend said court, at time limited by said Court for finishing his said examination under said fiat.

2nd count. That afterwards, and before the committing the offence hereinafter mentioned, to wit, on 16th June, the said T. Kenrick, so being a trader within the meaning of the laws relating to bankrupts, was indebted to John Forster in a certain sum of money exceeding 50*l.* to wit, 52*l.* 10*s.* for price and value in first count mentioned. That on 3rd July a fiat of bankruptcy was in due form of law granted and issued against said T. Kenrick, and said fiat was duly transmitted to Court of Bankruptcy, and on 4th July Court did adjudicate upon said fiat, and said Thomas Kenrick was by said Court, under and in pursuance of said fiat, in due form of law, adjudged and declared to be and then was a bankrupt, of all which, notice in writing, together with a duplicate of said adjudication was afterwards on said 4th July served on said T. Kenrick, and notice was also and with consent aforesaid of T. Kenrick, given in the *London Gazette* of the issuing of said fiat and meetings of said Court under same. And said Court afterwards, on 11th July, 9th August, and 14th Sept. did duly hold meetings under and in pursuance of said fiat, at which several meetings said T. Kenrick attended in his proper person before said Court in pursuance of a summons duly issued to him in that behalf, and was examined by said Court on each of those days, under and in pursuance of said fiat. That on 14th Sept. said Court did fix and appoint 8th Dec. at the hour of one in the afternoon of said day as the day which the said Court allowed said T. Kenrick for finishing his said examination under said fiat, and said examination was thereupon adjourned, &c. *as in first count.*

3rd count. That afterwards on 4th July, and after commencement of a certain Act of Parliament entitled An Act for the Amendment of the Law of Bankruptcy, a fiat in bankruptcy was duly granted and issued against said T. Kenrick, and said T. Kenrick afterwards, on day aforesaid, was in due form of law adjudged a bankrupt. That a certain day, that is to say, 9th August, was limited for surrender of said T. Kenrick under said adjudication of bankruptcy so made as aforesaid, and notice in writing was in due form of law given to said T. Kenrick, of the said fiat having been issued against him, said T. Kenrick, and of said adjudication and of the sittings of the Court authorized to act in the prosecution of said fiat, and notice was given in the *London Gazette*, to he tenor and effect last aforesaid. That on said 9th August, said T. Kenrick did duly surrender himself to said Court, and that on 14th September a certain hour and day was allowed to said T. Kenrick for finishing his said examination under said fiat by J. S. M. Fonblanque, esq. that is to say, one o'clock on 8th December. That said T. Kenrick having had personal notice of said hour and day limited by said Court, wilfully, unlawfully, and feloniously, on said 8th day of December, did omit to appear and surrender himself to said Court of bankruptcy.

4th count. That he, on said 8th December, did wilfully neglect to appear, and wilfully, unlawfully, and feloniously neglected and omitted to appear before said Court.

The prisoner pleaded not guilty.

Bodkin (with whom was *Doane*), for the prosecution, having stated the case,

Ballantine, for the prisoner, objected to the indictment, that it contained no averment that notice in writing had been served a the place of abode of the prisoner, and this the Act rendered absolutely necessary. It might moreover be further questionable, whether a bankrupt who had once surrendered could be brought within the Act, by default of appearance at any subsequent meeting.

ERLE, J.—I certainly take this view of the case. Either at the day for the first examination or at the last, he is bound to surrender, but if he has surrendered at any time, he has complied with the terms of the Act of Parliament.

PATTESON, J.—It is not, however, necessary to decide this question, for we are clearly of opinion that a notice in writing is necessary, and that, in consequence, the declaration must contain an averment to that effect. In strictness this is not the proper time for taking an objection of this kind; but if Mr. Bodkin does not interfere we think there can be no obstacle to our directing an acquittal. Such a proceeding has been usual where the indictment is palpably bad upon the face of it.

Bodkin acquiesced, and the prisoner was acquitted.

R. *v.* BISSET.

Thursday, Jan. 9.

In setting out a former conviction in an indictment for uttering counterfeit coin, a variance in the name of one of the magistrates before whom the previous trial was had, was bad.

The prisoner was indicted for uttering counterfeit, and a previous conviction was alleged, which made the present offence a felony. In the caption of the former indictment, as set out on the record, the name of one of the magistrates before whom the previous trial was had was spelt *Dalicon*, whilst in the conviction produced in Court it appeared to be *Dalison.*

Payne, for the prisoner, submitted, that on this variance the prisoner was entitled to an acquittal. He cited a case before Mr. Baron Maule, in which a like objection had prevailed, the name of Mr. Alderman Ansley having been mis-spelt in the recital of a previous conviction.

Bodkin (for the prosecution.)—I apprehend that if it appears by the statement of the caption of the indictment that there was a sufficient number of persons present to try the cause, this variance will not vitiate. It is only necessary to state as many as form the Court. The mention of the name at all is mere surplusage.

Payne.—How does that appear?

Bodkin.—Because the Court will take judicial notice that there were sufficient magistrates presiding at the trial, a great number being set out on this record. Supposing that four constituted a quorum—that four were set out, and one of the names was mis-spelt, that might be bad; but here many more are named than were requisite.

Payne.—That will depend upon the commission.

Patteson, J.—I think that the variance has been held fatal at *Nisi Prius*, where, in a commission, one of the judges' names was spelt incorrectly. It may not, perhaps, be necessary to set out all the names, but if they are set out, it ought to be done correctly. It might be that the magistrate who is thus misnamed was one of those before whom the case was tried. An acquittal was accordingly directed.

R. *v.* MUMFORD.

Query. Whether in an indictment for maliciously wounding cattle under the 7 & 8 Geo. 4, c. 30, s. 16, it is necessary since the 1 Vict. c. 90, s. 2, to prove malice against the owner?

The prisoner was indicted for maliciously wounding cattle under the 7 & 8 Geo. 4, c. 30, s. 16.

At the conclusion of the evidence no proof of malice against the owner having been adduced,

Patteson, J. observed, that there was a case now under the consideration of the judges as to how far the offence was a felony at all, unless it appeared to have been committed from malice to the owner of the animal. The Act of Parliament which rendered such proof unnecessary had been apparently repealed by the statute of 1 Vict. c. 30, s. 2. The former statute did not say that the offence should be complete, although no malice were shewn. Should the prisoner be convicted, it would be necessary, therefore, to reserve the point.

The prisoner was acquitted.

Note.—The 7 & 8 Geo. 4, c. 30, s. 16, enacts, "that if any person shall unlawfully and maliciously kill, maim, or wound any cattle, he shall be guilty of felony, and liable to be transported, &c. for life, or for not less than seven years." The 25th section of the same Act declares, "That *every punishment and forfeiture by this Act imposed* on any person maliciously committing any offence, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise." The 1 Vict. c. 90, s. 2, after reciting the 16th sec. of the foregoing Act, goes on to declare, "That so much of the said Act as relates to the *punishment* of persons convicted of any of the offences hereinbefore specified, shall be repealed;" and it then proceeds to award a different punishment. The Act of Geo. 4, therefore, not declaring the offence to be complete without proof of such malice, but merely that the *punishment* might, nevertheless, be awarded; and the statute of Vict. repealing so much of the former Act as relates to such punishment, it would seem that the 25th section has no longer any operation.—(*Reporter.*)

Tuesday, Feb. 4.

(Before the RECORDER.)

REG. *v.* WM. ASHE.

Practice.

Where a juryman is suddenly taken ill and obliged to leave the court in the midst of a trial, the jury will be discharged, a new jury sworn comprising the eleven remaining jurymen, and the evidence gone through de novo.

During the trial of this prisoner a juryman was suddenly taken ill and obliged to leave the court. He was in a dying state, and there was no probability that he would resume his duties.

The RECORDER remarked, that under the melancholy circumstances announced by the medical gentleman, it would be useless waste of time longer to delay the proceedings in the case under trial. The only question was, what should be done in the matter as it now stood. There was, he believed, no authority as to the course to be pursued under similar circumstances, though it was somewhat singular that the ordinary works of reference were silent upon the point.

Payne referred to *Rex.* v. *Ann Sealbert* (Leach's Crown Cases, 620.) This was an indictment for murder, tried at the Summer Assizes at York, in 1794, before Mr. Justice Laurence. During the trial, one of the jury was seized with a fit, and was carried out of the court in an insensible state. The judge waited some time in the hope that the juror might recover, but at length it was proved on oath that he would be unable to attend the trial immediately. Mr. Justice Laurence thereupon discharged the jury, and ordered a new jury to be sworn; the new jury being composed of the eleven remaining jurors, with the addition of another fresh juryman.

Ryland (*amicus curiæ*) said, that some years ago he

had been engaged in a trial at the Hertford Assizes, before Mr. Justice Littledale, and that when he (Mr. Ryland) had concluded the case for the prosecution, one of the jury was suddenly taken ill, and became wholly unable to remain in the jury-box. A surgeon, after examining the juror, on oath proved that it would be impossible for him to resume his duties within a reasonable time. On this evidence Mr. Justice Littledale directed another gentleman to be called and sworn, and the other remaining eleven jurors were re-sworn, and the whole of the evidence was then gone through *de novo*.

The RECORDER observed, that this was, no doubt, the proper course of proceeding, and it must be followed in the present instance.

Accordingly another juror was sworn, and his fellows re-sworn. The evidence was recapitulated by the witnesses, and the trial terminated in the *acquittal* of the prisoner.

THE LEGISLATOR.

Summary.

THE business of legislation, as usual at Easter, has proceeded slowly and with a languid spirit. Lord RADNOR has laid on the table of the House a Bill of his own framing to amend the Law of Bastardy. The Bill was read a first time.

In consequence of the closing of the office for the sale of Parliamentary papers this day (Good Friday), we have been unable to procure the paper whence we make our weekly abstract of the public and private business transacted in the House of Commons.

HOUSE OF LORDS.

BASTARDY.

MONDAY, March 17.—The Earl of RADNOR presented two petitions from magistrates of Bath and Wilts, complaining of the present state of the law as regarded bastardy. His lordship afterwards laid upon the table a Bill, not at all emanating from the petitioners, but from himself, to amend the existing law by repealing all the clauses in the Poor-Law Act of last session, excepting that which repealed the clauses in the former Bill. The effect would be to leave the law precisely as it stood before the Poor-Law Act of last session, or that which preceded it, was placed upon the statute book.—The Bill was read a first time, and the second reading was fixed for the 17th April.

HOUSE OF COMMONS.

LAW OF SETTLEMENT BILL.

MONDAY, March 17.—Mr. C. BULLER wished to ask the right honourable Secretary for the Home Department what course he intended with respect to the Bill he had introduced relative to the law of settlement?—Sir J. GRAHAM observed that the second reading of this Bill stood for the 7th of April, but he found from a communication which he had received from an honourable gentleman opposite, that it would be inconvenient to proceed with it then, in consequence of the quarter sessions occurring in many parts on the same day; he therefore would at once state that it was his intention to postpone it to the 14th of April.

CRIMINAL COURTS IN DEVON.

WEDNESDAY, March 19.—Mr. B. ESCOTT gave notice that, soon after the Easter recess, he should present a petition, from a barrister of long standing residing in the county of Devon, praying that the House would redress divers abuses and corruptions in the criminal courts of that county.

IMPRISONMENT FOR SMALL DEBTS.

THURSDAY, March 20.—Mr. H. BERKELEY gave notice that on the 10th of April he would move for leave to bring in a Bill to amend (we understood) an Act passed last session for abolishing imprisonment for small debts.

PARLIAMENTARY PAPERS.

SUITORS' FEE FUND ACCOUNT.

The following is the Return from the Accountant-General of the Court of Chancery, pursuant to the 5 Vict. c. 5, s. 63, from the 2nd October, 1843, to 1st October, 1844.

PAYMENTS.	£	s.	d.	CASH. £	s.	d.
Compensation to Five Masters at 725*l.* per annum	3,625	0	0			
Eleven Masters' Chief Clerks' Salaries, at 1000*l.* each	11,000	0	0			
Eleven Masters' Junior Clerks' Salaries, at 150*l.* each	1,650	0	0			
Total Masters				16,275	0	0
Salaries to Ten Registrars	15,900	0	0			
Compensation to ditto, under 3 & 4 Wm. 4, c. 94, s. 41, and 5 Vict. c. 53.	4,000	0	0			
Salaries to Fourteen Registrars' Clerks, less a proportionate part accrued between the death of one and appointment of another	6,792	13	3			
Compensation to one ditto under 5 Vict. c. 5, s. 53	200	0	0			
Pension to retired Registrars' Agent, under 3 & 4 Wm. 4, c. 94 s. 48	273	0	0			
Total Registrars				27,165	13	3
Master of Reports and Entries' Salary	1,000	0	0			
Clerk of Reports	200	0	0			
Two Clerks of Entries	250	0	0			
Compensation to One Clerk of Entries	100	0	0			
Salaries to Clerks of Accounts	2,550	0	0			
Compensation to the late Master of Reports and Entries	2,250	0	0			
Total Report Office				6,350	0	0
Part of Examiner's Salaries to Two Examiners at 700*l.* per annum	1,400	0	0			
Compensation to One Examiner, under 3 & 4 Wm. 4, c. 94	200	0	0			
Salaries to Examiners' Two Clerks, less a proportionate part accrued between the death of one and appointment of another	288	3	8			
Compensation to ditto	217	18	8			
				2,106	2	4
Two Clerks of Affidavits' Salaries	..	..		650	0	0
Salaries, &c. under 5 & 6 Vict. c. 84:—						
Two Commissioners in Lunacy	4,000	0	0			
Travelling Expenses	633	8	0			
Five Clerks to Commissioners	1,769	6	0			
Rent of Premises	330	0	0			
Expenses of Offices	698	18	2			
Secretary of Lunatics	800	0	0			
Four Clerks in Secretary's Office	693	19	4			
Expenses of Offices	457	15	11			
Compensation to the late Commissioner in Lunacy	480	0	0			
Ditto to the late Clerk to the Custodies	1,268	0	4			
Furniture, &c. for the Commissioners' Office	685	16	10			
				11,747	4	7
Salaries, &c. under 5 & 6 Vict. c. 103						
Six Taxing Masters	12,000	0	0			
Six Clerk to ditto	1,495	18	6			
Clerk of Enrolments	1,200	0	0			
Three Clerks to ditto	750	0	0			
Four Clerks of Record	4,800	0	0			
Twelve Clerks to ditto	3,000	0	0			
Copy Money for writing and copying in the Offices of the Taxing Masters, Clerk of Enrolments, and Clerks of Records*	6,001	7	9			
Rent of Taxing Master's Offices	800	0	0			
Expenses of Taxing Masters, Enrolment, and Record and Writ Clerks' Offices for Stationery, Coals, Candles, Servants' Wages, Insurance, Rates and Taxes, Furniture, Builders, and Surveyors for Alterations, &c.	3,990	3	5			
				34,037	9	6
Compensation for Loss of Offices and Profits to the undermentioned Offices, under 5 & 6 Vict. c. 103:—						
Five Six Clerks	7,889	11	8			
Twenty-two Sworn Clerks	30,070	4	8			
One Waiting Clerk	109	8	8			
Five Agents to Sworn Clerks	1,431	1	0			

PAYMENTS—continued.	£	s.	d.	£	s.	d.
Brought forward	39,500	6	0			
Three Clerks of Enrolments	1,233	15	0			
Two Deputy Clerks of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk	2,285	8	4			
Deputy Record Keeper and Agent	414	10	0			
Secretary of Decrees and Injunctions	49	13	4			
Receiver of the Sixpenny Writ Duty	68	0	0			
Bag Bearer	42	16	0			
Chaff Wax	19	16	8			
Sealer	17	14	0			
Messenger	12	12	0			
Ten Masters' Junior Clerks	1,716	14	4			
Clerk in the Public Office	300	0	0			
				45,661	5	8
				143,992	15	6
Excess of Fees above Charges for the Year ending Nov. 24, 1844				11,517	12	4
				155,510	7	10

RECEIPTS.	£	s.	d.	£	s.	d.
Fees received in the Masters' Offices	38,632	11	6			
" " Registrars' Office	17,020	7	6			
" " Report Office	8,218	10	8			
" " Affidavit Office	5,429	19	9			
" " Examiners' Office	2,267	18	7			
Fees received by Gentlemen of the Chamber	16	11	6			
" " for Fines and Recoveries	452	6	8			
Proportion of deceased Six Clerks' Fees	30	0	0			
Fees received at the Subpœna Office	135	0	0			
Fees formerly payable to the Lord Chancellor	1,545	5	9			
Fees received by Secretary of Lunatics	3,725	4	6			
" " Clerk to the Commissioners in Lunacy	3,321	4	8			
" " Taxing Masters	32,430	2	2			
" " Clerk of Enrolment	6,898	6	0			
" " Record and Writ Clerks	35,830	12	7			
Interest Money brought over from the Account of "The Sale of the Six Clerks' Office"	66	6	0			
				155,510	7	10

The last of the above Accounts contains the amount of the Fees received by the various Officers during the Year, and sworn to by their Affidavits, together with the amount due to such Officers during the same period; but as several of the Fees and Salaries due 25th Nov. 1844, were respectively not paid in and paid out till after that date, and also as some were paid in and paid out after the 25th November, 1843, which were due at that date, the above Account does not exactly agree with the Accountant-General's books, which are as follows:—

	Cash. £	s.	d.	Cash. £	s.	d.
Paid Salaries, &c.	173,434	2	5			
Balance of Cash on the Account, 24th November, 1844	52,920	12	0			
Balance of Stock ditto	..	..		111,781	1	7
Balance of Interest Money ditto	1,687	16	3			
Interest Money invested	6,142	16	8			
	234,185	7	4	111,781	1	7
Balance of Cash on the Account, 25th November, 1843	71,692	11	10			
Balance of Stock ditto	..	..		105,456	8	4
Balance of Interest Money ditto	4,607	2	6			
Dividends received	3,163	10	5			
Stock purchased with Dividends	..	..		6,324	13	3
Fees paid into Court during the period from 25th November, 1843, to 24th November, 1844.	154,662	2	7			
	234,125	7	4	111,781	1	7

* 618*l.* 0s. 2d. part of this sum, was not in fact due before the 7th December, 1844, but is necessarily included in this Account, as chargeable upon the Fees upon the other side of the Account.

THE SUGAR DUTIES OF FOREIGN COUNTRIES.—A somewhat important paper, purporting to contain an account of the import and export duties on sugar in France, and extracts from the recently issued table of modifications for regulating the excise duty on beet-root sugar, together with an extract from the general tariff of import duties on sugar in the United States, has been presented to both Houses of Parliament, by the command of her Majesty the Queen. It hence appears that the French import duties on the various qualities of sugar are as follows,—viz. on raw and not white sugar from Bourbon, 38*f.* 50c. (1*l.* 10s. 9½d.) per 100 kilogrammes; on raw and not white sugar from French Guiana, Martinique, and Guadaloupe, 45*f.* (1*l.* 16s.) per 100 kilogrammes; on the same quality of sugar from India, 60*f.* or 2*l.* 8s.; from elsewhere, out of Europe, 65*f.* or 2*l.* 12s.; from *entrepôts* in Europe, 75*f.* or 3*l.* On raw white sugar imported from the abovementioned places, the duties are respectively 45*f.* or 1*l.* 16s. 9¾d.; 52*f.* 50c. or 2*l.* 2s.; 80*f.* or 3*l.* 4s.; 85*f.* or 3*l.* 8s.;

and 95f. or 3l. 16s. per 100 kilogrammes. On clayed sugar of all kinds, without distinction or mode of preparation, the duties are on the produce of the same places respectively, 60f. or 2l. 8s.; 66f. 50c. or 2l. 13s. 2½d.; 80f. or 3l. 4s.; 85f. or 3l. 8s.; and 95f. or 3l. 16s. per 100 kilogrammes. It is necessary to state that the above duties exclusively apply to importations in French vessels, inasmuch as any importation from the French colonial dependencies in foreign bottoms, or by land, is entirely prohibited. On raw (not white) sugar, raw white sugar, and clayed of all kinds, imported in foreign vessels from India, or elsewhere, in or out of Europe, the duties are respectively 85f. (3l. 8s.), 105f. (4l. 4s.) per 100 kilogrammes. The export duties on all sugars are 25 centimes, or 5 2-5d. sterling, per 100 kilogrammes. So much for the general Customs' duties. Turning to the extract from the table of modifications in the French tariff of sugar duties resulting from the law of the 2nd of July, 1843, regulating the excise duty on beet-root sugar manufactured in France, it appears that on the 1st of August, 1845, the import duties on French colonial sugars will be as follows—viz. in the first type and inferior qualities from Bourbor, 38f. 50c. and on the same qualities from America, 45f.; on the first to the second type inclusive, from Bourbon, 42f. and from America, 48f. 50c.; on sugars above the second type, from Bourbon, 45f. 50c. and from America, 52f. per 100 kilogrammes. From the tables of the rates of duty to be levied upon sugars of French growth and manufacture, agreeably to the provisions of the *projet de loi* of the 2nd of July, 1843, it is found that the rate on beet-root and all other sugars capable of being crystallized will be on the 1st of August, 1845, 35f., 38f. 50c., 42f. and 45f., according to the several qualities; in August 1846, 40f., 44f., 48f. and 52f. respectively; and in August 1847, 45f., 49f. 50c., 54f. and 58f. 50c. per 100 kilogrammes respectively; it hence appearing, that whilst the import duties on French colonial sugars are to be reduced, those on French home-manufactured sugar are to be gradually, but decidedly, raised. The liquid sugars and all others not capable to be crystallized are divided into—first, syrup and concrete sugars, the duty on which, now 2f. per 100 kilogrammes, is to remain *in statu quo*: and, second, liquid granular sugars, the duty on which, now 30f. per 100 kilogrammes, will be raised next August to 35f.; in August 1846, to 40f.; and in August 1847, to 45f. per 100 kilogrammes. The extract from the general tariff of the import duties of the United States of America shews that the duties on sugar are as follows—viz. raw brown 2½ cents per lb.; candy, 6 cents per lb.; loaf and lump, 6 cents per lb.; white clayed, 4 cents per lb.; syrup of sugar, and brown clayed, 2½ cents per lb.; all others, not refined, 4 cents per lb.; and refined, 6 cents per lb. We have now given a full account of the interesting information which is to be derived from the returns before us.

RAILWAY TAXATION.—The late reports of the following railways give the following statistics for the last half-year:—Grand Junction (104 miles, capital expended 2,300,000l.), half-year's traffic receipts 229,000l., for dividend 130,000l.—paid poor-rates, tithes, church &c. 3,890l., Government tax of 5 per cent. on passengers 7,000l., besides income-tax on dividend &c.; Birmingham Railway (112 miles, capital expended 6,000,000l., on branches 500,000l.), half-year's receipts 450,000l., working expenses 182,000l., disposable balance 273,000l.,—rates and taxes 12,267l., Government passenger-tax 15,784l.; Greenwich (3¾ miles, capital 1,000,000l.), receipts (1,000,000 passengers) 27,600l., expended 27,400l., balance for shareholders 270l.—paid Government-tax 1,071l., rates and taxes 4,632l., income-tax 121l. Thus it will be seen that four railways of 440 miles in length (or 4,400 acres of land) paid in the half-year 30,146l. rates and taxes (or 6 per cent) and 39,200l. passenger-tax (or 6 per cent. further), besides stamps, income-tax, &c. on their disposable balance of 563,000l. The total amount of this taxation presses very heavily, when it is computed that there are now 2,000 miles of English railways, with a capital of 100,000,000l. and that on thirty eight of these railways (extending 1,756 miles), for the last six months of 1844, the traffic receipts were 3,250,000l., being about 4,000l. per mile per annum; from which deduct 1,600l. for working expenses, and there is left 2,400l. per mile per annum, or nearly 2,000,000l. for dividend.—*Railway and Land Taxation.*

PUBLIC PETITIONS TO PARLIAMENT.—On Friday was printed, by order of the House, the sixth report of the Select Committee of the Commons on "Public Petitions." It appears from their summary, that there are already lying on the table (amongst others), a petition, signed by 83 persons, against any further grant for the purpose of education in Ireland, —presented by Mr. J. P. Plumtre; 18 petitions, signed by 1,753 persons, for encouragement to the Church Education Society in Ireland; 4 petitions, signed by 438 persons, against the contemplated amalgamation or union of the dioceses of Bangor and St. Asaph; 15 petitions, signed by 6,809, persons, praying that, in any relief from taxation which may be given, the House will take the first opportunity of granting relief to the agriculturists; 18 petitions, signed by 1,528 persons, for a repeal of the malt duty; 20 petitions, signed by 1,690 persons, against the renewal of the property and income-tax; 11 petitions, signed by 3,420 persons, for a repeal of the tax upon windows; 2 petitions, signed by 9,598 persons, for a repeal of the Charitable Donations and Bequests (Ireland) Act, passed last session; 13 petitions, signed by 1,747 persons, in favour of a Bill for the establishment of local or county courts; 8 petitions, signed by 1,624 persons, for a repeal of the game laws; 1 petition, signed by 1,424 persons, for an alteration in the laws relating to the health of towns; 9 petitions, signed by 309 persons, against the Medical Bill of 1844; 56 petitions, signed by 1,993 persons, for an alteration in the Medical Practice Bill of 1844; 11 petitions, signed by 935 persons, praying that no increase whatever may be allowed in the naval force of this country (as contemplated by the Government now in power), but that, on the contrary, prompt measures may be taken greatly to reduce the existing naval and military establishments; 3 petitions, signed by 437 persons (male and female), stating that there is a large class of persons in the principal towns in the United Kingdom who make a trade of, and live by promoting promiscuous intercourse between the sexes; complaining that no adequate punishment is provided for this crime, heinous as it is; and praying that the House will render trading in vice in the manner referred to a highly penal offence, and that the magistrates and police officers may be invested with such summary powers of proceeding, in cases of suspected delinquency, as to enable them not only to detect guilt, but to bring it to certain and condign punishment; 38 petitions, signed by 7,358 persons, praying the House to adopt measures for preventing the increase of houses licensed for the sale of intoxicating drinks, and for diminishing to a very great extent the number already existing, and to pass a law for the entire abolition of the sale of such beverages on the Lord's day; and 14 petitions, signed by 4,874 persons, for a redemption of the tolls on the bridges of Waterloo, Southwark, and Vauxhall.

DWELLING-HOUSE AND WINDOW TAX.—By a return to an order of the House of Commons, dated the 18th of February, 1845, it appears that the total number of dwelling-houses in the United Kingdom at the census of 1841, was as follows:—In England, 3,144,641; in Ireland, 1,384,360; and in Scotland, 529,524; being a total of 5,058,525. The number of houses assessed to the window-duty during the same year was, in England, 414,395; and in Scotland, 33,025; total 447,420. Whilst the amount of duty was, in England, 1,716,331l. for the year 1841, and 1,618,932l. for the year 1844; in Scotland, 114,126l. for 1841, and 124,468l. for 1844; making together a total of 1,830,457l. for 1841, and 1,743,400l. for 1844. It should be remarked that this return does not include the dwelling-houses in the British isles.

REAL PROPERTY.—A return has been obtained by order of Parliament, on the motion of Mr. Villiers, shewing the total annual value of real property in each county of England and Wales assessed to the property and income-tax for the year ending April, 1843, distinguishing that on land, houses, tithes, manors, fines, quarries, mines, ironworks, fisheries, canals, railways, &c. It hence appears that in England and Wales alone, the grand total annual value of real assessed property amounts to the enormous sum of 85,802,735l. thus subdivided, viz.- lands, 40,167,088l. (or nearly one-half); houses, 35,556,399l.; tithes, 1,960,330l.; manors, 152,216l.; fines, 319,140l.; quarries, 207,009l.; mines, 1,903,794l.; iron-works, 412,022l.; fisheries, 11,104l.; canals, 1,229,202l.; and railways, 2,417,609l.; other property, not comprised in the foregoing, 1,466,815l. A similar return as to Scotland gives a grand total of 9,481,762l. viz.—lands, 5,586,527l.; houses, 2,919,338l.; fines, 901l.; quarries, 33,474l.; mines, 177,592l.; iron-works, 147,412l.; fisheries, 47,809l.; canals, 77,891l.; and railways, 181,333l. The other property not included in the foregoing details amounts to 309,480l.

WINDOW TAX.—It appears by a parliamentary paper, printed by order of the House of Commons, on the motion of Captain Pechell, that the produce of the window-duty for the five years ending April 5, 1844, was respectively as follows:—1840, 1,486,023l.; 1841, 1,774,638l.; 1842, 1,775,151l.; 1843, 1,776,789l.; 1844, 1,786,514l.

THE NEW SETTLEMENT BILL.—The Hoxne Union, in Suffolk, last week unanimously decided to petition against the Settlement Bill; and on Tuesday the Desswade Union, in Norfolk, by a large majority (above 30 against 5) came to the same decision. These two unions join the Wangford Union; the Hoxne also touches the Blything Union. The Braintree Union, in Essex, and the Steyning Union, in Sussex, are to consider the question this week.

THE MAGISTRATE.

Summary.

THE chief event of interest which has offered during the past week is the announcement by Sir JAMES GRAHAM of *an amendment* to the now famous Amendment Bill. The second reading of the new Settlement Bill, which stood for the 7th of April, is postponed to the 14th of that month. Some remarks on a subject of great hardship, if not injustice, to prisoners, will be found below, and to which we invite attention.

THE NEW SETTLEMENT BILL.

WE resume our review of this much-discussed measure.

Sec. 37 provides for the notification of unions thus parochialized in the *Gazette*, and to the clerks of the peace of every county in which any part of them may be situated.

The following sections may be thus briefly enumerated:—

Sec. 38. Guardians and their officers to proceed in matters of settlement and removal. Sec. 39. Guardians to take up such proceedings commenced before this Act. Sec. 40. Commissioners to declare the averages of such unions for seven years ending March 25, 1845. Sec. 41. Proviso for cases where moneys have been irregularly applied in relief of the poor. Sec. 42. After the declaration of averages, the expenses of the union to be charged on the respective parishes according to such averages. Sec. 43. Overseers to continue to relieve in sudden and urgent cases. Such relief to be charged to the respective parishes. Sec. 44. Proviso for the repayment of loans, already partly discharged, but in different proportions by different parishes. Sec. 45. Certain penalties for offences against parishes extended to unions for settlement. Sec. 46. Boards of guardians of single parishes may act in matters relating to the settlement and removal of the poor.

Such are the provisions which chiefly characterize the new Bill, and have elicited so much philanthropic sensation in behalf of the parochiality of paupers. We have attentively reconsidered the above clauses, and are still more disposed to adhere to our first impression, that these provisions would not produce any of that disruption of local feeling and neighbourly sympathies to which we attach the highest importance, and any real disturbance of which we should most strenuously denounce. But we cannot understand how this is to follow from enlarging the nominal area of the district within which paupers are not removable; for to this, and to this alone, the matter comes. Do they less belong to their parish than they did? Not the least; for it will be because *their* parish is in union A, that they are removed there; all the proofs of their settlement will equally relate to that parish, for they will be settled, in point of fact, in union A, in virtue of the parish to which they belong, and must continue to belong. True it is that by a very ill-advised provision, the expense of their maintenance is to be charged on the parish in proportion to the average it had previously paid during the seven years ending on the 25th instant, and not according to its existing charges; but does a man less belong to his parish because there is a new apportionment of the burden of pauperism among eight or ten of the surrounding parishes in which his own is included? If it were now for the first time enacted that paupers were to be sent to and relieved at the union workhouses out of their own parishes, there might be more truth in this outcry; but it happens that that is and has been the case for these ten years past. We do not see any extension of this system in the Bill before us. Paupers who are removed to the union workhouse under this Bill, would equally have gone there under the present law, and they will go there in virtue of their having gained a settlement in their own parish, whatever may be the wording of clause 33. The cry of unparochializing the poor is a mere partisan cry, and one which we think the country will do well to disregard. There is, however,

this benefit in the provision, which we commend, as far as it goes; it diminishes removal and litigation; for within each union, the parishes there cannot remove to one another: and it is between neighbouring parishes that removals and appeals are always most frequent. This is a great gain; and not to be counterbalanced by the lamentation that John Snooks belongs to union A, instead of parish B; when in point of fact he belongs to parish B as much as he ever did.

One great objection to the Bill is, that, after all, it is merely botching a bad system. We want to see removals done away with. We wish the poor to be chargeable to the parishes where they become chargeable. We do not believe that the interest of the labourer would ever admit of any great migration, unless there was demand for employment to warrant it. It might have been otherwise in the days of Charles II. when the land was half cultivated; but the law to remedy this has lasted 200 years, and has far outlived its necessity. The demand and supply of labour will always regulate the transition of labour. If the vicissitudes of trade should leave an influx of labourers suddenly impoverished in any place which had attracted them there, it is fair that such place, having had the benefit of their labour, should have the burden of their relief. The entire cessation of all the expenses of removal and appeals would clearly be a great gain. To this plan of ours we have received no objection among the several communications made to us on the subject.

One correspondent alone objects to our secondary proposal that the rates of each year should be apportioned on each parish according to their charges during each preceding year. In a letter signed J. T. R. 4 Law T. 405 (Feb. 22, 1845), occurs the passage—"The labour of farms is performed by the residents of their outskirts—for instance, the parishes of Shoreditch, Bethnal-green, Stepney, and many others contain an immense population of poor labourers. Would you propose that this poor population should be supported by the ratepayers of those parishes, while the rich residents of the parishes in the heart of the metropolis are to be unburdened with any poor at all?" Is it otherwise now? Are the rich parishes of London in the practice of supporting the poor of Shoreditch, &c.? We think not; and that the objection falls to the ground. It may be hereafter a question how far means might be adopted for a more equal distribution of the burden of poor-rates, but we deem it very important to give to each parish a direct interest in the diminution of pauperism, and to induce those who have or hold land to find employment for the labourers in their parishes. The moment that the rates are borne by the country at large, it becomes rather the interest of the parish to ease itself by sending all superfluous labour to a relief fund, no longer levied on the individual parish in proportion to its paupers, but regarded as a general reservoir, out of which each parish would strive to clutch the largest share. We have here somewhat strongly sketched the general features of the evil we most dread; but, on the other hand, we are not insensible of the defects which might attend the plan we propose. We do not offer it as perfect; but we do think it a material improvement on the present system.

When Sir James Graham's new Bill is again under discussion, we shall not fail to revert to it. In the interim we strongly advise those concerned in its operation to consider well its various provisions, and consider also the expediency of memorializing the Home-office against such parts of the measure as seem open to serious objection. In our humble judgment no part of the Bill deserves so much condemnation as the fixing of all future rate payments by the standard of the last seven years. The Tithe Act is far less absurd, for that goes by a floating period of the next preceding seven years; but to levy the rates of 1850 according to the proportion of 1838-45 does appear to be a most monstrous absurdity, and one liable to all the objection we have just stated to a national rate, as well as to the inevitable injustice arising from a fluctuating population. *S.*

NEW BASTARDY AMENDMENT BILL.

Sir James Graham has perceived the chance given by his Bill to the putative fathers to escape through the holes in Mr. Lumley's net; and he has announced an amendment of the Amendment Bill, so as to preclude any one from taking objections to formal defects in existing orders. We dare say there will be further amendments yet. We beg respectfully to suggest one which appears to us much wanted, in order to perfect the measure; it is, simply to relieve the Court of Queen's Bench of all further jurisdiction in poor-law matters, and to institute a new court of parochial appeal, of which we further beg leave to suggest that Golden Lumley, Esq. be made judge; of course without appeal from his lordship's judgments. This will save much trouble, and avoid the necessity of many future Acts of Parliament, by legalizing Lumleyism, prospectively as well as retrospectively.

As Parliament will legalize orders known to be illegal, it can have no scruple in making that law which may accidentally be not unlawful. We cannot lament that means be taken to relieve persons from dilemmas and difficulties, who are innocent of their causes; but we must seriously protest against the system of using Parliament for these purposes.

Some persons imagine we are not justified in treating Mr. Lumley with so much lenience and levity, under all the circumstances of the case. We do not think so. Mr. Lumley is, we believe, a gentleman of correct feeling and honourable mind; in having denounced his errors, so far as they were public and mischievous, we were warranted by every duty arising from our position and his responsibilities; but not one step further could or would we go. Besides there are others who are equally to blame.

DEPOSITIONS AGAINST PRISONERS.

A hint to magistrates on this subject is required. A practice has grown up of late of omitting to bring all the witnesses against a prisoner before the committing magistrate, and springing a mine under him by the production of evidence at the trial, of which no deposition had been taken. This may be legal, but it is a most unfair course, and clearly repugnant to the spirit and intent of the statute, which Lord Denman, C. J. in *Rex* v. *Grady* (7 Car. & Pay. 650) said was "to enable prisoners to know what they had to answer on their trial." At the last Quarter Sessions for Gloucestershire, a second indictment, charging a similar offence on another day to that laid in the first indictment, was preferred without any depositions whatever. The counsel for the prisoner moved to quash the indictment before plea, on the authority of the above case, citing also *Reg.* v. *Wilson* (1 Bt. & Sym. 164) to shew the jurisdiction of the Court. The Court seemed disposed to regard the case as one of hardship, but, inasmuch as there was an established usage to prefer indictments without depositions, the Court refused to interfere. If they were warranted in so refusing, the Legislature ought to interfere. Nothing can be more repugnant to justice than such conduct. The Court, in the case referred to, offered to allow the trial to be postponed, but that is a poor consolation to the prisoner, who may not be thereby enabled to improve his position, for how is he to enforce a disclosure of the evidence intended to be brought against him?

Subsequently the same objection was taken by the counsel for a prisoner at the last Herefordshire Sessions, against whom two witnesses were called without depositions. He complained most strongly of the injustice in his address to the jury. Mr. Barneby, M.P. who presides in that court, in summing up, approved of the animadversions thus made, and denounced the practice as most improper. It is clearly unjust, and ought to be scrupulously avoided.

Where really important evidence transpires after the committal, such evidence ought of course to be produced, but never without giving due notice of it to the prisoner or his legal adviser. A short Act providing for these cases, ought to be at once introduced. Mr. Ewart would much more profitably employ himself upon such a measure than on his counsel address measure. S.

INFORMATIONS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Your opinion (signed S.), 4 Law T. 423, states that "all *informations* should be on oath, whether the statute require it or not." I presume you mean "evidence," instead of "informations." You refer to 4 Law T. 343, where the point is rightly set forth as to evidence, and where also you have inserted a judicious note at the foot of the page, denying the propriety of taking *informations* on oath, unless where required by statute.

Your obedient servant,

March 3, 1845. W. P. P.

[Our correspondent is quite right, and we are obliged by the opportunity of correcting the erratum.]

THE LAWYER.

Summary.

There is nothing of special interest to offer. Mr. Berkeley, in the House of Commons, has given notice of his intention to bring in a Bill for amending the Act of last session for abolishing imprisonment for small debts. To this measure we shall look with curiosity and interest. The conclusion of the summary on decisions of last Term is presented below.

REVIEW OF THE CASES DECIDED IN ALL THE COURTS OF COMMON LAW,

During Hilary Term and Vacation, 1845.

(*Continued from page 460.*)

EXECUTION.

Meaning of "debt" in 7 & 8 Vict. c. 96, s. 57.—In *Fitzball* v. *Brooke* (4 Law T. 355) the protection given by Lord Brougham's Act to defendants in "actions for the recovery of any debt," where less than 20*l.* is recovered, was held to extend to cases of actions for penalties under an Act of Parliament, where less than 20*l.* was recovered upon judgment by default, although, had the action been tried, the jury might have given greater damages. The statute there was 3 & 4 Wm. 4, c. 15 (the Dramatic Property Act), making every person performing pieces without the leave of the proprietor of the copyright liable "for each and every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from any such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages." This decision shews that a contract between the parties is not essential to constitute a "debt" within the meaning of that Act.

HABEAS CORPUS.

That which will be known to posterity as "The Jersey case," has already given rise to one decision of general importance.

There can now be no doubt that, under statute 1 & 2 Vict. c. 45, any judge of the superior courts can issue a writ of *habeas corpus*, returnable in any of the other courts, and the affidavits upon which such writ is issued are rightly entitled in the court of which the judge is a member. (4 Law T. 353.)

HIGHWAYS.

It seems that a collector of highway rates is liable to an action for money had and received, if he refuses to hand over, on demand, the surplus arising from a distress, and that he is not entitled to notice of action under the Highway Act. (*Charrington* v. *Johnson*, 4 Law T. 398.)

HUSBAND AND WIFE.

A husband does not reduce a chose in action belonging to his wife, as a promissory note given to her *dum sola*, into possession, by receiving interest upon it in her lifetime. He is, therefore, an admissible witness in an action by her administrators to prove such payment of interest. (*Hart* v. *Stevens*, 4 Law T. 453.)

JUDGMENT.

In practice it has been considered that an action of debt would lie upon a judgment of any Court, whether of record or not; and this has now been distinctly decided in the case of *Williams* v. *Jones* (4 Law T. 319). "Whenever," said Mr. Baron Parke, "a Court of competent jurisdiction has decided that a defendant owes money to a plaintiff, debt will lie."

LANDLORD AND TENANT.

There is nothing very important to comment upon in this branch of the law. The principal case, *Counter* v. *Crane* (4 Law T. 449), although a decision of the Privy Council on an appeal from the Governor-General of Canada in Council, may be referred to in our summary, as, to use the words of the judgment delivered by Mr. Pemberton Leigh, "there would be no difference upon the main question between the decision of a court of law and a court of equity." The facts were briefly these. The appellant had contracted to demise certain premises for a term to the respondents, and, prior to the commencement of the term, to repair the old premises and build a new warehouse, and the rent was to be proportioned to the sum so laid out. The premises were not fully repaired or built at the time fixed for the commencement of the term, but the respondents had occupied the part that was finished. Before the execution of the lease and the completion of the premises, they were destroyed by fire. The respondents then refused to accept a lease unless the premises were rebuilt. The appellant then obtained a decree for specific performance in the Court of Chancery in Canada, which was reversed on appeal by the Governor in Council. He then brought the case before the Privy Council. The appellant's claim was rested upon the admitted principle, that a party who has entered into a binding contract for the purchase of an estate becomes in equity the owner of it, and is entitled to any profit and subject to any loss that may afterwards occur to it; and it was said in this case, although the period at which the works were to be done had passed before they were completed, yet that the respondents had waived any objection on that score, and the contract was still subsisting, and the principle was to be applied. A recent and very forcible illustration of this principle is afforded by *Vesey* v. *Elwood* (3 Drur. & War. 76), where a purchaser of a life annuity sold under a decree in equity, was held bound to pay the purchase-money, although the life dropped before, according to the course of practice, the purchase could have been confirmed in the Master's office.

But the Privy Council dismissed the appeal. They held that the general principle did not apply here, because, although the contract to take a lease might be treated in equity as an actual lease, it could be only so treated, subject to the condition that the warehouse and premises were put into the state agreed upon. The right to object for the non-performance within the time, had been waived by the respondents, but not the performance of the contract by the appellant. The respondents were to receive a complete building at the commencement of the term, and to restore a complete building at the end of it, and pay a rent proportionate to the expenditure. Had there been no fire, the appellant could not have required a specific performance before the buildings were finished; and why, then, should the fire increase his rights? Two modes were suggested by the appellant, by which substantial justice might be done; these were both considered as contrary to the principles upon which a court of equity acts, which were thus expressed:—"This would clearly be to impose on the parties a contract which they never entered into either by expression or implication; and although where a binding contract is subsisting, the completion of which in its exact terms becomes impossible, through accident, without any default of the party seeking relief, a court of equity will struggle with points of form, it cannot for that purpose alter the substance of the agreement, or impose upon either party obligations totally different from those which, by the agreement he had contracted to perform."

Penal rent.—A clause in an agreement that the tenant shall not break up or convert into tillage any meadow or pasture land under the penalty of 20*l* an acre, and so in proportion for a greater or less quantity, *to be recovered by distress, as for rent in arrear*," and "that he would not sell any hay, straw, or stubble produced upon the said premises under the penalty of 2s. 6d. for each yard of hay, and of 20s. for each cartload of straw or stubble, *to be recovered as aforesaid*, gives the landlord a power of distress. (*Pollitt* v. *Forrest*, 1 Car. & Kirw. 560; 4 Law T. 397.) But the Court of Exchequer considered that justifying in the words of the agreement was incorrect, the words "as for rent" rather implying a penalty, and that it should have been pleaded as rent. In *Chapman* v. *Beecham* (3 Q.B. 723), an avowry under a deed which gave to the defendant, if certain arrears of interest were due, power to enter and distrain; that he entered and took, and "as for and in the name of a distress," was held good as an avowry of leave and license.

Waiver of forfeiture.—*Doe dem. Muston* v. *Gladwin* (4 Law T. 432) well illustrates the principle that the courts of law must give effect to the plain legal meaning of deeds and agreements, however harsh, or even, morally speaking, unjust they may consider the proceedings. If any covenant in a lease giving a right of re-entry upon breach be broken, the landlord may avail himself of it in law, notwithstanding he has given a parol license to the tenant to commit the breach. The same principle applies to a composition deed, containing a proviso that it shall be void (*i. e.* voidable) upon non-performance of the terms. (*Hyde* v. *Watts*, 12 M. & W. 254.)

LICENSE.

Wood v. *Ledbitter* (4 Law T. 434) is at once the most elaborate and the most interesting judgment given during last Term. The simple question for decision was, whether Lord Eglintoun had power to remove the plaintiff from the inclosure and grandstand at Doncaster, when he had purchased a ticket issued with the privity of his lordship, purporting to give permission of ingress, egress, and regress there during the races. This right was held to be such a right affecting land, that it could be conferred only by deed. But the plaintiff, who had brought this action for trespass against the officer who had removed him, contended that, without being a grant, it was a license irrevocable. This led the Court to examine the cases fully, and to deliver a most luminous and learned judgment as to the nature of licenses in general. For the examination of the cases *Webb* v. *Paternoster* (Rolle, 143); *Wood* v. *Lake* (Sayer, 3); *Taylor* v. *Waters* (7 Taunt. 374); and *Wood* v. *Manley* (11 A. & E. 34), we refer our readers to the judgment itself, confining ourselves now to the principles established by the judgment. A license, then, is properly that which only makes an action lawful which would otherwise have been unlawful without it, but does not confer any property or pass any interest. Such a license, whether under seal or coupled with a grant invalid for not being under seal, is revocable at any time at the mere will and pleasure of the licenser; but if it be coupled with a grant, whether by parol or by deed, assuming that the grant be a valid one, it is irrevocable. The illustrations put by the Court are as follows:—

Thus a license by A to hunt in his park, whether given by deed or by parol, is revocable. It merely renders the act of hunting lawful, which, without the license, would have been unlawful. If the license be, as put by Chief Justice Vaughan, a license not only to hunt, but also to take away the deer when killed to his own use, this is in truth a grant of the deer with the license annexed to come on the land; and supposing the grant of the deer to be good, then the license would be irrevocable by the party who had given it. He would be estopped from defeating his own grant or act in nature of a grant. But supposing the case of a parol license to come on any land, and there to make a watercourse to flow on to the land of the license; in such a case there is no valid grant of the watercourse, and the license remains a mere license, and therefore capable of being revoked. On the other hand, if such a license were granted by deed, there the question would be on the construction of the deed, whether it amounted to a grant of the watercourse, and if it did, then the license would be irrevocable.

In the principal case it was held that the ticket was only a license, and therefore liable to revocation. It was a right by way of easement, but no interest was incident to the act permitted.

MANDAMUS.

Objection to writ, when to be taken.—Since the 6 & 7 Vict. c. 67, which assimilates the proceedings on a demurrer to the return to a mandamus to the proceedings in a common action, it is important to have it established, as it was in *Clarke* v. *Leicestershire Canal Company* (4 Law T. 435), that the authority of the Court to grant the mandamus may be disputed at any stage of the proceedings.

Where mandamus will not lie.—A mandamus does not lie to order the gaoler of the Queen's Prison to pay a certain sum weekly out of the fund for poor prisoners to a poor prisoner in his custody, the regulation of the prison being in the Secretary of State, according to Act of Parliament. (*Reg.* v. *Hudson*, 4 Law T. 353.)

PATENT.

Substitution of chemical equivalent substances.—A very important principle as to the infringement of patents depending upon chemical science, was laid down in *Heath* v. *Unwin* (4 Law T. 294). The particular nature of the patent and the alleged infringement need not be detailed, but the principle established was, that if a party substitutes for a part of a patent invention a well-known chemical equivalent, that is a mere colourable variation and an infringement of the patent; but where neither the world in general nor the defendant is aware that the substances substituted are equivalent, and where the defendant had no intention of imitating the patent invention, there is no infringement of the patent, either direct or indirect.

PLEADING.

We do not give questions of pleading in detail in these reviews; but we may just refer to one or two points decided during the last Term. The old opinion, that a man shall not be allowed to stultify himself, has been upset, at least so far as to allow a man to plead drunkenness (*Gore* v. *Gibson*, 4 Law T. 319; 9 Jur. 140), when sued as the indorser of a bill of exchange. The reasons in favour of lunacy at the time of contract being a good plea, would be still stronger, for drunkenness is a voluntary act. An interesting note is given by the learned reporter in the *Jurist*, tracing the course of the old doctrine; but he concludes by saying, that by the principal case, a contract entered into in a state of complete intoxication is *void*. We apprehend that "voidable" would have been more correct. It is clear, from the case, that the plaintiff was the immediate indorsee of the defendant, and it is not decided that such a plea would be good against a remote indorsee, as in the case of bills or notes for gaming consideration prior to the 5 & 6 Wm. 4, c. 41. The distinction laid down by Pollock, C. B. must also be borne in mind, that such a plea would only be an answer to an action on an express contract, and not to one founded upon a contract implied in law, or for the supply of necessaries, on which ground *Baxter* v. *Earl of Portsmouth* (5 B. & C. 170) was decided.

An ingenious but unsuccessful attempt was made in *Nordenstrom* v. *Pitt* (4 Law T. 357), to bring error upon the common count for interest, for not alleging that the money was forborne at interest.

In an action for a deceitful representation on a sale, *e. g.* of the goodwill of a trade, not guilty puts in issue the sale as well as the deceit. (*Mummery* v. *Paul*, 4 Law T. 373.)

PRACTICE.

There are numerous points of practice which are to be recorded in the present review. As before, we have arranged them alphabetically.

Acceptance of costs.—Acceptance of costs under a judge's order, after a rule *nisi* has been obtained to rescind it, precludes the party receiving them from making it absolute. (*Simmons* v. *King*, 4 Law T. 355.)

Affidavit.—It was held in *Cass* v. *Cass* (4 Law T. 315), by the Court of Common Pleas, that it is no objection to the jurat of an affidavit that it states the affidavit to be sworn at the judge's chambers in the county of Middlesex, without there is an affidavit that there is no place in Middlesex called the judge's chambers. Similar allegations are required when a writ of summons is objected to as not containing the name of the county. (*Lewis* v. *Newton*, 4 D. P. C. 355.)

Amendment of record.—*Melhuish* v. *Richardson* (7 B. & C. 819), followed by the recent case of *Cheese* v. *Scales* (1 D. & L. 657; 2 Law T. 426, 448), establishes beyond question that each Court of Record has full jurisdiction over its own records, and that the propriety of amendments made in them cannot be disputed in a court of error. But in *Jackson* v. *Galloway* (4 Law T. 334), the Court of Common Pleas expressed their strong opinion, that, after the Court of Error has pronounced judgment, the power of amendment ceases. No case but *Rex* v. *Carlile* (2 B. & Ad. 302) was cited in which such an amendment had been made. It was there done with the consent of the Crown,—which would, we apprehend, make no difference, for consent cannot give jurisdiction—but it is remarkable, that subsequently an application to the Court to allow *Rex* v. *Carlile* to be reheard, was refused (2 B. & Ad. 971), as was stated, because they doubted whether they had any power, even with consent, to alter the judgment of a preceding Term, and no precedent could be found. It would be strange then, if, not possessing the power to alter the judgment, they should be able to amend and alter the

issues to which the judgment refers, and so indirectly alter the judgment. In the principal case, even admitting the power, the lapse of two years was a sufficient answer.

Error.—A defendant who *non pros's* a plaintiff in error is entitled to enter the writ of error and the judgment upon the original record, under 11 Geo. 4 & 1 Wm. 4, c. 70. (*Reg.* v. *Birch*, 4 Law T. 292.) The defendant in error is bound to allow the plaintiff to have access to the *postea*, in order to complete the roll, or the plaintiff may himself bring in the roll and obtain a rule to compel them to complete it; but he cannot, before it is brought in, obtain such a rule. (*Newton* v. *Holford*, 4 Law T. 331.)

Judgment non obstante veredicto. — Judgment *non obstante veredicto* cannot be obtained where the other party is entitled to judgment upon the whole record. The loss of costs which may result from this is the punishment of the party for not demurring. (*Willoughby* v. *Willoughby*, 4 Law T. 320; *Harvey* v. *Pritchard*, 4 Law T. 338.)

New Trial.—*Wait* v. *Simeon* (4 Law T. 295, 338) was a novel application to the Court to allow a judge's order for stay of proceedings on payment of debt and costs, drawn up with the consent of the parties, to be rescinded, on the ground that the defendant had since obtained the evidence necessary to prove the pleas alleging gambling consideration. The order was rescinded on payment of costs, the sum claimed to be paid into court, and bear interest at 5 per cent. if the plaintiff ultimately succeeded. As Alderson, B. suggested, it was like a motion upon new facts after verdict; but it seems to be opposed to the case of *Hall* v. *West* (1 Dowl. & Lownd. 421; 2 Law T. 295), where the Court of Exchequer held, that they had no power to alter or rescind a judge's order which contained the words "by consent," although, in fact, they had been improperly inserted. Possibly, in the principal case these words were not inserted, a point on which we should be glad to be informed.

Where the substantial object of a new trial moved for by the plaintiffs, is to enable them to increase their damages, the Court will impose upon them the payment of the costs, although it might also have been obtained for the improper objection of evidence. (*The Fishmongers' Company* v. *Robertson*, 4 Law T. 313.)

Where the attorney for the plaintiff expressly swore at the trial that he was retained by him, the defendant may obtain a new trial upon an affidavit of the plaintiff himself that the statement was false. (*De Bernardy* v. *Grimston*, 4 Law T. 314, 399.)

New trial cannot be had by one defendant only.—There is some conflict between the cases on this point (Chitty's Archb. 1099); but in *Doe dem. Mudgeon* v. *Chapman* (4 Law T. 419) it was laid down that one defendant dissatisfied with the verdict should move to set it aside as to all. The reason, however, given in *Price* v. *Harris* (10 Bing. 331), where a motion by the *plaintiff* to set aside the verdict as to some of the defendants, was granted, would still seem to apply where the plaintiff moves; for it would be hard if, because one defendant has been improperly joined, that therefore a manifestly wrong verdict as to the others should be allowed to stand.

After trial before sheriff.—Where a motion for a new trial in an action tried before the sheriff is applied for solely as being against evidence, the rule laid down by the judges (4 M. & Scott, 485) requiring an affidavit of the circumstances, where no counsel was employed, does not apply; the sheriff's notes are quite sufficient. (*Keening* v. *Ackerman*, 4 Law T. 340.) It will be a sufficient answer by the defendant to a motion by the plaintiff for a new trial, because the verdict was against evidence, that leave was reserved to him to move to enter a nonsuit, if the Court see that such a motion, if made independently, would have been successful. (*Mummery* v. *Paul*, 4 Law T. 373.)

Payment into court.—In an action of trespass for breaking into the plaintiff's house and assaulting and beating his son, money may be paid into court. The assault and battery excepted in 3 & 4 Wm. 4, c. 42, s. 21, means a personal injury to the plaintiff, and the exception of an action for debauching the plaintiff's servant or daughter excludes by implication an action for beating a servant. (*Newton* v. *Holdford*, 4 Law T. 358.) The Court will not allow a payment into court, by which the defendant seeks to bring himself within the protection of Lord Brougham's Act. (*Brown* v. *Short*, 4 Law T. 339.)

Relinquishment of plea.—More than a twelvemonth ago we brought before our readers the case of *Hutton* v. *Turk* (2 Law T. 74), which has not yet been reported anywhere else, by which it was decided that a plea may be withdrawn after it has been demurred to, but before joinder in demurrer, without payment of any costs. We then suggested —which we again repeat—that this stratagem of pleading should subject the party to costs; but as yet no rule of Court has been issued on the subject. In *M'Intyre* v. *Miller* (4 Law T. 358) a plea had been thus relinquished; but in making up the Nisi Prius record, the plea, the demurrer, and the *relictâ verificatione* were entered with the rest. After verdict, the defendant brought error, alleging that the plea had never been disposed of, and that the *relictâ verificatione* was a mere nullity. On a rule for execution, notwithstanding the writ of error, the case of *Hutton* v. *Turk* was cited by *Bovill* as *amicus curiæ*; but although the Court seemed to consider that the form adopted was authorized, yet they would not say that the objection to its insertion in the *nisi prius* record was manifestly frivolous. On a subsequent day, however, a summons was taken out before Mr. Baron Alderson to strike out the plea and proceedings from the record. He thought it too important a matter to be decided at chambers, and adjourned it to the Court then holding sittings after Term, where the other judges would sit as his assessors. (4 Law T. 376.) It was then decided that, after the *relictâ verificatione*, the proceedings ought not to have been entered upon the record. The amendment was, however, allowed, upon payment of the costs of the application and the writ of error (which included two other probably frivolous grounds), if abandoned in three days.

Repleader.—A repleader will not be granted after a verdict upon an immaterial issue, if other material issues going to the whole cause of action are disposed of upon the record. (*Willoughby* v. *Willoughby*, 4 Law T. 320.)

Resealing record.—It should be borne carefully in mind that, whenever a cause is made a remanet from one sitting to another, the record must be resealed before the commencement of the sitting to which it stands over. (*King* v. *Tress*, 4 Law T. 355; 9 Jur. 105.)*

Return day of writ of trial.—There is no limitation imposed in terms by the 3 & 4 Wm. 4, c. 42, as to the period within which a writ of trial is to be returned; but if the plaintiff inserts a day so distant as that the defendant will be prejudiced thereby, the Court will order the officer of the Sheriff's Court to return it earlier. (*Billing* v. *Railton*, 4 Law T. 359.) The writ of trial had been obtained on the 3rd of January, and the action tried on the 7th, but it was not returnable until April 15.

Security for costs.—Before issue joined, it is not essential in an application for security for costs, that it should be made as soon as the knowledge of the plaintiff's residence abroad is acquired. (*West* v. *Cook*, 4 Law T. 375.) A defendant, under an interpleader rule, may move for security for costs like any other defendant. (*Benazech* v. *Bessett*, 4 Law T. 374.)

Suggestion to deprive plaintiff of costs.—It was thrown out by Mr. Justice Williams (1 Dowl. & Lownd. 820) that a motion for a suggestion to deprive the plaintiff of costs should be made within the same time as a motion for new trial; but in *Harding* v. *Howard* (4 Law T. 341) Mr. Justice Wightman said that the motion was in time after that period had elapsed, if before final judgment and taxation of costs. (See 4 D. P. C. 157, and Review, *suprà*, vol. 2, 447.)

Writ of summons.—Although it is not essential that the residence of the defendant be correctly stated (*Windham* v. *Fenwick*, 11 M. & W. 102), yet the place of the supposed residence must be described to be within the right county, and, therefore, a writ directed to T. H. of Wilson-street, Finsbury, in the city of London, is irregular. (*King* v. *Hopkins*, 4 Law T. 339.) In the same case it was held that the person at whose house a writ has been left for the purpose of supporting a *distringas* is entitled to treat it as a service upon him, and to apply to set it aside as irregular. So in *Stevenson* v. *Thorne* (2 Dowl. & Lownd. 230; 3 Law T. 205) a party was held to be entitled to set aside an irregular writ which had been served upon him, although in the affidavit he described himself differently from the description given in the writ.

PRISONER.

Charging prisoner in execution.—The 5 & 6 Vict. c. 22, which abolished the Fleet Prison, and constituted the Queen's Bench Prison the only prison for debtors, has not altered the practice as to charging in execution a prisoner in custody on a criminal charge. The Courts of Common Pleas and Exchequer had no such power, because they were unable to change the custody and commit the defendant again upon the criminal matter. (*Jones* v. *Danvers*, 5 M. & W. 234; Chitty's Archb. 854.) And in the Queen's Bench the practice was for the party to be brought up by a writ issued out of the Crown side of the court. This disability of the other courts and the practice in the Queen's Bench still exist. (*Gibb* v. *King*, 4 Law T. 292.)

In execution for costs in ejectment.—But for the fact that the point was again raised in *Doe dem. Simons* v. *Rice* (4 Law T. 340), we should have thought that it was quite clear that the 48 Geo. 3, c. 123, applied to prisoners in execution for nominal damages and costs in ejectment. (*Doe* v. *Reynolds*, 10 B. & C. 481, to the contrary, has long been overruled by *Doe* v. ——, 1 D. P. C. 69; *Doe* v. *Sinclair*, 5 Ibid. 615; and *Doe* v. *Ward*, Ibid. 290; *Doe* v. *Payton*, 7 Ibid. 671.)

STAMP.

The following singular document was put in to support a plea of accord and satisfaction in an action for seduction, and was held to require only an *ad valorem* stamp:—"Received of A. B. (the defendant) by the hand of his friend, the sum of 10*l.* in addition to the various amounts received of him at different times, in consideration of any favours conferred or services rendered to him by either of us at any time during our acquaintance; and which sum we hereby acknowledge to be ample remuneration, and we beg to return him our best thanks for the same." The defendant had a verdict.

WARRANT OF ATTORNEY.

Warrants executed abroad.—A decision of great practical importance was given in *Davis* v. *Trevanion* (4 Law T. 341), in which case a warrant of attorney executed in France was set aside because not duly attested according to the provisions of the statute. The statute, said Wightman, J. applies to all warrants of attorney whatsoever and wheresoever. This is in accordance with the principle, that a contract, which, on the face of it, is to be performed in a country different from that in which it is made, is governed by the laws of the country where it is to be performed. A debt contracted in France, with French interest to be paid in England, could not be enforced in England if the English laws of usury applied. (See Story, Conflict of Laws.)

Attestation.—The attesting attorney must be named by the defendant, that is, the circumstances must shew that he has exercised a free choice, although he did not name him in the first instance. (See cases, 1 Law T. 612.) But, in consequence of the nice objections that have been raised to attestations, it has become not uncommon to insert in the body of the warrant a statement that the defendant has expressly named the attorney to attest, and for the defendant to repeat the formula of appointment before the execution. This prudent course should always be adopted. In *Walton* v. *Chandler* (4 Law T. 374) it was considered sufficient, in the absence of fraud, although the attesting witness was the *brother* of the plaintiff's attorney. In no case should the agent to the plaintiff's attorney be the attesting witness, for, after *Prior* v. *Swaine* (3 Law T. 332; 2 Dowl. & Lownd. 37), the risk of its being set aside would be very great.

WILL.

Estate of trustees.—The *dictum* of that learned judge, Mr. Baron Parke, in *Barker* v. *Greenwood* (4 M. & W. 421), that whenever there is a limitation to trustees by the words of inheritance, the trustees are to take only so much of the legal estate as the purposes of the trust required has received the stamp of judicial authority in the decision of the Court of Queen's Bench in *Adams* v. *Adams* (4 Law T. 395).

WITNESS.

An attachment will not issue against a party in a civil cause for endeavouring to influence a witness not to attend at the trial. (4 Law T. 340.)

E. W.

* We understand the correctness of this report has been doubted by one of the taxing masters. We wish, therefore, to state, that having heard the motion for the rule, and the argument when it was made absolute, and also referred to the authorities cited, we have no doubt that it is correct.

COURT PAPERS.

HOUSE OF LORDS.

Session 1845.

CAUSES APPOINTED FOR HEARING.

Scot *v.* Ker (1st appeal). Scotland.
Scot *v.* Ker (3rd appeal). Ditto.
Vaughan *v.* Gronow. Chy. Eng. abated.
Heard.—Reg. *v.* Trafford. Wr. Err. K. B. England.
1833.—Blake *v.* Boyle. Chy. Ireland.
Attwood and Another *v.* Small. Ex. England, abated (1st appeal).
Johnstone *v.* Thomas, ex parte. Scotland, abated.
Gould, pauper, *v.* Richards. Chy. Ireland, abated.
1836, *Fully heard.*—Miller *v.* Knox. Ex. Ireld.
1837.—Small *v.* Attwood. Ex. Eng.
1837-8.—Turrell *v.* M'Gauraw, et ab. Ex parte, abated. Chy. Ireland.
Aitken *v.* Tinlay and Neilson. Abated, expte. Scotland.
E. Belfast *v.* Mqs. of Donegall. Abated, Chy. Ireland.
Crawford, pauper, *v.* Edward. Expte. Scotland.
Andrewes *v.* Walton. Chy. England.
Galway *v.* Barron. Ex. Ireland, abated.
2nd Session, 1841. *fully heard.*—The Skinners Co. *v.* The Irish Society. Chy. England.
Fully heard.—D. Beaufort *v.* Taylor, et ab. Ex parte. Chy. England.
Hatfield *v.* Phillips. Wr. Err. Ex. Eng. For the judges.
Hammersley *v.* Baron de Biel. Chy. England (Rolls).
1843. *In part heard.*—Campbell, or M'Laren, pauper, *v.* Fisher, pauper, Ex parte. Scotland.
Fully heard.—Forrest *v.* Harvey. Scotland.
Ditto Robertson or Rennie *v.* Ritchie. Scotland.
Cookson *v.* Cookson, et ab. Chy. Eng. (Rolls).
E. Stirling *v.* Officers of State for Scotland. Scotland.
Sir Hy. Bridges *v.* Fordyce. Scotland, abated.
Fergusson *v.* M'Innes. Ex parte, Scotland.
Macintosh *v.* Gordon or Macintosh. Scotland.
Purves *v.* Landell. Scotland.
The Irish Society *v.* The Bishop of Derry and Raphoe. Wr. Err. Exch. Chy. Ireland.
Stokes *v.* Heron. Ex parte, Chy. Ireland, abated.
V. Dungannon *v.* Smith. Ditto, abated.
Stuart *v.* Spottiswoode. Scotland.
Rev. Dr. Gordon *v.* Kinnoul. Ditto.
Allan, pauper, *v.* Glasgow. Ex parte Scotland, abated.
Beckenham *v.* Drake. Wr. Err. Ex. and Ex. Chy.
Hamilton *v.* Watson. Scotland.
D. Northumberland *v.* Sir J. M'Gregor. Scotland.
D. Northumberland *v.* Viscountess Strathallen. Scotland.
Allen, pauper, *v.* M'Pherson. Chy. England.
Jack, Lessee of Right Hon. G. R. Dawson, et ab. *v.* M'Entyre, Wr. Err. Exch. Chy. Ireland.
Sheeny *v.* Lord Muskerry. Chy. Ireland.
Ferrier *v.* Hutchinson. Scotland.
Abercrombie or Dingwall *v.* Dingwall. Scotland.
Hon. R. B. Wilbraham *v.* Scarisbrick. Duchy of Lancaster, abated.
Ferrier *v.* Dr. W. P. Alison. Scotland.
M'Innes *v.* Wright. Ex parte ditto.
Mayor, &c. of Newcastle-upon-Tyne *v.* The Attorney-Gen. Chy. Eng. (Rolls).
Cormack *v.* Erskine or Henderson. Scotland.
Gordon *v.* Howden. Ditto.
Cleland, pauper, *v.* Paterson or Cleland. Expte. Scotland.
Harrison *v.* Stickney. Wr Err. Q. B. England.
Broadley *v.* Stickney. Wr. Err. Ditto.
Cruikshank *v.* Lady A. I. Cruikshank. Scotland.
Hon. H. Trevor *v.* Hon. G. Trevor. Chy. England.
Colvile *v.* Colvile. Scotland.
1844.—Campbell *v.* Sir C. Campbell, et econ. Scotland.
Darley *v.* The Queen. Wr. Err. Ex. Chy. Ireland.
Reddie *v.* Higginbotham. Scotland.
Hill or Davidson *v.* Hill. Ditto.
Dixon or Fisher *v.* Dixon. Ditto.
Boyle *v.* Ferrall. Chy. Ireland.
Galbreath *v.* Armour. Scotland.
Cunninghame *v.* Macleod. Ditto.
Grant *v.* Findlay. Expte. Ditto.
Macpherson *v.* Craigie or Macpherson. Ditto.
Mayor, &c. Gloucester *v.* Osborne, et ab. Ex parte, Chy. England.
Pinkus *v.* The Ratcliff Gas Light and Coke Company Ex parte Chy. England.
Mackintosh *v.* Brierley. Scotland.
Brandas *v.* Barnett. Wr. Err. Common Pleas Ex. Chr.
Wallace *v.* Patton. Ex. Ireland.
M. Breadalbane *v.* Sinclair, expte. Scotland.
Maule *v.* Sir T. Moncrieffe, Bt Ditto.
Governors of Heriot's Hospital *v.* Ross, a pauper. Scotland.
Rusk *v.* Muir. Scotland.
Lord Camoys *v.* Blundell, expte. Chy. Eng.
M'Lean, pauper, *v.* The Officers of State for Scotland. Scotland.
Reddie *v.* Todd. Ditto.
E. Hopetoun *v.* Ramsay. Ditto.
Grant *v.* Shepherd. Ditto.
E. Mansfield *v.* Sir W. D. Stewart, Bt. Ditto.
Dr. Jack *v.* Sir T. Burnett, Bt. Ditto.
Stewart *v.* Sir W. D. Stewart, Bt. Ditto.
1845.—E. of Stair *v.* King. Ditto.
Findlay & Co. *v.* Findlay or Donaldson. Ditto.
Leith *v.* Young. Ditto.
Morris *v.* V. Downes. Chy. Eng.
Cairns *v.* Raiac. Ditto.
Fisher *v.* Sir J. Colquhun, expte. Scotland.
Scott, pauper, *v.* Lethen, expte. Ditto.
Wishart *v.* Wilson or Wishart. Ditto.
Saward *v.* M'Donnell, ex parte. Chy. Eng.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs, will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

St. James's Palace, March 12.—The Queen was this day pleased to confer the honour of knighthood upon James Cochrane, esq. Chief Justice of Gibraltar.

Foreign Office, March 12.—The Queen has been pleased to approve of M. Krehmer, as Acting Consul-General in Great Britain for his Imperial Majesty the Emperor of All the Russias.

The Queen has also been pleased to approve of Mr. Pieter Romyn, as Vice-Consul at Stockton; of Mr. John Owen, as Vice-Consul at Cardiff; and of Mr. Stephen Campbell, as Vice-Consul at Newport, for his Royal Highness the Grand Duke of Mecklenburg-Schwerin.

We understand that T. P. Dickenson, esq. has been recommended to her Majesty, by Sir Robert Peel, for the vacant commissionership of customs. Mr. Dickenson was for some years a member of the Commission of Revenue Inquiry, over which the late Lord Wallace presided, and has acted as a special commissioner under the Income Tax Act since the passing of it.—*Standard.*

The New Deputy Coroner for Westminster. — The Lord Chancellor has signified his approval of Mr. Bedford, of the firm of Bedford and Vincent, of Dartmouth-street, Westminster, the newly-appointed deputy coroner for the city and liberties of Westminster, in the place of Mr. Higgs, who held the office upwards of a quarter of a century. On Wednesday Mr. Higgs ceased to act, and Mr. Bedford entered into the functions of his office.

CANDIDATES WHO PASSED THE EXAMINATION.

HILARY TERM, 1845.

(*From the Legal Observer.*)

Names of Candidates.	*To whom Articled, Assigned, &c.*
Adams, Llewlyn	Joseph Piers, Ruthin
Austin, Isaac L'Estrange Southgate	John Peter Fearon, 1, Crown-office-row, Inner Temple; John Hemming, Weymouth
Bonnor, George	Benjamin Bonnor, Gloucester; Edward Washbourn, Gloucester
Brandt, Charles Henry	Henry Charlewood, Manchester
Buttery, John Hopkinson	John Buttery, Nottingham
Calder, Edward	Luke Thompson, York
Carnochan, Thomas Hardley	Frederick Hawksley Cartwright Bawtry, the younger, York; Charles Bell, 36, Bedford-row
Cornock, Thomas Morris	William Gresham, 3, Castle-street, Holborn; J. Benson, Gray's-inn-square; Daniel Cornthwaite, 14, Old Jewry-chambers
Corser, Edward	Henry Corser, Stourbridge
Croome, John Wise	Robert Wilton, Gloucester
Cunningham, Charles, the younger	Charles Williams, 19, Ely-place, Holborn; John Galsworthy, 19, Ely-place
Davenport, Frank Baddeley	William Harding, Burslem
Domville, Wm. Henry	Henry Denton, Lincoln's-inn
Dixon, William	Robert Maugham, 100, Chancery-lane
Dryden, Erasmus Henry	William Dryden, Kingston-upon-Hull
Dunn, William Laidler	John Anderson Pybus, Newcastle-upon-Tyne
Fendall, Thomas Halcott	Philip Reeve, Lincoln's-inn
Frere, Edward Daniel	John George Smith, Crediton; George Concanen, 5, Lincoln's-inn-fields
Gardner, Robert	A. Haymes, Leamington Priors; Thomas Wm. Capron, Savile-place, New Burlington-street
George, William Griffith	Thomas George, Cardigan
Goater, Thomas	William Henry Moberly, Southampton
Harrison, William Frederick	Robert Wilson, 1, Copthall-buildings; Charles Kaye Freshfield, 5, New Bank-buildings
Hayward, Charles Francis	John Hayward, Dartford
Heming, William Waters	Benjamin Alpin, Banbury, now of 5, Furnival's-inn
Henderson, Alfred	James Terrell, St. Bartholomew's-yard, Exeter
Hodgson, Charles	John Dodsworth, Selby; Mark Fothergill, Selby; Robert Benton Porter, Howden
Hutchinson, Bury Victor	George Barham, 7, Staple-inn
Ives, James	Herbert Sturmey, 8, Wellington-street, London Bridge, Southwark
Jackson, John Thomas Dodd	John Richards, the younger, Reading; William Burridge, Wellington
James, John Gwynne	Francis L. Bodenham, Hereford
Johnstone, William Paul	John Owen, Manchester
Knowles, Charles James	William Cooper, Shrewsbury
Leach, Francis	W. Henderson, of Lancaster-place
Mackrell, William Thomas	John Lawrens Bicknell, 25, Abingdon-st. Westminster
Marsh, Robert	Wm. Fretwell Hoyle, Rotherham
Martin, Thomas	James Kine, 19, Gracechurch-st.
Martineau, Hubert	Philip Martineau, 29, Montague-place, Bedford-square; William Malton, 60, Carey-street, Lincoln's-inn
M'Leod, Bentley	Henry Lowe, 22, Southampton-buildings, Chancery-lane
Merrifield, Thomas	Thomas S. Merrifield, Wainfleet
Moore, William	A. J. Moore, Bishopwearmouth
Nall, William	George Nall, Shipston-upon-Stour
Owen, Arthur Watkin	Copner Oldfield, Holywell, co. Flint; Hugh, Roberts, of Mold
Owen, Frederick	Henry Owen, Worksop
Pearce William	T. Coombs, the elder, Dorchester
Perkins, Richard, the younger	Richard Perkins, the elder, late of 15, Gray's-inn-square, now of 15, Regent-street
Pigott, Horatio	Edward Daniell, Colchester
Pinniger, John Alexander Mainley	Broome Pinniger, Chippenham; Henry Seymour Westmacott, 1, Gray's-inn-square
Probert, Charles Kentish	Thomas Probert, Saffron Walden, and Newport
Raphael, Lewis, jun.	Rowland Nevitt Bennett, 2, New-street, Lincoln's-inn.
Reeve, Richard Henry	Edmund Norton, Lowestoft
Rhys, Charles Thomas	Alexander Cuthbertson, Neath
Richardson, Philetus	F. Halsey Janson, 4, Basinghall-st.
Robinson, Philip Vyvyan (formerly Philip Vyvyan)	Helstone, Redruth
Ruck, Adam Joseph	John Monckton, of Maidstone
Rutherford, John	Geo. Rutherford, 13, Lombard-st.
Scott, Montagu Douglas	Geo. Concanen, 5, Lincoln's-inn-fields
Shoosmith, William	John Hensmen, Northampton
Smith, Frederick	John George Smith and Frederick Edward Smith, of Crediton
Sparham, Henry Mills	Henry Rogers, late of Thetford; Thomas Cookson Kenyon, Brandon, Suffolk; Thomas Borrett, 35, Lincoln's-inn-fields
Spooner, Thomas	Sommersby Edwards, Long Buckley; Thomas Ingram, Leicester
Stevens, Richard	Edw. Wilson Banks, Witham
Swainson, William	John Wm. Jas. Dawson, 7, Charlotte-st. Bloomsbury
Thompson, John Mawlen	John Atkins, 5, White Hart-court, Lombard-street
Thurston, Obed Edward	Thomas Crossman, Thornbury
Travers, William Thomas Locke	Ralph Thomas Brockman, Folkstone; Edward Watts, Hythe
Tucker, Andrew, jun.	John Henry Benbow, 1, Stone-buildings, Lincoln's-inn
Vaughan, Samuel Bradford	Frederick John Manning, 30, Craven-street, Strand
Wake, Bernard	Bernard John Wake, Sheffield; William Wake, Sheffield
Waller, Thomas Henry	William Saltwell, Carlton Chambers, Regent-street
Ward, Charles Edward	Francis Ridout Ward, Bristol
Welchman, Charles John Robert	Frederick Welchman, Southam
Yatman, Herbert George	Charles Druce, the younger, 10, Billiter-square
Yorke, Henry	George Croxton, Oundle; Henley Smith, Warnford-court, Throgmorton-street.

THE PROPERTY LAWYER.

NOTES ON CONVEYANCING CASES.

Several cases have recently been decided in the courts of common law which demand the conveyancer's attention. There is no part of his duty which requires more anxious attention than the consideration of informal and untechnical instruments.

Where a title has passed repeatedly under the review of counsel, in consequence of sales or mortgages, all is usually smooth enough; but where from any cause the title has not been sifted, irregularities occur with which it is not easy to deal. On the one hand it is most desirable not to magnify mere intechnicalities into serious difficulties of title,—for in our complicated system doubts are more easily raised than allayed,—so, on the other hand, no objection of substance must be overlooked. Questions of considerable nicety often arise upon the operation and construction of covenants, for the solution of which a reference to first principles and early decisions becomes necessary. A case involving the effect of covenants is therefore always important to the practitioner.

Warranty: Implied and express covenants.—In the case of *Williams* v. *Burrell and Another* (4 L. T. 415), this subject received a full and satisfactory judicial decision.

There, lessees of the settled estates of the late Earl of Egremont having been evicted by the successor to the title and the estates, by reason of the defective execution of the power under which it was intended to grant the leases which had proved invalid, the evicted lessees filed their bill in Chancery against the executors of the late earl for recovery of the value of the tenements from which they had been evicted. The cause coming on for hearing before the Master of the Rolls, a case as to the effect and construction of the warranty or covenant contained in the lease was stated for the opinion of the Court of Common Pleas. The case set forth the lease, and the circumstances under which the lessees were evicted. The material part for our present purpose is the following clause contained in each lease.

And the said earl, for himself, his heirs, and assigns, the said demised premises, with the appurtenances, unto the said J. W. his executors, adminis-

tractors, and assigns, under the rent; covenants, conditions, exceptions, and agreements before expressed, against all persons whomsoever lawfully claiming the same, shall and will, during the said term, warrant and defend.

The lessees, under the direction of the executors, had defended their possessions, and the executors had paid the taxed costs of the present Earl of Egremont; but the lessees had been left to pay the mesne profits, and their own costs, and had received no compensation for the loss of their interests in the tenements. There were two questions stated; first, whether J. W. the lessee, was entitled to recover, under the warranty or covenant above stated, from the executors of the late earl, the amount of the mesne profits paid to the present earl, the lessee's costs, and the value of his interest in the tenement. Secondly, whether the assignee of a similar lease, who had been evicted under the same circumstances, was entitled to recover such amounts from the late earl's estate. And thirdly, whether the evicted leaseholders were entitled to interest upon such amounts. It was admitted that the clause was not, in the technical sense of the term, a warranty, because a legal warranty is only applicable to freehold interests; but, for the plaintiffs, it was contended that the term "warrant and defend" used in the above clause constituted an express covenant for quiet enjoyment, and that "during the term" meant the full term affected to be demised by the invalid lease, not that interest which the lessor, the late earl, could lawfully grant, namely, during his own life. The authorities referred to on both sides will be found in our report. On the part of the executors, it was insisted that the clause amounted only to a covenant *in law*, and was therefore confined to the lessor's own acts, or to acts which had taken place during his own estate; that it rested upon the plaintiffs to shew that this was an express covenant on the part of the lessor; and that, notwithstanding the cases cited for the plaintiffs, this might be only an *implied* covenant, which was likened to a covenant *in law*. There was no breach of the covenant in the late earl's lifetime, and the obligation was, that, when called upon, he would warrant and defend. As regarded the lease, of which the assignee of the original lessee was ejected, it was contended that an assignee could only sue by reason of priority of estate, and here the priority of estate ceased before the breach, that is, on the death of the late earl.

The Court determined, that the clause was not a covenant *in law*, but either an *express* or *implied* covenant; there being no distinction in legal effect between them, which bound the estate of the lessor to make good the interest which the leases affected to grant; and that an assignee of such a lease was equally entitled with an original lessee to recover all the sums claimed except interest. In stating the opinion of the Court, Tindal C. J. after going over the facts said that the clause

> Could not be strictly and properly a warranty; and indeed the authority Co. Lit. 389 is clear upon that point. A warranty in such sense can neither be pleaded in law, nor can the party to whom the warranty is granted vouch, as he may when it is annexed to a real estate.
>
> That such a warranty was also admitted to be, when annexed to a chattel interest, in the nature of a covenant for quiet enjoyment. That the defendants contended it was only an implied covenant, or more properly a covenant in law only, and therefore extending no further than for quiet enjoyment during the continuance of the interest which passed by law under the demise, namely, *for the life of the lessor only*. The plaintiffs contended that it amounted to an express covenant. His lordship then proceeded:
>
> It appears to us that some confusion has arisen from want of distinguishing with sufficient accuracy between *covenants in law* and *implied covenants*, and from the use of these terms indiscriminately for each other. A covenant in law is, properly speaking, an agreement which the law infers, from the use of certain words of grant having a known legal operative force, as the word *dedi* in a feoffment, or *demisi* in a lease; and these words, after having had a direct operation in creating an estate, have a new and secondary operation given to them, and are held to form a covenant by the feoffor or lessor for the quiet enjoyment of the estate which they have already created.

This is plain and distinct. It will be remembered that the occurrence of such covenants *in law* as applied to instruments executed after the commencement of the present year, will be rendered less frequent, by the effect of the 6th section of the "Act to simplify the transfer of property" (7 & 8 Vict. c. 76). The words "grant" or "exchange" will not create any covenant by implication except in any cases where, by Act of Parliament, it shall be declared that the word "grant" shall have such effect. The Chief Justice thus states the nature of an *implied* covenant:—

> A covenant of this nature (covenant *in law*) is sometimes, too, it would seem, improperly called an *implied* covenant; whereas an implied covenant, in its proper legal sense, is a covenant not formally stated in a deed, but which is collected by constructive inference from the terms used in it; and we think an *implied* covenant, in its proper sense, should not be distinguished in its effects or legal consequences from an express covenant. It is, indeed, a matter of construction in every case, to ascertain whether the intent to covenant in such or such a manner is sufficiently manifest in the words used in the instrument; but the intention once ascertained, the real effect and consequences of such implied covenants as are not in any manner affected by the clearness or obscurity of the terms employed; such a difficulty, if overcome, in arriving at the construction, an implied covenant, in its proper sense, differs in no respect from a covenant which is expressed; and we think a covenant arising from the terms of the warranty is not, as contended for by the defendants, a covenant *in law*, but is, in the proper sense of the word, an implied covenant, to be construed in the same manner, and attended with the same result, as an express covenant for quiet enjoyment.

And after going through the authorities in support of the opinion of the Court, his Lordship said—

> Therefore, both on principle and authority, we think this is an express covenant for quiet enjoyment, which extends to the term purported to be granted; consequently the defendants are liable thereon as executors of the covenant.

So the assignee of a similar lease had the same right of suing on this covenant as the original lessee; and, as in *Spencer's* case (5 Rep. 16), it was held that a covenant *in law* for title would pass with the estate, there was neither principle nor authority to shew that an express covenant, either for title or quiet enjoyment, would not equally pass and be available by the assignees of the lessee or the executors of the assignee. The liability of the executors for the mesne profits and value of the term was held "too clear for discussion," and they were also held liable for the costs upon the particular circumstances. It is scarcely necessary to observe, that, although such a covenant as we have here serve as a "plank in shipwreck," no one could be advised to place much reliance upon it as a protection against an apprehended defect of title; for it is clear that, in ordinary cases, the evicted holder's costs could not be recovered, and these costs may constitute a very serious part of the loss.

A second case of covenant was *Hopkinson* v. *Lee* (4 Law T. 395), decided in the Queen's Bench, where it was held that if the interest is joint, an action of covenant must be brought in the names of the joint covenantees, although it was expressly stated that the covenant was "a distinct covenant with and to the other covenantee."

This shews the care which should be bestowed upon covenants, especially when, as in the case of *Hopkinson* v. *Lee*, the object of the covenant was to protect a party from a covenant by way of surety into which he had entered. W.

STATUTE OF LIMITATIONS.—BANKERS.

A question lately occurred whether the Statute of Limitations be applicable to the case of an account between a banker and his customer. In order to determine it, it became necessary to consider what the legal relation between the parties is. It has frequently been said, but more in argument than decision, that money paid into a bank is a deposit; that the banker is a sort of bailee or trustee for his customer, and that the relation is one of personal confidence, and not of contract. However consonant this may be with popular opinion, it is nevertheless clear that, in the eye of the law, the banker and his customer are regarded as debtor and creditor. Thus, in *Carr* v. *Carr* (1 Mer. 541, n.), the question was whether, under a bequest of *debts*, a bill of exchange payable to the testator and lodged at his banker's, and also a cash balance due to him on his banking account, would pass? The Master of the Rolls (Sir Wm. Grant) held that both passed. He was clear, he said, that the bill of exchange passed. He had entertained some doubt on the other point, but thought that the money which had been paid into the banker's ought also to pass as a debt. "This was not a *depositum*. A sealed bag of money might, indeed, be a *depositum*; but money paid in generally to a banker could not be so considered." He observed, "that money had no ear-mark; but when money is paid into a banker's, he always opens a debtor and creditor account with the payor. The banker employs the money himself, and is liable merely to answer the drafts of his customer to that amount. This would clearly support a commission of bankruptcy; it would not pass by the description of ready money (*sed, vide infra*); and therefore it must be considered as a debt, and pass by that description." So in the case of *Devaynes* v. *Noble* (1 Mer. 568), the same learned judge said, "There is a fallacy in likening the dealings of a banker to the case of a deposit, to which in legal effect they have no sort of resemblance. Money paid into a banker's becomes immediately a part of his general assets, and he is merely a debtor for the amount." Again: the Court of Queen's Bench, in *Sims* v. *Bond* (5 Bar. & Ad. 392), laid down that sums which are paid to the credit of a custom: with a banker, though usually called deposits, are in truth loans by the customer to the banker. (See also, to the same effect, *Parker* v. *Marchant*, 1 Y. & C. N. C. 307; and, on appeal, 1 Phil. 361.) The same doctrine has been clearly followed out by the Lord Chancellor in the case of *Foley* v. *Hill* (1 Phil. 399). The facts were shortly these: In 1829 the plaintiff opened a banking account with the defendants, and paid into their hands 6,117*l*. 10*s*. for which they sent him a receipt, inclosed in a letter, in which they agreed to allow interest at 3 per cent. upon the balances from time to time in their hands. The defendants subsequently drew two cheques on the bank, but no dealing took place, and no entry was made in the bank books, after the year 1831. The bill was filed in January, 1838, for an account, &c. The defendants relied on the Statute of Limitations. The Lord Chancellor allowed the defence, on the grounds that the balance due was a *debt* from the defendants to the plaintiff; that at law the statute might be pleaded, and that it was equally available in courts of equity, which he said, adopting the doctrine of Lord Redesdale in *Hovenden* v. *Lord Annesley* (2 Sch. & Lef. 607, 630), act not merely by analogy to the statute, but in obedience to it.

Having in our quotation from *Carr* v. *Carr*, given Sir Wm. Grant's dictum that a general cash balance at a banker's will not pass under the description "ready money," it is necessary to state that the contrary has lately been decided by Vice-Chancellor Bruce, and on appeal by the Lord Chancellor, in the case of *Parker* v. *Marchant* before referred to. (See also *Vaisey* v. *Reynolds*, 5 Russ. 12; *Taylor* v. *Taylor*, 1 Jur. 401.)

LEGAL INTELLIGENCE.

Holidays at the Law Offices.—The whole of the common law and Chancery offices were closed on Good Friday, and will so remain till Tuesday in next week, those days being holidays appointed to be kept by the 3 & 4 Wm. 4, c. 42; and by a rule of court signed by all the judges those days are not to be reckoned in computation of time for pleading in any action or rules and notices, with the exception of notices of trial, and the execution of writs of inquiry. In all cases where parties have been served with copies of writs to appear in eight days, if the last of those eight days should happen to fall on either of the above-mentioned days, then by the Uniformity of Process Act, next Wednesday, being the Wednesday in Easter week, is to be taken and considered as the last of such eight days for entering an appearance.

Taxing Master of the Court of Bankruptcy.—The vacancy created in the office of taxing master in this court by the death of the late D. H. Richardson, esq. has not yet been filled up. The appointment, which is a very important and lucrative one (the salary being 1,200*l*. per annum), is in the gift of the Lord Chancellor.

Trade of the United States.—The annual report of the Secretary of the United States Treasury is just out. The exact imports and exports for the year ending June 30, 1844, vary but little from the account published in December last. They stand thus:—Domestic exports from the United States, 1844, 99,715,179 dollars; foreign goods re-shipped, 11,527,248 dollars; total, 111,243,427 dollars. Imports into the United States 1844, 108,434,935 dollars. Balance in favour of the United States, 2,808,492 dollars. Vessels cleared from the United States in 1844:—American ships, &c. 8,148; foreign, 5,577; total, 13,725. The above were navigated by 153,407 men, and 4,425 boys.

Judges' Chambers.—Mr. Baron Rolfe, the vacation judge, will sit as usual to-day, and Monday and Tuesday next, notwithstanding the whole of the common law offices will be closed.

PROCEEDINGS OF LAW SOCIETIES.

INCORPORATED LAW SOCIETY.

This Society has petitioned for a repeal of the Certificate Duty. The following are the allegations of the petition:—

"That by the Act 25 Geo. 3, c. 80, for granting duties on certificates to be taken out by solicitors, attorneys, and others, every attorney, solicitor, and proctor was required to take out an annual certificate on which, if he resided in London or Westminster, or within the Bills of Mortality, there was charged a stamp duty of 5*l*. and if he resided in any other part of Great Britain, a stamp duty of 3*l*.

"That such annual certificate duties have by various Acts been increased, and ultimately, in 1815, by the 55 Geo. 3, c. 184, the following annual duties were imposed upon every attorney, solicitor, and proctor:—

	£
"On those practising within the limits of the twopenny post, who have been admitted for three years or upwards	12
"On those not admitted so long	6
"On those residing elsewhere who have been admitted three years	8
"On those not admitted so long	4

"That by the last-mentioned Act a stamp of 120*l*. is also charged upon all articles of clerkship to an attorney, solicitor, o. proctor, and a further duty of 25*l*. upon his admission.

"That by a return made to your Honourable House by the registrar at the Stamp Office, bearing date the 22nd May, 1833, the number of attorneys, solicitors, and proctors who paid the stamp duties for their certificates from Easter Term 1819 to Easter Term 1820, was 6,764, and the amount received for such duties was 57,646*l*.; and from Easter Term 1832 to Easter Term 1833 the number of certificated attorneys, solicitors and proctors was 9,221, and the sum received for certificates, 79,006*l*.

"That the number of certificates issued by the registrar of attorneys and solicitors appointed by the 6 & 7 Vict. c. 73, between the 15th November, 1843, and the 15th November, 1844, was 9,001, and the amount of certificate duty paid thereon in that year was 90,000*l*. or thereabouts.

"That it appears by a return made to your Honourable House, pursuant to an order dated 6th June, 1833, that the duties on 540 articles of clerkship to attorneys and solicitors received between Easter Term 1832 and Easter Term 1833 amounted to 64,800*l*.

"That such duties since that time have increased in proportion to the number of certificates issued.

"That the annual sum of 9,000*l*. or thereabouts, is also paid on the admission of attorneys, solicitors, and proctors into the superior courts.

"That the stamp duties so paid for articles of clerkship, admissions, and certificate duty, amount to the sum of 179,000*l*. annually.

"That no profession except that of your petitioners is charged with similar stamp duties, nor are the same nor any annual stamp duties imposed on the higher branch of the legal profession.

"That such duties are not founded on any just principle of taxation, and are partially and unequally borne."

YORKSHIRE LAW SOCIETY.

At a general meeting of the Yorkshire Law Society, held at Lockwood's Hotel, Pavement, York, on Friday, the 14th March, 1845, G. H. Seymour, esq. President, in the chair.

After the ballot for new members, the following Report of the Committee was read:—

During the period that has elapsed since the last general meeting, held Summer Assizes 1844, little has happened to engage the attention of the committee, nor have the proceedings of Parliament materially increased the business before them, no measures having been introduced during the present session directly affecting the profession.

The Ecclesiastical Courts and County Courts Bills, introduced last session, have been for the present abandoned; this the committee regret, as the former provided for many real improvements upon the present system, and they cannot but ascribe the postponement of these Bills to an influence more in favour of centralizing professional business in the metropolis than of the public advantage.

The committee have good cause to congratulate the members of the society on the formation of a General Association of Provincial Law Societies, which took place on the 11th January last, at Manchester. At the meeting held on that occasion, deputations attended on behalf of many provincial societies, comprising a very large proportion of the country solicitors, not only of the northern and midland counties, but the southern counties of Kent and Somersetshire were represented at the meeting.

The resolutions of the meeting forming the Association were advertised in the Law Times, and will no doubt have been seen by the members of this society; the committee have since framed rules for the management of the Association, a copy of which is laid on the table with this report.

The committee hope the members of this society will agree with them in thinking that it is essential that the Association of Provincial Law Societies should be entirely unconnected with the Metropolitan Law Association; for, although on many subjects they will, no doubt, be able to co-operate with the latter, there are matters relating to the profession resident in the provinces which require their especial attention; and it can hardly be doubted that if an association like the one now formed had been in existence at the time of the passing of the Attorneys and Solicitors Act, the clause which led to numbers of country solicitors travelling to London to get admitted in the courts would, by its vigilance, have been amended so as to have rendered such trouble and expense unnecessary.

The committee have pleasure in stating that the management of the newly-formed Association has been placed in able hands, and they look forward to its success with confidence.

In conclusion, it is with considerable gratification that the committee mention the fact that the president of this society has been elected the first president of the Association of Provincial Law Societies; they hope, in that character he will be the first of a long line of distinguished ornaments of the profession.

York, 14th March, 1845.

THE LAW SOCIETY'S CHARTER.

Our readers will have observed several notices in the daily papers regarding a *caveat* against a new charter to the Law Society, the hearing of which before the Lord Chancellor was from time to time deferred, on account of other pressing cases.

We are glad to say that the matter in dispute has been settled. It was, perhaps, scarcely to be expected that 1,300 lawyers would agree in opinion on any subject. By some concessions, however, on both sides, an arrangement has been effected, the *caveat* withdrawn, and the new charter passed to the Great Seal on Friday, the 14th instant, the charter bearing date the 26th February, when the *caveat* was lodged.

By the new charter, (to which we may hereafter advert), the joint-stock character of the society has been abrogated. Shares to the amount of 8,000*l*. and upwards have been presented by the members to the corporate body, and each member also relinquishes one share, by way of admission fee, into the new society.—*Legal Observer.*

CORRESPONDENCE.

SOLICITORS' BANK.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I have read your remarks as to the formation of a Solicitors' Bank with pleasure, as I have long thought such an institution ought to be formed, but I think it will not be complete unless it conducts all the ordinary business of a bank, confining its customers, however, to members of the Profession.

Every solicitor has during the year payments to make in town, and it would, I have no doubt, be to his advantage to keep a banking account with a bank in which he would feel an interest, and thus be enabled to make such payments without paying his country bankers their commission in doing so for him.

The transactions above referred to would, of course, be a source of profit to the bank, as, in addition to the claims made on all business transacted by bankers for their customers, the balances remaining to the credit of the parties keeping accounts would be so much additional capital with which to make loans, and the general business of banking would not, I should think, materially increase the expenses of working the institution.

I am, &c.

George Bell, Junr.

Welford, March 3, 1845.

DEBTOR AND CREDITOR.

[We have been obliged, for want of space, to omit the beginning of the following letter:—]

TO THE EDITOR OF THE LAW TIMES.

With what hurry was the Act of last session passed. —Who knew its clauses as the Bill was in progress? —Did any law society watch?—Was the Argus-eyed body in Chancery-lane present there? It was inferred from the language and nature of the statute during a certain Parliament, that there were no lawyers in that Parliament. Perhaps the future historian will draw some similar inference from the session of 7 & 8 Vict. Recollect, too, that the author of the 20*l*. clause in this Act—not in my Lord Cottenham's Bill—was (I believe) stated in the House of Lords to be Mr. More O'Ferrall, an *Irish* member for the county of Kildare (who added it in that mysterious place, a select committee); so here was a piece of legislation affecting so many and such important interests, done by an Irish member of the Lower House, and now discovered by the law lords! The amendment is to come. If this is a shade better, it will be a recommendation. However, I am desirous of saying a few words to you on a part of your last admirable article on this subject, where you recommend that all debtors who do not pay, after notice, &c. should be treated as insolvent, and liable to be summoned before a commissioner of bankruptcy, and thereon subject to punishment, if fraud is proved. All this is so far good; the principle is excellent; who is to prove the fraud is the question, and where and when. The creditors are the persons who would be most likely to know of the existence of fraud, and could prove it; but unless the investigation into the affairs of the bankrupt is carried on in the place in which he has traded, and sympathy shewn to the *creditor as well* as the debtor, the regulation is useless; it is giving a person a ladder and destroying the steps. Creditors of bankrupts who live within a hundred miles of Basinghall-street must be at the expense of their journey to and fro, remaining there if they desire to look into the affairs of the bankrupt. Our town, with the neighbouring one of Portsmouth, numbers about 70,000 inhabitants, and yet if a bankruptcy occurs here or there, the creditors, who may fairly be supposed to live in the neighbourhood, have no opportunity (unattended with expense) of exposing fraud, or looking into the dealings of him whom they have trusted and found wanting.

The evil of the present system of districts is bad enough; pray avoid its extension. I could say more on this subject, but meanwhile I would suggest *deliberation* and deprecate *haste*.

I remain, &c. Edward K. Stace.

Southampton, March 17, 1845.

MAGISTRATES' CLERKS BILL.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I think Mr. Trevor takes a one-sided view of section 12 in the Law Times of the 15th instant. I think the course of justice is open to great suspicion where clerks to the magistrates, or their partners, act as advocates before justices to whom they or their partners are clerks; and in illustration of my position I will mention two cases which have occurred to me in actual practice.

I appeared for a woman in a bastardy case, the defendant (a man of property) being represented by the partner of the clerk to the magistrates. The case was very strong against the defendant, but at the close of it the court was cleared, and the magistrates and their clerk were left to consider their decision, and after being closeted together for a considerable time, they dismissed the case.

In another case I lately appeared for the surveyors of highways, where they were summoned for non-repair of a road, which they contended was not a highway. The partner of the clerk to the magistrates appeared to prosecute. There was much discussion as to the law of the case, as to which the magistrates consulted their clerk. Again were the magistrates and their clerk closeted together, and the result was again unfavourable to my client.

Now, was the clerk to the magistrates in the above cases in the unbiassed position he ought to hold? In both cases my clients complained of the influence which was thrown into the scale against them by reason of the advocate on the other side being a partner of the legal adviser of the magistrates who had to decide the case. I do not wish to insinuate that any improper influence was actually used, but the course of justice ought to be above suspicion.

I have not a large sessions practice, and yet the above cases have happened in it within the last six weeks. *Ex uno disce omnes.*

I confess I think the 12th section of the bill not only just, but absolutely necessary, and I conceive that no one but a magistrate's clerk can think otherwise.

I am yours, &c.

Audi alteram partem.

17th March, 1845.

TO THE EDITORS OF THE LAW TIMES.

Gentlemen,—You solicit opinions as to the cause of the great increase in the number of appeals against orders of removal.

So far as Yorkshire is concerned, I can state that the great inducement for parishes to appeal against orders of removal is, that nine in ten of every order appealed against may be upset on technical informality, either in the order, examination, or notice of chargeability. The consequence is, that the most grievous injustice is perpetrated at every quarter sessions, and parish-officers are continually declining to take out orders of removal, preferring the cost of maintaining the paupers rather than to take out orders, which, however well the case is made out on the merits, can be upset by legal ingenuity.

If the Editors of the LAW TIMES would supply a form of Order of Removal, which shall be invulnerable, they would thereby do more to raise their position as distinguished lawyers than they imagine. At present it is a perfect matter of course that every order taken out is, by many parishes, appealed against, however clear the case may be on the merits. The policy of so doing, the returns in your last paper exhibit. Last year, of 1,751 orders appealed against, only 101 were confirmed.

I am, &c.

JAMES LANCELOT FOSTER.

York, Feb. 25, 1845.

SELECTIONS FROM CORRESPONDENCE.

"A CONSTANT READER" prefers the following complaints:—

As your paper has always been open to receive and make known all professional grievances, I venture to mention two or three which must interest a great portion of your readers, viz. gentlemen who are candidates for admission as attorneys at the Incorporated Law Society. Those to which I allude are in the shape of fees, which are demanded not only from those who pass their examination, but from those also who are rejected. On leaving the articles of clerkship to be perused, a fee of ten shillings is demanded; *and this is actually repeated* as often as a gentleman may have to give notice of his intention to apply for admission (as in the case of his having been rejected), although the articles cannot require a second perusal, and in many cases have remained in the possession of the clerk of the society. But this is comparatively small when we look to the next, which is a fee of two guineas, demanded from all who are declared fit to be admitted. Now this last is universally allowed to be a most unjust tax. A gentleman must either submit to these impositions, or else forfeit his five years' service, his premium (perhaps 500*l*.), and the amount he has paid for stamp-duty; for his certificate from the examiners is not given unless these fees be paid. If there were any just ground for charging these, it certainly would not be a matter of complaint; but really, who can say to what purpose these fees are applied? Why are articled clerks to subscribe to and support a society composed of members of the Profession whose object it is to throw as much difficulty in the way of candidates for admission as they can, and whose interest it is to keep the Profession as thin as possible? The average number of attorneys admitted is rather more than 300 annually. This number will give the society about 800*l*. per year, exclusive of lectures and admission fees to their library, both of which will, in course of time, no doubt, be made requisites before a candidate can be considered fit for examination, as will appear by referring to the preliminary questions to each examination. These things should be taken up in a proper spirit by those who will, when admitted, perhaps exclaim vehemently against the taxes already imposed upon the Profession; and, while petitions are being got up in almost every part of the kingdom for the repeal of the certificate-duty, it will be well to look after a society like this, which will doubtless impose as large taxes as the certificate-duty itself, should it be repealed; and this is no doubt the reason why it is so busy in getting these petitions presented. The facility with which their Act of Parliament has been obtained, by which they say these fees are authorized to be taken, renders it imperative on the Profession to keep a sharp look-out.

IN fairness to both parties in the Profession, we give insertion to the following communication, signed "A SOLICITOR," on the Justices' Clerks Bill:—

The 12th section of the above Bill appears at present to excite much interest, and some gentlemen, who appear to fancy their "vested rights" are at stake, have already sounded the alarm. That the clerks to the justices have been very much in the habit of conducting prosecutions against prisoners committed for trial by magistrates whose clerk they are, is no doubt the fact; but, from an experience of some years, I can confidently assert that it is a system which places additional difficulties in the way of an accused person; and I have more than once heard it asked in court by persons not interested in the case (but who were surprised at the advice given to the Bench), if the clerk was not interested in the matter being sent to a jury. If it is a practice leading to abuse, the sooner it is remedied the better. The attention of the Legislature has been called to it more than once. And this Bill only proposes to carry out the principle of the 102nd section of the Municipal Corporations Act (5 & 6 Wm. 4, c. 76), by which clerks to justices in boroughs are expressly prohibited from conducting prosecutions at assizes or sessions. I do not think this has been productive of any inconvenience to the public, or that there has been any difficulty experienced in filling the office with men of the first standing in their profession; and the Legislature will not, I am sure, now draw an odious comparison between officials in boroughs and counties. If the practice in boroughs has been found to work well, extend it to the counties; if otherwise, rescind it, and place the clerks in boroughs on the same footing as those in counties.

A SOLICITOR, using the signature "S. S." puts the following case of difficulty in procuring a Certificate of Naturalization by a person resident in Scotland, and seeks advice from any of our readers who may have had a similar case.

There appears to me to be an important omission in the "Act to amend the Laws relating to Aliens," 7 & 8 Vict. c. 66, relative to the administration of the Oath of Allegiance required to be taken by the 10th section of that Act.

By this section, after setting out the form of the oath, and that it shall be duly administered "before any of her Majesty's judges of the Court of Queen's Bench, or Court of Common Pleas, or master or master extraordinary in Chancery, and that the judge, or master or master extraordinary in Chancery, whether *in England* or *in Ireland*, before whom such oath may be administered, shall grant a certificate," &c.

I have a client resident in Scotland who is about to apply for a certificate of naturalization. It will be observed, on reference to the section in question, no provision appears to be made for administering the oath in that country; and I shall be obliged to any of your readers for his opinion as to whether such oath could be administered by any of the judges of the superior courts of Scotland, or whether it will be necessary for my client to come to England for the purpose of taking such oath.

It will be seen that throughout the Act, with the exception referred to, the words are *Great Britain* and *Ireland*; and that, in the section quoted, the authorities before whom the oath is to be taken are only those of the English and Irish Courts.

To Readers and Correspondents.

J. P. Uttoxeter.—*We have repeatedly denounced the system of giving answers to questions involving some practical difficulty in law proceedings adopted by other journals, and though we are duly sensible of the embarrassing position of our correspondent as regards his client, we cannot consistently advise him in this case.*

W. W. R. (Whitehall-terrace).—*The paragraph supplied having this morning (Friday) appeared in the* Chronicle, *we hold ourselves relieved of all obligation to notice it in this number.*

G. M. (Shrewsbury).—*The letter, though meritorious, both in intention and substance, would occupy a space in our columns which we can ill afford. The subject, too, has already been discussed at great length in our columns.*

NOTICE.

Our readers will have remarked in the LAW TIMES *of the 8th instant that two columns of one of the leaves were misplaced, so that the continuity of the matter was destroyed. We beg to say that with the index will be given a corrected leaf, to be substituted, when the volume is bound, for that which is defective.*

TO SUBSCRIBERS.

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

An Alphabetical Index to the Cases in the current Volume of the LAW TIMES *always lies at the Office for the purpose of reference.*

The Volumes of the LAW TIMES, *handsomely and uniformly bound, at 5s. 6d. each, if forwarded to the Office; with the Solicitor's name and abode lettered on the cover, 1s. extra.*

THE LAW TIMES.

SATURDAY, MARCH 22, 1845.

THE HEIR-AT-LAW SOCIETY.

SOME month since we promised a revelation of the doings of this *Society*. That announcement called forth a letter of defiance from Mr. Ross. Notwithstanding his threats, we should have submitted to the public a case which would have exhibited its true character and connections, but that one or two of the documents in our possession, though such as to leave no moral doubt, might have been subjected to legal doubt, and, as our readers are aware, we have learned, by experience, that neither a man's handwriting, nor his name attached to a printed paper, is deemed sufficient to justify an assertion that they are what they appear; we have waited, therefore, for confirmatory evidence; but, as positive proof is rarely to be obtained in any case, so it has turned out in this; we cannot *prove* that names and handwritings are what they seem, because no witness beheld the movement of the pen, and now-a-days no evidence less than that will be deemed to justify publication.

However, though we may not yet make known the damning facts we hold, we are glad to diffuse, as widely as our opportunities permit, an exposure of the Society which has recently taken place at Guildhall. We slightly abbreviate the report in the daily papers.

GUILDHALL.—THE HEIR-AT-LAW SOCIETY.—*Hugh Williams*, the clerk of the Heir-at Law Society, again appeared before Sir James Duke, to answer the complaint of a poor man, named Bridger, who had come to London to prosecute a claim to an estate in the country, worth 40,000*l*. The charge was, that the society had received 2*l*. 4s. 6d. for the special purpose of taking counsel's opinion, and, in violation of good faith, had not so applied it.

Williams had attended on a previous day, when he stated that the manager, Mr. George Ross, was out town; and that, in fact, Mr. Ross knew nothing of the matter, as the complainant's money had been embezzled by a late clerk. The complainant having ascertained that the manager is a prisoner in the Queen's Bench, and not a visitor in the country, renewed his application.

Sir James Duke asked if Ross was now in attendance?

Williams replied he was not; but he was there on behalf of Mr. Ross and the society.

Sir James Duke said he had received letters from parties who complained that they had paid money and received no service from the society. If this was the practice of the society it bordered on swindling.

Williams said he was ready to answer any charge.

Sir James asked who Watson, the chairman, was?

Williams replied he was a gentleman.

Sir James Duke said that was no answer. If Mr. Watson was a respectable man, he need not shrink from publicity.

Williams replied that the proceedings were too public, and that was the reason he should not give names.

Sir James said Mr. Boyle, of the Temple, had come forward to disclaim being what Williams had represented, the standing counsel of the society.

Williams stated that he was the society's standing counsel now, cases were drawn, and submitted for his opinion. He produced the book in which the cases and opinions were entered, and said the society's early cases had been submitted to Mr. Barker. It was very easy to cast imputations.

Sir James Duke asked who Mr. Barker was.

Williams replied he was a barrister of long standing.

Sir James Duke said he was astonished the public could be led astray by a society which had attracted the notice of one of the Queen's judges, and pointed out as a fit object for prosecution by the Attorney-General.

Sir James Duke asked if Mr. Ross was still out of town?

Williams said he was. He had gone to Brighton.

Sir James asked when he saw him last?

Williams said he should not answer that question. There was no complainant in court, and was he to be examined, and to make a defence where there was no charge?

Sir James Duke said if he would tell who were the seven directors of the society, he would feel obliged.

Williams replied he would not tell, for the reasons he had already given.

Sir James hoped the public would be cautious in

their dealings with a society, the directors of which shrunk from the disclosure of their names.

Williams said, of course they would be ashamed to see their names in a police report. Surely the case was not to be entered upon *ex parte*. Who accused the society? Had Sir James Duke any right to examine him (the clerk) at all?

Sir James Duke said the complainant had taken out the summons, and perhaps Mr. Williams could account for his absence.

Williams declared he had not compromised with the complainant, and if he now came for his money, perhaps the magistrate would order it should not be paid.

The aldermen called for Mr. Toole.

Mr. Toole said he would state his case. He had not exactly a complaint to make. He was at Hull some months ago, and he undertook to obtain an opinion on the claim of a poor man named Doughty. He obtained the opinion of an eminent practitioner, which was adverse, from want of certain papers. The poor man got more papers, and as a last resort placed them in the hands of the society. Upon paying the money, he obtained the following receipt:—

"Heir-at-Law Society, No. 358. Office, 14, Chatham-place, Blackfriars.

"Received the 13th of August, 1844, of Mr. Joseph Doughty, the sum of 2*l*. 4*s*. 6*d*. being the fee of counsel for opinion and advice herein. George Ross."

Williams, interrupting the complainant, asked what was the charge?—Toole said he did not make a charge.

Williams observed, that he had no right to be heard at all. He was not to cast imputations on the society if he had no charge. He protested in the strongest manner against any thing further being heard, as he had no charge to make.

Sir James said it was for him to judge whether there was ground of charge after hearing the circumstances.

Williams again formally protested against Mr. Toole being heard.

Mr. Toole, however, continued: Such a society, honestly conducted, would be a great benefit to society.

Williams said he was willing to return Mr. Toole the papers.

Sir James said he would not allow Mr. Toole to be interrupted. The time to reply was when he had finished.

The complainant continued.—After paying the fee, the client received a letter that his case would be submitted to counsel in its turn, but from August to March that turn had not arrived. A great many applications had been made at the office in Trafalgar-square, and Chatham-place, but no information had been obtained.

Sir James asked if an opinion had been taken on this case?

Williams referred to his book, but could not find one.

Sir James remarked that it would not have been difficult to manufacture an opinion, and affix any counsel's name to it. He asked Williams if he should read the opinion of the society, expressed by one of Queen's judges.

Williams protested energetically against any *ex parte* proceedings, or any expression of insinuations against the society.

Sir James Duke said it did not appear that the society had done anything in the case mentioned by Mr. Toole but give a receipt for the money. The gentleman sitting at his left hand, and whom Williams did not appear to know, was Mr. Boyle, whom he had misrepresented as being the standing counsel of the society.

Williams denied that he had so represented Mr. Boyle.

Sir James Duke said he gave the society credit for engaging a man of Mr. Williams's ingenuity and boldness.

Mr. Boyle begged to state that he was not the standing counsel for the society, or in any way connected with it. His opinion of certain cases had been obtained through a solicitor, in the ordinary manner. He had a list of the cases in which he had advised, and would show it to the alderman.

Sir James thanked him for his attention, and said it might be of some utility to print that list. It ran as follows:—"To advising on papers, Jan. 19, re Salomon; Jan. 19, re Pelham; Jan. 26, re Phillips; Jan. 29, re Barrott; Feb. 8, re Danvers; Feb. 14, re Crump; Feb. 15, re Haweis; Feb. 28, re Carew; March 5, re Wood; March 27, re Wood; May 29, re Salusbury; May 29, re Barnes; June 11, re St. Aubyn; June 11, re Meredyth; August 6, re Swinton; August 6, re Rawlins; August 6, re Eustace."

Mr. Tomkinson, of the Walworth-road, made a complaint, but in his case a legal opinion seemed to have been taken.

The chief clerk told Williams if he wished to see Mr. Ross, he might find him in the Queen's Prison; but Williams turned a deaf ear to it.

Sir James Duke, therefore, asked him if he wished to hear where Mr. Ross was?

Mr. Williams said no, he did not. It was shocking that there should have been an inquiry, when no charge was made. Such insinuations ought not to be permitted. The society was ready and able to answer every accusation that could be brought against it.

Sir James was glad to hear it, and discharged Mr. Williams from further attendance on Bridger's complaint.

From a prospectus dated 18'2, which was put in, it appeared the society was described as having a capital of 100,000*l*. in 100 shares of 1,000*l*. each, one half paid up, the other half made up of accumulating profits; rest, 25,000*l*.; established, 1839; conducted under the superintendence and management of seven directors (three being a quorum) and able assistants; George Ross, manager; W. H. Watson, chairman. A paper, which gives the resolutions of the committee held on the 9th November, 1841, states that the society have now placed by clients at their disposal various sums amounting to upwards of 800,000*l*. to be laid out in mortgage. Another prospectus, dated February, 1845, which was handed to the magistrate, gives the amount to be loaned on mortgage at only 500,000*l*., but it states that the society has 450 claims relating to property amounting to 20,000,000*l*. under consideration.

Here we have the names of Mr. Barker and Mr. Boyle figuring as standing counsel to this association of ——— (let the reader add whatever epithet he deems it to deserve). Mr. Boyle, however, publicly repudiates the "greatness thrust upon him." But where is Mr. Barker?

Since Mr. Barker has not yet put in *his* denial, we beg to ask him two questions; we do not put them without a reason, and we hope, *for his own sake*, he will favour the Profession with a reply. First, "Has he ever given his opinion upon cases submitted by the Society, without the intervention of a solicitor, and with only the words '*Heir-at-law Society*' indorsed?" Secondly, "Has he, in *all* instances, received a regular fee for such opinions; or has he shared, with Mr. George Ross, and Mr. R———, the so-called attorney for the Society, the profits of the business, in lieu of formal fees?"

We ask these questions, in hope that they will meet with an explicit reply in the negative, accompanied with such explanations as to the manner of the employment, the parties with whom the transactions took place, and the constitution of the Society, as Mr. Barker is doubtless competent to give. And we think that from both Mr. Barker and Mr. Boyle some further narrative is due to the Profession, not only to relieve themselves from the imputations which have attached to them by the report which we have published above, but to aid the Profession in investigations which will no doubt be now actively made for the purpose of revealing to the credulous public the true character of the Heir-at-law Society.

ADVERTISING ATTORNEYS.

From the *Hull Advertiser* of the 17th of January last, we take the following very *tailor-like* advertisement. Mr. William Henry Pearce has mistaken his profession.

WILLIAM HENRY PEARCE, Attorney-at-Law, 29, Vincent-street, Kingston-upon-Hull, solicits attention to the Act of Parliament which came into operation the Ninth Day of August last, since the passing of which a material alteration in the Law has taken place, and as the practice in the Court of Bankruptcy (where the debts do not exceed 300*l*.) will be as similar as possible to that in the Court for Relief of Insolvent Debtors (precisely the same form of Schedule being used and all other things to be done thereon being as nearly as possible assimilated to the practice in the Court for Relief of Insolvent Debtors), W. H. P. therefore begs to offer his professional services to persons in pecuniary difficulties, feeling assured that his constant and successful practice (upwards of ten years) in making up the Accounts of Insolvents and preparing their Schedules afterwards, will fully enable him to do the like in the Bankruptcy Court.

SHAM LAWYERS.

For the first time we have found some members of this tribe daring not only to *act* as attorneys, but to assume the *title*.

Quære, have not Messrs. Sanders and Co. upon their own confession, subjected themselves to the penalties of the Act?

Behold a copy of a card which we beg to submit to the consideration of the *Metropolitan and Provincial Legal Association*:—

J. SANDERS & CO.
SOLICITORS, APPRAISERS, UNDERTAKERS, and VALUERS,
41, Allen-street, Goswell-street, Clerkenwell.

Recover Rents, Taxes, and Debts of all descriptions, by legal process, with the least possible costs. Adjust Tradesmen's Accounts, &c.

N.B.—If any thing is wanted, drop a line; send or call as above. At home till Ten in the Morning.

J. S. & Co. take this opportunity of returning their most sincere thanks to the Public and their Friends, for the very liberal encouragement which they have shewn to them, during a period of twenty-five years, while following the above line of business; and trust that the same encouragement will be extended to them while they continue to manage their business with punctuality and strict attention thereto.

VERULAM SOCIETY.

The 7th and 8th numbers of the *Real Property* and *Conveyancing Cases*, completing Part II., are published. The 7th number of *Magistrates' Cases* and the 5th of *Practice Cases* are in the press.

The following *Forms* have been added to the list:—

Miscellaneous.
No. 1. General retainer; size, foolscap. In sheets, or bound in volumes, each containing 150 sheets.
No. 2. Warrant to sue; small size. In sheets, or bound in volumes, each containing 150 sheets.

Common Law.
Notice to Produce.

The following are in the press:—

Bankruptcy and Insolvency.
The nine forms under the Debtors and Creditors' Act.

Conveyancing.
Conditions of Sale, common and special.

Common Law.
Cognovits.
Warrants of Attorney.

Election Law.
Notice of Claim (counties and boroughs).
Notice of Objection (ditto).

Magistrates' Law.
All the new forms contained in the schedule to Sir J. Graham's Bastardy Act.

We repeat, that suggestions of *forms* useful in practice will oblige.

A list of the forms ready for delivery, with their prices, will be found in the advertisement. The members of the Verulam Society will be entitled to all or any of the Society's forms at a reduction of one-fourth from the prices named, which are those at which they are sold to the public.

It should be understood that the Forms can be had by order of any bookseller in the country, taking care only to give him the numbers and names of those required, as stated in the advertisement; and any quantity of each may be had, even to a single copy.

LECTURES ON MEDICAL JURISPRUDENCE.

By Alfred S. Taylor.

Delivered at Guy's Hospital, 1844.

Lecture X.

Arsenic in solution in water, is clear, colourless, possesses scarcely any perceptible taste, and has a very faint acid reaction. In this state, we should first evaporate a small quantity on a glass plate, slowly, when a confused crystalline crust will be obtained. On examining this crust with a common lens, it will be found to consist of numerous minute octohedral crystals, presenting triangular surfaces by reflected light. By this simple experiment, arsenic is distinguished from every other metallic poison:—1. On adding to the solution ammoniac-nitrate of silver, a rich yellow precipitate of arsenite of silver falls down, rapidly changing in colour

to a greenish-brown. The test is made by adding to a very strong solution of nitrate of silver, a weak solution of ammonia, continuing to add the latter until the brown oxide of silver, at first thrown down, is almost re-dissolved. The yellow precipitate is soluble in nitric, tartaric, citric, and acetic acids, as well as in caustic ammonia; it is not dissolved by potash or soda. 2. On adding to the solution of arsenic ammonio-sulphate of copper, a rich green precipitate is formed, the tint of which varies according to the proportion of arsenic present, and the quantity of the test added. This test is made by adding ammonia to a solution of sulphate of copper, until the bluish-white precipitate at first produced, is nearly re-dissolved; it must not be used too highly concentrated, as it possesses a deep violet blue colour, which may render obscure the green precipitate formed. The precipitated arsenite of copper is soluble in all acids, mineral and vegetable, and in ammonia, but not in potash or soda. When dried and collected, it possesses this valuable property: by very slowly heating a few grains in a tube of small bore, arsenious acid is slowly sublimed, in a ring of minute resplendent octohedral crystals, oxide of copper being left as a residue.

An important medico-legal question has arisen, in relation to the tests for arsenic; namely, whether we can rely upon any tests for this poison, independently of its reduction to the metallic state;—is it absolutely necessary, chemically speaking, to obtain the metal, in order to say that arsenic is certainly present in an unknown case? There is a popular prejudice in favour of this metallic reduction; and courts of law, as well as the public, are disposed to regard the obtaining of the metal as the only conclusive proof of the presence of this poison. The acquittal of Donnall, at Launceston, in 1817, mainly took place from the circumstance that the medical witnesses could obtain no metallic arsenic; they trusted to the liquid reagents alone, and these had unfortunately been applied to coloured fluids mixed with organic matter. At a trial on the Norfolk Spring Circuit, 1833, the medical witness admitted that the metallic reduction would have been more satisfactory, but he had consumed the fluids of the stomach in applying the liquid reagents. This evidence, although not absolutely rejected by the Court, was not well received, and the prisoner was acquitted. This being a purely chemical question, must of course be answered on chemical principles; for it is chemical certainty that the law requires. If a white powder were presented for analysis, and it was found to possess distinctly the three first characters pointed out, could any chemist entertain a reasonable doubt that the powder was white arsenic? I think not. The reduction process might corroborate, but I do not see how it could add greater certainty to the results thereby obtained; and in heating such a powder with flux, the chemist knows that a metallic sublimate must of necessity be formed, for there is no white solid in the whole range of substances known to chemistry which possesses these properties. If we are so situated that we are obliged to rely upon one test only, then the process by reduction should be preferred. But even here, so many mistakes have been made relative to the supposed metallic crust obtained from an unknown solid, that Dr. Turner and others have recommended that it should always be reconverted to arsenious acid, in oxidating it by heat, and that the white solid thus produced should be tested by liquid reagents. If arsenic in the form of a sublimate were presented to a chemist, and he were required to state its nature, he would necessarily treat it in this way before expressing a judicial opinion; because its real nature could only be with certainty established by such experiments. In a case in which the particulars are entirely unknown, there is nothing in the physical characters of an arsenical sublimate to justify a witness in giving a positive opinion respecting it before he has submitted it to various chemical processes. It appears to me that the action of sulphuretted hydrogen and the characters of the resulting sulphuret, coupled with the negative effect of hydrosulphuret of ammonia, as clearly indicate the presence of arsenic, chemically speaking, as the obtaining of a metallic sublimate. Where the matter is at all doubtful, the sulphuret should be reduced; but in such a case, if a sublimate be obtained by the reduction of the sulphuret, the precise nature of this should be verified by gently heating it in a wide reduction tube under a free access of air.

Marsh's Test.—This test depends on the decomposition of arsenic, and its soluble compounds by hydrogen evolved in the nascent state, from the action of diluted sulphuric acid or zinc. The apparatus is of the most simple kind, and is so well known as to need no description; the arsenic may be introduced into the short leg of the tube in the state of powder; but it is far better to dissolve it in water by boiling, either with or without the addition of a few drops of caustic potash; the metallic arsenic combines with the hydrogen, forming arsenuretted hydrogen gas, which possesses the following properties:—1. It burns with a bluish-white flame and thick white smoke (arsenious acid). 2. A cold plate of glass held in the flame near the point receives a dark stain from the deposit of arsenic upon it; this stain is composed in the centre of pure metallic arsenic, which may be sometimes raised up in a distinctly bright leaf of metal. Immediately on the outside of this is an opake black ring (suboxide or hydruret of arsenic), which, when viewed by transmitted light, is of a clear hair-brown colour at the extreme edge. If the quantity of arsenic be very small, the metallic lustre and opacity may be wanting, and the whole stain will have this colour by transmitted light; on the outside of this black ring is a thin wide film of a milk-white appearance, which is nothing more than arsenious acid reproduced by combustion. 3. A white saucer moistened with ammonio-nitrate of silver, held about an inch above the flame, will be found, if arsenic be present, to be coloured yellow, from the reproduced arsenious acid vapour being absorbed, and forming yellow arsenite of silver, easily soluble in acetic acid and ammonia; unless the gas possess these properties, there is no certain evidence of the presence of arsenic in the liquid examined.

Marsh's test is undoubtedly one of great delicacy. MM. Danger and Flandin assert that metallic deposits may be procured when the arsenic forms only the 2,000,000th part of the liquid examined. M. Signoret states that he has procured metallic deposits with only the 200,000,000th part of arsenic in the liquid; this is in the proportion of one grain of arsenic dissolved in about 400,000 ounces, or 3,000 gallons of water. As the delicacy of this test has been already made a subject of discussion in a court of law (*Reg.* v. *Hunter*, Liverpool Spring Assizes, 1843), it may be proper to offer a few remarks respecting it. It was stated on that trial, that the one-millionth part of a grain of arsenic might be rendered visible by Marsh's test, and the judge, guided by this statement, put the question to another medical witness, whether arsenic could be so removed from the stomach in three days as that it would be impossible to discover the one-millionth part of a grain in the body. It appears to me the facts relative to the delicacy of tests are not always stated with sufficient clearness on these occasions. Thus we ought to know two points: 1st, the total quantity of poison experimented on; and, 2nd, the degree of dilution, or the total quantity of liquid in which the poison was dissolved or suspended. There is no doubt that considerably less than the millionth part of a grain of arsenic may, by Marsh's test, be rendered visible on a glass plate. It is possible to distinguish with the eye a piece of leaf gold which would weigh less than the ten millionth part of a grain; but the real question is, whether the test will discover arsenic in a single drop of solution, made by dissolving one grain of the poison in a million grains or sixteen gallons of water; if not, the statement amounts to nothing; for it is clear that if more than one drop of such an extremely diluted solution be taken, the test is acting upon a larger quantity of arsenic than the above form of expression would indicate. I have generally found that the fractional quantity stated to be detected referred rather to the degree of dilution than to the absolute quantity of poison present; whereas a test may fail to act, as we have already seen, either from the smallness of the quantity of poison present, or from the very large quantity of water in which it is diffused. The results of my own experiments are, that where the arsenic is mixed with the acid liquid in a tube capable of holding two fluid ounces, very faint and scarcely perceptible deposits begin to be formed on a glass plate with a quantity equal to the 2,160th of a grain; the diffusion here being equal to two million times the weight of the poison with the 1,080th of a grain in the same quantity of water, the arsenic forming, therefore, one millionth part. Slight brown annular stains were procured with the 720th of a grain, the arsenic being in the proportion of about the 800,000th of the liquid. The stains were much more decided, but quite imponderable, with the 100th grain in one fluid ounce of water (the 48,000th part), and the 67th grain in two fluid ounces (the 64,800th part), the deposits on glass were decided and characteristic; and it is at this point that the tests begin to be safely available for the purposes of legal medicine. The delicacy of Marsh's test has no doubt been sometimes improperly estimated by the assumed weight of the metallic deposit on glass; whereas it is probable that the quantity of arsenic in one such infinitesimal deposit—if transferred to the apparatus—would give no indication whatever of its presence. In these experiments it must be remembered that we are operating on the whole quantity of the poison, dividing and subdividing the metal into a series of deposits, the weight of some of which might not be equal to the millionth part of the weight of the arsenic which is actually furnishing them.

There are numerous objections to Marsh's test. Other substances will combine with nascent hydrogen, and when that gas is burnt, a deposit will be formed on glass which may be mistaken for arsenic. Late researches have shewn that a liquid containing antimony, tellurium, selenium, iodine, bromine, phosphorus, and sulphur, or some kinds of organic matter, may in this way produce an inflammable gas, and leave a deposit on glass. The only objection of any practical force is that founded on the presence of antimony. There are these differences between the arsenical and antimonial stains: the stain of antimony has not the bright metallic lustre which that of arsenic sometimes presents. By transmitted light it is of a smoky black, while that of arsenic is of a hair-brown colour. Although the antimonial burns like the arsenical flame, yet the third property is entirely wanting. If the ammonio-nitrate of silver be held over the antimonial flame, the silver is reduced; no yellow arsenite is formed, as in the case of arsenic. This last criterion distinguishes the arsenical flame from that produced by all the other bodies above mentioned.

Reinsch has lately discovered a very simple method of determining the presence of arsenic in liquids. We should add to the suspected solution a few drops of pure muriatic acid, and place in it a slip of bright copper. There is no change until the liquid is brought to the boiling point, when, if arsenic be present even in small quantity, the copper acquires an iron-grey coating from the deposit of that metal; this is apt to scale off if the arsenic be in large quantity. We remove the slip of copper, wash it in water, dry it, and gradually heat it in a reduction-tube, when arsenious acid will be sublimed in minute octohedral crystals; if these should not be apparent from one piece of copper, several may be successively introduced; this test succeeds perfectly with powdered arsenic, the arsenites, arsenic acid, the arseniates, and orpiment; it will even separate the arsenic from the arsenite of copper, and from common lead-shot; when the quantity of arsenic is small, the copper acquires a faint violet or blue coat, and the deposit is materially affected by the quantity of water present; or, in other words, the degree of dilution. But one great advantage is, that we are not obliged to dilute the liquid in the experiment, and there is no loss of arsenic, except as it may be removed by the introduction of successive portions of copper. This test failed to detect the 4,000th part of a grain of arsenic in thirty drops of water, the dilution being equal to 120,000 times the weight of the arsenic. The deposit on copper commenced with a violet-coloured film, when the quantity of arsenious acid was equal to the 3,000th part of a grain in thirty drops of water, or under a dilution of 90,000 times its weight. It was also very decided with the 2,000th part of a grain in the same quantity of water; but in neither of these cases could octohedral crystals of arsenious acid be obtained by heating the copper. The following experiments will shew how this test is liable to be affected by dilution:—The copper was coated in a few seconds when boiled in a solution containing the 4,000th part of a grain in ten drops of water, although the test had failed to detect the same weight of arsenic in three times that quantity of water. So again, the 2,160th part of a grain in thirty drops of water gave an arsenical deposit on copper, while the same weight in half an ounce of water did not produce any effect on the metal. Certain objections may be urged to this test. Thus it may be said that arsenic was present in the muriatic acid; this is at once answered by boiling the copper in a portion of the muriatic acid before adding the suspected liquid. A more important objection is, that

other metals are liable to be deposited on copper under similar circumstances. Thus, this is the case with antimony, whether in the state of chloride, or of tartar emetic; nor is it always possible to distinguish, by the appearance, the antimonial from the arsenical deposit. Should the quantity of antimony be small, the deposit is of a violet tint; if large, of an iron-grey colour, exactly like arsenic. Tin and lead become tarnished under the same circumstances, but there is no decided metallic deposit. Bismuth produces a deposit very closely resembling that of arsenic. With respect to mercury and silver, a metallic deposit takes place in each case without boiling. In a salt of nickel or cadmium, the copper undergoes no change; hence this is another important distinction between cadmium and arsenic. Lastly, if an alkaline sulphuret, or sulphuretted hydrogen, be present in the liquid, the surface of the copper will become tarnished; but this effect takes place on contact, without boiling, and without rendering the addition of muriatic acid necessary. There is one answer to all these objections, namely, that from the arsenical deposit octohedral crystals of arsenious acid may be procured by slowly heating the slip of copper in a reduction-tube. If, while heat is applied to copper in a long piece of tube, drawn out at one end, a current of air be gently blown through it, a ring of white arsenious acid will be obtained; this may be filed off, boiled in water, and tested by the ammonio-nitrate of silver and sulphuretted hydrogen.

Arsenious acid, when in a state of solution, is not liable to be precipitated by any animal or vegetable principals; although all such substances render it less soluble in water. The liquid for analysis should be filtered through muslin, cotton, or paper, in order to separate any insoluble matters. Should it be coloured, this is of little moment, provided it be clear; if viscid, it should be diluted with water, and boiled with a small quantity of muriatic acid: on standing, a deposit may take place, and this should be separated by a filter. As a trial test, we may now boil, in a portion of the liquid, strongly acidulated with pure muriatic acid, a slip of bright copper. In a few seconds, if arsenic be present, this will acquire a grey metallic coating; if the copper remain unchanged, the arsenic, if present, must be in extremely minute proportion; if, on the other hand, the copper be covered by a grey deposit, it should be dried and heated in a reduction-tube in the way already described (Reinsch's test), in order to obtain from it octohedral crystals of arsenious acid. From several such slips of copper a quantity of metallic arsenic may be procured, sufficient, on reconversion to arsenious acid, to allow of a solution in water b'ing made, to which all the liquid tests may be applied. In this way the 144th part of a grain of arsenious acid was detected in two fluid drachms of gruel, milk, porter, and other organic liquids, in so many different experiments. It has also been thus easily separated from wine, brandy, and the liquid contents of the stomach of a person poisoned by arsenic. Here our analysis might be closed, if the object were to determine only the presence of arsenic; since a case can rarely occur in medico-legal practice, where it would be necessary to extract the whole of the arsenic from the fluid contents of the stomach. Having satisfied ourselves that arsenic is present, we may get rid of a portion of the organic matter by boiling the liquid with acetic acid, and filtering. Sulphuretted hydrogen gas may be then passed into it, and the precipitated sulphuret of arsenic collected. The sulphuret has sometimes a dark brown colour, from adhering organic matter; it is then better to transform it to arsenic acid by boiling it in nitro-muriatic acid, during which process the organic matter is entirely destroyed, and a solution of arsenic acid is obtained, and rendered fitted for testing, by digesting the evaporated residue in distilled water; or the sulphuret may be deflagrated with nitre, and arseniate of potash thereby obtained. In this case the surplus nitric acid should be driven off by sulphuric acid. An abundant deposit of metallic arsenic is procured by boiling the liquid, in either case, with muriatic acid and copper. In this way it is easy to analyse wine, coffee, tea, milk, porter, brandy, and similar liquids, for arsenic. Fowler's mineral solution, containing the arsenite of potash, may be thus examined; but in this case it would be better to resort at once to Reinsch's test: if the liquid for analysis should contain oil, this may be separated after boiling, by passing it through a wet filter. The result of a direct analysis is this: Two grains of arsenic were dissolved in half-a-pint of coffee. The liquid was rendered slightly alkaline by potash, in order to dissolve the arsenious acid, then evaporated, and the residue strongly heated. This residue was then digested in alcohol, to dissolve out any arsenite of potash present, and a solution of a pale straw-colour, amounting to about two drachms, was obtained. This was strongly acidulated with acetic acid, and again filtered. A current of sulphuretted hydrogen gas was passed into one half, and a yellow sulphuret soluble in ammonia was readily obtained, although sulphuretted hydrogen failed to detect the poison in the original coffee. The other half of the solution (one drachm) yielded also very satisfactory results with Marsh's test.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

BITTLESTON.—On the 14th instant, in Upper Stamford-street, the lady of John W. Bittleston, esq. of the Middle Temple, of a daughter.

RAINY.—On the 18th inst. at Cumberland-terrace, Regent's-park, the wife of George Rainy, esq. of a son.

WORSLEY.—On Friday, the 14th instant, at Binstead, near Ryde, Isle of Wight, the lady of W. R. Worsley, esq. of a daughter.

DEATHS.

BLISS, Edward, esq. of Brandon Park, in the county of Suffolk, late high sheriff and magistrate of the same county, at his town residence, Berkeley House, Hyde Park, on the 17th inst. aged 70.

CAREW, Rev. Gerald Pole, youngest son of the late Right Hon. Reginald Pole Carew, at Antony Vicarage, in the county of Cornwall, on the 14th inst. aged 30.

HEWSON, Rev. William, Doctor in Divinity, Chancellor of the Church, and one o the Canons of St. David's, Vicar of Swansea, &c. in Regent-street, on the 14th inst.

LLOYD, Edward Hewitt, the youngest child of J. H. Lloyd, esq. barrister-at-law, on the 17th inst. at the age of four years and seven months.

LIFFORD, Alicia Viscountess Dowager, at Astley Castle, Warwickshire, the residence of her son, Viscount Lifford, on the 15th inst. aged 81.

OPENSHAW, James, esq. of Fern-grove, near Bury, Lancashire, one of her Majesty's justices of the peace, on the 12th inst. aged 49.

RICHARDSON, Daniel Higley, esq. Master of the Court of Bankruptcy, to which honourable office he was appointed in August last by the Lord Chancellor, at his residence, Essex Lodge, Brixton Rise, on the 13th inst. aged 60.

TADDY, William, esq. her Majesty's ancient serjeant-at-law, and Attorney-General to her Majesty the Queen Dowager, at his house in Old Palace-yard, on the 14th inst. after a few weeks' illness.

WAINEWRIGHT, Reader, esq. of Lincoln's-inn, barrister-at-law, on the 13th inst. after a short illness.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.
For every succeeding 30 words . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	99¾	99⅞	99⅞	99⅞	99⅞	99⅞
Three per Cents. Reduced ...	100⅛	100⅛	100⅛	100	100	100⅛
New Three-&-a-quarter per Cts	103⅛	103⅛	103	103¼	103⅛	103¼
Long Annuities..........	12⅛	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	216½	216	217¼	217	217	217
India Stock	281	282	282¼	282	282½	282½
India Bonds, prem..........	70	73	72	72	72	73
Exchequer Bills, prem.	66	67	65	59	58	58
FOREIGN.						
Spanish Five per Cents.......	30¼	30⅜	30⅜	30¼	30½	30½
Spanish Three per Cents.	40⅜	40¾	40¼	40¼	40¾	40¾
Russian	119¾	117½	119¾	119¼	120	119¼
Peruvian..........	32½	32½	32½	32¾	33	33
Portuguese	60½	68	69	59	69¼	60¼
Mexican..........	36½	36¼	36½	36½	36½	36¼
——— Deferred	16½	16¾	16¾	17¼	17¾	16⅝
Dutch Two-and-a-Half per Cents..........	63¾	63⅞	63¾	63⅞	63½	63¾
——— Five per Cents.	99¼	99¼	99¼	99¼	99¼	99½
Danish	91	90¼	91	91½	91⅞	91
Colombian	14¼	14½	14¼	14¾	14⅛	14¾
Chilian	102¼	101½	101½	102	102	102
Buenos Ayres	43½	44	43½	43½	43½	43½
Brazilian..........	91	92	90½	91	91½	91
Belgian	101½	102	101½	101½	101⅛	101½

Public Sales.

[In future the results of such sales only as are advertised in the LAW TIMES will be published in this list, and reference will be given to the advertisements, it being found that, without the particulars, the results of sales are of no practical value. As sale by auction will in future be generally resorted to, auctioneers in town and country advertising in the LAW TIMES are requested regularly to forward the results of the sales so advertised.]

By Messrs. SHUTTLEWORTH and SONS.

A freehold estate, comprising Roughway Mill, for the manufacture of paper of the finest qualities, with several acres of meadow land, ozier-grounds, and coppices attached, and a valuable trout-stream, about four miles from Wrotham, in the parish of Wrotham, Kent, the whole comprising 10a. 3r. 25p.—4,000*l*.

A convenient business residence, No. 3, Jewin-crescent, Cripplegate, let at 45*l*.; held for 8¾ years, at 5*l*. 8s. per annum, land-tax 4*l*. 1s. net rental 35*l*. 11s.—150*l*.

A ditto, No. 39, let at 55*l*.; held for 8¾ years, at 11*l*. 13s. per annum, net rental, 43*l*. 7s.—150*l*.

A house with two shops, being Nos. 26 and 26½, High-street, St. Giles's, let at 82*l*.; held for five years, subject to a ground-rent of 20*l*. per annum—140*l*.

Two ditto, Nos. 27 and 28, let at 107*l*. 10s. per annum; held for 16 years, at a ground-rent of 40*l*. per annum—320*l*.

By Messrs. FULLER and MARSH, at the Mart.

The absolute reversion to a freehold estate, consisting of a farm-house, stabling, and agricultural buildings, and about 29 acres of arable, meadow, pasture, and orchard land, producing a rental of 54*l*. per annum, on the death of a gentleman now in the 66th year of his age—590*l*.

THE GAZETTES.

AMOUNT OF DIVIDENDS.

The sum stated as the Dividend, means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Tuesday, March 11.

Benson, T. stationer, div. next week. Graham, London.—*Burrage*, C. carcass butcher, last exam. April 1.—*Cleeve*, H. cow keeper, div. next week. Johnson, London.—*Davies*, J. P. surgeon, div. next week. Groom, London.—*Gould*, W. E. carver, last exam. passed.—*Hall*, T. B. grocer, div. next week. Graham, London.—*Smith* and *Smith*, warehousemen, last exam. passed.

Wednesday, March 12.

Perkins, W. upholsterer, div. next week. Bell, London.

Thursday, March 13.

Burt, W. lodginghouse keeper, last exam. April 17.—*Finlayson*, J. grocer, last exam. *sine die*.—*Hurrell*, A. wine merchant, last exam. April 11.—*Moore*, C. carver, last exam. April 9.—*Stephen*, G. scrivener, last exam. June 5.

Friday, March 14.

Argent, J. victualler, last exam. passed.—*Breckels*, S. bedstead maker, fin. div. next week. Alsager, London.—*Brice*, S. tailor, last exam. *sine die*.—*Clark*, R jun. wharfinger, assignees, April 11.—*Day*, J. victualler, assignees, April 16.—*Flowers*, E. C. cattle dealer, last exam. April 11.—*Gray*, J. L. tailor, div. next week. Groom, London.—*Harrison*, H. builder, div. next week. Johnson, London.—*Haword*, C. S. grocer, last exam. April 4.—*Jacobs*, J. fruit merchant, assignees, March 25.—*Maniglier*, J. watch maker, div. next week. Alsager, London.—*Nobbs*, W. M. hotel keeper, div. next week. Johnson, London.—*Rayner* and *Carter*, lamp manufacturers, last exam. passed.—*Stent*, W. hosier, fin. div. next week. Alsager, London.—*Thomas*, L. I. tea dealer, div. next week. Alsager, London.—*Williams*, J. B. stationer, div. next week. Pennell, London.—*Winton* and *Co*, warehousemen, joint div. next week. Turquand, London.—*Wood*, H. woollen factor, div. next week. Whitmore, London.

Saturday, March 15.

Barton, W. H. boot maker, div. next week. Follett, London.—*Harris and Hill*, tailors, &c. last exam. of Harris passed, Hill *sine die*.—*Oldham*, J. silk warehouseman, div. next week. Follett, London.—*Sparham*, J. miller, fin. div. next week. Follett, London.—*Tucker*, R. farrier, div. next week. Follett, London.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bannister and *Co.* shipwrights, second, 2s. 6d. Bird, Liverpool.—*Burgess*, J. farmer, first, 1s. 6d. Belcher, London.—*Boulter* and *Co.* builders, first, 10d. Christie, Birmingham.—*Cogan*, W. builder, first, 1s. 9½d. Hernaman, Exeter.—*Conibeere* and *Co.* drapers, second, 5-16ths of a penny. Christie, Birmingham.—*Gibbins*, J, carpenter, first, 3s. 7d. Belcher, London.—*Green*, G. J. glass manufacturer, fourth, 2½d. Christie, Birmingham.—*Heathorn*, J. L. shipowner, first, 8s. Edwards, London.—*Holdsworth*, G. worsted manufacturer, further, 1s. and 3s. 4d. to new proofs. Freeman, Leeds.—*Mallalieu*, J. woollen manufacturer, first, 3s. 8d. Hobson, Manchester.—*Megary*, T. coal merchant, first, 3s. Belcher, London.—*Murray*, E. T. leather seller, first, 9d. Belcher, London.—*Newman*, C. miller, final, 3¾d. and 2s. 3d. to new proofs. Belcher, London.—*Robbins*, J. bookseller, second, 2s. 6d. Pennell, London.—*Robinson*, T. wine merchant, first, 4s. 10½d. Christie, Birmingham.—*Sherwood*, T. brickmaker, first, 5s. Pennell, London.—*Trapp* and *Co.* tallow melters, second, joint, 1s. 3d.; first, T. Trapp, 20s.; first of T. P. Trapp, 20s. Edwards, London.—*Walker*, T. brewer, final, 6¾d. Young, Leeds.—*Woodhead* and *Co.* stuff manufacturers, first, 4s. Freeman, Leeds.—*Wright*, B. dealer in paint, first, 10s. Cazenove, Liverpool.

Insolvents' Estates.

Barrett, G. sen. hardwareman, Charles-st. Hatton-garden, 4s. 0½d.—*Bryant*, J. bookseller, Wellington-st. Strand, 6s. 10d.—*Cocksedge*, G. E. lieutenant, Frindsbury, 2s. [illegible]d.—*Cupit*, W. gardener, Sussex-road, Old Kent-road, 7s. 9d.—*Edwards*, J. mercer, Shrewsbury, further, 5½d.—*Fulcher*, J. bricklayer, Marlborough-st. Chelsea, 20s.—*Oughton*, W. draper, Pelton Fell, Durham, 1s. 2d.—*Pinhorn*, W. lieutenant, Lower Park-st. Greenwich, 1s. 10½d.—*Prater*, [illegible] barrister, Pentonville, 2s. 10d.—*Rainger*, F. clerk, Burlington-arcade, final, 2s. 10½d.—*Snook*, J. tanner, Colyton, Devonshire, 3s. 7½d.—*Steele*, H. cook in the navy, Plymouth, [illegible]

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, March 14.

Cutmore, V. jun. beer-shopkeeper, Wilsden, Harrow-road, Feb. 25. Trusts. E. Cutmore, widow, Guildford, and A. Miller, gent. Zoological-gardens, Regent's-park. Sol. Thwaites, Lyon's-inn.—*Sander*, P. haberdasher, Whitechapel High-st. March 7. Trusts. R. Johnson, warehouseman, Watling-st. and T. Watts, warehouseman, Russia-row. Sols. Parrington and Co. King-st. Cheapside.—*Wardle*, J. F. tailor, Wolverhampton, Jan. 29. Trusts. R. Bury, merchant, and J. Lees, accountant, both of Manchester. Sol. Taylor, Manchester.

Gazette, March 18.

Peart, J. wine and spirit merchant, Tynemouth, March 12. Trusts. R. Pow, chain and anchor manufacturer, and R. Spence, jun. bank agent, both of Tynemouth. Sols. Messrs. Barkers and Fenwick, North Shields.—*Walters*, W. draper, Crawford-st. Marylebone, Jan. 20. Trusts. N. Mason, lace merchant, Wood-st. and J. Crocker, jun. warehouseman, Watling-st. Sols. Soles and Turner, Aldermanbury.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, March 14.

BOTCHERBY, JOHN, coal owner, late of Darlington, March 28, at eleven, May 7, at two, Newcastle, Com. Ellison; Wakley, off. ass.; Leeman and Clark, York, Donkin and Co. Newcastle, and Tyas, Beaufort-buildings, sols. Date of fiat, Feb. 17. G. T. Andrews, architect, York, pet. cr. on behalf of the Durham County Coal Company.

COLE, FREDERIC LINDSAY, wine merchant, No. 101, Fenchurch-st. March 31, at half-past twelve, April 25, at two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Goddard, Wood-st. sol. Date of fiat, Oct. 24. Bankrupt's own petition.

DIX, THOMAS, shoe dealer, Liverpool, March 27, at twelve, April 24, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Chester and Co. Staple-inn, and Hodgson, Liverpool, sols. Date of fiat, March 7. Bankrupt's own petition.

DEBNEY, WILLIAM, victualler and cattle dealer, Mistley, Essex, March 25, at eleven, April 22, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Wire and Child, St. Swithin's-lane, and Barnes, Colchester, sols. Date of fiat, March 6. J. Pertwee, farmer, Mistley, pet. cr.

GREEN, JOHN, wine merchant, No. 5½, Pall-mall, and No. 99, Sloane-st. March 29, at half-past twelve, April 25, at one, Basinghall-st. Com. Fane; Alsager, off. ass.; Baxendale and Co. Great Winchester-st. sols. Date of fiat, March 4. G. Hathorn, gent. Brunswick-sq. pet. cr.

HOWARD, THOMAS NELSON DEATON, formerly of Fenchurch-st. glover, and late of Bankshall-st. Calcutta, in the presidency of Bengal, in the East Indies, merchant and broker, and now lodging at the Adelaide Hotel, London-bridge, March 29, at half-past one, April 25, at eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Buchanan and Granger, Basinghall-st. sols. Date of fiat, March 8. Bankrupt's own petition.

HURD, SAMUEL, dealer in china, glass, and earthenware, and hardwareman, 153, High-st. Rochester, March 22 and May 5, at half-past one, Basinghall-st. Com. Goulburn; Green, off. ass.; Smith, Wilmington-sq. sol. Date of fiat, March 7. Bankrupt's own petition.

KEWLEY, JAMES, tailor and draper, Liverpool, March 26, at twelve, April 23, at eleven, Liverpool, Com. Phillips; Cazenove, off. ass.; Cornthwaite and Adams, Old Jewry, and Pemberton, Liverpool, sols. Date of fiat, March 11. Bankrupt's own petition.

LANE, JOHN, licensed victualler, Hope and Anchor inn, Redcliff-hill, Bristol, March 20, at one, April 25, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Gillard and Flook, Bristol, sols. Date of fiat, March 10. Bankrupt's own petition.

LANE, THEOPHILUS, coal merchant and scrivener, Hereford, March 27 and April 21, at half-past eleven, Birmingham; Bittleston, off. ass.; Lanwarne, Hereford, and Suckling, Birmingham, sols. Date of fiat, March 7. I. Lanwarne, gent. Hereford, pet. cr.

MARSHALL, SAMUEL, builder, Kingston-upon-Hull, March 26 and April 15, at eleven, Leeds, Com. West; Young, off. ass.; Penniger and Westmacott, John-st. Bedford-row, England and Shackles, Hull, and Bulmer, Leeds, sols. Date of fiat, Feb. 26. J. and A. Wade, timber merchants, Hull, pet. crs.

MEEK, WILLIAM, ironmonger, Southampton, March 25, at two, April 29, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Bircham and Dalrymple, Bedford-row, sols. Date of fiat, March 11. Bankrupt's own petition.

MILLS, WILLIAM HENRY, wine and spirit merchant, and wine cooper, Mark-lane, London, March 25 and April 25, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Hughes and Co. Bucklersbury, sols. Date of fiat, March 12. W. Clark and J. Coulthard, bottle merchants, Great Tower-st. pet. crs.

PAINTER, MARY CONWAY, grocer and tea dealer, 102, Great Peter-st. Westminster, March 29, at two, April 25, at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Hildyard, Furnival's-inn, sol. Date of fiat, March 12. F. W. Painter, gent. Broadway, Westminster, pet. cr.

ROWE, JOHN STODWICK, draper, Newcastle-under-Lyne, March 25, at eleven, April 29, at one, Birmingham; Christie, off. ass.; Soles and Turner, London, and Suckling Birmingham, sols. Date of fiat, March 11. E. Cuthbert, D. Wotherspoon, and J. Wotherspoon, furriers, Cheapside, pet. crs.

SMITH, JOHN, money scrivener, Rugeley, Stafford, March 22 and May 9, at twelve, Birmingham; Valpy, off. ass.; Bennet and Thorne, Wolverhampton, sols. Date of fiat, Sept. 14. H. Hill, esq. manager and one of the registered public officers of the Wolverhampton and Staffordshire Banking Company, Wolverhampton, pet. cr.

THOMPSON, JULIUS, cheesemonger, Wigmore-st. Cavendish-square, March 25, at half-past two, April 29, at twelve, Basinghall-st. Com. Shepherd; Graham, off. ass.; Gauntlett, Guy's Inn-pl. sol. Date of fiat, March 5. G. Pencon, cheesemonger Newgate-st. pet. cr.

WAGNER, GEORGE, draper, 41, Bloomsbury-sq. March 25 and April 25, at one, Basinghall-st. Com. Fonblanque, Belcher, off. ass.; [illegible], [illegible], sols. Date of fiat, March 10. Bankrupt's own petition.

Gazette, March 18.

BROWN, RICHARD, joiner and builder, Kingston-upon-Hull, March 31 and April 16, at eleven, Leeds, Com. Ayscough [?]; Hope, off. ass.; Hicks and Marris, Gray's Inn, Messrs. Galloway and Bell, Hull, and Payne and Co. Leeds, sols. Date of fiat, March 10. R. Richardson, plumber, Hull, pet. cr.

CLEGG, THOMAS, coal merchant and master mariner, March 31, at one, May 6, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Jones, Mincing-lane, sol. Date of fiat, March 15. J. Tupman, master mariner and ship owner, Spalding, Lincolnshire, pet. cr.

DANIEL, WILLIAM, cabinet maker, March 28 and April 18, at twelve, Manchester. Pott, off. ass.; Soles and Turner, Aldermanbury; and Atkinson and Saunders, Manchester, sols. Date of fiat, March 11. W. Smee, upholsterer, Finsbury-pavement, pet. cr.

GRANGER, WILLIAM, paper manufacturer, Relly-mill, Durham, March 28, at half-past eleven, May 7, at one, Newcastle, Com. Ellison; Baker off. ass.; Harle, Newcastle, Smith, Durham, and Chisholme and Co. Lincoln's Inn-fields, sols. Date of fiat, March 12. Bankrupt's own petition.

HESTER, HENRY, tallow chandler, late of No. 1, Ratcliffe-terrace, Goswell-road, March 31 and May 5, at half-past eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Young and Co. St. Mildred's-ct. sols. Date of fiat, March 16. J. Mullett, merchant, Austin-friars-passage, pet. cr.

HOPE, CHARLES DOUGLAS, British and foreign broker, of No. 12, Greenhill-terrace, Chorlton-upon-Medlock, March 27 and April 17, at eleven, Manchester; Hobson, off. ass.; Cornthwaite and Adams, Old Jewry-chambers, and Moseley, Manchester, sols. Date of fiat, March 4. Bankrupt's own petition.

HULLEY, WILLIAM, tailor, Bakewell, Derby, April 1 and 28, at twelve, Manchester; Fraser, off. ass.; Tattersall, Great James-st. Broadbent, Sheffield, and Todd, Manchester, sols. Date of fiat, March 11. [illegible]. Hoyle, clothier, Holmfirth, Yorkshire, pet. cr.

IBBOTSON, WILLIAM, merchant, Sheffield, Yorkshire, April 2 and 29, at eleven, Leeds, Com. West; Freeman, off. ass.; Moss, Cloak-lane, and Bransom, Sheffield, sols. Date of fiat, March 11. I. Broadhurst, cooper, Sheffield, pet. cr.

PRICE, JOHN, draper, Oaken Gates, Shropshire, March 29 and April 28, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Garbett, Wellington, and Harrison and Smith, Birmingham, sols. Date of fiat, March 11. Bankrupt's own petition.

O'ROOKE, THOMAS, and BIRKS, WILLIAM, commission agents, Print-street, Manchester, April 2 and 28, at twelve, Manchester; Stanway, off. ass.; Chilton and Acland, Chancery-lane, Stanley, Birmingham, and Foster, Manchester, sols. Date of fiat, March 5. M. Rodgers, widow, Chiswell-st. Middlesex, pet. cr.

SHARMAN, FREDERICK, boot and shoe maker, West-sq. Southwark, lately carrying on business at Barge-yard, Bucklersbury, and also at Gracechurch-st. April 1, at one, and April 29, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; King, St. Mary Axe, sol. Date of fiat, March 17. Bankrupt's own petition.

STOCKS, GEORGE WILLIAM, linen draper, Norwich, April 2, at half-past two, and April 30, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Clowes and Co. Temple, sols. Date of fiat, Feb. 19. T. and W. Devas, warehousemen, Lawrence-lane, pet. crs.

WILLIAMS, WILLIAM, victualler, High-st. St. Giles, Middlesex, March 31 and May 5, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Futvoye, John-st. Bedford-row, sol. Date of fiat, March 8. W. Huggins, H. Broadwood, R. C. Mundell, E. Huggins, and T. C. Broadwood, brewers, Broad-st. Golden-sq. pet. crs.

WOODGATE, HENRY, horse dealer and butcher, Kinson, otherwise Kingston, Great Canford, Dorsetshire, March 28 and April 25, at two, Exeter, Com. Bere; Hirtzel, off. ass.; Parr and Co. Poole, Holme and Co. New-inn, and Messrs. Warren, Exeter, sols. Date of fiat, March 12. H. J. Cookman, jun. builder, Poole, pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, March 11.

Allen, W. and *Long*, P. coach proprietors, Manchester, March 6. Debts paid by Long—*Bayley*, J. and J. and *Kitts*, T. and J. cotton spinners, Bolton, so far as regards T. Kitts, March 7—*Cuthbert*, J. H. and *Bailey*, C. S. brewers and maltsters, Stonham Parva, Ipswich, and elsewhere, Jan. 1. Debts paid by Cuthbert—*Cross*, T. and *Barritt*, J. manufacturing chymists, Bury and Farnworth, Jan. 24—*Dunk*, J. and *Baker*, T. millers, Brighton. March 7—*Faulkner*, J. *Pollitt*, J. and *Taylor*, T. spinners and cotton manufacurers, Heaton Norris and Stockport, March 7. Debts paid by J. Faulkner—*Higgins*, W. J. J. and H. machine makers and cotton spinners, Salford, so far as regards W. Higgins, June 30, 1843—*Hilless*, J. and *Todd*, W. tailors, Bourn, March 1. Debts paid by Todd—*Hooper*, M. and C. W. tanners, Grange-road, Bermondsey, and leather and hide factors, Leadenhall-market, and Seething-lane, Feb. 28—*Hutchinson*, S. and *Binney*, R. share brokers, Bradford, March 8—*James*, J. and *Richmond*, T. W. linen drapers, Swansea, March 1—*Marshall*, C. *Mitchell*, J. and *Stones*, F. J. edge tool manufacturers, Sheffield, so far as regards Mitchell, Feb. 25. Debts paid by the remaining partners—*Morley*, J. sen. and jun. R. B. and S. wholesale hosiers, Wood-street, and Nottingham, so far as regards J. Morley, sen. and R. Morley, Dec. 31. Debts paid by the remaining partners—*Ouston*, J. R. C. and J. S. wine merchants, Hull, so far as regards J. S. Ouston, March 1. Debts paid by the remaining partner—*Pitcher*, R. and *Bates*, P. tar refiners, Surrey Canal-bank, Old Kent-road, March 10. Debts paid by Bates—*Roberts*, H. and *Lawrence*, M. boarding school keepers, June 29. Debts paid by Roberts—*Rudkin*, T. and H. and *Hemmings*, H. Baddington-street, Feb. 27—*Smith*, J. sen. and jun., F. A. S., *Holmes*, T., *Hurst*, F. and *Sayer*, J. machine builders and lace manufacturers, Spital-works, near Chesterfield, so far as regards Hurst and Sayer, Feb. 6—*Wooltright* [?], J., *Chidson*, W. D., *Wall*, T. and *Lindsay*, J. silk mercers, Liverpool, Feb. 14—*Weymouth*, J. and *Bigby*, W. attorneys, Chancery-lane, Feb. 17.

Gazette, March 14.

Bland, W. and J. builders, Godmanchester, March 12. Debts paid by J. Bland.—*Carr*, H. W., *Mann*, A. and *Bridge*, J. merchants, Liverpool, March 4.—*Colchester*, C. C. and *Gower*, C. F. soap makers, Ipswich, Feb. 24.—*Corless*, H., *Edwards*, I. D. and *Stevens*, J. chocolate manufacturers, Liverpool, March 10. Debts paid by Edwards and Stevens.—*Edwards*, P., C. and A. farmers, [illegible], March 11. Debts paid by C. Edwards.—*Farmer*, J. and [illegible] drapers, Hereford, Jan. 1, 1844.—*Fozard*, J. and *Jackson*, W. whitesmiths, Leeds, March 10. Debts paid by Fozard.—*Gibbs*, D., A. D. and W. A., soap makers, Milton-st. Jan. 2.—*Hall*, J. and *Buchanan*, B. merchants, Liverpool, March 6.—*Helm*, C. A. and *Hooper*, A. C. attorneys, Worcester, Dec. 31.—*Hervey*, S. E. and *Nowell*, A. W. milliners, Halifax, Jan. 8.—*Hewitt*, J. and *Mitchell*, J. trunk makers, Little Bell-alley, March 11.—*Kenworthy*, C. and *Taylor*, W. velvet finishers, Manchester, Dec. 28. Debts paid by Kenworthy.—*Manley*, W. and G. coal merchants, South-st. Borough, March 25.—*Melhado*, J. A. and *Magnus*, S. merchants, Adams-court, Old Broad-st. Dec. 31. Debts paid by Melhado.—*Nichols*, J. and *Gist*, W. Dec. 24.—*Nuttall*, S. and *Barlow*, J. cotton manufacturers, Bolton-le-Moors, Jan. 23. Debts paid by Nuttall.—*Pirie*, J. and *Hodgkinson*, G. E. London, March 13. Debts paid by Pirie.—*Postlethwaite*, R. and *Parsons*, W. Moreton in Marsh, March 7. Debts paid by Postlethwaite.—*Raleigh*, E. and *FitzPatrick*, N. agents, Liverpool, March 18. Debts paid by Raleigh.—*Robinson*, S. and M. millers, Richmond, March 11.—*Sanderson*, C. and *Purdie*, J. iron makers, Swinton Iron-works, Yorkshire, March 12. Debts paid by Sanderson.—*Seed*, W. and *Wilson*, H. spindle-makers, Preston, March 10. Debts by Seed.—*Sharland*, J. R. and T. linen drapers, Bishopsgate-st. Within, Dec. 31.—*Sinclair*, J. and *Whitehurst*, T. distillers, Princes-st. Lambeth, March 8. Debts by Sinclair.—*Turner*, J. T. and *Boyle*, J. W. paper stainers and flock manufacturers, Cleveland-st. Feb. 28. Debts paid by Boyle.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, March 11.

Bacon, A. esq. Egham, March 14, at half-past one.—*Broomfield*, R. boot maker, Middleton-st. Clerkenwell, April 2, at half-past eleven.—*Dicks*, J. bricklayer, Bedford, April 2, at twelve.—*Emery*, P. jun. out of business, Newark, March 14, at eleven.—*Fasson*, B. accountant, Lime-st. April 3, at half-past one.—*Griffin*, R. victualler, Ely, April 2, at twelve.—*Leach*, T. cheesemonger, North-st. Edgeware-road, April 2, at half-past eleven.—*Mares*, C. attorney, Willow-walk, Kentish-town, March 26, at twelve.—*Paybody*, victualler, Bedford, March 26, at twelve.—*Sutton*, H. gun maker, Newcastle-upon-Tyne, March 14, at one.—*Turpin*, J. out of business, Laystall-st. Gray's-inn-lane, April 2, at half-past eleven.—*Varrall*, J. C. engraver, Pratt-st. Camden-town, March 15, at two.—*Webb*, J. R. R. commander in the navy, Shaftsbury-crescent, Pimlico, March 14, at one.—*Woollett*, J. S. R. ink manufacturer, Woolwich, March 14, at one.

IN THE COUNTRY.

Gazette, March 11.

Benson, T. agent, Manchester, March 24, at twelve, Manchester.—*Bowden*, J. innkeeper, Saint Thomas Apostle, Exeter, March 25, at one, Exeter.—*Burge*, T. corn factor, Frome, April 1, at twelve, Bristol.—*Cato*, J. hatter, Ashton-under-Lyne, March 27, at twelve, Manchester.—*Clark*, D. wheelwright, Bristol, April 3, at half-past twelve, Bristol.—*Eastwood*, S. beer dealer and butcher, Claughton and Birkenhead, March 18, at twelve, Liverpool.—*Jones*, R. auctioneer, Dolgelly, March 19, at twelve, Liverpool.—*Stevenson*, J. D. fishmonger, Worcester, March 29, at half-past ten, Birmingham.—*Yeoman*, J. corn dealer, Wanstrow, March 27, at eleven, Bristol.

MEETINGS AT BASINGHALL-STREET.

Gazette, March 11.

Fry, W. T. pocket-book manufacturer, Church-st. Christchurch, April 3, at eleven.—*Johnson*, M. saddler, Waltham Abbey, April 3, at one.—*Morley*, J. printer, Symon's-st. Chelsea, April 3.

MEETINGS IN THE COUNTRY.

Bridge, J. overlooker in a stone quarry, Halliwell, April 3 and 4, Manchester.—*Cowsill*, J. bricklayer, Lymm, April 3, at twelve, Manchester.—*Haworth*, J. cloth finisher, Halifax, April 8, at eleven, Leeds.—*Lockett*, J. G. salesman, Bowden, April 3, at twelve, Manchester.—*Nash*, R. out of business, Stockton-upon-Tees, April 2, at half-past eleven, Newcastle.—*Walker*, B. cloth weaver, Guiseley, April 8, at eleven, Leeds.

MEETINGS AT BASINGHALL-STREE.

Gazette, March 14.

Blunt, A. cheesemonger, Lambeth-walk, April 3, at twelve.—*Daly*, T. gent. Sale-st. Hyde-park. March 31, at eleven.—*Fennell*, J. grocer, Barking, March 26, at twelve.—*Hendre*, J. H. out of business, South Weald, April 3, at one.—*Kitson*, T. J. cabinet maker, High-st. Hoxton, April 4, at eleven.—*Mansfield*, J. barman of the Queen's prison, April 2, at half-past eleven.—*O'Connor*, J. fruiterer, Edgware-road, March 31, at two.—*Ollendorff*, A. general dealer, Middleton-st. Clerkenwell, April 3, at twelve.—*Riley*, H. chair maker, Wilmer-gardens, Hoxton, April 3, at eleven.—*Simmonds*, J. comedian, Field-lane, Holborn, April 3, at one.—*Smith*, C. beer seller, New Peckham, April 2, at eleven.—*Smith*, J. pastry cook, Drury-lane, April 4, at eleven.—*Snell*, J. tailor, New Cumberland-st. March 31, at half-past eleven.—*Sparks*, T. J. clerk, Paris-st. Lambeth, March 10, at eleven.—*Ward*, W. ironmonger, John's-row, St. Luke's, March 31, at half-past one.

IN THE COUNTRY.

Blackford, J. weaver, Bewdley, March 27, at half-past ten, Birmingham.—*Everley*, E. W. gent. Bath, March 27, at half-past eleven, Bristol.—*Law*, J. ale retailer, Wolverhampton, March 22, at twelve, Birmingham.—*Radford*, J. plumber, Belper, March 20, at half-past ten, Birmingham.—*Reece*, R. clerk, Ledbury, April 4, at eleven, Birmingham.—*Sewards*, J. dyer, Aslackby, March 22, at twelve, Birmingham.—*Stephens*, J. labourer, Taversam, March 27, at eleven, Exeter.

MEETING IN THE COUNTRY.

Corthorn, J. April 4, at twelve, Birmingham.

THE REPORTS.

The following are the names of gentlemen who favour the Law Times with the Reports:—

PRIVY COUNCIL by Thomas Campbell Foster, of the Middle Temple, Esq. Special Pleader.
HOUSE of LORDS by William Paterson, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by Richard Griffiths Welford, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR of ENGLAND'S COURT, by George Goldsmith, Esq. of the Middle Temple, Barrister-at-Law.
ROLLS COURT, by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR KNIGHT BRUCE'S COURT by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.
VICE-CHANCELLOR WIGRAM'S COURT, by Henry Barbe, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH, by J. C. Symons, Esq. of the Middle Temple, Barrister-at-Law, and Edward Wise, Esq. of the Middle Temple, Barrister-at-Law.
The COURT of COMMON PLEAS, by Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law, and W. Paterson, Esq. of Gray's-inn, barrister-at-law.
The COURT of EXCHEQUER by John Bridge Aspinall, Esq. of the Middle Temple, Barrister-at-Law, and H. T. Cole, Esq. of the Middle Temple, Barrister-at-Law.
The BAIL COURT by T. W. Saunders, Esq. of the Middle Temple, Barrister-at-Law.
The EXCHEQUER CHAMBER by A. A. Fry, Esq. of Lincoln's-inn, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.
LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by T. B. Hughes, Esq. of the Inner Temple, Barrister-at-Law.
BRISTOL DISTRICT COURT by J. Angus Homer, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. Robinson, Esq. of the Middle Temple, Barrister-at-Law.
CROWN CASES (before all the Judges) by H. Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law
NORTHERN CIRCUIT, York, and Liverpool, by J. B. Aspinall, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. Oliphant, Esq. Barrister-at-Law.
WESTERN CIRCUIT, by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law.
OXFORD CIRCUIT, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.
NORFOLK CIRCUIT by Jno. B. Dasent, Esq. Barrister-at-Law.
SITTINGS AT NISI PRIUS AFTER TERM, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law; and Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.
ELECTION COMMITTEES by Edward W. Cox, Esq of the Middle Temple, Barrister-at-Law.
REGISTRATION COURTS, collected and edited by Edw. W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by William Duggan, Esq. Barrister-at-Law.
QUEEN'S BENCH and CRIMINAL COURTS by Wm. St. Leger Babington, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.
The Written Judgments are reported verbatim in Short-hand by Mr. H. Gregory, Short-hand Writer.

Equity Courts.

LORD CHANCELLOR'S COURT.

Thursday, March 27.

MANN v. RICKETTS.

Practice—Inrolment of decrees—Caveat—Entry—Uniform practice—General orders—Calculation by lunar or calendar months.

The question on this motion was, as to the existing practice with respect to the inrolment of decrees.

The decree in this cause was made by the Master of the Rolls, on the 23rd of February, 1843, and the docket was signed by the Lord Chancellor and the Master of the Rolls on the 15th of August following. The defendant presented a petition of rehearing, and when about to set down the cause before the Master of the Rolls, he found that the decree had been inrolled. The motion now made was to vacate the inrolment, on the ground that it had been made after the time within which inrolment could take place without an order *nunc pro tunc*, and that no such order had been obtained.

Two points were made: first, that Lord Clarendon's order, made respecting inrolments in 1671, was in force; and, secondly, that if that order had been modified by a modern practice, under which six months was the period for inrolment without the order *nunc pro tunc*, the six months of modern practice are lunar, and not calendar months.

Cooper and *Kent*, for the defendant's motion, on the first point contended that Lord Clarendon's order of 1671 had never been repealed, and was still in force. It directs "that all decrees, dismissions, &c. be drawn up, signed, and inrolled before the first day after the next Michaelmas or Easter Term after the same shall be pronounced respectively, and not at any time after without the special leave of the Court." (Beame's Orders, 205.) That order was stated (2 Dan. Ch. Prac. 679) to be still in force. The same thing is laid down in the older books of practice (2 Comyn's Digest, tit. Chancery, p. 312; Practical Register, 323; 1 Harrison's Chancery Practice, 322, Newland's edition, 1808). Here the decree, not having been inrolled by the last day of the Easter Term after it had been pronounced, it ought not to have been inrolled without an order. There is another order of Lord Clarendon's which relates only to the entry of decrees: "that all orders, &c. which shall be pronounced and made in Michaelmas and Hilary Terms, or the vacations after, be actually entered before the first day of Michaelmas Term then after; and that all orders, &c. which shall be pronounced in Easter and Trinity Terms, or the vacations after, be likewise entered before the first day of Easter Term then next following; and that no orders, &c. that shall not be so entered, shall be afterwards entered, but by the special order of the Court first had and obtained." (Beames, Orders, 290; Gilbert For. Rom. 163; *Cherrill* v. *Martin*, 4 Sim. 344; *Attorney-General* v. *Newberry*, C. P. Cooper's Reports.) On the second point they contended that, in the absence of any general order to the contrary, a month in this court meant a lunar month. (*Robinson* v. *Newdick*, 1 Merivale, 13.)

Hallett, contra, cited *Barnes* v. *Wilson* (1 Russ. & Myl. 486); *Deloraine* v. *Brown* (3 Bro. C. C. 643); 2 Smith's Chancery Practice, 5, 2nd edit. The practice is now that six months, that is six calendar months, are allowed for inrolling orders and decrees.

The Lord Chancellor.—In the case of *Barnes* v. *Wilson* I decided that the inrolment of the decree was to be deemed complete on the delivery of the documents to the messenger, for the purpose of being carried to the Lord Chancellor for inrolment; and I then consulted the six clerks, and received from them a certificate that such, in their opinion, was the practice. I understand that Vice-Chancellors Knight Bruce and Wigram require the cause to be reheard unless the minutes are spoken to within a limited time.

As to the two orders of Lord Clarendon, I am not sure whether the last, that of 1691, whether it does not include decrees; it would apply to decrees. But supposing the latter order only applies to the entry of decrees, there is no inconsistency between them. If the party is negligent in entering under the order of 1791, that does not prevent him inrolling the decree: but for that purpose he must obtain an order *nunc pro tunc*. I am told by the register that the practice is that decrees may be inrolled without an order *nunc pro tunc* within six months. If six months have been adopted by way of equalizing the periods under Lord Clarendon's orders, and that practice has been acted upon, as I am informed it has, for more than a century, such uniform practice acquiesced in by the Court, would overturn Lord Clarendon's orders. I can only obtain a certificate from the officers as to the practice. Then as to the question whether the six months are lunar or calendar months, it comes to the same thing. I must require the officers of the court to certify what is the practice on that point. I am told that for upwards of a century the practice has been to reckon time by calendar months. I must, therefore, act upon the established practice. Probably calendar months have been adopted, that periods should be fixed instead of fluctuating. The Court adheres to the general orders and rules, unless where there has been a long and uniform practice to the contrary, which the Court has sanctioned by acquiescence. If the officers report that six months have become the settled period for inrolling decrees, I must act upon it, as well as that the months are calendar months. At the Accountant-General's office time is reckoned by calendar months. It was contended that, under the general order of the 18th of January, 1838, which directs that the six clerks are to bring inrolments and dockets into the Rolls Chapel, the inrolment is not complete until it has been brought into the Rolls Chapel. But that order calls them inrolments, and is only intended to provide for their safe custody. The inrolment is complete when authenticated by the signature of the judge who made the decree, and by the subsequent signature of the Lord Chancellor. That the parties have no means of knowing that a decree has been inrolled, only goes to the question that some new general rule may be required on the subject. It is one of the difficulties arising out of the abolition of the Six Clerks Office which has not been provided for. The party intending to have the cause reheard can always prevent this inconvenience by immediately entering a *caveat* against the decree.

Jan. 27 and Feb. 28.

DALTON v. HAYTER.

Exceptions—Irregularity—Service—5th order of 1828—Practice.

The 5th order of 1828 requires exceptions for insufficiency to be referred not before eight days or after fourteen; and if the order to refer the exceptions, though obtained, is not served within the fourteen days, it is to be considered as abandoned.

This was an appeal against an order of the Master of the Rolls, allowing the reference of exceptions to an answer for insufficiency. The question turned upon the construction of the 5th order of April 3, 1828, which directs, "that when exceptions to an answer for insufficiency are not submitted to the plaintiff may, at the expiration of eight days after the exceptions are delivered, but not before, unless in injunction causes, refer such answer for insufficiency; and if he do not refer the same within the next six days, he shall be considered as having abandoned the exceptions, in which latter case such answer shall be forthwith deemed sufficient."

On the 8th of November the plaintiff delivered exceptions to the defendant's answer for insufficiency; on the 16th of November, which was Saturday, the time for submitting to the exceptions expired, and on the 23rd of November the plaintiff obtained, and served an order for setting aside the exceptions. The question made at the Rolls was, whether Sunday was to be reckoned in computation of time under the order, when it was the first day of the second period mentioned in the order, viz. the six days, during which the plaintiff might refer the exceptions.

Wakefield and *Wood* contended that the eight days having expired on Saturday the 16th, plaintiff could not obtain an order to refer the exceptions before Monday, and consequently that the 17th (Sunday) would not count as one of the six days. They cited *Ashmole* v. *Goodwin* (2 Salk. 254); *Wathen* v. *Beaumont* (11 East, 271); *Bullock* v. *Hedington* (1 Sim. 481); *Mootham* v. *Baskett* (1 Merivale, 2[illegible]); *Anon.* (1 Strange); *Lee* v. *Carlton* (5 Term Rep.); *Taylor* v. *Harrison* (1 Myl. & Cr. 274); *Attorney-General* v. *Clack* (1 Myl. & Cr. 367).

Roupell and *Beavan*, contra, cited *Hunter* v. *Capron* (5 Beav. 93); *Macintosh* v. *Great Western Railway* (1 Hare, 328).

The Lord Chancellor then stated that in Ireland Sunday is excluded in all cases.

Wakefield, in reply, cited 3 Dan. Ch. Pr. 258.

JUDGMENT.

The Lord Chancellor.—The plaintiff in this case excepted to the defendant's answer for insufficiency. The exceptions were filed on the 8th day of November, and the eight days allowed by the 5th general order of 1828, for submitting to the exceptions, expired on the 16th of November. On the 18th of November an order to refer the exceptions was obtained by the plaintiff, which was clearly in time, and served on the 23rd of November. One question is, whether the service was made in time. Another question made, whether, when the first day of the six mentioned in the order falls on a Sunday, it is to be reckoned, does not arise. It is immaterial for the determination of this case, for the order was not served in time. The order was not irregular; but it had been abandoned. That is not the ground upon which the case comes here. The original motion should have been refused, according to the case of *Taylor* v. *Harrison* (1 Myl. & Cr.) In that case the order was obtained, but not served in time, the Vice-Chancellor ordered the exceptions to be taken off the file, and that order was confirmed, on appeal, by Lord Cottenham. That is the course when the order is obtained in time, but not served in time. The case, too, has been lately decided at the Rolls, in *Mackdonald* v. *Plummer*, on the 17th of February, 1845. Here the order to refer was served out of time. The order of the Court below ought to be discharged. The order was right but by the subsequent neglect of the party, it was not served in time. The Master will decide upon the question of service, when it is raised before him. The parties must be in the same situation as to proceedings in the cause as when this motion was made.

Friday, Feb. 28.

MANN v. RICKETTS.

Enrolment of decrees—Lord Clarendon's Orders—Certificate of officers—Practice.

The Lord Chancellor.—In this case, I have received a certificate from the officers of the court stating that, for more than seventy years past, six calendar months had been the time allowed for enrolling decrees; and it is a much more convenient time than that fixed by Lord Clarendon's orders, because it is a fixed period. The senior Clerk of Records and Writs states, that to his personal knowledge during sixty years, such has been the established practice; and that there is a book of the late Mr. Deedes, an officer at the Rolls, which carries back the same practice to an earlier period; and that that book has always been deemed an authority. It is also stated by the certificate, that if no *caveat*, or subsisting *caveat* appears, all decrees will be enrolled, as of course. I do not think this a case for costs.

Re Wood, a Lunatic.

Practice—Renewal of copyholds.

Bayley supported a petition for liberty for the committee of the estate to take the necessary steps, and apply the requisite funds to obtain a renewal of a customary or copyhold estate, held on lives.

Ordered.

Re York, a Lunatic.

Allowance for draining.

Hallett appeared to support a petition by the committee of the estate, which prayed that a sum of money, together with the produce of timber cut down, might be applied to the under-draining of part of the lunatic's estate, according to a plan of which the commissioner had approved; the tenant had undertaken to draw the stones required for the purpose.

Ordered.

ROLLS COURT.

Monday, Feb. 24.

Fraser *v.* Wood.

A testator, in 1809, devised his estate, subject to his debts, and in 1813, a creditors' suit was instituted, and a decree for an account, &c. afterwards made. Several proceedings were taken to keep alive the suit till 1838, when it abated. In 1842, the estates were sold, and in the abstract of title every thing relating to the suit was suppressed, and upon its being discovered, a separate report was obtained that the debts amounted to a sum specified. The purchaser objecting to the title, on a reference to the Master, he found a good title could not be made, which finding the Court confirmed, and refused an inquiry as to the debts.

This cause came on upon exceptions to the Master's report, objecting that he ought not to have found that a good title could not be made to the Manor of Bramston Hall, &c. in Suffolk. The estate was put up to auction under very stringent conditions of sale; and on the 10th of May, 1842, John Wood, the defendant, became the purchaser, at the price of 30,000 guineas. On the 18th of May an abstract of title was delivered, consisting of thirteen parts, of which the seventh was the will of John Revett, dated 27th November, 1809, and devising his estates, &c. at Bramston Hall, for the benefit of his wife and children, subject to his debts, and authorizing his trustees to sell. The testator died on the 1st of December, 1809. In 1813, Mr. Jessop instituted a creditors' suit, and a decree was made in 1817 for an account, &c.; but though there were several proceedings in the cause, no effective steps were taken till 1838, when the suit abated by the death of Catherine Anne Pytches, the daughter of the testator. In 1825, the trustees conveyed to Hodgson and another to sell, and they made title to Fraser, the present vendor. Wood was a simple contract creditor of the testator, and proved his debt, amounting to 27*l.* 6*s.* 6*d.* but had never after taken any step in the matter. When the abstract was delivered to the defendant, all mention of the suit was carefully suppressed; and on Mr. Wood discovering the matter, he was told that it had long since been disposed of. The purchaser, however, not being satisfied, the plaintiff, on the 24th of November, 1842, filed his bill for a specific performance, and the defendant by his answer having taken objections, on the 6th of April, 1843, there was a reference to the Master as to the title, and on the 3rd of July following, the defendant's objections were carried in, which respected the debts of the testator. From that till the 12th of February, 1844, nothing was done, when the plaintiff brought in his answer to the objections, and a separate report of the Master, stating the amount of the testator's debts to be 1,650*l.* and also a paper purporting to be minutes of an order confirming that report: and this the plaintiff thought sufficiently satisfactory. Upon the report of the Master, stating a good title could not be made, objections were taken by the vendor.

Turner (with him *Cole*), for the vendor.—The separate report was got to satisfy the purchaser, who objects that other creditors may come in; but the length of time since 1817, is sufficient to rebut any presumption of that kind. [The Master of the Rolls.—The presumption which would otherwise arise, is in this case neither way, for the matter has been all the time in court.] We do not dispute the right of the purchaser to have the debts reported due paid out of the purchase-money. Besides, the purchaser was himself a creditor, and knew all the facts at the time. They cited 1 Sugd. V. & P. 422.

Kindersley (with him *Wood*).—The separate report was obtained from a different Master, and is, in fact, no report at all. The registrar refused to draw up the order. The concealment of the suit is inexcusable, and the proof of the debt by the purchaser is of no consequence. The Master, therefore, rightly found the title not good. The conduct of the parties in keeping back the information as to the suit, coupled with the stringent conditions of sale, disentitles them to an inquiry. (*Esdaile* v. *Stephenson*, 1 Sim. & St. 122; *Hyde* v. *Dallaway*, 2 Hare, 528.)

The Master of the Rolls.—The trustees for sale of certain estates sold them; and, on a reference to the Master, objections to the title were taken in July 1843. On the argument of the exceptions, these facts appeared. [Here his Lordship stated the facts.] In this state of the cause, and there being a decree, the parties take upon themselves to sell by auction, before they knew whether it was necessary to sell or not. The abstract of title is delivered, but no reference is made therein to this suit. Objections are taken, and the Master takes them into consideration. Can anybody doubt that the Master was right, under such circumstances, in reporting as he did? They rely on presumption alone, and they endeavour to make good the title and to remove the objections by a separate report. I am reluctant to think that they procured it from a Master who did not know the case. But it is not confirmed. What, then, is wanted? If the cause is brought on on further directions, there are a great many irregularities which cannot be set right without much time; and the question is, if time may be given for that purpose. Each case depends on its own circumstances; and I ought to see that there is not a great deal of error, and that the difficulty can be got over in a short time. I do not see that that is so in this case; and, therefore, I overrule the exceptions.

Tuesday, Feb. 25.

Ex parte Lithgow, *re* The Eastern Counties Railway Company.

Petition to tax the costs of taxation of a bill of costs—Tender of amount—Service on railway company.

Trower applied to obtain a reference to tax costs of taxation to which the Eastern Counties Railway Company were liable under their Acts. The original petition was served upon the secretary of the company, but all subsequent process upon the solicitor only. On the petition being brought on, the Court made the order; but Mr. Roupell, for the company, had asked that it should stand over, and subsequently said the service of this petition was irregular, being on the solicitor, and not on the secretary, as the Act directed. This, it was submitted, was not so.

Roupell, for the company.—The application that it might stand over had been made, but the petitioner had drawn up the order stating my appearance, and had served it on the company, at the same time serving the petition on the secretary. I now appear on this second service.

Trower.—The company having taken the petitioner's land, on a reference to tax his bill of costs, less than one-sixth was taxed off, and therefore the company were liable for the costs of taxation, and the order to refer them for taxation was consequently right.

Roupell.—Before this petition was presented, on the 12th of February last, we tendered the petitioner the amount of the taxed costs which had been ascertained, together with the costs of the petition and the costs of the irregular petition, &c. in all about 26*l.* and we are still ready to do the same. We are, therefore, entitled to the costs of this application.

Trower.—We delivered our bill in January. The affidavit on the other side only states 26*l.* tender, but does not say there is no more.

The Master of the Rolls.—This is ridiculous and absurd, if not culpable conduct. Here the one side is ready to pay, and the other has not said the tender is too little. The respondents may make an affidavit.

Roupell.—And if no affidavit, there may be a reference to tax.

The Master of the Rolls.—Yes, distinguishing the costs before and after the petition.

Wednesday, Feb. 26.

Lawson *v.* Paddon.

Exceptions to an answer for scandal and impertinence—Exceptions to the Master's report, allowing the exceptions for impertinence—Concealment by a vendor of his previous insolvency.

The defendant Paddon, having agreed with James Hilton Lawson for the purchase of certain property, the day previous to that fixed for the completion of the purchase, searched the register of the Insolvent Court, and found that James Hilton Lawson had been an insolvent in 1831. He must then have sworn that he was not entitled to any property in possession, remainder, or expectancy, whereas he was in possession of the property in question. Upon the discovery of the insolvency, the defendant gave the plaintiff notice to rescind the contract. The plaintiff, however, having obtained a release from his creditors, filed a bill for specific performance; in the answer to which the defendant said the plaintiff sold the property, "falsely claiming to be entitled thereto," and afterwards repeated the same expressions. He also stated that the plaintiff had concealed his insolvency, and "speculated upon the possibility of his not searching the Insolvent Court." To this answer exceptions were taken for scandal and impertinence. The Master allowed the latter, and exceptions were taken to his report on that account.

Southgate, for the exceptions, said the whole consisted of only forty-nine words, and the taking exceptions in such a case was an abuse of the rule. (*Att. Gen.* v. *Rickards*, 6 Beav. 444; *Marshall* v. *Mellersh*, Id. 558.) Besides, the defendant did conceal his insolvency, and the answer stated no more than the fact. The creditors had not all released the plaintiff.

Rogers, contrà.—The passages in question bear cruelly on the plaintiff, and are unnecessary. Only three debts, amounting to less than 5*l.*, had not been released.

Southgate.—Attorneys seldom search the Insolvent Court, and the plaintiff knew it. As to cruelty, the language is still on the answer, and the plaintiff did not except to the report declaring it not scandalous.

The Master of the Rolls.—I cannot encourage the practice on either side. True it is in the answer, but then it is done because it is disagreeable to the other side. On the other hand, it is not a fit subject for reference to the Master for scandal and impertinence; neither is it proper to come here on exceptions from the Master's report. On the one hand, the plaintiff concealed his insolvency, which is sometimes innocent, but it is not so here; and on the other, the language used is not material, but still it is too trumpery and ridiculous to come here about. The Master has found the impertinence, but not the scandal, and I am at a loss what to do. There is evidently a bad spirit on both sides, which I do not approve. I shall read over the papers.

Feb. 27.—The Master of the Rolls.—The whole proceeding is excessively foolish and ridiculous. I will not disturb the Master's resort. I overrule the exceptions, and give costs to neither side.

Beauclerk *v.* Ashburnham.

Baily, in this case (reported 4 Law T. 431), stated that the trustees had withdrawn their opposition, and it was proposed that it should be declared that the leaseholds in question were within the power, and that it should be imperative on the trustees to agree to the purchase of them, &c.

The Master of the Rolls.—No; I leave it to them to accept or reject, knowing my opinion. I do not wish it to be imperative on them. All I say is they cannot reject leaseholds generally, or these in particular, because they are leaseholds. In other respects I leave them free to use their discretion. If they wish an inquiry respecting them, they can have it. You have said nothing as to costs.

Baily.—We propose to pay them out of the trust fund. There is a question as to two sets of costs to the two dissentient trustees who have opposed separately.

The Master of the Rolls.—I think they must have each his costs.

Sidebottom.—And as between solicitor and client?

The Master of the Rolls.—Yes.

Feb. 21 and 27.

Boschetti *v.* Power.

Practice—Orders—1 Wm. 4, c. 36, s. 15, r. 3.

An attachment may issue after the time for answering has expired, though the plaintiff has previously joined with the defendant in a commission to take the answer.

The time is not thereby extended.

The plaintiff cannot proceed upon the old practice, and issue the attachment in the vacation, returnable immediately, under the new rules, unless the defendant is in London, or within twenty miles thereof, according to the 1 Wm. 4, c. 36, s. 15, r. 3.

In this case, which has appeared so often in the columns of the Law Times, application was made to discharge an order for an attachment for want of an answer, on the ground of irregularity.

Turner (with him *Rogers*), for the defendants.—The 1 Wm. 4, c. 36, s. 15, r. 3, allows a writ of attachment to be issued in vacation, immediately returnable, if the party be within twenty miles of London; but if he is not, there must be fifteen days between the teste and return. (1 Dan. Prac. 589.) That was not so here, the return being immediate, though the party is in Gibraltar. On the 3rd of February last the plaintiff joined in a commission to go to Gibraltar to take the answer, and on the 7th of the same month the time for answering expired.

The Master of the Rolls.—When is the commission returnable?] The first day of Easter Term. This is important, as they have issued an attachment, which is to be executed before the commission is returned.

Lowndes (with him *Torriano*), for the plaintiff.—The fact is, they moved for an extension of time to answer, which was refused them, except upon the terms of paying into court money in their hands, which terms they declined. On the 7th of February, the time for answering expired, and we issued our attachment, pursuing the old practice, as the writ of attachment was not done away with by the Orders of 1841, which annulled the other processes of contempt. The common course is to issue the attachment, and proceed under the new Orders to take the bill *pro confesso*. [The Master of the Rolls.—I am surprised at you; but proceed, you are on a strict point of practice.] The officers of the Court informed us we were right. We consulted them, as they are empowered, under the 4th Order of October 1842, to ascertain whether a writ is of the proper form, and they told us we were quite regular. If not, they have misled us. It is because the wishes

of the Court, as to the terms offered to the defendants, were not complied with, we take this course. We stand upon the old practice, and are not bound to take the liberty given us by the 1 Wm. 4, c. 36. The clause was intended to apply to the writs abolished by the Orders of 1841. There is no irregularity. As to joining in the commission to take the answer, we are not thereby in the least prejudiced. We joined in it to take an answer, but we knew nothing about it. [The MASTER of the ROLLS.—That proposition, as to joining in the commission, needs more illustration than you have given it; commissions are different — some returnable without delay, others not.] All we have to do with it is, that it gives us a right to have a commissioner. When a plaintiff joins in a commission, he knows nothing about it; and it has, therefore, no operation to deprive him of the right of taking any remedy he can. We do not proceed under the 1 Wm. 4, c. 36. The 1st Order of 11th April, 1842, has been under consideration in *Elloft* v. *Brown* (2 Hare, 618), and in *Harrison* v. *Stewardson* (Id. 533). [The MASTER of the ROLLS.—Has there been any case in which a writ of attachment returnable immediately has been issued against a person residing abroad?]

Turner, in reply.

Thursday, Feb. 27.—The MASTER of the ROLLS.—The defendants reside in Gibraltar, and on the 7th of February the time for answering expired. On the 21st of January they moved for an extension of time to answer, but were refused. On the 3rd of February a commission, bearing date the same day, and returnable without delay, was issued. The plaintiff joined in that commission, and by the course and practice of the Court that commission runs till the first day of next Easter Term. The time for putting in an answer having expired on the 7th of February, an attachment issued according to the practice of the Court, and the commission does not operate to extend the time; and it is immaterial whether the plaintiff joined in the commission, or not. The plaintiff being entitled, under ordinary circumstances, to an attachment after the time for answering has expired, on the 10th February sued out his writ, returnable immediately, and delivered it to the Sheriffs of London, though the defendants were known to be at Gibraltar; and this motion is made to discharge that order for irregularity. Now the 1 Will. 4, c. 36, s. 15, r. 3 authorizes that course to be pursued in vacation, if the defendant be resident in London, or within twenty miles of it, but otherwise, it requires fifteen days between the teste and return of the writ. But the defendant insists that he had a right to proceed on the old practice, and to direct the attachment to the Sheriffs of London, though the defendant was known to be in Gibraltar. It is not necessary to inquire whether the defendant may proceed upon the old practice, for it does not appear that there was any such practice as this. According to Lord Clarendon's Orders, the practice was to issue writs of attachment to London in all cases, except where it was known that the defendant was not there; but there was no practice to make out an attachment to a county where the party was known not to be. This might have been done to shew where the party then was, and for taking bills *pro confesso*. Moreover, the attachment ought not to be sued out without a previous order obtained; here there was none. The statute says it may be sued out without an order, if made returnable in fifteen days; but that was not so here. The attachment is, therefore, irregular, and I must discharge the order with costs.

Torriano submitted whether it should be with costs, as they were misled by the officers of the court.

The MASTER of the ROLLS.—I have so ordered because I think it purely vexatious.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Feb. 12, 13, 14, *and* 19.

STEVENS *v.* STEVENS.

Deposit of deeds—Solicitor—Fraud.

A farmer who had a mortgage upon property delivered all the title-deeds, except the deed assigning the mortgage to himself, to his solicitor, for the purpose of preparing an abstract, with a view to a sale. The solicitor fraudulently completed the sale of the property, and some time afterwards absconded. Until the solicitor absconded, no inquiry was made by the mortgagee as to his deeds; and it was held, under the circumstances, that the mortgagee was not liable as a party to the solicitor's fraud.

The circumstances which gave rise to this suit will sufficiently appear from the Vice-Chancellor's judgment.

Russell, Wigram, Campbell, and *Jackson*, for the plaintiff, cited *Evans* v. *Bicknell* (6 Ves. 174); *Martinez* v. *Cooper* (2 Russ); and *Greig* v. *Wells* (10 Ad. & Ell. 90).

Swanston, Chandless, and *Greaves* for the defendant.

The VICE-CHANCELLOR.—In the observations which I am about to make I shall assume that two questions of fact will be answered in the defendant's favour, namely, that before July 1842, the defendant was not aware that Lingwood's purchase had been completed by payment of his purchase-money, and that he did not authorize or assent to the receipt by Ledyard of Lingwood's purchase-money. If I were satisfied that those two questions of fact would be answered in the defendant's favour, I should dismiss this bill. There is not, in my opinion, any ground for supposing that there was any dishonest intention on the part of the defendant.

Ledyard was the defendant's solicitor. He was a solicitor of good credit, who had dealt so much in raising loans of money and in procuring money and security for money, as to approach very much the character of the old scrivener, of which there are so few instances, if any, at the present day. Ledyard appears to have assisted a person of the name of Scriven in the purchase of a farm in the neighbourhood of Cirencester, in which place Ledyard lived, for 1,200*l*. It was accordingly conveyed to Scriven and his trustee to bar dower, and Scriven immediately, or almost immediately afterwards, and his trustee, mortgaged the estate to Ledyard, with power of sale, for 1,200*l*. which sum, in fact, Ledyard seems to have advanced. Ledyard appears not to have trusted much to Scriven, and especially to have taken possession of the estate himself, so far as that can be understood in the sense of receiving the rents. There does not appear any trace of actual receipt or enjoyment on the part of Scriven himself. This occurred in 1827. In the year 1831 it appears the defendant, who was a farmer in the neighbourhood of Cirencester, and a client of Ledyard's, has 1,000*l*. to lay out. He seems to have applied to Ledyard for a security, and Ledyard determines to let him have this security; and accordingly Ledyard prepares and causes to be engrossed and executed a deed, which may be called a deed of transfer of the mortgage. It is not, in the ordinary form of such instruments, subject to redemption; it does not assign the debt, or give the usual power of attorney to the assignee of the debt to use the name of the assignor. The assignment of the mortgage was upon the alleged receipt of 1,200*l*.; but 1,000*l*. only was paid, and Ledyard takes from the defendant a promissory note for 200*l*. the difference, and gives up to the defendant the security, and the defendant appears to have had sole possession of the title-deeds and of the deed of transfer, Ledyard appearing willing to trust him, and he does not appear to have made any indorsement on either of the deeds with respect to the 200*l*. portion of the purchase-money of the mortgage security remaining unpaid. whereas between Ledyard and the defendant there might have been a lien for that amount. Ledyard does not appear to have made himself personally liable for the money, as I understand the deed, and the defendant appears from time to time afterwards to have received the interest from Ledyard, but only on the 1,000*l*., the case appearing to be very much in the dark as to the 200*l*. Some years afterwards, namely, in the year 1840, Ledyard contracts to sell the farm to a proprietor in the neighbourhood, a gentleman or farmer, who had an estate on which he resided immediately adjoining. The contract is made late in December 1840, and it is to be inferred that at or about that time Ledyard applies to the defendant for the deeds, and I think it may be assumed, for the purpose of making an abstract. That which is positively proved by White, then Ledyard's clerk, is that the defendant in the month of January brings the deeds with him; and omitting for the present that which is stated in the answer, the case rests very much upon the evidence of Mr. White.

Now inferring, as I do from his evidence, without resorting to the answer for information, that the deeds were left with Ledyard for the purpose of preparing the abstract with a view to a sale, I am of opinion there was nothing improper in it, and there was not gross negligence. Mr. Ledyard was the person who, subject to any effect on the power that the transfer had made, would have the power of sale. At all events, he was the prominent man with respect to the farm; he was the person with whom the defendant had dealt, and either acting for himself or acting for Scriven, the defendant might well have supposed that he, the defendant, might with propriety sell the farm, and not forgetting the position in which Ledyard stood with regard to the 200*l*. it appears to me that it was a reasonable thing in the defendant to lend the deeds to Ledyard for the purpose of making an abstract, and that it was not incumbent on the defendant to suspect that an improper use would be made of those deeds. It has been ingeniously and fairly observed, that the deeds would not enable a complete or fair abstract to be made, because the actual deed of transfer was retained; and if there had been any reason to suspect actual fraud, the observation might have weight; but I am of opinion the course adopted in this respect was consistent with perfect fairness. The defendant, a farmer be it recollected, might have well thought, and probably did think, "I can do no harm in lending the deeds; they will be safe in the solicitor's hands; I had rather not part with my own deed, I had rather keep it." He might have supposed, if he thought about it, that the business of the transfer to him having been transacted at Ledyard's office, Ledyard might not require that deed for the purpose of being abstracted. In any event, if Ledyard had wanted it, he might expect to be asked for it, which he was not, and I think it was a natural course of conduct. The circumstance, however, that they were never returned to him may be a strong circumstance with respect to the character of the delivery. But when it is considered that Ledyard stood in the position of solicitor to him; when it is considered that the defendant was not bound, as in my opinion he was not bound, to suspect any thing wrong; when I assume he was not aware of the purchase having been completed by payment of the purchase-money; and when I assume, as it is fair to do, if any knowledge on the subject is to be ascribed to this defendant, that he was certain that the money could not be paid, and that his security could not be taken from him as long as he had his own deed; certain, in this sense, that if he thought about it he must be aware that could not be done without a crime. I am of opinion no inference arises against him, from the circumstance that he did not call back the deed, although he may have been aware that the treaty with Ledyard was in active progress, and though he may have been aware a time was appointed for completing it. He had a right to think the money would not and could not be paid without his concurrence, without the production of the deed, the retention of which by him prevented a possibility of making an effectual title, and he was entitled, as I repeat, to believe that Ledyard would not do, and did not intend to do, any thing unfairly.

I am of opinion, therefore, that in the mere delivery of the deeds, upon the mere custody of the deeds, however long, nothing arises in this particular case; and if I were satisfied upon the two questions of fact which I have mentioned, which are quite beside the notion of any fraud or gross negligence having been committed before the month of July 1842, in which Ledyard absconded, I should dismiss the bill. With regard to the two questions of fact in which I have reserved myself, there is evidence which, as at present advised, I think requires sifting.

After hearing counsel for the defendant upon sending issues upon the two questions mentioned in the Vice-Chancellor's judgment, his Honour directed them to be tried.

Tuesday, Feb. 18.

SHADBOLT *v.* WOODFALL.

Assent by executors—Bequest of leaseholds.

Where executors have assented unconditionally to a specific bequest of leasehold estates, they are not entitled to be indemnified out of the testator's general estate on account of the covenants in the lease.

The testator, in this case had by his will bequeathed specifically certain leasehold property, and the executors assented unconditionally to the bequest. The executors now sought to be indemnified out of the testator's general estate in respect of the covenants on the part of the testator which were contained in the lease.

Russell and *Whateley*, for the executors.

Wigram and *Nicholson*, for the defendants.

The VICE-CHANCELLOR considered that the executors, having unconditionally assented to the bequest, they were not entitled to the indemnity they asked.

Friday, Feb. 21.

GOSLING *v.* CARTER.

This case, which is reported *ante*, p. 393, was this day spoken to upon the minutes, when

Wigram and *Hardy*, for the plaintiff, stated that they were ready to prove the existence of debts, and further argued that the heir-at-law was not a necessary party to the sale, as the executors had full power under the circumstances to sell. They cited *Tylden* v. *Hythe* (2 Sim. & Stu. 228); and *Forbes* v. *Peacock* (11 Sim.)

Teed and *Goldsmith*, for the defendant, were not heard.

The VICE-CHANCELLOR.—In this will there is an express power of sale, and but one, given so as not to be exercised until after the death of the testator's widow. She is still alive. I decline deciding against the purchaser, without binding myself to any opinion that, whether the widow does or does not disclaim, the express power of sale is not now exercisable. For the purposes of this suit, I hold that the power of sale is not now exercisable. But there is, in a certain sense, an implied power of sale, because the debts are charged upon the testator's real estates, and therefore there is, in a manner, a power of sale. I am of opinion that in this will there is an intention that the sale should be made by the executors, or one of them, and not otherwise. The next question is, whether such intention is expressed so as to create a legal power, in which case the heir need not join. I am of opinion that it is a question of too great a nicety and difficulty to decide against a purchaser in a suit for specific performance. The purchaser requiring the concurrence of the heir-at-law, must pay for the discovery of such heir, or not, according to his contract; but I repeat, that I decline making him take the estate without the concurrence of the heir. Without prejudice then to any question as to the legal estate, I decide that the executors, as there are debts

admitted, have power to sell. I do not decide that the heir-at-law is a necessary party, but I will not compel the purchaser to take the title without his concurrence.

Monday, Feb. 24.

ALLEN *v.* WEDGWOOD.

Costs—Purchaser of equity of redemption and of prior interests made co-plaintiff in a foreclosure suit with the person entitled to the first mortgage, against a mesne incumbrancer.

In this case, which was a suit for foreclosure against Mr. Wedgwood, who had contracted to purchase under a trust-deed for creditors (subject to the mortgages of Mrs. Parry, one of the plaintiffs), and also against Mr. Gwyther, a judgment creditor, it appeared that, subsequent to the registry of the judgment of Gwyther, the equity of redemption was assigned to the plaintiff Allen, and he afterwards purchased the interests of some of the creditors under the trust-deed.

Allen was now joined as plaintiff in this foreclosure suit with the person entitled to the prior mortgages.

Russell and *B. L. Chapman*, for the plaintiffs.

Allnutt, for the defendant Gwyther, offered to disclaim if the plaintiffs would pay Gwyther's costs, at the same time submitting that, as this suit was constituted, he was entitled to his costs, as his judgment debt had a priority over the interests claimed by the plaintiff Allen.

The VICE-CHANCELLOR said, that a question of great nicety might possibly be raised if this offer were not accepted. He mentioned the cases of *Toulmin* v. *Steere* (3 Mer. 210), and *Moratta* v. *Murgatroyd* (1 P. Wms. 393).

Russell then acceded to the proposition, and the costs were directed to be entered in the decree as paid by consent.

Circuit Reports.

SPRING ASSIZES.

NORTHERN CIRCUIT.

York, Thursday, March 20.

(Before Mr. Justice WIGHTMAN.)

REG. *v.* WILLIAM MARCHANT.

A notice given by the guardians of a union to a person intended to be charged as father of a bastard child under the 4 & 5 Wm. 4, c. 76, and 2 & 3 Vict. c. 85, is sufficient if signed by a majority of the guardians of the union duly assembled at a meeting of the board of guardians, and need not be signed by the whole body of guardians, nor by a majority of them.

An order in bastardy under the same statutes alleged that it was duly proved to the justices that the child was born a bastard, and was chargeable, and that it was duly proved on oath there, as well by the evidence of the mother as upon other testimony corroborative in material particulars of her evidence, that W. M. was the father of the said child. Held, that it was sufficiently stated that the evidence upon which the order was made, was taken upon oath. Held also, that if it had not sufficiently appeared, that would have been an objection to the order as well under the statutes above cited as under the present statute of 7 & 8 Vict. c. 101.

The indictment was for disobeying an order in bastardy made before the late statute 7 & 8 Vict. c. 101. It consisted of three counts, two of which stated the substance of the order, and the other set it out at length. The order was as follows:—

"City of York, } At a Petty Sessions of her Majesty's Justices of the Peace for the
To wit. } City of York, holden at the Guildhall of and in the said City, on the sixteenth day of March, in the Year of our Lord One Thousand Eight Hundred and Forty, before us, two of her Majesty's Justices of the Peace of and for the said City.

"Whereas the township of Clifton is situate within the York union, and part of the said union is within the said city of York:

"And whereas, the guardians of the said union have now applied to us, the justices here assembled, and holding the petty sessions aforesaid, in and for the city aforesaid, for an order upon William Marchant, of the township of Clifton aforesaid, labourer, whom they, the said guardians, charge with being the putative father of a female child, which has lately been born a bastard of the body of Deliah Clark, widow, and has, by the inability of the said mother of such child to provide for its maintenance, become chargeable to the said township of Clifton, to reimburse such union for the maintenance and support of the said child:

"And whereas due notice of the intention of the said guardians to make this present application was, on the twenty-eighth day of February last, given by the said guardians to the said William Marchant, and the said William Marchant being now called, and not appearing, either by himself or his attorney, we, the said justices, so here assembled as aforesaid, nevertheless proceed to hear such application, in pursuance of the statute in such case made and provided; and it being now proved to us, the said justices so here assembled as aforesaid, that the said child was on the twenty-fourth day of November last past, that is to say, since the passing of an Act passed in the fifth year of the reign of his late Majesty, King William the Fourth, intituled 'An Act for the amendment and better administration of the Laws relating to the Poor in England and Wales,' at the township of Clifton aforesaid, born a bastard of the body of the said Deliah Clark: And that the said child, on the eighteenth day of February last past, and within three calendar months of the making of this present application, by reason of the inability of its said mother to provide for its maintenance, became, and from thence hitherto hath been and still is chargeable to the said township of Clifton: And it being duly proved on oath now here, as well by the evidence of the said Deliah Clark, the mother of the said child, as upon other testimony corroborative in material particulars of the evidence of the said Deliah Clark, to the satisfaction of us, the said justices here, that the said William Marchant is the father of the said child: we, the said justices here assembled as aforesaid, having heard the evidence in this behalf adduced, are satisfied of the facts aforesaid, and that the said William Marchant is really and in truth the father of the said child: And it appears to us, the justices so here assembled as aforesaid, to be just and reasonable, under all the circumstances of the case, that the said William Marchant should pay unto the guardians of the said union such sum or sums of money as the said union has expended, and also such sums as the said union may from time to time expend, for the maintenance and support of the said child, not exceeding the sum of one shilling and sixpence by the week.

"And whereas no application has been made with respect to the said child to any Court of General Quarter Sessions, under the provisions of the said Act, so entitled as aforesaid:

"Therefore, we, the said justices, so here assembled as aforesaid, do now hereby order that the said William Marchant do pay unto the guardians of the said union, the sum of eleven shillings and eightpence expended by the said union for the maintenance and support of the said child from the eighteenth day of February aforesaid, when the said child became chargeable as aforesaid to the present time, and do also pay to the guardians of the said union, weekly and every week from henceforth, until the said child shall attain the age of seven years (if the said child shall so long live and continue to be chargeable to the said township of Clifton), such sum and sums of money as shall be weekly expended by and on behalf of the said union, for the maintenance and support of the said child during the time last aforesaid, not exceeding the sum of one shilling and sixpence in each and every week.

"Given under our hands and seals at the session aforesaid.

"EUST. STRICKLAND,
"THOS. BARSTOW."

The indictment alleged that due notice of the intention of the guardians of the poor to make the application to the justices at petty sessions had been given by the said guardians to the said William Marchant. The statute 4 & 5 Wm. 4, c. 76, s. 72, enacts, "That when any child shall hereafter be born a bastard, and shall, by reason of the inability of the mother of such child to provide for its maintenance, become chargeable to any parish, *the overseers or guardians of such parish*, or the guardians of any union in which such parish may be situate, may, if they think proper, after diligent inquiry as to the father of such child, apply to the next general quarter sessions of the peace within the jurisdiction of which such parish or union may be situate, after such child shall have become chargeable, for an order upon the person whom they shall charge with being the putative father of such child, to reimburse such parish or union for its maintenance and support, &c."

The 73rd section enacts, "That no such application shall be heard at such sessions unless fourteen days' notice shall have been given under the hands of such overseers or guardians to the person intended to be charged with being the father of such child of such intended application; and in case there shall not, previously to such sessions, have been sufficient time to give such notice, the hearing of such application shall be deferred to the next ensuing general quarter sessions, &c."

The 2 & 3 Vict. c. 85, s. 1, transfers the jurisdiction of the Court of Quarter Sessions to special or petty sessions, and provides that all enactments in the 4 & 5 Wm. 4, c. 76, relating to the Court of General Quarter Sessions, shall be taken to apply to the said justices in special or petty session, except that the notice to the person intended to be charged with being the father of the child, need not be given more than seven days instead of fourteen days before the session at which the application shall be heard."

The notice proved to have been given in this case was as follows, and it appeared in evidence that the parties whose signatures were attached were only a small portion of the guardians of the union:—

"TO WILLIAM MARCHANT, ...
"Whereas, Deliah Clark, now in the York Union Workhouse, was, on the twenty-fourth day of November last, delivered of a female bastard child, and the said child, by reason of the inability of its said mother to provide for its maintenance, on the eighteenth day of February instant became chargeable to the township of Clifton, and from thence hitherto has been maintained and supported by the York Union, in which the said township is situate: And whereas we, the undersigned, being a *majority of* the guardians of the said union, *duly assembled* at a meeting of the board of guardians of the said union, HAVING MADE diligent inquiries as to the father of the said child, do find and charge that you, William Marchant, are the father of the same: Therefore take notice, that we, as such guardians of the said union, intend, on the sixteenth day of March next, to apply to the justices of the peace, at the petty sessions which will be then holden by them, at half-past twelve o'clock at noon, at the Guildhall in and for the city of York, within which city part of such union is situate, for an order upon you, the said William Marchant, to reimburse the said union for the maintenance and support of the said child, and to make such further order for its future maintenance and support as to the said justices shall seem meet. Given under our hands, at a meeting of the board of guardians of the said union, held this twenty-seventh day of February, one thousand eight hundred and forty.

"HENRY SMALES, Presiding Chairman.

"GEO. DRUMMOND.	HENRY COBB.
JOSEPH WADE.	W. PLOWS.
RICHD. BROADMEAD.	SAML. HERBERT.
THOS. WALKER.	THOS. DEWS.
THOS. MASON.	FRAS. CALVERT.
THOS. BILLESBY.	RICHD. SMITH."

Phillips, for the defendant, objected that no sufficient notice had been proved. The statute 4 & 5 Wm. 4, c. 76, s. 72, provides that the overseers or guardians of the parish, or guardians of the union, may apply for an order, &c. The 73rd section enacts that no such application shall be heard unless fourteen days' notice shall be given under the hands of such overseers or guardians to the person intended to be charged. The subsequent statute reduces the number of days to seven, but makes no other alteration in the notice required. The notice here is signed by twelve guardians of the union, who are alleged to be "a majority of the guardians of the said union duly assembled at a meeting of the Board of Guardians of the said union." It is uncertain whether this means a majority of the guardians of the union, or only of those who were duly assembled at that meeting. But it is not sufficient, even if the words can be construed to mean, that the notice was given by the majority of all the guardians, because, according to the words of the Act of Parliament, it ought to be given by the guardians, and not merely by a majority, by which must be understood the whole of the guardians. Where the Act requires certain things to be done by all the guardians, it is not sufficient that they should be done by a majority, but still less, by a majority of a meeting which itself comprehended only a small section of them.

Bliss, for the prosecution, contended, that though the sections were worded as above stated, still that the act of a majority of a meeting of guardians was the act of the whole, and was valid for all purposes.

WIGHTMAN, J.—I think the notice sufficient.

Phillips then objected that the order was bad, because it did not appear that it was proved upon oath before the justices that the child was born a bastard, or that it was chargeable to the township. He further contended that the words, "and it being duly proved on oath here, as well by the evidence of the said Deliah Clark, the mother of the said child, as upon other testimony corroborative in material particulars of the evidence of the said Deliah Clark, to the satisfaction," &c. did not sufficiently shew that both the evidence of the mother and all the other testimony were upon oath. With regard to the first point, it was material before the justices that the birth and the chargeability should be proved; and, being material, they must have been proved upon oath, and it should have been so alleged in the order. *Reg.* v. *The Justices of Buckinghamshire* (4 Law T. 341) is a case decided by your lordship last term involving this very principle. It may be said that that decision was under the late statute, 7 & 8 Vict. c. 101; but there is no difference in this respect between the statutes.

WIGHTMAN, J.—That case was decided on general principle, not on the particular words of the statute.

Phillips.—The same case applies to the second point. It ought to appear distinctly, and without any uncertainty, that both the evidence of the mother and the material testimony in corroboration, were taken upon oath; but it is consistent with the wording of this order that only a part of the evidence may have been upon oath, or that the case might have been duly proved on oath, in the opinion of the justices, by entirely different evidence, and that neither that of the mother nor the corroborating testimony alluded to by the order, might have been upon oath at all. Reading the words above quoted as a parenthesis, it does

not appear at all that the mother's evidence was upon oath. (*Reg.* v. *Jates*, New Sessions Cases, pt. 2; *Ex parte Gray*, 1 Bitt. & S. 116.)

Bliss, contrà.—The two first averments are merely introductory, and it is unnecessary to allege that they were proved upon oath. With regard to the latter point, the averment that it was proved upon oath overrules the whole sentence.

WIGHTMAN, J.—It is quite true that it ought to appear clearly on the face of the order that every thing material was proved upon oath; but I think it was not necessary to allege that the birth and the chargeability were so proved; and as to the other point, if you put a fair construction on the words used, it must be understood that all the evidence taken was on oath. I think, therefore, the objections cannot be sustained.

MIDLAND CIRCUIT.

Derby, Tuesday, March 18.

(Before Lord Chief Justice TINDAL.)

COULSON *v.* SANDARS and ANOTHER.

In a conviction under stat. 5 *Geo.* 4, *c.* 83, *s.* 4, *for pretending to tell fortunes, it is not necessary, in describing the offence, to allege to whom the pretence was made, and, in the warrant of commitment issued in pursuance of such conviction, it is enough to allege generally that the party was convicted of being a rogue and vagabond, "for that he did pretend and profess to tell fortunes;" nor does the addition of other unnecessary words, as "and did use certain devices, by palmistry and otherwise," vitiate the warrant. It is not necessary, in express terms, to say where the party convicted is to be kept in safe custody; it is enough, if it appears clearly upon reading the whole of the warrant.*

Declaration, in trespass for false imprisonment.

Plea—Not guilty, by statute.

On the part of the plaintiff a warrant of commitment was put in, signed by the defendants, two of her Majesty's justices of the peace for the borough of Derby, the material parts of which were as follows:—

"Whereas William Coulson was duly convicted before us, two, &c. of being a rogue and vagabond, for that he, on, &c. did pretend and profess to tell fortunes, and did use certain devices by palmistry and otherwise, &c." Then followed a command to the constable to deliver the said William Coulson to the keeper of the house of correction at Derby; and then a command to the said keeper the said William Coulson safely to keep to hard labour for the space of two calendar months.

On the part of the defendants, the conviction upon which the warrant of commitment was founded, was put in. It followed the form given by the statute, the 5 Geo. 4, c. 83, s. 4, and was in these words:—

"Derby, } Be it remembered, That on to wit. } at William Coulson is convicted before us (naming the justices), two of her Majesty's justices of the peace in and for the said county, of being a rogue and vagabond, within the intent and meaning of the statute made in the 5th year of the reign, &c. for that the said Wm. Coulson, on , at , did pretend and profess to tell the fortune of one Benj. Ferne, a subject of her Majesty, &c., with the intent, and for the purpose of deceiving and imposing upon the said Benj. Ferne; and for which said offence the said Wm. Coulson is ordered to be committed to the house of correction at Derby, there to be kept to hard labour for the space of two calendar months. Given under our hands and seals, &c."

Signed and sealed by the defendants.

Hill, Q. C. and *Waddington*, for the plaintiff, submitted, 1st, that the conviction was bad for uncertainty, in not stating to whom the pretence was made; which, they contended, was as necessary in a conviction under this statute, as in an indictment for obtaining money under false pretences. In the latter case it was immaterial whether the pretence was made to the person defrauded; and so here it was immaterial whether the pretence was made to the person whose fortune was to be told; but unless the conviction shewed to whom the pretence was made, it wanted the requisite certainty. Then the warrant is bad. There is no doubt that the warrant ought to follow the conviction. (*Daniel* v. *Phillips*, 1 C. M. & R. 662.) It does not here.

The stat. 5 Geo. 4, c. 83, s. 4, provides, "that every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person; every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his Majesty's subjects, shall be deemed a rogue and vagabond within the true intent and meaning of this Act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months." The warrant, therefore, charges two distinct offences; but the conviction only one. But the warrant is also bad; first, because it neither states to whom the pretence was made, nor whose fortune was to be told, nor alleges any intent to deceive and impose upon any one; it shews no offence under the statute; and, secondly, because it does not shew where the plaintiff was to be kept to hard labour. It is true the 17th section provides "that no proceedings to be had before any justice or justices of the peace under the provisions of this Act shall be quashed for want of *form*;" but the defects pointed out here are substantial defects, affecting the magistrates' jurisdiction.

Humfrey, Q. C. and *Ponsonby*, for the defendants.

TINDAL, C. J.—I am of opinion that this conviction is sufficient to sustain the warrant of commitment, and that the defendants, therefore, are not liable in trespass. The statute provides a form of conviction; that form is followed; and the blank which is left for the description of the offence is filled up in the words of the statute; it is said that the conviction ought to have stated to whom the pretence was made; but the answer is, that it matters not to whom the pretence was made; the statute says generally every person "pretending to tell fortunes." Then the warrant recites generally that the plaintiff has been convicted of pretending to tell fortunes; but not with the same particularity as the conviction; nor is the same particularity necessary. It is true that the warrant adds also, "and did use certain devices by palmistry and otherwise;" but that is unnecessary, and may be rejected as surplusage. As to the last objection, it is quite clear, from the whole of the warrant, *where* the plaintiff was to be kept in safe custody. There is a direction to the constable to take him to the keeper of the house of correction at Derby, and then a direction to that keeper safely to keep the plaintiff, which could only be in the house of correction; for if the keeper were to allow him to go elsewhere, it would be an escape. Upon the whole, therefore, the defendants are not liable, and the plaintiff must be nonsuited.

WESTERN CIRCUIT.

Exeter, Friday, March 21.

(Before Mr. Justice ERLE.)

REG. *v.* AVERY and ANOTHER.

Practice—Evidence.

The evidence of an accomplice, though uncorroborated, is evidence to go to the jury.

Prisoners were indicted for entering lands by night, &c. in pursuit of game.

The principal witness was an accomplice.

Slade, for the prisoners, submitted that the evidence of the accomplice was uncorroborated, and that, therefore, there was no case to go to the jury.

ERLE, J.—My own opinion is, that I have no right to withdraw any case from the jury where there is even one competent witness for the prosecution, although he be an accomplice, and uncorroborated. That is my view of the law.

Greenwood and *Rowe*, for the prosecution.

Slade, for the prisoner.

Exeter, Monday, March 24.

(Before Mr. Justice COLERIDGE.)

DOE *dem.* MOLESWORTH, Bart. *v.* SLEEMAN.

Evidence.

This ejectment was brought to recover a piece of land which was said to be within the limits and to belong to a manor.

A witness was called for the plaintiff to prove the *locus in quo* to be within the bounds of the manor, by giving evidence as to the *reputation* of its limits. He stated that he lived within the limits of the manor, but admitted he had never held any of the manorial lands, nor had any thing personally to do with the manor.

Crowder objected that he was not a competent witness. This witness is called, he argued, to give hearsay evidence of the boundaries of this manor, without having any legitimate means whatever of ascertaining or testing the accuracy of any thing he might have heard about it. The rule is, no doubt, that the *tenants of a manor* may give evidence of what they have heard other deceased tenants say of its customs and bounds; and this rule is a reasonable one, as they have an interest in correctly ascertaining the facts respecting these matters. It is like the hearsay evidence of members of a family respecting the pedigree of such family, in which cases none but its members are held to be admissible witnesses.

Greenwood contended that the witness was clearly admissible. He lived within the limits of the manor, and had the same means of ascertaining its boundaries as any of the tenants could have. He cited *Crease* v. *Barrett* (1 C. M. & R. 919).

COLERIDGE, J.—I have never understood there is any such limit or distinction with regard to the admissibility of witnesses called to give evidence respecting the reputed bounds of a manor, as that contended for by Mr. Crowder. All that is necessary is, that such witnesses shew they have been so circumstanced as to be in a situation to ascertain what those boundaries were. I think this witness is in that situation, and I shall therefore receive his evidence.

Greenwood and *Montague Smith*, for the plaintiff.

Crowder and *Butt*, for the defendant.

HOME CIRCUIT.

Maidstone, Tuesday, March 11.

REG. *v.* COBUS.

Where a prisoner charged with any offence has been removed to a lunatic asylum, under 3 & 4 *Vict. c.* 54, *the Court will not discharge the recognizances of the prosecutor and witnesses, but will respite them until the next assizes.*

The prisoner had been committed on a charge of murder, and on a certificate of two justices of the peace that he was insane, the Secretary of State had issued his warrant under the 3 & 4 Vict. c. 54, for the removal of the accused to a lunatic asylum.

Deedes now applied, on behalf of the prosecutor and the witnesses who had been bound over to prosecute and give evidence, that their recognizances might be discharged.

ALDERSON, B.—I think I ought to be particularly careful in acting upon a statute such as this, which supersedes the common law and the much more wholesome state of things that existed under it. Formerly, if a prisoner, when brought to trial, exhibited any symptoms of insanity, it was the judge's duty to empannel a jury in open court, to try whether he was insane or not, and the question was publicly decided. Now what is to prevent a murderer from being smuggled away into a madhouse, without the slightest public investigation with regard to the heinous charge brought against him? Two justices of the peace, behind the back of the prosecutor, give a certificate that the man is insane, and the case may be hushed up for ever. In this instance there is, perhaps, no actual ground for any exception being taken to the course pursued; I only speak of the principle. At any rate I think I should not be acting properly were I to discharge these recognizances. I will respite them until the next assizes, with an intimation to the prosecutor and witnesses that they need not come up again until they are summoned. I cannot help repeating that in this case, as well as in every similar one, a prisoner accused of murder may escape justice altogether, unless two magistrates consent to certify that he is sane.

NORFOLK CIRCUIT.*

AYLESBURY.

(Before Mr. Baron PARKE.)

REG. *v.* WM. DAY, clerk.

Felonious cutting and wounding—When common assault.

In an indictment for feloniously cutting and wounding, with intent to disable and do grievous bodily harm, the felony is not supported by proof that the prosecutor, in the act of warding off a blow, pushed his hand against that of the prisoner, and so received a wound on his finger; the prisoner having cut and slit the smock frock of the prosecutor in a manner which indicated an intention to injure that garment, and not the person of the prosecutor. These facts, however, are sufficient to support a conviction for a common assault.

The prisoner was indicted for cutting and wounding James Batchelor, with intent, in the first count to maim and disable him, and in the second, to do him some grievous bodily harm.

Birch, for the prosecution, called the prosecutor, who swore that the defendant being in a public-house, he went to him at the request of the landlord, with the view of persuading him to leave the house. To this application the prisoner made no reply, and the prosecutor retired into the parlour: after which the prisoner was observed to take out a penknife from his pocket, open it—and return it. In a few moments afterwards, the prosecutor renewed his solicitation to the prisoner, who thereupon sprung on him and knocked him over a form with his fists, in one of which he appeared to have some instrument. When the prosecutor recovered his legs, he put forth his hand to ward off the attack of the prisoner, and in so doing he pushed it against the right hand of the prisoner, in which was a penknife, which ran into the prosecutor's finger, just deep enough to bring blood. The prosecutor and other witnesses, when called upon to describe the blows given by the prisoner, said that he seemed to hold the penknife in his hand and to use it as if he were attempting to cut the frock of the prosecutor, for his motion was "up and down several times," as if he was scarring the frock; and that, on being produced, bore three long marks as if it had been slit downwards by as many cuts from a knife; while there were scars in several other places, through which the knife had not penetrated, and all in the same direction. In this state of things,

PARKE, B. intimated that there was an end to the felonious part of the charge against the prisoner. It was evident from the account given of his conduct and actions by the prosecutor and the other witnesses, that the object of his attack was the dress, and not the person of the prosecutor; and the cut received by the prosecutor was not one inflicted by the knife coming against his hand, but his hand coming in contact with the knife at a moment when no intention existed in the mind of the prisoner to inflict any wound on his person.

Sanders, for the prisoner, then submitted that there was not even enough to sustain a convic-

tion for a common assault. If there was no felony because there was an absence of any intent to injure the person of the prosecutor, the attack of the prisoner on the dress of the prosecutor exclusively could not amount in the eye of the law to an assault; for every assault must presume an injury to, or at least an attack on, the person. The person here of the prosecutor was never touched.

Parke, B.—No, it was not; but surely it is an assault on a man's person to inflict injury to the clothes on his back. In the ordinary case of a blow on the back, there is clearly an assault, though the blow is received by the coat on the person. It certainly appears to me that there is plenty of evidence here to support a conviction for a common assault; but I will confer with my brother Patteson on the subject.

The learned Baron then retired for a few moments, and on his return into court announced, that the opinion of Mr. Justice Patteson entirely coincided with that previously expressed by himself. He accordingly directed the jury to acquit the prisoner of the felony, but to find him guilty of the common assault.

Guilty—six weeks' imprisonment.

Reg. v. Abraham.

Shooting at with intent—Felony and common assault.

The indictment charged that the prisoner shot at John Earl, with intent to maim him and to do him some bodily harm.

From the evidence of the prosecutor it appeared that he was in a field hunting small birds in a hedge with some other boys, when the prisoner, who was then a gamekeeper, came up to them with a gun on his arm, and ordered them off. Upon this the prosecutor ran away with his companions, but had not got more than 40 or 50 yards off when he heard the report of a gun, and at the same moment felt several shot rattling against his back and arms, one of which struck him on his hand and lodged in his finger. Turning round, he saw the prisoner with his gun up to his shoulder pointing towards him.

Another witness proved that the prisoner said afterwards, that he had "warmed their tails a goodish bit for them."

Parke, B.—There can be no doubt that this is an assault, but I think the felonious part of the charge cannot be supported by these facts. In order to do so it must appear clearly that the prisoner discharged the gun at the prosecutor with the intent laid in the indictment; but he seems to have waited till the prosecutor had attained such a distance from him as not to be injured by the shot. He would rather appear to have fired after the prosecutor and his companions with the view of frightening them than with any serious intention of inflicting any injury to their persons. This conduct, though very reprehensible, is yet not sufficient to bring the case within the Act, and he ought therefore to be acquitted of the felony and convicted of an assault.

The jury found the prisoner guilty of a common assault accordingly.

Sentence—two months' imprisonment.

Wells was counsel for the prosecution, and *Sanders* for the defence.

THE LEGISLATOR.

Summary.

Parliament has been resting from its labours during the present Easter week, and when it again assembles it will be more engrossed with private than with public legislation. The Lawyers will enjoy a respite during the present session.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, March 17.

Jewish Disabilities.

Tuesday, March 18.

Museums of Art—"to enable Town Councils to establish Museums of Art in corporate towns."

Thursday, March 20.

Customs Imports.

BILLS READ A THIRD TIME AND PASSED.

Friday, March 14.

Bastardy.

Monday, March 17.

Customs Export Duties.

Tuesday, March 18.

Sugar Duties.

Wednesday, March 19.

Railway Clauses Consolidation.
Lands Clauses Consolidation.

Thursday, March 20.

Railway Clauses Consolidation.
Ditto (Scotland).
Land Clauses Consolidation.
Ditto (Scotland).

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, March 14.

Eastern Union Railway.
Battersea Poor.
Midland Railways (Swinton to Lincoln).
Ditto (Syston to Peterborough).
Ditto (Nottingham to Lincoln).
Stokenchurch Roads.
Dublin and Drogheda Railway.
Shepley and Lane-head and Barnsley Road.
Lowestoft Railway and Harbour.
Harrogate and Ripon Junction Railway.
Manchester Court of Record.

Monday, March 17.

Cornwall Railway.
Waterford and Kilkenny Railway.
Glasgow Bridges.
Shaw's Waterworks.
Yoker Road.
Dundalk and Enniskillen Railway.
Chelsea Improvement.
Erewash Valley Railway.
Bristol Parochial Rates.

Tuesday, March 18.

Glasgow and Shotts Roads.
North Woolwich Railway.
St. Matthew, Bethnal-green, Cemetery.

Wednesday, March 19.

Whittledean Waterworks.
Manchester, Leeds, and Hull Railway.
Middlesborough and Redcar Railway.
Yarmouth and Norwich Railway.
Wear Valley Railway.
Chester Improvement.
Southport and Euston Junction Railway.
North Union and Ribble Navigation Branch Railway.
Glasgow, Garnkirk, and Coltbridge Railway.
Glasgow Markets.
South Wales Railway.
Taw Vale Railway.
Westminster Improvements.
Manchester Improvements.
Glasgow Police.
Anderston Municipal and Police.
Rye and Tenterden Railway.

Thursday, March 20.

Keyingham Drainage.
Dundee and Perth Railway.
Dundee Waterworks.
Belfast Improvement.
Middlesex County Rate.
North British Insurance Company.
Firth and Clyde Navigation.
Manchester, Sheffield, and Midland Junction Railway.
Hungerford and Lambeth Suspension Bridge.
Aberdeen Railway.

BILLS READ A SECOND TIME.

Friday, March 14.

London, Worcester, and South Staffordshire Railway.
Amicable Society Assurance.
Edinburgh and Hoy Railway.
Foulmire Inclosure.

Monday, March 17.

Blackburn and Preston Railway.
Shelsley Road.
Launceston and South Devon Railway.
Sheffield Water.
Sheffield and Lincolnshire Junction Railway.
North British Railway.
South Devon Railway
Berks and Hants Railway.
Glasgow, Paisley, Kilmarnoch, and Ayr Railway.
Clydesdale Junction Railway.

Tuesday, March 18.

York and North Midland Railway (Harrogate Branch).
Ditto (Doncaster Extension).
Falmouth Harbour Extension.
Black Sluice Draining and Navigation.
Southwark and Vauxhall Water Company.
West of London and Westminster Cemetery.
Liverpool Guardian Gas.

Wednesday, March 19.

Staley Bridge Waterworks.

PETITIONS.

91 Sierra Leone,—*Return presented*,—of Copies of Despatch of Lord Stanley to Governor Macdonald, dated 10th Feb. 1844; and other Papers relating to Sierra Leone [Address 25th February]; to lie on the table.

SESSIONAL PRINTED PAPERS.

Par. Num.

109. Queen's Bench—Ireland—Copies of Affidavits.
111. Metropolitan Police—Accounts
Children's Employment—Index to the Second Report of Commissioners.
117. Railways—Approach to the Metropolis—Report of the Board of Trade.
118. Railways—Trent Valley and Churnet Valley—Report of the Board of Trade.
119. Railways—North and North West of Ireland—Report of the Board of Trade.
120. Railways—Scotland—Report of the Board of Trade.
113. Corn Accounts.
125. Dwelling Houses and Window Duty—Return.
130. New Zealand—Copies of Despatch.
132. Ships—Return.
131. New Zealand—Copies of Correspondence.
83·1. Railways, West of England Division, including Wilts and Dorsetshire—Map.
124. Bills—Railway Clauses Consolidation—Amended.
127. —— Lands Clauses Consolidation, Scotland—Amended.
116. —— Calico Print-Works.
102. Real Property—Return.
129. Falkland Islands, New Zealand—Copies of Correspondence.
133. Window Duty—Return.
134. Bill—Land Clauses Consolidation, amended by Committee and on Report.
126. Tallow, &c.—Account.
135. Railway Bills—Second Report of Committee.
138. Railway Clauses Consolidation (Scotland)—Amended.
122. Poor Law, Rochdale Union—Copies of Memorials.
144. Lard—Account.
145. Sugar—Order in Council.
90. Bills—Field Gardens.
136. —— Jewish Disabilities Removal.
148. —— Public Museums, &c.
627. (Session 1844) Aborigines (Australian Colonies)—Papers.

Brewers.—By a return lately issued, it appears that there are in the United Kingdom 2,695 brewers, of which number 2,362 carry on business in England, 211 in Scotland, and 122 in Ireland. There are 86,234 victuallers in the United Kingdom. In England, 57,855; in Scotland, 15,501; and in Ireland 12,878. In England there are at the present period 31,729 persons licensed to sell beer to be drunk on the premises, and 4,022 persons to sell beer not to be drunk on the premises. There are no such licenses in Scotland or Ireland. In the United Kingdom there are 26,716 victuallers who brew their own beer. There are 26,715 persons licensed to sell beer to be drunk on the premises who brew their own beer, and 12,603 brewing their beer, not so licensed.

The Corn Laws.—An important and interesting return, as regards its bearing upon the operation of the laws affecting the importation and consumption of corn, grain, meal, and flour, has been printed by order of the House of Commons, on the motion of Mr. W. Miles, M.P. It appears from this paper, that during the year 1844, ending the 5th of January, 1845, the gross total quantity of wheat and wheat flour imported into this country amounted to 1,381,875 quarters: viz. 1,145,883 quarters of foreign, and 235,992 quarters of colonial, produce and growth. The quantity entered for home consumption during the same period amounted to 1,026,976 quarters, of which 791,385 quarters were of foreign, and 235,591 quarters of colonial growth and produce. The quantities remaining in the warehouse at the close of the year 1844 amounted altogether to 439,823 quarters. The largest importations of wheat and wheat flour appear to have taken place in the months of May, June, July, August, and September, and the smallest in the months of February and December. The quantities thrown upon the market, or, in other words, entered for home consumption, amounted in the month of July to 427,623 quarters, and in that of August to 187,504 quarters, or about two-thirds of the whole quantity entered for home consumption in 1844. The monthly average price of wheat in England and Wales was, in January, 1844, 51s. 1d.; in February, 53s. 5d.; in March, 56s. 6d.; in April, 55s. 4d.; in May, 55s. 6d.; in June, 55s. 8d.; in July, 54s. 4d.; in August, 50s.; in September, 46s. 4d.; in October, 46s. 2d.; in November, 45s. 11d.; and in December, 45s. 3d. per quarter: thus shewing that the price of wheat was never higher than 2*l.* 16s. 3d. nor lower than 2*l.* 5s. 3d. per quarter, giving opportunity for a difference between the two extreme prices of only 11s. a quarter. The total quantities of barley imported in 1844 amounted to 1,029,021 quarters, of which 1,022,076 quarters were entered for home consumption; the total quantity of oats and oatmeal imported to 304,757 quarters, of which 264,854 were entered for home consumption; the total quantities of rye and rye-meal imported to 26,591 quarters, and the total quantities entered for domestic consumption to 28,779; the total importation of pease to 109,176 quarters, and the quantities entered for home consumption to 122,984 quarters; and the total importation of beans to 154,582 quarters, and the total quantities entered for domestic consumption to 225,680 quarters. It further appears, according to this return, that the total quantity of corn, meal, and flour, the growth of Ireland, imported into Great Britain from the former country, amounted to 2,801,206 quarters, of which 440,153 quarters consisted of wheat and wheat flour, and 2,242,310 quarters of oats and oatmeal alone.

Bills in Progress.

DEATH BY ACCIDENTS COMPENSATION.

After reciting that no action at law is now maintainable against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injuries so caused by him; it enacts,—

1. That whensoever any person shall, by his wrongful act, neglect, or default, have caused the death of another person, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action in any of her Majesty's courts of record at Westminster, and recover damages in respect thereof, then and in every such case the person causing such death shall be liable to an action for damages resulting therefrom, notwithstanding the death of the person injured.

2. That every such action shall be for the sole benefit of the wife or husband, or child or children of the person whose death shall have been so caused as

aforesaid, and may and shall be brought by and in the name of the executor or executrix, or administrator or administratrix, or if there shall be neither executor or executrix, administrator or administratrix, then by the wife, or husband, or child, or one of the children, of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the pecuniary injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount recovered, after deducting all costs in and about such proceedings, shall be divisible and divided amongst the before-mentioned parties in such shares and proportions as the jury by their verdict shall find and direct: Provided always, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and if two or more actions in respect thereof shall at any time be brought, it shall be lawful for the court or a judge to order that the same may be consolidated, and also to direct in whose name the action after consolidation shall proceed, as well as to make such other orders therein as to them or him shall seem fit.

3. That in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a particular of the person or persons for whom and on whose behalf damages shall be claimed in such action.

4. That nothing herein contained shall in any way or manner be construed to discharge or relieve any person or persons, corporation or company, from being proceeded against criminally for any matter done or omitted for which this Act provides a civil remedy; and that the amount of any damages and costs that may be recovered in any action as aforesaid shall and may be recoverable out of the lands, hereditaments, goods, and effects of any person or persons, corporation or company, notwithstanding the same shall and may have been forfeited to the Crown by the conviction of any person or persons causing such death, for felony or misdemeanor in consequence thereof.

5. That no voluntary deed, conveyance, or assignment, otherwise than for a valuable and *bonâ fide* consideration, made by any person or persons, corporation or company, after he or they shall have caused the death of any person or persons as aforesaid, shall be valid or binding as against the party entitled to recover damages and costs in any such action against such person or persons, corporation or company.

6. That no proceedings under and by virtue of this Act shall be commenced or taken before the expiration of three months, nor after the expiration of six months from the death of the party injured as aforesaid.

7. That in case any person who may have been so injured by the act, neglect, or default of another, and who may afterwards die in consequence thereof, shall in his lifetime have recovered damages in an action against or received compensation by agreement or compromise from the person or persons, bodies corporate, or company, for the injury he may so have sustained, then and in such case the remedies provided by this Act shall not accrue to the personal representatives or surviving relations of such deceased person as aforesaid.

8. That it shall be lawful, notwithstanding anything herein contained, for the personal representatives or surviving relations of any deceased persons as aforesaid to compromise any claim against any person or persons, bodies corporate or company, for injury or loss that he, she, or they may have sustained.

9. That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, the word "person" to apply to bodies politic or corporate, whether sole or aggregate; and words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender.

10. That this Act shall come into operation from and immediately after the passing thereof.

JEWISH DISABILITIES REMOVAL.

Reciting that the declaration prescribed by an Act of the 9 Geo. 4, c. 17, intituled "An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments," on admission into office in municipal corporations, cannot conscientiously be made and subscribed by persons of the Jewish religion: it is therefore enacted, That, instead of the declaration required to be made and subscribed by the said recited Act, every person of the Jewish religion be permitted to make and subscribe the following declaration within one calendar month next before or upon his admission into the office of mayor, alderman, recorder, bailiff, town clerk, councillor, or any other municipal office in any city, town corporate, borough, or cinque port, within England and Wales, or the town of Berwick-upon-Tweed:

"I, *A. B.*, being a person professing the Jewish religion, having conscientious scruples against subscribing the declaration contained in an Act passed in the 9 G. 4, intituled 'An Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments,' do solemnly, and sincerely, and truly declare, That I will not exercise any power, or authority, or influence, which I may possess by virtue of the office of   to injure or weaken the Protestant Church as it is by law established in England, nor to disturb the said church, or the bishops and clergy of the said church, in the possession of any right or privileges to which such church or the said bishops and clergy may be by law entitled."

2. That such declaration shall be of the same force and effect as if the person making it had made and subscribed the declaration aforesaid contained in the said Act of the 9 G. 4, c. 17.

DIVORCE (PRIVY COUNCIL).

Reciting that it is expedient that the obtaining divorces *à vinculo matrimonii* should be rendered a remedy common to all classes of the community, and such cases may conveniently be considered by the Judicial Committee of her Majesty's Privy Council: it is enacted,—

1. That if any person shall present a petition to her Majesty in Council, complaining of adultery committed, and praying for a divorce *à vinculo matrimonii*, and her Majesty shall think proper to refer the same to the said committee, the matter of the petition shall be inquired of by the said committee, according to the usual course of proceeding, and according to such further rules and orders as it is hereinafter authorized and empowered to make; and if the said committee shall report that a divorce should be granted as prayed, then it shall be lawful for her Majesty to confirm the same report by order in council, and such order shall be binding on all parties, and shall have the force and effect of a divorce *à vinculo matrimonii*, any law, custom, or usage to the contrary, in any wise notwithstanding.

2. That the said judicial committee shall have power to make such rules and orders of proceeding as it shall deem fit for conducting the said inquiry, touching the requiring the proof of an action having been brought for criminal conversation by the said petitioner against the alleged adulterer, and a verdict having been obtained by him, touching the requiring the production of a sentence of the Ecclesiastical Court of separation *à mensâ et thoro*, touching the examination of the petitioner, and otherwise as to the said committee shall seem fit, and generally such rules and orders for regulating its proceedings in divorces as it shall think fit, which rules and orders, being submitted to her Majesty, and confirmed by order in council, shall be laid before both houses of parliament within one calendar month next after such order in council being made, if parliament be sitting, or if not, within one calendar month after the commencement of the then next session, and shall be deemed and taken to be binding on the said committee, and on all parties before it, in such matters of divorce, unless one or other house of parliament shall, within one calendar month after the same shall have been laid before it, present an address to her Majesty, praying that the said order in council may be rescinded, in which case such rules shall have no force or effect whatsoever.

3. That it shall and may be lawful for the said Judicial Committee to make it one condition of the granting such divorce that such provision shall be made for the wife, when divorced, as may seem reasonable and just in all the circumstances of the case, which conditions, if approved by her Majesty by order in council, shall be deemed and taken to be binding on the petitioner after the dissolution of his marriage; and the wife shall, after such dissolution, have such and the like remedies for recovery of the annuity granted as she would have had in case the said petitioner had executed a bond, or other instrument under seal, conditioned to pay such annuity, provided that the said Judicial Committee shall have power to require such petitioner to give his own bond, with securities, to be approved by the clerk of the council, for the discharge of such annuity.

CLASSIFICATION OF RAILWAY BILLS.

The Select Committee appointed for the classification of Railway Bills, according to the resolutions adopted by the House, and who are empowered to report from time to time, report as follows:—

Your committee having considered the several matters referred to them, are of opinion that it is expedient that there be referred to one and the same committee the following bills and projects:—

A. Central Kent; London, Chatham, and North Kent; London, Chatham, and Chilham; (South Eastern) North Kent; London and Ashford; (South Eastern) Hungerford-bridge to Tonbridge; (South Eastern) Tonbridge to Hastings; Rye and Tenterden; (South Eastern) Ashford to Hastings; Brighton, Lewes, and Hastings (Keymer Branch); Brighton Lewes, and Hastings (Ashford Branch); South Eastern) Maidstone to Rochester; (South Eastern) Minster to Deal, and Walmer and Margate Deviation and Extension; Kentish Coast; Gravesend and Rochester (Thames and Medway); London, Chatham, and Gravesend; London and Croydon (Orpington Branch); London and Croydon (Enlargement and Branches); London and Maidstone; (South Eastern) Headcorn and Rye; London and Greenwich widening; (South Eastern) London and Greenwich Railway Extension; London and Greenwich.

Your committee further recommend that the following bills and projects be referred to another committee:—

B. Leeds and West Riding Junction; West Yorkshire; Huddersfield and Manchester (railway and canal); Manchester and Leeds (Burnley Branch); Manchester and Leeds (Heywood Branch Extension); Manchester, Bury, and Rosendale; Leeds and Thirsk; Harrogate and Ripon Junction; York and North Midland (Harrowgate Branch); Leeds, Dewsbury, and Manchester.

Your committee further recommend that the following bills and projects be referred to another committee:—

C. Barnsley Junction; Huddersfield and Sheffield Junction.

Your committee further recommend that the following bills and projects be referred to another committee:—

D. Leeds and Bradford Extension (Shipley to Colne); Blackburn, Burnley, Accrington, and Colne; Blackburn, Darwen, and Bolton.

Your committee further recommend that the following bills and projects be referred to another committee:—

E. Northumberland; Newcastle and Berwick; Newcastle and Darlington (Brandling Junction); Newcastle upon-Tyne and North Shields (Tynemouth Extension).

Your committee further recommend that the following bills and projects be referred to another committee:—

F. Oxford, Worcester, and Wolverhampton; Oxford and Rugby; Oxford and Didcot; London and Worcester and Rugby and Oxford Railway (Dudley to Wolverhampton); Birmingham and Glocester Railway (Worcester Branch and Deviation); Birmingham and Glocester (Wolverhampton Extension); Bristol and Glocester and Birmingham and Glocester; London and Worcester and Rugby and Oxford Railway (Dudley and Sedgeley); London, Worcester, and South Staffordshire.

Your committee further recommend that the following bills and projects be referred to another committee:—

G. Bristol and Exeter Branches; London and South Western Railway (Yeovil Extension); London and South Western Railway (Hook-pit Branch); London and South Western Railway (Basingstoke, Didcot, and Swindon Junction); Wilts, Somerset, and Weymouth; Southampton and Dorchester.

Your committee further recommend that the following bills and projects be referred to another committee:—

H. Harwich; Harwich (Hosking's Line); Harwich Railway and Pier (Eastern Union); Harwich and Eastern Counties Junction; Colchester Port and Junction.

Your committee further recommend that the following bills and projects be referred to another committee:—

I. Lynn and Ely; Ely and Bedford.

Your committee further recommend that the following bills and projects be referred to another committee:—

K. Eastern Union and Norwich; Diss and Colchester (with branches); Norwich and Brandon Deviation, and Diss and Dereham Branches; Lynn and Dereham; London and Norwich; Eastern Counties (Colchester and Bury St. Edmund's Extension); Lowestoft; Diss, Beccles, and Yarmouth; Eastern Union and Bury St. Edmund's; East Dereham and Norwich; Eastern Counties (Cambridge and Bury St. Edmund's Extension); Wells and Thetford; Yarmouth and Norwich; Norwich and Brandon (Norwich Extension), now called Yarmouth and Norwich.

Your committee further recommend that the following bills and projects be referred to another committee:—

L. London and Portsmouth; Guilford, Chichester, and Portsmouth; Brighton and Chichester (Portsmouth Extension); Epsom and Dorking; London and Brighton (Redhill and Dorking Branch); South-Eastern (Reigate to Dorking); Horsham Railway; Guilford Junction.

Your committee further recommend that the following bills and projects be referred to another committee:—

M. North Devon; Exeter and Crediton.

Your committee further recommend that the following bills and projects be referred to another committee:—

N. South Devon, Tavistock, and other branches; Launceston and South Devon; Cornwall and Devon Central; Cornwall; West Cornwall; St. Ive's Junction.

Your committee further recommend that the fol-

lowing bills and projects be referred to another committee:—

O. Trent Valley; Churnet Valley; Grand Junction (Potteries Branch); Tamworth and Rugby; Manchester and Birmingham (Macclesfield Branch Extension).

Your committee further recommend that the following bills and projects be referred to another committee:—

P. South Wales Railway; Monmouth and Hereford; Monmouthshire Railway; Glocester and Dean Forest; Newport and Pontypool; Taff Vale Railway; Aberdare Railway.

Your committee further recommend that the following bills and projects be referred to another committee:—

Q. Shrewsbury, Oswestry, and Chester Junction; Cheshire and Shropshire Junction.

Your committee further recommend that the following bills and projects be referred to another committee:—

R. Dublin and Drogheda; Dublin and Belfast Junction (Branch to Kells); Dundalk and Enniskillen; Great North Western (Ireland); Ulster Extension; Northern (Armagh and Dublin); Newry and Enniskillen.

Your committee further recommend that the following bills and projects be referred to another committee:—

S. Belfast and Ballymena; Londonderry and Enniskillen; Londonderry and Coleraine.

THE MAGISTRATE.

Summary.

Again the week is without an incident requiring particular notice.

THE GAME LAWS.

Very widely erroneous notions prevail on this subject from the dictum we lately heard fall from a learned judge, that game was as much the property of the person whose land fed it as the coat on his back, down to the equally extravagant error of supposing that game ought to be regarded by the law in the same light as sparrows.

We take no extreme view of the matter: so long as game continues to be a luxury by the sale of which money is to be made, and so long as game feed on corn and are incapable of being reclaimed, so long will the peculiarity of the case necessitate provisions adapted to meet it.

Is it just, and ought it to be so esteemed, to allow no sort of prior right or facility to him who feeds game to benefit by the produce of that food? If the game be not his property, that which fattens it and gives it its growth and its value is his property. And yet are there men who contend that there should be no law or obstacle to prevent any one, not only from taking the game thus fed without let or hindrance; but that all the world should be at liberty to go by night with dogs and guns into other people's land, whereon game is fed, to take it there. This is what the law forbids, and what they who make outcry against the law approve of being done. The law goes no further, in point of fact, than to punish poachers for doing that, armed by night, which it were illegal to do unarmed by day, and remediable by action at law! With day poaching the game-laws do not interfere further than by fiscal regulations and by exacting a license from all who carry guns; subject to which proviso, every one is now at full liberty to kill game on his own land, or on that of another person with the leave of that person. (See 1 & 2 Wm 4, c. 32, s. 6.) When we hear the lavish abuse poured upon the game-laws, we are sometimes half disposed to believe that those who indulge in it are ignorant what the game-laws are. Any thing more lenient and irrepressive of innocent liberty it were difficult to devise; and yet the government are beset with entreaties to interfere, because in the execution of these mild and merciful enactments it happens sometimes through the passions of poachers that strife and bloodshed occur.

This is a perilous argument for the abolition of the law, unless resistance is a reason for the removal of restraint, and it be deemed fit to instruct the people that order yields to violence, and law to lawlessness; that the more sturdily and bloodily they resist, the more effectual the victory of outrage! If so, there is wisdom in this lesson to the lawless, and this premium to the passions. But if not, what becomes of the argument for abolishing a law because it is violently broken?

In point of fact, how stands this objection? The occurrence of outrage is clearly an evil much to be deplored. Is it, however, one of great magnitude and frequent occurrence? Ten thousand times has it been so stated with all the emphasis of conviction. Let us bring the case to the sober test of facts and figures, and, dispensing for a moment with the romance and even the philanthropy of the matter, let us see whether these occurrences are numerous or not. Here are the "Tables of Criminal Offenders for 1843," a Parliamentary return, where we find that the total number of persons convicted of the offence of night poaching during the whole year, and throughout all England and Wales, was 172! being the one hundred and twenty-third part of the entire conviction for crimes, and one-seventieth part of the simple larcenies alone! True it is that the summary convictions are not included for shooting by day without license, or for trespass by day in search of game, where the offender cannot pay the fine; and true it is, that imprisonment is in itself an evil, and much is it to be desired that our gaols were rendered places of improvement as well as of punishment. But does not this very fact shew how wrong-headed and perversely obliquitous are the anti-game-law party? Their objection is virtually against the system of prison discipline. But if so, why do they not expend their wrath and exert their power against that real and enormous evil, instead of *diverting* attention to a matter comparatively insignificant? This is the great moral ground on which we denounce all these mighty efforts to assail minor evils—they give protection to parent abuses. Have we not in our magisterial system, in our poor-laws, and in our prisons, ample evils to correct, which it is vitally needful to take in hand before we descend to the sufferings of poachers, who are mostly composed of dissolute and vicious men?

We do not deny that some modification might possibly be made for the better in the game-laws; but seeing the vast improvement they have at no distant period undergone, we earnestly invite the magistrates and the country to devote their minds to something of more sterling utility and pressing need, than Mr. Bright's fondness for farmers and pity for partridges,—classes of creation capable of taking ample care of themselves. S.

PROOF OF PATERNITY UNDER THE BASTARDY ACT.

A correspondent in the Law Times of the 15th instant suggests "that no woman, who can be shewn within a given time to have cohabited with more than one man, or who can be proved to be a person of lewd life, ought to be permitted to obtain an order on any person for the maintenance of her bastard. One reason for this is, that she is required to swear to the father, and this in the great majority of cases no such woman can do without perjury, inasmuch as she cannot possibly herself know to whom the honours of paternity should justly be given."

We have given consideration to the important provision our correspondent proposes. We cannot assent to it. Injustice might be done by it. The fact that a woman is profligate is not of itself a sufficient reason why the man who really is the father of her child is to be exempted from the support of his own offspring. The child is not the less his, nor are the obligations of a father less incumbent upon him. The difficulty of proof is another question: but it requires no Act of Parliament to provide against the danger of a mistake on this score. It is always open to the man to throw suspicion on the woman's testimony by evidence of her intercourse with others. Our experience is that such evidence has too much, rather than too little, influence on justices. It is rare in many places that a woman, whose testimony is thus shaken, succeeds in obtaining an order. Unless in gross and extreme cases, we believe the woman has not the uncertainty as to the father of her offspring, which our correspondent fancies. In those few cases she would certainly fail in nineteen cases out of twenty in obtaining an order; therefore the abuse would not obtain.

"The English law (he goes on to say) recognizes no action for seduction even, much less does it encourage the arts of the harlot, by permitting her to extort from the person *she* has seduced, a premium for her wickedness."

We are rather sceptical as to this seduction of men by women. We have a strong suspicion that these male innocents are rare occurrences. We never remember to have seen an authenticated instance of one. The English law recognizes no action for seduction, simply on the principle of *volenti non fit injuria*. The principle of making a man pay a trifle to the support of his own child, is because *the child is his*, and there exists a natural claim upon him to do so, which the law properly and justly enforces. The words "premium for her wickedness" are a mere flourish of speech, exceedingly deceptive and perfectly groundless in fact. If our correspondent will try the experiment of supporting a child till it is thirteen years old on 2s. 6d. per week, he will find it any thing but a *premium*. We believe the law as it stands to be humane, politic, and Christian; and we have every conviction that, in a vast majority of cases, the measure of justice falls short, if at all, on the woman's side.

JUSTICES' CLERKS. BASTARDY AND REMOVAL ORDERS, &c.

TO THE EDITOR OF THE LAW TIMES.

Sir,—What is all this about? asked the Bishop of Exeter; and, What are justices' clerks? Ask lawyers.

It is truly amusing at times to peruse the correspondence contained in your valuable publication, and now more particularly as affects Mr. Lumley's bastardy orders, and other persons' removal orders, &c., and though last not least, a letter from York, inserted in your last week's Law Times, wherein the writer recommends you to supply an *invulnerable* order of removal, "whereby you would do more to raise your position as *distinguished* lawyers than you imagine;" and I imagine that this proposed form of order is expected to supersede the necessity of justices' clerks having any legal capacity for preparing the necessary examinations and other documents upon which such order is to be grounded. I was not aware, until I read this letter, that there was any difficulty in preparing an order of removal, as its antique form is already almost invulnerable.

The recommendations and observations communicated to you on these subjects are all of a piece with that most curious mode of retrospective legislation proposed to be adopted for making legal Mr. Lumley's form of order in bastardy, than which a more inefficient document (in omitting almost every legal ingredient) could not by the most obtuse legal pretenders have been prepared. For my part, I have been greatly surprised that it should have been adopted at all, and such general adoption speaks volumes not only against the legal acumen of Mr. Lumley *in these matters*, but of the justices' clerks who made use of it.

It appears to me that the proposed legalizing of Mr. Lumley's orders, and the adoption of any form of order as a complete nostrum in the proposed amendment act, will cause a great anomaly, as the law with respect to such documents is, in legal principle, only the law of the land as regards all other documents whereby the liberty of the subject is assailed, and it is more than absurd to expect that documents purporting to be legal should only be required to be prepared as now intimated, and brought down to suit the capacity and slovenliness of any "'prentice hand."

One great fault is in the selection of justices' clerks from political favouritism, very often not from the ranks of the profession at all, and without any regard to their standing as respects their legal character and attainments; and the consequence is, that although the law very reasonably, and having especial regard to the liberty of the subject, as well in these as in other similar cases, requires a statement of circumstances to be fully made out to establish a settlement, according to the ingredients of each settlement, as fully contained and particularized in the specific Act of Parliament for that purpose, before a man and his family can be forced from their home and their dearest connexions, yet it very generally happens, that such justices' clerks omit some of the ingredients referring to such settlement as laid down and easily to be understood on examination of such specific Act of Parliament, and sometimes, yea, often, their examinations not containing an ingredient at all.

Why, Sir, no greater nicety is required in stating the evidence in examinations upon which removal orders are grounded, whereby a man is to be forcibly ejected from all he holds dear, than in any other case where the liberty of the subject is in jeopardy. And, constitutionally speaking, why should not the ingredients be fully developed and established wherein the poor man is so much concerned? I think it ought to be the more so, on account of his poverty and utter helplessness to remedy any irregularities.

These matters must be scrutinized like all other legal matters, and it is high time to get rid of the crudities and absurdities promulgated by persons calling themselves attorneys-*at-law*, when, in fact, *at law* has nothing to do with their capacities, and often with their other avocations.

It appears to me that a convenient expediency is sought to be substituted for law, and I imagine that if, instead of your making the attempt to draw an

invulnerable order, you will set your wits to work, and eke out a specific for the invulnerability of some folks' intellects, "you will do more to raise your position as distinguished lawyers than you imagine."

The incapacities of justices' clerks are so notorious, that I and many other settlement attorneys prepare our own documents, and pay the clerks' fees (which apparently suits their appetite and convenience); our clients preferring to pay a few extra shillings, and sometimes pounds, rather than trust to such clerks. But it would be more consonant with justice (until a proper selection of clerks take place), if attorneys, in whom their clients repose confidence, should be allowed to prepare such documents without paying fees to such clerks as are now in being, very generally, than by making the Quixotic attempt to bring down the requirements of the law to their imbecile notions.

I fear that neither you nor the Secretary for the Home Department has as yet been made fully acquainted with the sort of justices' clerks that are employed by county justices to prepare legal process in very many districts, and it is very advisable that such appointments should be examined into. It would do great service if some law society or influential M.P. would obtain a return of justices' clerks, their mode of appointment, legal standing, additions, and descriptions; as it is certainly too much to expect, at this day, that inferior courts of justice, which are becoming so very general, and exercise so much power over the subject, should, for want of legal knowledge, have conferred upon them greater powers of dispensing with the bulwarks of the law than superior courts.

Before closing these observations, I will take the further liberty of asserting that the ignorance I refer to is not confined to cases of bastardy and removal, but the same or similar defects are to be found in most other documents emanating from the like source, wherein any thing out of the common jogtrot mode is requisite; and if the system be not altogether remedied, the legislature will be required, on many more occasions than those now proposed, to interfere, for the purpose of counteracting the evils arising from the appointment of inefficient clerks, and the utter absence of care and tact in the drawing of Acts of Parliament.

If I may be allowed to deviate from the text afforded me by the observations contained in the letter from York, and apply myself to the remarks that have been often recently made as to the numerous cases which have been brought before the Court of Queen's Bench on points of law, caused by the carelessness and deficiency of justices' clerks, and which are put forth as grounds for extraordinary legislation, may I not, with very great propriety, ask of you and your readers, what have been the sufferings of the many poor persons who have been illegally convicted and otherwise injured in their property and persons? it being notorious, that at petty sessions in country places, almost without exception, legal evidence is dispensed with, and in lieu thereof, a sort of "mixty, maxty, queer hotch potch," of what the clerks and justices call *Law and Equity*, as relates to evidence, is fully allowed and approved of—nay, I have often heard it boldly asserted, that such Courts are not bound by the rules of legal evidence at all. If the poor are to be protected, to be mercifully dealt with and to have full justice done, it is absolutely necessary to abide by the strict letter of the law, or those who are otherwise helpless will be still more so, and the dicta of any justice and his clerk will effectually swamp, very often, the only chance for justice. The very *forms* of the law are the *substances* of the law, to the poor man, more than to any other person.

If the country gentlemen, taking upon themselves the onerous duty of justices of the peace, find themselves in a dilemma, let them at once abrogate their present appointments, meet and choose their clerks from the talent of the Profession, for their several petty sessional divisions, and I have no doubt but they will easily select gentlemen every way conversant with the groundwork and practice of the law, and ready to advise as true *amici curiæ*, and to take upon themselves the pecuniary responsibility of their acts.

I trust the present "cacoethes scribendi" of some justices' clerks, which is not only ridiculous but lamentable, will be futile, and I am thankful that we have as yet a House of Lords to whom the proposed alterations will have to be submitted. It is evident, that as regards the law, it is our "*dernier ressort*" for better expectations.

I hope that nothing which I have written can possibly be deemed to apply offensively to many regular professional gentlemen performing the duties of justices' clerks, whose legal acquirements are well known to be an honour to the office and to the magistrates who have selected them.

En passant, I may observe that as respects both bastardy and removal matters, all the points of law which have of late so much annoyed the little lawyers, have been nearly worked up, and it is the opinion, at least, of the West Riding Bar, that this periodical tinkering is requisite to provide food for its astuteness, and is generally hailed as a harbinger of their future harvest.

I am, Sir, yours, &c.

Otley, March 25, 1845. EDWARD BARRET.

DISCHARGED PRISONERS' PASSES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—A man bearing a pass which purported to be of the above description, was lately apprehended and convicted of vagrancy, as a person wandering abroad to beg alms, &c. under 5 Geo. 4, c. 83, s. 3, the pass being considered to be a palpable and gross forgery, for the following reasons:—

1. It was not sealed with any county or special seal, the essential mark of genuineness, which the Act expressly requires, for the most obvious reasons.

2. It contained a circuitous route for the bearer, taking him to a large town fully ten miles out of his direct road, and that within about sixty miles of the place of issue.

3. It was defective in the omission of no less than four very important parts of the form (schedule B of the Act), which the Act expressly requires to be followed, viz. the title or heading, and the N.B. at the foot, of the first or *certificate* form, the "directions for filling up" at the end of the second or *route* form, and the "memorandum for the guidance of the overseers," &c. at the end of the third or *description* form.

4. It was without a printer's name, and was meanly printed, and the signatures and seals were of suspicious appearance.

This document was transmitted, for examination, to the clerk of the peace for the county from whence it purported to emanate, in the full assurance that its spurious character would be confirmed. But your readers will be as surprised as I was myself, to learn that the reply was, "The pass is *genuine*, the circuitous route was inserted by *mistake*, *we have no county seal!*"

Perhaps a portion of your widely circulated paper will be usefully occupied in publishing these facts, that visiting justices and clerks of the peace may be aware of the mischief which they may do, by neglecting the plainest provisions of this Act of Parliament, while professing to act under it.

I am, Sir, yours, &c.

24th March, 1845. W. P. P.

TO THE EDITOR OF THE LAW TIMES.

SIR,—That a justices' clerk ought in no case to be concerned for any party litigant before the justices whom he serves, I, as a justices' clerk, most readily concede. I had supposed that such a course was universally abandoned by clerks, and prohibited by justices.

But this is all that your correspondent "*Audi alteram partem*" attempts to prove, in his letter in your last; and the letter of Mr. Trevor in the LAW TIMES of the 15th inst. remains untouched by him. The argument of this gentleman is only in favour of the clerk's supporting the acts of his justices in *ulterior* proceedings, subsequent to the completion of the acts themselves.

In prosecutions for felony, two principal duties devolve on the attorney. The first is the conduct of the prosecution itself, including getting up the case, instructing counsel, preferring the indictment, &c. to the close of the trial. The second is, to obtain the allowance of the expenses, and to pay over the due amount to the prosecutor and witnesses.

For the former duty the clerk is especially fitted by his education and professional habits; few respectable attorneys, except such as hold this office, giving themselves the trouble to study criminal law and practice. His previous official knowledge of the case greatly facilitates the efficient discharge of the duty of prosecution. And the county allowance for professional attendance is in general so extremely low, that it is not worth the acceptance of a respectable attorney in single cases; whereas the clerk, conducting numerous cases at the same assizes, is sufficiently, though moderately, paid for his services, without expense to the prosecutor.

With regard to the second duty of receiving and accounting for the allowed costs, if justices' clerks be forbidden to prosecute, the business will, probably, for the reasons above assigned, often fall into less respectable hands; and, consequently, prosecutors and witnesses will frequently (as already in some cases so conducted they do) find great difficulty in obtaining their money. This does not happen when the justices' clerk prosecutes, both because the clerks are generally men of character, and also because any malversation would be easily checked by an appeal to the justices whom they serve, and who have absolute power to dismiss them.

So that when the clerk prosecutes, the usual result is that the case is intelligently and respectably conducted, the prosecutor is exempt from expense, and the allowances are faithfully accounted for.

If any other respectable attorney prosecute, either the prosecutor must pay him, or he must be inadequately paid. If an attorney of a different character, he will, probably, first neglect the case, and then pocket the allowances, leaving the poor prosecutor and witnesses, and, perhaps, even the counsel also, to their *remedy at law!*

The *only* objection suggested to the clerk's prosecuting is, that he may possibly advise improper commitments, in order to obtain prosecutions! How gross a libel, not on him merely, but on his employers, the county magistracy! *They* are suspected of first selecting as their clerk a mean and hungry pettifogger, and then allowing themselves to be persuaded by him into the grossest injustice upon a plain question of fact!

I am yours, &c.

March 24, 1845. W. P. P.

POOR LAW CIRCULAR.

(*Continued from page* 239.)

ACCOUNTS.

COST OF OBTAINING COUNSEL'S OPINION ON RATING LIGHTHOUSE.

June 7, 1844.

Auditor of Eastbourne Union—Inquired, as to the propriety of allowing, in the accounts of the overseers of East Dean, certain charges incurred by them, under the authority of the vestry, in obtaining counsel's opinion, with regard to the assessment of the dues derivable in respect of a lighthouse situated in that parish.

Ans. There is no fixed rule for determining the occasions on which overseers may properly employ professional persons; but it may be observed generally, that when the difficulties of any case are such, that it is not to be expected that overseers can proceed without professional advice or assistance, any reasonable expense incurred for such advice or assistance would be allowable in the overseers' accounts, as a charge incidental to the due execution of their office. Having thus stated the general principle applicable to such cases, the Commissioners must leave it to yourself to determine, in the present instance, whether, under all the circumstances, there was sufficient doubt or difficulty in the matter to justify the overseers in seeking professional advice. The Commissioners themselves will merely remark, that they do not perceive any circumstances which could have occasioned any such difficulty; that is to say, they do not see that the case of the lighthouse in question was in any material respect distinguishable from the cases in which lighthouse dues had been expressly held to be not rateable—nor do they consider there was any good ground for supposing that those decisions would be likely to be reversed, and a new principle of rating adopted, with regard to this description of property. The overseers of East Dean were fully aware of those decisions. The Commissioners think it right to add, that if the overseers were not justified by the circumstances of the case in obtaining the opinion of counsel, the sanction of the vestry would not of itself be sufficient to authorize the proceeding. The decision in *R.* v. *Guyer* (4 Nev. & Man. 158) shews, that where the law does not authorize the charging of any particular payment on the poor-rate, the mere concurrence of the vestry will be no protection to the overseers.

FIRE-ENGINE.

EXPENSES OF REPAIRING, NOT PAYABLE OUT OF THE POOR RATES.

May 25, 1844.

Overseers of Botesdale, Hartismere Union—Stated, that there was belonging to the parish of Botesdale a fire-engine, which for many years past had been kept in repair by voluntary contributions; but this means of preserving it in a state of efficiency had entailed an annual expense on a few individuals, while others, claiming the use of the instrument, refused their assistance; so that at length the overseers were without any funds wherewith to pay for keeping it in a proper and useful state. Requested to know whether charges for needful repair, and other necessary expenses, might not be paid out of the poor-rate, in which case all would bear a proportion of the burden.

Ans.—The only enactments of which the Commissioners are aware, authorising the provision and repair of fire-engines at the charge of the poor-rates, are the 12 Geo. 3, c. 73, and 14 Geo. 3, c. 78; and these statutes extend only to the cities of London and Westminster, certain parishes in Middlesex specially named, and other parishes within the bills of mortality. The Commissioners fully recognise the utility and importance of maintaining such engines in a state of efficiency, but they are nevertheless constrained to state, that however desirable the object in question may be in itself, there does not appear to be any lawful authority for charging the expense upon the poor-rates, in parishes which do not come within the range of the above-named statutes.

LUNATIC.—MAINTENANCE OF.

June 8, 1844.

Clerk of the Bingham Union—Stated, that Sarah the wife of Henry Richardson, about eight years ago, being a confirmed lunatic, and chargeable to the parish of St. Peter, Nottingham, was placed by that parish in the Nottingham Lunatic Asylum. An order of justices was then obtained under the 9th Geo. 4, c. 40, for the maintenance of the lunatic in the asylum by the parish of Tollerton (in the Bingham Union), where her settlement was adjudged to

be. The parish of Tollerton did not at the time investigate the lunatic's settlement, but paid for her maintenance under the order, until about five years ago, when the same was continued to be paid by the board of guardians, and charged to the parish. In September, 1843, Henry Richardson became chargeable to the parish of St. Peter, Nottingham, and an order for his removal to Tollerton was obtained. The parish officers of Tollerton then investigated the matter of the settlement of the parties, and found that neither of them had any settlement there. In consequence of this, the parish officers gave notice of appeal against the order of removal, which was eventually quashed, but *not on the merits*, and they therefore gave notice to the board of guardians, not to make any further payment on account of the lunatic's maintenance in the asylum. The board of guardians and the parish officers respectively also gave notice to the managers of the asylum, that no such payment would in future be made; the managers of the asylum, however, disregarded these notices, alleging that they held an order for the maintenance of the lunatic by the parish of Tollerton, and they had accordingly made a demand on the guardians of the Bingham Union for the quarter's maintenance, due the 25th of March last. Requested the Commissioners' advice under the above circumstances.

Ans.—An order of removal unappealed against, has been decided by the courts to be conclusive evidence, as to the pauper's settlement, up to the date of such order. The Commissioners are not aware of any case in which this principle has been expressly held to be applicable to orders of maintenance under the 9 Geo. 4, c. 40. But where such an order has been made, and notice of it has been given to the parish of the alleged settlement, and that parish has submitted to it, allowing the time of appeal to go by, without appealing, the Commissioners are disposed to consider that the principle above referred to would apply to such a case, in the same manner as it does to orders of removal. The Commissioners, therefore, think that, as the parish officers of Tollerton, in the present instance, acquiesced in the order for the wife's maintenance under 9 Geo. 4, c. 40, and did not appeal against it as the might have done, they were concluded by it with regard to the settlement up to that time. Then, there is nothing to shew that any subsequent settlement has been obtained by the pauper. The order for the removal of the husband to Tollerton was quashed, but not (it is stated) on the merits. Consequently it proves nothing, one way or other: as to the settlement, if it had been quashed on the merits, there might have been a question how far the former order, under 9 Geo. 4, c. 40, being unappealed against, could be affected by it. Under the circumstances stated, the Commissioners see no reason to suppose that the order of maintenance could now be successfully resisted by the parish officers of Tollerton.

OVERSEERS

BOUND OVER TO PROSECUTE IN A CASE OF MANSLAUGHTER COSTS NOT PAYABLE OUT OF THE POOR-RATES.

June 28, 1844.

Messrs. Collins and Son, Bodmin—Stated that, in the month of October 1842, two men, whilst returning from a fair at Wadebridge in a drunken state, rode over and killed a poor woman, who was a pauper of the parish of Egloshayle; a coroner's inquest was held on the body, when a verdict of manslaughter was returned. The coroner then summoned the overseers of the parish of Egloshayle before him, and bound them in heavy penalties to prosecute at the next assizes, and committed one of the men to prison to answer the charge. The overseers being thus bound to prosecute, employed them (Messrs. Collins and Son) for that purpose, and the party was accordingly tried at the March assizes 1843. The overseers and parishioners were desirous that the costs of the prosecution should be paid, but the auditor objected to allow the amount in the overseers' accounts, considering it a charge which should not have been incurred by them. The overseers had no discretion in the matter after being bound in heavy penalties to prosecute, and without it no prosecution would have taken place. Requested the Commissioners' sanction to the overseers, under the circumstances, paying these costs out of the poor-rates. The coroner stated, that the course always pursued by him in all cases where the party injured is a pauper, was the one adopted in the present instance, in order to secure the proper prosecution of the offenders, and he contended that he had a legal right to do so.

Ans.—The Commissioners do not doubt the power of the coroner, under 7 Geo. 4, c. 64, to bind over by recognizance any person to prosecute in a case of manslaughter, who may know or declare any thing material touching the matter to be tried. But his power does not extend to binding over persons to prosecute in their official capacity. There is no obligation or duty attaching to overseers, as such, to prosecute charges of murder or manslaughter. They, in common with other persons, are liable to be bound over, but it is not as overseers, but as individuals. It consequently follows, that if they are bound over in any case, they cannot lawfully apply the funds which come to their hands for a specific purpose (viz. the relief of the poor) to the payment of any costs incurred in the prosecution which may not be allowed by the county. The practice, therefore, of binding over overseers in such cases (inasmuch as it proceeds upon the erroneous assumption that they have public funds at their disposal applicable to the payment of the costs of the prosecution) is much to be regretted. The Commissioners consider that the auditor would have no alternative, but to disallow as unfounded any payment of this nature which might be entered in the accounts of the overseers.

RECOVERY OF BALANCES FROM A DEFAULTING OVERSEER, WHO BECAME INSOLVENT.

June 27, 1844.

Clerk of the Alton Union—Forwarded resolutions of the vestry of Bentworth parish, whereby it appeared that the overseer, who had become insolvent, was in default with the parish, and that the vestry considered it inexpedient to proceed against him for the recovery, on account of the expense of the proceeding and the uncertainty of the result, requested to have the Commissioners' opinion thereon.

Ans.—The Commissioners cannot, of course, express any opinion as to the probable success of any proceeding which might be taken against the defaulting overseer, with a view to the recovery of the balance in his possession. It nevertheless appears to the Commissioners a case in which it would be proper that some endeavour should be made to protect the parish from loss. Such proceedings may not be effectual, but the present overseers will have discharged their duty in instituting them. If the defaulting overseer has not accounted to the justices, he can be required to do so, under 50 Geo. 3, c. 49. If he has accounted, and the justices have found a balance due from him, and such balance has not been paid over to the succeeding overseers, such overseers can apply to the justices to issue their warrant for the recovery of the balance; and in default of a sufficient distress, the defaulting overseer can be committed until the balance is paid, (50 Geo. 3, c. 49.) On the other hand, the overseer who is represented to have misapplied the moneys of the parish can be preceeded against, under the 97th section of the Poor Law Amendment Act, for such misapplication. If the justices should convict, the offender will be liable to pay treble the amount or value of the money misapplied. The Commissioners think it necessary to add, that in case the balance in hand, or any portion of it, should be recovered, the present overseers will of course be bound to charge themselves in their accounts with the moneys so obtained.

THE LAWYER.

Summary.

Holiday has reigned in legal circles, and there is not so much as a rumour calling for comment.

This rest will enable us to clear off a heavy arrear, preparatory to the now fast approaching labours of the Term.

The civil business of the present circuit has been remarkably light. The assigned cause is the absorption of lawyers and clients in railway speculations.

COURT PAPERS.

CHANCERY SITTINGS

Sittings before and in Easter Term, 1845.

Before the LORD CHANCELLOR.

Before Term, at Lincoln's Inn.

Day	Date	Business
Monday	April 7	Seal day. Motions
Tuesday	8	Petition day
Wednesday	9	Appeals (Wednesday 9 to Monday 14)
Thursday	10	
Friday	11	
Saturday	12	
Monday	14	

In Term, at Westminster.

Day	Date	Business
Tuesday	15	Motions
Wednesday	16	Petition day
Thursday	17	Appeals (Thursday 17 to Wednesday 23)
Friday	18	
Saturday	19	
Monday	21	
Tuesday	22	
Wednesday	23	
Thursday	24	Appeal Motions
Friday	25	Petition Day. Unopposed Petitions only, and Appeals
Saturday	26	Appeals (Saturday 26 to Wednesday 30)
Monday	28	
Tuesday	29	
Wednesday	30	
Thursday	May 1	Appeal Motions
Friday	2	Petition Day. Unopposed Petitions only, and Appeals
Saturday	3	Appeals (Saturday 3 to Wednesday 7)
Monday	5	
Tuesday	6	
Wednesday	7	
Thursday	8	Appeal Motions.

Such days as his Lordship is occupied in the House of Lords excepted.

Before the VICE-CHANCELLOR OF ENGLAND.

Before Term, at Lincoln's Inn.

Day	Date	Business
Monday	April 7	Seal Day. Motions
Tuesday	8	Petition Day
Wednesday	9	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Wednesday 9 and Thursday 10)
Thursday	10	
Friday	11	Unopposed first, Short Causes, and Causes
Saturday	12	Pleas, Causes, &c. (Saturday 12 and Monday 14)
Monday	14	

In Term, at Westminster.

Day	Date	Business
Tuesday	15	Motions
Wednesday	16	Petition day
Thursday	17	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday	18	Unopposed first, Short Causes, and Causes
Saturday	19	Pleas, Causes, &c. (Saturday 19 to Wednesday 23)
Monday	21	
Tuesday	22	
Wednesday	23	
Thursday	24	Motions.
Friday	25	Petition Day. Unopposed first, Short Causes, and Causes
Saturday	26	Pleas, Causes, &c. (Saturday 26 to Wednesday 30)
Monday	28	
Tuesday	29	
Wednesday	30	
Thursday	May 1	Motions.
Friday	2	Petition Day. Unopposed first, Short Causes, and Causes.
Saturday	3	Pleas, Causes, &c. (Saturday 3 to Wednesday 7)
Monday	5	
Tuesday	6	
Wednesday	7	
Thursday	8	Motions.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Before Term, at Lincoln's Inn.

Day	Date	Business
Monday	April 7	Seal Day. Motions
Tuesday	8	Petition day. Petitions and Causes
Wednesday	9	Bankrupt Petitions and Causes
Thursday	10	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Thursday 10 and Friday 11)
Friday	11	
Saturday	12	Short Causes and Causes
Monday	14	Bankrupt Petitions.

In Term, at Westminster.

Day	Date	Business
Tuesday	15	Motions
Wednesday	16	Petition Day. Petitions and Cause
Thursday	17	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Thursday 17 and Friday 18)
Friday	18	
Saturday	19	Short Causes and Causes
Monday	21	Pleas, Causes, &c. (Monday 21 and Tuesday 22)
Tuesday	22	
Wednesday	23	Bankrupt Petitions and ditto
Thursday	24	Motions
Friday	25	Petition Day. Petitions, Causes, &c.
Saturday	26	Short Causes, Causes, &c.
Monday	28	Pleas, Causes, &c. (Monday 28 and Tuesday 29)
Tuesday	29	
Wednesday	30	Bankrupt Petitions and ditto
Thursday	May 1	Motions
Friday	2	Petition Day.
Saturday	3	Short Causes, Causes, &c.
Monday	5	Pleas, Causes, &c. (Monday 5 and Tuesday 6)
Tuesday	6	
Wednesday	7	Bankrupt Petitions, and ditto
Thursday	8	Motions.

Before VICE-CHANCELLOR WIGRAM.

Before Term, at Lincoln's Inn.

Day	Date	Business
Monday	April 7	Motions
Tuesday	8	Petition Day. Petitions and Causes
Wednesday	9	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Wednesday 9 to Friday 11)
Thursday	10	
Friday	11	
Saturday	12	Short Causes and ditto
Monday	14	Pleas, Causes, &c.

In Term, at Westminster.

Day	Date	Business
Tuesday	15	Motions
Wednesday	16	Petition Day. Petitions and Causes
Thursday	17	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Thursday 17 and Friday 18)
Friday	18	
Saturday	19	Short Causes, Petitions (unopposed first), and Causes
Monday	21	Pleas, Causes, &c. (Monday 21 to Wednesday 23)
Tuesday	22	
Wednesday	23	
Thursday	24	Motions, and ditto.
Friday	25	Petition day. Pleas, Causes, &c.
Saturday	26	Short Causes, Petitions (unopposed first), and Causes
Monday	28	Pleas, Causes, &c. (Monday 28 to Wednesday 30)
Tuesday	29	
Wednesday	30	
Thursday	May 1	Motions and ditto
Friday	2	Petition Day. Pleas, Causes, &c.
Saturday	3	Short Causes, Petitions (unopposed first), and Causes
Monday	5	Pleas, Causes, &c. (Monday 5 to Wednesday 7)
Tuesday	6	
Wednesday	7	
Thursday	8	Motions, and ditto.

Before the MASTER OF THE ROLLS.

Before Term, at the Rolls.

Day	Date	Business
Monday	April 7	Motions
Tuesday	8	Petitions, unopposed first
Wednesday	9	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Wednesday 9 to Monday 14)
Thursday	10	
Friday	11	
Saturday	12	
Monday	14	

In Term, at Westminster.

Day	Date	Business
Tuesday	15	Motions
Wednesday	16	Petitions, unopposed first.
Thursday	17	Pleas, Demurrers, Causes, Further Directions, and Exceptions (Thursday 17 to Monday 21)
Friday	18	
Saturday	19	
Monday	21	

Tuesday ......22—Petitions, unopposed first
Wednesday ....23—Pleas, Causes, &c.
Thursday ......24—Motions
Friday ....25 }
Saturday ......26 } Pleas, Causes, &c.
Monday ....28 }
Tuesday ....29—Petitions, unopposed first
Wednesday ....30—Pleas, Causes, &c.
Thursday .. May 1—Motions
Friday .... 2 }
Saturday ...... 3 } Pleas, Causes, &c.
Monday........ 5 }
Tuesday ...... 6—Petitions, unopposed first
Wednesday .... 7—Pleas, Causes
Thursday ...... 8—Motions.

Short Causes, and Consent Causes, every Tuesday at the sitting of the Court, except April 15.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs, will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

FOREIGN OFFICE, MARCH 25.—The Queen has been graciously pleased to appoint John Hay Drummond Hay, esq. to be her Majesty's Agent and Consul-General in the dominions of the Emperor of Morocco.

The Queen has also been graciously pleased to appoint William Willshire, esq. to be her Majesty's Consul at Adrianople.

The Queen has also been graciously pleased to appoint Robert Grigg, esq. to be her Majesty's Consul at Mobile.

The Queen has been pleased to approve of Mr. D. Ippolito Garrow as Vice-Consul at Malta for his Majesty the King of the Two Sicilies.

DOWNING-STREET, MARCH 22.—The Queen has been pleased to appoint Charles William Warner, esq. to be her Majesty's Attorney General for the island of Trinidad.

WHITEHALL, MARCH 18.—The Lord Chancellor has appointed Joseph Inglesant, of Loughborough, in the county of Leicester, gent. and George Burd, of Birmingham, in the county of Warwick, gent. to be Masters Extraordinary in the High Court of Chancery.

LEGAL INTELLIGENCE.

THE CITY LAW COURTS.

The sub-committee, to whom "all matters and things" connected with the proposed improvement of the city Law Courts were referred—namely, Messrs. Ashurst, Farrar, Anderton, Harrison, Barnard, Taylor, Thomas Wood, and John Wood were referred, have agreed to a report, which will be discussed by the Court of Common Council on Thursday next. The sub committee submitted to the Recorder the recommendations before made with regard to the Mayor's Court—to wit:—

"MAYOR'S COURT.

"1. The court to be thrown open to all practitioners.

"2. Counsel, duly admitted of the inns of court, to be allowed to plead, although the common pleaders of the city, have not been first feed. Such of the common pleaders of the city as are entitled to be compensated for the loss they will sustain by their not being necessarily feed before other counsel are employed.

"3. Attorneys duly admitted in the superior courts of Westminster Hall, on production of their certificate, and copy of their freedom, and residing within the city, and being enrolled in this court, to be admitted to practise in this court.

"The clerks of the Mayor's Court who at present have the exclusive right of appearing in it as attorneys, to be compensated (with the exception of the junior) by present sum or annuity for the loss they will sustain by losing that exclusive right; and for the loss of the right of alienation of their office, by some sum to be now ascertained, but to be paid at their respective deaths.

"4. The registrar or his deputy, to exercise for the future his ancient power of administering the affidavit to found a foreign attachment, upon the application of any attorney enrolled as above; but no such attachment to issue without the judge's fiat, or the order of the registrar or his deputy, the latter having respectively given good security.

"5. Pledges to be taken by the registrar, or his deputy, according to regulations of that purpose.

"Due security to be given by the registrar and deputy-registrar.

"6. Judge.—To meet the expected increase of business in the court, by its being thrown open, the present Judge of the Sheriffs' Court to preside as assistant to the Recorder, whenever required by the Recorder to do so, or if appointed by him for that purpose."

These propositions having been submitted to the Recorder, that gentleman gave in writing the following remarks on them:—

"1. I entertain doubts of the expediency of throwing open the Mayor's Court to the bar without restriction. The common pleaders are required to be freemen of London, and take an oath of office as common pleaders.

"2. If the suggested alterations for the improvement of the court should occasion any considerable addition to the business, it would be worthy of consideration whether the number of common pleaders should not be increased by act of Common Council.

"3. The Mayor's Court is a court by custom, and is essentially a court for the benefit of the citizens of London. The attorneys admitted to practise in the court should not only be free of the city, but resident within the jurisdiction.

"3. I am indisposed to effect any change in the existing customary mode of proceeding in foreign attachment.

"5. In order to preserve this important custom, it is essential to adhere to ancient form and practice. Before I can sanction a departure from the present mode of proceeding, the suggested ancient power of the registrar should be fully authenticated.

"6. This is in accordance with my own suggestion, and in strictness would only require the concurrence of the Court of Mayor and Aldermen; but, inasmuch as it imposes new duties upon an officer appointed by the Court of Common Council, their consent and approbation should be obtained. The suggested compensations appear equitable and just."

In a further conference between the Recorder and the sub-committee, the Recorder was heard again, and stated that he saw no reason to change his opinion, and therefore adhered to it.

The sub committee then turned their attention to the Sheriff's Court, and agreed to the following:—

"First. To enlarge the amount below which the cause should not be removeable.

"Second. That the process and subpœna should be compulsory wherever served. And

"Third. That the execution should follow the defendant into any county.

"The sub-committee thereupon directed Mr. Solicitor to prepare the draft of a bill to accomplish these objects, adding any clauses for strengthening and improving the court in other respects that might appear to him desirable, and to lay the same before us for consideration; but such directions to the solicitor were subject to the confirmation of us, your committee, and were given only that time might be saved, and a rough draft of the bill be prepared for further consideration."

The whole question, as we have said, will come under the consideration of the Court of Common Council on Thursday.

FIRE INSURANCES.—Table shewing the Rates of Fire Insurances paid by several of the largest Cities in the world. Compiled by J. Braidwood, esq. superintendent of the London Fire Brigade, in 1844.

PLACE.	Materials of Construction.	Private Dwelling Houses and Furniture. Lowest.		Private Dwelling Houses and Furniture. Highest.		Retail Shops and Contents not Hazardous. Lowest.		Retail Shops and Contents not Hazardous. Highest.		Wholesale Warehouses and Contents. Lowest.		Wholesale Warehouses and Contents. Highest.	
		s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Berlin	Brick and Timber	2	0	3	0	2	6	4	0	3	0	5	0
Dresden	Stone	2	0	3	0	2	6	4	0	3	0	5	0
Paris	Brick, Stone, and Timber	1	6	2	6	2	0	3	0	2	0	3	0
Hamburg	Brick and Timber	5	0	7	6	7	6	10	0	7	6	10	0
New York	Stone ditto	5	0	6	0	6	0	6	0	5	0	upwards of 20	0
Philadelphia	Stone ditto	5	0	20	0	5	0	20	0	5	0	20	0
London	Brick ditto	1	6	5	0	1	6	5	0	2	0	7	6
Liverpool	Brick ditto	1	6	3	0	1	6	3	0	2	0	25	0
Manchester	Brick ditto	1	6	3	0	1	6	3	0	3	0	24	0
Glasgow	Stone ditto	1	6	5	0	2	0	6	0	2	0	5	0
Edinburgh	Stone ditto	1	6	5	0	1	6	5	0	1	6	5	6

A SUCCESSFUL RAILWAY PROPRIETOR.—The Duke of Devonshire, after having disposed of his extensive and very valuable estates near Ripon and Boroughbridge, is now offering his vast and magnificent property in Londesborough, near Market Weighton, for sale. The value of the Londesborough estate is rated at upwards of 500,000*l*. and, it is said, they have been offered to George Hudson, esq. of York, the great capitalist and rail proprietor, who is already an extensive purchaser of the noble duke's property in Yorkshire.—*Newcastle Journal.*

LIBERALITY OF LAWYERS.—We gladly insert the following communication from an esteemed correspondent:—The munificent donation and bequest of Mr. Jonathan Brundrett to the University of London is well known. The late Mr. Thorp, of Alnwick, in Northumberland, brother of Archdeacon Thorp, D.D. Warden of Durham University, by a testamentary bequest, established a scholarship in that university. Mr. Ralph Lindsay has also founded a like scholarship of 40*l*. a-year in the same university for natives of the diocese educated for three years at the Durham Grammar School, tenable for four years. We must not omit, also, the kindness and liberality of the late Mr. Hobler, of the Lord Mayor's Office, towards the City of London School, on the site of Honeylane Market, established under the 4 & 5 Wm. 4, c. 35, to carry out the benevolent intentions of Mr. John Carpenter, formerly a solicitor and town-clerk of the city of London, who, by his will, founded four scholarships, and charged his estates, known as "The Carpenter Estates," with the burden thereof.—*Legal Observer.*

A LAWYER OUTDONE.—Robert Roache, a notorious pickpocket, was on Monday last, at the borough sessions, tried and convicted, for the third time, and sentenced to ten years' transportation. Like all other rogues, although conscious of his guilt, he was anxious to secure the services of a barrister to plead his cause before the jury. He had been too often similarly circumstanced not to be aware that this could only be done through the intervention of an attorney, and accordingly he sent for Mr. Owen, a gentleman at present enjoying a considerable amount of practice in this town. The thief was well aware, also, that unless he had something tangible to offer to the man of law, not one step would be taken towards his defence. He pleaded his poverty, but stated that the day before he was apprehended he had purchased a very valuable lever watch, which he was willing to hand over as security for the payment of the necessary fees. It is generally considered that lawyers act upon the maxim, "All is fish that comes to the net," and in this instance, at least, there was no objection to the terms proposed. The brief was duly prepared, and an able counsel, Mr. James, retained for the defence. During the day, the attorney, doubtless thinking it was time he had the "ticker" in his possession, instructed the counsel to apply to the recorder for an order to have the watch delivered up to him. The prisoner was charged with stealing handkerchiefs; the recorder said he had no objection to comply with the request, as he had nothing to shew that the watch was stolen, or had any reference to the charge upon which the prisoner stood indicted. Matters being thus far comfortably arranged, inquiries began to be made as to the patent lever. The prisoner said it had been taken from him by Mr. Tuck, bridewell keeper. Mr. Tuck was sent for, and when questioned upon the subject, stated that he had taken a brass chain attached to a potato from the prisoner, but that he had seen nothing of any watch. The "patent lever" was immediately sent for, and it turned out to be nothing more nor less than a potato, to which was attached a piece of brass chain, probably worth twopence, with which the "knowing one" had been "sporting his figure" at Lucas's repository, and other places, the resort of gentlemen. Of course there was an outrageous burst of laughter in the court at this disclosure, and the mirth was increased when the Recorder said, "I am sorry to see, Mr. James, that your lever watch turns out to be a potato." We suppose that the only party who would not join in the amusement would be the unfortunate attorney, who would, in common parlance, "laugh on the wrong side of his mouth."—*Liverpool Mercury.*

APPEAL BUSINESS IN THE HOUSE OF LORDS.—Since the opening of the session, the despatch of appeal business with respect to the hearing of causes is almost, if not entirely, without precedent. As many as twenty cases have been argued, and of those not a few have received judgment. On Monday, the 7th of April, the first day of the House sitting after the Easter recess on judicial business, two causes are fixed for hearing viz. *Viscount Dungannon* v. *Smith*, and *Jack* v. *M'Entire*. The following cases have been referred to the Appeal Committee:—*Foley* v. *Hill*; *Ranger* v. *the Great Western Railway Company*; *Farmer* v. *Farmer* (two appeals); *Adams* v. *Evans*; *Thorneycroft* v. *Crockett*; *Robertson* v. *Pattinson*; *Lady E. R. Hastings* v. *The Marquis of Hastings*; and *Lord Montgomerie* v. *The Earl of Eglintoun*; but until the committee shall have decided that the standing orders have been complied with, and the appeals are competent, no time can be mentioned for hearing them. In addition to the appeal causes fixed, as well as those before the appeal committee which have not yet been determined, there is the "Crawford and Lindsay Peerage" case to be submitted to a committee of privileges—the petition of the claimant James, Earl of Balcarres, for leave to lodge cases, as it is technically termed, having been considered by the House and allowed. With respect to that branch of the Auchterarder case which has been fully argued at the bar, *The Rev. Dr. Gor-*

don v. *The Earl of Kinnoul*, rumour asserts that the decision of the Court of Session will be reversed when the judgment of the House of Lords is given. This, it is believed, will give to the ministers and party seceding from the Church of Scotland a sort of triumph; but the point in dispute nowise interferes with the previous decisions of the House establishing the right of the patron of benefices to present, calling upon the presbytery to confirm it, provided the presentee be duly qualified to perform the duties imposed upon him by law, and also provided he be of good moral character and of unexceptionable life. The judgment is to be given on Thursday, the 10th of April.

It has been rumoured that the Lords of the Judicial Committee of her Majesty's Privy Council, finding the cases in appeal from these islands occupy too much of their time, and occasion much inconvenience, have resolved to recommend to her Majesty the appointment of a revising barrister, whose special duty it would be to come here four times a year to report on such cases.—*Jersey Times.*

ASSIZE BANQUET AT THE TOWN HALL, LIVERPOOL.— The worthy chief magistrate of Liverpool lately entertained the Hon. Mr. Justice Wightman, Pudsey Dawson, esq. of Hornby Castle, the high sheriff of the county, the Rev. Rector Brooks, the sheriff's chaplain, the town clerk, and a number of the most distinguished members of the bar, at a grand banquet at the Town-hall.

WILL OF THE EARL OF MORNINGTON.—Limited probate of the will, as far as relates to the property in England and Wales, of the Right Hon. William Wellesley, Baron Maryborough, of the United Kingdom of Great Britain and Ireland, and Earl of Mornington in Ireland, was granted on the 20th instant, to the Right Hon. Lord Fitzroy James Henry Somerset, K C.B. and Mr. John Parkinson, of Lincoln's-inn-fields, two of the executors. A power is reserved to the Right Hon. Catherine Elizabeth, Dowager Lady Maryborough, Countess of Mornington, to prove the will hereafter. His lordship died on the 22nd of February last, was formerly of Saville-row, and late of Grosvenor-square. The will is short, dated the 23rd of April, 1844, and signed "Mornington." Personal estate within the province of Canterbury sworn under 100,000*l*. Directs that 2,000*l*. shall be immediately paid to the countess, and leaves her all the plate and household furniture absolutely. Bequeaths several annuities to be paid out of the personal estate. Devises and bequeaths his freehold, copyhold, and leasehold estates, and the residue of his personal estate to trustees, Lord F. Somerset and Mr. Thomas Parkinson, to convert into money, and invest the same in funded securities; the dividends and interest to be paid to the countess for her life, and gives her a power of appointment over the principal to his three daughters, the Countess of Westmoreland, Lady Mary Charlotte Anne Bagot, and Lady Fitzroy Somerset; in default of such appointment in trust for his daughters.

WILL OF THE REV. GEORGE HULME. — The will of the Rev. George Hulme, of Shinfield, in the county of Berks, clerk, has just been proved by the executors, William Stephens, esq. of Prospect-hill, Tilehurst, Berks; the Rev. George Hulme, and the Rev. William Hulme, clerks, the sons of the deceased. Personal estate sworn under 120,000*l*. The will is dated December 6, 1844. Devises his messuages, lands, tenements, and hereditaments in the parish of Shinfield to his eldest son, the Rev. George Hulme, and appoints him residuary legatee of both the real and personal estate. Devises to William Stephens, and his sons George and William, and their heirs, all real estate vested in him on mortgage. Bequeaths to William Stephens a legacy of 100*l*. Bequeaths to his son, the Rev. William Hulme, 2,500*l*. Bank Stock, and 2,000*l*. Three per Cent. Consolidated Bank Annuities. Bequeaths to his daughters Emily and Maria all his money standing in the Three per Cent. Reduced Annuities. Bequeaths to his sons John, Henry, and Edward, 10,000*l*. each, in the Three per Cent. Consolidated Bank Annuities. Bequeaths to his daughters Matilda, Catherine, and Julia 10,000*l*. each in the like stock. These legacies to be paid to them on their severally attaining the age of twenty-five, or day of marriage.

WILL OF COLONEL SIR SAMUEL GORDON HIGGINS.—The will of the late Sir Samuel Gordon Higgins, late of Chapel-street, Belgrave-square, Middlesex, Knight Commander of the Royal Military Order of the Guelph, and a colonel in the army, and Equerry of the late Duke of Gloucester, who died on the 14th of October last, has just been proved in Doctors' Commons by the executors, William Frederick Higgins and Warner Charles Higgins, esq. the sons of the deceased. The will is in the colonel's handwriting, and dated 25th of April, 1843. Desires that his funeral should be private, one mourning coach, and that no carriages should follow. Leaves specific bequests to his son William Frederick, and to his daughter Louisa, wife of Lieut. Willan, Royal Artillery, and bequeaths to his grandchildren, the children of the latter, ten shares in the Van Diemen's Land Company. Leaves the rest of the property to his four sons, after the death of their mother (who is to enjoy the interest for her life), and regrets it is so small. Personal estate under 7,000*l*. — *Historical Register.*

INHERITANCE EXTRAORDINARY. — A butcher at Nottingham has succeeded to a fortune, variously estimated at 8,000*l*. to 16,000*l*. by the death of his mother, who was transported for uttering base coin about thirty years ago, but afterwards reformed, married again, and amassed considerable wealth.

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.

The following correspondence has passed between this Society and the Incorporated Law Society.

To R. MAUGHAM, Esq. *Secretary to the Incorporated Law Society.*

March 10, 1845.

SIR,—I am directed by the council of the Metropolitan and Provincial Legal Association, to state that they have reason to fear that much misconception prevails among the members of the Law Institution, in regard to the objects of the Legal Association, —that in the consciousness that those objects are substantially the same as those of the Law Institution, so far as regards the common interests of the Profession, the council deeply regret that their success should be endangered by any supposed want of cordiality between the two bodies; that to obviate all suspicion of this being the case, they request a conference with the Directors of the Law Institution, in the hope that it may lead to a principle of co-operation to the common advantage of the Profession.

The council trust that it is unnecessary to disclaim any wish or object of a pecuniary nature in urging such co-operation, as they fully rely, and believe they may do so with confidence, upon the support of their subscribers,—their only motive being to secure that unanimity, without which the best efforts of the Law Institution or of the Association, will fail in affording due protection to the Profession, or in promoting its respectability.

I am, Sir, your most obedient servant,

GEO. FITCH.

The Incorporated Law Society of the United Kingdom, 15th March, 1845.

SIR,—I am directed by the Committee of Management of the Incorporated Law Society to acknowledge the receipt of your letter of the 10th instant, and to inform you that they are perfectly satisfied that the objects of the Metropolitan and Provincial Legal Association are highly praiseworthy, and the committee will always be glad to co-operate with the Association in matters for the common advantage of the Profession.

I am, Sir, your very obedient servant,

R. MAUGHAM, Secretary.

George Fitch, esq. Secretary.
Metropolitan and Provincial Legal Association.

CORRESPONDENCE.

A POINT OF PRACTICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In Nos. 82, 83, and 84 of the LAW TIMES, I find selections from correspondents respecting the practice in cases of sale by a mortgagor.

Your correspondent "T. H. A.," in No. 83, has therein stated that the question to be decided, namely, whether it is the province of the solicitor of the mortgagor or of the mortgagee to prepare the abstract of title, in case of a sale by the mortgagor, had arisen in a case in which he was himself concerned, and that a reference was made to the committee of the Law Institution for its decision; and they, most unequivocally, as your correspondent states, decided that the solicitor for the mortgagee had the right to prepare the abstract.

The case put by "A. F." has just occurred with me, and I contend that the mortgagor's solicitor had no right to prepare and deliver an abstract from his own draft abstract, and the copy taken by him of the draft mortgage. "H. W. I.," in No. 84, submitted a case for your advice of a similar nature. And in the same paper appears a letter from "P. B. T.," who questions the correctness of the views of your correspondents "A. F." and "T. H. A." Your correspondents "H. W. I." and "P. B. T." express themselves as young practitioners anxious to receive information. I am in the same position; and I write to request your consideration of the question, and that you will, through the medium of your valuable journal, set the matter at rest, that the Profession generally may, together with myself, be guided in the proper course to be pursued.

The solicitor of the mortgagor has written to me, stating his opinion that I have no right to furnish the abstract, as he has in his possession a draft, from which he can copy all he wants, and, in fact, has done so; and he also says that he has prepared an abstract of the mortgage security from his copy of the draft.

I am unwilling to do any thing which is not strictly correct and professional, and I shall, therefore, abstain from further claim until I learn your opinion. It appears to me, however, both in reason and justice, that I am of right entitled to prepare and furnish the abstract. I am in the position of the solicitor of a vendor in a case of sale of the mortgaged property, and as such I can see no ground for the solicitor of the mortgagor disputing my claim. Your early attention to my request will confer great favour upon your obedient servant,

EDGAR BOND.

Norwich, March 13, 1845.

[We would not presume to frame a rule for professional guidance. We can but submit any question that may arise to the judgment of our readers; and if differences of opinion should still exist after discussion, we would recommend that the matter be referred to, and decided by, one of the leading law societies. Opinions on the point sent by Mr. Bond will oblige.—ED. L. T.]

AGENCY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your numbers of the 1st and 8th March, the attention of the Profession is called by your correspondents to the omission of the London attorneys as to payment of costs to their brethren in the country for agency matters, and "Another Country Solicitor" suggests that instead of returning the process to the office whence it was received, it should be forwarded with the account of charges to the London agent, who, on receiving the amount, will hand over the process, &c.

I take leave to suggest what appears to me a preferable plan, and one which will save the London agent much trouble, viz. that the process, with the account of charges, should be forwarded to Mr. Laidman, of the firm of Messrs. Laidman and Cox, of No. 119, Chancery-lane, who will receive the costs, hand over the process to the London attorney, and, on the 1st of every month, pay over the amount in his hands (after deducting a very small commission) to the London agent, and forward an account to the country solicitor.

Mr. Laidman is employed by many solicitors in my own neighbourhood, and has recovered for me many sums which I never expected to receive, and I am glad to have the opportunity of bearing testimony to the assiduity and punctuality which he evinces in the collection and payment to the London agent of the country agency charges.

I am, Sir, yours, &c.

JOHN HARVEY BOYS.

Margate, 12th March, 1845.

COUNTRY AGENCY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In several of your late publications, subscribers have justly complained of the disreputable practice of London solicitors not paying the charges of their country agents, and various remedies are recommended; I beg to state the course I have for some time pursued, and with what I consider success.

Some few years ago, the East Kent Law Society, with the sanction of the Metropolitan Law Association, passed a resolution to send their affidavits of service of writs, &c. through an agent, to be delivered, on payment of the charges, and which has pretty generally been adopted by the solicitors in Kent without any complaint of the practice that I have heard of.

It is not reasonable to expect agents to give the time of their clerks to hunt up our small charges; and Mr. Laidman, of 119, Chancery-lane (an old managing clerk), having started as a collector of country agency charges, and being strongly recommended, I have employed him as my collector since January 1842, and I see I have sent him 238 accounts; of these he has received 190, and I have no doubt will get many of the others. I am therefore highly satisfied with the result of this system, and the advantages the employing him has been to me. On the first of every month he payed over the amounts received to my agents. I can strongly recommend him to the Profession, for his prompt attention in collecting, and the punctual way in which he renders his account.

The above accounts only include the business done since January 1842; but I sent him many others of a very ancient date, with which he was as successful as I could expect, recovering some which had been on my books for fifteen or twenty years.

I remain, Sir, yours, &c.

Dover, March 10, 1845. THOMAS PAIN.

SOLICITORS' BANK.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The usefulness of the proposed bank, if it could be beneficially worked in practice, would most undoubtedly be great in the metropolis; but it appears to me that even there the expense for such a "tem-

porary" purpose would operate as a great practical discouragement to the use of it by parties whom it is proposed to benefit.

I presume that deposits of title-deeds with equitable mortgages would be the principal security adopted for the proposed "temporary loans;" but whether legal or equitable, if the directors were not prepared to incur great personal responsibility, the sufficiency of the document given as security, and the goodness of the title, would most undoubtedly have to be regularly ascertained, in each case, by the bank solicitors, at the cost of the borrower. For considering the bare number of the profession in London (setting aside other considerations), it is impossible that the Directors could safely take for granted that every set of title-deeds brought to them for "temporary loans" (even by the shareholders in the bank, not taking into account others, of whom the Directors could have no knowledge whatever) disclosed a good title to the property sought to be pledged; and as to country solicitors, the argument applies still more strongly. I am not aware that it is the usual practice with London bankers to accommodate *at all* by loans in the way proposed, but in the country, where such "temporary" accommodation is *now* continually granted by bankers, the character of the solicitor applying, and of his client, is most probably known to the bank beforehand, and an investigation of title and the preparation of any very formal security thus avoided. It will be conceded that this "solicitors' bank" to be successful, should have the general support of the principal legal firms in London, and I can easily imagine that many of them might, and doubtless will, consider it highly objectionable to have the concerns of their clients exposed to the knowledge of any one office, however respectable.

The proposed bank might supply (in *London*) a want, but in my opinion it would be at too considerable a cost.

These remarks have been induced by your leading article of the 1st instant, and I shall be obliged by your giving them a place in your journal.

I am, Sir, yours, &c.
JOHN S. PEACOCK.

Darlington, March 12, 1845.

Re WELLS.

TO THE EDITORS OF THE LAW TIMES.

SIR,—I positively deny the accuracy of the report in your last publication in reference to this case. The damages were 100*l.* (not 40s. as insinuated by your reporter) for a gross and unprovoked assault; and the costs were taxed at 36*l.* 5s. Your reporter, who was counsel for Wells, did not venture to assert in court *that the plaintiff*, a boy only nine years old, *richly deserved the chastisement he had received*, and I can appeal to Mr. Commissioner Stevenson, Mr. Pollock the Registrar, and other officers of the Bristol District Court of Bankruptcy, and many others present at the short hearing, of the truth of this statement.

I am, &c.
Bath, March 25, 1845. THOS. HIGGINS.

SELECTIONS FROM CORRESPONDENCE.

"A MAGISTRATE'S CLERK" forwards the subjoined observations and statements on the Justices' Clerks Bill:—

Although I am a magistrate's clerk, and have acted as such in the county of Suffolk for thirty years, I trust you will insert this, upon the principle of *audi alteram partem*. In two or three papers I have seen, Sir James Graham on Wednesday, the 12th instant, upon the second reading of the Justices' Clerks Bill, is reported to have said, "The bill would not occasion any additional expense to the counties; but even if it did, it would be better that such were the case, than that the monstrous injustice should continue of levying fees from innocent persons unjustly accused of crime, on their discharge from custody before a magistrate."

Now, Sir, for the twofold purpose of vindicating the justices' clerks in this district, as also the memory of many magistrates for whom I have acted, and who are now gone, to give an account of their deeds at another tribunal, I can most truly and conscientiously say, that I never knew a defendant, who was in custody and discharged, called upon to pay any fees. If a man is apprehended on a charge of felony, no fees are ever taken of him; if upon a summary proceeding, and the complaint is dismissed, the magistrates who hear it may, under the well-known act of 18 Geo. 3, adjudge the informant to pay all the costs; therefore, what inducement is there in any magistrate to act with such injustice and folly as stated by Sir James Graham? Of course I speak only as to my own knowledge, and Sir James had, doubtless, proof when he made this assertion.

Mr. Escott has also stated his doubts whether these fees were legal. I would refer him to the 22nd Geo. 2, under which act the fees have always been regulated and taken, as by a table allowed by two judges. Various acts also regulate the fees to be taken, and therefore no reasonable doubt can be raised as to their legality. I should hope no one, not even Mr. Escott himself, would say the fees set by the Highway Act are too high, viz. 6d. for every information, and 1s. for every order: these scarcely pay for paper, and I never take them, but have the comfort of framing the most troublesome informations and intricate orders under it for nothing.

I make these remarks with great deference to the honourable the Home Secretary, and I trust he may have been misinformed, but I hope I shall stand excused in rebutting such a statement, more particularly as it comes from such a quarter.

ANSWER TO THE QUERY OF "S. S."

TO THE EDITOR OF THE LAW TIMES.

SIR.—If you will refer to the 3 & 4 Wm. 4, c. 42, s. 42 (which was introduced into Parliament at my request), I think you will find an answer to your question.

I know that under that enactment Master's Extra have been appointed in most of the large towns in Scotland. I would at all events try the effect of swearing, &c. before one.

I am, &c.
A. T. STEAVENSON.

To Readers and Correspondents

E. K (Dover.)—*The plan has been before suggested, but found to be impracticable.*

FAIR PLAY—*will see that his comments on the duties of Justices' Clerks have been already anticipated.*

G. W. (Rochford.)—*The suggestion will be attended to.*

T. P. (Dover.)—*The letter was sent to the printer. How mislaid we cannot think. Inquiries shall be made.*

TO SUBSCRIBERS.

THE PUBLISHER *begs to state, in reply to repeated applications, that he will readily accommodate the Subscribers to the* LAW TIMES *by procuring for them and inclosing in the parcels he may have occasion to transmit to them, any Books, Law Forms, or other Publications they may desire to receive from London. They may also, if they please, avail themselves of the transmission of their Volumes of the* LAW TIMES *for binding, to inclose any other books for the binder.*

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THE LAW TIMES.

SATURDAY, MARCH 29, 1845.

TO READERS.

THAT we may bring up a long arrear previously to the commencement of the business of the ensuing Term, we this week omit some of the usual commentaries on passing legal topics.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

A CORRESPONDENCE between this society and the Law Institution will be found in another place. It is satisfactory to see proof of so kindly a feeling existing between two powerful associations, each of which is capable of performing essential services to the Profession, that might be marred by jealousies or disagreements. The proffer of the younger and more energetic society is stamped with genuine good feeling and evident anxiety to advance, by combined exertions, the interests it is associated to protect. This timely correspondence will, at least, serve to remove any doubts which may have been excited in some quarters as to the feeling actually existing between the two societies, which is thus proved to be most cordial and friendly; giving assurance that the best friends of the Institution in Chancery-lane may advantageously support also the *working* society lately established.

SHAM LAWYERS.

THE following advertisement of another member of this tribe appeared in the *Brighton Herald* of 22nd February last. He should be strictly watched.

TO PARENTS AND GUARDIANS.

Parents or Guardians having sons or wards wishing to be apprenticed in London, are informed that Mr. Rearden, Albion Chambers, 11, Adam-street, Adelphi, London, has constantly several hundred vacancies to fill up in the establishments of Professional Gentlemen, Merchants, Tradesmen, and Mechanical Trades-men in nearly every branch of mechanical business that can be named. The premiums, in many cases, may be paid by instalments. As great attention is paid to the respectability, long standing in business, and stability of masters recommended by Mr. R., he has no doubt of giving satisfaction to those who may avail themselves of this notice. Mr. R.'s charge will in no case exceed 30s. *which includes drawing the indentures and a copy.*—Applications by letter, pre-paid, will meet with prompt attention.

VERULAM SOCIETY.

WE have to acknowledge the receipt of numerous suggestions of Forms that might usefully be added to the series now in course of publication for the Society. Due consideration will be given to each, and such as may appear likely to be in sufficient request to justify the cost of drawing and printing will be adopted. But correspondents must remember that, as all the Forms of the Society will be settled by Counsel, the cost of printing is not the only calculation. As it is impossible to answer individually the many communications upon this subject, the friends who so kindly forward suggestions must not consider themselves neglected because no immediate notice is taken of their letters; and we trust that they will continue to furnish like hints, assured that all will be appreciated and receive the most anxious consideration.

Now to report progress. Urgent business has prevented the very able Conveyancer, to whom has been intrusted the preparation of the Forms of *Conditions of Sale*, from completing them so speedily as we had anticipated. They are, however, promised in the course of the ensuing week, when they will immediately be sent to the printer. The many members who have ordered them must therefore excuse the unavoidable delay.

An abundant supply is now obtained of the *Forms of Retainer*, and they are being bound in volumes, to lie on the office desk; so that if the rule be adopted for every client to give a formal authority to the attorney, it may be asked without offence, and obviously as the general practice of the office.

Let us here observe that if any desirable alteration, in any form, should occur to the practitioner, he will much oblige by at once so informing us, the great object being to render the Verulam Society's Forms the most complete and practical that skill and experience can make them.

The fifth number of Practice Cases and the seventh of Magistrates' Cases will be delivered early next week. But the reporters being on circuit, the unavoidable delay in forwarding and returning proofs, &c. renders it impossible to state the precise day of publication.

They will be followed by *Real Property Cases* and *Criminal Law Cases*.

Some members have complained that the *Verulam Reports* do not appear with sufficient speed, and they refer to those of the LAW

Times in proof. But it must be remembered that the Law Times reports are avowedly brief notes of cases, as caught by the ear; but the *Verulam Reports* are carefully prepared, with laborious reference to the briefs, the pleadings, and the cases cited, and are intended to be of permanent and standard value, and therefore demand for their composition a considerable time. Speed is incompatible with perfect accuracy.

Others, again, have complained that the same cases have already appeared in the Law Times. Of course they have, because the Law Times reports *every* case. But, although the substance of the case is contained in the Law Times, it appears in the *Verulam* in a more complete form, and carefully fitted for study, for reference, and for citation, by the process above described. The one is by no means a substitute for the other.

The following new members have been enrolled since our last report:—

Whittaker, G. W. Bampton, Oxon.
Weston, M. C. Dorchester.
Scriven and Young, Messrs. Hastings.
Whitefield, John Charles, 1, South-square, Gray's-Inn.
Wake, G. A. Eling.
Fardell, Rev. Henry, J. P., Vicarage, Wisbeach.
Dransfield, John, Barnsley.
Bretherton, Edward, Liverpool.
Coombs and Son, Messrs. Dorchester.
Castleman, Edward, Wimborne.

JUDICIAL SYSTEM IN FRANCE.

Sir,—I beg to forward you an article on the judicial organization in France, and on the competency of our different tribunals, and being the first of a series of articles on this subject, your readers will be enabled to form their own opinion as to the different mode of administering justice in our two countries. Civil interests will alone be considered.

ARTICLE I.

Under the political and administrative aspect, France is divided into 86 departments; under the military aspect, into 21 military divisions; but under the judicial aspect, she contains 27 districts of the Cour Royale, or courts of appeal.

Each district of the Cour Royale comprises a certain number of civil district courts.

And each cognizance of a civil district court comprises several justices of peace (*juges de paix*), whose civil court is a court of appeal, as the Cour Royale is the court of appeal for the district courts.

Above this hierarchy of justices of peace, of district courts, and of Cours Royales, is the Court of Cassation, unique in France, and having its own special jurisdiction, as indeed has each court, clearly defined.

We shall treat 1st, of the justices of peace, as having direct connection with the *conseils des prud'hommes*.

2nd. Of the civil district courts, and of the tribunals of commerce, which ought to be viewed together, and of arbiter judges (*arbitres juges*).

3rd. Of the Cours Royales.

4th. Of the Court of Cassation.

5th. Of the administrative jurisdiction, which comprises the councils of the prefecture, and the council of state; and, lastly, we shall say a few words on the Court of Accounts (*Cour des Comptes*).

Judicial power forms a part of sovereign authority, which is the highest human power.

It is essentially different and distinct from the executive power, which ought never to interfere with the administration of justice; but, as an element of true justice, it is thus defined in the law of the 1st of October, 1789, Art. 19: "The judicial power can never, in any instance, be exercised either by the King, or by the legislative body; but justice is to be administered in the name of the King by the tribunals established by the law." This article also clearly defines the limits of the legislative and judicial powers.

The Chambers, Houses of Parliament, and the King, concur in the formation of the law; but they ought not to be called upon to apply it. And, with regard to the sovereign's power in the presence of the law, the words of a celebrated magistrate well express it: "A prince, wearing pardon in his face, cannot meet the eye of a culprit on the bench." And, lastly, all these maxims are confirmed by the Charter, Art. 48: "All justice emanates from the King, and is administered in his name by judges nominated and instituted by him."

Art. 49 adds, that "judges nominated by the King are irremovable."

This article applies to judges of the district courts, and to the judges of the Cours Royales, and of the Court of Cassation, who all have the title of Counsellor of his Majesty at the Cour Royale of, &c.

Justices of peace, and administrative judges are not within this article; and the jurisdiction of each court is determined by the law with regard to the nature of the cases to be tried before it, and to the extent of territory in which its jurisdiction is exercised.

OF JUSTICES OF PEACE, OR JUGES DE PAIX.

France contains 2,846 cantons or cognizances of justices of peace, each canton having a justice of peace; and in some parts, in consequence of the extent of the population or of the territory, some cantons contain many cognizances of justices of peace.

In England, the institution of justices of peace, forming in each county the *Commission for the King's peace*, and which has been the result of the gradual conquest of royal authority over feudal power, dates from the reign of Edward I. and the year 1275. We cannot go so far back; the first mention in the annals of our judicial history of any institution at all analogous to that of the justices of peace, is in a royal ordinance of September 1769, which authorizes bailiwick officers to assemble, three in number, for the purpose of judging in a private audience, and without the ministry of a procureur, cases simply personal which exceeded not 40 livres.(*a*) The formation of justices of peace is a benefit derived from the Revolution of 1789. Imitating the English institution, the aim of the Constituent Assembly in establishing justices of peace, was to place within the immediate reach of litigants, judges—upright, enlightened, and respectable men—commissioned to settle lawsuits, and to pronounce on unimportant contests.

The law of the 24th of August, 1790, was a new era for France. "We shall no longer see," said the mover of this law, "the roads leading from villages to towns crowded with litigants, going to consult judges whose business it is to perplex cases rather than to decide them." According to this law, the justices of peace were elected by their fellow-citizens, and adjudicated with assessors. Posterior laws have suppressed the assessors, and placed the justices of peace at the King's nomination; they are removable, which is a great defect in our legislation. In case of impediments, their place is supplied by two substitutes from each canton, appointed by the King.

The jurisdiction of the justices of peace remained as it had been determined by the law of 1790, until the law of the 25th of May, 1838, extended it and altered it in the following manner.

Jurisdiction. The attributes of the justices are threefold, judicial, conciliatory, and extra-judicial.

1. *Judicial attributes.*(*b*)—According to the law of the 25th May, 1838, which has regulated afresh the jurisdiction of the courts of peace, the justices of peace take cognizance of all personal or moveable cases, without appeal, up to the value of 100 francs, and with appeal up to the value of 200 francs. They decide without appeal up to 100 francs, and with appeal up to 1,500 francs, upon all contests between innkeepers and lodgers or travellers, for expenses or loss and damage of goods deposited; between carriers or watermen and travellers, for delays or loss and damage of goods; between travellers and coach-makers or other workmen, for contracts, wages, or repairs. They also judge upon indemnifications claimed by the tenant or farmer for non-possession, loss, or injury of the property let, arising from the acts of the landlord, when the right to an indemnity is not disputed.

They pronounce, also, without appeal, up to 100 francs, and with appeal up to any value, on cases of payment of rents, notices to quit, expulsions, provided the price of the locality does not exceed 400 francs in Paris and 200 francs elsewhere.

If the rent of the locality is to be paid in corn, the justice of peace estimates it according to the prices of the nearest market.(*c*)

The justices of peace also take cognizance without appeal up to 100f. and with appeal up to any sum that is claimed, of all cases relating to damages occasioned to the crops and land, either by persons or animals; of the felling of trees; the cleansing of trenches or of canals; watering lands or manufactories, when the right of property or use is not contested; of all local repairs of houses o. farms belonging to the tenant; of all contests between servants and masters, workmen and their employers, tradesmen and their apprentices, without derogating from the laws and rules relating to the jurisdiction of *jurymen* (*prud'hommes*); (*d*) of all contests relating to the payment of nurses, and of all cases of injury or defamation, verbal or written, public or private, committed otherwise than through the medium of the newspapers; of quarrels and blows, provided the parties have not taken proceedings in the criminal courts.

Justices of peace never take cognizance without appeal, but with appeal, of all boundary cases and those relating to limits prescribed by the law for plantations of trees or hedges, or of constructions and works which may annoy a neighbour; of claims for annuities not exceeding 150f. which, according to articles 205—211 of the Code Civil, parents and children mutually owe each other, in cases where either are in indigence; and, lastly, they are sole judges of cases called *possessoriæ actionis querela*, in which it is only requisite to appreciate a fact, that is, the possession for one year by the plaintiff who complains of having been disturbed in his possession (*spoliatus antè omnia restituendus*). The real owner in vain shews his deeds of possession, for the justice of peace cannot admit them; the district courts alone are judges of property questions; the justice of peace can only verify the fact that the actual possessor, having had possession for one year, cannot be disturbed; there is a conjecture in his favour; why has the real owner so long abandoned his property? he is to blame, and has not the right to employ violence or coercive measures to regain it. He must now prove his rights before competent judges. It is the distinction made by ancient authors between the *petitorium* and the *possessorium*.

This competency of the justices of peace extends to all kinds of immoveables, and not to moveables,—*mobilium vilis est et abjecta possessio*; moreover, Art. 2279 of our Civil Code states, *that with regard to moveables, possession equals right.*

When the defendant opposes to the plaintiff a compensation or a claim by way of set-off within the limits of the jurisdiction of the justice of peace, he takes cognizance of it, even though the united demands amount to more than 200f.

When both claims, either in compensation or set-off, come within the jurisdiction of the justice of peace to judge without appeal, he shall pronounce on both without appeal; but if one of the claims is liable to an appeal, the justice of peace shall decide upon all with appeal.

If the claim for indemnification on the set-off claim exceeds the limits of his jurisdiction, the justice of peace can either refrain from deciding on the plaintiff's claim only, or refer all parties to the district court.

But when the claim is only a claim for damages, the justice of peace always takes cognizance of it, whatever be the sum—and thus it ought to be, otherwise, to avoid the jurisdiction of the justice of peace and gain time, it would be sufficient to oppose proceedings by a claim for damages exceeding the limits of his competency.

When several claims made by the same party are united in the same suit, the justice of peace only pronounces with appeal, if their total value exceeds 100f. even though one of the claims be inferior to this sum. He becomes incompetent altogether if the claims united exceed the limits of his jurisdiction.

The provisional execution of judgments shall be ordained in all cases where there are authentic deeds acknowledged, promised, or a preceding condemnation which has not been appealed against.

In all other cases the justice of peace can ordain the provisional execution, independent of appeal, and without bail, when it is an annuity question, or

(*a*) There was, however, at the Châtelet of Paris (Tribunal of First Instance), an auditor-judge, commissioned to examine cases not exceeding 50 livres, summarily, and without the ministry of procureurs.

(*b*) I can only give you an analysis of the law of 1838; your readers can consult the text, if needful.

(*c*) In every locality, after the markets, the price of corn is regularly published.

(*d*) Conseils de prud'hommes—Courts instituted for the regulation and inspection of workpeople.

when the sum does not exceed 300f.; with bail above this sum.

The bail is received in court by the justice of peace. In urgent cases he can ordain the immediate execution of his judgments.

Appeal against the judgments of the justices of peace is not lawful before the lapse of three days after the judgment has been passed, unless there is reason for a provisional execution, or after the lapse of thirty days after the signification of the judgment of the parties domiciled in the canton. Persons residing out of the canton have a further delay.

The following extracts from the Code of Civil Procedure shew the mode of proceeding :—

"Art. 1033.—The day of the signification of the judgment, and that on which it expires, are never reckoned in the delays allowed for adjournments, assignations, summonses, and other deeds signified to the parties or forwarded to their domicile; the delay is increased one day for every third myriameter of distance, and the increase shall be doubled in cases of journeys and returns.

"Art. 73. If the party assigned resides out of continental France, the delay shall be—

"1st. Two months for those residing in Corsica, Elba, or Caprain, in England, or in those states bordering upon France.

"2nd. Four months for those residing in other parts of Europe.

"3rd. Six months for those residing out of Europe, on this side the Cape of Good Hope.

"4th. A year for those residing beyond it.

"Art. 74. When an assignation for a person domiciled out of France is given him in France, the usual delay only shall be allowed, unless the Court sees fit to increase it."

Appeal is not lawful against judgments improperly given with appeal, or against those which, given without appeal, are not called such.

But judgments called without appeal shall be subject to appeal, if they have been given with appeal, either in cases of which the justice of peace could not take cognizance, or in cases within his jurisdiction.

When the justice of peace has declared himself competent, the appeal cannot be lodged until after the final judgment.

The judgment of the justices of peace cannot be attacked before the court of highest appeal, unless they have *exceeded their power*; such as making rules instead of applying those already existing.

The result of all these dispositions is, that all cases submitted to the justice of peace are irrevocably judged by him, provided they do not exceed the sum fixed for judgments without appeal. The intention of the Legislature has been to abridge trifling suits, and to close as soon as possible all discussions which only stimulate the passions of ignorant litigants.

The bailiffs of the canton are bound to be on duty at the courts held by the justice of peace, but they can neither be present as counsel, nor represent the parties as proxy for them, under a penalty of from 25f. to 50f. inflicted by the justice of peace, without appeal, or even of a temporary suspension of their functions.

Finally, we must notice a last clause inserted in Art. 17 of the Law of 1838 :—

"In all cases, except those where there is peril, or those in which the defendant is domiciled out of the canton, or out of all the cantons of the same town, the justice of peace can forbid the bailiffs sending a summons without having previously, without cost, called the parties before him."

Nearly all the justices of peace have conformed to this clause, and now no judgments are given without a previous attempt to reconcile the parties. The judgments of the justices of peace have accordingly considerably diminished in number—a loss for bailiffs, but a gain for litigants.

A few special laws recognize to the justices of peace the power of deciding on civil contests relative to the application of the tariff, or the quota of duties demanded by the toll received; also on the custom-house duties for importations, in disputed cases.

The purport of the law is always the same; to decide on the spot and quickly on all unimportant contests.

Such are the *judicial attributes* of the justices of peace.

2. *Conciliatory attributes.*— The legislator of 1790 (the law of the 24th August), to diminish the number of suits, submits them all to a previous attempt at a reconciliation. (Art. 48 of the Code of Civil Procedure.) In all contests, the parties are obliged, in the commencement, to appear before the justice of peace, who, persuading them to be reconciled, endeavours to point out the means; and if he does not succeed, he advises them to submit their cause to arbitrators selected by themselves. (Art. 60, Law of the 22nd Fumaire, Year 8.)

All hearing is denied the parties until they have accomplished this formality or paid the penalty inflicted on either of them who personally or by proxy has not attended the conciliatory summons of the other. The Articles 49 and the following of the Code of Civil Procedure have specified the cases absolved from conciliatory preliminaries; such as those which require speed, or which cannot admit of negotiations, as where there are minors, &c.

This compelled conciliatory attempt is productive of much good in the country; peasants, too much inclined to go to law, often yield to the advice of the justice of peace. This is one of the noblest missions of the justice of peace.

3. *Extra-judicial attributes.*—These comprehend the interventions of the justices of peace in matters of civil jurisdiction—*non-contentious*: they preside over family councils, where it is a question of the interests of minors; they place the seals after deaths and bankruptcies; they draw up deeds of adoption or of emancipation; they receive the oaths of jurymen; they are present at the opening of doors when entrance has been refused to the bailiffs or to the public force; they are, in a word, competent for a number of deeds which require speed, which would be too long to detail, and which are specified in all our different codes.

We will close this article on the justices of peace by a short notice on the *Conseils de Prud'hommes.* These courts are instituted for the purpose of terminating, by conciliatory means, the trifling dissensions which arise daily either between manufacturers and their workpeople, or between foremen and their companions. They judge, as a tribunal without form, without costs, and without appeal, all dissensions concerning which conciliatory measures have failed. Their jurisdiction is much the same as that of the justices of peace. The judges are elected by manufacturers and the master-workpeople: half are selected among the manufacturers, the other half among the master-workpeople. As they are elected every three years, all those who have distinguished themselves by their integrity can aspire to the title of *Prud'homme.* (Decree of the 11th June, 1809.) The préfet draws up the list of the electors. There are as yet only a few manufacturing towns provided with *Conseis de Prud'hommes*; but the Government has the power of establishing them by royal ordinance wherever the want of them is felt; and it is to be regretted that this institution is not more disseminated, for its influence is desirable in the intercourse between masters, foremen, and workpeople.

My next article will be on the Civil District Courts, and will soon be forwarded to you.

I remain, Sir, yours truly,

N. TRITTI,
Avocat à la Cour Royale.

Paris, January 28, 1845.

TAWELL'S CASE.

SOME REMARKS ON THE EVIDENCE DEDUCIBLE FROM THE ODOUR OF PRUSSIC ACID IN A DEAD BODY.

By ALFRED TAYLOR, Esq. Lecturer on Med. &c.

(*For the Law Times.*)

As a general principle, the odour of this poison, which resembles that of bitter almonds, may be detected in the dead body when the *post mortem* examination is made within two or three days. It has been observed so long as seven, and even *eight* days after death, in the bodies both of men and animals; but then, on the other hand, there are many well-known conditions which will account for its non-detection, even when the individual has not been dead twenty-four hours. Many persons are wholly unsusceptible of the smell of prussic acid. I have known an individual who had been engaged twenty years in a chemical laboratory, unable to distinguish any odour in the English medicinal prussic acid. Again, none may be perceived if the dose of poison be small, if it be mixed up with other strongly smelling liquids, or if the body have been long exposed, either to the air or rain—for prussic acid is a volatile poison, and in general evaporates rapidly. In order to shew how readily the odour may be concealed by other odours, the following experiment was performed subsequently to the trial of Tawell. A dose of prussic acid, sufficient to kill an adult (*i.e.* ⅘ of a grain of anhydrous acid), was mixed with about four ounces of London porter. Two professional men, one engaged for the prosecution and the other for the defence in Tawell's case, could not detect any odour of prussic acid in the contents of the bottle. It was then handed to an experienced professor of chemistry of thirty years' standing, and he was unable to detect the poison by the smell. It is essential in the performance of such experiments that two or more bottles should be used, only one of which should contain the poison, and if possible the individuals should not be allowed to have the least suspicion of the object of the experiment. These facts, which are not new, appear to me to shew that the view taken by the learned judge was correct, *i.e.* that "smell was a proof of the presence of the poison, but the absence of smell was no proof of its absence."

In the course of his speech for the defence, Mr. Kelly refers to the alleged *non-detection* of an odour in the stomachs of seven persons, who were accidentally killed in Paris, some years since, by an overdose of prussic acid. He pronounces this to be an erroneous statement, and his language would lead to the belief that it occurs in my *Manual of Medical Jurisprudence.* If I am right in the construction, the learned counsel has himself fallen into an error; since in no part of that work do I refer to the presence or absence of an odour of the poison in these cases.

In another passage relative to the death of a youth from 3½ drachms of prussic acid, he alleges that I led the Crown witness to form a wrong opinion, by saying that there was "no odour in the body," and not stating that it was perceived in the stomach. In reply to this remark, I beg to observe that the quotation referred to was made in order to shew that in death from a very large dose of prussic acid (3½ drachms of a German acid, equal to *one ounce* of Scheele's) there may be no odour whatever about the body of the deceased, even when it happens to be placed under the most favourable circumstances for its retention. I certainly cannot hold myself responsible for all the inferences which may be drawn by witnesses from the cases reported in the *Manual*, but if the learned counsel had referred to the original work in which this case occurs (*Horn's Archiv fur Medicinische Erfahrung*, 1823, b. 2, s. 51), he would have seen that my account is substantially correct. As it is, I can plainly perceive that he has been misled by trusting to a French or English version.

Merzdorff, the reporter of it, expressly says, "there was no smell of bitter almonds about the body." ("De Leiche stank nicht sonderlich, liess aber keinen Geruch von bittern Mandeln vornehmen." (Loc. cit. p. 55.) Further, the case was "remarkable" for the *entire absence of the odour of bitter almonds* ("der gänglich fehlende Geruch von bittern Mandeln.") (p. 60.) With respect to the alleged presence of an odour in the stomach, which Mr. Kelly thought ought to have been mentioned by me, all I have to say is, that whatever may be met with in the French and English translations of the case, the original does not, in my judgment, warrant the inference drawn by the learned counsel. From Merzdorff's description, I doubt whether the alleged odour in the stomach would have been perceived by one person out of twenty; and altogether his account is so ambiguous, as certainly not to justify an author in making this a prominent part of the case; nor is it such a serious omission as Mr. Kelly endeavoured to make it appear. Merzdorff says of the stomach, there was a sour, sharp smell of "Ittner's prussic acid," *but no odour of bitter almonds* ("nicht aber den (Geruch) der bittern Mandeln.") (p. 57.) Again, he says, it was perceptible to "a well-practised nose" ("einer sehr geübten Nase"); and lastly, "the distilled liquid of the stomach *smelt less of prussic acid than of rancid fat* ("Das Destillat roch nur schwach nach Blausäure stärker nach ranzigent Fett). Now I am ready to concede that to one endowed with a very sensitive nose, and who is perfectly well acquainted with the peculiarly sharp sour smell of "Ittner's prussic acid," although mixed up with the smell of rancid fat, the odour might have been perceptible; but whether rightly or wrongly, most medical men judge of the presence of prussic acid on these occasions by the *detection of an odour*

analogous to that of bitter almonds; and if they did not perceive this odour, the majority would be unable to speak with certainty to the presence of the poison; but we have it in Merzdorff's own words, that there was no odour whatever of bitter almonds (the usual characteristic odour of prussic acid) *about the body or in the stomach*. I must, therefore, regard this as an unfortunate remark on the part of the learned counsel; for he places himself in the position of blaming an author for not coupling with his history of the case an observation which, if not directly contradicted by the original report, is at least so ambiguously stated in it, as perfectly, in my opinion, to justify its omission.

On referring to the French and English versions (the latter derived from the French) of this singular case, I find in them the errors which would account for Mr. Kelly's observations. I have made these remarks, because on a future occasion Merzdorff's case may be again brought forward, and the evidence from the presence or absence of an odour of prussic acid in a dead body may be material. They may likewise serve to shew that the accuracy of the reports of cases, quoted by English authors, should not be tested by comparing them with the translations of those cases in another language.

March 25, 1845.

A COURSE OF LECTURES ON THE LAW OF CONTRACTS,

By Professor Carey.

Delivered at the University College.

LECTURE II.

Parol Contracts — Parties incapable of making Contracts — Duress — Fraud — Intoxication — Agreements in Writing.

Taking the definition given by Blackstone, and altered to our purpose, we find a contract defined to be "an agreement to do, or not to do, a particular thing, made either on sufficient consideration, or with certain prescribed formalities." Contracts executed with these prescribed formalities,—special contracts, as they are termed,—I shall pass over for the present, and confine my observations chiefly to parol contracts. Contracts of this class fall correctly within the definition which Blackstone has applied to contracts in general, namely, "an agreement, on sufficient consideration, to do or not to do a particular thing;" from which definition it will appear that, in treating of contracts, there are three points to be looked at: first, the act of agreement; secondly, the consideration; and thirdly, the thing to be done or forborne; of which three things it will be remembered that two, viz. the agreement, and the thing to be done or forborne, are essential to contracts of every kind. A consideration is essentially requisite to parol contracts only.

First, then, there is in all contracts an agreement, a mutual bargain and convention; and, therefore, there must be at least two contracting parties of sufficient ability to make a contract; which ability the law recognizes in all persons who are not subject to some *incapacity*, whether natural or legal. The great natural incapacity is a deficiency of understanding; by which is meant, not a mere feebleness of intellect, but a want of sufficient sense to carry on the common business of life. Any degree of weakness of mind short of this, though it may be a sufficient claim to the protection of the law against fraud or imposition, will not of itself affect the validity of a contract. (2 Kent Comm. 452; Treatise of Equity, p. 66, note.) A person labouring under this total incapacity is said to be *non compos mentis*; a most comprehensive term, which comprehends both idiots and lunatics. Such persons are incapable of binding themselves by contract, whether a commission has issued against them or not; and where a commission has issued, and the party has been thereupon found incompetent, this (as to third persons) is only *primâ facie* evidence of the fact; but, if it be not contradicted, the contracts of a lunatic are void from the period at which the commission finds the lunacy to have commenced. It was formerly a doctrine of our courts that, when sued upon his contract, the party himself could not set up as a defence that he was incompetent at the time it was alleged to have been made. This, in the language of Littleton and Coke, would be to "stultify and disable himself." (Rep. Co. Litt. 247, a; *Beverley's case*, 4 Rep. 123.) "In a bill depending in the Court of Requests, between Snow plaintiff, and Beverley the defendant, the matter was that Snow had made a bond to the defendant in 1,000*l.*, and in the said court would be relieved because at the time of the making of the said bond, he was *non compos mentis*."

It is said in the *Treatise on Equity*, sec. 47, "The common lawyers endeavoured to set up a maxim of their own, in defiance of all justice and the universal practice of all the civilized nations of the world, for they said that it was a known rule in their law that no man of full age should be admitted in any plea to stultify and disable himself, because when he recovers his memory, he cannot know what he did when he was of non-sane memory; and therefore they concluded he should have no relief from this, even in a court of equity, because it would be a subversion of a principle and ground of law." In modern times, however, this subtlety has been disregarded (as you find in 2 Blackst. 291), and at the present day no engagement, whether by specialty or simple contract, is binding in equity or at law, if entered into by a person who was at the time *non compos mentis*. (*Yates* v. *Boen*, 2 Str. 1104.) A record, indeed, is of so high a nature, that it cannot be contradicted or questioned, as will be seen by the following case. (*Mansfield's* case, 12 Rep. 123.) "A monstrous and deformed cripple, an idiot, was, by the practice of one Nichols and others, taken out of the custody of his guardian, and carried upon men's shoulders to a place unknown, and there kept in secret until he had acknowledged a fine of his lands before Justice Southcote, in the 9th of Queen Elizabeth. He was afterwards, upon inquisition, found an idiot. The matter was brought before the Court of Wards, and he was sent out of the Court of Wards to be shewn to the Judges of the Court of Common Pleas, and to the jurors; and being brought upon a man's shoulders, Lord Dyer said that the judge who took the fine was never worthy to take another; but notwithstanding this, and although the monstrous deformity and idiocy of the cripple was apparent and visible, yet the fine stood good. In the language of Lord Chief Justice Hobart, in *Needler* v. *The Bishop of Winton* (Hobart's Rep. 221), "the law finds them not so disabled, nor admits the averment of such disablement, because it is certified by the invincible and indisputable credit of the judge, that they were perfect and able persons;—that is to say, the law does not say that a fine levied by a lunatic is good; but that if a fine is levied at all, that the law presumes the party to have been competent, and will not admit any evidence of his being otherwise." This doctrine with respect to the validity of a record is still adopted in courts of law. In a late case (*Murley* v. *Sherren*, 8 A. & E. 754), E. T. Murley was *non compos mentis*, and while in that state he conveyed his lands to one Templeman, in fee, by fine. This fine was binding *at law*. One Greenham was afterwards appointed committee of the estate. He commenced proceedings *in equity* against Templeman, the purchaser. A compromise was entered into, wherein the rights of E. T. Murley were betrayed, and Templeman, the purchaser, was to retain part of the land, and to convey the rest back, not to the lunatic, but to the committee, Greenham. That is to say, Greenham, instead of protecting the interests of the lunatic, having commenced an action to recover the property, leaves one half of it with the purchaser, and takes the other back for his own purposes. The heir-at-law of the lunatic, relying upon the fraud that had been committed, claimed Greenham's land, and the Court of Queen's Bench said—"Though there may have been fraud, what relief equity may afford you is not for us to say," but the fine conveyed the land to Templeman, and the *legal* right of Murley, the heir, was thereby put an end to. It is not that Greenham was not guilty of fraud in taking it back again; the Court had nothing to do with that question. The lunatic conveyed the lands by fine to Templeman, the purchaser, and the effect of that fine was, that the lands ceased to be those of the lunatic.

The protection afforded by our courts to persons unable to take care of themselves will not be extended to defeat the claims of creditors who, without practising any imposition on the lunatic, have provided him with things necessary and suitable to his condition in life. (*Baxter* v. *The Earl of Portsmouth*, 5 B. C. 170.) "I was of opinion, at the trial," says Chief Justice Abbott, "that the evidence given on the part of the defendant was not sufficient to defeat the plaintiff's action. It was brought to recover their charges for things suited to the state and degree of the defendant, actually ordered and enjoyed by him. At the time when the orders were given and executed Lord Portsmouth was living with his family, and there was no reason to suppose that the plaintiff knew of his insanity. I thought the case very distinguishable from an attempt to enforce a contract not executed, or one made under circumstances which might have induced a reasonable person to suppose the defendant was of unsound mind. The latter would be cases of imposition; and I desired that my judgment might be taken to be that such contracts would bind, although I was not prepared to say that they would not. Upon further consideration I find no reason for thinking that my direction to the jury was erroneous, or that the verdict should be disturbed."

Still, an executory contract will not be binding; that is to say, if a man, being a lunatic, enter into a contract whereby he imposes a duty on himself of doing something—if it were to engage a house, to write a book, or if he were to enter into any undertaking or contract in which a work is to be done by him—no doubt he would not be bound by it; but where a contract is executed, and he has had the benefit of it, and there has been no imposition on him, and the benefit he has had is suitable to his estate, he will be bound to pay.

Children likewise are, for want of understanding, naturally incapable of entering into any agreement; and this incapacity is by our law extended till they have attained the full age of twenty-one. Within that age a minor, or *infant*, as he is termed, cannot bind himself by any agreement, nor is he liable for any debts he may have contracted, except for such as are necessary for him according to his condition in life and future prospects. (*Peters* v. *Fleming*, Hil. T. 1840, 6 M. & W. 42.) But if an infant who has contracted a debt, though it be not for necessaries, after he comes of age expressly promises to pay it, he will be liable on this promise, provided it is made in writing. This provision was introduced by Lord Tenterden (9 & 9 Geo. 4). I am here speaking of debts contracted by an infant wherein he is himself the party who becomes the debtor. This is altogether different from the case where goods are supplied to the infant *on the credit of the parent*. A father is liable for goods ordered by his son, provided the order was given under the father's authority, but not otherwise. Where this authority is not expressly given, it may be inferred from circumstances: as where goods are supplied to the son with the father's knowledge, or are sent to him at his father's house; such circumstances as these are evidences from which the father's authority may be inferred. There are two cases which proceed on the doctrine that where the father's authority cannot be inferred there can be no claim: *Mortimore* v. *Wright* (E.T. 1840, 6 M. & W. 482)—that was a case of a claim for an amount charged for board and lodging and attendance on a son during illness; and also *Rolfe* v. *Abbot* (6 Car. & P. 286).

A married woman is at law under a total incapacity. She cannot bind herself at law by any contract or agreement, even though she be living apart from her husband, and having a separate maintenance secured by deed; but where a woman has a separate estate, payment out of it may be enforced in equity; and if a woman marry an alien, and he lives out of the country, or if her husband is civilly dead, or if he is transported, she is in such case treated as a *femme sole*. So in London, a married woman, a trader, is by custom deemed a *femme sole*. (See the case of *Marshall* v. *Rutton*, 8 T. R. 545.) Till that case, the law was not very decided; there were some conflicting cases before it. "A femme covert cannot bring an action or be impleaded as a feme sole while the relation of marriage subsists, and she and her husband are living in this kingdom, notwithstanding she lives separately from her husband, and has a separate maintenance secured to her by deed." It is a case worth reading with considerable attention, as it is the foundation of most of the cases that have succeeded it. (*Bullpen* v. *Clark*, 17 Ves. jun. 366; *Walford* v. *De Vienne*, 2 Esp. 554.)

The question frequently arises how far the husband is bound by the contracts of the wife. (*Manby* v. *Scott*, 1 Lev. 4, and Siderfin, 109, which is translated in the 2nd volume of Smith's Leading Cases.) The rule is, that marriage does not of itself give a wife any authority to bind her husband; but that he is bound by her contracts where made with his assent. Where she can be deemed an

agent of her husband, so far the wife is on the same footing as her children; either the one or the other can bind the head of the family where their acts can be construed to be with his authority. But there is this difference, that the agency of the wife is more easily inferred than the agency of the children. When they are living together, the assent of the husband will be presumed to all contracts made by her for necessaries suitable to his degree and estate. She is, for such purposes, considered as the *agent of her husband*. A wife can bind her husband only as his agent; but from marriage and cohabitation agency will be presumed. Where the articles supplied are not necessaries, the husband, in the absence of any express assent to the purchase, will not be liable for them. (*Montague* v. *Benedict*, 3 B. & C. 631; *Seaton* v. *Benedict*, 5 Bing. 28; and the older case of *Ellerington* v. *Parrott*, 1 Salk. 118; 2 Lord Raymond, 1006.) And even with respect to such articles as the husband would be otherwise liable for, he may prevent any such liability by giving notice to the tradesmen not to supply goods to his wife. If the husband and wife cease to live together, the circumstances are materially altered. If the husband turns away his wife, or by cruelty or ill-treatment compels her to leave his house, he gives her a credit wherever she goes for reasonable expenses. (*Hodges* v. *Hodges*, 1 Esp. 441.) This credit does not depend on any supposed assent on the part of the husband; it is a credit to which the wife is entitled by law. (*Boulton* v. *Prentice*, 2 Str. 1214, Selwyn's Nisi Prius, 276.) "Assumpsit for goods sold and delivered to the defendant's wife. On motion for a new trial, it appeared that the defendant and his wife had formerly lodged at plaintiff's house, during which time the defendant had given plaintiff express notice not to trust defendant's wife. Afterwards, defendant and his wife went to lodge at another place, where defendant used his wife ill, after which they separated, and defendant refused to see her again; she desired him to maintain her, and offered to return and cohabit with him, which he refused, and struck her, and declared that if any person trusted her or gave her credit, he would not pay them. She had not any clothes, and was wholly destitute of necessaries. The goods furnished to her by plaintiff were necessaries, and suitable to the condition of the wife." It was held by the Court "that although the prohibition took effect, and continued in force during the cohabitation, yet such prohibition could not, after the cohabitation ceased, either extinguish or lessen the credit to which the wife was by law entitled, after the husband had turned her away, and refused to maintain her; for the husband, by such conduct, gave his wife such a general credit as amounted to a revocation of the prohibition." That is an exception to the general rule that the wife can bind her husband only by reason of his assent.

If the wife runs away from her husband—elopes with an adulterer—or the husband turns her out of doors on account of adultery, she carries no credit with her. (*Child* v. *Hardiman*, 2 Str. 875.) Nay, even where the husband has wrongfully turned away his wife, if she afterwards commits adultery, she thereby forfeits all claim to be either received or supported by the husband. (*Govier* v. *Hancock*, 6 T. R. 603.) If the husband and wife live separately by mutual consent, the husband is bound to maintain her; but if she has sufficient funds of her own, or if he agrees to make her a sufficient allowance, *and pays it*, his liability ceases. (*Clifford* v. *Layton*, Moody & M. 102; *Nurse* v. *Craig*, 2 New T. R. 148.) Where the husband and wife are separated by a divorce *a mensâ et thoro*, if the Ecclesiastical Court refuses her alimony, this amounts to an adjudication that she has no claim upon her husband, and she has no power to bind him even for necessaries. If alimony is granted, the husband is not liable for her debts, as long as he pays the alimony; but if it is not paid, the power of binding him will be revived. (*Hunt* v. *De Blaquiere*, 5 Bingh. 550.)

In order to constitute an agreement, there must be necessarily a consent on the part of the person who thereby makes himself liable, which consent implies the free exercise of the understanding and the will. Constraint by means of violence is called in our law *duress*; in Latin, *durities*; of which there are two sorts; first, *duress of imprisonment*, where a man is actually deprived of his liberty without lawful warrant or authority; and *duress per minas*, where the hardship is only threatened and impending. You will find duress treated of in 1 Black. 130, and Bacon's Abridg. tit. "Duress." In order to constitute *duress per minas*, there must be a reasonable and well-grounded fear of such violence and injury as the party cannot receive any sufficient atonement for by pecuniary compensation; such as loss of life or limb; but the fear of battery, or being beaten, though never so well grounded, is no duress; nor is the fear of having one's goods taken away and destroyed; because in these cases, though the threat be performed, a man may have satisfaction by recovering equivalent damages. There are not many recent cases with respect to duress, but there is one with respect to duress of goods in *Skeate* v. *Beale* (11 A. & E. 983). One of the defences here was a duress of goods. "The declaration states a distress on lands in the occupation of the defendant, and that the defendant, by writing, in consideration of plaintiff withdrawing the distress, undertook that he would pay the arrears, and in default of his doing so, plaintiff might take steps to recover them; that plaintiff did withdraw the distress, but defendant paid only a part of the arrears."

There is a case of duress in *Duncan* v. *Scott* (1 Campb. 100). There Scott, the master of an American ship, was carried to St. Domingo, was there cast into prison, and threatened with having his ship confiscated, and being himself guillotined, if he did not put his name to a bill of exchange. He signed a bill for 3,000*l.*; he afterwards gave orders to the drawee not to pay the bill when presented; he was himself sued upon the bill in England, and it was held he was not liable to the payee. In ascertaining what degree of terror is sufficient to avoid a contract, our courts followed most implicitly the doctrines found in the compilations of Justinian; where the provisions on this subject are so ample, as to lead us to infer that cases of violence and terror were not of unfrequent occurrence in the tribunals of Rome. (Warnkœnig, *Institutiones*, p. 812: "*Porro et qui metu coactus contraxit* jure *quidem obligatur sed cum nil consensui, tam contrarium est quam vis et metus (quem comprobare contra bonos mores est) exceptione debitor tueri se potest: nec interest utrum a stipulanti, vel ab extraneo metus illatus sit.*" According to the Roman law, a party who has entered into a contract by compulsion is at law liable to an action on his contract; but it is in his power to defeat the action by setting up the violence as a defence; and it is pretty much the same now under the new rules of pleading in this country. In equity, if a man, by compulsion, enter into an act, though the terror was not sufficient to constitute duress at common law, he will be relieved from the contract. (2 Vern. 497.)

Fraud also makes a contract void, both in equity and at law; whether the object of the fraud is to injure the public, or a third person, or one of the parties. Fraud in general is effected either by actual misrepresentation, or by the concealment of some material fact. In one case, where the purchaser of a picture laboured under a delusion with respect to it which materially influenced his judgment, and the owner of it, being aware of the delusion, did not remove it, but suffered him to purchase it while acting under it, the sale was held void. (*Heale* v. *Gray*, 1 Stark. 431.)

If the representation is, in fact, false, but the party believes it to be true, this is no fraud; and the party who makes the false statement is entitled to the benefit of his ignorance. So, if a party who makes a false statement, believing it to be true, is an agent, it has been held that his principal is entitled to the benefit of the agent's ignorance. That has been held in the case of *Cornfoot* v. *Fowke* (E. T. 1840; Law Jour. Rep. 297; 6 M. & W. 358). In this case a house was let. The owner of the house knew that there was a nuisance next door: the person employed to let the house did not know that there was a nuisance next door. On discovering the nuisance, the purchaser wished to set aside the bargain, but it was held that he could not. "To an action for taking a ready-furnished house, the defendant pleaded that the plaintiff caused and procured defendant to enter into the agreement by means of fraud, covin, and misrepresentation of the plaintiff and others in collusion with him; on which, issue was joined. It appeared at the trial that the plaintiff had employed one C to let the house in question, and the defendant being in treaty with C for taking it, asked him 'if there was any objection to the house?' to which he answered that there was not, but it was afterwards discovered that the adjoining house was a brothel, and on that ground he declined to fulfil the contract."

It was held by all the judges, except Lord Abinger, that if an agent "so authorised should enter into an agreement to let the house of his principal, making it part of the contract that the house was free from any particular nuisance, as, for instance, the immediate neighbourhood of a brothel, it is obvious the principal can only enforce the contract, or recover damages for breach of it, by shewing that he was able and willing to do what his agent had contracted to do, that is, to let to the intended tenant the house free from the particular nuisance."

Lord Abinger was of a different opinion. He thought that the contract ought to be set aside on two grounds: first, that the party was answerable for the representations of the agent; and secondly, that by those representations a party had been led into making a contract which he would not otherwise have made (which is very nearly the ground in the last case that I mentioned). The authority of this case, however, has been very much shaken by other cases that have been tried in the Queen's Bench. (*Fuller* v. *Wilson*, E. T. 1842.)

In the case of *Fuller* v. *Wilson*, the Court of Queen's Bench expressed an opinion coinciding with the opinion of Lord Abinger. But the cause was taken by writ of error into the Exchequer Chamber, and the judgment of the Court was ultimately given upon a different point.

It was at one time considered as a rule, both at law and in equity, that intoxication did not avoid a contract, unless it were produced by the circumvention of the other party, so as to constitute a fraud on his part. It has been, however, held in Chancery, that the drunkenness of a party is sufficient to set aside an agreement in three cases; first, if some unfair advantage was taken; secondly, if some contrivance was used to draw the party to drink; or thirdly, if the state of intoxication was so extreme as to deprive him of the use of his reason (2 Kent, 451; *Cory* v. *Cory*, 1 Ves. 19; *Cook* v. *Clayworth*, 18 Ves jun. 12); and now, even at law, a contract will be held void if the party who made it was so drunk that he did not know what he was about, inasmuch as, under such circumstances, he had no capacity to contract. (1 Stark. E. 126; 3 Camp. 33.)

At common law, all simple contracts might be made by word of mouth, or in any other manner by which the intention of the parties could be made known; but in order to prevent the uncertainties attending mere verbal promises, the legislature has thought fit in certain cases that the agreement, or a note or memorandum thereof, should be in writing, signed by the party to be charged therewith, or his agent. Without these formalities, a contract or undertaking cannot be enforced.

These contracts relate chiefly to

An agreement respecting real property.

An agreement not to be performed in a year.

A contract for goods above 20*l.*

An agreement in consideration of marriage; and

Promises to pay money, the payment of which without such recognition or promise would not be enjoined.

An agreement is not completed until the assent of both parties has been given. An offer made by one and not accepted by the other, is not binding on the person by whom it is made, and he is at liberty to retract the offer at any time before it is accepted, and this right is mutual; for, until both parties are agreed, either has a right to be off. When the offer is made by letter, and is within a reasonable time accepted by letter, this acceptance is deemed simultaneous with the offer, and the two communications, taken together, constitute an agreement such as the Court of Chancery will exact, and for the breach of which damages may be recovered in a court of law. (*Kennedy* v. *Lee*, 7 Merivale, 441; *Adams* v. *Lindsell*, 1 B. & A. 686.)

THE CRITIC.

New Books.

The Law Review, No II.

We resume this work. The article on Legal Education abounds in matter that deserves the most anxious consideration of the Profession.

The writer recommends the establishment of a college or colleges for legal education. The following are his

SUGGESTIONS FOR A LAW UNIVERSITY.

1. We have already a great facility prepared for us in regard to the constitution of this University by the ancient establishment of the Inns of Court. The harmonious and cordial co-operation of these venerable societies must be an indispensable condition of this new work. Upon a perfect equality these four

societies must be admitted to concur in regulating the whole affairs of the University; and for this purpose no arrangement appears more desirable than to make the standing council, the executive body, consist in part of the four Treasurers of these societies, who are the heads of these bodies, yearly succeeding to office by rotation. But there ought also to be a more permanent portion of the executive body; and for this purpose it seems fit that the four Inns should choose two, irremovable except by the majority of the Inns, and that the judges should name a President, to hold his office for a year, but to be indefinitely re-eligible. The whole executive council would thus consist of seven members, and its rules and regulations should have the force of laws, and bind the University in all respects.

The delivery of lectures would be a part of the scheme, and for providing funds recourse must be had to the revenues of the different societies, and as these are administered by the benchers of each, the council would demand, and the benchers grant, such supplies as the services to be performed might require. For building, at least at first, no expense need be incurred. Lincoln's Inn Hall would suffice as soon as the Chancery sittings were removed to the new building; and if any inconvenience should be found from the conflict of hours, the other Inns could easily furnish accommodation. But it is extremely desirable that the whole course should be conducted in the same place; and this may well be arranged by the different classes meeting, one before the sitting of the courts, one after their rising and before dinner, and two in the evening. We shall presently see that four classes a day would be sufficient, and for each an hour and a half should be allowed, to admit of examinations and exercises.

For the salaries of the Professors, a yearly sum should be allotted, to be distributed among the four societies, and to be granted permanently by the benchers of each. But a due regard must be had to the necessity of making the professors depend upon the fees of their students for a considerable proportion of their emoluments. This is necessary in order to encourage active exertion. A salary of three or four hundred a year to each professor would not be too great; and the funds of the societies could well afford it.

2. The choice of the professors should be vested in the council, and each should hold his office subject to removal, provided that five out of seven, including the three more permanent members of the council, agreed to displace. The professors should have one of their number in rotation to exercise the functions of their chief, or dean, and who should in that capacity be bound to attend all meetings of the council as an assessor, whensoever he should be required, either at his own desire, or at the desire of the council.

It would be necessary to have three chairs or classes and advisable to have four. There must be one of common law, one of equity, one of conveyancing, by means of which last the common-law professor would be enabled to pass more lightly over the law respecting real property. But it would be most desirable to add a fourth, of general and comparative jurisprudence, and of civil law and the law of nations. A course of legal education cannot be regarded as perfect which leaves out these subjects. We have great doubts if equity can alone furnish out a class; while common law would be too heavy, including as it does criminal law and actions, were it not relieved by the conveyancing class. But perhaps the equity professor might teach the matters required for practising in the House of Commons' committees, and even the *practice* in courts of appeal; or he might undertake bankruptcy and insolvency.

It is well worth considering, whether subsidiary instructions might not also be given in special pleading and in practice, separately from common law. These subjects lie within a narrow compass, and could be treated of either by the common-law professor, or by a pleader under his superintendence.

There is no doubt that the University must be thrown open to all practitioners, to barristers as well as students, to attornies and their clerks as well as to barristers, to civilians and proctors as well as common-law lawyers or common-law students. Any exclusion indeed would be not only invidious but impossible.

The only question is, whether any share in the government of the University should be given to attornies and solicitors. As a good understanding between the different branches of the profession is in an eminent degree desirable, being greatly for the benefit of each, there seems no harm in allowing an eighth member to be added to the council, the head of one of the Inns in Chancery, *taken in rotation*, or *one yearly elected* by the three heads of these Inns. This would be agreeable to that branch of the profession, and would be also of great use in the conduct of the University's affairs.

A question may arise, if this University ought to grant degrees of bachelor of laws. It is not very material. But one thing seems clear: a certificate of two years' attendance at different classes being given by the professors respectively, and also a testimonial of good conduct, ought to have the effect of saving the party from two of the five years required by three of the societies(a) previous to admission as a barrister. At present the degree of master of arts at Oxford, Cambridge, or Dublin, wholly unattended with a certificate of ability, and without any regard to legal education at all, saves these two years at all the Inns of Court. Yet the being a Scottish barrister has no such effect. There is in this a great inconsistency, which the benchers might in each Inn easily remove, and the certificate above proposed appears to be the proper course.

How far certificates of study should be made necessary to being admitted barristers is scarcely a question. Either such certificates or actual examination seems to be indispensable, else the establishment of a University would be a mere form. Perhaps the best course would be, considering the intimate connection between the proposed institution and the four societies, to leave the regulation of this important and delicate matter to the deliberations of the council. Such are our opinions upon this subject; all which is respectfully submitted to the bench, the bar, and the public.

We must add this very interesting

MEMOIR OF THE LATE RIGHT HON. SIR JOHN BAYLEY, BART.

Amongst the zealous and deserving servants of the public, the late Sir J. Bayley must be considered as holding a distinguished place. Having been raised to the Bench at a then unusually early period of life, he continued his useful and honourable labours for upwards of twenty-five years: nor were they at last interrupted by any wish for retirement or love of ease, but by the pressure (not so much of age as) of infirmities, which rendered that retirement inevitable.

About the time of his appointment, a most objectionable practice had prevailed of selecting for judges men who ought rather to have been receiving the reward of past services, than entering upon the performance of them. The late Mr. J. Chambre and Mr. B. Wood, though most eminent for their legal attainments and knowledge, were called to the exercise of their most weighty and responsible duties after the age of sixty. Mr. J. Burrough was appointed at a much later period of life, and the Lord Chief Baron Alexander, when seventy years old,—and, moreover, after having been removed from practice in any court for not less than twelve years. In truth, an opinion seemed to have grown up that the proper time for bringing men into the public service was, when individuals began to entertain suspicions of decline, and, for that cause, to entrust their business to younger hands. The case of Sir J. Bayley, as has been already observed, and will appear, when we come, in order, to notice the precise date of his elevation, was an exception to this absurd and vicious rule,—the more obviously absurd, when it is recollected that what Cicero says of an orator is true of a judge—the duties require the possession "laterum et virium."

Sir J. Bayley was of a highly respectable family upon the confines of the counties of Huntingdon and Northampton—Bayley of Elton; his mother (a Kennett) being descended, in a direct line, from Kennett, Bishop of Peterborough. John was the second son: and his position, therefore, pointed him out for a life of employment. His original destination was the Church, and he was placed upon the foundation at Eton, in the hope of being drafted off to King's College, Cambridge. In this hope, however, he failed, and the disappointment extended to after life, not merely from his preference to the Church, but from a belief which he entertained, that his advancement would have been greater in the profession of his choice, than in that which he was driven to pursue.

Upon his being superannuated (as it is called) at Eton, he was sent at once to the law, and commenced his career by entering, or, as the phrase is, having the run of the office of Mr. Lyon, an attorney, for a year. He then entered at Gray's Inn, and was two years in the office of Mr. Lamb, a special pleader, who went the Northern Circuit for many years, and was the friend, and nearly the contemporary of Chambre and Wood. He then, according to the prevalent usage, commenced practice on his own account with considerable success. In Easter Term, 1793, he was called to the Bar with such indications of advancement, that, in Trinity Term, 1799, he, together with Mr. Serjeant Lens, took the degree of the Coif. His business then consisted chiefly of legal arguments —business which, although not of the most showy, or, as it is called, leading description, is, nevertheless, best calculated to improve the lawyer; and the manner in which he acquitted himself attracted the notice of those whom it concerned; for, in May, 1808 (then in his forty-fifth year), he was appointed a judge of the King's Bench, in which he remained till November, 1830, when he was removed to the Court of Exchequer, and, at the end of Hilary Term, 1834, he resigned—having completed the unusually long period of twenty-six years, within three months, of judicial service. Having been created a Privy Councillor and a Baronet, he died in October, 1841, and was succeeded in the title by his eldest son, Sir John Bayley, the present baronet.

The industry which distinguished Sir J. Bayley at the bar did not forsake him when he was raised to the bench. Amidst his various occupations as a judge, he never failed (as had long been his habit) to abstract and index every reported case. We mention this chiefly as a proof of his labour and pains-taking. It has been said, however, that this "repertory of easy reference" was found of much use, especially in the latter part of the time of Lord Ellenborough. For himself, although when composing judgments (in which, it is understood, he had a large share) he might wish to know where every thing was to be found on the subject, it was a common remark that he did best when he trusted most to himself; this was certainly most true when he was sitting at Nisi Prius. With respect to his conduct towards his brethren on the bench, it appeared always of that useful and unpretending kind, which exhibits an anxiety to forward the general business of the court, without any affectation of shining or display. As to his deportment, generally, towards the whole Profession, and the opinion entertained of him, all comment is superfluous when we bear in mind the regret with which his departure from the King's Bench to the Exchequer was attended, and the sincere expression of admiration of his many most valuable qualities then conveyed to him; than which it is impossible to conceive a more authentic and honourable testimonial.

In points of practice, a very necessary, though not the most attractive part of legal lore and labours, Sir J. Bayley was absolutely unequalled. The clearness and certainty with which he disposed of questions of this sort was so great that people were half persuaded to believe that there must be something of system and principle in it. The late Mr. B. Bolland, when at the bar, used to observe, that no man living ever pretended to venture a guess, when "a trial had been lost," except Bayley.

As a judge presiding at Nisi Prius, Sir J. Bayley had many qualities of great importance and value. His knowledge of all the details of business belonging to both branches of the Profession (thanks, perhaps, to the first part of his legal education) was remarkably extensive and accurate. His apprehension of the evidence, as it was given, was very clear, and, until his infirmities began to appear, his notes (rapidly taken) full and satisfactory; though, for some cause or other, he chose a little duodecimo volume, in which nobody but himself could have written at all. In one particular, requiring no ordinary grasp and comprehension of mind, he was never surpassed: written documents, generally, including deeds of any length and complexity, were explained by him, and their peculiar bearings pointed out to the jury in a manner the most luminous and intelligible. For this cause, or, perhaps from his high estimate of the value of written evidence, he always seemed to feel, and often expressed great satisfaction, when the parties had fixed themselves by indelible black and white.

In his management of parol testimony he was not always equally successful—and that, not from any want of apprehension or sagacity, but owing to the goodness of his own disposition, and his too favourable opinion of human nature. Fully sensible of the most pernicious tendency of perjury (as, indeed, who is not?) and the heinousness of the offence, he was, and, probably, for that reason, somewhat sceptical as to the frequency of its existence, which, from sad experience, we know to be too certain. When contradictions were staring each other in the face, he would sometimes torture his faculties in an attempt to reconcile them; and, in so doing, would have recourse to suppositions sufficiently arbitrary and far-fetched, when the simple solution, that one or both of the contending parties were "bearing false witness" would have been nearer the truth.

In the conduct of criminal business, Sir J. Bayley was above all praise. The *suaviter in modo* was never put in practice more uniformly or successfully. If he had studied (as perhaps he had) the wise and dignified remarks of Don Quixote to the supposed governor of Barataria, when about to enter upon his office, ever so attentively, he could not have acquitted himself better. The unhappy culprit could not but feel that he was treated, not only with fairness, but indulgence. The story, a thousand times repeated, and as often disbelieved, that the stolen property was found in a ditch by the highway, or in a footpath over a field, was listened to without any symptoms being betrayed of that entire incredulity with which the narrative was attended. The result, as to conviction and penal example, was, of course, precisely the same, whilst the effect produced upon those who were witnesses of such demeanour, was to increase and fix their attachment to the laws of their country. Sir J. Bayley, though of a tender and kindly nature, did not shrink, when the occasion required it, from the performance of that stern and awful duty which necessity imposed upon him: it has been said, however, that he would sometimes retire to his chamber, there, by prayer and supplication, to bring himself to a state of due humiliation, when about to exercise the tremendous power entrusted to him over the life of a fellow-creature.

We have adverted to the beneficial effect which the judicial conduct of Sir J. Bayley was calculated to

(a) In the Middle Temple, we believe that three years are now sufficient, provided the person to be admitted is twenty-three years of age.

produce. We consider it, however, as an instance only (though a favourable one undoubtedly) of what is continually going on, in a greater or less degree, from the same cause. In no respect does the working of the constitution appear in so favourable and attractive a shape as in the administration of justice, and especially that part of it which, at certain intervals, circulates throughout the country. In other respects the great body of the people do not see much to approve of or admire. Certain apartments in Downing-street, and even the occupants of them, of whatever party (for with that we do not meddle) excite little interest or attachment. The periodic time of the tax-gatherer has no charms; and even the pomp and parade with which Majesty is occasionally exhibited, dazzle but for an hour, leaving, perhaps, some sore and half-angry feeling occasioned by the inequality of human condition, which accident and not merit has produced. The very immunities and privileges, which, by those who reflect justly, are recognised as the indicants and accompaniments of good government, are in their nature negative; the absence of vexation or oppression. Men who have been long in the enjoyment of this habitual freedom, no more think of inquiring into the causes of it, than they do of examining the component parts of the air they breathe; they soon fall into the lazy and inconsiderate enjoyment of undisturbed possession.

But with the administration of justice it is otherwise. Though recurring at stated and not distant periods, there is enough of novelty to create an immediate though temporary interest, and to excite attention; and if the agents employed on these occasions are enabled to produce a favourable opinion of their conduct throughout the country, they are at the same time conferring a lasting benefit upon the government which they represent in one most important particular. There were persons who affirmed at the time that the acquittal of Tooke and Hardy saved this country from revolution. We do not say that the circuits of the judges create an attachment to the constitution of their country, but, assuredly, they increase it. We are not indiscriminate panegyrists of the judges, nor do we mean to insinuate, that they all deserve the encomiums bestowed upon Sir J. Bayley. In natural abilities in legal and other acquirements so necessary,—in manner, temper, and demeanour they must differ;—how should it be otherwise? But they have one common and prevailing recommendation; one never-failing passport to the respect and esteem of the country,—a firm belief of, and confidence in their fairness and impartiality, and that, if any be committed, they are errors of inadvertence and not of design.

If these observations upon the general estimation of the judges and their services be well founded, a slight—to say no more—with which the whole body was recently treated, must occasion some surprise, if not regret. We allude to the rank conferred upon the two additional Vice-Chancellors, and in these remarks we are, of course, to be understood as intending nothing uncourteous to the very eminent and respectable individuals who were appointed, and who could have no concern in the transaction. But the office!—an office which, until tried, could have no peculiar claim to distinction, but possibly might earn it, —an office of somewhat doubtful expediency and precarious existence,—an office with no prejudice in its favour, but, on the contrary, connected with the most unpopular of all our civil institutions! Unceremoniously to lift the new possessors of this office of yesterday over the heads of the old established magistracy, "the judges of the land," their seniors in standing,—the judges entrusted with the administration of the common law, the favourite of the people of England,—the judges, who, by virtue of the queen's commission, with which they are sent out, actually take precedence of every subject of the realm, does seem to have been a step which, unless called for by some inevitable necessity, was inconsiderate and improper.

We cannot conclude this article without making some remarks, addressed especially to those who are entering upon the profession of the law. The career of Sir J. Bayley must, of course, be considered as successful. It is true that he probably felt a certain degree of mortification when Lord Tenterden, then a junior judge of the King's Bench (by a precedent, without reference to him, of a very questionable tendency) was raised over him, to the Chief Justiceship of that Court; and some also, perhaps in a less degree and certainly with less reason, when Lord Lyndhurst was created Lord Chief Baron, he (Sir J. Bayley) then being the senior judge of the Exchequer. Yet his was a case of success obtained by industry and perseverance, in his instance not tardily rewarded; we say by industry, for he was not distinguished by any marked superiority of powers of speech, which, other things being equal or nearly so, must necessarily lead (and what wonder?) to reputation and ascendancy. There was in him nothing like distressing superiority to depress and discourage, but every thing to encourage hope and animate exertion. "Go and do likewise," may well be said, without any violence to probability, to every young man of fair abilities and resolute application. Instances there are, undoubtedly—unfortunate instances of failure; most of the cases, however, we suspect, admitting of some particular explanation and solution. As a general rule we affirm, as the result of much observation, that a fair share of attention and attainment does, in the law, with reference to other professions and employments, produce a reasonable return and compensation. Be it, however, that success is uncertain and the pursuit difficult! what is there excellent of which the same thing may not be said?—what science or art worth knowing that can *easily* be acquired?—what pursuit, in short, by which men can make "sui memores alios," except upon the condition attached to it by the philosophical poet, "*merendo!*" Let not our youthful readers deceive themselves. there is no royal road to distinction. Superiority cannot be begged or borrowed; it must be earned. And if men have been found of that "clear spirit" which can "scorn delights, and live laborious days," with no expectation of present honour or advantage, but fed by the reversionary hope of a splendid immortality;—how much more may exertion be expected, when the prize to be contended for is not dimly seen in obscure, because distant, perspective, but is set directly before the aspirant, and, as it were, within his grasp.

NECROLOGY.

We regret to announce the death, after a few [illegible] illness, of Mr. Charles Edwards, of the Inner Temple, barrister-at-law. He died on Thursday night, at his chambers in Paper-buildings, [illegible] by all his friends and acquaintance, [illegible] him doubted but [illegible] his life been spared he would have been an ornament to the profession to which he had long devoted his time and attention.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for [illegible] of the above is 5s.]

BIRTHS.

SAMSON.—On the [illegible] Hall, in the county of Cornwall, the lady of [illegible] esq. Solicitor, of a son.

YARDLEY.—On the [illegible] the lady of Edward Yardley, esq. of Serjeant's [illegible] daughter.

MARRIAGES.

GIBBONS, J. [illegible] of the Inner Temple and Lincoln's Inn, second son of John [illegible] esq. late of Horsenden-house, Bucks, to Julia [illegible] second daughter of the late Rev. G. W. Hall, D.D. Master of Pembroke College, Oxford, and Canon of Gloucester on the 25th inst. at Holy Church, Oxford.

SOLLY, Thomas, esq. Barrister-at-Law, of the Middle Temple, to [illegible] only daughter of Hollis Solly, esq. on the 24th inst. at Essex-st. Chapel.

DEATHS.

BLISS, Edward, esq. of Brandon-park, in the county of Suffolk, [illegible] High Sheriff and Magistrate of the same county, on the 17th inst. at his town residence, Berkeley house, [illegible], aged 7[illegible].

BEST, George Nathaniel, esq. senior bencher of the Middle Temple, on the [illegible]th inst. at his house in Welbeck-st. Cavendish square, [illegible] 76.

DOWNES, [illegible] wife of William Downes, esq. solicitor, on the 25th inst. in [illegible].

PORTMORE, [illegible], Countess of, relict of the late Earl of Portmore, on the 20th inst. at Bath, aged 69.

POTTER, Sir Thomas, Knt. justice of the peace for the county of Lancaster and alderman of the borough of Manchester, on the 20th inst. at his residence, Buile-hill, near Manchester, aged 71.

TRAVIS, Dorothy, relict of the late [illegible] esq. for many years Deputy Recorder and Town Clerk of Scarborough, on the 16th inst. at Scarborough, aged [illegible].

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . . [illegible]s.
For every succeeding 30 words . [illegible]

PURCHASE OF THE MANCHESTER MANORIAL RIGHTS BY THE CORPORATION.—The corporation of this town have completed negotiations with Sir Oswald Mosley, Bart. for the purchase of the manorial rights of the town, which are estimated to be worth 218,7[illegible]. The average proceeds for the last few years have been 9,[illegible]l. 1[illegible]s. 9d. arising from tolls, properties, &c. The council after mature deliberation, have agreed to pay Sir Oswald Mosley the sum of 200,000l. for the whole of his manorial rights and properties, and to mortgage them for the interest of the amount, which is to be paid at the rate of 3½ per cent. per annum. They have also agreed to pay off the principal by instalments of not less than 4,000l. and of not more than 6,000l per annum. By this arrangement it is calculated that the tolls, chief rents, &c. will realize 1,000l. a year more than the sum required to pay the interest. How far these anticipations may be realized is very doubtful. It is worthy of remark, however, that in the year 1808 the proceeds of the Manchester manorial rights were 2,800l. whilst in 1844 they amounted to upwards of 10,000l.

RAILWAYS.

Railway Department, Board of Trade,
Whitehall, March 21, 1845.

Notice is hereby given, that the Board constituted by Minute of the Lords of the Committee of Privy Council for Trade, for the transaction of Railway business, having had under consideration the under-mentioned railway schemes, have determined on reporting to Parliament in favour of the

Aberdare,
Brighton, Lewes, and Hastings—Keymer Branch,
Cockermouth and Workington,
Dunstable, London, and Birmingham.
Erewash Valley,
Manchester, Sheffield, and Midland Junction,
Newark and Sheffield,
North Wales Mineral Railway—Extension,
Preston and Wyre — Lytham and Blackpool Branches,
Shrewsbury, Oswestry, and Chester,
Sunderland, Durham, and Auckland,
Wear Valley,

and recommend the postponement until a future period of the

Ely and Bedford,
Launceston and Tavistock,
South Devon and Tavistock.

DALHOUSIE.
C. W. PASLEY. G. R. PORTER.
D. O'BRIEN. S. LAING.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols ...	99¼	99¼	99⅝	99⅞	99⅝	99¾
Three per Cents. Reduced ...	100⅛	100⅛	100⅛	100	100	99⅞
New Three-&-a-quarter per Cts	103⅛	103⅜	103	103¼	103¼	103¼
Long Annuities ...	12⅛	12⅞	12¼	12⅛	12⅛	12⅛
Bank Stock ...	216½	216	217½	217	217	217
India Stock ...	281	282	282	282	282½	282¾
India Bonds, prem. ...	79	73	72	72	72	71
Exchequer Bills, prem. ...	66	67	65	59	58	57
FOREIGN.						
Spanish Five per Cents ...	30¼	30¼	30⅞	30½	30¼	30¼
Spanish Three per Cents. ...	40½	40⅝	40¼	40⅝	40⅝	40⅝
Russian ...	119½	117½	119⅞	119½	120	119⅞
Peruvian ...	27	27	27½	28	29	29
Portuguese ...	66¼	68	69	69	69¼	65¼
Mexican ...	36¼	36¼	36¼	36¼	36¼	36¼
——— Deferred ...	16½	16⅞	16¼	17¼	17⅞	17
Dutch Two-and-a-Half per Cents...	61¾	63⅝	63¼	63½	63½	62¾
——— Four per Cents. ...	99¼	99¼	99¼	99¼	99¼	99¼
Danish ...	91	90¼	91	91½	91½	91
Colombian ...	11¼	11½	14¼	14⅝	14⅛	15⅜
Chilian ...	102½	101½	101½	102	102	102
Buenos Ayres ...	43½	41	43½	43½	43½	43
Brazilian ...	91	92	90½	91	91½	92
Belgian ...	101½	102	101⅛	101½	101½	103

THE GAZETTES.

AMOUNT OF DIVIDENDS.

The sum stated as the Dividend, means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, March 17.

Kipling and *Co.* warehousemen, last exam. of Kipling, April 29.—*Sedman*, J. colour merchant, div. next week. Groom, London.

Tuesday, March 18.

Hamm, S. silk hat manuf. last exam. April 2.—*Miller*, J. bootmaker, last exam. April 18.—*Richardson*, J. bootmaker, last exam. April 8.—*Stringer*, J. R. clothier, final div. next week. Turner, London.—*Wehnert*, H. tailor, last exam. passed.—*Welsh*, W. I. attorney, div. next week. Johnson, London.

Wednesday, March 19.

Clay, [illegible] draper, div. next week. Johnson, London.—*Warner*, S. bricklayer, last exam. May 14.—*Weston*, T. [illegible] April 23.

Thursday, March 20.

Nolnuen, W. pianoforte maker, div. next week. Turner, London.—*Rugg*, S. carpenter, last exam. passed.

Saturday, March 22.

Hurd, [illegible] china dealer, assignees, May 5.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bates, W. H. factor, second, 6d. Christie, Birmingham.—*Bulmer*, T. rope manuf. first and final, 6s. 2½d. Baker, Newcastle.—*Dobson* and *Co.* carpet manuf. first, 3s. 4d. to new proofs, and second, 2½d. Valpy, Birmingham.—*Fisher*, F. linen draper, 5s. to new proofs. Freeman, Leeds.—*Glazebrook*, J. carpenter, first 6d. Valpy, Birmingham.—*Goren*, J. scrivener, second, 4d. Edwards, London.—*Green*, T. W. bookseller, first, 5s. Young, Leeds.—*Harriot*, G. brewer, second, 1s. 7½d. Morgan, Liverpool.—*Hayton*, J. ship owner, first and final, 1s. 11d. Baker, Newcastle.—*Heywood* and *Co.* warehousemen, final, 1½d. Pott, Manchester.—*Lister*, J. C. wine merchant, first, 1s. 6d. to new proofs.

Valpy, Birmingham.—*Miller*, T. baker, first, 1s. 4d. Edwards, London.—*Milner* and Co. confectioners, final, 2s. 6½d. first and final sep. 2l. 20s. and second-sep. of 3. 4s. Hope, Leeds.—*Newton* and Co. engineers, first, 4s. 6d. Edwards, London.—*Penton*, J. ironmonger, first, 1s. 8d. Edwards, London.—*Richardson*, W. glass manufacturer, first, 1s. Baker, Newcastle.—*Sargent*, J. N. grocer, first, 5s. 6d Valpy, Birmingham.—*Sedgley*, S. grocer, first, 1s. 10d. Valpy, Birmingham.—*Smith*, R. attorney, third, 6d. Christie, Birmingham.—*Thelwell*, R. silversmith, first and final, 4s. 4d. Pott, Manchester.—*Thorn*, T. G, builder, first, 6s. 2d. Graham, London.—*Whitehead*, J. brewer, first, 9½d. Pott, Manchester.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, March 21.

Bywater, R. grocer, Coventry, Jan. 28. Trusts. J. Dobson, hop merchant, St. Thomas's-st. Southwark. T. Ridgway, tea dealer, King William-st. and R. K. Rotherham, esq. Coventry. Sol. Davis, Coventry.—*Campion*, C. tailor, Hull, March 10. Trusts. J. Jones, jun. and J. Addison, woollen drapers, both of Hull. Sol. Wells, Hull.—*Chaloner*, E. widow, Worksop, March 18. Trusts. T. Chaloner, farmer, Whitwell, and J. Durham, miller, Worksop. Sol. Wake, Worksop.—*Goddard*, C. carman, Great Pulteney-st. March 15. Trust. J. Llewellin. gent. Highgate. Sol. Llewellyn, Noble-st. Cheapside.—*Peters*, J. fancy trimming manufacturer, Kent-st. Haggerston, Jan. 22. Trust. W. Fisher, silkman, Union-court, Wormwood-st. Sol. Hudson, Bucklersbury.—*Tew*, J. linen draper, Uxbridge, March 1. Trusts. J. and J. Johnson, linen drapers, Watford and Rickmansworth. Sol. Fellows, Rickmansworth.

Gazette, March 25.

Smith, R. H. draper and grocer, Saltfleet, Lincolnshire, March 20. Trusts. J. Smith, schoolmaster, Saltfleet, and R. Rhodes, cordwainer, Tathwell. Sol. Lucas, Louth.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, March 21.

CARTER, GEORGE JOHN, carpenter and builder, Hornsey-cottage, Hornsey-road, March 28 and May 2, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Chambers, Basinghall-st. sol. Date of fiat, March 19. Bankrupt's own petition,

FERGUSON, WILLIAM, draper and tea dealer, Liverpool, April 4 and May 2, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Wilkin, Furnival's-inn, and Wardle, Liverpool, sols. Date of fiat, March 11. Bankrupt's own petition.

FULLJAMES, ALFRED VINCENT, auctioneer, appraiser, house and general agent, and broker, No. 21, Bridewell-lane, Bath, April 7, at one, May 2, at eleven, Bristol, Com. Stephen; Kynaston, off. ass.; Gray, Bristol, sol. Date of fiat, March 15. Bankrupt's own petition.

GROUND, PHILIP, tallow chandler, Donnington, Lincolnshire, March 28 and Aptil 28, at two, Basinghall-st Com. Evans; Bell, off. ass.; James and Son, Ely-place, sols. Date of fiat, March 11. C. J., W., T. and T. Jones, jun. merchants, Leadenhall-buildings, pet. crs.

HONE, WILLIAM, coach proprietor and porter merchant, 4, King-st. Reading, March 31, at half-past one, May 2, at half-past eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Webb, Lad-lane, sol. Date of fiat, March 19. Bankrupt's own petition.

LORIERE, Baron VERNEUIL DE BEAULIEU, soap manufacturer, Regent's-terrace, Commercial-rd. East, March 28, at eleven, April 30, at two, Basinghall-st. Com. Evans; Johnson, off. ass.; Barron and Cullen, Bloomsbury-sq. sols. Date of fiat, March 5. H. C., J., and J. N. Carter, cabinet-makers, High-st. Poplar, pet. crs.

MACHU, JAMES LEWIS, silk trimming manufacturer, Macclesfield, Chester, April 1, at half-past one, May 2, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Cox, Pinners'-hall, sol. Date of fiat, March 10. W. Scott, silk dealer, Great Winchester-st. pet. cr.

MILWARD, THOMAS, miller, Nottingham, April 1 and 29, at one, Birmingham; Valpy, off. ass.; Shilton and Son, Nottingham, sols. Date of fiat, March 7. J. Severn, gent. Nottingham, pet. cr.

ROBINSON, WILLIAM HENRY, wine and spirit merchant, Leicester, April 5 and May 9, at one, Birmingham; Christie, off. ass.; Dimmock and Burbey, Sise-lane, and Ludlow, Birmingham, sols. Date of fiat, Feb. 26. S. Vincent and C. Pugh, wine merchants, Rood-lane, London, pet. crs.

ROBINSON, THOMAS lime burner, rope manufacturer, carrier, flat or barge and ship owner, Eccleston, near Prescot, April 2 and May 3, at eleven, Liverpool, Com. Phillips; Casenove, off. ass.; Norris and Co. Bartlett's-buildings, and Taylor, St. Helen's, sols. Date of fiat, March 19. Bankrupt's own petition.

SMITH, CHARLES, and CHAPMAN, EDWARD JOHN, civil engineers, Bradford and Birkenhead, April 2 and 21 at eleven, Leeds, Com. West; Freeman, off. ass.; Sudlow and Co. Chancery-lane, and Lee, Leeds, sols. Date of fiat, Feb. 27. W. Barker, publican, Bradford, pet. cr.

SWEENY, CHARLES STEWART, apothecary, 11, Chester-pl. Hyde-park-sq. March 31, at two, May 5, at two, Basinghall-st. Com. Goulburn; Fallett, off. ass.; Wade and Pennington, Frederick's-pl. Old Jewry, sols. Date of fiat, March 14. Bankrupt's own petition.

TURNER, HENRY, cowkeeper, Theobald's-road, Bedford-row, March 28, at half-past one, April 30, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Messrs. Robinson, Queen-st.-pl. Upper Thames-st. sols. Date of fiat, March 18. J. Creed, lighterman, Great Hermitage-st. St. George's East, pet. cr.

WOOLFALL, RICHARD, butcher, Warrington, Lancaster, April 3, at one, April 24, at twelve, Manchester; Hobson, off. ass.; Sharpe and Co. Bedford-row, and Rowe, Liverpool, sols. Date of fiat, March 14. Bankrupt's own petition.

Gazette, March 25.

[illegible], JOHN, wine and spirit broker, Great Tower-st. London, April 4 and May 9, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Treherne and White, Barge-yard-chambers, sols. Date of fiat, March 24. E. G. Godsell and F. G. Godsell, wine agents, Great Tower-st. pet. crs.

COFFEE, MATTHEW, victualler, Liverpool, April 4 and May 2, at eleven, Liverpool, Com. Ludlow; Bird, off. ass.; Holme and Co. London, and Baker, Liverpool, sols. Date of fiat, March 15. W. Davis, and R. Stanton, his partner, wine merchants, Liverpool, pet. crs.

HODGES, WILLIAM, hide and skin dealer and salesman, King's Head-yard, Duke-st. Bloomsbury, April 1, at one, May 2, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Dale, Furnival's-inn, sol. Date of fiat, March 20. F. R. Smith, gent. Barnard's-inn, pet. cr.

JARMAN, WILLIAM ELWORTHY, confectioner, High-st. Exeter, April 4, at one, May 1, at eleven, Exeter, Com. Bere; Hernaman, off. ass.; Stogdon, Exeter, and Keddell and Co, Lime-st. sols. Date of fiat, March 14. J. C. Wilcocks, linen draper, Exeter, pet. cr.

JONES, JAMES, fellmonger, Chester, April 3 and May 1, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Bridger and Blake, London-wall, Dodge, Liverpool, and Grocott, Liverpool, sols. Date of fiat, March 17. S. Lord and C. Reinhardt, wool dealers, Liverpool, pet. crs.

LEDIARD, WILLIAM, coach proprietor, Watling-st. Wellington, Salop April 11, at eleven, May 9, at half-past eleven, Birmingham; Valpy, off. ass.; Harrison and Smith, Birmingham, sols. Date of fiat, March 17. H. Hemming, coachman and shopkeeper, Wellington, pet. cr.

MARTYN, CHARLES, linen draper, Durham, April 10 and May 8, at one, Newcastle Com. Ellison; Baker, off. ass.; Abbott, Charlotte-st. Bedford-square, Thompson, Durham, and Messrs Bennett, Manchester, sols. Date of fiat, March 12 J. C. Taylor, H. Humphrys, and J. Hurst, merchants, Manchester, pet. crs.

MAY, SAMUEL, watch manufacturer, 51, Myddleton-st. Clerkenwell, April 11, at one, May 6, at half-past twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Thwaites, Lyon's-inn, Strand sols. Date of fiat, March 20. S. Saltmarsh watch-case manufacturer, 74, Myddleton-st. Clerkenwell, pet. cr.

OVEREND, THOMAS, maltster, scrivener and attorney, Walcot-sq Surrey, April 4, at two, May 7, at twelve, Basinghall st. Com. Evans; Bell, off. ass.; Milne and Co. Temple, sols. Date of fiat, March 24. J. Hanson, draper, Staindrop and W. Brunskill, surgeon, Staindrop, executors of C. Howe, deceased, pet. crs.

RIXY, JOHN, merchant, Liverpool, Lancaster, April 11, at eleven, May 9, at twelve, Liverpool, Com. Ludlow; Turner, off. ass; Bridger and Blake, London-wall, and Dodge, Liverpool, sols. Date of fiat, March 17. D. Baugh, cigar manufacturer, Liverpool, pet. cr.

ROBINSON, BENJAMIN, draper, Burton-upon-Trent, Stafford April 5, at half-past eleven, May 9, at eleven, Birmingham; Christie, off. ass.; J and J. Richardson, Burton-upon-Trent, sols. Date of fiat, March 18. E. Buck, widow, Burton-upon Trent, pet. cr.

PARTNERSHIPS DISSOLVED.

Gazette, March 18.

Auston, W. H. and *Tinkler*, W. G. custom-house agents, Harp-lane, Lower Thames-st. Mach 8.—*Bindley*, G. and J. haberdashers, Coventry, Dec 23. Debts paid by G Bindley. —*Broad*, P and J tallow melters, Brighton, Feb. 22.—*Butler*, J. L. and *Paton*, W. coal merchants, Liverpool, March 15 Debts paid by Butler.—*Cowling*, J. and *Peacock*, A. silkmen, Spital square, March 15. Debts paid by Cowling. —*Darby* J. *Higgs*, J. and *Pickering*, T. coal masters, Kingswinford, so far as regards Pickering, March 7. Debts paid by Darby and Higgs.—*Dean*, T. W. and *Law*, E. artists, Nicholas-lane, March 18.—*Dobson*, J. and *Nixson*, C. marble dealers, Dent, Yorkshire, Jan. 22.—*Dyer*, J. and *Culliford*, H. drapers, Banwell, March 15. Debts paid by Dyer.—*Eyre*, C. C. and *Burge*, F. J. surgeons, Hammersmith, March 17. *Freeman* G. and *Beesley*, T. B. nail factors, Birmingham, March 13.—*Greenhow*, T. E. and *Huntley*, R. E. ship brokers, Newcastle, March 15.—*Hanney*, T. and *Hinton*, T. contractors and excavators, Bradford, March 10.—*Hawkins*, J. *Cooper*, J. and *Fieldhouse*, W china manufacturers, Stoke-upon-Trent, so far as regards Cooper, March 15. Debts paid by the remaining partners.—*Knapp*, J. *Bray*, W. and *Edmonds*, H. clothiers, Bradford, March 13.—*Phillips* E. and *Farenc*, A. G. wine merchants, Lower Thames-st. March 17.—*Prichard*, J. and B. A. and *Railton*, J. timber dealers, Liverpool, so far as regards J. Railton, March 13. Debts paid by the remaining partners. —*Reed*, W. and *Taylor*, R. linen drapers, Brunswick-parade, Islington March 15.—*Reynolds*, G. and S. corn dealers, Salisbury-st. Lisson-grove, March 14. Debts paid by G. Reynolds.—*Sanderson*, T. and *Cook*, H J. coal merchants, Liverpool, March 14. Debts paid by Sanderson.—*Toft*, A. and *Austin*, J engravers, Shelton Potteries, Feb 25—*Woollright*, H. and *Pearson*, J. linen drapers, Canterbury, March 15.—*Townley*, W and R. and *Cartwright*, W. H. cotton spinners Blackburn, March 14. Debts paid by W. Townley. *Wessel*, C. R. and *Stapleton*, F. importers of foreign music, Frith-st. Soho, March 17. Debts paid by C. R. Wessel.

Gazette, March 21.

Ayres, J. and P. builders, Dover, March 3.—*Bishop*, J. J. and A. J. London, so far as regards A. J. Bishop, March 1.—*Bryant*, E. and *Brown*, J. H. bonded store merchants, Bristol, March 17. Debts paid by Bryant.—*Curtis*, T. sen. and jun., R. L. and E C., builders, Westham, March 17. Debts by Thomas Curtis and Thomas Curtis, jun.—*Fenton*, C. E. and T. proctors, Great Carter-lane, March 17—*Gardner*, E. T. *Naylor*, J and T. cotton spinners, Preston, so far as regards James Naylor, March 17. Debts paid by the remaining partners.—*Greensted*, S. *Flagford*, M. A. and C. dress makers, Crawford-street, March 17.—*Haddock*, W. and J. and *Clay*, J. retail ironmongers, Sunderland, March 1. Debts paid by Clay. *Holston*, J. W. and *Pells*, C. tailors, Saint Martin's-lane, March 19.—*Irving*, J. and *Bunton*, W. woollen drapers, Manchester, Sept. 30, 1843.—*Jones*, W. and *Hodgson*, A. insurance brokers, Liverpool, Dec. 31.—*Karn*, J. and T. butchers, Charlton Kings, and at Cheltenham, March 19.—Debts paid by Joseph Karn.—*Kolbe*, J. G. and *Davies*, R. tailors, Conduit-street, March 20.—*Naylor*, T. and J. *Gardner*, E. T. and *Crankshaw*, R. cotton manufacturers, Preston, March 17. Debts paid by Crankshaw. —*Newton*, M. and *Darbyshire*, J. brick makers, Manchester, Jan. 1, 1843.—*Oldham*, T. and *Grimes*, W. millers, Baginton, March 29. Debts paid by Grimes.—*Owen*, T. and *Aston*, W. fustian printers, Manchester, March 19. Debts paid by Owen.—*Pitts*, G. and *Tristram*, B. hide merchants, Liverpool, March 16.—*Redman*, W. E. and *Willard*, F. tailors, Brighton, March 17. Debts paid by Redman.—*Scaife*, C. and *Baynes*, M. A. innkeepers, Harrogate, Jan. 6. —*Shield*, J. and *Allhusen*, C. iron merchants, Newcastle, March 12. Debts paid by Shield.—*Smith*, S. and *Malpas*, C. mat dealers, Manchester, March 11.—*Timmis*, J. and *Browne*, J. B. brewers, Chesterton and Newcastle under Lyme, March 1. Debts paid by Timmis.—*Wake*, J. H. and *Thompson*, J. woollen drapers, Sunderland, March 19.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, March 19.

Brant, J. coach builder, Hatton-garden, March 22, at twelve.—*East*, G. weaver, James-st. Bethnal-green-road, March 22, at eleven.—*Finch*, J. cow keeper, High-st. Deptford, March 22, at half-past eleven.—*Morgan*, T. boot maker, Ryde, March 26, at one.

IN THE COUNTRY.

Blanchard, E. grocer, Leeds, March 25, at eleven, Leeds. —*Emsley* G. jun. clothier, Calverley, March 25, at eleven, Leeds.—*Gawthorpe*, W. bricklayer, Leeds, March 25, at eleven, Leeds.—*Jones*, E. traveller, West Derby, March 25, at eleven, Liverpool.—*Lumb*, J. beer-house keeper, Leeds, April 2, at eleven, Leeds.—*Marsden*, T. joiner, Sheffield, April 2, at eleven, Leeds.—*Pemberton*, T. butcher, Leeds, April 2, at eleven, Leeds.—*Sterland*, W. farmer, Sheffield, March 25, at eleven, Leeds.—*Turpin*, R. police officer, Leeds, April 2, at eleven, Leeds.—*Wilkinson*, A. and C. machine makers, Huddersfield, March 25, at eleven, Leeds.—*Wright*, W. draper, Halifax, April 2, at eleven, Leeds.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, March 21.

Boddington, W. house agent, Alfred-st. Bedford-sq April 7, at one.—*Guyver*, J. dairyman, Cross-st Hatton-garden, April 2, at twelve.—*Loudour*, C. teacher of the French language, Compton-st. Brunswick-sq. April 7, at half-past twelve.—*Pither*, J. cattle dealer, Reading, April 9, at eleven. *Pontifex*, S. Bloomfield-ter. Pimlico, April 4, at half-past eleven.—*Pope*, G. livery stable keeper, Kilburn, April 9, at one.—*Proctor*, G. portrait taker, St. Andrew the Less and St. Mary the Great, Cambridgeshire, April 9, at one.—*Reach*, J. J. out of business, Bury Saint Edmunds, March 7, at twelve.—*Silversides*, W. jun. farmer B[illegible]ford, April 7, at twelve.—*Smith*, J. fishmonger, Ship-yard, Temple-bar, April 2, at twelve.—*Venus* G. S. ship chandler, Wapping-wall, April 9, at eleven.—*Woodard*, E. bricklayer, Ipswich, April 7, at half-past eleven.

MEETINGS AT BASINGHALL-STREET.

Ball, R. S. T. house painter, Devonshire-street, Queen-square, April 14, at half-past twelve.—*Bunker*, J. out of business, Northampton, April 14, at half-past two.—*Farnell*, J. T. schoolmaster, Norwich, April 14, at two.—*Girling*, J. M. veterinary surgeon, Northampton, April 14, at eleven.—*Kummell*, C. clerk, Pilgrim-street, Kennington, April 11, at a quarter past two.—*Mitchell*, G. clerk, Manchester-buildings, Westminster, April 14, at one. —*Price*, J. jun. grocer, Cotton-st. Poplar, April 14, at twelve. —*Sidders*, J. A. fruiterer, Brighton, April 14, at half-past one.

MEETINGS IN THE COUNTRY.

Dear, J. engineer, Derby, April 5, at eleven, Birmingham. —*Evans*, J. innkeeper, Cheltenham, April 7, at twelve, Bristol.—*Francis*, H. mineral agent April 7, at eleven, Bristol.—*Hutchinson*, W. victualler, Dronfield, April 4, at one, Manchester.—*Nelson*, G. farmer, Wetherall, March 28, at half-past one, Newcastle.

From the Gazette of Friday, March 28.

Bankrupts.

Johnston, L. wine merchant, Hammersmith.—*Morton*, D. fishmonger, East Cheap, City.—*May*, E. draper, Aldgate High-st. City.—*Phillips*, J. tailor, Pinner's-court, Old Broad-st. City.—*Gardner*, G. tavern keeper, Gravesend.—*Woodhead*, J and D. woollen cloth manufacturers, Huddersfield.

THE LAW TIMES,
AND JOURNAL OF PROPERTY.
The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 79.] SATURDAY, OCTOBER 5, 1844.

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MANSFIELD-STREET.—To be SOLD, by Mr ELGOOD, the remainder of the original LEASE, at a low ground-rent, of a capital MANSION in an airy, cheerful position, at the corner of New Cavendish-street, close to Portland-place formerly the residence of the late Marquis of Waterford, having four rooms on the drawing room floor, two staircases, ample bed-chambers, offices, and stabling. Apply at Mr. ELGOOD'S Offices, Wimpole-street.

To be Sold.

GLOUCESTER-CRESCENT, adjoining the Regent's-park.—To be DISPOSED OF, a modern and desirable RESIDENCE, in this airy and cheerful situation, with neat garden, &c. It has been recently furnished by a lady (who is unexpectedly obliged to remove). It is held for three years, at a low rent of 60 guineas, and will be parted with on reasonable terms, avoiding the trouble and delay of furnishing. Apply at Mr. ELGOOD'S offices, 98, Wimpole-street.

A Large IRON DOOR (new).—To be SOLD immediately, a capital STRONG-ROOM DOOR and FRAME, 6 feet 9 inches high by 2 feet 6 wide, with three-bolt lock, and two keys, made to order, but has never been used, in consequence of other arrangements. May be seen and purchased by application at Mr. ELGOOD'S Office, 98, Wimpole-street, Cavendish-square.

VICINITY of HYDE-PARK GARDENS and KENSINGTON-GARDENS.—A detached MANSION, with an Acre of Pleasure-ground and capital Stabling, to be LET, or SOLD, in consequence of the proprietor going abroad, and can be recommended as an elegant residence of the first class. To be viewed by tickets only, for which, and particulars, apply at Mr. ELGOOD's Offices, Wimpole-street.

OXFORD-SQUARE, HYDE-PARK-GARDENS.—To be DISPOSED OF, by order of the Executors, an elegant spacious RESIDENCE, with an extra story of bed-chambers, good domestic offices, coach-house and stable; held for 7, 14, or 21 years, at a very low rent of 230*l*. per annum; and the premises may be had for three years, the remainder of the first term, with some appropriate furniture, at a valuation. Apply at Mr. ELGOOD'S Office, in Wimpole-street.

ST. AGNES-VILLAS, Kensington-gardens. To be DISPOSED OF, by Mr. ELGOOD, in this improved and agreeable situation, the LEASE at a low rent of 70*l*. of one of the above eligible compact COTTAGE VILLAS, with flower-garden in front and walled garden behind, with small lawn and green-house, and including all the neat and appropriate furniture and effects, the proprietor, a lady, retiring into the country. To be viewed by cards, to be had at Mr. ELGOOD'S Offices, 98, Wimpole-street.

SPACIOUS COPYHOLD RESIDENCE, Hampstead-Heath.—Mr. ELGOOD is favoured with instructions to offer for SALE an excellent FAMILY RESIDENCE, containing a dining-room 24 feet by 18, drawing-room 25 feet by 18, and 12 feet 6 in. high, morning-room, &c., six best bed-chambers and dressing-rooms, seven or eight servants' rooms and domestic offices, with six-stalled stable, double coach-house, and other convenient buildings; handsome lawns and pleasure-gardens, &c. of about three acres, ornamented with fine timber, and intersected by gravel walks. The whole principally inclosed with a brick wall, and amply supplied with fine spring and soft water. To be viewed by tickets, for which and particulars apply to Mr. ELGOOD, Auctioneer and Estate Agent, 98, Wimpole-street.

To be Let.

HAREWOOD-SQUARE, Dorset-square. —To be LET UNFURNISHED, in consequence of a decease, a Gentlemanly RESIDENCE, on the east side, one of the well-built and handsome houses formerly called Melbury-terrace, with good hall and stone staircase, two principal rooms on each floor, four attics, and high service of water. It is held at a rent of 110*l*. and, to insure an immediate letting for an unexpired term of two years, a good tenant would be liberally dealt with, or a longer term can be had. Apply at Mr. ELGOOD'S Offices, 98, Wimpole-street.

SYDENHAM, KENT, a quarter of a Mile from the Railway Station.—To be LET FURNISHED, for Three Years, or the Lease to be disposed of, a gentlemanly detached Cottage, containing three neat sitting-rooms and four bed-rooms, with kitchens, chaise-house, and stable, pleasure-grounds and excellent garden; on an eminence commanding beautiful and extensive views. Unfurnished, rent and taxes, 80*l*. per annum; furnished, 150 guineas. Apply at Mr. ELGOOD'S Agency Offices, 98, Wimpole-street.

ON the PORTSMOUTH Road, 43 miles from Town.—To be LET, FURNISHED, for one, two, or three years, an excellent FAMILY RESIDENCE, with coach-house and stable, pleasure-grounds, with lodge entrance, and good walled garden, some trout fishing, and shooting over 150 acres. The house (which is surrounded with park-like meadows) and furniture are in excellent order, the neighbourhood good, and the situation healthy. Apply to Mr. ELGOOD, Estate Agent, 98, Wimpole-street.

STANMORE, ten miles from Town.—To be LET, by Mr. ELGOOD, unfurnished, at 80 guineas a year, a genteel RESIDENCE, containing eight or nine bed-rooms, large drawing-room, parlour, and offices, standing in nearly three acres of gardens and grounds, and enjoying extensive prospects. Some repairs are requisite, and, if preferred, they would be done for a tenant at a fair remunerating rent. A paddock of about seven acres may also be rented. Apply at Mr. ELGOOD's offices, Wimpole-street.

HARROW.—Spacious Residence for a Family or any private or public Institution.—To be LET, on LEASE, a MANSION and PREMISES, on the Hill, commanding magnificent prospects, standing in a fine grove and pleasure-grounds of twelve acres, with gravel walks, sheet of water, &c. a rich meadow of seven acres, and capital walled garden. There are about thirty rooms, with all necessary attached and detached offices. One mile from the railway station. Apply to Mr. JACKSON, 15, Piccadilly; or Mr. ELGOOD, 98, Wimpole-street.

To be Let.

GREAT CUMBERLAND-PLACE.—To be LET, unfurnished, by Mr. ELGOOD, an excellent FAMILY HOUSE, the late residence of Sir Clifford Constable, bart. with capital offices and stabling. The situation of this house is opposite the crescent, and commands immediate access to Hyde-Park. N.B. May be rented for three years. Apply at Mr. ELGOOD'S Agency and Auction Office, 98, Wimpole-street.

PARK-SQUARE, Regent's-park.—To be LET, unfurnished, by Mr. ELGOOD, an elegant RESIDENCE, in this very delightful situation, with full command of the gardens, and view of the park; the rooms handsome and commodious, with convenient offices, and a three-stall stable adjoining, back rooms on the parlour floor, and entrance from the rear. Apply to Mr. ELGOOD'S Offices, Wimpole-street.

CHANDOS-STREET, Cavendish-square. —To be LET, unfurnished, by Mr. ELGOOD, a very desirable medium-size FAMILY RESIDENCE in this delightful situation, close to Langham-place, recently put into perfect repair for immediate furnishing, and lately the residence of Mrs. Dampier, deceased. Apply at Mr. ELGOOD'S House Agency and Auction Offices, Wimpole-street.

Sales by Auction.

KENT.—ROMNEY MARSH, WITTERSHAM, and STONE.—Mr. B. HATCH respectfully invites the attention of graziers and capitalists to the following first-class LAND INVESTMENTS, which he will offer for SALE by AUCTION, at the White Lion Inn, Tenterden, on Friday, the 18th day of October, at Twelve o'clock at noon, in seven lots, viz.:—

Lot 1. The genteel brick-built FAMILY RESIDENCE of the late Richard Knight, esq. situate at Wittersham, containing dining-room 16 feet by 19, drawing-room 15 feet square, parlour 14 feet 8 inches by 14 feet 4 inches, kitchen, pantry, and store-rooms, five convenient bed-rooms, four attics, and five cellars, three gardens, one stocked with choice fruit trees, a cottage, barn, and lodges, roomy stabling and coach-houses, and agricultural conveniences, with nearly forty-eight acres of rich meadow and pasture LAND, whereof nearly eleven acres are marsh, and all within a ring fence. The house is delightfully situate on an eminence, within sixteen miles of Hastings, four of Rye, and six of Tenterden, and commands a beautiful prospect of part of Kent and Sussex, and a distant view of the British Channel and French coast. Immediate possession may be obtained.

Lot 2. A Freehold Messuage, in two dwellings, and garden, containing about 1r. 34p. at Wittersham.

Lot 3. Three pieces of Freehold rich fatting MARSH LAND, in Stone, containing about fifty-three acres, in the occupation of Mr. William Knight, at the annual rent of 150*l*.

Lot 4. Two pieces of excellent freehold fatting fresh Marsh Land, called the Flats, near Guildford-lane, in Brookland, containing 47a. 0r. 20p.; let to Mr. John Grist, at 140*l*.

Lot 5. Three pieces of superior freehold fresh Marsh Land, called the Seeds, containing 12a. 3r. 16p. in Brookland, occupied by Mr. Grist at 39*l*. per annum.

Lot 6. A substantial Freehold Lodge, and very rich piece of fatting fresh Marsh Land, called the Seven Acres, in Brookland, containing 6a. 3r. 12p.; let to Mr. Grist at the annual rent of 21*l*.

Lot 7. About forty and a half acres of freehold Meadow or Pasture fresh Marsh Land, with sheep-pound and washing-tun, in Fairfield and Brenzett, in the occupation of Mr. Grist, at the yearly rent of 100*l*.

The four last lots are situate within Walland Marsh, in which the scots, tithe rent-charge, and parochial rates are proverbially low, and forming a portion of that highly luxuriant level in Kent generally called ROMNEY MARSH. The estates are in excellent repair, surrounded by good fences, well watered, and conveniently situate for markets and roads, and are within easy distances of the South-Eastern Railway, and the market towns of Tenterden, Rye, Ashford, and Romney.

Lots 1, 2, and 3 may be viewed on application to Mr. Knight, and the remainder by applying to Mr. John Grist, at Brookland. Printed conditions of sale may be had, fourteen days before the sale, at the Auction Mart, London; and further particulars obtained of Wm. Knight, esq. Wittersham; Mr. Chas. Shepherd and Mr. Joseph Munn, Solicitors, and the Auctioneer, Tenterden.

Absolute Reversion to 12,000*l*. Three per Cent. Stock.

MR. SINGLE will SELL by AUCTION, at Garraway's, on Friday, October 11, at Twelve, an ABSOLUTE REVERSION to 8,200*l*. Three per Cent. Reduced, and also to 3,800*l*. Three per Cent. Consols, payable on the death of a lady in her 59th year of her age, subject to legacy duty at 3 per cent., and to payment of a legacy of 100*l*.

Particulars of Mr. H. Terrell, Solicitor, 30, Basinghall-street; Mr. J. H. Terrell, Solicitor, St. Martin's-lane, Exeter; and of Mr. SINGLE, Surveyor, 34, Coleman-street, City.

Breconshire, South Wales.

A Very improvable FREEHOLD ESTATE and desirable INVESTMENT will be offered for SALE by PUBLIC AUCTION, at the Lion Hotel, in the town of Builth, in the county of Brecon, on Monday, the 14th day of October, 1844, at Three o'clock in the afternoon, subject to conditions, and either together or in lots, unless disposed of in the mean time by private contract; comprising 1,100 acres, divided into compact Farms, situate in the parish of Llangamarch, in the said county, near the celebrated mineral springs "Llanwrtid Wells," midway between the towns of Builth and Llandovery, and distant from the county town of Brecon 12 miles.

Descriptive and other particulars may be had on application to Messrs. ROGERS and GREEN, Solicitors, Kington, Herefordshire, at whose offices a map of the property may be seen.

Sales by Auction.

SUSSEX.—VALUABLE FREEHOLD ESTATES in Cowfold, Shermanbury, and Shipley.—For SALE by PUBLIC AUCTION, by PLUMER and SON, at the King's Head Hotel, Horsham, on Wednesday, the 9th October, 1844, at one o'clock.

Lot 1. The GRATWICK ESTATE, in Cowfold and Shermanbury, comprises a substantial house, contiguous to the road from Brighton through Horsham to London, and 250 acres of good arable, meadow, and wood land, and well-arranged agricultural buildings. The situation of the estate is most eligible, lying on an eminence, and commanding an extensive view, bounded by the chain of the Sussex Hills. The house is easily capable of considerable enlargement, and the site is well worthy of a more important residence. In the neighbourhood are several newly-erected gentlemen's seats.

The estate lies near the East and West Sussex Junction Road, thirteen miles from the coast, about eight from Hayward's-heath and Hassock's-gate stations on the London and Brighton Railway. It is famed for the production and rearing of game, and lies midway between the kennels of the celebrated Horsham, and Crawley and Findon fox-hounds.

A coach to London from Brighton passes the estate.

Lot 2. PONDTAIL FARM, in Shipley, consists of about 160 acres of excellent freehold arable and meadow land, well stocked with thriving young oak trees, for the growth of which the soil is particularly congenial. Also a farm-house, with barns, stabling, and other buildings.

Printed particulars, with a map of Gratwick, may be had ten days before the sale, on the premises, at the principal inns in the neighbouring towns, of Mr. Hide, Auctioneer, Worthing; Messrs. Palmer, France, and Palmer, Solicitors, 24, Bedford-row, London; Messrs. Coppard and Rawlinson, Solicitors, and of the Auctioneers, Horsham.

TO CAPITALISTS.—Valuable MANOR in Cheshire for SALE, nearly adjacent to the flourishing town of Birkenhead.—To be SOLD by AUCTION, by Messrs. T. WINSTANLEY and SONS, at the Clarendon Rooms, South John-street, Liverpool, on Tuesday, the 15th day of October, 1844, at One o'clock in the Afternoon, subject to such conditions as will be then produced, all that valuable FREEHOLD ESTATE, comprising the Manor and entire township of Noctorum, situate in the hundred of Wirrall, and county of Chester, and containing 326 acres of land in statute measure or thereabouts, with a modern-built residence, capital farm buildings, and labourers' cottages attached.

This eligible Property affords an opportunity for speculation and investment rarely to be met with. The Estate is at present occupied by a farm tenant, and the land is in a high state of cultivation. From its locality, however, it is admirably calculated for building purposes; and to meet the increasing demand in the neighbourhood of Birkenhead for land of that description, the proprietor has been induced to offer it to public competition.

The township of Noctorum lies about three miles to the west of the important town of Birkenhead, but at the nearest point it is within a mile of its boundary, from whence several new streets have been already laid out, and are now forming towards this estate. The distance from the house at Noctorum to the shore of the river Mersey is about two miles and a half, and from the sea it is about three miles distant.

A great part of the Estate is situate on an eminence, sloping into one of the most picturesque vales in the county of Chester, and commanding the most extensive and pleasing views of the romantic scenery of North Wales. It is therefore peculiarly suitable for the erection of villa residences. All the materials for building and draining purposes are to be had upon the property itself. There are several quarries of stone, abundance of superior clay for brick making, and also excellent beds of sand. The Estate is plentifully supplied, too, with water of the purest quality, which is obtained at about thirteen yards from the surface.

Another peculiar feature in this township, which must considerably enhance its value, is, that it is free from the burthen both of Poor and Highway Rates.

Mr. George Jackson, the occupier, will shew the Estate on application, and plans and particulars may be had from him, from Messrs. WINSTANLEY and SONS, the Auctioneers, or from NICHOLSON and SONS, Solicitors, Warrington.

SOUTH METROPOLITAN PURE WATER COMPANY. Capital 300,000*l*. in shares of 10*l*. Deposit 10s. per share.

Trustees (until the Act of Parliament is obtained).

Robert Biddulph, esq. Charing-cross.

Thos. Grissell, esq. Lambeth.

H. Weston, esq. Borough Bank.

Engineer—Mr. James Easton, Grove, Southwark.

Prospectuses containing forms of applications for shares, and every information, may be had of the secretaries.

JOHN GALSWORTHY, 19, Ely-place, } Joint
E. H. BRAMAH, 6, Great Winchester-street, } Secretaries.

LEA and PERRINS WORCESTERSHIRE SAUCE.

Prepared from a Recipe of a Nobleman in the County.

"One of the most piquant inventions of this luxurious and epicurean age is Lea and Perrins' Worcestershire Sauce, adapted to Fish, Flesh, Fowl, and Soup; giving a zest far superior to the long-established favourites, more wholesome and of less cost."—*Naval and Military Gaz.*, April 6, 1843.

Copy of a testimonial from Capt. Hosken.

"Great Western Steam-ship, June 6, 1844.

"The cabin of the Great Western has been regularly supplied with Lea and Perrins' Worcestershire Sauce, which is adapted for every variety of dish; from turtle to beef, from salmon to steaks—to all of which it gives a famous relish. I have great pleasure in recommending this excellent sauce to captains and passengers for its capital flavour, and as the best accompaniment of its kind, for a voyage.

(Signed) "JAMES HOSKEN."

Sold, Wholesale by the Proprietors, Messrs. LEA and PERRINS, Worcester; Messrs. BARCLAY and SONS, Farringdon-street, and the principal Oil and Italian Warehousemen, London; and Retail, by the usual venders of Sauces.

Sales by Auction.

NEWBURY, BERKS.—Valuable Freehold Arable and Meadow Lands, Genteel Residences, Excellent Business Premises and Dwelling-houses, situate in the parishes of Newbury and Greenham, and several detached Premises and Enclosures of Land in various parishes adjacent to Newbury and other property, by THOMAS WHEELER, at the Pelican Hotel, Speenhamland, on Tuesday, the 8th October, 1844, at Three o'clock in the afternoon (unless previously disposed of by private contract, of which due notice will be given).

Forty-three Acres (more or less) of good Land, 35 acres of which are arable and about 8 acres pasture (in the occupation of Mr. George Eyles, whose tenancy expires at Michaelmas next), lying compact and contiguous to the town of Newbury, and near the Winchester road, affording an excellent and delightful site for building, surrounded by good roads and boundaries.

Four Substantial and Genteel Residences, known as "Andover Terrace," with convenient offices (one having chaise-house and stable), with gardens attached, pleasantly situate on the Andover road, about a quarter of a mile from Newbury, all in good repair, and occupied by responsible yearly tenants.

Also Two excellent Meadows adjoining, containing about 15 acres, in the occupation of Mr. George Eyles, whose tenancy expires at Michaelmas. (The whole of the above lands and premises are free from land-tax.)

A good Dwelling-House and commodious Coal and Slate Yard or Wharf, with stable and buildings, and walled-in garden, at West Mills, Newbury, in the occupation of Mr. Adey, under a lease which expires Michalmas 1849. These premises are well situate for the above business, being close to the Kennet and Avon canal.

Enclosure of arable land, containing 1a. 2r. 0p. (more or less), situate at Snelsmore common; five acres (more or less) of excellent water meadow, lying close to Greenham Mills, occupied by Mr. Thomas Smith, as yearly tenant; a neat Cottage, and about half an acre of meadow, situate at Newtown, Hants, occupied by Mrs. Matthews, as yearly tenant.

A substantial Dwelling-House, situate in Church-lane, on the west side of the market-place, Newbury, now occupied by Mr. Lewis, as yearly tenant.

Four 25*l.* shares in the Newbury Gas and Coke Company, paying interest at 5*l.* per cent. per annum.

The property may be viewed on application to the respective tenants, and descriptive particulars may be had fourteen days previous to the sale, at the principal inns in the neighbourhood, at Reading and Winchester, of Messrs. BUNNY and SON, Solicitors, Newbury, and of the Auctioneer, Market-place, Newbury.

Insurance Companies.

AUSTRALASIAN, COLONIAL, AND GENERAL LIFE ASSURANCE AND ANNUITY COMPANY, No. 126, Bishopsgate-street.

THE LIVES of PERSONS proceeding to or residing in AUSTRALASIA and the EAST INDIES are assured by this Company on very favourable terms.

Premiums and claims may be made payable in those countries by indorsement.

Prospectuses and full particulars may be had at the offices of the Company, corner of Cornhill.

EDWARD RYLEY, Secretary.

PROMOTER LIFE ASSURANCE and ANNUITY COMPANY, 9, Chatham-place, Blackfriars, London, Established in 1826.

DIRECTORS.

Wm. Goodenough Hayter, esq. M.P.
Charles Johnston, esq.
John Towgood Kemble, esq.
John G. Shaw Lefevre, F.R.S.
Robert Palk, esq.
John Louis Prevost, esq.
Samuel Smith, esq.
Le Marchant Thomas, esq.

TRUSTEES.—John Deacon, esq., John G. Shaw Lefevre, esq. F.R.S., Charles Johnston, esq.

This Society is supported by an ample subscribed Capital, and by a considerable accumulated premium fund.

Assurances are effected at a low rate of premium, without profits, or at an increased premium, with participation in the profits of the office.

The following are the annual Premiums required for the assurance of 100*l.* on a healthy life in either case:—

WITHOUT PROFITS.

Age 20	£1 11s. 8d.	30	£2 2s. 2d.
40	£2 17s. 0d.	50	£4 0s. 8d.

WITH PROFITS.

Age 20	£1 16s. 11d.	30	£2 9s. 2d.
40	£3 6s. 6d.	50	£4 14s. 2d.

A Bonus in ready money, at the rate of 15 per cent. on the premiums received (equivalent to a reversionary bonus of about 30 per cent.) was declared in May, 1842, on all beneficial policies on which three annual premiums had been paid in the December previous.

A division of the profits takes place every five years, and the holders of beneficial policies can receive their bonuses in ready money, or have them applied in augmentation of their policies, or in reduction of their future premiums.

Assurers may contract to pay their Premiums either in one sum, in a given number of payments, in annual, half-yearly, or quarterly payments, or on the ascending or descending scale.

Officers in the Army and Navy on active service, Persons afflicted with chronic and other diseases, and such as are going beyond the limits of Europe, are also Assured at moderate Rates.

Prospectuses and all necessary information may be obtained at the Office.

MICHAEL SAWARD, Secretary.

Insurance Companies.

THE MARINERS' AND GENERAL LIFE ASSURANCE COMPANY, ESTABLISHED FOR INSURANCES ON THE LIVES OF MARINERS, Whether of the Royal or Mercantile Navy; MEMBERS OF THE COAST-GUARD, FISHERMEN OR BOATMEN, MILITARY MEN OR CIVILIANS, proceeding to any part of the Globe; as also INDIVIDUALS OF EVERY CLASS IN SOCIETY, resident on shore, are Insured. Empowered by Act of Parliament.

TRUSTEES.

Admiral Sir Philip Henderson Durham, G.C.B.	Vice-Admiral Sir William Hall Gage, G.C.H.
Joseph Somes, Esq.	

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SOLICITOR.

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The Policies granted by this Company cover Voyages of every description and service in every part of the Globe. The Premiums for Life Policies, *with permission to go any and everywhere without forfeiture*, are lower than have ever hitherto been taken for such general risks.

Deferred Annuities to Mariners at very moderate premiums.

The Premiums for *all General Assurances* are based upon a new adjusted Table of Mortality.

Ten per Cent. of the Profits applied in making provision for Destitute and Disabled Mariners.

JOHN DAWSON, Resident Manager.
Arthur-street East, London Bridge.

The Company are ready to receive applications for Agencies from individuals of respectability, influence, and activity, resident in the principal Sea-ports and Market Towns of the United Kingdom.

UNITED KINGDOM LIFE ASSURANCE COMPANY, 8, WATERLOO-PLACE, PALL-MALL, LONDON.

Established by Act of Parliament in 1834.

DIVISION OF PROFITS AMONG THE ASSURED.

HONORARY PRESIDENTS.

Earl of Errol.	Earl Somers.
Earl of Courtown.	Lord Viscount Falkland.
Earl Leven and Melville.	Lord Elphinstone.
Earl of Norbury.	Lord Belhaven and Stenton.
Earl of Stair.	

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Samuel Anderson, Esq.	Charles Graham, Esq.
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Edw. Boyd, Esq., Resident.	William Railton, Esq.
E. Lennox Boyd, Esq., Asst. Resident.	John Ritchie, Esq.
	F. H. Thomson, Esq.
Charles Downes, Esq.	

Surgeon—F. Hale Thomson, Esq., 48, Berners-street.

This Company, established by Act of Parliament, affords the most perfect security in a large paid-up Capital, and in the great success which has attended it since its commencement in 1834,

Its Annual Income being upwards of £72,000.

In 1841, the Company declared an addition to the Shareholders of one-half of their Stock, and also added a Bonus of 2*l.* per cent. per annum on the sum insured to all policies of the participating class from the time they were effected.

The Bonus added to policies from March, 1834, to the 31st Dec. 1840, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy.
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

The Premiums nevertheless are on the most moderate scale, **and only one-half need be paid for the first Five Years,** where the Insurance is for Life.

Every information will be afforded on application to the Resident Directors, EDWARD BOYD, Esq., and E. LENNOX BOYD, Esq., of No. 8, Waterloo-place, Pall-mall, London.

EDWARD PRICE and Co. beg respectfully to request that all parties wishing to purchase their COMPOSITE CANDLES will ask in the shops simply for "PRICE'S PATENT CANDLES." Since these have attracted public attention, many Imitators have made candles, and called them by the name "Composite," used by Edward Price and Co.; but the process by which the real Composite Candles are made, being a patent one; and E. P. and Co. granting no licenses, none of these imitation candles are at all the same as the real ones. The chief properties of these latter are their burning, without snuffing, more brilliantly than the best wax, and their affording so large an amount of light, that they are cheaper, taking this into account, than the commonest tallow candles, one of them giving the light of two ordinary moulds. They may be had of most of the respectable Dealers throughout the Kingdom, and are supplied to the trade wholesale by EDWARD PRICE and Co. Belmont, Vauxhall; and by PALMER and Co., Sutton-street, Clerkenwell.

New Publications.

RICHARDS'S BOOK of COSTS in all the COURTS, including the Costs upon the Lower Scale, as recently settled by the Judges.

2nd edition, price 18s.
A Supplement to First Edition, published separately, price 3s. sewed.

"To the legal profession this work is invaluable."—*Morning Chronicle.*

"No office will be completely furnished that has not Mr. 'Richards's Book of Costs' lying upon the desk for hourly reference."—*Law Times.*

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Lately published, price 2s.

OUTLINES of a PLAN for ADAPTING the MACHINERY of the PUBLIC FUNDS to the TRANSFER of REAL PROPERTY.

By ROBERT WILSON.

London: BLENKARN, 19, Chancery-lane.

THE QUARTERLY REVIEW, No. CXLVIII. is just published.

CONTENTS:—

1. The CONQUEST and the CONQUEROR.
2. FORSTER on ARABIA.
3. PASSAGES in the LIFE of a RADICAL.
4. HORACE WALPOLE.
5. On the TREATMENT of LUNATICS.
6. PAINTING in FRESCO.
7. STANLEY'S LIFE of DR. ARNOLD.
8. JAMES, FIRST EARL of MALMESBURY.

JOHN MURRAY, Albemarle Street.

MR. SERJEANT STEPHEN'S NEW COMMENTARIES on the LAWS of ENGLAND.—The Publisher of the above work has the pleasure to announce to Subscribers and the Profession generally, that the Third Volume will be published on the first day of Michaelmas Term next; the desire of the learned author to incorporate in the forthcoming volume the several alterations in the law of the last Session of Parliament having necessarily protracted its publication till that period. The Fourth Volume, which completes the work, is in a forward state, and will be published as speedily as possible, consistent with accuracy and the importance of the undertaking.—October 1, 1844.

HENRY BUTTERWORTH, Law Bookseller and Publisher, 7, Fleet-street.

Just published,

TIME-TABLE CARDS, for the Use of CHAMBERS and OFFICES, and particularly adapted for Students previous to their examination; comprising, I. A Chancery Time-Table; II. A Common-Law Time-Table; III. A Bankruptcy Time-Table. By FREELOVE HAMMOND, Esq. of the Inner Temple, Barrister-at-Law.

These Tables are printed on three cards, and shew at a glance the times fixed by the statutes, rules of court, &c. for the various notices and other proceedings in the above branches of the law, arranged for ready reference.

Price of the THREE TABLES, ONE SHILLING only. Printed by E. DIPPLE, 42, Holywell-street; and published at the Office of the LAW TIMES.

N.B. These Tables will be sent to any part of the country, postage free, to any person forwarding fourteen penny postage stamps for the same to the LAW TIMES Office.

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N.B. The List of Subscribers to THE CRITIC *is now ready, and may be had at the Office; or it will be forwarded, on application, post free, to any part of the country.*

Legal Notices.

BOROUGH of KINGSTON-UPON-HULL.—NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE for the Borough of KINGSTON-UPON-HULL, for the trial of Prisoners committed and held to bail on charges of felony and misdemeanor, will be holden at the Town Hall, in the said borough, before MATTHEW TALBOT BAINES, Esquire, Recorder of the said borough, on SATURDAY, the 19th day of October, at Ten o'clock in the forenoon, when and where all persons bound by recognisances, and others having business at the said Sessions (except as hereinafter mentioned), are requested to attend; and in all cases where the parties accused are OUT ON BAIL, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'clock on MONDAY morning, the second day of the Sessions.

AND NOTICE IS HEREBY ALSO GIVEN, that all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the 19th day of October next; and the hearing of Appeals and Motions will be taken at Nine o'clock in the morning on the Tuesday following (if the criminal business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take notice that in Appeals against Removal Orders, Copies of the Notice and Grounds of Appeal, and Examination of the Pauper, must be filed along with the Removal Order. J. H. GALLOWAY,
Clerk of the Peace.
Office of Clerk of the Peace, Kingston-upon-Hull,
25th Sept. 1844.

LANCASHIRE MICHAELMAS SESSIONS.—NOTICE is HEREBY GIVEN, that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of Lancaster will be held at the CASTLE of LANCASTER, on MONDAY, the 14th day of October instant, at Ten o'clock in the forenoon; and, by adjournment, at the following places and times; viz.—

At the Court House in PRESTON, on WEDNESDAY, the 16th day of October instant, at Ten o'clock in the forenoon.

At the New Bailey Court House in SALFORD, near Manchester, on MONDAY, the 21st day of October instant, at Ten o'clock in the forenoon.

And at the Court House in KIRKDALE, near Liverpool, on WEDNESDAY, the 30th day of October instant, at Ten o'clock in the forenoon.

And that all business relating to the assessment, application, or management of the County Stock or Rate will commence at such Sessions respectively at Eleven o'clock in the forenoon of the first day thereof.

All business arising within the Hundred of Lonsdale is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions at each of the above-named places; and the trial of such Appeals takes place at Lancaster on the first day; at Preston and Kirkdale, not earlier than Friday, the third day; and at Salford, on Friday, the fifth day.
GORSTS and BIRCHALL, Dep. Clerks of the Peace.
Clerk of the Peace's Office, Preston.
1st October, 1844.

UNION of PROVINCIAL LAW SOCIETIES.—The MEETING of the DEPUTATIONS from the various Law Societies joining the Union will be held at the Rooms of the Manchester Law Association, No. 4, Norfolk-street, Manchester, on Friday, the 10th of January, 1845, at eleven a.m.

The several Societies already forming the Union, and the Names of their respective Hon. Secretaries, appear below; and it requested that any other Society intending to join will immediately communicate with Mr. Thomas Taylor, Solicitor, 28, Princess-street, Manchester, Hon. Sec. *pro tem.*

Name of Society.	Name of Secretary.	Residence of Secretary.
Birmingham	T. S. James, Esq.	Birmingham.
Cumberland	T. S. Railton	Carlisle.
Gloucestershire ..	John Burrup..........	Gloucester.
Hull	Edward Sidebottom ..	Hull.
Lancaster	John Sharp	Lancaster.
Leeds............	J. H. Shaw	Leeds.
Liverpool	J. Oliver Jones	Liverpool.
Manchester	T. Taylor, 28, Princess-street	Manchester.
Plymouth	J. Pridham	Plymouth
Somersetshire	J. Ruddock	Bridgewater, of the Junior Club.
West Riding......	— Pitt	Huddersfield.
Yorkshire	T. Hodgson	York.

LEEDS BOROUGH SESSIONS.—NOTICE is HEREBY GIVEN, that the next GENERAL QUARTER SESSIONS of the PEACE for the Borough of LEEDS, in the county of YORK, will be holden before THOMAS FLOWER ELLIS, Esq. Recorder of the said borough, at the COURT-HOUSE, in LEEDS, on WEDNESDAY, the 23rd day of October instant, at Two o'clock in the afternoon, at which time and place all jurors, constables, police-officers, prosecutors, witnesses, persons bound by recognisance, and others having business at the said sessions are required to attend.

And NOTICE IS HEREBY FURTHER GIVEN, that all appeals, applications, and proceedings under the Highway [illegible] (not previously disposed of) will be heard and taken at [illegible] of the Court on FRIDAY morning, the 25th day [illegible] instant, at Nine o'clock, unless any felonies or [illegible] shall then remain undisposed of, in which [illegible] appeals, applications, and proceedings will be [illegible] as soon after Friday morning at nine o'clock [illegible] of the felonies and misdemeanors shall [illegible] of. JAMES RICHARDSON,
Clerk of the Peace for the said Borough.
[illegible] October 3, 1844.

Legal Notices.

PUBLIC NOTICE.—NORTHAMPTON TOWN and BOROUGH SESSIONS.—NOTICE is HEREBY GIVEN, that the GENERAL SESSIONS of the PEACE for the Town and Borough of NORTHAMPTON will be holden at the Guildhall, in the said town and borough, on WEDNESDAY, the 16th day of October instant, at Nine o'clock in the forenoon; at which time and place all persons who are bound by recognisance to appear and prosecute, or give evidence upon any bill or bills of indictment, or to answer any charge or charges whatsoever, or have any business to transact at the said sessions, are required to attend, as the Court will be punctual in entering on the business of the sessions at the time above mentioned. And Solicitors are requested to take notice that in appeals against removal orders, copies of the notice and grounds of appeal and examination of the pauper must be filed along with such orders.
By order of the Court,
Office of the Clerk of the Peace, Newland, Northampton, GEORGE COOKE, Clerk of the Peace.
Oct. 2, 1844.

THE SCHOLASTIC DIRECTORY.

TO THE CLERGY who receive Pupils, to all Schoolmasters and Mistresses, and to all Professors of Languages, &c.—On the 1st of January, 1845, will be published, at the Offices of "The Authors' Institute," London, "The Scholastic Directory," in one volume, 12mo.; containing the Names and Addresses of all the Public and Private Boarding, Day, and other Schools and Seminaries throughout England, Wales, and Scotland, for both sexes; and all parties desirous of having the Names and Addresses of their Schools and Seminaries inserted therein must have the goodness to forward the same at latest by the 30th of November, addressed, under cover and prepaid, to "The Editor of The Scholastic Directory, 14, Surrey-street, Strand, London," accompanied by twelve penny postage stamps, as the fee charged for such insertion in the forthcoming Directory. Professors of Foreign Languages, Mathematics, Arithmetic, Writing, Music, Dancing, Fencing, &c. &c. may also have their Names inserted on the same terms.

Persons desirous of having their Prospectuses and detailed Accounts of their Schools printed at the end of "The Scholastic Directory," must forward the same also under cover, addressed as before mentioned, and they will be informed by post how much such insertion will cost them. They will then be required, if they agree to the terms, to pay for the same by Post-office order, before the appearance of "The Scholastic Directory."

It cannot fail of being felt that this will be the best possible mode for Schoolmasters and Schoolmistresses, and all connected with Tuition, to make known their various establishments, and also to increase their number of Pupils.

Other Advertisements will be received at the rate of One Shilling per line; but no Advertisement will be inserted under Seven Shillings.—London: 14, Surrey-street, Strand. Oct. 1, 1844.

Sales by Auction.

WALMER, KENT.—Elegant Freehold MARINE RESIDENCE.—Messrs. BROOKS and GREEN will SELL by AUCTION, at Garraway's, 'Change-alley, Cornhill, on Wednesday, the 30th October, 1844, at Twelve o'clock, unless in the mean time disposed of by private contract, a highly valuable FREEHOLD ESTATE, situate in the delightful and rural village of Walmer, comprising the elegant Marine Residence of the late George Goad, esq.; since which period several thousand pounds have been laid out in rendering the residence complete, and improving the estate, together with its beautiful pleasure-grounds and park-like paddocks, in all fifty acres, commanding most extensive views of the sea, and the grounds and plantations of Walmer Castle. The residence is exceedingly compact, and adapted for the immediate reception of a family of the first respectability.

A plan of the estate, together with full particulars, may be obtained at the principal hotels, Dover, Deal, Canterbury, Ramsgate, and Walmer; of Messrs. POWELL, BRODERIPS, and WILDE, 9, New-square, Lincoln's-inn; and to be viewed by orders only, to be had of Messrs. BROOKS and GREEN, Estate-agents, Surveyors, and Auctioneers, 28, Old Bond-street.

In Staffordshire, on the borders of Derbyshire.—Valuable Freehold Estates, consisting of upwards of 835 acres, principally dairy land, with convenient Farm-houses and Agricultural Buildings, Quarry of excellent Limestone, Limekiln, &c.

MESSRS. WINSTANLEY have received directions from the surviving Trustee under the Will of Brian Hodgson, Esq. deceased, to SELL by AUCTION, at the Green Man, Ashbourn, in the county of Derby, on Thursday, Oct. 17, in lots, a valuable and most desirable FREEHOLD PROPERTY, intersected by the high road between Derby and Manchester, and divided into several compact farms, bounded by a stream of water, and skirted by fine thriving woods, with suitable farm-houses and agricultural buildings, situate in the township of Swinscoe and parishes of Blore and Mayfield, in the county of Stafford, about four miles from Ashbourn, 10 from Leek, 16 from Derby, and contiguous to the demesnes of the Earl of Shrewsbury and H. F. Okeover, Esq. and in a country abounding with game. It comprises about 804 acres of excellent old dairy, pasture, and arable land, let to respectable tenants at moderate rents, together with 21 acres of wood and plantation, a quarry of excellent limestone, limekiln, &c. in hand.

To be viewed by applying to Mr. Thomas Gallimore, at Ellis-hill Farm, Swinscoe. Printed particulars will be ready twenty-eight days before the sale, when they may be obtained at the Green Man, Ashbourn; the George, Leek; Red Lion, Calton-moor; Swan, Stafford; Angel, Macclesfield; the King's Head, and Midland Counties Hotel, at Derby; Lion, and Flying Horse, Nottingham; Bulkeley Arms, at Stockport; Hen and Chickens, Birmingham; King's Head, at Coventry; Three Crowns and Bell, Leicester; Bridgewater Arms, Manchester; Royal Hotel, Chester; of Thomas Fellowes, esq. Solicitor, Rickmansworth. Herts; of Mr. Bardswell, Solicitor, and of Messrs. THOMAS WINSTANLEY and SONS, at Liverpool; and of Messrs. WINSTANLEY, Paternoster-row, London.

Sales by Auction.

HARROGATE.—By Messrs. WINSTANLEY, at the Crown Hotel, Low Harrogate, on Monday, October 21, at Three in the afternoon.

THE following valuable ESTATE, copyhold of the Forest of Knaresborough, where the fine is certain and very small:—Lot 1 comprises the Crown Hotel at Low Harrogate, and county of York, immediately contiguous to the Montpellier Baths and to the New Royal Pump Room, established for upwards of 100 years, and frequented by families of the first distinction, containing noble lofty dining and drawing rooms, with numerous private sitting rooms and suites of apartments, upwards of 130 bed chambers, and every convenience for carrying on the extensive business of this hotel. In the cellars are four excellent springs of fresh water, and in the grounds are two springs of sulphur water and one of Cheltenham water. The property, which contains 7,800 square yards, is in the occupation of Mr. Staning for the residue of a term of ten years, at a reserved rent of 600*l.* per annum. Also, Six stone-built Messuages, with Seven Shops, &c. forming Victoria-place, immediately adjoining to the hotel, and let to yearly tenants at rents amounting to 176*l.* Lot 2. The Montpellier Baths, a very substantial stone-built structure of elegant design, situate adjacent to lot 1, containing thirteen bath rooms, with dressing rooms, ladies' and gentlemen's waiting rooms, apartments for superintendent, steam engine, and all necessary apparatus for supplying the baths. Also a pump room of a neat and appropriate design, surrounded by highly ornamental pleasure grounds, where great numbers of visitors resort for the purpose of taking the sulphur water, for which Harrogate is so justly celebrated, or of a saline spring similar to the highly esteemed waters of Cheltenham, and of enjoying the delightful walks with which the gardens are diversified. The grounds contain eight very valuable springs of sulphur water, one of Cheltenham water, one of chalybeate water, and one of fresh water. The above, containing 11,485 square yards, are in the occupation of Mr. James Dawson, for a term of six years from the 1st of January, 1844, at a rent of 500*l.* per annum. Lot. 3. Two substantial stone-built Messuages, forming Bath-terrace, in Low Harrogate, contiguous to the Montpellier pleasure grounds, with flower and kitchen gardens, containing altogether 1,510 square yards. The land-tax is redeemed. The above properties present highly eligible opportunities for the investment of capital at a good interest, the principal parts of the buildings being modern, and in good repair. The income of the three lots amounting to 1,400*l.* per annum.

To be viewed by permission of the tenants, by tickets only, which, with particulars, plan, and conditions of sale, may be obtained of Mr. S. Powell, jun. Solicitor, High Harrogate; also of Mr. Andrews, Architect, York; at the hotels in Leeds, Sheffield, Derby, Manchester, Newcastle, Cheltenham, Leamington, Bath, Bristol, Edinburgh, Glasgow, and Dublin; of Messrs. WINSTANLEY and SONS, Auctioneers, Liverpool; at the Auction Mart; and of Messrs. WINSTANLEY, Paternoster-row, London; and of Messrs. Powell and Sons, Solicitors, Knaresborough.

ELLEL GRANGE ESTATES, NORTH LANCASHIRE.—To be SOLD by AUCION, by order of the Trustees of the will of Richard Atkinson, Esq. deceased, by Messrs. TUGWOOD and SON, on Wednesday, the 23rd day of October next, at the King's Arms Hotel, in Lancaster, the sale to commence at Twelve o'clock at noon, subject to such conditions as shall be produced, either together or in lots, the beautiful and highly-desirable MANSION HOUSE and ESTATE, called "ELLEL GRANGE," for many years the residence of the late Richard Atkinson, Esq. situate about six miles south of Lancaster and about three-quarters of mile from two of the Stations on the Lancaster and Preston Junction Railway. The Mansion House is surrounded by pleasure-grounds and wood, and about 150 acres of the property is approached by a carriage-drive from the Lancaster and Preston turnpike-road of nearly half a mile in length, at the entrance of which an appropriate and picturesque gatekeeper's lodge is situate, and comprises entrance-hall, dining, drawing, and billiard-rooms, with library, and spacious and commodious kitchens and servants' offices, and steward's and housekeeper's-rooms; also, coach-houses, stabling, barns, shippons, gardens, hot-house, green-house, &c. &c.

Also, the "CRAG HALL," "BANTON HOUSE," and "WALKERS I'TH FIELDS" Estates, situate in the townships of Ellel, Cockerham, and Scotforth, near Lancaster, and comprising upwards of 350 acres of Freehold Tenure, and the principal part tithe free of rectorial tithe (the rest being subject to small moduses and commutation rents payable in lieu of tithes) in the occupation of respectable and responsible tenants.

Also will be Sold, at the same time and place, all those two freehold closes of Land, in Scotforth, called "JACKSONS," containing together 3a. 3r. 15p. statute measure; and also all those three closes of freehold Land, situate in the township of Skerton, containing together 6a. 3r. 6p. statute measure.

Also, all that plot of building-ground, called "TOWNS END CLOSE," situate in Upper King-street, in the town of Lancaster, and now occupied as gardens; and also a Rent-charge of Ten Shillings arising out of certain lands in the township of Ellel, the property of Mr. William Bradshaw, apportioned thereupon by virtue of the provisions of the General Tithe Commutation Act.

Printed particulars may be had at the King's Arms Hotel, in Lancaster, and of Mr. Lamb, Hay Carr, near Lancaster; of Mr. William Sharp, 2, Verulam-buildings, Gray's-Inn, London; of Mr. John Sharp, Solicitor, Lancaster, who will direct a person the shew the estates, and from whom further particulars may be known.

Lancaster, Sept. 24, 1844.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 5th day of Oct. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

Vol. IV. No. 80.] SATURDAY, OCTOBER 12, 1844.

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Legal Notices.

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The several Societies already forming the Union, and the Names of their respective Hon. Secretaries, appear below, and it is requested that any other Society intending to join will immediately communicate with Mr. Thomas Taylor, Solicitor, 28, Princess-street, Manchester, Hon. Sec. *pro tem.*

Name of Society.	Name of Secretary.	Residence of Secretary.
Birmingham	T. S. James, Esq.	Birmingham.
Cumberland	T. S. Railton	Carlisle.
Gloucestershire	John Burrup	Gloucester.
Hull	Edward Sidebottom	Hull.
Lancaster	John Sharp	Lancaster.
Leeds	J. H. Shaw	Leeds.
Liverpool	J. Oliver Jones	Liverpool.
Manchester	T. Taylor, 28, Princess-street	Manchester.
Newcastle and Gateshead	F. Seymour; Wm. Crighton	Gateshead.
Plymouth	J. Pridham	Plymouth.
Somersetshire	J. Ruddock	Bridgewater, of the Junior Club.
West Riding Yorkshire	— Pitt; T. Hodgson	Huddersfield. York.

LANCASHIRE MICHAELMAS SESSIONS.—NOTICE is HEREBY GIVEN, that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of Lancaster will be held at the CASTLE of LANCASTER, on MONDAY, the 14th day of October instant, at Ten o'clock in the forenoon; and, by adjournment, at the following places and times; viz.—

At the Court House in PRESTON, on WEDNESDAY, the 16th day of October instant, at Ten o'clock in the forenoon.

At the New Bailey Court House in SALFORD, near Manchester, on MONDAY, the 21st day of October instant, at Ten o'clock in the forenoon.

And at the Court House in KIRKDALE, near Liverpool, on WEDNESDAY, the 30th day of October instant, at Ten o'clock in the forenoon.

And that all business relating to the assessment, application, or management of the County Stock or Rate will commence at such Sessions respectively at Eleven o'clock in the forenoon of the first day thereof.

All business arising within the Hundred of Lonsdale is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford, and within the Hundred of West Derby, at Kirkdale.

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GORSTS and BIRCHALL, Dep. Clerks of the Peace.
Clerk of the Peace's Office, Preston.
1st October, 1844.

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J. H. GALLOWAY,
Clerk of the Peace.
Office of Clerk of the Peace, Kingston-upon-Hull,
25th Sept. 1844.

THE LEGAL ASSOCIATION, 5, Bedford-row, Established for the Protection and Justification of the Profession; supported by annual Subscriptions of One Guinea. A GENERAL MEETING of the PROFESSION and the MEMBERS of the ASSOCIATION, is fixed for WEDNESDAY, the 30th instant, at Two for Three o'clock in the Afternoon, precisely, at the Gray's-Inn Coffee-house, to elect a President, Vice Presidents, Auditors, and Secretary for the year ensuing, and to adopt the Rules and Plans for the future government and working of the Association. The critical situation and future prospects of the Profession demand prompt and serious consideration, and any new auxiliary body of the Profession actively co-operating and having one common object in view with those Societies already established for similar purposes, is but strengthening the combination necessary for the welfare and protection of the Profession and the purposes sought to be attained. Copies of the Rules, &c (stating the objects of the Association) intended to be submitted at the meeting, may be had by any member of the Profession on application at No. 5, Bedford-row, between the hours of 10 and 5, and where those desirous of enrolling themselves as members of the Association may do so.

E. Clarke, Hon. Sec. David Williams Wire, Chairman of the Interim Committee.

Sales by Auction.

TO CAPITALISTS.—Valuable MANOR in Cheshire for SALE, nearly adjacent to the flourishing town of Birkenhead.—To be SOLD by AUCTION, by Messrs. T. WINSTANLEY and SONS, at the Clarendon Rooms, South John-street, Liverpool, on Tuesday, the 15th day of October, 1844, at One o'clock in the Afternoon, subject to such conditions as will be then produced, all that valuable FREEHOLD ESTATE, comprising the Manor and entire township of Noctorum, situate in the hundred of Wirrall, and county of Chester, and containing 326 acres of land in statute measure or thereabouts, with a modern-built residence, capital farm buildings, and labourers' cottages attached.

This eligible Property affords an opportunity for speculation and investment rarely to be met with. The Estate is at present occupied by a farm tenant, and the land is in a high state of cultivation. From its locality, however, it is admirably calculated for building purposes; and to meet the increasing demand in the neighbourhood of Birkenhead for land of that description, the proprietor has been induced to offer it to public competition.

The township of Noctorum lies about three miles to the west of the important town of Birkenhead, but at the nearest point it is within a mile of its boundary, from whence several new streets have been already laid out, and are now forming towards this estate. The distance from the house at Noctorum to the shore of the river Mersey is about two miles and a half, and from the sea it is about three miles distant.

A great part of the Estate is situate on an eminence, sloping into one of the most picturesque vales in the county of Chester, and commanding the most extensive and pleasing views of the romantic scenery of North Wales. It is therefore peculiarly suitable for the erection of villa residences. All the materials for building and draining purposes are to be had upon the property itself. There are several quarries of stone, abundance of superior clay for brick making, and also excellent beds of sand. The Estate is plentifully supplied, too, with water of the purest quality, which is obtained at about thirteen yards from the surface.

Another peculiar feature in this township, which must considerably enhance its value, is, that it is free from the burthen both of Poor and Highway Rates.

Mr. George Jackson, the occupier, will shew the Estate on application, and plans and particulars may be had from him, from Messrs. WINSTANLEY and SONS, the Auctioneers, or from NICHOLSON and SONS, Solicitors, Warrington.

To be Sold.

WORCESTERSHIRE.—Valuable FREEHOLD ESTATE (tithe-free).—To be SOLD by PRIVATE CONTRACT, the two desirable and compact Estates, called the GREATER PODEN ESTATE and the LESS PODEN ESTATE, presenting a most eligible opportunity for Investment. The Estate of Greater Poden comprises 288 acres, partly arable and partly meadow pasture, together with a substantial farm-house and the usual outbuildings and appurtenances, all in good order. Less Poden comprises 132 acres meadow pasture, with a good farm-house and outbuildings. The whole property is in good condition, and at present let to responsible tenants, at very low rents. It is situated six miles from Evesham, and between two and three miles from Campden, in Gloucestershire.

Applications to be made to Messrs. SANDYS and PEARSON, 5, Serjeants'-inn, Fleet-st. or to Messrs. WILKINS and KENDALL, Solicitors, Bourton-on-the-Water, Gloucestershire, at whose offices plans of the Estate may be seen.

New Publications.

In 4to. price with large Chart-deed, Steel-plate Coloured Maps of England, Wales, and Scotland, 4s. or without Maps, 3s.

GILBERT'S SUMMARY of the OCCUPATIONS of the PEOPLE of ENGLAND, WALES, and SCOTLAND, from the Abstract of the Population Commissioners, by command of her Majesty.

"The extraordinary interest and value of the information now for the first time brought to light in this work, must necessarily command extensive and permanent attention; great weight must needs be attached to the evidence they contain, on account of the care with which they have evidently been prepared, and the enormous number of answers from which they have been digested and classified."—*The Times*, September 10.

London: JAMES GILBERT, 49, Paternoster-row, and by order of all booksellers.

ARCHBOLD'S PRACTICE of the CROWN OFFICE of the COURT of QUEEN'S BENCH, with Forms of all the Pleadings, Rules, Notices, &c. which occur in Practice. By J. F. ARCHBOLD, Esq. Barrister-at-Law. 1 vol. 12mo. price 12s. boards.

The *Law Times* of the 21st September last, in a review of this work, after giving an analysis of it, and extracts from it, says—"This analysis of the work, and the above extracts from it, will leave no more doubt upon the minds of our readers than exists in our own, that the *Practice of the Crown Office of the Court of Queen's Bench* will fully sustain the reputation of Mr. Archbold, and higher praise could not well be given."

London: OWEN RICHARDS, 194, Fleet-street.

MR. OKEY'S PUBLICATIONS.

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A CONCISE DIGEST of the Law, Usage, and Custom affecting the Civil and Commercial Intercourse of the Subjects of Great Britain and France.

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DROITS, PRIVILEGES, et OBLIGATIONS des ETRANGERS dans la GRANDE BRETAGNE.

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Age		Age	
20	£1 16s. 11d.	30	£2 9s. 2d.
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The Bonus added to policies from March, 1834, to the 31st Dec. 1840, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy.
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

The Premiums nevertheless are on the most moderate scale, **and only one-half need be paid for the first Five Years,** where the Insurance is for Life.

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To Readers and Correspondents.

J. A. (Rugeley).—*His question is the moot point as to transfer of mortgage stamps that has been so much debated in the columns of the* LAW TIMES. *The general opinion seems to be, that the 35s. transfer stamp, together with the* ad valorem *stamp on the additional sum advanced, is sufficient.*

P. R. A.'s *letter is not strictly within the scope of the* LAW TIMES, *although we admire the excellent spirit that dictated it.*

R. S.—*His suggestion would, we fear, be impracticable, in consequence of the difficulty of paging and binding. But if the subscribers prefer it, we should have no objection to include the statutes in the Appendix, and relieve the columns of the* LAW TIMES *from a dead weight, which we really think might be better employed, although we cannot venture altogether to omit them.*

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

CHAPMAN.—On the 13th of May last, at Karori, near Wellington, New Zealand, the lady of Mr. Justice Chapman, of a son.

HARGRAVE.—On the 8th inst. at the residence of her father, William Hargrave, esq. Leeds, Yorkshire, the lady of John F. Hargrave, esq. barrister-at-law, of a son.

MOULTRIE.—On Thursday, the 3rd inst. at the Vicarage, Cleobury Mortimer, the lady of E. M. Moultrie, of the Middle Temple, barrister-at-law, of a son.

PUGH.—On the 3rd inst. in Regent-street, Mrs. J. Walter Pugh, of a son.

MARRIAGES.

FRENCH, George, esq. of Lincoln's-inn, to Emma, youngest daughter of the late Robert Law, esq. of Lauriston, in the county of Cork, on the 8th inst. at Cheltenham.

GABRIEL, Thomas, jun. of Clapham Common and Lambeth, to Mary Dutton, only child of Charles Pearson, esq. the City solicitor, on the 8th inst. at Clapham Church.

HANSARD, George, esq. of Lincoln's-inn, barrister-at-law, and youngest son of James Hansard, esq. of Hendon, Middlesex, to Amelia, eldest daughter of Nathaniel Dando, esq. of the former place, on the 10th inst. at St. Luke's, Norwood.

DEATHS.

BADGER.—After a short illness of scarlet fever, and within a few hours of each other, Emily, in her 7th year, and Ben. James, in his 5th year, children of Benjamin Badger, esq. barrister-at-law, on the 5th inst. at Pont-street, Belgrave-square.

BRANFELL, Champion Edward, esq. for many years deputy-lieutenant and a magistrate of the county, on the 7th inst. at Upminster Hall, Essex, aged 55.

EDWARDS.—Maria Theresa, the wife of Mr. A. F. Edwards, of Hungerford and Aldbourn, Wilts, on the 6th inst. after a long and distressing illness, aged 38.

OVERBURY, James, esq. a magistrate of the county, on the 7th inst. at his residence, No. 10, Pitville Parade, Cheltenham, aged 64.

SCOTT, James, esq. a magistrate and deputy-lieutenant of the county, on the 22nd ult. at his seat, Brotherton, Kincardineshire, aged 67.

WALLINGTON.—Hannah, the wife of Mr. Algernon Wallington, late of Hunter-street, Brunswick-square, solicitor, on the 17th ult. at Shacklewell, aged 71.

WRIGHT, Mr John, for many years one of the messengers of the Court of Bankruptcy, on the 5th inst. at his house in Quality-court, Chancery-lane, aged 84.

YOUNG.—Eliza, widow of the late Major Gavin Young, Judge Advocate-General of the Bengal Army, on the 2nd inst. at Southborough, Kent, suddenly, aged 49.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bullman, E. K. upholsterer, first, 4s. 4d. Fearne, Leeds.—*Frost*, J. baker, final, 3d. to new proofs. Miller, Bristol.—*Garsed*, J. cloth dresser, first and final, 1s. 11d. Fearne, Leeds.—*Gordon* and *Co.* machine makers, first, 1s. 3d. Fraser, Manchester.—*Grimshaw*, J. draper, first and final, 11s. 8½d. to new proofs, and second and final, 3s. 8½d. on old proofs. Fearne, Leeds.—*Jackson*, C. S. cloth merchant, first and final, 2s. 6d. Fearne, Leeds.—*Langmead*, W. banker, final, 2½d. Hernaman, Exeter.—*May*, J. victualler, first, 3s. 1d. Miller, Bristol.—*Newsome*, J. blanket manufacturer, first and final, 9½d. Fearne, Leeds.—*Nuttall*, T. butcher, first, 2¾d. Stanway, Manchester.—*Parker* and *Co.* dyers, first and final, 5s. 7¾d. to new proofs, and second and final, 7¾d. on old proofs. Fearne, Leeds.—*Taylor*, G. mercer, second, 6d.; first, 6s. to new proofs. Miller, Bristol.—*Wright*, J. miller, first and final, 1s. 11½d. Fearne, Leeds.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Oct. 4.

Gee, S. druggist, Whitehaven (Aug. 12). C. Magee, grocer, and W. Wilson, druggist, Whitehaven, trusts.; Atkinson and Son, Whitehaven, sols.—*Nicholson*, W. carpet manufacturer, High Holborn (Sept. 26). W. Morley, Gutter-lane, and G. Pollock, Wood-st. warehousemen, trusts.; Dickson and Overbury, Frederick's-pl. sols.

Gazette, Oct. 8.

Coulson, J. innkeeper, Great Clacton, Essex (Oct. 2). R. Baxter, blacksmith, and W. Wilson, grocer, Great Clacton, trusts.; Sperling, Walton on the Naze, sol.—*Kay*, R. S. brush manufacturer, Derby (September 14). A. Warne, brush manufacturer, Nottingham, and F. R. Frinneby, brush manufacturer, Coppice-row, Clerkenwell; Moore, Nottingham, sol.—*Slocombe*, W. linen draper, Bristol (Sept. 28). W. Hitchcock, warehouseman, and R. Spence, warehouseman, Love-lane, trusts.; Messrs. Sole, Aldermanbury, sol.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Oct. 4.

ALEXANDER, GEORGE, innkeeper, Beaminster, Dorsetshire, Oct. 18, at one, Nov. 14, at eleven, Exeter, Com. Bere; Hernaman, off. ass.; Newman and Co. Yeovil, Raven, Temple, and Terrell and Roberts, Exeter, sols. Date of fiat, Sept. 24. T. Cave, brewer, Yeovil, pet. cr.

CROXTON, GEORGE, glass and china dealer, Manchester, Oct. 18 and Nov. 7, at eleven, Manchester, Potts, off. ass.; Jaques and Co. Ely-place, and Chew, Manchester, sols. Date of fiat, Sept. 30. T. Molineux, T. Webb, M. Ellis, and B. Molineux, glass and vial manufacturers, Manchester, pet. crs.

HOWARD, FRANK, publisher and artist, 22, Tonbridge-place, Hoxton, Oct. 15 and Nov. 13, at one, Basinghall-st. Com. Evans; Bell, off. ass; Bird, Lincoln's-inn-fields, sol. Date of fiat, Oct. 2. J. S. and J. Hunt, and R. Ristall, silversmiths, New Bond-st. pet. crs.

METCALF, JOHN, silk manufacturer, Macclesfield, Oct. 18 and Nov. 7, at twelve, Manchester, Hobson, off. ass.; Milne and Co. Temple, and Ainsworth. Macclesfield, sols. Date of fiat, Sept. 30. C. Bickerton, joiner, Macclesfield, pet. cr.

SMITH, LENY DEIGHTON, SMITH, HENRY, and SMITH, GEORGE FREDERICK, crape manufacturers, Dulverton, Somersetshire, and Gutter-lane, London, Oct. 9, at half-past twelve, Nov. 19, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Kirkman, King William-st. sol. Date of fiat, Oct. 1. R. Davies, W. Bell, R. Dodgson, and L. Hebling, merchants, Old Broad-st. pet. crs.

TULLEY, ALFRED, grocer and tea dealer, Hackney, Oct. 15 and Nov. 13, at two, Basinghall-st. Com. Evans; Johnson, off. ass.; Norton and Son, New-st. Bishopsgate-st. sols. Date of fiat, Oct. 2. W. T. Grove, cigar-dealer, Arthur-st. West, London-bridge, pet. cr.

Gazette. Oct. 8.

AKEHURST, ANN, baker, East Malling, Kent, Oct. 26, at eleven, Nov. 19, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.: Selby and Mackeson, Serjeant's-inn. sols. Date of fiat, Sept. 30. J. Phillips, miller, Ryarsh, Kent, pet. cr.

BREZ, JOHN JAMES, tailor and draper, Chester, Oct. 18 and Nov. 19, at twelve, Liverpool, Com. Phillips; Morgan, off. ass. Date of fiat, Oct. 1. W. A. Phillips and John Holme, woollen drapers, Liverpool, pet. crs.

BUTTERWORTH, THOMAS WILLIAM, draper and small ware dealer, Bedford-st. Hulme, Lancaster, Oct. 19 and Nov. 8, at eleven, Manchester; Hobson, off. ass.; Johnson and Co. Temple, and Hitchcock and Co. Manchester, sols. Date of fiat, Oct. 3. Bankrupt's own pet.

DANCASTER, JOHN, painter and glazier, St. James's-st. Brighton, county Sussex, Oct. 15, at half-past one, Nov. 13, at half-past eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Galsworthy and Nichols, Cook's-court, Carey-st. sols. Date of fiat, Oct. 4. Bankrupt's own petition.

FLEETHAM, SAINT ANDREW, grocer and shopkeeper, Hartlepool, county Durham, Oct. 15, at eleven, Nov. 26, at two, Newcastle, Com. Ellison; Wakley, off ass.; Meggison and Pringle, King's-road, and Wilson and Turnbull, Hartlepool, sols. Date of fiat, Sept. 24. W. Bannington and H. Thorpe, grocers, Stockton, pet. crs.

PELLISSIER ADELE, lodging housekeeper, No 12, Bentinck-terrace, Regent's-park, county of Middlesex, Oct. 23, at half past one, Nov. 26, at eleven, Basinghall-st. Com. Williams; Graham, off. ass.; Christmas, Raymond-buildings, sol. Date of fiat, Oct. 3. Bankrupt's own petition.

PRIOR, JOHN, and BRADY, HENRY, brush manufacturers, oil and colour merchants, and co-parters. Kingston-upon-Hull, Oct. 18, and Nov. 13, at eleven, Leeds, Com. West: Freeman, off. ass.; Willis and Co. Tokenhouse-yard; Messrs. Colbeck and Thompson, Hull; and Messrs. Horsfall and Harrison, Leeds, sols. Date of fiat, Sept. 27. W. and S. Tudor, lead merchants, Hull, pet. crs.

PUGSLEY, DANIEL, warehouseman, No. 15, Great Distaff-lane, City London, Oct. 15, and Nov. 13, at half-past two, Basinghall-st. Com. Evans; Johnson, off. ass.; Messrs. Sole, Aldermanbury, sols. Date of fiat, Oct. 3. Bankrupt's own petition.

RIGMAIDEN, EDWARD, wine and spirit dealer, Liverpool, county Lancaster, Oct. 18, and Nov. 19, at eleven, Liverpool, Com. Phillips; Cazenove, off. ass.; Chester and Co. Staple-inn, and Hodgson, Liverpool, sols. Date of fiat, Sept. 30. Bankrupt's own petition.

ROSKELL, NICHOLAS, merchant, Liverpool, Oct. 21, Nov. 13, at eleven, Liverpool, Com. Phillips; Cazenove, off. ass.; Sharpe and Co. Bedford-row, and Lowndes and Co. Liverpool. Date of fiat, Oct. 3. Bankrupt's own petition.

TRISTRAM, JOB, beer-shop keeper, Two Mile-houses, Basford, Oct. 25 and Nov. 14, at eleven, Leeds, Com. West: Young, off. ass.; Messrs. Baxter, Lincoln's-inn-fields; Wells, Nottingham; and Messrs. Payne and Co. Leeds, sols. Date of fiat, Sept. 27. S. Hanson, gentleman, Nuthall, Notts, pet. cr.

WANOSTROCHT, NICHOLAS, boarding-house keeper, Heath-cottage, Blackheath-hill, Oct. 26, at twelve, Nov. 19, at half-past one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Thomas, Fen-court, Fenchurch-st. sol. Date of fiat, Oct. 3. Bankrupt's own petition.

WEST, FREDERICK HENRY, licensed victualler, White Hart Tavern and Railway Hotel, 197, High-st. Shoreditch, Oct. 15, at half-past twelve, Nov 21, at eleven, Basinghall-st. Com. Williams; Turquand, off. ass.; Swan, Great Knight-rider-st. sol. Date of fiat, Oct. 3. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Oct. 1.

Ames, L., *Castle*, M. H., *Harris*, T., and *Castle*, R. rectifying distillers, Bristol, Sept. 29.—*Askew*, R. and *Barlow*, R. dyers, Failsworth-lodge, near Manchester, Sept. 27.—*Becke*, G. and *Flower*, F. attorneys, Lincoln's-inn-fields, Sept. 30.—*Cheshire*, T. and *Ture*, J. C. W. merchants, Liverpool, Sept. 23. Debts paid by Cheshire.—*Crowder*, W. W. and *Cook*, C. woolstaplers and agents, Birmingham, Sept. 26.—*Davey*, R. jun. and *Cosway*, W. jun. coal and slate merchants, Tiverton, Sept. 28. Debts paid by Cosway, jun.—*Gledhill*, W. and *Johnson*, G. brick makers, Undercliffe and Bradford, Sept. 24.—*Greenwood*, R. E. and *Knight*, W. coal merchants, Halstead and Colchester, June 24.—*Hall*, J. and *Brodribb*, H. attorneys, Moorgate-street-chambers, Coleman-street-buildings, Sept. 28.—*Hardy*, J. and *Mallett*, H. saddlers, Nottingham, Sept. 28.—*Keill*, J. and *Courant*, E. merchants and commission agents, Liverpool, Sept. 30.—*Marsden*, G. E., *Nicholl*, H., and *Nicholl*, V. brewers, Lewisham, so far as regards Marsden, Sept. 29. Debts paid by Messrs. Nicholl.—*Owen*, J. and *Ellis*, J. fancy toy dealers, Manchester, Sept. 27. Debts paid by Owen.—*Penford*, H. and *Fox*, M. millers, Farndon, Notts. March 1, 1843.—*Pollard*, J. and *Lytham*, W. ship store dealers, Liverpool, Sept. 7.—*Pollon*, F. T. and *Goodeve*, G. bootmakers, London, Sept. 24.—*Rider*, A. and B. hat tip manufacturers, Red Cross-st. Southwark, Sept. 17.—*Russell*, A. and *Thomson*, J. linen drapers, Rochdale, Sept. 24.—*Scoles*, W. and *Kings*, W. coach and harness makers, High Holborn, Sept. 28.—*Wilcock*, J., *Wilcock*, R., and *Hooley*, L. manufacturers and knitters of improved cotton and worsted healds, Stockport, Sept. 26. Debts paid by Wilcock.

Gazette, Oct. 4.

Alexander, W. and J. plumbers, Fordingbridge, Sept. 26. Debts paid by J. Alexander.—*Ames*, L. and J., *Castle*, M. H., and *Harris*, T. malt distillers and spirit dealers, Bristol, Sept. 30.—*Atkin*, P. and *Ryder*, S. tea dealers, Liverpool, Sept. 28.—*Blackburn*, E. and G. bricklayers, Limehouse, June 24. Debts paid by G. Blackburn.—*Chapple*, T. and *Clarke*, C. linen drapers, Great Dover-st. Aug. 19.—*Day*, W. and *Climenson*, E. waggoners and carriers, St. Ives, Oct. 1.—*Ellis*, E. and *Farndon*, E. maltsters and brewers, Walberton, Sussex, Sept. 3.—*Embley*, J. and *Davies*, J. warehouse keepers, Bristol, Oct. 1. Debts paid by Davies.—*Fielding*, J. and J. tea dealers and coffee roasters, Rochdale, Sept. 26.—*Gordon*, R. and *Davies*, L. ironfounders, Heaton Norris, Oct. 2. Debts paid by Gordon.—*Gutch*, J. M. *Martin*, J. and *Hooper*, F. printers and newspaper publishers, Bristol, Oct. 2.—*Hathway*, H. *Seater*, J. and *Hathway*, R. wholesale stationers, Tower Royal, Oct. 1. *Henry*, G. and E. merchants and importers of beads, &c. Bread-st. Cheapside, Sept. 30.—*Hepworth*, J. and D. dyers and bleachers, Halifax, Sept. 30. Debts paid by J. Hepworth.—*Jillard*, W. P. *Spencer*, J., and J. P. and *Jillard*, H. P. brewers and spirit merchants, Oakhill, Somersetshire, Sept. 30. Debts to be paid by the new partnership.—*Jones*, S. and *Bye*, T. grocers and cheesemongers, Witney, Sept. 26.—*Little*, R. D. and *Weaver*, H. architects, Chippenham, Sept. 29.—*Mercer*, G. and *Peil*, J. cigar manufacturers, Liverpool, Oct. 1. Debts paid by Mercer.—*Parsons*, P. M. and *Bunning*, T. B. civil engineers, Cranmer-pl. Waterloo-rd. Sept. 28. Debts paid by Parsons.—*Rumsey*, W. and J. tailors, Wapping-wall, Aug. 17.—*Sherwin*, J. G. *Cope*, J. and *Heaton*, J. engineers, Cumberland-st. Shoreditch, so far as regards J. Heaton, Oct. 1.—*Summers*, S. and *Tearle*, T. brewers, Kingston, Surrey, Aug. 26.—*Tarleton*, G. E. and *Jones*, A. hemp dealers, Liverpool, June 13.—*Underhill*, J. and *Powell*, W. dealers in Government securities, Stock Exchange, London, Oct. 1.—*Wight*, R. and T. ironfounders, Sunderland, Oct. 1. Debts paid by R. Wight.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Oct. 1.

Allen, G. B. tailor, Wilmot-st. Brunswick-sq. Oct. 21, at half-past eleven.—*Bartley*, N. gent. Martin's-lane, Cannon-st. Oct. 23, at eleven.—*Bridge*, J. saddler and harness maker, Haverhill, Oct. 21, at half-past eleven.—*Bridgman*, J. cabinet maker, Little Queen-st. Holborn, Oct. 23, at half-past eleven.—*Britton*, the Rev. James, clerk, Queen's prison, Oct. 21, at half-past one.—*Hadley*, J. baker Star-corner, Bermondsey, Oct. 21, at twelve.—*Ingram*, J. hair dresser, Cambridge, Oct 23, at eleven.—*Mack*, J. boot maker, Church-street-corner, Suffolk, Oct. 21, at half-past twelve.—*Smith*, H. silk velvet manufacturer, Daniel-st. Bethnal-green, Oct. 21, at twelve.—*Stallabrass*, J. butcher, Broxburne, Oct. 23, at half-past eleven.—*Weston*, G. M. Hanover-st. Regent's-park, Oct. 21, at one.—*Williams*, J. lieutenant, Wharton-st. Clerkenwell, Oct. 21, at eleven.

Country.

Davies, D. farmer, Penygarn, Oct. 18, at eleven, Bristol.—*Halls*, T. K. drilling master, Oct. 24, at eleven, Exeter.—*Harrison*, writing clerk, Worcester, Oct. 22, at half-past one, Birmingham.—*Johnson*, R. F. farmer, North Seaton, Oct. 25, at half-past twelve, Newcastle.—*Marlow*, R. labourer, Tamworth, Oct. 24, at eleven, Birmingham.—*Maydew*, J. labourer, Over Peover, Oct. 10, at twelve, Manchester.—*Oram*, W. butcher, Nottingham, Oct. 14, at half-past ten, Birmingham.—*Spencer*, G. boot maker, Blagdon, Oct. 24, at eleven, Exeter.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Oct. 4.

Boorman, G. butcher, Canterbury, Oct. 16, at twelve.—*Farr*, J. E. carpenter, Baldock, Oct. 16, at half-past two.—*Goldsmith*, E. plumber and glazier, Lewes, Oct. 16, at two.—*Hayles*, J. carter, Ryde, Isle of Wight, Oct. 23, at eleven.—*Hacker*, R. out of business, Mint-st. Southwark, Oct. 16, at eleven.—*Lashmar*, B. builder, New Shoreham, Oct. 16, at one.—*Lewis*, B. out of business, Back Church-lane, Commercial-road East, Oct. 16, at half-past two.—*May*, J. assistant-clerk, Hart-court, Bridgewater-square, Oct. 19, at half-past twelve.—*Morley*, J. printer, Symon's-st. Sloane-square, Oct 19, at one.—*Rudden*, J. out of business, Chatham, Oct. 16, at half-past eleven.—*Saffhill*, J. farmer, Hillingdon, Oct. 19, at half-past eleven.—*Sawyer*, W. out of business, William-st. St. George's, Middlesex, Oct. 19, at twelve.—*Smith*, J. plumber and painter, Burford, Oct. 16, at eleven.—*Smith*, T. Edward-st. Bermondsey, Oct. 16, at half-past two.—*Thompson*, J. W. out of business, Cottage-lane, Commercial-road East, Oct. 16, at half-past twelve.—*Walker*, J. C. pilot, Lower Shadwell, Oct. 23, at twelve.

MEETINGS IN THE COUNTRY.

Gazette, Oct. 8.

Hely, J. green grocer, Manchester, Oct. 15, at twelve, Manchester.—*Henkin*, J. labourer, Coton, Oct. 24, at eleven, Birmingham.—*Hide*, E. table-knife manufacturer, Sheffield, Oct. 18, at eleven, Leeds.—*Hope*, J. provision shopkeeper and journeyman machine maker, Heywood, Oct. 16, at twelve, Manchester.—*Jackson*, T. butcher, Bradford, Oct. 18, at eleven, Leeds.—*Knight*, J. bricklayer, New Radford, Oct. [illegible], at eleven, Leeds.—*Mellor*, R. inspector of weights and measures, Hollinwood and Manchester, Oct. 15, at twelve, Manchester.—*Rogers*, J. out of business, Bilston, Oct. [illegible], at eleven, Birmingham.—*Walker*, T. stone mason and railway contractor, Dunford, near Huddersfield, [illegible] eleven, Leeds.

Sales by Auction.

Valuable Leasehold Estate in the City of London.

MESSRS. DAVIS and VIGERS are directed by the Mortgagee to SELL by AUCTION, at the Auction Mart, on Tuesday, October 22, at Twelve, in One Lot, a desirable and valuable LEASEHOLD PROPERTY, being Nos. 5, 6, and 7, Bank Chambers, Lothbury, in the immediate vicinity of the Bank of England and Royal Exchange, and now let to highly respectable tenants, at a rental of 513*l.* per annum.—To be viewed by permission of the tenants; particulars and conditions of sale may be had of Messrs. J. and C. ROGERS, Manchester-buildings, Westminster; at the Auction Mart; Hall of Commerce; and Auctioneers' offices, 3, Frederick's-place, Old Jewry.

Cottage Residence, Brixton, Surrey.

MESSRS. DAVIS and VIGERS are directed by the Executors to SELL by AUCTION, at the Auction Mart, on Tuesday, October 22, at Twelve (unless previously disposed of by private treaty), an elegant COTTAGE RESIDENCE, known as IVY COTTAGE, Brixton, Surrey, held by lease for an unexpired term of forty-nine years, and producing a rental of 52*l.* per annum.—To be viewed by permission of the tenants; particulars and conditions of sale may be had of Mr. F. DRAKE, Bouverie-street, Fleet-street; at the Auction Mart; Hall of Commerce; and of the Auctioneers, 3, Frederick's-place, Old Jewry.

Ground Rents for Investment, Clapham-road.

MESSRS. DAVIS and VIGERS are directed by the Executors to SELL by AUCTION, at the Auction Mart, on Tuesday, October 22, at Twelve (unless previously disposed of by private Treaty), in One Lot, desirable GROUND RENTS, secured on a House and Shop, Lambeth-place, Clapham-road, now in the occupation of Mr. Lambert; part of the Greyhound public-house, and the livery stables and residence in the rear; small house and shop adjoining, let to Mr. Biddell; and three messuages, coach-house, &c. facing St. Mark's church, producing together a rental of 55*l.* 12*s.* 4*d.* per annum.—To be viewed by permission of the tenants; particulars and conditions of sale may be had of Mr. F. DRAKE, Bouverie-street, Fleet-street; at the Auction Mart; Hall of Commerce; and of the Auctioneers, 3, Frederick's-place, Old Jewry.

Absolute Reversion to Money in the Funds, and a valuable Leasehold Estate.

MESSRS DAVIS and VIGERS will SELL by AUCTION, at the Auction Mart, on TUESDAY, October 22, at Twelve, in Two Lots (unless previously sold by private treaty), the ABSOLUTE REVERSION to One-Ninth part of One-Fourth Part or Share of 17,712*l.* 6*s.* 7*d.*, 4*l.* 17*s.* 9*d.*, and 660*l.* 11*s.* 10*d.* Three per Cent. Consols, and 6,003*l.* 6*s.* 8*d.* Three-and-a-half per Cent. Reduced Bank Annuities; also One-Ninth part of One-Sixth part of 7,353*l.* 6*s.* 8*d.* Three per Cent. Consols, standing in the names of trustees of the highest respectability, and receivable on the decease of a gentleman in the 55th year of his age, and a lady in the 53rd year of her age; also to One-Ninth part of One-Sixth part or share of certain substantial houses, stables, and premises, situate in the parish of St. Marylebone, valued at 20,325*l.* 10*s.*; also to One-Ninth part or share of two capital residences, of the present estimated value of 1,061*l.* 6*s.*—Particulars may be had at the Auction Mart; Hall of Commerce; Messrs. WALTHEW, solicitors, 5, Furnival's-inn, Holborn; and of the Auctioneers, 3 Frederick's-place, Old Jewry.

Desirable Leasehold Property, Ground Rents, &c. for Investment, Brixton, Surrey.

MESSRS. DAVIS and VIGERS are directed by the Executors to SELL by AUCTION, at the Auction Mart, on Tuesday, October 22, at Twelve, in Two Lots (unless previously disposed of by private treaty), GROUND and other RENTS, arising out of and secured on fifteen cottage residences in South Island-place, Brixton, Surrey, let to respectable tenants, producing a rental of 110*l.* 16*s.* 6*d.* per annum.—To be viewed by permission of the tenants; particulars, with conditions of sale, to be had of Mr. F. DRAKE, Bouverie-street, Fleet-street; at the Auction Mart; Hall of Commerce; and Auctioneers' offices, 3, Frederick's-place, Old Jewry.

Valuable Ground-Rents, Wandsworth-road, Surrey.

MESSRS. DAVIS and VIGERS are directed by the Executors to SELL by AUCTION, at the Auction Mart, on Tuesday, October 22, at Twelve (unless previously disposed of by private treaty), valuable LEASEHOLD GROUND-RENTS, secured on a chapel and tenements in the Wandsworth-road, Surrey, amounting to 85*l.* 7*s.* per annum.—Particulars and conditions of sale may be had of Mr. F. DRAKE, Bouverie-street, Fleet-street; at the Auction Mart; Hall of Commerce; and Auctioneers' Offices, 3, Frederick's-place, Old Jewry.

HYTHE, in KENT.—Valuable Freehold Property.—To be SOLD by AUCTION, by Messrs. FINNIS and RONALDS, by order and direction of the Assignees of Mr. Edward Sedgwick, a bankrupt, at the Swan Inn, Hythe, on Monday, the 21st day of October, 1844, at 3 o'clock in the Afternoon, all that MESSUAGE or MANSION-HOUSE, with the stables, coach-house, lawn, yard, garden, together with a small paddock inclosed, with an ornamental shrubbery, out-buildings, and convenient offices thereunto belonging, with the appurtenances, situate in High-street, in Hythe aforesaid, and now or late in the occupation of Mr. Edward Sedgwick, Solicitor. The above premises are exceedingly well adapted for a respectable family, as the house contains a dining-room, drawing-room, 21 feet by 18 feet, and 12 feet in height, commanding a sea view; three other rooms used as offices, four bed-rooms, and four good attics. Hythe is the nearest sea-port town to London, on the line of the South-Eastern Railway, and there are six trains to and from London daily, and from the circumstance that the inland scenery immediately contiguous to Hythe is universally admired, this property is considered well worth the attention of any gentleman who is desirous of obtaining a residence by the sea coast.

For further particulars and for conditions of sale apply to the Auctioneers, Hythe; to Messrs. Waterman, Wright, [illegible] Solicitors, 22, Essex-street, Strand, London; [illegible] and Watts, Solicitors, Hythe.

Sales by Auction.

WALMER, KENT.—Elegant Freehold MARINE RESIDENCE.—Messrs. BROOKS and GREEN will SELL by AUCTION, at Garraway's, on Wednesday, the 30th October, 1844, at Twelve o'clock, unless in the mean time disposed of by private contract, a valuable FREEHOLD ESTATE, situate in the delightful and rural village of Walmer, comprising the elegant Marine Residence of the late George Joad, esq.; since which period several thousand pounds have been judiciously expended in improving the property, together with its beautiful pleasure-grounds and park-like paddock, in all fifty acres, commanding extensive views of the sea, and the grounds and plantations of Walmer Castle. The elegant and appropriate furniture may be taken by valuation.

Full particulars and a plan of the estate may be had at the principal hotels at Dover, Deal, Canterbury, Ramsgate, and Walmer; at Garraway's; of Messrs. Powell, F. & W. Broderip, and Wilde, New-square, Lincoln's-inn; and to be viewed by orders only, to be had of Messrs. BROOKS and GREEN, Estate-agents, Surveyors, and Auctioneers, 28, Old Bond-street.

In Staffordshire, on the borders of Derbyshire.—Valuable Freehold Estates, consisting of upwards of 835 acres, principally dairy land, with convenient Farm-houses and Agricultural Buildings, Quarry of excellent Limestone, Limekiln, &c.

MESSRS. WINSTANLEY have received directions from the surviving Trustee under the Will of Brian Hodgson, Esq. deceased, to SELL by AUCTION, at the Green Man, Ashbourn, in the county of Derby, on Thursday, Oct. 17, in lots, a valuable and most desirable FREEHOLD PROPERTY, intersected by the high road between Derby and Manchester, and divided into several compact farms, bounded by a stream of water, and skirted by fine thriving woods, with suitable farm-houses and agricultural buildings, situate in the township of Swinscoe and parishes of Blore and Mayfield, in the county of Stafford, about four miles from Ashbourn, 10 from Leek, 16 from Derby, and contiguous to the demesnes of the Earl of Shrewsbury and H. F. Okeover, Esq. and in a country abounding with game. It comprises about 804 acres of excellent old dairy, pasture, and arable land, let to respectable tenants at moderate rents, together with 31 acres of wood and plantation, a quarry of excellent limestone, limekiln, &c. in hand.

To be viewed by applying to Mr. Thomas Gallimore, at Ellis-hill Farm, Swinscoe. Printed particulars will be ready twenty-eight days before the sale, when they may be obtained at the Green Man, Ashbourn; the George, Leek; Red Lion, Calton-moor; Swan, Stafford; Angel, Macclesfield; the King's Head, and Midland Counties Hotel, at Derby; Lion, and Flying Horse, Nottingham; Bulkeley Arms, at Stockport; Hen and Chickens, Birmingham; King's Head, at Coventry; Three Crowns and Bell, Leicester; Bridgewater Arms, Manchester; Royal Hotel, Chester; of Thomas Fellowes, esq. Solicitor, Rickmansworth, Herts; of Mr. Bardswell, Solicitor, and of Messrs. THOMAS WINSTANLEY and SONS, at Liverpool; and of Messrs. WINSTANLEY, Paternoster-row, London.

DOVOR.—SALE of a very valuable and extensive FREEHOLD ESTATE, in the flourishing and improving Town of Dover; producing an annual rental of upwards of 200*l.*—To be SOLD by AUCTION, by Mr. BIRCH, at the Antwerp Hotel, in Dover, on Monday, November 11, 1844, at Two for Three o'clock in the Afternoon precisely, in one Lot (unless previously disposed of by PRIVATE CONTRACT, of which due notice will be given), the above valuable Estate, comprising a large Messuage and elegant and extensive Shop, leased to Mr. Skillman, draper, for seven years, from the 6th of January, 1843; determinable at the end of the first four years. Another large Messuage and Shop, leased to Mr. Smith, hatter, for twenty-one years, from the 11th of October, 1837; determinable at the end of the first fourteen years. A Free Public-House, at the back of the above, in the occupation of Mr. Spice, tenant at will; and a Messuage adjoining, in the occupation of Mr. Binfield, grocer, also tenant at will. The premises in the occupation of Messrs. Skillman and Smith front the upper part of Snargate-street (near to the New Bridge, which leads to Waterloo-crescent, the Marine-parade, and Camden-crescent), and is the great thoroughfare of the fashionable visitors; and the premises in the rear are in a very populous neighbourhood, and from the increasing prosperity of the Town, the Estate offers a most eligible and improvable investment.

To treat for the purchase by Private Contract, and for printed particulars and conditions of sale, apply to Mr. PAIN, Solicitor, Dover.

MR. CLARKE'S ENAMELLED SUCCEDANEUM, for stopping decayed Teeth, is far superior to any thing ever before used, as it is placed in the tooth without any pressure or pain, and becomes as hard as the enamel, immediately after application, and remains firm in the tooth for life, rendering extraction unnecessary, and renders them again useful for mastication. Prepared only by Mr. Clarke, Surgeon Dentist.

LOSS OF TEETH.

Mr. CLARKE still continues to supply the loss of teeth, from one to a complete set, upon his beautiful system of self-adhesion, which has procured him such universal approbation in some thousands of cases, and recommended by numerous physicians and surgeons, as being the most ingenious system of supplying artificial teeth hitherto invented. They are so contrived as to adapt themselves over the most tender gums or remaining stumps, without causing the least pain, rendering the operation of extraction quite unnecessary. They are so fixed as to fasten any loose teeth, by forming a new gum, where the gums have shrunk, from the use of mercury or other causes, without the aid of any wire or springs, and above all, are firmer in the mouth, and fixed with that attention to nature as to defy detection by the closest observer. He also begs to invite those not liking to undergo any painful operation, as practised by most members of the profession, to inspect his painless, yet effective, system, where numerous sets and partial sets, in all stages of progress, may be seen; and in order that his system may be within the reach of the most economical, he will continue the same moderate charges.

Mr. CLARKE, Surgeon-Dentist, at home from Ten till Five. No. 6, Thayer-street, Manchester-square.

Sales by Auction.

HARROGATE.—By Messrs. WINSTANLEY, at the Crown Hotel, Low Harrogate, on Monday, October 21, at Three in the afternoon.

THE following valuable ESTATE, copyhold of the Forest of Knaresborough, where the fine is certain and very small:—Lot 1 comprises the Crown Hotel at Low Harrogate, and county of York, immediately contiguous to the Montpellier Baths and to the New Royal Pump Room, established for upwards of 160 years, and frequented by families of the first distinction, containing noble lofty dining and drawing rooms, with numerous private sitting rooms and suites of apartments, upwards of 120 bed chambers, and every convenience for carrying on the extensive business of this hotel. In the cellars are four excellent springs of fresh water, and in the grounds are two springs of sulphur water and one of Cheltenham water. The property, which contains 7,900 square yards, is in the occupation of Mr. Staning for the residue of a term of ten years, at a reserved rent of 600*l.* per annum. Also, Six stone-built Messuages, with Seven Shops, &c. forming Victoria-place, immediately adjoining to the hotel, and let to yearly tenants at rents amounting to 170*l.* Lot 2. The Montpellier Baths, a very substantial stone-built structure of elegant design, situate adjacent to lot 1, containing thirteen bath rooms, with dressing rooms, ladies' and gentlemen's waiting rooms, apartments for superintendent, steam engine, and all necessary apparatus for supplying the baths. Also a pump room of a neat and appropriate design, surrounded by highly ornamental pleasure grounds, where great numbers of visitors resort for the purpose of taking the sulphur water, for which Harrogate is so justly celebrated, or of a saline spring similar to the highly esteemed waters of Cheltenham, and of enjoying the delightful walks with which the gardens are diversified. The grounds contain eight very valuable springs of sulphur water, one of Cheltenham water, one of chalybeate water, and one of fresh water. The above, containing 11,495 square yards, are in the occupation of Mr. James Dawson, for a term of six years from the 1st of January, 1844, at a rent of 500*l.* per annum. Lot. 3. Two substantial stone-built Messuages, forming Bath-terrace, in Low Harrogate, contiguous to the Montpellier pleasure grounds, with flower and kitchen gardens, containing altogether 1,510 square yards. The land-tax is redeemed. The above properties present highly eligible opportunities for the investment of capital at a good interest, the principal parts of the buildings being modern, and in good repair. The income of the three lots amounting to 1,400*l.* per annum.

To be viewed by permission of the tenants, by tickets only, which, with particulars, plan, and conditions of sale, may be obtained of Mr. S. Powell, jun. Solicitor, High Harrogate; also of Mr. Andrews, Architect, York; at the hotels in Leeds, Sheffield, Derby, Manchester, Newcastle, Cheltenham, Leamington, Bath, Bristol, Edinburgh, Glasgow, and Dublin; of Messrs. WINSTANLEY and SONS, Auctioneers, Liverpool; at the Auction Mart; and of Messrs. WINSTANLEY, Paternoster-row, London; and of Messrs. Powell and Sons, Solicitors, Knaresborough.

ELLEL GRANGE ESTATES, NORTH LANCASHIRE.—To be SOLD by AUCTION, by order of the Trustees of the will of Richard Atkinson, Esq. deceased, by Messrs. TUGWOOD and SON, on Wednesday, the 23rd day of October next, at the King's Arms Hotel, in Lancaster, the sale to commence at Twelve o'clock at noon, subject to such conditions as shall be produced, either together or in lots, the beautiful and highly-desirable MANSION HOUSE and ESTATE, called "ELLEL GRANGE," for many years the residence of the late Richard Atkinson, Esq. situate about six miles south of Lancaster and about three-quarters of mile from two of the Stations on the Lancaster and Preston Junction Railway. The Mansion House is surrounded by pleasure-grounds and wood, and about 150 acres of the property is approached by a carriage-drive from the Lancaster and Preston turnpike-road of nearly half a mile in length, at the entrance of which an appropriate and picturesque gatekeeper's lodge is situate, and comprises entrance-hall, dining, drawing, and billiard-rooms, with library, and spacious and commodious kitchens and servants' offices, and steward's and housekeeper's-rooms; also, coach-houses, stabling, barns, shippons, gardens, hot-house, green-house, &c. &c.

Also, the "CRAG HALL," "BANTON HOUSE," and "WALKERS I'TH FIELDS" Estates, situate in the townships of Ellel, Cockerham, and Scotforth, near Lancaster, and comprising upwards of 350 acres of Freehold Tenure, and the principal part tithe free of rectorial tithe (the rest being subject to small moduses and commutation rents payable in lieu of tithes) in the occupation of respectable and responsible tenants.

Also will be Sold, at the same time and place, all those two freehold closes of Land, in Scotforth, called "JACKSONS," containing together 3a. 3r. 15p. statute measure; and also all those three closes of freehold Land, situate in the township of Skerton, containing together 6a. 3r. 6p. statute measure.

Also, all that plot of building-ground, called "TOWNS END CLOSE," situate in Upper King-street, in the town of Lancaster, and now occupied as gardens; and also a Rent-charge of Ten Shillings arising out of certain lands in the township of Ellel, the property of Mr. William Bradshaw, apportioned thereupon by virtue of the provisions of the General Tithe Commutation Act.

Printed particulars may be had at the King's Arms Hotel, in Lancaster, and of Mr. Lamb, Hay Carr, near Lancaster; of Mr. William Sharp, 2, Verulam-buildings, Gray's-inn, London; of Mr. John Sharp, Solicitor, Lancaster, who will direct a person the shew the estates, and from whom further particulars may be known.

Lancaster, Sept. 24, 1844.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 12th day of Oct. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 81.] SATURDAY, OCTOBER 19, 1844.

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For One Year paid in advance £2 0 0
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Legal Notices

THE LEGAL PROTECTIVE ASSOCIATION, 5, Bedford row, established for the Protection and Justification of the Profession, supported by annual Subscriptions of One Guinea. A GENERAL MEETING of the PROFESSION and the MEMBERS of the ASSOCIATION, is fixed for WEDNESDAY, the 30th instant, at One for Two o'clock in the Afternoon precisely, at the Gray's-Inn Coffee house, to elect a President, Vice Presidents, Auditors, and Secretary for the year ensuing, and to adopt the Rules and Plans for the future government and working of the Association. The critical situation and future prospects of the Profession demand prompt and serious consideration, and any new auxiliary body of the Profession actively co-operating and having one common object in view with those Societies already established for similar purposes, is but strengthening the combination necessary for the welfare and protection of the Profession and the purposes sought to be attained. Copies of the Rules, &c. (stating the objects of the Association, intended to be submitted at the meeting), will be sent to every Member of the Association, and may be had by any member of the Profession on application at No. 5, Bedford row, between the hours of 10 and 5, and where those desirous of enrolling themselves as members of the Association may do so.
T. CLARKE, Hon. Sec. DAVID WILLIAMS WIRE, Chairman of the Interim Committee.

UNION of PROVINCIAL LAW SOCIETIES.—The MEETING of the DEPUTATIONS from the various Law Societies joining the Union, will be held at the Rooms of the Manchester Law Association, No. 1, Norfolk street, Manchester, on Friday, the 10th of January 1845, at eleven a.m.
The several Societies already forming the Union, and the Names of their respective Hon. Secretaries, appear below; and it is requested that any other Society intending to join will immediately communicate with Mr. Thomas Taylor, Solicitor, 28, Princess street, Manchester, Hon. Sec. *pro tem.*

Name of Society	Name of Secretary	Residence of Secretary
Birmingham	T. S. James, Esq.	Birmingham
Cumberland	T. S. Railton	Carlisle
Gloucestershire	John Burrup	Gloucester
Hull	Edward Shebottom	Hull
Lancaster	John Sharp	Lancaster
Leeds	J. H. Shaw	Leeds
Liverpool	Oliver Jones	Liverpool
Manchester	T. Taylor, 28, Princess-street	Manchester
Newcastle and Gateshead	F. Seymour; Wm. Crighton	Gateshead
Plymouth	J. Pridham	Plymouth
Somersetshire	J. Ruddock	Bridgewater of the Junior Club
West Riding Yorkshire	— Pitt; T. Hodgson	Huddersfield; York

WIGAN BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the next GENERAL QUARTER SESSIONS of the PEACE for the Borough of WIGAN, in the County of Lancaster, will be held before ROBERT SEGAR, Esq., Recorder of the said Borough, at the Moot Hall, within the said Borough, on MONDAY, the 4th day of NOVEMBER next, at half past nine o'clock in the forenoon, at which time and place all jurors, prosecutors, witnesses, persons bound by recognizances, and others having business at the said Sessions, are required to attend.
RA. LEIGH,
Clerk of the Peace for the said Borough.
Dated the 14th day of October, 1844.

New Publications.

Insurance Companies.

Insurance Companies.

SHERIFF'S COURT.—On Thursday proclamation was made in the usual manner by Hemp, the officer, and the following persons not answering to their names, were declared outlaws:—Thomas Reade Kemp, at the suit of Sir William Pilkington, bart.; John Charles Trevanion, at the suit of Jacob Connop; George Clarke, at the suit of Joseph Ivimy; Thomas De la Hay, at the suit of William Graham; Thomas K. Channell, at the suit of J. Wilkinson; William Pyne, at the suit of J. Calcott; Sarah Gregson, at the suit of William Wood; William Francis Ellerby, at the suit of Nathaniel Daniel; George Baker, at the suit of William Tombleton; Thomas Hawkes, at the suit of William Adams; E. B. Lake, at the suit of Joseph Smith; George Croke, at the suit of E. J. Hill; John Croke (clerk), at the same suit; Sir John Scott Lillie, at the suit of E. J. Hill; William Pyne and William Learmonth, at the suit of C. Lewis; and C. Wing, at the suit of the same plaintiff.

THE GAZETTES.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Antrobus, D. salt merchant, 6½d. Turner, Liverpool.—*Baker*, B. mason, third, 3s. 6d. Turner, Liverpool.—*Biggs*, C. merchant, first and final, 3s. 6d. Pott, Manchester.—*Blatchford*, P. miller, fur. 13-16ths of 1d. and 3d. to new proofs. Hirtzel, Exeter.—*Buckley* and *Co.* manufacturers, 2nd, 1s. Pott, Manchester.—*Fairclough* and *Co.* scriveners, jt. 3s. 10d. sep. Fairclough 2s. 3d. Turner, Liverpool.—*Fozzard*, E. dyer, first, 7½d. Pott, Manchester.—*Gibson*, E. builder, first, 5s. 3d. Turner, Liverpool.—*Hawarden* and *Co.* cotton manufacturers, sep. Hawarden 2s. 2d. and 7-8ths of 1d. Pott, Manchester.—*Molyneux*, T. silk manufacturer, final, 1s. Pott, Manchester.—*Pritchard*, E. wine merchant, first, 4s. Turner, Liverpool.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Oct. 11.

Smith, T. brewer, Ealing, Sept. 27. Trusts. W. Grainger, maltster, New Brentford, W. Tucker, ironmonger, Old Brentford, H. Hancock, bricklayer, Ealing, J. Thorn, plumber, New Brentford, and J. Neville, cooper, Old Brentford. Sol. Nicholas, Brentford.—*Payne*, S. draper, Plymouth, Sept. 26. Trusts. D. Derry, banker, Plymouth, and A. Caldecott, warehouseman, city of London. Sol. Surr, Lombard-st.—*Savin*, C. artificial florist, South Audley-st. Sept. 11. T. Wood, gent. Hartsland, Kent. Sol. Knobel, Mincing-lane.

Gazette, Oct. 15.

Abbott, S. grocer, Bristol, Sept. 11. Trusts. E. Abbott, shopkeeper, Bristol, J. D. Moor, rope manufacturer, Bristol, and J. Lowick, gent. Almondsbury. Sol. Brittan, Bristol.—*Richardson*, J. innkeeper and farmer, Mablethorpe, Lincolnshire, Oct 9. Trusts. W. Buffam, farmer, St. Helen's, and T. Richardson, farmer, Midville. Sol. Lucas, Louth.—*Swann*, C. sen. factor, Redditch, Aug. 27. Trusts. J. H. Rodgers, webb manufacturer, Birmingham, W. Elliott, button maker, Birmingham, and W. Welch, jun. factor, Redditch. Sol. Rawlins, Birmingham.—*Wiltshire*, T, innkeeper, Charing. Kent, Oct. 12. Trusts. W. Rideal, wine merchant, Union-st. Southwark, and T. Rachell, gent. Charing. Sol. Norwood, Charing.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Oct. 11.

CORK, JOHN FREDERICK, and DE CARLE JOHN LAUNCELOT, coach builders, both of 142, New Bond-st. Middlesex, and the latter also of 3, Heathfield-ter. Turnham-green, Middlesex, Oct. 24, at half-past eleven, Nov. 26, at one, Basinghall-st. Com. Williams; Turquand, off. ass.; Roper, Lincoln's-Inn-fields, sol. Date of fiat, Oct. 8. W. and G. Southey, curriers, Chenies-st. Bedford-sq. pet. crs.

COULSTON, JAMES, innkeeper, Great Clacton, Essex, Oct. 22, at two, Nov. 19, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Mawe, New Bridge-st sol. Date of fiat, Oct. 4. J. P. Osborn, merchant, Colchester, pet. cr.

JAMES, CHARLES, oilman and Italian warehouseman, 95, Grand Junction terrace, Edgware-road, Paddington, Oct. 22, at half-past one, Nov. 9, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Chamberlayne and Meaden, Great James-st. sols. Date of fiat, Oct. 3. Bankrupt's own petition.

MARTIN, THOMAS GEORGE, wine merchant, Cold Harbour-lane, Camberwell, Oct. 22, at half-past eleven, Nov. 20, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Jinkinson, Cannon-st. sol. Date of fiat, Oct. 8. W. Heath, solicitor, Gracechurch-st. pet. cr.

PENSAM, CAROLINE, dress and straw bonnet maker, 386, High-street, Cheltenham, Oct. 25, at twelve, Nov. 25, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Stylus, Cheltenham, sol. Date of fiat, Oct. 7. W. Curtis, furniture broker, Cheltenham, pet. cr.

ROWE, HENRY, merchant, 33, Charles-st. Hatton-garden, Oct. 23, and Nov. 22, at half-past eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Johnson, Walcot-sq. sol. Date of fiat, Oct. 7. J. Rumsey, tailor, Wapping-wall, pet. cr.

WARREN, AMELIA, widow, confectioner and fruiterer, 45, Parliament-street, Westminster, Oct. 22 and Nov. 20, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; James, Basinghall-st. sol. Date of fiat, Oct. 4. Bankrupt's own petition.

WHITEHEAD, JAMES, common brewer, Ainsworth, Lancaster, Oct. 25, at eleven, Nov. 15, at twelve, Manchester; Pott, off. ass.; Chilton and Acklaud, Chancery-lane, and Hutton, Bolton-le-Moors, sol. Date of fiat, Oct. 3. G. Binks, merchant, Bolton-le-Moors. pet. cr.

Gazette, Oct. 15.

BALL, GIDEON, carpenter and builder, 3, Albion-st. Upper Bristol-road, Bath, Oct. 29 and Nov. 26, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Drake, Bath, and Richards and Co. Lincoln's-inn-fields, sols. Date of fiat, Oct. 7. J. Lester, timber merchant, Walcot, pet. cr.

BERENGER, FREDERICK ARNOLD, clothier and general salesman, 20, Homer-st. Crawford-st. Marylebone, Oct. 26, at half-past twelve, Nov. 27, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Teague, Crown-court, Cheapside, sol. Date of fiat, Oct. 10. On his own petition.

BIBBY, JAMES, coach and car proprietor, and livery stable keeper, Liverpool, Oct. 29 and Nov. 26, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Cornthwaite, Liverpool, and Cornthwaite and Adams, Old Jewry-chambers, sols. Date of fiat, Oct. 9. P. Mullin, coach builder, Liverpool, pet. cr.

COALL, WILLIAM JOHN JACKMAN, grocer, Queen-st. Exeter, Oct. 22 and Nov. 19, at one, Exeter, Com. Bere; Hirtzel, off. ass.; Stogdon, Exeter, and Keddell and Co. Lime-st. sols. Date of fiat, Oct. 10. On his own petition.

HALL, THOMAS BATT, grocer and shopkeeper, Coggershall, Essex, Oct. 25, at twelve, Nov. 25, at three, Basinghall-st. Com. Williams; Graham, off. ass.; Wire and Child, St. Swithin's-lane, sols. Date of fiat, Oct. 8. T. Moore, grocer, Colchester, pet. cr.

LEE, MICHAEL, and LEE, BARNETT, tailors, Duke-st. Piccadilly, Oct. 26 and Nov. 27, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Lewis and Lewis, Ely-place, sols. Date of fiat, Oct. 10. On his own petition.

MINTER, WILLIAM, builder and innkeeper, Colchester, Essex, Oct. 24, at half-past twelve, Nov. 26, at two, Basinghall-st. Com. Williams; Graham, off. ass.; Milne and Co. Temple, and Smithiers and Co. Colchester, sols. Date of fiat, Oct. 7. F. G. Abell, attorney, Colchester, pet. cr.

TABBERNER, THOMAS, corn factor and hop merchant, Oct. 29 and Nov. 28, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Bartlett, Birmingham, and Holme and Co. New-inn, sols. Date of fiat, Oct. 7. J. Tyler, hop merchant, Worcester, pet. cr.

WILLIAMS, HENRY DAVID, plumber, painter, and glazier, East-st. Southampton, Oct. 26, at twelve, Nov. 27, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Paterson, Bouverie-st. sol. Date of fiat, Oct. 10. Bankrupt's own petition.

PARTNERSHIPS DISSOLVED.

Gazette, Oct. 8.

Alison, J. M. and *Ranken*, J. S. London, Oct. 4.—*Baynton*, W. H. and *Slade*, J. solicitors, Devizes, Sept. 29.—*Brown*, E. and *Chew*, B. chemists, Lower-st. Islington, Oct. 4. Debts paid by Brown.—*Burton*, A. and J. furniture dealers, Brownlow-st. Holborn and Skinner-st. Snow-hill, Sept. 29. Debts paid by J. Burton.—*Chapman*, J. and *Herbert*, G. W. linen drapers and hosiers, Reading, Oct. 5. Debts paid by Herbert.—*Hallas*, J. and *Kaye*, C. G. cotton warp makers, Huddersfield, Oct. 5. Debts paid by Kaye.—*Harris*, H. and *Johnson*, J. booksellers, Dover, Sept. 30.—*Hayes*, W. and *Hughes*, W. builders, Birkenhead, Cheshire, Oct. 1. Debts paid by Hughes.—*Heale*, W. sen. and jun. nurserymen, Calne, Chippenham, and Devizes, Sept. 28.—*Hilder*, J. and *Henley*, T. S. millers, Salehurst, Sussex, Sept. 29.—*Kempson*, P. and S. millers, Birmingham, July 12.—*Kenyon*, R. and *Orme*, W. engravers to calico printers, Salford, Oct. 5.—*Lavender*, E. and W. H. saddlers, Ramsey, Huntingdonshire, Oct. 4.—*Marsden*, F. and *Hey*, G. shoe manufacturers, Leeds, Oct. 7. Debts paid by Hey.—*Nield*, S. and *Lewis*, T. mercers and drapers, Nantwich, Sept. 30.—Debts paid by Lewis and Salmon.—*Obbard*, W. and *Brown*, W. T. booksellers and news-venders, Little George-st. Westminster, Sept. 30.—*Partridge*, S. and *Tabberner*, J. L. Windmill-end, Worcestershire, Oct. 4.—*Patterson*, W. and *Mercer*, J. junior, ship builders, Bristol, Sept. 29. Debts paid by Patterson.—*Pritty*, T. and *Hodgson*, H. R. ironmongers, Bury St. Edmunds, Sept. 30.—*Stanford*, H. and *Freeman*, F. F. milliners and dress makers, Woodbridge, Suffolk, Sept. 30.—*Storey*, J. and *Gibb*, J. ship chandlers, Liverpool, Oct. 5. Debts paid by Storey.—*Storey*, J. and *Winspear*, J. shipsmiths, Liverpool, Oct. 5. Debts paid by Winspear.—*Taylor*, W. and *Shirley*, W. H. plumbers, Sheffield, Sept. 30. Debts paid by Taylor.—*Thorp*, G. and T. linen drapers, Clapham-road, Sept. 29.—*Wickham*, Fitz W. and *Balding*, H. wholesale grocers, Bristol, Oct. 4.

Gazette, Oct. 11.

Archbutt, R. and T. builders, Chelsea, Oct. 10. Debts paid by R. Archbutt.—*Beaumont*, J. and T. Sutton-st. Commercial-road East, Oct. 4.—*Brearley*, G. and D. flushing manufacturers, Batley, Sept. 16.—*Clark*, M. *Keeling*, E. H. and *Clark*, H. F. wine brokers, Tower-st. so far as regards Keeling, Oct. 11. Debts paid by the remaining partners.—*Coates*, J. and *M'Naught*, A. J. calico printers, Seedley and Manchester, Oct. 4. Debts paid by Coates.—*Cort*, B. and J. jun. ironmongers, &c. Leicester, Sept. 7.—*Dutton*, G. W. and R. and *Cartwright*, T. jun. linen drapers, Chester, Oct. 4.—*Harding*, J. *Cox*, J. and *Shaw*, J. G. oil and tallow merchants, Bristol, as far as regards Harding, Sept. 30. Debts paid by the remaining partners.—*Hudson*, T. and *Boyd*, G. wholesale leather merchants, Newcastle, July 30.—*Jackson*, W. H. and *Carter*, C. ironmongers, Rochford, Sept. 28.—*James*, C. and E. D. grocer, Newcastle, Oct. 2. Debts by E. D. James.—*Mogg*, J. and *Curnh*, J. flour merchants, Falmouth, Sept. 7.—*Murphy*, R. and *Malcomson*, A. B. merchants, King William-st. Oct. 10.—*Newsome*, W. and *Holt*, C. emery roller makers, Rochdale, June 10. Debts paid by Newsome.—*Parke*, R. M. and *Harrison*, R. manufacturers of prussiate of potash, Newcastle upon-Tyne, Sept. 9.—*Sheffield*, W. and *Keates*, J. E. tailors and drapers, Manchester, June 15.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Oct. 8.

Abbott, H. engraver, Bow-st. Covent-garden, and Park-st. Camden-town, Oct. 22, at one.—*Bennock*, A. commission agent, Upper Park-st. Islington, Oct. 23, at half-past two.—*Bull*, W. farmer, Bembridge, Oct. 22, at half-past two.—*Carrington*, M. out of business, Deptford, Oct. 22, at half-past one.—*Christophers*, H. shipping agent, Amwell-st. Pentonville, Oct. 29, at half-past twelve.—*Cogger*, J. jun. wire worker, St. George's-place, Brixton, Oct. 26, at half-past eleven.—*Fisher*, W. attorney, Hammersmith, Oct. 23, at half-past twelve.—*Foulkes*, T. out of business, Victoria-terrace, Stockwell, Nov. 18, at eleven.—*Giles*, J. A. clerk, Haddington, Nov. 4, at eleven.—*Gliddon*, R. W. gent. Claremont-cottage, Camden-hill, Kensington, Oct. 29, at half-past eleven.—*Goldring*, F. out of business, Hastings-st. Brunswick-sq. Nov. 4, at half-past eleven.—*Hawker*, T. R. tailor, Dorrington-st. Clerkenwell, Oct. 22, at two.—*Ife*, J. carpenter, Plaistow, Oct. 23, at half-past one.—*Jefferis*, W. farmer, St. Alban's and Hatfield, Oct. 26, at half-past eleven.—*Kerr*, A. beer retailer, Romford, Oct. 26, at eleven.—*Leney* W. T. green grocer, Alpha-st. Peckham, Oct. 26, at one.—*Lord*, H. clerk, Brownlev-st. Stepney, Oct. 29, at twelve.—*Lord*, S. jun. clerk, Maze-pond, Southwark, Oct. 29, at eleven.—*Martindale*, B. attorney, Northumberland-st. and Cecil-st. Strand, Oct. 22, at two.—*Mottley*, W. W. butcher, Warwick-st. Pimlico, and Newgate-market, Oct. 19, at two.—*Neirinckx*, A. gent. Lower Queen-st. Rotherhithe, Oct. 23, at twelve.—*Railton*, J. wine merchant, Grange-road, Bermondsey, and Great Tower-st. Oct. 22, at half-past two.—*Scott*, J. T. house agent, Milton, Oct. 26, at half-past twelve.—*Silverlock*, R. clerk, Grange-road, Bermondsey, Oct. 29, at eleven.—*Smeeton*, G. horse agent, Stratford, Oct. 23, at two.—*Smith*, A. coach builder, Southrow, New-road, Oct. 22, at one.—*Smith*, J. tailor, Shenington, Oct. 22, at half-past two.—*Stansby*, M. A. lodging-house keeper, College-place, Camden-town, Oct. 23, at half-past two.—*Stadwell*, D. coal dealer, Wandsworth, Nov. 4, at twelve.—*Thompson*, C. E. coal dealer, Warlter's-cottages, Asylum-road, Old Kent-road, Oct. 23, at one.—*Weatherby*, J. gent. Brunswick-place, Brompton, Oct. 19, at half-past two.

Gazette, Oct. 11.

Dowley, J. H. clerk, White Conduit-st. Oct. 30, at twelve.

Gazette, Oct. 8—*Country.*

Archibald, J. clerk, Newent, Nov. 1, at eleven, Bristol.—*Broad*, G. butcher, Oct. 29, at one, Bristol.—*Dark*, J. commission agent, Bristol, Oct. 29, at two, Bristol.—*Didcote*, W. boot and shoemaker, Cheltenham, Nov. 1, at twelve, Bristol.—*Fleming*, D. grocer, Bristol, Oct. 31, at eleven, Bristol.—*Frith*, J. the younger, butcher, Liverpool, Oct. 16, at one, Liverpool.—*Godward*, A. innkeeper, Adwick-upon-Dearne, Nov. 1, at eleven, Leeds.—*Haslam*, P. attorney, Congleton, Oct. 14, at one, Liverpool.—*Kilner*, J. P. warehouseman, Huddersfield, Nov. 1, at eleven, Leeds.—*Scott*, A. banksman, Rochdale, Oct. 18, at twelve, Manchester.—*Spratley*, J. stevedore, Liverpool, Oct. 16, at half-past one, Liverpool.—*Steers*, W. pot-mold maker, Keighley, Nov. 1, at eleven, Leeds.

Gazette, Oct. 11—*Country.*

Anderson, R. sen. husbandman, Oct. 31, at eleven, Newcastle.—*Bray*, E. coal and corn dealer, Solihull, Nov. 5, at eleven, Birmingham.—*Kain*, J. out of business, Somerton, Oct. 24, at twelve, Exeter.—*Lane*, G. beer retailer, Berkeley, Nov. 7, at twelve, Bristol.—*Mercerot*, W. C. professor of dancing, Leamington Priors, Oct. 29, at half-past ten, Birmingham.—*Unwin*, G. miller, Caver's Wall, Oct. 22, at one, Birmingham.—*Yeoman*, J. carpenter, Phillack, Oct. 25, at one, Exeter.

For Sale.

LEASEHOLDS for SALE.—To be SOLD by PRIVATE CONTRACT, four well-built, semi-detached DWELLING HOUSES, situate in Cold Harbour-lane, North Brixton, Surrey. Three of the houses are let on lease to respectable tenants. The property is held on lease for a term of 80 years from Christmas 1842, at low ground-rents.

For particulars apply to Messrs. HANSLIP and MANNING, Solicitors, 20, Thavies'-inn, Holborn.

PLAISTOW, ESSEX.—An excellent detached Freehold FAMILY RESIDENCE, Meadow Land, Gardens, Coach-house and Stabling. Land-tax redeemed. To be SOLD by PRIVATE CONTRACT, by Messrs. THORNTON and SON, by direction of the executors of Mrs. Lack, deceased, a capital and spacious brick-built freehold FAMILY RESIDENCE, with carriage approach and shrubbery and portico entrance, in the high road at Plaistow, in capital substantial and ornamental repair, containing numerous excellent bed-chambers, handsome drawing, dining, and breakfast rooms, domestic apartments, basement offices, detached 4-stall stable, coach-house, out-buildings, gardener's cottage, productive fruit, vegetable, and flower gardens, well laid out, and 5½ acres of sound productive land, most desirable for occupation or investment.

To be viewed by cards only, which, with particulars, may be had of THORNTON and SON, Auctioneers, Brentwood, Stratford, and 58, Fenchurch-street.

Sales by Auction.

THE ORCHARD, WANDSWORTH, SURREY, on the road from thence to Putney, an important FREEHOLD ESTATE, Land-tax redeemed, most eligible for a Building Speculation.—To be PEREMPTORILY SOLD by AUCTION, by Messrs. NEWTON and APPLETON, at the Auction Mart, London, on Wednesday, the 30th of October, at Twelve, in one Lot, a highly desirable FREEHOLD ESTATE of Eleven Acres of Land, with a modern-built Mansion thereon, comprehending all the requirements for a large Respectable Family, or a public Establishment. The grounds are bounded by good roads. The views of the Thames and its splendid diversified scenery, from all points of this Estate, invite the Builder or Speculator to the erection of Villas so much wanted in this locality; and such may be laid out without interfering with the necessary accommodation and delightful views from the mansion. Or a large secure income may with certainty be created in first-rate Freehold Ground-rents.

Full descriptive Particulars with Plans, may be obtained at the Mart; Eagle, Wandsworth; of Mr. Newton, Rosebank, Hampton Court; and of Messrs. NEWTON and APPLETON, Auctioneers and Estate Agents, 7, Mansion House-street, City.

STAPLEFORD ABBOTT, ESSEX.—The Grove House Estate, with twenty-five Acres of excellent Pasture and Arable Land and Homestead.—Messrs. THORNTON and SON will SELL by AUCTION, at Garraway's Coffee House, Change Alley, Cornhill, on Friday, November 8th, at Twelve o'clock, by direction of the Proprietor, changing his residence, in four lots, a genteel detached RESIDENCE, known as the GROVE-HOUSE ESTATE, most pleasantly situated and commanding extensive and picturesque views, at Stapleford Abbott, on the high road from Romford to Ongar, and sixteen miles from London, in the vicinity of the principal markets, and surrounded by good hard roads. The land, which has a frontage to the main roads, comprises six inclosures of good meadow land of twenty-three acres, and two acres of sound arable land. The property is copyhold, at a trifling quit rent. May be viewed by leave of the proprietor; particulars on the premises; inns at Ongar, Epping, and Chigwell; of Messrs. HILLEARY, Solicitors, Stratford, and 63, Fenchurch-street; and of THORNTON and SON, Auctioneers, Brentwood, Stratford, and 58, Fenchurch-street.

WALMER, KENT.—Elegant Freehold MARINE RESIDENCE.—Messrs. BROOKS and GREEN will SELL by AUCTION, at Garraway's, on Wednesday, the 30th October, 1844, at Twelve o'clock, unless in the mean time disposed of by private contract, a valuable FREEHOLD ESTATE, situate in the delightful and rural village of Walmer, comprising the elegant Marine Residence of the late George Joad, esq.; since which period several thousand pounds have been judiciously expended in improving the property, together with its beautiful pleasure-grounds and park-like paddock, in all fifty acres, commanding extensive views of the sea, and the grounds and plantations of Walmer Castle. The elegant and appropriate furniture may be taken by valuation.

Full particulars and a plan of the estate may be had at the principal hotels at Dover, Deal, Canterbury, Ramsgate, and Walmer; at Garraway's; of Messrs. Powell, F. & W. Broderip, and Wilde, New-square, Lincoln's-inn; and to be viewed by orders only, to be had of Messrs. BROOKS and GREEN, Estate-agents, Surveyors, and Auctioneers, 38, Old Bond-street.

Sales by Auction.

HYTHE, in KENT.—Valuable Freehold Property.—To be SOLD by AUCTION, by Messrs. FINNIS and RONALDS, by order and direction of the Assignees of Mr. Edward Sedgwick, a bankrupt, at the Swan Inn, Hythe, on Monday, the 21st day of October, 1844, at 3 o'clock in the Afternoon, all that MESSUAGE or MANSION-HOUSE, with the stables, coach-house, lawn, yard, garden, together with a small paddock inclosed, with an ornamental shrubbery, out-buildings, and convenient offices thereunto belonging, with the appurtenances, situate in High-street, in Hythe aforesaid, and now or late in the occupation of Mr. Edward Sedgwick, Solicitor. The above premises are exceedingly well adapted for a respectable family, as the house contains a dining-room, drawing-room, 21 feet by 18 feet, and 13 feet in height, commanding a sea view; three other rooms used as offices, four bed-rooms, and four good attics. Hythe is the nearest sea-port town to London, on the line of the South-Eastern Railway, and there are six trains to and from London daily, and from the circumstance that the inland scenery immediately contiguous to Hythe is universally admired, this property is considered well worth the attention of any gentleman who is desirous of obtaining a residence by the sea coast.

For further particulars and for conditions of sale apply to the Auctioneers, Hythe; to Messrs. Waterman, Wright, and Kingsford, Solicitors, 23, Essex-street, Strand, London; or to Messrs. Brockman and Watts, Solicitors, Hythe.

Important Sale of Copyhold Ground-Rents, equal to Freehold, and valuable Leasehold Estates, in and near London, producing a rent-roll of about 2,000*l.* per annum.

MR. FREDERICK CHINNOCK has been instructed by the Devisees in Trust, under the will of the late Mrs. Sarah Quincey, to SELL by AUCTION, at the Auction Mart, on Tuesday, Nov. 12, at One, COPYHOLD GROUND-RENTS, equal to Freehold, amounting to 335*l.* per annum, with valuable Reversions, arising out of a noble pile of buildings, situate at the foot of Blackfriars-bridge, on the Surrey side, and known as Albion-place, and five excellent Houses, with shops, adjoining the same, in the Blackfriars-road; also a valuable Copyhold private Residence, with possession, situate on the banks of the Thames, commanding a fine view of St. Paul's, the bridges, and the river; two valuable Copyhold Houses, in Holland-street, producing 111*l.* per annum; and the extensive Copyhold Wharf and Premises, known as Albion-wharf, in the occupation of Messrs. Wyatt and Co. producing 700*l.* per annum; also a noble modern Leasehold Building, situate in Falcon-court, Fleet-street, held at a low ground-rent, called Temple-chambers, producing a rental of 340*l.* per annum; a Leasehold Estate, comprising four modern private residences, situate in lower Belgrave-place, Pimlico, and a large Dwelling-house, with an extensive range of buildings and wharf, extending to the Grosvenor-basin, producing a rental of 240*l.* per annum; also a valuable Freehold Public-house and Dwelling-house adjoining, situate in the Borough, Southwark, let on lease at 50*l.* per annum; and a compact Leasehold Estate, situate at Low Layton, in Essex, with gardens and land, producing 118*l.* per annum. Descriptive particulars and plans will be ready for delivery on and after the 16th of October, and may be obtained at the Mart; of Messrs. RICHARDSON and SMITH, Solicitors, 28, Golden-square; and at Mr. CHINNOCK's Auction and Estate Offices, 28, Regent-street, Waterloo-place.

PERIODICAL SALE.—Established in 1803.—Valuable Life Policies in the Equitable, Atlas, and Norwich Union Assurance Offices: Shares in the Norwich Union Fire Office, &c.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Monthly Sale of Reversionary Interests, &c. appointed to take place at the Mart, on Friday, November 1, at Twelve, in Lots, a POLICY for the Sum of 2,000*l.* with the additions, amounting to 400*l.* making together 2,400*l.* effected with the Equitable Assurance Office, in 1820, life 64. A Policy for 4,000*l.* with the accumulations, amounting to 4,744*l.* effected with the Atlas Assurance Office, in 1825, life 64. A Policy for 1,200*l.* with a bonus, amounting to 368*l.* 5s. 3d. making together the sum of 1,568*l.* 5s. 3d. effected with the Norwich Union Society, in 1812, life 71. Two Shares of 200*l.* each, in the Norwich Union Fire Assurance Society; the last dividend declared about last January was at the rate of 7½ per cent.

Particulars may be obtained in due time, at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

CHELSEA, contiguous to the Royal Military Asylum.—FREEHOLD RESIDENCE and GROUNDS, and large LEASEHOLD GARDEN adjoining, applicable for Building Purposes.

MESSRS. SHUTTLEWORTH and SONS are directed by the Trustees under the Will of the late John Bailey, esq., to SELL by AUCTION, at the Mart, on FRIDAY, Nov. 8, at Twelve, a valuable FREEHOLD PROPERTY; comprising an excellent Family Residence, substantially erected, and desirably situate No. 24, Smith-street, Chelsea, within a few minutes' walk of the Royal Military Asylum, containing numerous sleeping apartments, excellent drawing and dining rooms, breakfast parlour, and suitable domestic offices, with a conservatory, lawn, and flower garden tastefully disposed; large yard conveniently placed and inclosed with lofty carriage gates, substantial brick stabling for three horses, hunter's box, coach-house and loft over, a very compact brewhouse and appurtenances, poultry-house, and other useful outbuildings; also a capital kitchen garden entirely walled, with a gardener's cottage and tool-house; the whole comprising nearly three acres, and are let on a lease, which will expire at Lady-day, 1845, at a very low rent of 140*l.* per annum. The kitchen garden (comprising about an acre) is leasehold for a long term, at a peppercorn, and possesses an increased value from its contiguity to the extensive building operations now in progress in this rapidly improving neighbourhood.

May be viewed by permission of the tenant; and particulars had fourteen days previous to the sale at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Sales by Auction.

HARROGATE.—By Messrs. WINSTANLEY, at the Crown Hotel, Low Harrogate, on Monday, October 21, at Three in the afternoon.

THE following valuable ESTATE, copyhold of the Forest of Knaresborough, where the fine is certain and very small:—Lot 1 comprises the Crown Hotel at Low Harrogate, and county of York, immediately contiguous to the Montpellier Baths and to the New Royal Pump Room, established for upwards of 100 years, and frequented by families of the first distinction, containing noble lofty dining and drawing rooms, with numerous private sitting rooms and suites of apartment, upwards of 130 bed chambers, and every convenience for carrying on the extensive business of this hotel. In the cellars are four excellent springs of fresh water, and in the grounds are two springs of sulphur water and one of Cheltenham water. The property, which contains 7,800 square yards, is in the occupation of Mr. Stanning for the residue of a term of ten years, at a reserved rent of 600*l.* per annum. Also, Six stone-built Messuages, with Seven Shops, &c. forming Victoria-place, immediately adjoining to the hotel, and let to yearly tenants at rents amounting to 176*l.* Lot 2. The Montpellier Baths, a very substantial stone-built structure of elegant design, situate adjacent to lot 1, containing thirteen bath rooms, with dressing rooms, ladies' and gentlemen's waiting rooms, apartments for superintendent, steam engine, and all necessary apparatus for supplying the baths. Also a pump room of a neat and appropriate design, surrounded by highly ornamental pleasure grounds, where great numbers of visitors resort for the purpose of taking the sulphur water, for which Harrogate is so justly celebrated, or of a saline spring similar to the highly esteemed waters of Cheltenham, and of enjoying the delightful walks with which the gardens are diversified. The grounds contain eight very valuable springs of sulphur water, one of Cheltenham water, one of chalybeate water, and one of fresh water. The above, containing 11,485 square yards, are in the occupation of Mr. James Dawson, for a term of six years from the 1st of January, 1844, at a rent of 500*l.* per annum. Lot 3. Two substantial stone-built Messuages, forming Bath-terrace, in Low Harrogate, contiguous to the Montpellier pleasure grounds, with flower and kitchen gardens, containing altogether 1,510 square yards. The land-tax is redeemed. The above properties present highly eligible opportunities for the investment of capital at a good interest, the principal parts of the buildings being modern, and in good repair. The income of the three lots amounting to 1,400*l.* per annum.

To be viewed by permission of the tenants, by tickets only, which, with particulars, plan, and conditions of sale, may be obtained of Mr. S. Powell, jun. Solicitor, High Harrogate; also of Mr. Andrews, Architect, York; at the hotels in Leeds, Sheffield, Derby, Manchester, Newcastle, Cheltenham, Leamington, Bath, Bristol, Edinburgh, Glasgow, and Dublin; of Messrs. WINSTANLEY and SONS, Auctioneers, Liverpool; at the Auction Mart; and of Messrs. WINSTANLEY, Paternoster-row, London; and of Messrs. Powell and Sons, Solicitors, Knaresborough.

ELLEL GRANGE ESTATES, NORTH LANCASHIRE.—To be SOLD by AUCION, by order of the Trustees of the will of Richard Atkinson, Esq. deceased, by Messrs. TUGWOOD and SON, on Wednesday, the 23rd day of October next, at the King's Arms Hotel, in Lancaster, the sale to commence at Twelve o'clock at noon, subject to such conditions as shall be produced, either together or in lots, the beautiful and highly-desirable MANSION HOUSE and ESTATE, called "ELLEL GRANGE," for many years the residence of the late Richard Atkinson, Esq. situate about six miles south of Lancaster and about three-quarters of mile from two of the Stations on the Lancaster and Preston Junction Railway. The Mansion House is surrounded by pleasure-grounds and wood, and about 150 acres of the property is approached by a carriage-drive from the Lancaster and Preston turnpike-road of nearly half a mile in length, at the entrance of which an appropriate and picturesque gatekeeper's lodge is situate, and comprises entrance-hall, dining, drawing, and billiard-rooms, with library, and spacious and commodious kitchens and servants' offices, and steward's and housekeeper's-rooms; also, coach-houses, stabling, barns, shippons, gardens, hot-house, green-house, &c. &c.

Also, the "CRAG HALL," "BANTON HOUSE," and "WALKERS I'TH FIELDS" Estates, situate in the townships of Ellel, Cockerham, and Scotforth, near Lancaster, and comprising upwards of 350 acres of Freehold Tenure, and the principal part tithe free of rectorial tithe (the rest being subject to small moduses and commutation rents payable in lieu of tithes) in the occupation of respectable and responsible tenants.

Also will be Sold, at the same time and place, all those two freehold closes of Land, in Scotforth, called "JACKSONS," containing together 3a. 3r. 15p. statute measure; and also all those three closes of freehold Land, situate in the township of Skerton, containing together 6a. 3r. 6p. statute measure.

Also, all that plot of building-ground, called "TOWNS END CLOSE," situate in Upper King-street, in the town of Lancaster, and now occupied as gardens; and also a Rent-charge of Ten Shillings arising out of certain lands in the township of Ellel, the property of Mr. William Bradshaw, apportioned thereupon by virtue of the provisions of the General Tithe Commutation Act.

Printed particulars may be had at the King's Arms Hotel, in Lancaster, and of Mr. Lamb, Hay Carr, near Lancaster; of Mr. William Sharp, 2, Verulam-buildings, Gray's-inn, London; of Mr. John Sharp, Solicitor, Lancaster, who will direct a person the shew the estates, and from whom further particulars may be known.

Lancaster, Sept. 24, 1844.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 19th day of Oct. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 82.] SATURDAY, OCTOBER 26, 1844.

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Legal Notices.

THE LEGAL ASSOCIATION, 5, Bedford-row, established for the Protection and Justification of the Profession; supported by annual Subscriptions of One Guinea. A GENERAL MEETING of the PROFESSION and the MEMBERS of the ASSOCIATION, is fixed for WEDNESDAY, the 30th instant, at One for Two o'clock in the Afternoon, precisely, at the Gray's-Inn Coffee-house, to elect a President, Vice Presidents, Auditors, Council, and Secretary for the year ensuing, and to adopt the Rules and Plans for the future government and working of the Association. The critical situation and future prospects of the Profession demand prompt and serious consideration, and any new auxiliary body of the Profession actively co-operating and having one common object in view with those Societies already established for similar purposes, is but strengthening the combination necessary for the welfare and protection of the Profession and the purposes sought to be attained. Copies of the Rules, &c. (stating the objects of the Association) intended to be submitted at the meeting, will be sent to every Member of the Association, and may be had by any member of the Profession on application at No. 5, Bedford-row, between the hours of 10 and 5, and where those desirous of enrolling themselves as members of the Association may do so.

F. CLARKE, Hon. Sec. DAVID WILLIAMS WIRE, Chairman of the Interim Committee.

NOTICE.—JOHN HOWIE and ARCHIBALD HOWIE, who, in or about the year 1798, were residing in or near Ceres, near Couper of Fife, N. B. stone masons, if now living, or if dead, their Executors or Administrators, can learn something to their advantage by applying to Messrs. MERCER and EDWARDS, Solicitors, Deal, Kent.

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7. Order of Maintenance, where Application was made before Birth.
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13. Warrant of Commitment of Putative Father after Distress Warrant; Variation, where no Distress Warrant issued.
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F. Order of Liberation of Witness on submission.
G. Notice by Putative Father of Appeal.
H. Recognizance to try Appeal at Quarter Sessions, with Three Notices.
I. Recognizance to await Return of Distress Warrant.

CONTRIBUTIONS.

K. Precept to Guardians for Contributions to County Rate, 7 & 8 Vict. c. 33.

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AFFAIRS OF JERSEY.—Mr. Roebuck, M.P. for Bath, who has been staying this summer in Jersey, and who is generally understood to have taken an active part in the discussions which arise between the Government and the Channel Island authorities, returned a few days since from a visit to the Lieutenant-Governor at Haviland-hall.—*Le Pilote*, Guernsey paper.

NECROLOGY.

MELANCHOLY DEATH OF A BARRISTER AT DUBLIN.—A very afflicting occurrence recently took place in the neighbourhood of Finglass, a village about three miles on the north side of this city. Mr. John Walsh, barrister, after concluding his business in the Insolvent Court, walked out in the direction of Finglass, taking with him two dogs. Adjacent to Finglass there is a large quarry hole, filled with water to the depth, it is said, of thirty feet in some parts, and in which, it is thought, Mr. Walsh sent the dogs to swim. Be that, however, as it may, the lifeless body of the unfortunate gentleman was discovered in the water, about five o'clock, by a policeman. It is thought that while he was walking on the edge of the quarry a portion of the earth gave way beneath his feet, and he was precipitated into the water. Mr. Walsh, ten or twelve years ago, had been an active member and a frequent speaker at the Trades Political Union. At the election for Dublin, in 1835, he was the proposer of Mr. O'Connell. Subsequently he went to the bar, and devoted himself with diligence to the business of his profession. He has left a wife and young children.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTH.

DAVIS, Mrs. Hewitt.—On the 20th inst. at Spring Park, Addington, Surrey, of a daughter.

MARRIAGES.

COOTE, N. J. esq. of her Majesty's 22nd Regiment, third son of R. H. Coote, of Lincoln's-inn, esq. barrister-at-law, to Rhoda Carleton, only daughter of William Holmes, esq. of Brookfield, Sussex, on Tuesday, the 22nd inst. at Leominster, Sussex.

FORBES, Arthur Kennedy, esq. barrister-at-law, to Euphemia, eldest daughter of the late Colonel Nichol, Adjutant-General of the Bengal Army, on the 19th inst. at the parish church of St. Marylebone.

JENKINS, William, esq. of her Majesty's Dockyard, Woolwich, to Louisa Sophia, second daughter of the late Hon. Sir William Oldnall Russell, Chief Justice of Bengal, at St. George's, Hanover-square.

WHITTAKER, Lewis Duncan, esq. Justice of the Peace, son of Edmund Whittaker, esq. late of Bampton, Oxon, to Rebecca, youngest daughter of William Cox, of Hobartville House, esq. Justice of the Peace and Warden of the district, on the 16th of May, 1844, at Richmond, New South Wales.

DEATHS.

CROSBY, Edith Russel, the infant daughter of James Crosby, esq. of Church Court, Old Jewry, solicitor, on the 16th inst. at Brighton.

DEACON, Edward Erastus, esq. of the Inner Temple, barrister-at-law, and of Michael's Grove, Brompton, on the 16th inst. aged 60.

HYNDHAM, Henry, esq. Sheriff of the Huron District, youngest son of the late Colonel H. Hyndham, of the Hon. East India Company's Service, at Goodench, Upper Canada, on the 19th of September.

ADVERTISEMENTS.

Insurance Companies.

Insurance Companies.

Trimsaran Anthracite Iron and Coal Works, in Caermarthenshire, South Wales.

MESSRS. HOGGART and NORTON have received instructions to offer for SALE by AUCTION, in the month of November next (unless previously disposed of by private contract), the LEASE, Plant, and Stock of all those valuable newly-erected IRON WORKS, with the extensive and very rich mineral taking attached thereto, known as the TRIMSARAN IRON and COAL WORKS, situate in the parish of Pembrey, Carmarthenshire, three miles from the excellent harbours of Pembrey and Kidwelly, which communicate with the works by canal. The iron-works comprise two newly-erected furnaces, sixteen months in blast, cast-house, foundry, two refineries, capital new blast engine, smithies, shops and offices complete. The Mineral Taking comprises upwards of 1,200 acres, containing above twenty workable seams of coal and abundant pins of ironmine all proved, opened by level, and of excellent quality for making iron; also a very valuable and abundant seam of black band, from which excellent foundry iron has been made. There is a new pit of sixty fathoms, with new engine, other colliery engines, railways, tramways, brick-yard, clay mill, kilns, trams, &c. where fire-bricks of the best description are made. The iron produced at these works is of the first quality made in the Anthracite district, and the collieries and brick-yard are capable of furnishing a large shipping trade in addition to supplying the iron works. The lease is for a term of sixty years, at a moderate rent and royalties, and it contains a provision for a right to purchase the freehold within a specified term on very advantageous terms. For further particulars apply to T. J. Mawe, esq. Bridge-street, Blackfriars; Messrs. Dawes, Angel-court, Throgmorton-street; Messrs. Freshfield, Bank-buildings; of Mr. Blethyn, on the premises; at the Mart; and to Messrs. HOGGART and NORTON, 62, Old Broad-street, Royal Exchange.

HERTS.

MESSRS. HOGGART and NORTON have received instructions from the trustees under the will of the late Dr. Forester to offer for SALE at the Mart, on Friday, November 29, in about twenty lots, the COTTERED and BROADFIELD ESTATE, situate between Baldock and Buntingford, in the county of Herts, and within thirty-five miles of London, comprising about 1,300 acres of land beautifully timbered, with an ancient residence, numerous farm-houses and farm-buildings, in excellent condition, and occupied by a highly respectable tenantry. Also the extensive manors of Cottered and Broadfield. The whole property is freehold and tithe free, and situate in a fine sporting part of the county. A more detailed advertisement will appear in a few days, and particulars may in due time be had of Messrs. Jessop, Son, and Burnaby, Solicitors, Derby; Messrs. Smedley and Rogers, Jermyn-street, London; Mr. T. Miles, Land-surveyor, Leicester; at the inns, Baldock and Buntingford; at the Mart; and of Messrs. HOGGART and NORTON, 62, Old Broad-street, Royal Exchange.

LUTON HOO.—Luton Park, with the surrounding Estates, Woods, Plantations, and the residue of its splendid Mansion, Lakes, Trout Streams, and the Manor of Luton.—By Messrs. HOGGART and NORTON, at the Mart, on Friday, Nov. 29, at Twelve, in one lot, by direction of the Most Noble the Marquis of Bute, Earl of Dumfries.

THAT distinguished and splendid Freehold Estate of LUTON HOO, in the hamlets of East and West Hyde, the township of Luton and Stopsley, together with the Manor of Luton, co-extensive with its other manors, with the fines, quit-rents, and rights of common; the market-house at Luton, the stallage pens, tolls on market days, and also on the fairs and statute days; also the several farms of Summeries, Copthall (with the capital residence, in the occupation of the Rev. W. M'Dowall), West Hyde, New Mill-end, Brach Mill-end, Luton Park, with New Inn, and Cold Harbour; these farms having capital farm-houses, with extensive agricultural buildings of every description, and containing altogether about 3,500 acres of land, lying within a ring fence, with three water corn mills upon the river Lea, which gives an exclusive trout stream of about three miles in extent; also the residence of —— Brickwood, esq. with its offices and gardens. The mansion of Luton Hoo, as preserved from the late conflagration, contains a suite of apartments forming a drawing-room, music-room, and saloon, 143 feet in length, with proportionate width and height, an unfinished dining-room 43 feet by 21 feet, library and breakfast-rooms, with 14 bed-chambers and dressing-rooms of noble dimensions, and five water-closets, housekeeper's rooms, and numerous offices on the basement, which might be completed at a small expense; capital stabling, and innumerable offices. The mansion is placed upon the centre of the park and park farm, of about 1,000 acres, beautifully undulated, and adorned by stately forest trees, groups of fine plantations and woods, intersected by a magnificent sheet of fifty acres of water, forming the course of the river Lea, and affording the finest fishing in the county, with an over-shot water-wheel throwing a never-failing and powerful supply of the finest water to the mansion, its offices, gardens, and the home park farming buildings. The park is approached through four lodges, and is partly inclosed by a wall excluding any rights of path or roads. The gardens contain about ten acres, and are inclosed by lofty walls clothed with the finest fruit trees. The turf carriage drives through the woods extend over the entire of the home estate, for at least fifteen miles, and in every direction present the most picturesque views of the surrounding property and country. The noble proprietor of this estate has erected upon various parts the most substantial and comfortable brick and flint cottages, with large gardens; there is also a chief part of the village of West Hyde. The present low rentals and value of this magnificent property may be taken at about 4,000*l*. per annum. Full descriptive particulars are now in active preparation, which, with lithographic plans, will shortly be issued to the public. The mansion may be viewed by tickets only, and Mr. Akers, who is resident at the West Mill Lodge, will attend to shew the home park and woods, and the respective tenants of the farms will shew their different holdings. Particulars may be had twenty days prior to the sale, of Messrs. Roy, Blunt, Johnston, and Walton, Solicitors, Lothbury, near the Bank; of Frederick Chase, esq. Luton; also at the George; at the Bull, Harpenden; Sun, Hitchen; Salisbury Arms, Hatfield; Peahen, St. Alban's; Sugar-loaf, Dunstable; at the Mart; and of Messrs. HOGGART and NORTON, 62, Old Broad-street, Royal Exchange.

Valuable Advowson and Next Presentation to the Vicarage of Luton, Beds.—By Messrs. HOGGART and NORTON, at the Mart, on Friday, November 29, at Twelve, by direction of the Most Noble the Marquis of Bute, Earl of Dumfries.

THE PERPETUAL ADVOWSON and NEXT PRESENTATION to the VICARAGE of LUTON, the tithes of which have been commuted and apportioned at 1,350*l*. per annum, exclusive of the surplice fees, Easter offerings, and other dues, with a comfortable vicarage-house, gardens, and two small closes of meadow land, a short distance from the ancient and beautiful Church of Luton. The present incumbent is in his 70th year.

Particulars may be had 20 days prior to the sale, of Messrs. Roy, Blunt, Johnston, and Walton, Solicitors, Lothbury, near the Bank; of F. Chase, esq. Luton; at the George; Bull, Harpenden; Sun, Hitchen; Salisbury Arms, Hatfield; Peahen, St. Alban's; Sugar-loaf, Dunstable; the Mart; and of Messrs. HOGGART and NORTON 62, Old Broad-st. Royal Exchange.

Valuable Leasehold Estate, Canonbury-square.

MESSRS. D. S. BAKER and SON have received instructions to SELL by AUCTION, at the Mart, on Wednesday, November 6, at Twelve, an excellent FAMILY RESIDENCE, situate in that much-esteemed locality, Canonbury-square, Islington, containing suitable accommodations for a gentleman's family, with garden and greenhouse. It has the advantage of very pleasant views over Newington and the neighbouring country, and is let to a highly respectable tenant at 55*l*. per annum: the premises are held for a long term at a ground rent. May be viewed by permission of the tenant, and particulars had, ten days prior to the sale, of J. SOWTON, esq. Solicitor, 27, Great James-street, Bedford-row; at the Auction Mart; and of Messrs. D. S. BAKER and SON, Islington.

Freehold and Copyhold Ground-rents, with the Reversion to an Income of 600*l*. a year.

MESSRS. D. S. BAKER and SON have received directions from the Executors of the late Mr. Dennis Chapman, to SELL by AUCTION, at the Mart, on Wednesday, November 6, at Twelve, a most valuable PROPERTY; consisting of a Freehold Ground-rent of 125*l*. per annum, arising from the Wheatsheaf Public-house, Edgeware-road, Paddington, and four houses adjoining; also a Ground-rent of 5*l*. per annum, secured upon two houses with excellent shops, Nos. 135 and 136, St. Alban's-place, Edgeware-road, adjoining the above, with the Absolute Reversion to the whole of the before-mentioned estate at the expiration of 38 years, which may be fairly estimated to produce 600*l*. per annum—offering one of the most desirable investments ever submitted to public competition. To be viewed by permission of the tenants. Particulars had, 21 days prior to the sale, of W. J. Boulton, esq. Solicitor, Northampton-square; at the Wheatsheaf; at the Auction Mart; and of Messrs. D. S. BAKER and SON, Islington.

Important Sale of Copyhold Ground-Rents, equal to Freehold, and valuable Leasehold Estates, in and near London, producing a rent-roll of about 2,000*l*. per annum.

MR. FREDERICK CHINNOCK has been instructed by the Devisees in Trust, under the will of the late Mrs. Sarah Quincey, to SELL by AUCTION, at the Auction Mart, on Tuesday, Nov. 12, at One, COPYHOLD GROUND-RENTS, equal to Freehold, amounting to 335*l*. per annum, with valuable Reversions, arising out of a noble pile of buildings, situate at the foot of Blackfriars-bridge, on the Surrey side, and known as Albion-place; and five excellent Houses, with shops, adjoining the same, in the Blackfriars-road; also a valuable Copyhold private Residence, with possession, situate on the banks of the Thames, commanding a fine view of St. Paul's, the bridges, and the river; two valuable Copyhold Houses, in Holland-street, producing 111*l*. per annum; and the extensive Copyhold Wharf and Premises, known as Albion-wharf, in the occupation of Messrs. Wyatt and Co. producing 700*l*. per annum; also a noble modern Leasehold Building, situate in Falcon-court, Fleet-street, held at a low ground-rent, called Temple-chambers, producing a rental of 346*l*. per annum; a Leasehold Estate, comprising four modern private residences, situate in lower Belgrave-place, Pimlico, and a large Dwelling-house, with an extensive range of buildings and wharf, extending to the Grosvenor-basin, producing a rental of 240*l*. per annum; also a valuable Freehold Public-house and Dwelling-house adjoining, situate in the Borough, Southwark, let on lease at 50*l*. per annum; and a compact Leasehold Estate, situate at Low Layton, in Essex, with gardens and land, producing 118*l*. per annum. Descriptive particulars and plans will be ready for delivery on and after the 16th of October, and may be obtained at the Mart; of Messrs. RICHARDSON and SMITH, Solicitors, 28, Golden-square; and at Mr. CHINNOCK's Auction and Estate Offices, 28, Regent-street, Waterloo-place.

VALUABLE INVESTMENT of COMMUTED RENT-CHARGES in LIEU of TITHES.—TO BE SOLD by AUCTION, by Mr. STAFFORD, at his Room, in Milsom-street, Bath, on Saturday, the 16th day of November, 1844, at twelve for one o'clock, certain PAYMENTS in LIEU of TITHES, commuted and secured under the provisions of the Colerne Inclosure Act, and variable at the end of every twenty-one years, according to the average price of wheat for the seven preceding years, and payable out of estates in the parish of Colerne, in the county of Wilts, distant about six miles from Bath.

These payments, at present, amount to the annual sum of 91*l*. 10s. and will not be variable until the year 1851, the last assessment having been made in the year 1830.

Lot. 1. RENTS payable out of the CHARTERHOUSE ESTATES, the whole of which, with the exception of a few small pieces of land, are in the occupation of Mr. Joseph Pinchin and Mrs. Pinchin, 21*l*. 0s. 4d.

Lot 2. RENTS payable out of the Estates, late Deverell's, now the property of A. C. Boode, esq., Thomas Harding, esq., and others, amounting to 28*l*. 12s. 4d.

Lot. 3. RENTS payable out of the Estates late Methuen's, now principally the property of A. C. Boode, esq. 14*l*. 12s. 10d.

Lot. 4. A RENT payable out of the COLLEGE FARM, at COLERNE, amounting to 18*l*. 8s. 11d.

Lot 5. RENTS payable out of divers estates in the parish of COLERNE, amounting together to 11*l*. 16s.

Printed particulars, with any further information, may be had on application at the offices of Messrs. THOMAS and ROBERT CRUTTWELL, Solicitors, 5, Westgate-buildings; or to the Auctioneer, Bath.

MOST IMPORTANT FREEHOLD INVESTMENT in the City of BATH.—To be SOLD by AUCTION, by Mr. STAFFORD (by direction of trustees), at his room, in Milsom-street, on Saturday, the 16th day of November, 1844, at Twelve for One o'Clock precisely, the following very valuable FREEHOLD GROUND RENTS, well secured, and issuing out of the entirety of Norfolk Crescent, Nelson-place, and a great portion of Great Stanhope-street, and Nile-street; with several Leasehold Ground Rents, contiguous, and belonging to the same estate; varying in amount from five to fifteen pounds each per annum, and producing together the net yearly sum of 302*l*. 5s. 6d.; being a most desirable investment either to the great or small capitalist.

Lot 1. RENTS issuing out of NORFOLK CRESCENT, and LAWN RENTS charged on the Houses.

	£	s.	d.		£	s.	d.
Norfolk House ..	10	1	0	No. 9, Ditto ..	15	11	0
No. 1, Norfolk-crescent ..	13	1	0	No. 10, Ditto ..	14	15	0
No. 2, Ditto ..	14	14	0	No. 11, Ditto ..	14	13	0
No. 3, Ditto ..	14	14	0	No. 12, Ditto ..	14	14	0
No. 4, Ditto ..	14	11	0	No. 13, Ditto ..	14	15	0
No. 5, Ditto ..	14	14	0	No. 14, Ditto ..	14	13	0
No. 6, Ditto ..	14	14	0	No. 15, Ditto ..	14	14	0
No. 7, Ditto ..	14	14	0	No. 16, Ditto ..	14	14	0
No. 8, Ditto ..	14	14	0	No. 17, Ditto ..	14	41	0
				No. 18, Ditto ..	15	18	0
					£275	1	0

Out of NELSON-PLACE.

	£	s.	d.		£	s.	d.
					94	18	6
No. 1, Nelson-place	13	13	0	Also a plot of Ground adjoining No. 8, containing in length and in depth feet, and now used as a garden ground, let at the low rent of	7	0	0
No. 2, Ditto ..	9	13	6				
No. 3, Ditto ..	11	12	0				
No. 4, Ditto ..	11	12	0				
No. 5, Ditto ..	11	12	0				
No. 6, Ditto ..	12	2	0				
No. 7, Ditto ..	12	2	0				
No. 8, Ditto ..	12	12	0				
	94	18	6		£101	18	6

Out of GREAT STANHOPE-STREET, N. W. side.

	£	s.	d.		£	s.	d.
No. 8, Stanhope-street	5	14	0	No. 12, Ditto ..	6	0	0
No. 9, Ditto ..	5	14	0	No. 13, Ditto ..	5	11	0
No. 10, Ditto ..	5	14	0	No. 14, Ditto ..	6	15	0
No. 11, Ditto ..	6	0	0	No. 15, Ditto ..	9	8	0

Out of GREAT STANHOPE-STREET, South Side.

	£	s.	d.		£	s.	d.
No. 17, Ditto ..	12	0	0	No. 20, Ditto ..	7	10	0
No. 18, Ditto ..	7	10	0	No. 21, Ditto ..	7	10	0
No. 19, Ditto, and 1s. per annum for right of way	7	11	0		£93	0	0

Out of NILE-STREET.

	£	s.	d.		£	s.	d.
No. 1, Nile-street	3	12	0	No. 2, Ditto ..	5	12	0
					£9	4	0

SUMMARY OF LOT 1.

	£	s.	d.
Amount of Rents payable out of Norfolk-crescent	275	1	0
Ditto Nelson-place	101	18	6
Ditto Great Stanhope-street	93	0	0
Ditto Nile-street	9	4	0
	479	3	6
Deduct original Ground Rent, £192 10s. 0d.	192	10	0
Net Rent	£286	13	6

	£	s.	d.
Lot 2. A FREEHOLD GROUND RENT, secured upon and made issuing and payable out of, a piece of Ground, and the Coach-houses and Stables erected thereon, situate in the rear of Nos. 13, 14, 15, and 16, Norfolk-buildings	6	6	0
Lot 3. A LEASEHOLD GROUND RENT, secured upon, and made payable out of			
No. 3, Nile-street	4	0	0
No. 4, Ditto	5	10	0
No. 5, Ditto	5	10	0
	15	0	0
Lot 4. SEVERAL LEASEHOLD GROUND RENTS, charged upon, and made issuing and payable out of, Coach-houses and Stables at the back of Norfolk-crescent, called "NORFOLK-MEWS," viz.:—Out of No. 1, the sum of 15s.; out of No. 2, 1*l*.; No. 3, 1*l*.; Nos. 4 and 5, 6s. each; and No. 6, 1*l*.; amounting together to	4	7	0

Lot 1 will be sold subject to the payment of three several original Ground Rents of 64*l*. 3s. 4d. amounting together to 192*l*. 10s. per annum; and also to keeping the Lawn in front of Norfolk Crescent in good condition, the costs of which, for the last nine years, has averaged 18*l*. 0s. 5d. per annum.

Lot 3 for the residue of a term of 99 years, commencing 29th of September, 1792, subject to the yearly rent of 10*l*. 1s.

Lot 4 for the residue of a term of 1,000 years, from the 23rd of December, 1816.

Printed particulars, with any further information, may be had on application to the Offices of Messrs. THOS. and ROBT. CRUTTWELL, Solicitors, 5, Westgate Buildings; or to the Auctioneer, Bath.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 26th day of Oct. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 83.] SATURDAY, NOVEMBER 2, 1844.

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Legal Notices

AT a Meeting of the EAST KENT LAW ASSOCIATION held at the Fountain Inn Canterbury on the 2 th October 1844 present Mr WILKINSON (in the chair Messrs Brocke Mertens Knocker Gravener Shepherd Lassell Sankey Nutt and Sladden

The Rules Committee not having been able to settle the rules desire time till the next meeting for the purpose

Moved by Mr Shepherd and seconded by Mr Knocker and

Resolved That this Meeting consider it desirable to enter tain the question of joining the Union of Provincial Law Societies and that a committee be formed for the purpose of obtaining information and to report to a special meeting of this Society to be called at an early day to determine thereon

That the following gentlemen do form the committee — Mr Knocker Mr Shepherd and Mr Wilkinson

Moved by Mr Knocker and seconded by Mr Shepherd and

Resolved That it be recommended to the members of this Association to become members of an association now forming in London which has assumed the title of the ' Legal Protective Association " but at the same time that it be urged upon the officers of the intended association to alter the name to the ' Metropolitan and Provincial Law Association " or some other title less apparently exclusive than the one proposed the protection of the interests of the Profession being not exclusive but consequentially the protection of the interests of the public at large

Resolved, That a copy of the above be sent to Edward Clarke esq secretary to the Legal Protective Association

Resolved That it is the opinion of this Meeting that it is very desirable that the Professional Costume should be resumed by Attorneys and Solicitors in all cases of their attendance in court in discharge of their professional duties

Resolved That a copy of the above resolution be forwarded to the Secretary of the Incorporated Law Society with a request that he will submit the same to the society with a view to their obtaining the opinion and sanction of the Judges thereon during the ensuing Term

Moved by Mr Shepherd and seconded by Mr Sankey,

That it is the opinion of this Association that it would greatly tend to the respectability of the Profession if the names of the Attorneys conducting or defending any case or prosecution at the Assizes or Sessions were entered with the proper officer of the Court previously to any person being allowed to conduct any such prosecution or defence and that this subject be taken into consideration at the Special Meeting with a view to obtaining the sanction of the respective Courts for effect ing that object

Resolved That a copy of the above resolutions be sent to the Publishers of the " LAW TIMES "

WILKINSON, Chairman

Legal Notices

METROPOLITAN and PROVINCIAL LEGAL ASSOCIATION —At a GENERAL MEETING of the Association, held at the Gray's Inn Coffee house, Holborn, on Wednesday, the 30th ult. for the Adoption of Rules and the Election and Appointment of Officers for the year ensuing pursuant to public notice,

Sir GEO STEPHEN Knight in the Chair

Moved by David Williams Wire, esq seconded by Godfrey Goddard esq —

That the Rules of the Association as prepared by the Interim Committee, be at once submitted and passed, and which were then read, and, after some discussion, passed accordingly

Sir George Stephen was then proposed to fill the office of President for the year ensuing, and which was carried unanimously

James Burchell esq Thomas Pain esq of Dover and David Williams Wire esq were then proposed as Vice-Presidents for the year ensuing carried unanimously

W H Ashurst, esq John Harvey Boys esq of Margate, and Thomas Moseley esq were then proposed as Auditors for the year ensuing carried unanimously

The names of twenty four members twelve being selected from London solicitors and twelve from country solicitors, were then proposed as Members of the Council of Inquiry and Direction for the ensuing year, and were read over by the Chairman, and whose appointment was carried unanimously

E Clarke esq was then proposed as Secretary for the ensuing year which appointment was carried unanimously.

A vote of thanks was then moved by Mr Turner to Sir George Stephen for his able and zealous conduct in the chair, which was carried unanimously and after returning thanks for which and expressing his determination to do all in his power to further the objects of the Association, the Meeting separated E CLARKE, Secretary

' Bedford row

New Publications.

ARCHBOLD'S PRACTICE of the CROWN OFFICE of the COURT of QUEEN'S BENCH, with Forms of all the Pleadings, Rules, Notices, &c. which occur in Practice. By J. F. ARCHBOLD, Esq. Barrister-at-Law. 1 vol. 12mo. price 12s. boards.

The *Law Times* of the 21st September last, in a review of this work, after giving an analysis of it, and extracts from it, says—"This analysis of the work, and the above extracts from it, will leave no more doubt upon the minds of our readers than exists in our own,—that the *Practice of the Crown Office of the Court of Queen's Bench* will fully sustain the reputation of Mr. Archbold, and higher praise could not well be given."

London: OWEN RICHARDS, 194, Fleet-street.

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A TREATISE upon the LAW, PRIVILEGES, PROCEEDINGS, and USAGE of PARLIAMENT. By THOMAS ERSKINE MAY, Esq. Barrister-at-law, Assistant Librarian of the House of Commons.

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"Mr. May deserves infinite credit not only for the learning, but the labour which he has bestowed upon this compact and comprehensive work. It is the first successful attempt to reduce into order, in one systematic treatise, the chaos of Parliamentary Precedents, and we can but repeat that, to the lawyer or the country gentleman, the student of constitutional history or of newspaper debates, it will be found to each and all most interesting and most valuable. We may likewise add another class, to whom we should say it is indispensable—we mean the members themselves of both Houses of Parliament, to whom it will prove a hand-book of reference and *vade mecum* of practice."—*Times,* Oct. 15.

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In consequence of the facility of railroad conveyance, we have made arrangements with the principal carrying establishments to deliver all our parcels, free of expense, to any part of the kingdom. By our list of prices it will be seen we can supply good Common Tea at 3s. to 3s. 4d. Breakfast Souchong, for general use, at 3s. 8d. Pekoe Souchong, at 4s. and an superior kind at 4s. 4d. which will be found all a family would require. It is expected all orders will be accompanied by a remittance or Post office order, or, if a reference be given, the amount can be remitted on a receipt of goods.

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ECONOMY OF ARTIFICIAL LIGHT.

"Report of the fourteenth meeting of the British Association for the Advancement of Science, Monday, September 30. Section G. Mechanical Science. On the Economy of Artificial Light for Preserving Sight. By Mr. J. Hawkins."

"Few were aware," he said, "of the injury inflicted on the sight by too much, or too little light, and by a sudden transition from gloom to light. He had tried several experiments with a view to procure a light of a medium description. He commenced with two common candles, alternately snuffing and leaving them unsnuffed, and measuring the intensity of the light. The result of this experiment was, that he found that the candle well snuffed gave eight times the light of that which was unsnuffed. He then proceeded to a process of weighing, and found that one pound of the snuffed candles gave as much light as nine pounds of the unsnuffed candles."

Mr. Hawkins further found that a pound of candles, to burn (like Price's Patent Candles) without snuffing, gave the same light as four pounds snuffed in the usual way, say every ten minutes, and the same as eleven pounds unsnuffed altogether. After alluding to further experiments with Candles, and also with Oils, he concluded by recommending the Self-Snuffing Candles in preference to Oil Lamps.

Price's Patent Candles have for some time past been advertised as more economical than common tallow ones, because, not requiring to be snuffed, they give so much more light. The Patentees now publish the above extract as a remarkable confirmation of the truth of their assertions. Those who still persist in burning tallow moulds, or dips, in the idea that candles at sixpence per pound are necessarily cheaper than those at a shilling per pound, may now learn how much real economy there is in such a course. Four pounds of the snuffed candles giving, as above shewn, the same light as one pound of the self snuffing ones, those who burn tallow candles at sixpence per pound are doing the same thing as if they paid two shillings per pound for Price's Patent Candles, for they pay four sixpences for that quantity of light which one pound of these candles will give. They suffer, moreover, the bad smell, dirt, and annoyance arising from the use of the snuffers every ten minutes, and the injury to the eyesight stated above, to follow the sudden transition from gloom to light when the candles are snuffed.

Price's Patent Candles are sold by respectable dealers in most parts of the kingdom, but care must be taken to insist on being supplied with the real ones, as many imitations are made at low prices for the shopkeepers, which, on account of the greater profit, some of them endeavour, and with too frequent success, to palm upon the public as "just the same as the Patent Candles." The trade may obtain them wholesale from Edward Price and Co Belmont, Vauxhall or from Palmer and Co Sutton street, Clerkenwell.—From the *Athenaum* of Saturday, 19th October, 1844.

PARISH CLERKS.—By an Act of the last session (7 & 8 Vict c. 59), persons in holy orders can be appointed to the office of church clerk, chapel clerk, or parish clerk, and may be required to act as assistant curates whilst holding the offices mentioned.

THE GAZETTES.

DIVIDENDS

Bankrupts' Estates

Official Assignees are given to whom apply for the Dividends

Atchesley P R second 1½d Christie Birmingham—*Bull* and *Turner*, printers second 1s Whitmore Birmingham—*Davies*, R grocer first 1s 6d Acraman Bristol *Dixon* J mercer final, 1s 1½d Whitmore Birmingham—*Doult*, J wine merchant, first, 6d Acraman Bristol—*Evans* T scrivener, first 3s 1d Morgan Liverpool—*Hawkins*, G mason, second 2s 6d Acraman Bristol—*Hebblewhite*, F wine merchant, second 6½d Cazenove Liverpool *Hill*, T Brewer, fourth 2d Cazenove, Liverpool—*Hodgson* R mercer first 9s Baker Newcastle—*Howarth*, J flannel manufacturer first 3½d Stanway Manchester—*Jordan* and Co merchants second [illegible] first, 4s 6d to new proofs second sep of Magrath [illegible] first 2s 0d on new proofs Morgan Liverpool—*Innes* S B grocer, final, 1s 9d Whitmore Birmingham—*Scott* C carrier, final, 1s 9d Whitmore Birmingham *Smith* R first, 8½d Christie, Birmingham—*Simpson* R innkeeper, first 10s to new proofs Baker Newcastle *Stourbridge*, G mason first 1s Acraman Bristol—*Weir*, W iron merchant, first 5s 6d Wakley, Newcastle—*Whitley* J scrivener, 1d and 9 12nds of 1d Morgan, Liverpool.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Oct 25

Butcher, C and I. nail manufacturers, Wentworth, Aug 28 Trusts W R Bayliffe, ironmonger and W Dason banker's clerk, both of Rotherham Sol Hoyle R therham—*Cressy*, J builder, Hull, Oct 19 Trusts G Jackson builder, and J. Turner, ironmonger, both of Hull Sol Tenney, Hull—*Lewis*, R colliery contractor Cymaur, Aug 30 Trust A O Davis, mineral surveyor, Newbridge Sol Sherrard, Bristol.—*Prichard*, L grocer, Pontypool, Oct 21 Trust. J Hare, corn merchant, Pontypool Sol. Sherrard, Pontypool.

Gazette, Oct 29.

Brocklebanks, J. [illegible], Dudley, Oct. 7. Sols. Messrs. Bennett, Manchester.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Oct. 25.

CARTER, JAMES WATSON, coach plater and ironmonger, 120, Long-acre, Nov. 6, at one, Dec. 4, at two, Basinghall-st Com Evans; Johnson, off. ass.; Beaumont and Thompson, Lincoln's-inn, sols. Date of fiat, Oct. 24 J Parsons, lace manufacturer, Long-acre, pet cr

FOWLER, ALFRED, carpenter and builder, Leamington-priors, Warwick, Nov 2 and 29, at eleven, Birmingham, Com Daniel, Bittleston, off. ass; Messrs. Russell, Leamington-priors, sols Date of fiat, Oct. 15. W Russell, gent. Leamington-priors, pet cr.

GOULD, JOHN, cattle salesman, Congresbury, Somerset, Nov 11, at half-past twelve, Dec 6, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; A'Beckett and Co Golden-sq sols Date of fiat, Oct. 15. J Say, yeoman, Winscombe, Somersetshire, pet. cr.

JONES, BENJAMIN, victualler, Birmingham, Warwick, Nov 7, and Dec 4, at eleven, Birmingham, Com. Daniell, Bittleston, off ass; Chilton and Co Chancery-lane, and Suckling, Birmingham, sols. Date of fiat, Oct. 28. J. Smallbrook, maltster, Yardley, pet. cr.

SIMPSON, JOSEPH, builder, Paradise-farm, Stockwell, Nov 5, at half-past eleven, Dec, 6, at eleven, Basinghall-street, Com Fane, Alsager, off ass, Alexander, South-st. Finsbury, sol. Date of fiat, Oct. 10. W. Buckwell, building material merchant, Borough-road, pet cr

WALKER, WILLIAM, hatter, Birmingham, Nov. 7, at half-past eleven, Dec 6, at one, Birmingham, Valpy, off ass.; Jackson, Field-court, Gray's-inn, and Harrison and Smith, Birmingham, sols Date of fiat, Oct. 21. J. Marks, cap manufacturer, Birmingham, pet cr

WESTRUP, WALTER, and COCKERDOR, THOMAS MARTIN, millers and ship biscuit bakers, New Crane, Shadwell, and Northfleet Kent Nov 6 at two, Dec 11, at twelve Basinghall-st Com Evans, Bell, off ass, Shearman and Slater, Great Tower-st sols Date of fiat, Oct 21 A Robinson, flour factor, Plaistow, pet cr

Gazette, Oct 29

BENSON, THOMAS stationer and account book maker 12, North-place Gray's inn-road, and 108, Gray's inn-lane, Nov 7 at half past one Dec 10 at twelve, Basinghall st Com Williams, Graham off ass, Badham and Houghton Gray's inn, sols Date of fiat, Oct 21 On his own petition

ELLIOTT, RALPH draper, Durham Nov 8 and Dec 10, at one Basinghall st Com Williams Graham, off ass Ashurst Cheapside sol Date of fiat Oct 14 W White and S Greenwell warehousemen Cheapside pet crs

FRENCH PETER carpenter and straw bonnet maker Worthing Sussex Nov 19 at eleven Dec 11 at one Basinghall st Com Evans Johnson off ass Hicks and Marris Gray's-inn sols Date of fiat Oct 24 Bankrupt's own petition

JOHNSON JOHN merchant Liverpool Lancaster Nov 8, Dec 10 at twelve Liverpool Com Phillips Caron off ass Lucas and Co Liverpool and Sharpe and Co Bedford row, sols Date of fiat, Oct 24 Bankrupt's own petition

MARTIN, MORRIS upholsterer and cabinet maker Park-st St Augustine Bristol Nov 12 at twelve Dec 10 at eleven Bristol Com Stevenson Miller off ass Gillard and Flook Bristol sols Date of fiat Oct 25 C B Hare J Hare and S V Hare floorcloth manufacturers Bristol pet crs

MITCHELL JAMES livery stable keeper Montagu st Montagu sq Middlesex Nov 7 at eleven Dec 10 at half past eleven Basinghall st Com Williams Turquand off ass Melton Warwick ct Gray's-inn sol Date of fiat Oct 16 W Byers and S I Watson warehousemen pet crs

MORGAN ROWLAND carpenter 13 Ampton st Gray's inn road Nov 11 and Dec 12 at two Basinghall st Com Evans Bell off ass Allen and Nicoll Queen st Cheapside sols

OWEN BARNARD BENJAMIN and OWEN BERNARD GEORGE tailors Pall mall Nov 7 at one Dec 10 at eleven Basinghall st Com Williams Turquand off ass Edwards and Pike New Palace yard sols Date of fiat Oct 24 Bankrupt's own petition

PRETTY THOMAS grocer druggist and ironmonger Bilston Stafford Nov 7 and Dec 4 at eleven Birmingham Com Daniell Whitmore off ass, Willim Bilston, sol Date of fiat Oct 18 W Jones and T Foster bankers Bilston

ROSS JOSEPH CLARK merchant 2 Savage gardens London Nov 12 at eleven Dec 11 at half past one Basinghall st Com Evans Bell off ass, Miller and Orr East Cheap sols Date of fiat Oct 23 I W Wing grocer, Eastcheap pet cr

PARTNERSHIPS DISSOLVED

Gazette Oct

Buchanan R and *Parlane* A house joiners and timber dealers Liverpool Aug 1 *Cooper* R and B *S* silk manufacturers Coventry Oct 10 Debts paid by Cooper—*Gunn* R and *Ch* H M Gunn commission merchants Liverpool Feb 1 *Graham* T and *Smith* G shawl merchants, Islington Oct 1 *Herford* T and T wine merchants Manchester Oct 17 Debts paid by T H Herford—*Holmes* J and T and *T* [illegible] shawl merchants Ryan st as far as regards the Bird Oct 19 Debts paid by the remaining partners *Jacks n* T and C shoe makers Wakefield Oct 18 *Keen* *m* T and *Crossley* I engravers and lithographic printers Manchester Oct 19 Debts paid by Keenan—*Lang* S and *Spear* C lime burners and timber merchants Halton quay St Dominic Cornwall Aug 17 Debts paid by Lang *Leach* T and *T* [illegible] flannel and baize manufacturers Healey-hall near Rochdale and Wood st Cheapside, July 8 *Lett* J and T haberdashery men *Exeter* Oct 11 *Lees* S and *Bedford* T silk mercers, Brighton Oct 21 Debts paid by Lewis—*Mathews* T, J and W, lead smelters Bagillt and Liverpool so far as regards W Mather June 30—*Newton* M and *Ullmann* B cigar manufacturers Crown st Finsbury Oct 1 Debts paid by Newton—*Osborn* W H sen and W H jun gold and silver smiths St Agnes's at Oct 1 Debts paid by Osborn jun—*Perry* T and G coach builders Stroud, Oct 21.—*Ramuell*, J and *Ramsum*, B manufacturing chemists, Loslock Graham, near [illegible] Debts paid by Commin—*Turner*, J. and *Hutchings*, W. brewers, Saint Albans, Oct. 17—*Unsh*, J. B. and T. B. [illegible], Saint Ives, Huntingdonshire, April 12.—*Wright*, E. and [illegible], W. drapers, Halstead, Aug 21.

Gazette, Oct. 28.

Aloof, S deceased, *Abecasis*, S de A. and *Aloof*, J. merchants, Leman-st Oct. 17 Debts paid by Abecasis.—*Anthony*, J. G. and *Erlam*, R. G. shipping agents, Cornhill, Oct. 24—*Bousfield*, E L. and W. and *Strong*, W. G. ironmongers, Stoke-upon-Trent, Dec 31.—*Bowring*, A. and J. J hosiers, Fenchurch-st Lombard-st. Oct 23.—*Benton*, T. *Pemberton*, T. H and *Colbourn*, J. iron-masters, Sedgley, Oct 21 Debts paid by Benton and Pemberton.—*Brook*, F and E stone masons, Leeds, Oct 19 Debts paid by F. Brown—*Crabtree*, J and *Scott*, H. Trinidad and Liverpool, Oct. 1. Debts paid by Scott Trinidad, and Crabtree, Liverpool.—*Ground*, E. and P, drapers, Wisbeach, April 6.—*Hancorn*, J P and *Kitt* A surgeons, Upper Copenhagen-st Islington, Oct 21—*Lester*, S A and *Watkins*, H. milliners, Manchester, Oct. 19. Debts paid by Lester.—*Levy*, H. and *Newton*, G H. cigar manufacturers, Plymouth, Oct. 21 Debts paid by Levy—*Mowbray*, H. and W plumbers, Leicester, June 18 Debts paid by W. Mowbray.—*Silverwood*, M. and *Gill*, G. fancy waistcoating manufacturers, Kirkburton.—*Spencer*, W. and J. and *Brown*, J. drapers, Newcastle, so far as regards W Spencer, Oct. 22.—*Smith*, J. and *Gillot*, G. wood cutters, Hathersage, Derbyshire, Aug. 16—*Taylor*, M A. and *Ray*, E. H. schoolmistresses, Uxbridge, July 20—*Whalley*, J. and G grocers, Little Bolton, Oct 16. Debts paid by G. Whalley—*Wylam*, E. deceased, and *French*, W. wharfingers, Sunderland, Aug. 14. Debts paid by French.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Oct 22

Billing, J H out of business, Harrow-weald, Nov. 6, at eleven—*Crawley*, C out of business, Canterbury-place, Walworth Nov 6 at half past one—*Foreman*, F paper hanger, Nov 12, at one *Kemble* R paper maker Nov 6, at half-past twelve—*Lambert* W beer retailer Nov 6 at twelve *Newnham* B tailor Frith st Soho, Nov 6, at half-past eleven—*Ogg* E and T private teachers Putney Nov 6, at twelve—*Poulton*, B W clerk to a coal merchant West-st. Walworth, Nov 6, at one *Ramshaw* & P pilot, Gravesend, Nov 6 at twelve—*Ely* T livery stable keeper Ashen Tree-court Whitefriars Nov 6 at eleven—*White*, A accountant, Ireland row, Mile-end-rd Nov 6 at half past twelve

Gazette Oct 25

Blunden T J stone mason Bury st Fulham road Nov. 12, at half past twelve—*Bruce*, W vendor of turf, Peterborough Nov 18 at half past eleven—*Clark* W grocer, Aldenham Nov 12 at half past eleven—*Earles*, T D surgical instrument maker Nov 13 at eleven—*Jackson* W. victualler Brick st Piccadilly Nov 18 at half past one—*Jones* R grocer and cheesemonger Canterbury Nov 12 at one—*Packe* T law writer Liverpool st Walworth common Nov 1 at twelve—*Shepherd* R green grocer Carnaby st Nov 12 at twelve—*Thornton*, D clerk, Trinity-terrace, Tower hill Nov 12 at eleven

Country—Gazette Oct 22

Bale J butcher Bristol Nov 11 at eleven, Bristol—*Barnet* [illegible] Nottingham Nov 12 at half past ten Birmingham [illegible] publican, Newcastle upon-Tyne Nov 6 at eleven Newcastle—*Jenkinson*, J corn miller formerly of Brightside Bierlow now of Leeds out of business Nov 8 at eleven Leeds—*Magenns* T commission agent Chester Nov 5 at eleven Liverpool *Martin*, S gun lock filer West Bromwich Nov 13 at half past ten, Birmingham *Perry* J grocer and general shopkeeper, Tredegar Iron works Nov 14, at eleven Bristol—*Strawer*, W baker Manchester Nov 8 at twelve, Manchester—*Litherington* T baker, Liverpool, Nov 8, at eleven, Liverpool

Country—Gazette Oct 25

Goodlin D butcher and beer retailer Dunketon, Nov. 15 at twelve Bristol—*Gratton* H farmer and butcher, Ripley Nov 15 at eleven Leeds—*Johnson* T provision dealer Manchester Nov 8 at twelve Manchester—*Lord*, T out of business Birmingham Nov 2, at one Birmingham—*Rindell* T H beer retailer Bristol, Nov 12, at eleven Bristol *Sester* J shoemaker Norton, Nov 7 at twelve Manchester *Stevens* T T out of business, Dolgelly Nov 7 at eleven Liverpool—*Taylor*, T surgeon, Manchester Nov 1 at twelve, Manchester—*Webster* T. bricklayer Wakefield Nov 14 at eleven Leeds—*Whitley*, T gardener Wakefield, Nov 14, at eleven, Leeds

From the Gazette of Friday, November 1.

Bankrupts

Chandler, W chemist Minories *Goldsmith* T merchant, Old Broad st City *Brodie* W beer seller Snowhill—*Robertson* A and *Lowe* T T cabinet makers, High st Shoreditch *Avery* R provision dealer Manchester *Hill* C victualler Bristol *Biddulph* W B iron dealer Durham

ADVERTISEMENTS.

Sales by Auction.

Albion-place and Blackfriars-road.—Copyhold Ground Rents, amounting to 325*l*. per annum.

MR. FREDERICK CHINNOCK has received instructions from the Devisees in Trust, under the will of the late Mrs. Sarah Quincey, to SELL by AUCTION, at the Auction Mart, on Tuesday, November 12, at twelve, the above valuable COPYHOLD GROUND RENTS, arising out of three substantially brick-built private residences, Nos. 6, 7, and 8, Albion-place, Blackfriars, and five dwelling-houses, with shops, being Nos. 254, 255, 256, 257, and 258, in the Blackfriars-road, the whole being copyhold of inheritance without fine or quit rent. Descriptive particulars and plans are now on delivery at Messrs. RICHARDSON and SMITH'S, Solicitors, 28, Golden-square; at the Auction Mart; and at Mr. CHINNOCK'S Auction and Estate Offices, 28, Regent street, Waterloo-place.

Albion-house, Albion-wharf, and two Private Dwelling-houses, Holland-street, Blackfriars, producing 956*l*. per annum.

MR. FREDERICK CHINNOCK will SELL by AUCTION, by order of the Devisees in Trust under the Will of the late Mrs. Sarah Quincey, at the Auction Mart, on Tuesday, Nov. 12, at Twelve, a substantially-built private RESIDENCE, known as Albion-house, situate at the foot of Blackfriars-bridge, commanding a fine view of the city and the river Thames of the annual value of 150*l*.; also the extensive WHARF and PREMISES, known as ALBION WHARF, extending from the Thames to Holland-street, and let on lease to Messrs. Wyatt and Parker, Roman cement merchants, at 700*l*. per annum; also two PRIVATE HOUSES, Nos. 1 and 2, Holland-street, producing 106*l*. per annum. Particulars may be obtained of Messrs. RICHARDSON and SMITH, Solicitors, 28, Golden-square; at the Mart; and of the Auctioneer, 28, Regent-street, Waterloo-place.

Freehold Public-house, Borough.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on TUESDAY, Nov. 12, at twelve, by direction of the Devisees in Trust under the Will of the late Mrs. S. Quincey, the FREEHOLD PUBLIC-HOUSE, known as the Falcon, situate in Falcon-court, opposite St. George's Church, Southwark, and private house contiguous, let on Lease to Mr. J. Harman, brewer, at the low rent of 50*l*. per annum. Particulars of Messrs. RICHARDSON and SMITH; at the Mart; and at Mr. CHINNOCK's offices, 28, Regent-street, Waterloo-place.

Temple-chambers, Fleet-street, producing 313*l*. per annum.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on Tuesday, November 12, at Twelve, by direction of the Devisees in Trust to the estate of the late Mrs. Quincey, a substantial modern BUILDING, containing numerous suites of chambers, situate in Falcon-court, Fleet-street, let to firms of the highest standing in the profession of the law, at rents amounting to 346*l*. per annum, and held for an unexpired term of 28 years, at a ground-rent of 33*l*. exclusive of taxes, &c. producing an improved rental of 233*l*. May be viewed any time previous to the sale. Particulars had at the Mart, of Messrs. RICHARDSON and SMITH 28, Golden-square; and at Mr. FREDERICK CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

LOW LEYTON, ESSEX.—Desirable and compact Leasehold Estate.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on Tuesday, November 12, at one, by direction of the Devisees in Trust for the Estate of the late Mrs. Quincey, a good FAMILY HOUSE, pleasure-grounds, kitchen garden, and paddock, also two convenient Cottage Villas, situate at Knott's-green; all let to highly respectable tenants, at rents amounting to 118*l*. per annum, and held for forty-three years from June 1801, at a ground rent of 41*l*. May be viewed previously to the sale by leave of the tenants. Particulars had at the Mart; of Messrs. RICHARDSON and SMITH, Solicitors, 28, Golden-squre; and at Mr. F. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Belgrave-place, Pimlico —Extensive Business Premises, with Wharf, and Four private Residences, producing an improved réntal of 108*l*. per annum.

MR. FREDERICK CHINNOCK will submit by AUCTION, at the Auction Mart, on Tuesday, Nov. 12, at One, by direction of the Devisees in Trust for the Estate of the late Mrs. Quincey, a valuable LEASEHOLD ESTATE, held for an unexpired term of eighty years, comprising the extensive premises known as Scott's paper-staining manufactory, with extensive range of buildings, extending to the Grosvenor-basin, and dwelling-house, also four private residences in Lower Belgrave-place. May be viewed any time previously to the sale by permission of the tenants. Particulars had at the Mart; of Messrs. RICHARDSON and SMITH, Solicitors, 28, Golden-square; and at Mr. F. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Sale of Books, &c.

LAW BOOKS.

MR. HODGSON will SELL by AUCTION, at his Great Room, 192, Fleet-street (corner of Chancery-lane), on Wednesday next, Nov. 6, at half-past twelve, the valuable LAW LIBRARY of a Barrister retired from the Profession; including a fine set of Ruffhead's Statutes at Large from Magna Charta to 5 Victoria; the Reports of Dickens, Henley, Brown, Vesey, Vesey jun. (2nd edition), Vesey and Beames, Cooper, Merivale, Swanston, Russell, Russell and Mylne, Mylne and Keen, Mylne and Craig, Keen, Maddock, Simons and Stuart, Simons, Rose, Buck, Glyn and Jameson, Montagu and Macarthur, Price, Burrow, Cowper, Douglas, Durnford and East, East, Maule and Selwyn, Barnewall and Alderson, Barnewall and Cresswell, Barnewall and Adolphus, Adolphus and Ellis, Espinasse, Campbell, Starkie, Gow, Holt, Ryan, and Moody, &c. &c. Treatises, and Books of Practice. To be viewed, and Catalogues had.

Sales by Auction.

VALUABLE FREEHOLD ESTATE, Kerry, Montgomeryshire.—To be SOLD by AUCTION, by Mr. GRIFFITHS, at the Castle Inn, in Bishop's Castle, on TUESDAY, the 12th day of November, 1844, at four o'clock in the afternoon, subject to the conditions to be then and there produced:

All that compact and valuable Freehold ESTATE, called Cefn Gwynne and Cwmtre-Farla, situate in the parish of Kerry and county of Montgomery, in the holding of Messrs. Thomas, consisting of two good Dwelling-Houses, with convenient Outbuildings, and 166a. 2r. 23p. or thereabouts, of good arable, meadow, pasture, and wood land, within a ring fence, adjoining to lands of R. Leyland, esq. It is subject to a chief rent of 1s. 4d. per annum, and the Tithe Commutation Rent Charge, 10*l*. 3s.; the Land Tax is redeemed.

Further particulars may be had on application to Mr. James Bourn, jun. Mawley Town Farm, Cleobury Mortimer; Mr. EDW. KING, Solicitor Bath; or to the Auctioneer, at Bishop's Castle, where a plan of the Estate may be seen, and to view the Lands apply upon the premises.

Valuable Law Library of 600 vols. of the late T. W. Tyndale, esq. barrister-at-law, including a fine Series of the Reports, Statutes at Large, and various best modern works of reference and practice, in excellent condition.

MR. HAMMOND will SELL by AUCTION, by order of the Executors, at his Great Room, 28, Chancery-lane, on Tuesday, Nov. 12th, at Twelve o'clock, the above choice LAW BOOKS, with LIBRARY FITTINGS, &c. To be viewed, and catalogues had, Estate Agency Offices, 28, Chancery lane.

Valuable well-secured long Leasehold Improved Ground Rents, amounting to 129*l*. per annum, in five lots, desirable for a safe and profitable investment of Capital.

MR. MOORE will SELL by AUCTION, at the Mart on Thursday, November 7, at Twelve, an IMPROVED RENT of 28*l*., amply secured on extensive premises, timber-yard, paper factory, &c. near Stepney Church; 8*l*. per annum, on 10 cottages, Lansdowne-place, Brand-street, Holloway; 24*l*. on 11 houses, Hunt-street, Brick-lane, 24*l*. on 10 houses Shacklewell-street, Brick-lane; and 45*l*. on five houses building-ground, &c., John and Norfolk streets, Cambridge-heath: the whole held for long terms, at low original ground rents, direct from the freeholders, and are of the annual value of 500*l*. Particulars at the Mart; of Mr. WILSON, Solicitor, 7, Symond's-inn Chancery-lane; Mercers'-hall; and at the Auctioneer's Offices, Mile-end-road.

Freehold and Leasehold Investments, and a detached Cottage with extensive Garden.

MR. MOORE will SELL by AUCTION, at the Mart, on Thursday, Nov. 7, at Twelve, by order of the Executors of Mrs. Lings and others, in seven lots, TWO small FREEHOLD HOUSES, in Grosvenor-square, Mapes-street, Bethnal-green road; two LEASEHOLDS Park-place adjoining; a compact LEASEHOLD DWELLING-HOUSE, 1, Glocester-street, Cambridge-heath turnpike, term 60 years, ground-rent, 2*l*. 15s.; a ditto, Three-colt-lane, Bethnal-green; a ditto, Prince-street Baker's-row Whitechapel; a good SIX-ROOMED HOUSE, with garden, No. 52, Church-road, opposite the George, Commercial-road, term 46 years, ground-rent, 3*l*. 7s.; and a pleasantly situate detached COTTAGE, at present divided into two, with a very spacious ornamental garden, with summer houses, fish-pond, &c. well stocked with choice fruit-trees shrubs, and flowers; term 46 years; ground-rent only 8*l*; annual value 50*l*. Particulars at the Mart; of Mr. HUDSON, 4, Old Jewry; Messrs. Hamilton and Justice, 17, Berners-street, Oxford-street; at Mercers'-hall; at Pinner's-hall; and at the Auctioneer's offices, Mile-end-road.

To be Sold.

TO be SOLD, an extensive and well-established MANUFACTURING BUSINESS, carried on in the metropolis, now in full work, and commanding a first-rate connection. Price of the plant, stock in trade fixtures, goodwill, &c. 3,000*l*. The profit can be shewn to reach nearly 1,000*l*. per annum. Any one in possession of the requisite capital and of active business-like habits, who could devote the necessary time, would find this an advantageous opportunity of embarking in business.

Apply to Messrs. WALKER and GRIDLEY, Solicitors, 5, Southampton-street, Bloomsbury-square.

NORTH WILTS. — To be SOLD by PRIVATE CONTRACT, a very desirable FARM, comprising a good House and Homestead, about 280 acres of Freehold, and 74 acres of Lifehold Land, 248 of which are arable, 93 acres pasture, and 3a. 2r. 0p. planted to firs. This farm is situate in a very desirable parish, about five miles from Hungerford, and is well worth the attention of capitalists.

For particulars apply to Mr. COMBE, Solicitor Staple-inn, and Mr. CHARLES BAYLY, Solicitor, Frome.

OFFICE for PATENTS of INVENTIONS and REGISTRATION of DESIGNS, No. 14, LINCOLN'S-INN-FIELDS.—Inventors and Capitalists are informed that all Business relating to the Securing and Disposing of BRITISH and FOREIGN PATENTS Preparation of Specifications, and Drawings of Inventions, is transacted with care, economy, and despatch

REGISTRATION OF DESIGNS.

Under the New Act, 6 & 7 Vict c. 65, ARTICLES of UTILITY, whether in Metal or other substance, may be protected in the three kingdoms for three *years* at a small expense. *Ornamental Designs* may also be registered under the Act 5 & 6 Vict. c. 100.

A Prospectus, with full particulars as to the course to be pursued, and the expense, &c. of being protected, either by Letters Patent or the Designs Acts, may be had *gratis*, upon application, personally or by letter, to Mr. ALEXANDER PRINCE, 14, Lincoln's-Inn-fields.

THE LONDON POLYGLOT LEGAL and COMMERCIAL TRANSLATING INSTITUTION and BUREAU des ETRANGERS.

Capital, 2,500*l*. in 250 shares of 10*l*. each; 2*l*. deposit.

Further calls not to exceed 1*l*. each, nor to be made without three months' previous notice.

Temporary Office, 44, Threadneedle-street. The objects of this Institution are:—

1st. To secure the faithful, speedy, economical, and confidential translation into and from the English language, of all legal and commercial instruments, &c.

2nd. To conduct foreign correspondence with secrecy and despatch on extremely moderate terms.

3rd. To provide a corps of intelligent and trustworthy interpreters for the service of foreign shipping in the port of London and elsewhere, and for general purposes.

4th. To furnish sound information and advice on all points relating to foreign law and Commerce; and,

5th. Through the medium of the Bureau des Etrangers to promote the views and protect the interests, legal and commercial, of foreigners in this country, and to secure for them assistance and advice of high and responsible character.

The profits of the Institution must exceed 100 per cent. on capital employed; but the principal object being to supply a great public desideratum, it is deemed necessary that the shares shall be, as far as possible, distributed amongst those classes who will be chiefly benefited by the Institution, viz.:—

Foreign commercial houses, solicitors, proctors, notaries, and foreign gentlemen of talent, and good legal or commercial education abroad, who may wish to be employed as translators, &c.

Applications for further information, or for the prospectus of the Institution, or for shares, which will be allotted on the 11th instant, to be made personally, or by letter prepaid, to the Manager, or to the Secretary, at 44, Threadneedle-street.

N. F. EDWARDS, Manager.
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N B. Agents (being solicitors) will be appointed in the principal sea-port and manufacturing towns, on terms which may be learned on application to the Manager or Secretary as above.

LAW BOOKS.—A Gentleman is desirous of PURCHASING the following books.—

Barnewall and Cresswell, 10 vols.
Barnewall and Adolphus, 5 vols.
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Bingham's New Cases, 5 vols.
Crompton, Meeson, and Roscoe, 2 vols.
Dickinson's Quarter Sessions (last edition).
Archbold's Criminal Pleading (last edition).
Statutes from 1 Vict. to 5 & 6 Vict. inclusive. 8th edition, by O. Richards.
Comyn's Digest.

Address, stating the condition, &c. of the books, and how bound, with lowest prices of each set, to R. B Q, LAW TIMES Office

New Publications.

TO LEGAL AUTHORS.—The VERULAM SOCIETY being about to publish a work on the PRACTICE of the LAW, as conducted in the Attorney's office, LEGAL AUTHORS willing to undertake either of the following divisions of the work are requested to communicate with the EDITOR of the LAW TIMES.

I. The PRACTICE of the COURTS of COMMON LAW.
II. The PRACTICE of the COURTS of EQUITY.
III. The PRACTICE of the MAGISTRATES' COURTS—1st. QUARTER SESSIONS; 2nd, PETTY SESSIONS.
IV. The PRACTICE of the COURTS of INSOLVENCY and BANKRUPTCY
V. The PRACTICE of the COUNTY COURTS and LOCAL COURTS.
VI. The PRACTICE of the CRIMINAL LAW.
VII. The PRACTICE of CONVEYANCING.
VIII. The PRACTICE of WILLS and ADMINISTRATIONS.
IX. The PRACTICE of the LAW of VENDORS and PURCHASERS.
X. The MISCELLANEOUS PRACTICE of an ATTORNEY'S OFFICE, arranged alphabetically.

N.B. Each Treatise is to be strictly limited to PRACTICE; that is to say, instructions to the Lawyer what he is TO DO in any case. All the FORMS likely to be required in the business therein described must be appended to each Treatise.

Verulam Society Offices, 29, Essex-street, Strand.
24th Oct. 1844.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 2nd day of Nov. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

Vol. IV. No. 84.] SATURDAY, NOVEMBER 9, 1844.

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Money Wanted.

MONEY.—WANTED, to PURCHASE an ANNUITY of 100*l*. per annum, amply secured, during a life aged 41 last birthday. Apply by letter, stating terms and full particulars of security, addressed to A. B. 4, Middlesex-place, New-road.

WANTED 2,000*l*. at 5 per cent. upon the Security of the arrears and future payments of an Annuity under a Will, charged upon Freehold Property of ample value, but the payment of which has been prevented by the pendency of a Suit for the Administration of the Estate, now on eve of conclusion.

Address J. B. Messrs. Laidman and Cox, Law Stationers, Chancery-lane.

MONEY WANTED, by way of ANNUITY.—MANOR of SOUTHWARK. The Commissioners of Pavements, acting under the Act of Parliament the 52nd Geo. III. cap. 14, for better Paving, Cleansing, Lighting, and Watching the Streets, Lanes, and other Public Passages and Places within the Manor of Southwark, otherwise called the Clink, or Bishop of Winchester's Liberty, in the Parish of St. Saviour, Southwark, in the County of Surrey, hereby give notice that they are desirous of taking up the sum of 1,500*l*. upon annuities payable quarterly, in amounts of not less than 300*l*., on the security of the pavement rate; and that they will meet at the Committee-room, Emerson-street, St. Saviour's, Southwark, on Wednesday, the 20th day of November, at Six o'clock in the evening precisely, to take into consideration all applications for advancing the same. All LETTERS or TENDERS offering to advance any money, must state the age of the party or parties for whose life or lives the annuity is required to be granted, and other particulars, and must be sealed up, and addressed to the Commissioners, and be delivered to their Clerk, at his Offices undermentioned, on or before Monday, the 18th day of November next; and no letter or tender will be received after that day. The money to be raised, and the grant of annuity securing the same, are authorized by the provisions of the above-mentioned Act of Parliament. All further particulars can in the meantime be obtained by application at the Clerk's Office. Dated this 31st day of October, 1844.

By order of the Commissioners,
HERBERT STURMY, Clerk.
8, Wellington-street, London-bridge.

Situations Wanted.

LAW.—A Gentleman who has been admitted, and has since been assisting a firm in the City as Conveyancing Clerk, would be glad to meet with a similar Situation either in Town or Country, or take the management of a moderate practice under the occasional superintendence of the principal.

All necessary references, &c. given on application to B. T. Law Times Office, Essex-street, Strand.

WANTED, by a single man, aged 30, who can draw Abstracts and common Drafts if required, a SITUATION as Copying and Ingrossing Clerk in Town or Country, at a moderate salary.

Address A. B., care of Mr. Balls, 408, Oxford-street, London.

Situations Vacant.

LAW.—A SOLICITOR of 10 years' standing, and having a General Practice, is desirous of forming an ENGAGEMENT with an assiduous young gentleman, recently admitted, and competent to undertake the MANAGEMENT of the BUSINESS, under his supervision, and in his occasional absence; one who would consider experience or a view to a Partnership (for which capital would be required) as equivalent to his services, for a limited period, would be preferred.

Apply to A. G., Mr. Henville's, Law Stationer, Took's-court, Chancery-lane.

Partnerships Wanted.

LAW PARTNERSHIP.—A Gentleman who has been admitted two years, and who since then has had the partial management of the same office in which he was articled, is desirous of entering into PARTNERSHIP with a SOLICITOR practising either in TOWN or COUNTRY, for which an adequate premium would be given; or would have no objection to undertake the MANAGEMENT of a BUSINESS, with the ultimate prospect of being admitted a partner.

Address (post-paid), "H. B." Law Times Office, Essex-street, Strand.

LAW PARTNERSHIP WANTED.—A Gentleman, aged 25, and who has been admitted three years, would be happy to treat with any Gentleman or Firm for the purchase of a MOIETY or SHARE of a respectable and Established BUSINESS. The highest references will be given and required. Address, pre-paid, to L. M. at the Office of the Law Times, 29, Essex-street, Strand, London.

Legal Notice.

PURSUANT to a DECREE of the High Court of Chancery, made in a cause EVERET against PRYTHERGELL, the CREDITORS of RICHARD MEDLEY, late of Sheffield, in the county of York, Hair seating Manufacturer, who carried on business at Sheffield, aforesaid, in the name of Hitchen, deceased (who died on or about the 14th day of February, 1841), are, on or before the 20th day of December, 1844, to come in and prove their Debts, before William Wingfield, esq. one of the Masters of the said Court, at his Chambers, in Southampton-buildings, Chancery-lane, London, or in default thereof they will be peremptorily excluded the benefit of the said Decree.

Jno. RYALLS, Sheffield Plaintiff's Solicitor.
PARKES, CARY, BLOUNT, and BROOKFIELD,
12, Bedford-row, London, Plaintiff's Agent.

LAW AGENCY.—In the Bankruptcy Court, under the different statutes relating to Bankrupts, Insolvents, and arrangements between Debtors and Creditors. Messrs. BUCHANAN and GRAINGER, Solicitors, 8, Basinghall-street, inform the Profession, and Country Solicitors more particularly, that they accept business as Agents for those who cannot devote their time and attention to the practice of the Court in the above matters.

TO COUNTRY SOLICITORS.—Agents of intelligence and respectability (being Solicitors) will be appointed in the large seaport and manufacturing towns, on terms which may be learned on application to the Manager or Secretary of the London Polyglot Legal and Commercial Translating Institution and Bureau des Etrangers provisionally registered, pursuant to Joint Stock Companies Registration Act, 7 & 8 Vict. c. 110.

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GENTLEMEN of the LEGAL PROFESSION may obtain Office Papers at the following prices per Ream:—Draft Paper, 7s. 6d.; Foolscap, 14s.; Lined Brief, 17s.; Large Blue Wove Letter, 9s.; Fine Stout Bath Post, 8s.; inferior, do. 5s.; Envelopes, 6d. per 100; and every description of Stationery at equally low prices, at F. WARR'S Kent Paper Warehouse, 63, High Holborn, opposite Great Turnstile.

LAW.—An experienced Law Stationer offers to execute all business in his line with neatness, correctness, and expedition, at prices usually termed writer's prices, being only two-thirds of those generally charged. Stamps and parchment supplied; plans copied, lithographed, &c.

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A PROCTOR and a NOTARY may each obtain a gentlemanly and lucrative appointment on application, personally, to the Manager or Secretary of the London Polyglot Translating Institution and Bureau des Etrangers (provisionally registered pursuant to the Joint Stock Companies Registration Act, 7 & 8 Vict. c. 110). Offices, 15, New Broad-street, City.

TO CAPITALISTS and Others wishing to increase their income, by an eligible investment without risk or liability of Partnership.—The advertiser, who has a LEASE of a MANUFACTORY for 21 years, upon which he has expended several thousand pounds in the erection of the necessary machinery, is anxious to find a person who will purchase the machinery and a lease for 1,700*l*. and grant the present tenant a new lease at an improved rent, to yield on the outlay a return of 10 per cent. A policy of insurance would be effected to the amount of 1,000*l*. as a further advantage to the purchaser, and personal security given for the punctual payment of the rent quarterly. Address, pre-paid, to A. B. Messrs. Marden and Prichard's, Newgate-street.

CHAMBERS.—To be LET, at 44, Bloomsbury-square (Corner of Hart-street), Suites of Rooms on the Second and Third Floors, and Area, approached by a handsome Entrance Hall and Stone Staircase, and adapted either for Residence or Offices.

Apply to the Housekeeper, on the premises.

To be Sold.

FREEHOLDS.—To be SOLD, TWO FREEHOLD (adjoining) HOUSES, in one title, in the best part of Coleman-street, City, Nos. 54 and 55, producing together 133*l*. 10s. per annum net; let on leases to very respectable tenants, of which five years and a quarter on one, and seven years on the other, are unexpired. Tenant to pay all rates and taxes. To be sold for 2,650*l*. Fixtures at a valuation. The tenants for the shorter term have lately applied for an extension of lease. Apply to J. S. 68, Upper Thames-street.

Sales by Auction.

Periodical Sales of Reversions, Advowsons, Life Interest, Life Policies, Shares in Public Undertakings, &c.; established in 1803.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public that the classification of this species of property having proved to be extremely advantageous and economical to venders, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of REVERSIONARY INTERESTS, policies of insurances, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through the present year (1844) as follows:—Friday, December 6.—28, Poultry, Jan. 1.

Periodical Sale: established 1803.—Valuable Equitable Policy.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Monthly Sale of Reversionary Interests, &c. appointed to take place at the Mart, on Friday, December 6, at Twelve, a POLICY of ASSURANCE for 1,500*l*. with the accumulations thereon, amounting to 1,792*l*. 10s. making together the sum of 3,292*l*. 10s. effected with the Equitable Assurance-office the 8th of August, 1816, on the life of a gentleman now in the 50th year of his age; annual premium 39*l*. 6s. 6d. Particulars may be had in due time of Messrs. WEYMOUTH and GREEN, Solicitors, 10, Angel-court, Throgmorton-street; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale: established 1803.—Valuable Reversion to a Freehold Estate and Money in the Funds.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Periodical Sale of Reversionary Interests, &c. appointed to take place at the Mart on Friday, Dec. 6, at twelve, in lots, the REVERSION to a valuable FREEHOLD ESTATE, comprising about 51 acres of rich arable, pasture, and meadow land, farm-house, outbuildings, orchard, and garden, lying within a ring fence, and surrounded by farm preserves, and situate near the market town of Modbury, eight miles from Plymouth, twelve from Totnes, in the parish of Hobbeton, on the southern coast of Devon, in the occupation of an old and respectable tenant, at a rent of 65*l*. per annum, to which the purchaser will be entitled, provided a gentleman aged 41 survives a gentleman aged 67; and the Contingent Reversion to 1,000*l*. 3½ per Cents.; lives 40 and 41 against 75. Further particulars may be had at the Mart, and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale, established in 1803.—Old Policies in the Equitable, Union, and Economic Life Assurance Societies.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Periodical Sale of Reversionary Interests, &c. appointed to take place at the Mart on FRIDAY, Dec. 6, at twelve, in lots, a POLICY of ASSURANCE for the sum of 3,000*l*. with the accumulations thereon, amounting to 2,700*l*. making together the sum of 5,700*l*. effected with the Equitable Assurance Society Jan. 26, 1809, life 82; a ditto for 2,000*l*. with the accumulations thereon, amounting to 386*l*. making together the sum of 2,386*l*. effected with the Union Assurance Society 14th of August, 1820, life 57; and a ditto for 500*l*. effected with the Economic, 18th of October, 1832, life 57. Particulars may be had (in due time) at the Mart, and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

St. John's Wood.—Two Leasehold Villas, one with possession, the other on lease.

MESSRS. WINSTANLEY will SELL by AUCTION, on the Premises, 28, Park-road, St. John's Wood, on Monday, Nov. 18, by direction of the proprietor, T. H. Andrews, esq. who is changing his residence for the country, a neat COTTAGE VILLA, with possession, being 28, Park-road, Regent's-park; containing two drawing-rooms, dining-room, and library, four bed-chambers, and a dressing-room, with servants' bed-room, kitchen, &c.; inclosed in a small walled ornamental garden. Also, the adjoining cottage, 29, which is similarly arranged, and is let on lease to a respectable tenant, at 84*l*. per annum. Both houses are held under one lease for a term of 72 years unexpired, at a ground-rent. To be viewed by applying at 28, where particulars may be had 21 days previous to the sale; of Mr. COMBE, Solicitor, 9, Staple-inn; at the Eyre Arms, St. John's Wood; and of Messrs. WINSTANLEY, Paternoster-row.

Valuable Law Library and Miscellaneous Works of 1,000 Volumes of the late T. W. Tyndale, esq. Barrister-at-law, including a fine series of the Reports, Statutes at Large, and various best Modern Works of Reference and Practice, in excellent condition.

MR. HAMMOND will SELL by AUCTION, by order of the Executors, at his Great Room, 28, Chancery-lane, on Tuesday, November 19th, at twelve o'clock, the above choice LAW BOOKS, with Library-fittings, &c. To be viewed, and Catalogues had, Agency Offices, 28, Chancery-lane.

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[7 & 8 Vict. c. 101, ss. 2—11.]

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7. Order of Maintenance, where Application was made before Birth.
8. Order of Maintenance, where Application was made after Birth, subsequent to Act, with Variation where Birth before Act.
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B. Conviction of Rogue and Vagabond.
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D. Warrant for Apprehension of Witness not appearing on Summons.
E. Warrant of Commitment of Witness refusing to give Evidence.
F. Order of Liberation of Witness on submission.
G. Notice by Putative Father of Appeal.
H. Recognizance to try Appeal at Quarter Sessions, with Three Notices.
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Sum Assured.	Time Assured.	Sum added to Policy.
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

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THE PARIS BAR AND THE PRESIDENT.—The dispute between the Paris Bar and M. Seguier, the first president of the *Cour Royale*, after having been left smouldering during the vacation, has at length been put an end to. On the 4th inst. the Court met for the winter session, upon which occasion it is usual for the Attorney-General to make a speech to the Court, to which a reply is made by the President. Upon this occasion it was arranged that a conciliatory allusion should be made by the Procureur-General Hébert to the unfortunate differences which had arisen between the Bench and the Bar, the great inconveniences to which it might lead; and the learned gentleman accordingly did so, and concluded his speech by hoping that all parties would shew a conciliatory spirit, and give each other mutual assistance in the difficult duties falling to the lot of each of them. The President Seguier said a few words in reply, in which he expressed his great respect for the Bar, and the pleasure it gave him that they should again meet in unison, and determined, as magistrates and counsel, to labour in their several vocations for the service of the King and the good of the people. The barristers then retired to their private place of meeting, and, after some discussion, it was at length determined unanimously that the reparation offered was sufficient, and that henceforth the advocates should plead as usual in the *Cour Royale*; and thus has ended a quarrel which for some months has created a great deal of talk among our neighbours, but put unfortunate suitors to great inconvenience and loss, from the delay it caused in the dispensation of justice.

Dublin, Nov. 2.

OPENING OF NOVEMBER TERM.

Very different was the scene presented in the Queen's Bench this day from that which had been witnessed at the opening of the last November Term. Then the monster prosecution was impending, the Crown lawyers were preparing to open the campaign, the country was to be astounded with the "awful conspiracy," and the Crown agents were managing the jury-lists.

What a change has since occurred :- the judgment against the state prisoners reversed, the Crown prosecutors, foiled and defeated, now keep aloof from public observation in the hall; and Mr. O'Connell, triumphing over his prosecutors, is hunting with his beagles in the Kerry mountains.

As I anticipated, there was no change whatever to-day amongst the judges. The rumours on this subject were entirely unfounded.

The Term was opened about one o'clock, with the usual formalities. There were not many mere spectators who usually attend on similar occasions.

The Lord Chancellor held a bar levee this morning at his house in Stephen's-green, which was attended by all the Judges, the Attorney and Solicitor General, and the leading members of the Bar

COURT OF CHANCERY.

His Lordship took his seat on the bench, and the following gentlemen were called to the bar, having been previously sworn in before Judge Perrin, in the Queen's Bench :-

Ponsonby Moore, esq. eldest son of the Rev. Charles Moore, of Monasterevan, in the county of Kildare, clerk.

*Andrew Russell Stritch, esq. only son of Thomas Queely Stritch, late of Townmullen, in the county of Clare, esq. deceased.

John William Edden, esq. only son of William Edden, esq. of Nelson place, in the city of Cork, esq.

*Francis Cahill, esq. only son of Francis Cahill, late of Lower Bridge-street, in the city of Dublin, esq.

Jonathan Darby, esq. eldest son of the Rev. Christopher Darby, of Priory, Stoneyford, in the county of Kilkenny, clerk.

William Neilson Hancock, esq. second son of William John Hancock, of Balbriggan, esq. in the county of Dublin.

Edward Ledwith, esq. eldest son of Edward Ledwith, of Ledwiths-town, esq. in the county of Longford.

*John Pigot, esq. eldest son of the Right Hon. D. Pigot, of Merrion-square, in the city of Dublin, Q.C.

*Magrah Cahill, esq. youngest son of Cornelius Cahill, late of Rathlesty, in the county of Tipperary, esq. deceased.

Henry Thomas Cusack, esq. eldest son of James William Cusack, of Kildare-street, in the city of Dublin, esq. M.D.

Frederick Bowles, esq. eldest son of Charles Froby Bowles, of Clontarf, in the county of Dublin, late captain in her Majesty's 26th regiment of foot.

Thomas Henry Barton, esq. eldest son of Dunbar Barton, of Fitzwilliam-square, in the city of Dublin, esq.

NEW QUEEN'S COUNSEL.—The following gentlemen were called to the Inner Bar :—

Isaac Butt, esq.; A. Edward Gayer, esq.; Henry George Hughes, esq.; Boyle Keller, esq.; John George, esq.; George Battersby, LL.D; Matthew Baker, esq. Joseph Radcliffe, esq. (Judge of the Consistorial Court

COURT OF QUEEN'S BENCH.

Mr. Justice Perrin took his seat on the bench about half-past twelve o'clock, and the gentlemen about to be called to the Bar took the usual oaths before him.

His lordship intimated to one of the gentlemen whose name appeared in the list (Mr. Long, of Pembroke-street), that although he was then sworn, he was not to be called until Wednesday next, and added, that on that day the benchers would consider a memorial sent in by him.

Christopher Nelson Duffe, esq. was sworn into the office of Clerk of the Rules, in the room of Patrick Costello, esq. retired on full salary, pursuant to the late Act 7 & 8 Vict.

Wm. Chr. Knox, esq. was sworn in Assistant-Clerk of the Rules, under the same Act.

Mr. Justice Perrin congratulated both gentlemen, in highly complimentary terms, on their appointment.

Dublin, Nov. 6.

RUMOURED CHANGES ON THE BENCH.

It is likely that important changes will, before the lapse of many weeks, perhaps days, take place on the Irish bench. The absence of Chief Justice Pennefather, and his continued illness, have given rise to a rumour that his retirement will cause a vacancy in the Queen's Bench, which in all probability will be filled by the Right Hon. T. B. C. Smith, our distinguished Attorney-General. It is likewise currently rumoured that Mr. Justice Burton, who is long since entitled to retire "upon full pay," will make room for a successor, and that Mr. Solicitor-General Greene (who is convalescent, but still in a delicate state of health) will be afforded an opportunity to accept the office. There are various other rumours and speculations afloat, but the serious indisposition of the Chief Justice of the Queen's Bench has, I believe, in a great measure, caused importance to be attached to any of them.

* Those marked thus (*) are Roman Catholics.

NEW QUEEN'S COUNSEL.

At the sitting of the Court of Chancery this morning, Mr. Joseph Napier and Mr. Richard Nunn, assistant-barrister for the county of Tyrone, were called to the inner bar. Mr. Napier was called to the bar in Easter Term, 1831, and Mr. Nunn, in Easter, 1808.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

A BECKETT, Gilbert Abbott, esq. barrister-at-law, the lady of, on the 25th ult. at Portland House, Hammersmith, of a son.

MARRIAGES.

WELCH, John, esq. of the Inner Temple, to Henrietta Anne Ffowell, eldest daughter of Richard Sprye, esq. on Saturday last, at the Old Church, Brighton.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length :

For the first 70 words . . . . . 5s.
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THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	100¼	100	100	100¼	100⅛	100⅜
Three per Cents. Reduced	99⅞	99⅞	99⅞	99⅞	99⅞	100
New Three-and-a-quarter per Cents.	102⅛	102¼	102¼	102⅛	102¼	102⅛
Long Annuities	12⅞	12¾	12⅞	12	12¾	12⅞
Bank Stock	204	204½	204⅞	204¾	205	205
India Stock	286	287	287½	288	288	288
India Bonds, prem.	85	86	86	87	88	88
FOREIGN.						
Spanish Five per Cents.	22½	24	23½	24	24⅛	24⅛
Spanish Three per Cents.	34	34½	34¾	35	35½	35⅝
Russian	118	118½	118½	119	119	119
Peruvian	24½	24¼	25	25	25½	25½
Portuguese	53	53¼	53½	54½	55	56½
Mexican	34¼	34	34	34¼	34½	35
——— Deferred	15¼	15½	15¼	15½	15	15½
Dutch Two and a Half per Cents.	62	62¼	62½	62⅛	62⅜	62⅝
Five per Cents.	98½	99	99	99¼	99¼	99¼
Danish	88½	88¾	89	89½	89½	90
Colombian	13½	13¾	14	14	14¼	14¼
Chilian	101½	102	102½	102½	103	103¼
Buenos Ayres	36	37	36½	37	37	37
Brazilian	86	85¾	86½	86¼	86¾	87
Belgian	103	102½	103	103⅞	103¼	103⅞

RAILWAY TRAFFIC.—The following are the receipts of railways for the past week—that is to say, up to the date to which the respective returns are made, together with the receipts for the same week of the previous year :—

	Last Week. £	s.	d.	Corresponding Week, 1843. £	s.	d.
Birm. and Gloucester, Oct. 25	2,190	6	7	1,816	16	9
Bristol and Gloucester, Oct. 26	1,005	9	1			
Eastern Counties, and Northern and Eastern, Oct. 27	4,334	18	6			
Edinburgh and Glasgow, Oct. 26	2,522	1	5	2,337	4	4
Great Western Oct. 27	16,510	11	2	14,212	15	2
Grand Junction, Oct. 26	8,053	16	11	7,511	16	2
Glasg. Paisley, and Ayr, Oct. 26	1,702	4	6	1,359	3	5
Great North of England, Oct. 26	1,851	15	1	1,538	12	6
London and Birm. Oct. 26	16,047	17	0	16,542	2	0
London and Blackwall, Oct. 27				665	1	2
London and Brighton, Oct. 26	5,040	12	1	4,120	6	7
London and Croydon, Oct 29	457	1	3	235	8	3
London and Greenwich, Oct. 27	728	15	1	644	17	6
London and South-West. Oct. 29	6,247	16	0	6,207	17	8½
Liverpool and Manchest. Oct. 25	4,958	3	1	4,007	12	9
Manchester, Leeds, and Hull Associated Com. Oct. 26	6,881	4	5	5,859	3	10
Manchester and Birm. Oct. 26	3,267	1	2	2,845	16	8
Midland, Oct. 26	10,122	16	1	8,766	19	0¼
Newcastle and Carlisle, Oct. 26	1,872	12	11	1,473	18	5
Newcastle & Darlington, Oct. 26	1,081	12	0			
Paris and Rouen				3,962	0	0
Paris and Orleans				5,405	0	0
South-Eastern and Dover				3,768	17	6
Sheffield & Manchester, Oct. 26	661	15	4	445	1	5
York and North Midland, with Leeds and Selby, Oct. 26				1,658	4	3
Yarmouth and Norwich Oct. 27						

INCREASE IN THE VALUE OF RAILWAY CAPITAL.

TO THE EDITOR OF THE MORNING HERALD.

SIR,—The following Table shews the amount of capital authorized to be raised by shares in twelve of the principal railways; the amount of increase which has taken place in the value of this capital in October 1843 and 1844, as compared with 1842, and the premium or discount per cent. at which it was quoted in the Share Lists for these years :—

Name of Railway.	Sum to be raised by Shares. £	1842. Prem. £	1842. Discount £	1843. Prem. £	1843. Discount £	1844. Prem. £	1844. Discount £	Increased value of Share Capital as compared with 1842. 1843. £	1844. £
Birmingham and Gloucester	1,187,000	—	39	—	47	5	—	143,000	763,000
Ditto, Derby	1,161,000	—	39	—	30	—	20	165,000	918,000
Bristol and Exeter	1,500,000	—	20	—	11	8	—	225,000	510,000
Edinburgh & Glasgow	1,125,000	—	6	6	—	26	—	135,000	360,000
Grand Junction	2,479,000	73	—	105	—	186	—	893,000	893,000
Great North of England	969,000	—	45	—	26	25	—	184,000	427,000
Great Western	4,650,000	19	—	25	—	69	—	279,000	2,325,000
Liverpool and Manchester	1,209,000	75	—	112	—	100	—	448,000	303,000
London and Birmingham	6,875,000	91	—	118	—	112	—	1,857,000	1,444,000
Ditto, Brighton	1,794,000	—	28	—	26	—	6	36,000	395,000
South Western*	2,222,000	51	—	72	—	81	—	267,000	666,000
South Eastern*	2,996,000	—	33	—	15	30	[illegible]	540,000	1,888,000
Total	28,167,300							5,112,000	10,889,000

* Average taken.

Thus, in 1843, the value of these twelve lines was upwards of 5,000,000*l*. more than in 1842, and nearly 11,000,000*l*. in 1844.

I am, Sir, your obedient servant,

Nov. 1. EISENBAHN.

We are requested to state that the splendid estate at Walmer, last week named in the list of Public Sales as having been sold by Messrs. Brooks and Green for 10,500*l*. was not then sold, and is still in the market for private contract.

Public Sales.

By Messrs. MUSGROVE and GADSDEN, at the Mart.

A leasehold estate, consisting of two houses, Nos. 6 and 7, East-street, Hoxton, let at 63*l*.; held for 28 years, at 10*l*. per annum—500*l*.

A house and business premises, No. 26, West Smithfield, let at 84*l*. per annum, held for 27 years from Midsummer last, at 37*l*. per annum—530*l*.

A freehold house, No. 2, Cloak-lane, Queen-street, Cheapside; also a dwelling-house, No. 2, Baldwin's-court, let at 60*l*. per annum—1,040*l*.

A freehold house, No. 16, Cloak-lane, let at 35*l*. per annum—600*l*.

A ditto, No. 17, let at 40*l*. per annum—685*l*.

Two freehold houses, Nos. 3 and 4, Baldwin's-court, let at 45*l*. per annum—615*l*.

A house and shop, No. 325, Oxford-street, and a shop, parlour, &c. in Swallow-passage, let at rents producing above 200*l*. per annum; held, for upwards of 70 years, at a ground-rent of 13*l*. per annum—3,310*l*.

Two houses, Nos. 7 and 8, Clarence-grove, Kentish Town, let at 56*l*. per annum; held for a term of 86½ years, at 8*l*. 10s. per annum—240*l*.

By Messrs. FULLER and MARSH.

A policy, or one-and-a-half share, for 300*l*. effected with the Amicable on the 17th November, 1836, on the life of a gentleman in the 51st year of his age; annual premium, 10*l*. 17s. 6d.—40*l*.

A policy for 500*l*. with the accumulations thereon, amounting to 400*l*. effected with the Equitable, August 19, 1813, on the life of a gentleman now in the 67th year of his age; annual premium, 16*l*. 12s.—610*l*.

A Policy for 4,000*l*. effected with the National Society, Feb. 4, 1830, on the life of a gentleman now in the 58th year of his age; the original annual premium was 147*l*.; the last premium was reduced to 98*l*.—1,300*l*.

An annuity of 100*l*. payable during the life of a gentleman now in the 41st year of his age; secured on the annual payments of 199*l*. from the East India Company, and 300*l*. from the Bengal Medical Retiring Fund—1,200*l*.

A policy, or 12 shares for 2,400*l*. effected with the Amicable Society on the 21st of December, 1824, on the life of a lady now in the 69th year of her age, annual premium 99*l*. The bonuses payable average from 15 to 25 per cent., so that a sum of 3,000*l*. may be presumed to be receivable on the death of the assured—1,250*l*.

The absolute reversion to one-eighth part of 1,666*l*. 13s. 4d. Three per Cent. Reduced Bank Annuities, and one-eighth part of 1,169*l*. 11s. 10d. late Three-and-a-Half per Cent. Reduced Bank Annuities, now converted into Three-and-a-Quarter per Cent. Annuities, on the death of a lady now in the 56th year of her age—115*l*.

By Mr. SINGLE.

Several acres of freehold building ground, divided into 100 plots, situate in St. James's-street, Manor-square, Manor-street, Hatcham-street, Manor-road, and Hatcham-road, near the Rising Sun, in the Old Kent-road, sold for an average price of 2*l*. 5s. per foot.

A freehold house, No. 5, Middle-street, Commercial-road—200*l*.

A house, No. 25, South Grove, Peckham, let at 45*l*.; held for 46 years, at 8*l*. per annum—[illegible]*l*.

Five houses, situate Nos. 5 to 9, Prospect-row, Walworth-road, let at 147*l*. per annum; held for 16½ years, at a ground-rent of 65*l*. per annum—620*l*.

Sales by Auction.

SOUTHAMPTON.—To Capitalists, Builders, Proprietors of Assembly Rooms, and Others.

MESSRS. WITHERS and ROBERTS beg to announce that they have received positive instructions from the executors of the late Thos. Morris, esq. to SELL by AUCTION, at the Victoria Rooms, on Wednesday, November 20th, 1844, at Twelve o'clock in the forenoon, in lots, the extensive and important FREEHOLD PROPERTY known as the ROYAL VICTORIA ASSEMBLY ROOMS, situate in the very heart of the town, facing the Southampton Water, altogether forming a most complete establishment for carrying on balls, concerts, exhibitions, and public amusements, also convertible for theatrical performances, or various purposes if required. It is now proposed to offer the Assembly Rooms with a portion of the land in front, in one lot, so as to afford a purchaser the opportunity of obtaining this valuable property at a moderate outlay, and keep the establishment in his own hands, if he wishes, as an arrangement can be made with the present tenant for giving immediate possession. The valuable freehold land, forming the principal portion of the Promenade Grounds, and admirably adapted for building purposes, lying between Portland-terrace and the Victoria Rooms, with the Spa Cottage, Chalybeate Spring and Land, next Orchard-street, will be offered in lots, and particularly claims the attention of builders and speculators. Likewise, in lots, Four commanding first-rate RESIDENCES, with Gardens in the rear, being Nos. 5, 6, 7, and 8, Portland-terrace, enjoying uninterrupted views of the Southampton Water and New Forest, and adapted for families of the highest respectability; together with a Piece of Land, forming the opening to the water at the end of Portland-street. The properties may be viewed, and further particulars had at the Mart, London; of Mr. G. TWYMAN, Solicitor, Winchester; and of the Auctioneers, 10, Above-bar, Southampton.

LAW BOOKS.

MR. HODGSON will SELL by AUCTION, at his Great Room, 192, Fleet-street (corner of Chancery-lane), on Thursday next, November 14, and following day, at half-past twelve, valuable LAW BOOKS, the Library of Sir Richard Ottley, late Chief Justice of the Supreme Court of Judicature at Ceylon; also the valuable Libraries of two Chancery Barristers, retired from the Profession; including Runnington's Statutes at Large, from Magna Charta, with Continuation to 1 & 2 Victoria; The Year Books; Comyns's Digest, by Hammond; the Reports of Peere Williams, Atkyns, Vernon, Strange, Brown, Cox, Vesey, Vesey jun. Vesey and Beames, Merivale, Swanston, Jacob and Walker, Jacob, Russell, Russell and Mylne, Mylne and Keen, Mylne and Craig, Keen, Beavan, Maddock, Simons, Coke, Croke, Salkeld, Saunders, Comyns, Lord Raymond, Wilson, Burrow, Cowper, Douglas, Durnford and East, East, Maule and Selwyn, Barnewall and Alderson, Barnewall and Cresswell, Barnewall and Adolphus, Adolphus and Ellis, Blackstone, Bosanquet and Puller, Taunton, Broderip and Bingham, Bingham, Robinson, Addams, Phillimore, Haggard, &c. &c. Series of the Old Reports, Treatises, and Books of Practice. A Collection of Ecclesiastical, Canon, Colonial, and Civil Law, in good preservation.

To be viewed, and Catalogues had.

TO SMALL CAPITALISTS AND OTHERS.

MESSRS. BROOKS & GREEN will SELL by AUCTION, at Garraway's, on WEDNESDAY, the 13th day of November, 1844, a small Freehold Estate, Tithe Free and Land Tax redeemed, comprising two neat detached VILLA RESIDENCES, very pleasantly situate at HAYES, Middlesex, 11 miles from Town, on the high Road, about ¼ of a mile from the Church, and 1¼ from the Railway Station at Southall. The villas are substantially built, and each contains five Bed-rooms, two Sitting-rooms, Entrance Hall, Kitchen, Wash-house, two Cellars and Larder in the basement, Chaise-house and Stable, large Gardens, front and back, laid out and planted. The fixtures, which are new, will be included in the sale. Printed particulars may be obtained at the Adam and Eve, Hayes; Garraway's, Cornhill; Hall of Commerce; of Mr. Stransom, Uxbridge; Red Lion, Southall; and of Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street.

VALUABLE FREEHOLD ESTATE, Kerry, Montgomeryshire.—To be SOLD by AUCTION, by Mr. GRIFFITHS, at the Castle Inn, in Bishop's Castle, on TUESDAY, the 12th day of November, 1844, at four o'clock in the afternoon, subject to the conditions to be then and there produced:

All that compact and valuable Freehold ESTATE, called Cefn Gwynne and Cwmtre-Farls, situate in the parish of Kerry and county of Montgomery, in the holding of Messrs. Thomas, consisting of two good Dwelling-Houses, with convenient Outbuildings, and 166a. 2r. 23p. or thereabouts, of good arable, meadow, pasture, and wood land, within a ring fence, adjoining to lands of R. Leyland, esq. It is subject to a chief rent of 1s. 4d. per annum, and the Tithe Commutation Rent Charge, 10*l*. 3s.; the Land Tax is redeemed.

Further particulars may be had on application to Mr. James Bourn, jun. Mawley Town Farm, Cleobury Mortimer; Mr. EDW. KING, Solicitor, Bath; or to the Auctioneer, at Bishop's Castle, where a plan of the Estate may be seen, and to view the Lands apply upon the premises.

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TO LEGAL AUTHORS.—The VERULAM SOCIETY being about to publish a work on the PRACTICE of the LAW, as conducted in the Attorney's office, LEGAL AUTHORS willing to undertake either of the following divisions of the work are requested to communicate with the EDITOR of the LAW TIMES.

I. The PRACTICE of the COURTS of COMMON LAW.
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III. The PRACTICE of the MAGISTRATES' COURTS—1st, QUARTER SESSIONS; 2nd, PETTY SESSIONS.
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Verulam Society Offices, 29, Essex-street, Strand, 24th Oct. 1844.

THE LITERARY JOURNAL OF YOUNG ENGLAND.

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The *Law Times* of the 21st September last, in a review of this work, after giving an analysis of it, and extracts from it, says—"This analysis of the work, and the above extracts from it, will leave no more doubt upon the minds of our readers than exists in our own,—that the *Practice of the Crown Office of the Court of Queen's Bench* will fully sustain the reputation of Mr. Archbold, and higher praise could not well be given."

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Advertisements will be received until the 9th,—Saturday.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 85.] SATURDAY, NOVEMBER 16, 1844,

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METROPOLITAN AND PROVINCIAL LEGAL ASSOCIATION.—THE COURT OF BANKRUPTCY.—Memorials to the Honourable Commissioners from the Practising Barristers and Solicitors of the Court of Bankruptcy, representing to their Honours the disgraceful and inadequate state of accommodation provided for the Members of the Bar, Solicitors, and the public, who are called to attend those Courts on business, lie for signature at No. 5, Bedford-row, and will be presented in a few days.

E. CLARKE, Secretary.

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GORSTS and BIRCHALL, Dep. C. P.
Clerk of the Peace's Office,
Preston, 11th November, 1844.

PURSUANT to a DECREE of the High Court of Chancery, made in certain causes "Collier versus Mills," and "Lunn versus Mills," any person or persons CLAIMING to be the NEXT of KIN of THOMAS MILLS, late of Horningham, in the county of Wilts, gentleman (who died in or about the month of February, 1838), or the legal personal representative or representatives of any such next of kin who may have since died, is or are on or before the 11th day of December, 1844, by his, her, or their solicitors, to come in before James William Farrer, esq. one of the Masters of the said Court, at his chambers, in Southampton-buildings, Chancery-lane, London, and make out his, her, or their kindred or representation; or, in default thereof, he, she, or they will be peremptorily excluded the benefit of the said Decree.—Nov. 4, 1844.

JOHN SYMONS, Plaintiff's Solicitor, 33, Old Jewry.

PURSUANT to a DECREE of the High Court of Chancery, made in a cause of "Cross *v.* Kennington," the CREDITORS of GEORGE KENNINGTON, late of Wrawby, in the county of Lincoln, gentleman, (who died on the 26th November, 1837), are to come in and prove their debts before Sir William Horne, one of the Masters of the said Court, at his Chambers, in Southampton-buildings, Chancery-lane, London on or before the 10th day of December, 1844; or in default thereof, they will be peremptorily excluded the benefit of the said Decree.

CHARLES BELL,
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PURSUANT to a DECREE of the High Court of Chancery, made in a cause "Laycock *v.* Johnson," any person or persons CLAIMING to be HOLDER or HOLDERS of any BILL or BILLS of EXCHANGE accepted by TRISTRAM RIDGWAY, late of Huddersfield, in the county of York, Wool Factor, is or are by his or their solicitors forthwith to come in before William Wingfield, esq. one of the Masters of the said Court, at his Chambers in Southampton-buildings, Chancery lane, and make out his or their claims.

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MEMBERS OF THE COAST-GUARD, FISHERMEN OR BOATMEN, MILITARY MEN OR CIVILIANS, proceeding to any part of the Globe; as also INDIVIDUALS OF EVERY CLASS IN SOCIETY, resident on shore, are Insured.

Empowered by Act of Parliament.

TRUSTEES.

Admiral Sir Philip Henderson Durham, G.C.B.	Vice-Admiral Sir William Hall Gage, G.C.H.
Joseph Somes, Esq.	

DIRECTORS.

The Right Hon. Capt. Lord Viscount Ingestre, R.N. C.B. M.P.

Capt. Thomas Dickinson, R.N.	Sir George Rich
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PHYSICIAN.	SURGEON.
Sir James Eglinton Anderson, M.D. M.R.I.A. 11, New Burlington-street.	Charles Ilderton Croft, esq. 22, Laurence Pountney-lane.

SOLICITOR.

John Hayward, Esq. 2, Adelaide Place, London Bridge, and Dartford, Kent.

The Policies granted by this Company cover Voyages of every description and service in every part of the Globe.

The Premiums for Life Policies, *with permission to go any and everywhere without forfeiture*, are lower than have ever hitherto been taken for such general risks.

Deferred Annuities to Mariners at very moderate premiums.

The Premiums for *all General Assurances* are based upon a new adjusted Table of Mortality.

Ten per Cent. of the Profits applied in making provision for Destitute and Disabled Mariners.

JOHN DAWSON, Resident Manager.
Arthur-street East, London Bridge.

The Company are ready to receive applications for Agencies from Individuals of respectability, influence, and activity, resident in the principal Sea-ports and Market Towns of the United Kingdom.

Insurance Companies.

NORWICH UNION SOCIETIES.

OFFICES—Surrey-street, Norwich; New Bridge-street, Blackfriars, London; Princes-street, Edinburgh; Capel-street, Dublin.

FIRE-INSURANCE SOCIETY.—CAPITAL £550,000.

DIRECTORS.

President—E. T. Booth, esq.
Vice-President—A. Hudson, esq.

George Morse, esq.	Edward Steward, esq.
George Durrant, esq.	Timothy Steward, esq.
Maj.-Gen. Sir R. J. Harvey, C.B.	Lewis Evans, esq. M.D.
Charles Evans, esq.	Captain Blakiston, R.N.
Isaac Jermy, esq., Recorder of Norwich.	Wm. Martin Seppings, esq.

Samuel Bignold, esq., Secretary.
Thomas Bignold, esq., Solicitor.
R. J. Bunyon, esq., Secretary (for London Department), 6, Crescent, New Bridge-street.

Insurances are granted by this Society on buildings, goods, merchandize, and effects, ships in port, harbour, or dock, from loss or damage by fire in any part of the United Kingdom of Great Britain and Ireland.

It is provided by the Constitution of the Society, that the insured shall be free from all responsibility, and to guarantee the engagements of the Office, a fund of 550,000*l.* has been subscribed by a numerous and opulent proprietary. Returns are periodically made to parties insuring.

The business of the Society exceeds Fifty-eight Millions. The duty paid to Government for the year 1842 was 68,612*l.* 14s. 9d., and the amount insured on Farming Stock was upwards of Nine Millions and a Half.

Extract from the Returns to the Stamp Office, shewing the Duty and amount insured on Farming Stock, paid by the five Principal Offices for the year 1842:—

	FARMING STOCK.	DUTY.
Norwich Union	£9,522,693	£68,612 14 9
County	7,461,858	18,465 10 7
Sun	6,818,051	165,683 16 8
Phœnix	1,811,461	129,619 2 3
Royal Exchange	4,310,771	71,801 11 2

LIFE INSURANCE SOCIETY.—INSTITUTED 1808.
Capital invested, £1,750,000.

DIRECTORS.

E. T. Booth, esq.	Major-General Sir R. J. Harvey, C.B.
Isaac Jermy, esq. Recorder of Norwich.	Dr. Evans.

Timothy Stewart, esq. &c.
Secretary—Samuel Bignold, esq.
Actuary—Richard Morgan, esq.
Solicitor—Edward Field, esq.
Secretary for London Department—R. J. Bunyon, esq.

This Society has been established upwards of thirty-four years; ad just demands upon its funds have been promptly and liberally settled, nearly two millions and a half have been thus paid away on expired policies, and to meet the existing engagements of the Institution, it possesses funds amounting to upwards of a million and three-quarters, almost wholly invested on real and Government securities.

The Rates of Premium are below those of most other Offices, and, under the age of 45, not less so than ten per cent.—a benefit in itself equivalent to an annual bonus; whilst periodical additions are also made to the sums assured upon all policies for the whole duration of life, in proportion to the amount of premium paid, the full advantage of Life Assurance is thus enjoyed by the members of this Institution.

The subjoined List of some of the existing Policies of the Society exhibits the aggregate amount of Bonus assigned to each of those Policies, including that declared at the General Meeting held on the 9th of September, 1842.

No.	SUM ASSURED.	BONUS.
477	£1,000	£776 4 10
951	499	431 10 5
170	1,000	445 15 6
751	1,000	455 7 4
1245	2,000	852 5 1
1276	1,500	619 3 1
1450	2,000	751 17 2
1444	1,000	519 10 7
1459	500	155 14 4
1745	2,000	1,117 1 11
1850	1,500	119 10 5
2370	1,000	531 6 10

Tables of Rates, &c. may be obtained at the Society's Offices, or of the Agents, in all parts of the United Kingdom.

CANDIDATE LIFE ASSURANCE ASSOCIATION.
To the Shareholders, Policyholders, and all others whom it may concern.

NOTICE *is hereby given, that I have* REGISTERED the above COMPANY, pursuant to the Act of the 7th and 8th of Victoria, c. 110. Any person desirous of perusing the Deed of Settlement of this Company may do so by calling upon me here, or have a copy of the said deed by addressing a letter to my private office, Grecian-chambers Devereux-court, Temple.

345, Strand, Nov. 11, 1844. GEORGE DUERR, Resident Director and Manager.

LEA and PERRINS WORCESTERSHIRE SAUCE.

Prepared from a Recipe of a Nobleman in the County.

"One of the most piquant inventions of this luxurious and epicurean age is Lea and Perrins' Worcestershire Sauce, adapted to Fish, Flesh, Fowl, and Soup; giving a zest far superior to the long-established favourites, more wholesome and of less cost."—*Naval and Military Gaz.*, April 8, 1843.

Copy of a testimonial from Capt. Hosken.

"Great Western Steam-ship, June 6, 1844.

"The cabin of the Great Western has been regularly supplied with Lea and Perrins' Worcestershire Sauce, which is adapted for every variety of dish; from turtle to beef, from salmon to steaks—to all of which it gives a famous relish. I have great pleasure in recommending this excellent sauce to captains and passengers for its capital flavour, and as the best accompaniment of its kind, for a voyage.

(Signed) "JAMES HOSKEN."

Sold, Wholesale by the Proprietors, Messrs. LEA and PERRINS, Worcester; Messrs. BARCLAY and SONS, Farringdon-street, and the principal Oil and Italian Warehousemen, London; and Retail, by the usual venders of Sauces.

COALS.—R. W. SAMSON'S present moderate prices for COALS having brought such an influx of orders has compelled him to refrain from quoting them as usual, and in now doing so has to beg the favour of as much time as possible for their execution. Best Wall's-end coals, 28s. 6d.; Wall's-end ditto, 24s.; firewood, 3s. 6d. Address to Essex-wharf, Strand.

LINCOLN'S-INN FIELDS, June 21, 1844.

DEAR SIR,—Having sought the advice of a first-rate surgeon for a slight case of hernia, and being led to adopt a Common Truss, which gave me no relief, I feel bound to acknowledge that I consider it one of the greatest events of my life when I got out of that truss into your Patent; and whilst I continue to feel so little annoyance, it is a matter of perfect indifference to me if all mankind are made acquainted with it. Yours truly,

ROBERT MEDCALF.

To Mr. Coles, of Charing-cross.

WINTER OVER COATS, WRAPPERS, &c.—Messrs. BURCH and LUCAS (late J. Albert) respectfully invite Gentlemen to view their New and Fashionable assortment of Patent and Beaufort Beavers, Fancy Vestings, Trouserings, &c. for the approaching Season; the style and cut of every garment are guaranteed equal to any of the first houses at the West-end, at prices in unison with the economy of the times, feeling confident that Gentlemen who may do them the honour will be perfectly satisfied with any garment that leaves their Establishment.

A large assortment of Great Coats kept ready made, in all the different and most approved forms agreeable to the prevailing tastes; being made under the superintendence of the Proprietors, they are enabled to speak confidently as to their superiority over all garments of a slop description, the which are entirely excluded from this Establishment.

52, KING WILLIAM STREET, LONDON BRIDGE.
(Opposite the Statue.)

THE LONDON IMPROVED MANIFOLD LETTER WRITER, for producing a Letter and several copies at one time, complete for 7s. 6d. Travelling Cases, 7s. 6d. each. Superfine Draft Paper, 8s. 6d. per Ream. Lithography executed at moderate charges. Gentlemen visiting London will find great advantage by purchasing at the London Paper and Parchment Warehouse, GLOSSON and CO. 17, Holborn (opposite Furnival's Inn). Country orders executed.

TO CALICO PRINTERS and OTHERS.

TO BE SOLD by PRIVATE CONTRACT, the leasehold interest for an unexpired term of sixty-three years, commencing from the 1st May, 1841, of and in all those compact and desirable Print Works known by the name of the Spring Water Print Works, situate at Whitefield, in the Township of Pilkington, in the county of Lancaster, now in the occupation of Messrs. Alfred Thomas and Co., with the dwelling-house, cottages, outhouses, erections and buildings, and the several fields or closes of land occupied therewith, containing altogether 38a. 3r. 8p. statute measure, or thereabouts. The purchaser will have the option of taking at a valuation the valuable steam-engine, machinery, utensils, copper rollers, drugs, and drysalteries now on the premises.

The present opportunity is such as rarely occurs for any one intending to embark in the printing trade, the works in question being well known in the trade to possess every advantage; they are capable of turning off 2,000 pieces per week, there is a never-failing supply of pure spring and soft water in the dryest seasons, and the works are within six miles of Manchester.

For further particulars apply to Messrs. Alfred Thomas and Co. at the Works and at No. 35, Mosley street, Manchester; Thomas Crutchley, esq. 65, Mosley-street, Manchester, Mr. Ash at Messrs. Jones, Loyds, and Co. Manchester; to Mr. William Broome, Accountant, St James's-square Manchester, or Messrs. Barlow and Aston, Solicitors, 1, Townhall-buildings, Manchester.

FIFTY POUNDS REWARD.—The hard substance obtained by pressure from the crude Cocoa-Nut Oil is an essential ingredient in the PATENT COMPOSITE CANDLES, and as EDWARD PRICE and CO. hold the Patents for this process, and grant no licenses under them, it follows, either that the imitation Composite Candles are entirely different from the patent ones, or, that the imitators are infringing the patents. The first is generally the case, but to protect themselves against the possibility of the other, EDWARD PRICE and CO. hereby engage to pay a reward of Fifty Pounds to any workman or other person who may give such information respecting parties pressing Cocoa-Nut Oil as shall lead to their conviction. The name of the informant will be kept strictly secret, and he need not take a prominent part in the proceedings, as all that E. P. and Co. require, is the first clue to the discovery of the infringers, which they will then follow up for themselves. This advertisement is being published in every newspaper of any circulation in the United Kingdom.

The Candles are now so well known to the public, that it is hardly necessary to state here that they burn more brilliantly than the best wax, and give so large an amount of light, as to be cheaper, taking this into account, than the commonest tallow candles. They may be had of most of the respectable dealers throughout the kingdom; but purchasers must insist on being supplied with "PRICE'S PATENT CANDLES," otherwise they are liable to be deceived with some of the imitations, all called, like the real ones, "Composite." Those parties really in the trade, who do not yet keep them for sale, are informed that they can purchase of the Patentees, or of Palmer and Co. Sutton-street, Clerkenwell, any quantity, large or small, at the wholesale price, and that allowances are made in an increasing ratio to parties taking to the amount of 50*l.* 100*l.* 150*l.* or 200*l.* at a time, and a very large allowance indeed to parties taking so large a quantity as to enable them to become wholesale agents for an entire district.

Belmont, Vauxhall, July 24th, 1844.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

For the first 70 words . . . . . 5s.

For every succeeding 30 words . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	100	100¼	100	100¼	100¼	100¼
Three per Cents. Reduced	99¾	99⅝	99¾	99¾	99⅝	99¾
New Three-and-a-quarter per Cents.	101⅞	102	102	101⅞	101¾	102
Long Annuities..............	12¾	12¾	12⅞	12¾	12⅞	12
Bank Stock	204¼	204½	204⅛	204½	205	205
India Stock	287	286¾	287	287½	288	287¾
India Bonds, prem..........	75	76	77	78	77	78
FOREIGN.						
Spanish Five per Cents.......	24⅛	23½	24	24½	24	24¼
Spanish Three per Cents.	35	35½	35⅞	35½	35½	35¾
Russian	118½	118½	118½	119	119½	119
Peruvian..................	24½	24¼	25½	25½	25½	25½
Portuguese	54	54½	54½	54½	54½	55½
Mexican..................	35	35½	35	35½	35½	35½
——— Deferred	15½	15½	15¼	15¼	15	15½
Dutch Two-and-a-Half per Cents..............	62½	62½	62½	62½	62½	62½
—— Five per Cents.	98¼	99¼	99	99	99½	99¾
Danish	89	89½	89½	89½	90	90
Colombian	13¼	13½	14¼	14	14	14
Chilian	102½	102½	102	102½	103	103½
Buenos Ayres	35	36	37	37	37½	37½
Brazilian................	87	87½	87½	87½	88	88
Belgian	102	102½	102	102¼	102½	101¾

Sir David Roche, bart. in Master Townsend's office, has purchased Mr. Odell's lands of Ballingarry, producing 601*l.* a-year, for 9,700*l.*—*Limerick Chronicle.*

EXTENSIVE SALE OF HOUSES.—THE VALUE OF FREEHOLD PROPERTY.—On Thursday a sale by auction took place at the Auction Mart, by Mr. G. Robins, of property situated in Lisson grove, consisting of several valuable freehold ground-rents, producing a clear income of 240*l.* per annum, secured upon 56 freehold houses, including shops and corner houses, the annual value of which was near 2,000*l.* and the reversion in fee of which went to the purchaser in 75 years, which was the period of the several leases. The auction room was crowded, and several gentlemen of large capitals were present. The total ground-rent amounted to 240*l.* 5s. and the yearly rent of the houses to 1,913*l.* The property fetched 7,156*l.* 10s. Among the lots was the Hope and Anchor public-house, which was subject to no ground-rent, the rent of which was 150*l.* per annum. It was a fee-farm rent, and the reversion fell to the purchaser in 75 years. This went for 100 guineas.

Public Sales.

By Messrs. SHUTTLEWORTH and SONS, at the Mart.

A freehold house No. 21, Smith-street, Chelsea, near the Royal Military Asylum, with lawn and flower-garden, containing 2r. 1p. The kitchen-garden, comprising 1r. 10p. is leasehold for 90 years from March 1817, of which 62¼ years are unexpired, under the rent of a peppercorn; let at the rent of 90*l.* per annum —2,700*l.*

Two residences Nos. 7 and 8, Green-terrace, near the New River Head, Clerkenwell, let at 100*l.* per annum, held for 67 years at a ground-rent of 50*l.* per annum; also the ground-rents of seven houses, Nos. 2, 3, 4, 6, 9, 10, and 22, being the six following lots: held for 67 years from Michaelmas 1841, at a ground-rent of 1*l.* per annum each—895*l.*

A house, No. 2, Green-terrace, let at 42*l.* per annum, held for 67 years from September 1841, at a ground-rent of 4*l.* per annum—435*l.*

Two ditto, Nos. 3 and 4, ditto—950*l.*

A house, No. 6, held for the same term—485*l.*

A ditto, No. 9, ditto—430*l.*

A ditto, No. 22, ditto—390*l.*

An improved ground-rent of 6*l.* per annum, secured upon No. 5, Upper Gloucester-street, adjoining the above, held for the term of 66¾ years—125*l.*

A ditto of 5*l.* secured upon No. 23, Green-terrace, held for the same term—100*l.*

By Mr. MOORE.

A house, No. 82, Church-road, St. George's-in-the-East, held for 45½ years, at 3*l.* 7s. per annum—135*l.*

Two freehold houses, Nos. 1 and 3, Grosvenor-square, Bethnal-green-road—128*l.*

Two houses, Nos. 4 and 5, Park-place, Bethnal-green-road, held for 77 years, at 6*l.* per annum—23*l.*

An improved rent of 45*l.* per annum, secured upon five houses in John-street, Hackney—480*l.*

A house and premises, No. 9, Tatten-street, Stepney, let at 32*l.*; held for 46 years, at a ground-rent of 4*l.* per annum—370*l.*

Two cottages, known as Garden Cottages, situate in the rear of Tatten-street, Stepney; held for 46 years, at 12*l.* per annum—430*l.*

A house, No. 1, Gloucester-street, Cambridge-road, let at 17*l.*; held for 58 years, at 2*l.* 15s. per annum—85*l.*

Ten messuages, Nos. 1 to 4, Lansdowne-place, and Nos. 1 to 6, Osnaburgh Cottages, Holloway, let at 33*l.*; held for 59¼ years, at 25*l.* per annum—90*l.*

An improved ground-rent of 24*l.* per annum, for the residue of a term commencing Lady-day 1811, arising from 14 houses in Hunt-street and John's-court, Mile-end New Town—248*l.*

An improved ground-rent of 24*l.* per annum, for the residue of a term of 60 years, from Midsummer 1830, arising from 10 houses, Shacklewell-street, Bethnal-green—250*l.*

By Mr. CHINNOCK, at the Mart.

The following freehold, copyhold, and leasehold estates, in and near London, producing a rental of about 2,000*l.* a year, were sold yesterday by Mr. Chinnock, in twenty lots, as follows:—

The property forming the first twelve lots is copyhold of inheritance, held under the manor of Old Paris Garden, without fine or quit rent, and in every respect equal to freehold.

The first lot comprises a residence, being No. 6, Albion-place, Blackfriars; let for 59 years, at a ground-rent of 50*l.* per annum—1,120*l.*

A ditto, No. 2, ditto—1,120*l.*

A ditto, No. 8, ditto—1,140*l.*

A ditto, No. 9, in hand, and at the estimated value of 150*l.* per annum—1,850*l.*

A residence, No. 258, on the east side of the Blackfriars-road, let for 61 years, from December 1803, at a ground-rent of 25*l.* per annum—600*l.*

A house and shop, No. 257, in Blackfriars-road, let at a ground-rent of 35*l.* per annum, for the term of 61 years, from June 1804, and for the further term of 38 years, from the expiration of the present lease—820*l.*

A ditto, No. 256, ditto—820*l.* A ditto, No. 255, ditto—810*l.*

A house and shop, No. 251, Blackfriars-road, let for the same terms at a ground-rent of 45*l.* per annum—1,080*l.*

A house, No. 1, Holland-street, Blackfriars, let for four years on a repairing lease, at 60*l.* per annum—910*l.*

A ditto, No. 2, let at 46*l.* per annum—900*l.*

An extensive wharf and premises, situate close to Blackfriars bridge, known as Albion Wharf, let for 21 years from June 1828 at 700*l.* per annum, and for a further term of 10¾ years, at 450*l.* per annum—8,950*l.*

The Temple Chambers, Falcon-court, Fleet-street, let at rents amounting to 416*l.* per annum; held for 60 years from Midsummer 1812, at 13*l.* per annum—taxes payable by the landlord about 80*l.* per annum—1,850*l.*

A house No. 47, Lower Belgrave-place, Pimlico, let at 42*l.* per annum; held for 96¼ years, from September 1827, at a ground-rent of 10*l.* per annum—420*l.*

A ditto, No. 48, ditto—450*l.*

A ditto, No. 50, ditto—460*l.*

A ditto, No. 51, ditto—490*l.*

The extensive premises known as Scott's paper-staining manufactory, No. 49, Lower Belgrave-place, Pimlico; let for 21 years, expiring at Midsummer 1852, at the yearly rent of 150*l.*, and they are also sold subject to a reversionary lease to take effect from the existing lease for 21 years, at the yearly rent of 150*l.*, held for a term of 96¼ years from Michaelmas 1827, at the yearly ground-rent of 11*l.* improved rental 40*l.*—460*l.*

A freehold house, known by the sign of the Falcon, situate in Falcon court, Southwark, also a messuage in Falcon-court, next the Falcon, let for 20 years from Christmas last at 50*l.* per annum—550*l.*

A leasehold estate, situate in the road leading from Knott's Green to Knight's Green, Low Leyton, Essex, comprising a family house, with hot and green houses, large kitchen-garden and paddock, let at 60*l.* per annum, also a cottage adjoining the preceding, standing in the centre of a large garden, let at 32*l.* per annum, and a cottage let at 26*l.*, held for 43 years from 24th June 1804, at 41*l.* per annum, annual rental 77*l.*—110*l.*

NECROLOGY.

MR. SERJEANT ANDREWS.

On Wednesday morning this learned serjeant breathed his last at his residence at Hampstead-hill. The account of the attempt at self-destruction appeared on Monday. The melancholy depression of spirits produced by long study in the legal profession, is the only cause assignable for the rash act. The learned gentleman was married, and has left a widow and two young children to deplore his untimely end.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

FOSTER.—At Wells, Somersetshire, the lady of Wm. J. S. Foster, esq. of a son.

HEATHCOTE.—On the 11th inst. at No. 43, Eaton-place, the lady of Sir Wm. Heathcote, Bart. M.P. of a son.

HORSFORD.—On the 6th inst. at Gillingoase, near Falmouth, the lady of T. M. Horsford, of Lincoln's-inn, esq. Barrister-at-Law, of a daughter.

WILMOT.—On the 4th inst. at 10, Welbeck-street, Cavendish-square, the lady of Paul Wilmot, esq. Barrister-at-Law, of a son.

MARRIAGES.

BEARCROFT, Robert John Thomas, son of the late William Robert Bearcroft, esq. and second grandson of the late Edward Bearcroft, Chief Justice of the County Palatine of Chester, to Elizabeth Jane, only daughter of Edward Butler Taylor, late of the island of Barbadoes, esq. on the 9th inst. at Trinity Church, Borough.

BONSEY, Henry, esq. only son of William Bonsey, esq. of Belle Vue, Slough, Solicitor, to Mary Caroline, eldest daughter of M. G. Price, esq. of Brighton, on the 12th inst. at St. Nicholas Church, Brighton.

WELCH, John, esq. of the Inner Temple, eldest son of the late John Welch, esq. of Lancaster, to Henrietta Hele Fowel, eldest daughter of Richard Sprye, esq. of Chesham-place, London, and granddaughter of the Rev. John Sprye, vicar of Ugborough, in the county of Devon, at the Old Church, Brighton, on Saturday, the 2nd inst.

DEATHS.

SAYE and SELE, Lord, on the 13th inst. aged 76.

SLADE, Mary, relict of John Slade, esq. for nearly half a century an eminent solicitor practising at Devizes, Oct. 27, aged 71.

THE WINTER ASSIZES.—We are informed that an intimation has been received by the authorities that Mr. Justice Coleridge (who is to preside at the winter assizes at York and Durham) will take the Yorkshire assizes first. Although he has not yet positively concluded the arrangements, it is his present intention to open the commission for Yorkshire on Thursday, the 28th instant.—*Yorkshire Gazette.*

ATTORNEYS' AND SOLICITORS' ADMISSIONS.—We are informed that upwards of 200 solicitors were sworn in the first day of term, before the Master of the Rolls. Such admissions under the 45th section of 6 & 7 Vict. c. 73, will relate back to the time of admission in the first common law court in which they were respectively admitted, and any intervening costs may therefore be recovered. Those who may be hereafter admitted will, of course, not have that retrospective advantage. We understand the Master of the Rolls will continue to admit solicitors *without examination*, on producing their previous common law admissions, on such days as may be appointed.—*Legal Observer.*

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by J. A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES before all the Judges, by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law, and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BARINGTON, LL.D. Barrister-at-Law.

N.B. The names of the reporters of such important points as may arise upon Circuit will be announced as soon as arrangements for each are completed.

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MONTGOMERYSHIRE, on the borders of Shropshire.—To be SOLD, by PRIVATE CONTRACT, the MANORS of LEIGHTON and TEMPSTER, otherwise Tiertreff, the handsome modern mansion-house called Leighton-hall, now in hand, and 2,800 acres of good land surrounding it, of which 150 acres are in woods and plantations, and the remainder divided into convenient farms and tenements, and let to responsible yearly tenants at moderate rents; the whole being freehold of inheritance, except one small tenement, held under a lease for years, of which thirty-five were unexpired at Lady-day last. Terms for commutation of the tithes have been agreed on, and the land-tax is redeemed. This most desirable property lies nearly in a ring fence, is well stocked with game and fish, and is bounded on one side by the river Severn, which separates it from the Earl of Powis's demesnes adjoining Powis Castle. The estate is distant one to three miles from Welsh Pool, and nineteen miles from Shrewsbury, and the roads about it are excellent. A mail passes within a mile of the house, and leaves letters from all parts of England every morning and returns in the afternoon. For particulars and to treat for the purchase apply to Mr. Salt, solicitor, Shrewsbury.

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of the Office of the Commissioners in Lunacy.
London: STEVENS and NORTON, Law Booksellers and Publishers, 26 and 39, Bell-yard, Lincoln's-inn.

Just published in 12mo. 5s. boards.
THE THEORY and PRACTICE of CONVEYANCING, containing also an Analytical Table of Real Property Law, with Precedents; and the recent Act to simplify the Transfer of Property, intended chiefly for the use of Students. By JAMES LORD, of the Inner Temple, esq. Barrister-at-law.
London: OWEN RICHARDS, Law Bookseller and Publisher, 194, Fleet-street.

TO LEGAL AUTHORS.—The VERULAM SOCIETY being about to publish a work on the PRACTICE of the LAW, as conducted in the Attorney's office, LEGAL AUTHORS willing to undertake either of the following divisions of the work are requested to communicate with the EDITOR of the LAW TIMES.
I. The PRACTICE of the COURTS of COMMON LAW.
II. The PRACTICE of the COURTS of EQUITY.
III. The PRACTICE of the MAGISTRATES' COURTS —1st. QUARTER SESSIONS; 2nd, PETTY SESSIONS.
IV. The PRACTICE of the COURTS of INSOLVENCY and BANKRUPTCY.
V. The PRACTICE of the COUNTY COURTS and LOCAL COURTS.
VI. The PRACTICE of the CRIMINAL LAW.
VII. The PRACTICE of CONVEYANCING.
VIII. The PRACTICE of WILLS and ADMINISTRATIONS.
IX. The PRACTICE of the LAW of VENDORS and PURCHASERS.
X. The MISCELLANEOUS PRACTICE of an ATTORNEY'S OFFICE, arranged alphabetically.
N B. Each Treatise is to be strictly limited to PRACTICE; that is to say, instructions to the Lawyer what he is TO DO in any case. All the FORMS likely to be required in the business therein described must be appended to each Treatise.
Verulam Society Offices, 29, Essex-street, Strand.
24th Oct. 1844.

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Published at the Office of the LAW TIMES, 29, Essex-st.

New Publications.

GRATIS! GRATIS! GRATIS!
THE EXAMINATION QUESTIONS.—A copy of the Questions at the present Michaelmas Term Examination will be forwarded (free) after Saturday next, to any gentleman, on receipt (post paid) of a request to that effect, addressed to the EDITORS of the LAW STUDENT'S MAGAZINE, 13, Carey-street, London, and inclosing two postage heads. Early application must be made.
N.B.—Copy the address.

TO ARTICLED AND UNARTICLED CLERKS.
In the Press, and will shortly be published, Price 2s. 6d.
HINTS on the STUDY of the LAW, for the Practical Guidance of Articled and Unarticled Clerks, in seeking a competent knowledge of the Profession.
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THE LITERARY JOURNAL OF YOUNG ENGLAND.
On Thursday, No. 21 of
THE CRITIC, a Journal of British and Foreign Literature and Art, Guide to the Library and Book-club, and Bookseller's Circular, published on the 1st and 15th of each month, in 32 large pages, price 6d, or 7d. stamped for post; it will be regularly forwarded, by post, for half a year, to any Subscriber transmitting 6s. in penny postage stamps.
The last number contains articles on the Principles and Policy of Young England—Reviews of and copious extracts from the Despatches of the Duke of Wellington—Southey's Life of Dr. Bell—Passavant's Life of Raphael—Breen's Antigua—Miss Bunbury's Rides in the Pyrenees—The Annuals—Liebig's Chemistry—Captain Widdrington's Travels in Spain—Mrs. Meredith's New South Wales—Art—New Music—Bookseller's Circular—Literary Intelligence—Classified List of New Books—Necrology.
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Published at the Office of the *Illustrated London News,* 198, Strand.

On Monday next, 18th inst. No. I. of
THE LAW REVIEW and Quarterly Journal of British and Foreign Jurisprudence.
CONTENTS:—
1. The Study and Science of Jurisprudence.
2. Re-sistance to the Gradual Improvement of the Law.
3. On the Distinction between Law and Fact.
4. The Law of Fees and Costs.
5. A Memoir of the Lord Chief Baron Abinger.
6. The Joint Stock Companies Regulation Act.
7. The Alteration in the Alien Law.
8. Lord Denman's Speech on the Relief of Scrupulous Persons from Oaths.
9. Memoir of the late Lewis Duval, esq.
10. The Revision of Public Bills.
11. Legal Education.
12. Recent Alterations in the Forms of Conveyances.
13. The Writ of *Certiorari* in Criminal Cases.
14. Bankruptcy and Insolvency.
Correspondence.
SELECTION OF ADJUDGED CASES RECENTLY REPORTED.
Postscript.
List of New Publications.
London: OWEN RICHARDS, Law Bookseller and Publisher, 194, Fleet-street.

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LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 16th day of Nov. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 86.] SATURDAY, NOVEMBER 23, 1844,

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TO PARTIES RESIDENT IN YORKSHIRE.—Any one who can give information respecting the present residence of Mr. P—— Hammill (some years ago connected with the POCKLINGTON JOINT-STOCK BANK), will confer a favour on the Advertiser by communicating with him thereon.
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Legal Notices.

LANCASHIRE INTERMEDIATE SESSIONS.—NOTICE is hereby given, that a GENERAL SESSION of the PEACE for the County Palatine of LANCASTER, for the trial of persons committed and held to bail on charges of felony and misdemeanor, will be held at the COURT-HOUSE, in PRESTON, on FRIDAY, the twenty-ninth day of November, inst. at Ten o'Clock in the forenoon, and at the NEW BAILEY COURT-HOUSE, in SALFORD, on Monday, the second day of December next, at Ten o'Clock in the forenoon.
GORSTS and BIRCHALL, Dep. C. P.
Clerk of the Peace's Office,
Preston, 11th November, 1844.

LEEDS BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the NEXT GENERAL QUARTER SESSIONS of the PEACE for the Borough of LEEDS, in the County of York, will be holden before THOMAS FLOWER ELLIS, Esq. Recorder of the said Borough, at the COURT HOUSE in LEEDS, on MONDAY, the sixteenth day of December next, at Nine of the Clock in the Forenoon, at which time and place all jurors, constables, police officers, prosecutors, witnesses, persons bound by recognizance, and others having business at the said Sessions, are required to attend.
And NOTICE is hereby also given, that all appeals, applications, and proceedings under the Highway Acts (not previously disposed of) will be heard and taken at the opening of the Court, on Tuesday, the seventeenth day of December next, provided all cases of Felony and Misdemeanor shall then have been disposed of, or otherwise as soon as the criminal business of the Sessions shall be concluded.
By order,
JAMES RICHARDSON,
Clerk of the Peace for the said Borough.
Leeds, 18th November, 1844.

PURSUANT to a DECREE of the High Court of Chancery made in a cause "Everett v. Prythergch," [illegible] MEDLEY, late of Sheffield, in the county [illegible] coating manufacturer (who carried on business at Sheffield, aforesaid, in the name of Charles Hutchen), deceased (who died on or about the 14th day of February, 1844), are, on or before the 20th day of December, 1844, to come in and prove their Debts, before William Wingfield, esq. one of the Masters of the said Court, at his Chambers, in Southampton-buildings, Chancery-lane, London, or in default thereof they will be peremptorily excluded the benefit of the said Decree.
JNO. RYALS, Sheffield, Plaintiff's Solicitor.
PARKES, CARY, BLOUNT, and BROOKFIELD, 12, Bedford-row, London, Plaintiff's Agents.

METROPOLITAN and PROVINCIAL LEGAL ASSOCIATION.—At a meeting of the Council of this Association held at No. 5, Bedford-row, London, on Thursday, the 21st November, 1844,
Sir GEORGE STEPHEN, President, in the Chair,
Resolution moved and seconded—
"That Mr. Clarke having expressed his wish to resign the office of Secretary of this Association, his resignation be accepted."
Carried unanimously.
Resolution moved and seconded—
"That the Secretary to this Association shall not be concerned, either directly or indirectly, in conducting agency business for other solicitors."
Carried unanimously.
Resolution moved and seconded—
"That the foregoing resolutions be printed and sent, under the authority of the President, to all the members of the Association, and that the same be advertised in the LAW TIMES."
Carried unanimously.
GEORGE STEPHEN, President.

LAW AGENCY.—In the Bankruptcy Court, under the different statutes relating to Bankrupts, Insolvents, and arrangements between Debtors and Creditors. Messrs. BUCHANAN and GRAINGER, Solicitors, 8, Basinghall-street, inform the Profession, and Country Solicitors more particularly, that they accept business as Agents for those who cannot devote their time and attention to the practice of the Court in the above matters.

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This Subscription will be closed on Saturday next, the 30th November. The name of every Subscriber will be forwarded to Mr. HILL, and lists will be published and given to Subscribers on application to the Secretary. The following Bankers receive Subscriptions:—
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„ Strahan and Co. 218, Strand.
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BURGHCLERE, Hants.—WM. AYLWIN has received instructions from the Executors of the late T. Major, esq. to submit for SALE by PUBLIC AUCTION (unless an acceptable offer be made for the same by private contract), on Thursday, the 28th of November, 1844, at Three o'clock, at the Pelican Inn, Speenhamland, a very desirable ESTATE, in the above parish, Copyhold of Inheritance, consisting of a licensed Beer-house, called the "Queen Adelaide," with about two acres of Arable and Meadow Land adjoining, and Seven Cottages, with large productive gardens, all well tenanted, with extensive common rights.
For particulars and conditions, and to treat for the property, apply to Messrs. MATTHEWS and ASTLEY, Solicitors, Hungerford; or to Mr. WM. AYLWIN, Land Surveyor and Auctioneer, Market-place, Newbury, Berks.

To be Sold.

MONTGOMERYSHIRE, on the borders of Shropshire.—To be SOLD, by PRIVATE CONTRACT, the MANORS of LEIGHTON and TEMPSTER, otherwise Tiertreff, the handsome modern mansion-house called Leighton-hall, now in hand, and 2,800 acres of good land surrounding it, of which 150 acres are in woods and plantations, and the remainder divided into convenient farms and tenements, and let to responsible yearly tenants at moderate rents; the whole being freehold of inheritance, except one small tenement, held under a lease for years, of which thirty-five were unexpired at Lady-day last. Terms for commutation of the tithes have been agreed on, and the land-tax is redeemed. This most desirable property lies nearly in a ring fence, is well stocked with game and fish, and is bounded on one side by the river Severn, which separates it from the Earl of Powis's demesnes adjoining Powis Castle. The estate is distant one to three miles from Welsh Pool, and nineteen miles from Shrewsbury, and the roads about it are excellent. A mail passes within a mile of the house, and leaves letters from all parts of England every morning and returns in the afternoon. For particulars and to treat for the purchase apply to Mr. Salt, solicitor, Shrewsbury.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by J. A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

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BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

CORRESPONDENCE.

FORMS OF CONVEYANCE AND MORTGAGE.

(In LAW TIMES of Aug. 31.)

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reference to Mr. Church's letter of last week, I would beg to submit to the Profession at large that there can be no objection to, or doubt upon, the forms in question, on the ground that the word "valid" is there used in place of the word "effectual." The statute does not prescribe that, in referring thereto, the express title shall be set out, it merely requires that the deed "be expressed to be made in *pursuance* of this Act;" and, therefore, any terms or form of reference would suffice, provided an intention be thereby manifested of taking *the benefit of the Act*, which is certainly the case here, unless the courts are to "intend nonsense." The words, "in pursuance of the statute for dispensing with a lease for a year" (as there is no other English Act specifically for that purpose), would doubtless be equally effective; but the shortest and best mode, in my estimation, is, to make the reference literally, thus: "in pursuance of the Act 4 and 5 Victoria, cap. 21."

I am, Sir, yours, &c.

Nov. 18, 1844. G. AUSTIN.

CERTIFICATE DUTY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I wish particularly to draw the attention of yourself and your numerous readers to the petition of the Lincolnshire Law Society for a Repeal of the Attorney's Certificate Duty (inserted in your paper of the 9th of November last, p. 105), and I would earnestly recommend all solicitors and law societies at once to adopt similar petitions; to co-operate with other societies, and by united effort endeavour to obtain a total or partial repeal of this most oppressive, unjust, and unfair tax.

Let every attorney and solicitor do what he can by petitioning and otherwise against this piece of injustice, and when the whole Profession makes a stir against it some modification or total repeal will be the result. Only let the Profession make a demand of their rights and shew their wrongs, I am confident that the former will be yielded to them and the latter removed.

Petition! Petition! Petition!

I am Sir, yours, &c.

WM. PHILLIPS.

75, Petergate, York, Nov. 20, 1844.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My friend, Mr. Taylor (Secretary to the Law Society) has sent me your last number, in which there appears a circular letter of mine to the respectable solicitors here, and some remarks of your own upon it.

Be assured, if it were left to myself, I should have treated it with that "coolness" which you think I possess in so eminent a degree; but as it has raised the indignation of my professional friends, who think I ought to notice it, I shall do so shortly.

You ask—"Is he an Attorney, or a Sham Lawyer, or what?" That question might have been answered by yourself had you looked at the Law List.

You say I am unknown to you even by name; that is to say, *I* am not a subscriber to your periodical. Had you inquired of the Law Society, or of any respectable solicitor in Manchester, you would have found few better known, and, I trust, more respected.

But you think it may amuse your readers. I would advise you in future to leave amusing articles to *Punch*, for, be assured, you will fail. They appear not in your way.

I must beg of you to send down to the Law Society (Messrs. Rowley and Taylor) the envelope containing my circular, or if it were given to you personally, send the party's name.

I will now only add that I regret your remarks more for the sake of the public than for myself, inasmuch as you destroy that moral effect which your widely circulated paper might produce if you confined yourself to the attacking of really petty-fogging practitioners and their nefarious practices; but they should be well-authenticated cases.

I presume you will feel it but justice to publish this letter, and, perhaps, you will not object to publish the name of your informant.

I am, Sir, your obedient servant.

S. TUFFLEY HARDING.

Manchester, Nov. 18, 1844.

[Of course we publish Mr. Harding's defence, and leave it to our readers to say, upon re-perusal of his letter in our columns of last week, whether it was not one that required explanation, to say the least of it.

Equally of course we do *not* give the name of the gentleman by whom it was forwarded to us. It is not our practice so to do.

But we may add that the letter bears no date of the town, but only of the street; and supposing the writer's address to be in London, we turned to the Law List, and finding no such name here, we set down Mr. HARDING as one of the sham lawyers with whom the metropolis abounds. Hence the query, which, had we known, or had the letter shewn, that he was resident in Manchester, would not have been put, because the Law List would have answered it.

It will be unnecessary to assure our readers that it is not for their *amusement*, or for our own, that we have exposed professional malpractices, but as a most solemn duty, for the purpose of purifying the Profession.

Still the question returns, *is* Mr. HARDING'S circular strictly correct? What say the experienced? —Editor LAW TIMES.]

SELECTIONS FROM CORRESPONDENCE.

"Z." submits the following query on the subject of "CREDITORS' DEEDS OF ASSIGNMENT:"—

Some professional men have lately adopted the practice of introducing into deeds of assignment for the benefit of creditors, a clause to the following effect:—

"That it shall be lawful for the said creditors or any of them, by note or memorandum in writing under their respective hands, to authorize any other person to execute these presents in their names and on their behalf; and to specify in the schedule hereunder written the amount of the debts due to such creditors respectively; and that such execution and specification shall be as binding and effectual as if the same were done under a formal power of attorney from such creditors."

The above mode, if it can be safely acted on, affords great facilities for obtaining the execution of deeds of assignment by creditors who reside at a distance; and I shall be obliged if some one of your correspondents will say how far the execution of a deed by an agent acting under a mere memorandum (not under seal, and unstamped) is such an execution as would be binding and effectual upon the creditor, and release the assignor and his estate from future liability or risk.

"LANCASTRIENSIS" comments on the fees to "Clerks to the Peace:"—

That most crying evil, the burthen imposed on misdemeanants in the exaction from them of heavy fees, notwithstanding their acquittal, has been so often and so ably commented upon in the pages of your journal, that perhaps little remains to be said now upon the subject. Every right-thinking person must be thoroughly convinced of the injustice of it, and before another session of Parliament closes most heartily do I join with you in the hope expressed in your last paper, "that some efficient measures will be adopted to remove this most monstrous stain upon the administration of justice." In the meantime I may furnish another of the many instances where this most objectionable practice has occurred, and has borne with great hardship on the individual who has been its victim. A poor fellow was indicted at the last quarter sessions for Lancashire (which county has not as yet yielded to the general impulse and abolished this exaction by its officers) for obtaining money under false pretences. There was not a shadow of a "pretence" for the charge; in fact, as the sequel proved, it was nothing short of a wilful and malicious prosecution. The jury at once acquitted him, and yet he was saddled with the payment of 1*l*. 5*s*. 8*d*. fees before he could be "legally" discharged.

The poor man had not a farthing to pay the fees with—indeed, had it not been for the extreme kindness of a few friends who felt confident of his innocence, he would not have been in the fortunate position to be defended by counsel.

In order, therefore, to procure his release, his friends had not only to bear the expense of feeing counsel on his behalf, but had to submit to their generosity being further taxed by the payment of the clerk of the peace's bill.

"X." addresses to us the following not uncalled-for suggestion:—

I was much pleased at seeing the observation made by Sir G. Stephen, at the late meeting of the "Metropolitan and Provincial Legal Association," as to the absolute necessity of fair and honourable practice by practitioners themselves. There is one practice which ought to be at once given up, and which is a stain on the Profession, namely, that of wantonly appearing and driving to trial an innocent plaintiff, perhaps a honest and hard-working tradesman, who is compelled to call in the aid of the law to recover his just claim.

Discrimination by the public as to respectability or non-respectability is out of the question, the whole Profession shares the odium.

It has been suggested that in every case of the above description, where the presiding judge shall certify that upon the trial there was no real defence, the defendant's attorney should be made to pay the plaintiff his debt and costs, provided the defendant fails to do so.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

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Peruvian	24½	25	25½	25½	25½	25⅛
Portuguese	54¼	54	54⅛	54¼	54½	55
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Colombian	13⅞	13⅞	14⅛	14¼	14	14
Chilian	102½	102	102⅛	102⅞	103	103
Buenos Ayres	36	36½	37	37	37¼	37
Brazilian..................	88	85½	88¼	8[illegible]	89	89
Belgian	102	102	101⅛	102⅞	101¼	101⅛

Public Sales.

By Messrs. WINSTANLEY, at the Mart.

A freehold residence, called Grove House, with coach-houses, stabling, &c. and about seven acres of land, beautifully timbered, and bounded by the river Wey, at Weybridge, Surrey, on the road to Chertsey—3,200*l*.

By Messrs. WARLTERS, LOVEJOY, and SON, at Garraway's.

The Wheatsheaf wine and spirit establishment, situate at Lower Grosvenor-place, Pimlico. The establishment comprises two houses, held by several leases; the Wheatsheaf is held for 19 years, from Lady-day 1844, at a rent of 30*l*. clear of all taxes, and a further penal rent of 30*l*. to guard against obnoxious trade, and the private house for 16½ years, from Lady-day 1844, at a like net rent of 63*l*. making together 93*l*. per annum—4,400*l*.

The lease of the King's Head wine vaults, situated at the corner of Nutford-place, fronting the Edgeware-road, held under two sub-leases, for terms together of 28 years from Lady-day last, at a rent of 73*l*. 10*s*. for first 6½ years, and 84*l*. for the remainder of the term 309*l*.

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A freehold estate, land-tax redeemed, comprising 2a. 3r. 10p. situate at Oak of Honour-hill, Camberwell. A mansion is in course of erection, and an expensive lodge has been built—680*l*.

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A house, No. 2, Alexander-street, Old Kent-road; held for 99 years, at a ground-rent of 5*l*. per annum—300*l*.

An intended public-house, at the corner of Alexander-street, let at 50*l*. per annum; held for 99 years, at a ground-rent of 5*l*. per annum 600*l*.

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A house and shop, No. 17, Ferdinand-place, Hampstead-road; held for 97½ years, at a ground-rent of 2*l*. 10*s*. per annum—200*l*.

Three houses and shops, Nos. 18, 19, and 20, ditto—185*l*.

Two ditto, Nos. 14 and 15 ditto—285*l*.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

MARRIAGES.

NICHOLSON, Rev. P. C. son of the late Rev. Henry Nicholson, Rector of Moresby, Cumberland, and nephew of the late Kenneth Francis Mackenzie, esq. formerly Attorney-General at Grenada, to Mary, daughter of Major J. Linwood Verity, late of the 92nd Highlanders, on the 19th inst. at the parish church of Brompton, Middlesex, by the Rev. W. J. Irons, Vicar, assisted by the Rev. J. Stoughton Money Kyrle, Rector of Yatesbury, Wilts.

DEATHS.

LLOYD, John, esq. of the Mount, Chester, formerly Prothonotary and Clerk of the Crown for the counties of Chester and Flint, and afterwards Clerk of Assize of the North Wales and Chester Circuit, on the 14th inst.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 23rd day of Nov. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 87.] SATURDAY, NOVEMBER 30, 1844.

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Legal Notices.

LEEDS BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the NEXT GENERAL QUARTER SESSIONS of the PEACE for the Borough of LEEDS, in the County of York will be holden before THOMAS FLOWER ELLIS Esq. Recorder of the said Borough, at the COURT HOUSE in LEEDS, on MONDAY, the sixteenth day of December next, at Nine of the Clock in the Forenoon, at which time and place all jurors, constables, police officers, prosecutors, witnesses, persons bound by recognizance, and others having business at the said Sessions, are required to attend.

And NOTICE is hereby also given, that all appeals, applications, and proceedings under the Highway Acts not previously disposed of will be heard and taken at the opening of the Court, on Tuesday, the seventeenth day of December next, provided all cases of Felony and Misdemeanor shall then have been disposed of, or otherwise as soon as the criminal business of the Sessions shall be concluded.

By order,

JAMES RICHARDSON,

Clerk of the Peace for the said Borough.

Leeds, 19th November, 1844.

THE CREDITORS of the Reverend JOHN ROBERT BARBER, late of Marlborough-place, Kennington, in the county of Surrey, Clerk, an Insolvent Debtor, are requested to MEET the ASSIGNEE of his Estate and effects at the Office of Mr. HOOK, No. 11, Tokenhouse-yard, in the city of London, on TUESDAY, the 10th day of December next, at 12 o'clock at noon precisely, to assent to or dissent from the said Assignee compromising, settling, or staying the proceedings in a certain suit in Equity, lately prosecuted by the said Assignee, for the recovery of a reversionary interest to which the said insolvent was entitled, being part of the estate and effects of the said Insolvent, and to his compounding, submitting to arbitration, or otherwise agreeing to any debt, matter, or thing relating thereto.

WANTED to PURCHASE FIVE SHARES in the LEGAL and GENERAL LIFE ASSURANCE COMPANY.

Price and particulars to be forwarded (prepaid) to T. G. [illegible], Messrs. SCOTT and TAHOURDIN'S, 25, Lincoln's-inn-fields.

THE LONDON IMPROVED MANIFOLD LETTER WRITER, for producing a Letter and several copies at one time, complete for 7s. 6d. Travelling Cases, 7s. 6d. each. Superfine Draft Paper, 8s. 6d. per Ream. Lithography executed at moderate charges. Gentlemen visiting London will find great advantage by purchasing at the London Paper and Parchment Warehouse, CLOSSON and CO. 17, Holborn (opposite Furnival's Inn). Country orders executed.

LEGAL REGISTER.—The Publisher of the LAW TIMES begs to announce to the PROFESSION that, in compliance with numerous requests, he has opened a LEGAL REGISTER for the reception of all information on matters of business in which the Profession is interested. It will be classified under the following heads:—

Professions for Sale.	Estates for Sale.
Professions Wanted.	Estates Wanted.
Moneys to Lend.	Estates to Let.
Moneys Wanted.	Heirs-at-Law.
Situations Wanted.	Next of Kin.
Clerks, &c. Wanted.	Miscellaneous Register.

&c. &c.

The fee for Registering either of the above will be *One Shilling* for less than 30 words, and one shilling for each additional 30 words. The fee for searching the Register, *one shilling*. Inquiries by letter will be duly answered.

These fees are intended merely to cover the cost of a clerk and books, and to prevent frivolous entries and searches; the sole purpose of the Register being the accommodation of the Profession, by providing for them a central and readily accessible repertory of matters on which its members most desire to communicate or obtain information.

N.B. Letters containing instructions for Registration, or requesting a search, should inclose the fee in *penny* postage stamps.

Sales by Auction.

TO CAPITALISTS.—Valuable and extensive property at Pendleton, near Manchester.—To be SOLD by AUCTION, by Messrs. CAPES and SMITH, at the Law Society's Rooms, No. 4, Norfolk-street, in Manchester, on Wednesday, the 18th day of December next, at three o'clock in the afternoon, subject to such conditions as will be then produced.

The inheritance in fee simple of and in SEVERAL CLOSES or PIECES of LAND, part of an estate called BRINDLEHEATH, situate at Pendleton, near Manchester, containing 11,250 square yards of land, or thereabouts, and TWENTY-TWO SEVERAL MESSUAGES and Cottages standing thereon, all which premises are now respectively occupied by Messrs. Wright Turner, Ralph Hobson, Blinkhorn and Bradshaws, John Greenwood, and others, and produce at low rentals an income of 280*l.*

And the several YEARLY RENTS of 29*l.* 14s., 24*l.* 1s. 1d., and 4*l.* 1s. 11d. respectively reserved and made payable out of adjoining lands and buildings, formerly other parts of the Brindleheath Estate.

The lands unbuilt upon are now, and have been for many years, occupied as a Market-garden, Nursery, and Pasture-ground. They may be eligibly laid out in building-plots, and are well calculated for manufacturing purposes, as they lie up to the Manchester and Bolton Railway and Canal. It has been ascertained there is Coal under the Estate, which, including that under the lands sold off upon chief rent, would belong to a purchaser. The property is about two miles from the Manchester Exchange, and within one mile of the township of Salford; the access thereto from both those towns is free from toll, and the whole is only subject to a nominal rent of 2*l.*

Further particulars and plans of the Estate may be had on application to Mr. WILLIAM BROOME, Accountant, 3, St. James's-square, or Mr. JAMES PARRY, Solicitor, 23, King-street, Manchester.

LAW BOOKS.

MR. HODGSON will SELL by AUCTION at his Great Room, 192, Fleet-street (corner of Chancery-lane), on Tuesday next, December 3rd, and following day, at half-past Twelve, the valuable LAW LIBRARY of W. K. Dehany, esq. deceased, Solicitor to her Majesty's Board of Excise, by order of the executors; also, the LIBRARIES of TWO BARRISTERS, retired from the Profession; including complete series of the modern reports in law and equity, treatises and books of practice.

To be viewed, and Catalogues had.

To be Sold.

MONTGOMERYSHIRE, on the borders of Shropshire.—To be SOLD, by PRIVATE CONTRACT, the MANORS of LEIGHTON and TEMPSTER, otherwise Tiertreff, the handsome modern mansion-house called Leighton-hall, now in hand, and 2,600 acres of good land surrounding it, of which 150 acres are in woods and plantations, and the remainder divided into convenient farms and tenements, and let to responsible yearly tenants at moderate rents; the whole being freehold of inheritance, except one small tenement, held under a lease for years, of which thirty-five were unexpired at Lady-day last. Terms for commutation of the tithes have been agreed on, and the land-tax is redeemed. This most desirable property lies nearly in a ring fence, is well stocked with game and fish, and is bounded on one side by the river Severn, which separates it from the Earl of Powis's demesnes adjoining Powis Castle. The estate is distant one to three miles from Welsh Pool, and nineteen miles from Shrewsbury, and the roads about it are excellent. A mail passes within a mile of the house, and leaves letters from all parts of England every morning and returns in the afternoon. For particulars and to treat for the purchase apply to Mr. Salt, solicitor, Shrewsbury.

New Publications.

Insurance Companies.

Insurance Companies.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

HUBBACK.—On the 24th inst. at Torrington-square, the wife of John Hubback, esq. of Lincoln's-inn, of a son.

MARRIAGES.

FERGUSSON, Captain James Alexander Duncan, Bengal Cavalry, third surviving son of the late Sir James Fergusson, Bart. of Kilkerran, to Margaret, daughter of the late James Hope, esq. writer to the Signet, Edinburgh, on the 15th inst. at Wardie-lodge, near Edinburgh.

TRAFFORD, Lieutenant-Colonel, of Pantheol, county of Carmarthen, to Maria, second daughter of John Le Marchant, esq. of Melrose, Jurat of the Royal Court of Guernsey, on the 21st inst., at St. Peter's Church, Guernsey.

DEATHS.

BARNES, Thomas, esq. a magistrate for the counties of Dorset and Devon, on the 20th inst. aged 60, at Hawkchurch.

BURRELL, Elizabeth Marianne, only daughter of Joseph Burrell, esq. barrister-at-law, on the 21st inst. at Porchester-terrace, aged three years and three months.

PANTON, John Pattison, esq. Second Secondary of the late Pipe-office in the Exchequer, on the 24th inst. at his residence in Hunter-st. Brunswick-square, aged 70.

SHERRING, Mr. William, many years Clerk of the Indictments for the county of Dorset, much and deservedly lamented, on the 21st inst. at Sherborne, Dorsetshire, aged 68.

To Readers and Correspondents.

A WELL-WISHER.—*Thanks for the hint, but a verbatim report of all the cases would occupy twenty volumes a year at the least. It is necessary to curtail the arguments of counsel. All useful objects are obtained by our plan of reporting verbatim the* written, *and therefore, deliberate opinions of the judges. This is the* really *valuable portion of a Law Report. All the rest is only suggestion, not authority.*

R. T.—*The Reports in the Law Journal are always cited when used by counsel.*

ZETA'S *suggestions are impracticable. He would starve out the Bar.*

W. J. W. (Wells) *is right. The paragraph should not have appeared in that place. It was so set by the Printer without the knowledge of the Editor.*

A SUBSCRIBER.—*The difficulties in the way of rightly spelling names which are only caught by the ear in court are almost insuperable.*

A QUARTER SESSIONS ATTORNEY *does not meet the merits of the case.*

W. C. (Newcastle).—*It is a rule never to interfere with the Reporter of the Court. in his sole discretion it rests what cases he shall report, and the manner of doing it. If the Reporter did not take the case, we cannot procure it. If he did, it will appear in due course.*

W.—*Decidedly that of Mr. Stone, the* Attorney. *Davidson's Concise Forms* appear *to be good, but on such a matter we should be averse to advise, as we could not possibly give them the necessary scrutiny.*

EBOR *will see that his hint has been taken.*

H. C. H.—Byles, *without doubt.*

Y. Z. *will be made early use of.*

H. B.—*We have asked the Reporter. he does not know of its being reported. He deemed it of no public interest*

ENQUIRER.—*It is unnecessary to insert his query. The word "extend" implies an addition to the present meaning of the word.*

MR. J. SMITH *will, of course, take no notice of bills of costs from persons he never employed.*

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third,* has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

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	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents Consols	100¼	100¼	100⅜	100¾	100¾	100⅞
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India Stock	287	287	287½	287	288¼	280
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Exchequer Bills, prem.	60	59	60	60	59	60
FOREIGN.						
Spanish Five per Cents.......	26	25¼	25½	24¾	23½	23¾
Spanish Three per Cents.	34½	34½	34½	34½	35¼	35¼
Russian	118½	118	118¼	119	119¼	119
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Portuguese	54½	54½	55¼	55¼	55¾	56
Mexican............	36	36¼	36⅛	36⅛	36¼	36⅛
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Danish	89	89⅛	89	89	89¾	89½
Colombian	13½	13¾	13¼	13¼	12¾	13¾
Chilian	100½	101	102	102¼	102	102
Buenos Ayres	36	36½	37	37	36½	37
Brazilian............	88	88½	88¾	89	89¼	89
Belgian	101½	102¼	102	102	102¼	102

Public Sales.

By Messrs. SHUTTLEWORTH and SONS.

A residence, No. 1, Ulster-place, the corner of the New-road and Park-square, in the Regent's-park, let on lease, at a rent of 160*l.* per annum; held for 78½ years, at a ground-rent of 25*l.* per annum—1,900*l.*

By Mr. ELGOOD, at the Mart.

The house, No. 26, York-street, Portman-square; held for 60 years, at a ground-rent of 24*l.* per annum—455*l.*

A ditto, No. 35, ditto, let on lease at 80*l.* per annum—565*l.*

Two houses, Nos. 13 and 14, Bridport-street, Dorset-square; held for 97 years at a ground-rent of 12*l.* per annum, and let to yearly tenants at 72*l.* per annum—790*l.*

A villa, No. 5, Uxbridge-gardens, Bayswater; held for 70 years, at a ground-rent of 7*l.* per annum, and let for 5 years at 42*l.* per annum—485*l.*

The adjoining house, No. 6, ditto—485*l.*

A pair of cottage villas, Nos. 5 and 6, Monmouth-road, Westbourne-grove; held for 75 years at a peppercorn, let to yearly tenants at 78*l.* per annum—1,050*l.*

CHANCERY SITTINGS IN LINCOLN'S-INN, AFTER MICHAELMAS TERM, 1844.

(Before the LORD CHANCELLOR.)

Monday, December 2nd—First seal—appeal motions.
Tuesday, 3rd; Wednesday, 4th; and Thursday, 5th—Appeals.
Friday, 6th (petition day)—Unopposed petitions and appeals.
Saturday, 7th—Second seal.
Monday, 9th; Tuesday, 10th; and Wednesday, 11th—Appeals.
Thursday, 12th—Third seal—appeal motions.
Friday, 13th (petition day)—Unopposed petitions.
Monday, 16th, and Tuesday, 17th—Appeals.
Wednesday, 18th—Fourth seal—appeal motions.
Thursday, 19th—Petition day.

(Before the MASTER of the ROLLS.)

Friday, November 29th, and Saturday, 30th—At the Privy Council.
Monday, December 2nd—At the Rolls—motions.
Tuesday, 3rd—At the Rolls—petitions, the unopposed first.
Wednesday, 4th; Thursday, 5th, and Friday, 6th—At the Privy Council.
Saturday, 7th—At the Rolls—motions.
Monday, 9th—At the Privy Council.
Tuesday, 10th—At the Rolls—petitions, the unopposed first.
Wednesday, 11th—At the Privy Council.
Thursday, 12th—At the Rolls—motions.
Friday, 13th, and Saturday, 14th—At the Privy Council.
Monday, 16th—At the Rolls—pleas, demurrers, exceptions, causes, further directions.
Tuesday, 17th—At the Rolls—petitions, the unopposed first.
Wednesday, 18th—At the Rolls—motions.
Consent causes, and short causes, every Tuesday at the sitting of the Court.
Note.—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding.

(Before the VICE-CHANCELLOR of England.)

Monday, December 2nd—First seal—Motions.
Tuesday, 3rd, Wednesday, 4th; and Thursday, 5th—Pleas, demurrers, exceptions, causes and further directions.
Friday, 6th (petition day)—Unopposed petitions, short causes, and causes.
Saturday, 7th—The second seal—motions.
Monday 9th, Tuesday, 10th, and Wednesday, 11th—Pleas, demurrers, exceptions, causes, and further directions.
Thursday, 12th—The third seal—motions.
Friday, 13th (petition day)—Unopposed first, short causes, and causes.
Saturday, 14th, Monday, 16th; and Tuesday, 17th—Pleas, demurrers, exceptions, causes, and further directions.
Wednesday, 18th—The fourth seal—motions.
Thursday 19th—Petition day.
Friday 20th—Unopposed petitions, short causes at the head of the paper, &c.

(Before Vice-Chancellor Knight BRUCE.)

Monday, December 2nd—The first seal—motions and causes.
Tuesday, 3rd—Pleas, demurrers, exceptions, causes, and further directions.
Wednesday 4th—Bankrupt petitions and ditto.
Thursday, 5th—Pleas, demurrers, exceptions, causes, and further directions.
Friday, 6th (petition day)—Petition and causes.
Saturday, 7th—The second seal—motions, short causes, and causes.
Monday, 9th—Bankrupt petitions and causes.
Tuesday, 10th—Pleas, demurrers, exceptions, causes, and further directions.
Wednesday, 11th—Bankrupt petitions and ditto.
Thursday, 12th—The third seal—Motions and causes.
Friday, 13th (petition day)—Petitions and causes.
Saturday, 14th—Short causes and causes.
Monday, 16th—Bankrupt petitions and causes.
Tuesday, 17th—Pleas, demurrers, exceptions, causes, and further directions.
Wednesday, 19th—The fourth seal—Motions and bankrupt petitions.
Thursday, 19th (petition day)—Petition and causes.
Friday, 20th—Pleas, demurrers, exceptions, causes, and further directions.
Saturday, 21st—Short causes and causes.

(Before Vice-Chancellor WIGRAM.)

Monday, Dec. 2nd—The first seal—Motions and causes.
Tuesday, 3rd; Wednesday, 4th, and Thursday, 5th—Pleas, demurrers, exceptions, causes, and further directions.
Friday, 6th (petition day)—Petitions and ditto.
Saturday, 7th—The second seal—Motions, short causes, petitions (unopposed first), and causes.
Monday, 9th; Tuesday, 10th; and Wednesday, 11th—Pleas, demurrers, exceptions, causes, and further directions.
Thursday, 12th—The third seal—Motions and causes.
Friday, 13th (petition day)—Pleas, demurrers, exceptions, causes, and further directions.
Saturday, 14th—Short causes, petitions (the unopposed first), and causes.
Monday, 16th, and Tuesday, 17th—Pleas, demurrers, exceptions, causes, and further directions.
Wednesday, 18th—The fourth seal—Motions and causes.
Friday, 20th—Pleas, demurrers, exceptions, causes, and further directions.
Saturday, 21st—Short causes and causes.

A jury assembled in Bath to assess damages for false imprisonment under the game laws, when the following examination of a witness by Mr. Ludlow took place:—Mr. Ludlow: Do you know Mr. Chivers? Witness: Ees, zur, I knaw him very well; I zeed 'un doun at Gloucester 'sizes, where you were counsel against 'un.—Mr. Ludlow: Indeed, I didn't recollect that; you have a better memory than I have. Witness: Noa, zur, I don't think I hae; I wish I'd haulf as good. Mr. Ludlow: Did you ever see any law books in Mr. Chivers's room? Witness: Noa, zur. Mr. Ludlow: But there must have been some: people couldn't do without books, you know. Witness: Noa, zur, they couldn't, sure enough; parsons couldn't preach without a book, and you lawyers couldn't bother people so, if you hadn't books to go by.

TRIAL BY JURY.—Not a hundred miles from Peterborough, at a late quarter sessions held in an ancient town-hall, it is said that a remarkable circumstance occurred. On the trial of a prisoner charged with robbing his master of various articles, the business had proceeded so far as to leave the matter in the hands of the jury; and that body not being able to come to a satisfactory determination whether the prisoner was guilty or not, and being locked up, the foreman proposed, in order to shorten the question, that the poker from the fireplace should be placed exactly upright, and that if it fell to the right the prisoner was guilty, and if it fell to the left he was not guilty! The poker so placed fell to the right, and the poor prisoner obtained three months' imprisonment in consequence.—*Lincoln Mercury.*

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

BRITISH and FOREIGN INSTITUTE,

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The winter session of the Institute being about to commence, the committee have authorized, by an unanimous resolution, the publication of the First Annual Report, adopted at a general meeting of the members, the Earl of Devon in the chair. This contains an authentic statement of the rapid progress, present financial condition, and latest list of members (now exceeding 1,200), and may therefore be relied upon by those who desire accurate information on the subject. Copies may be had, gratis, at Messrs Smith, Elder, and Co.'s, 65, Cornhill; Messrs. Fisher and Co.'s, 38, Newgate-street; Mr. Geo. Bell's, 186, Fleet-street; Mr. Ridgway's, 169 Piccadilly; and at the Institute, 13, George-street, Hanover-square.

The present Rates of Admission are, for Town Members an entrance of Ten Guineas, and an Annual Subscription of Five; for Country Members living more than twenty-one miles from London, an entrance of Five Guineas, and an Annual Subscription of Two.—Ladies and Families of Members at half these Rates.

The Lectures, Conversazioni, Discussions, and Musical Soirées, will be continued twice a week for fifty-two evenings, on every Wednesday and Friday, from January to June inclusive; and the Libraries and Drawing-rooms will be open daily (except Sundays) from nine in the morning till eleven at night.

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As there are now members from almost every county in England, Scotland, and Ireland, and in the different Capitals of Europe, from Petersburgh to Naples, as well as from the East and West Indies, North and South America, and the Colonies general; there will be no difficulty in making references, in almost any quarter, to actual members, for any information required.—Persons residing abroad may secure their Membership by the payment of an Entrance Fee of Five Guineas; but no Annual Subscription will be required till their return to England, and no arrears be chargeable during their absence.

Candidates may be furnished with Cards of Introduction, and all the requisite forms, either personally, or by letter addressed to

JAMES S. BUCKINGHAM, Resident Director.

ADVOWSON for SALE.—To be SOLD, by PRIVATE CONTRACT, the NEXT PRESENTATION and PERPETUAL ADVOWSON of the RECTORY of IDEFORD, in the county of Devon, situate four miles from the much frequented watering-place Teignmouth, and near to Chudleigh, so celebrated for its romantic rocks and scenery. The tithes are commuted, and the rent-charge fixed at 255*l.* per annum. There are sixty two acres of glebe adjacent to the house, which let for 100*l.* per annum. The age of the present incumbent is 50.

For further particulars, and to treat for the purchase, apply to Mr. BEERS H. THELWALL, Solicitor, Wirksworth, Derbyshire.

New Publications.

THE LITERARY JOURNAL OF YOUNG ENGLAND.
On Monday, No. 22 of

THE CRITIC, a Journal of British and Foreign Literature and Art, Guide to the Library and Book-club, and Bookseller's Circular, published on the 1st and 15th of each month, in 32 large pages, price 6d., or 7d. stamped for post; it will be regularly forwarded, by post, for half a year, to any Subscriber transmitting 6s. in penny postage stamps.

The last number contains articles on the Principles and Policy of Young England—Miss Martineau on Mesmerism—Reviews of and copious extracts from Craik's History of English Literature—Caroline Fabler's Reminiscences—Life of the Rev. Andrew Bell—The Zoonist—Essays on Partial Derangement of the Mind—An Aide-de-Camp's Recollections of China—Marryat's Settlers in Canada—I Promessi Sposi—The Mosaic Workers—Edwards's Providence—Edwards's Marriage—Fairfax's Translation of Tasso—Jones's Tecumseh—Trotter's Elements of Algebra—White's Universal History—Elementary Latin Exercises—Commentary on the Eton Latin Grammar—The Dublin Review—The New Edinburgh Review—The Keepsake—The Book of Beauty—Cattermole's Historical Annual—Revelations of Russia—Nursery Rhymes—Osborne's Guide to the Madeiras—Rennie's Bird Architecture—Foreign Literature, Science, and Art—Music—Art—Bookseller's Circular—Repertory of Books, &c. published Abroad—Classified List of New Books.

N.B. The magnificent List of Subscribers to THE CRITIC is now ready, and may be had on application.

Published at THE CRITIC Office, 29, Essex-street, Strand.

ARCHBOLD'S PRACTICE of the CROWN OFFICE of the COURT of QUEEN'S BENCH, with Forms of all the Pleadings, Rules, Notices, &c. which occur in Practice. By J. F. ARCHBOLD, Esq. Barrister-at-Law. 1 vol. 12mo. price 12s. boards.

The *Law Times* of the 21st September last, in a review of this work, after giving an analysis of it, and extracts from it, says—"This analysis of the work, and the above extracts from it, will leave no more doubt upon the minds of our readers than exists in our own,—that the *Practice of the Crown Office of the Court of Queen's Bench* will fully sustain the reputation of Mr. Archbold, and higher praise could not be given."

London: OWEN RICHARDS, 194, Fleet-street.

New Publications.

PRICE FIVE SHILLINGS,

THE LAW OF DISTRESS FOR RENT, on Property not the Tenant's, considered and condemned; including a Report of the recent case, *Joule* v. *Jackson*, with Remarks thereon, &c.

EXTRACTS FROM THE PRESS GENERALLY:—

"The author argues strongly against the present state of the law. Some very valuable information is afforded on the law of distress, and we recommend the work to the perusal of all parties."—*Liverpool Mercury.*

"The author's observations are just and forcible; the arguments are well sustained, and must lead to a conviction that the law ought to be amended."—*Chester Courant.*

"The existing law is minutely analyzed, and its impolicy, as well as its injustice, freely exposed. The whole subject demands the serious attention of the Legislature."—*Bolton Chronicle.*

"This little work appears to us to be a very able disquisition on a subject in which the public is deeply interested.... The subject is dwelt upon with great power and energy, and the law shewn to be unjust and oppressive."—*Stockport Advertiser.*

"This volume will be found very useful not only to brewers and others suffering from the last interpretation of the law, but to the legal profession."—*Preston Chronicle.*

"This is an able dissertation on the law of distress; and the object of the author is to effect an alteration in regard to property taken in distress, not belonging to the tenant. He treats of the origin and nature of the remedy by distress at common law; the law of agistment, as connected with distress for rent; and then of chattels which may or may not be distrained. The author discusses, with considerable acumen, the several cases on the subject, particularly Fowkes *v.* Joyce (3 Lev. 260); Francis *v.* Wyatt (1 W. Blac. 483, 3 Burr. 1498); Muspratt *v.* Gregory (1 M. & W. 633, 3 M. & W. 677); and Adams *v.* Grane (1 C. & M 380). The larger portion of the book is devoted, however, to the recent case of Joule *v.* Jackson, tried at the Liverpool Summer Assizes in 1846, before Mr. Baron Rolfe. Of this a full report is given, and the case was afterwards argued in Banc, as reported 7 Mee. & Wel."—*Legal Observer.*

London, SIMPKIN, MARSHALL, and Co.; Manchester, SIMMS and DINHAM.

Just published, price 1s. stitched.

REMARKS upon the late ALTERATIONS in the LAW of IMPRISONMENT for DEBT; with Suggestions for their Amendment and Removal, in a Letter addressed to the Right Hon. HENRY LORD BROUGHAM.

By WILLIAM ALFRED HILL, Esq. M.A. Barrister-at-Law.

S. SWEET, 1, Chancery-lane, Fleet-street.

Just Published,

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24th Oct. 1844.

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AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 88.] SATURDAY, DECEMBER 7, 1844.

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A PRISON SCENE.—The following laughable dialogue occurred on Friday the 29th ult., in the Jersey Prison. Sir John De Veulle and Mr. Bisson presented themselves as visiting magistrates at the door of Mr. Wilson's room about half-past ten o'clock. Mr. Wilson was not up. A knock at his door being heard, Mr. Wilson called out, in his loudest tones, "Who's there?" Answer—"Sir John De Veulle." Mr. Wilson—"Come in?" Sir J. De Veulle (Mr. Bisson remaining a little in the rear)—"I wish to know, Mr. Wilson, whether you have any complaint to make?" Mr. Wilson—"Five hundred. In the first place, where are your prison rules?—they ought to be posted up in every prisoner's room; but before I talk to you, take off your hat." Sir J. De Veulle—"Really, Mr. Wilson,——" Mr. Wilson—"Take off your hat!" Sir J. De Veulle—"I moved my hat when I came in." Mr. Wilson—"Take off your hat, Sir; I'm bareheaded! How dare you enter a gentleman's room with your hat on?" Sir J. De Veulle—"Oh, if that is all you have to say, I shall leave you." Mr. Wilson—Then take yourself off." This unceremonious rejection of the bailiff's kind offices, tendered to the man he had imprisoned, must have somewhat startled and annoyed that functionary—more especially if, as we believe, he intended to renew the offers fruitlessly made through Mr. Hammond.—*Jersey Gazette.*

To Readers and Correspondents

G. H. K.—*A useful Law Dictionary, to be published in parts, is one of the projected works of the Verulam Society.*

A SUBSCRIBER (Manchester) *has made some mistake. The Index to the 3rd volume consists of ten pages, the Statutes are separately indexed, and every subject is elaborately treated in like manner in the General Index.*

AN OLD SUBSCRIBER.—*The pressure of strictly legal matters upon our columns compelled the omission of those tables.*

W. MELLAND.—*The complaint is sent to the reporter. The price of the volume is, we believe, 5s.*

J. C. W. (Beccles).—*This communication is not admissible, for reasons that must be obvious to the writer.*

F. L. B. (Llanelly).—*The work named is the most complete, but the most costly. There are cheaper books on the same subject, as Archbold's, Deacon's, and Stone's. We should pause before we so expended 6l.*

E. F. (Norwich).—*Our strict rule is to notice no malpractices that are not brought before the public by advertisement, in courts of justice, &c. Therefore while we thank our correspondent for his attention, we must decline to insert his communication.*

F. F. D.—*We prefer to wait the final result of the correspondence. If then it shall appear to be likely to interest our readers, it shall be used.*

ERRATA. In the list of members to the Verulam Society, published in No. 86 *for* "Heane, Henry, Newport Pagnell" *read* "Heane, Henry, Newport, Salop."

In the list of gentlemen called to the Bar, given in the same number, *for* "Wire, Edward, esq." *read* "Wise, Edward, esq."

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An improved rent of 45*l*. per annum, secured upon five houses and piece of building-ground, in John-street and Norfolk-street, in the parishes of St. Matthew, Bethnal-green, and St. John's, Hackney, No. 32, John-street, a neat compact dwelling-house, let on lease for the whole term, less two months, at 100*l*. per annum – 450*l*.

Two freehold houses, situate Nos. 1 and 3, Grosvenor-square, Mape's-street, Bethnal-green-road, let to weekly tenants, at rents amounting to 18*l*. 4s per annum – 125*l*.

Two leasehold houses, situate Nos 1 and 5, Park-place, Mape's-street, Bethnal-green-road, let to weekly tenants, at rents amounting to 22*l*. 2s. per annum; held by lease direct from the freeholder, for a term whereof 77 years were unexpired at Michaelmas-day last, at a ground-rent of 6*l*. per annum, land-tax redeemed—Bought in.

A dwelling-house, No. 1, Gloucester street, Cambridge-road, a few yards from Hackney-road Turnpike; the premises let at the low rent of 17*l*. per annum; held by lease for a term, whereof 59 years were unexpired at Christmas last, at the ground rent of 2*l*. 15s. per annum – 85*l*.

A leasehold dwelling-house, very conveniently situated No. 52, Church-road, Commercial-road East, in the parish of St. George, Middlesex. The premises have within the last six months been put into complete repair, and contain four rooms besides kitchen, washhouse, and other convenient domestic offices, with a good garden in the rear; at a net rental of 14*l*. 13s. per annum – 135*l*.

By Messrs. MUSGROVE and GADSDEN, at the Mart.

A policy in the Rock Office, for 2,000*l*. together with the accumulations up to the present time, amounting to 514*l*. effected the 6th June, 1823, upon the life of a gentleman now aged 64; annual premium, 73*l*. 13s. 4d.—1,310*l*.

A freehold ground-rent of 43*l*. 15s. per annum, arising from four residences known as Nos. 1, 2, 3, and 4, Elm Grove-place, Norwood – 1,200*l*.

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By Mr. HENRY BROWN.

The lease and good-will of a chemist and druggist's, situate No. 95, Minories, held for 10½ years, at 100*l*. per annum – 95*l*.

By Mr. DANIEL CRONIN, at Garraway's.

The free wine and spirit establishment known as the Talbot, in Tottenham Court-road, the corner of Goodge-street, held for 23¼ years, at the rent of 180*l* per annum 3,800*l*.

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The free public house, tavern, and wine vaults, known as the Grapes, in Three Tun-passage, Newgate-street, held for 18¼ years at 110*l*. per annum—1,200*l*.

The free public house known as the Lion and Key, situate in Lower Thames-street, opposite the Custom House Quay, held for 17½ years at 62*l*. 3s. 6d. per annum – 600*l*.

By Mr. ALLEN DAVIS, at Garraway's.

The public-house known as the Grapes, in Blackman-street, Borough offered for sale by order of the High Court of Chancery. The property is held for a term of 61 years, from Christmas 1840, at the rent of 60*l*. per annum. It was knocked down at 1,015*l*. but not sold.

Two houses known as Claremont Cottages, back of Anne's place, Old Kent-road, let at 26*l*. per annum, held for 32¼ years, at 4*l*. per annum; also a plot of ground adjoining, 72 feet in length, and 50 feet in breadth; held for the same term, at 4*l*. per annum 130*l*.

Two houses and ground, Nos. 1 and 2, in Bronti-place, Walworth, and a small plot of ground adjoining; held for 10½ years at a peppercorn rent; the whole let at rents amounting to 26*l*. 4s.—170*l*.

A house, No 6, Park road, Clapham, let at 14*l* per annum; held for 27 years from Michaelmas last, at a peppercorn ground-rent 110*l*.

A ditto, No. 4, ditto 90*l*.

A freehold house and ground, at the back of the Black Horse, Brixton-place—130*l*.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

MARRIAGES.

HARDING, George Joseph, esq. of Solihull, Warwickshire, to Helen, eldest daughter of the late Rev. Jeremiah Watson, of Arnwood, Lymington, Hants, on the 4th inst at St Marylebone church.

PRYCE John Bruce, esq. of Duffryn Glamorganshire, High Sheriff for that county, to Alicia Grant, second daughter of the late William Bushby, esq. of Great Cumberland-place, on the 30th ult. at Tattingstone, Suffolk.

DEATHS.

BROUN, Hon. Sir James, knt. Baron of Coulstoun, and a baronet of Scotland and Nova Scotia. His titles the second of which was enjoyed by his ancient family before 1116 have devolved upon his eldest son, Sir Richard Broun, Eq Aur Honorary Secretary to the Committee of the Baronetage for Privileges, and now the eighth baronet, on the 10th ult. at Moffat, Dumfriesshire.

BYRON, John Ralph, youngest son of the Right Hon. Lord Byron at Leamington, on the 30th of November, aged 8.

CAVE, Hon. Robert Otway, M.P. of Stanford Hall, Leicestershire, and of Castle Otway, in the county of Tipperary, at Bath, on the 29th ult. after a short illness

LONG, Elizabeth, third daughter of Mr William Long, of Nelson-square, Blackfriars-road, and of Bouverie-street, solicitor, on Monday, the 2nd inst. aged 21.

LOTHERINGTON, Thomas, esq. of Holden-house, Louthborough, Kent, one of the magistrates of that county, on the 4th inst aged 55.

SEALE, Colonel Sir John Henry, bart. M.P. on the 28th of November, at his residence, in London.

WITHAM, Henry, esq. High Sheriff of the county of Durham, on the 28th ult. at his seat, Lartington Hall, Yorkshire, aged 65.

WOODWARD, George Henry, esq. 71, Milton-street, Dorset-square, barrister-at-law, on Tuesday, the 26th ult. at the Glebe, Fethard.

NECROLOGY.

THE HON. ROBERT OTWAY CAVE.

We have to announce the demise of the Hon. Robert Otway Cave, M.P. for Tipperary, who expired after a short illness on Friday se'nnight, at Bath, where the hon. gentleman had repaired with Mrs. Otway Cave for the benefit of his health. The deceased was eldest and only surviving son of the late Mr. Henry Otway, brother of Admiral Sir Robert Otway, Bart. K.C.B. and Sarah (now Baroness Braye), only daughter of Sir Thomas Cave, Bart. whose grandmother was eventually heiress of the first Lord Braye. He was consequently heir apparent to the barony of Braye. The hon. deceased married, Oct. 19, 1833, Miss Sophia Burdett, eldest daughter of the late Sir Francis Burdett, Bart. by whom, however, we hear he does not leave any issue. He was returned for Leicester, in 1826, by a considerable majority over Mr. William Evans and Lord Denman, and in 1830 was elected for Hastings. In 1835 he was elected, in conjunction with the Right Hon. Richard Lalor Shiel, for the county of Tipperary, and has continued to represent that Irish county up to the present time. In 1818 he took the name of "Cave" in addition to that of Otway, by royal sign manual. As we have above stated, he was heir apparent to the barony of Braye, a title which had been in abeyance since 1557 until 1839, when the barony was called out in favour of the present Baroness Braye, mother of the deceased. The hon. member was, in his political principles, a zealous and attentive supporter of what are termed "Liberal" opinions. By his death a vacancy of course occurs in the parliamentary representation of the county of Tipperary; but it is of little moment in a party view, as the popular candidate is certain to be returned without opposition by the Conservatives. We understand that on Friday evening an express was received by Miss Burdett Coutts from Bath, which conveyed the most unfavourable intelligence regarding the hon. member's health, and, in consequence, that lady left by the mail train that evening to join her sister at Bath; but, on her arrival, the hon. gentleman had expired. Miss Coutts remains with her sister at Bath to condole with her on the severe domestic bereavement she has experienced.

REINFORCEMENTS FOR THE BAR.—During Michaelmas Term, which terminated on Monday, no less than fifty-four persons were called to the bar, which at the commencement of term, as appeared by publication of the fact, numbered 2,243 individuals. Of the 54, 15 were called by the Honourable Society of Lincoln's inn, eight by the Honourable Society of the Inner Temple, 29 by the Middle Temple, and two by Gray's-inn.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

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FOR

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VOL. IV. No. 89.] SATURDAY, DECEMBER 14, 1844

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MR. MOORE will SELL by AUCTION, at the Mart, on Tuesday next, December 17th, at Twelve, a FREEHOLD GROUND RENT of 12*l.* secured on four houses of the annual value of 80*l.*; also, an Improved Rent of 15*l.* amply secured on property at Cambridge Heath; an Improved Rent of 21*l.* secured on fourteen houses in [illegible]-street, Mile End New Town, let on lease for the whole term, Six Leasehold Houses, Sidney-street, Mile End Turnpike; a compact House and Shop, Jubilee-place, Commercial road, term twenty-six years, ground rent 1*l.*; an Annuity of [illegible] 10s. per annum, secured during four lives on property worth 100*l.* per annum, Two Leasehold Houses and Shops in [illegible] road, St. George's East, term forty-five years, ground rent [illegible] 15s. per annum, the absolute Reversion of one [illegible] part of 16[illegible] acres of Freehold Land at Monk [illegible], Suffolk, let on lease at [illegible] per annum; and a contingent Reversion of one tenth part of 3,507*l.* now in the funds, both receivable on the death of a widow lady aged [illegible].
Particulars at the Mart; of Marten, Thomas, and Hollams, [illegible] Commercial Chambers, Mincing lane; Mr. Wilson, 7, [illegible] Inn; Morris, Stone, and Townson, Moorgate-street Chambers, Mr. Otway, Stratford; and at the Auctioneer's offices, Mile End-road.

New Publications.

On Thursday next, the 19th inst. will be published, Price 6s.

THE LAW MAGAZINE and QUARTERLY REVIEW of JURISPRUDENCE. No. 1, New Series. No. 65, Old Series.

CONTENTS:

1. Presumptive Evidence.
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3. The Law of Debtor and Creditor.
4. The Growth of Crime.
5. Greening's Chitty on Pleading.
6. The Transfer of Property Act.
7. Parochial Settlements.
8. The Bar.

Notes of leading Cases—Digest of Common Law, Criminal, and Magistrates' Cases, Equity Cases, &c.—Events of the Quarter—List of New Publications—Postscript.

London: WILLIAM BENNING and Co. Law Booksellers, 43, Fleet-street.

TO LEGAL AUTHORS.—The VERULAM SOCIETY being about to publish a work on the PRACTICE of the LAW, as conducted in the Attorney's office, LEGAL AUTHORS willing to undertake either of the following divisions of the work are requested to communicate with the EDITOR of the LAW TIMES.

I. The PRACTICE of the COURTS of COMMON LAW.
II. The PRACTICE of the COURTS of EQUITY.
III. The PRACTICE of the MAGISTRATES' COURTS—1st, QUARTER SESSIONS; 2nd, PETTY SESSIONS.
IV. The PRACTICE of the COURTS of INSOLVENCY and BANKRUPTCY.
V. The PRACTICE of the COUNTY COURTS and LOCAL COURTS.
VI. The PRACTICE of the CRIMINAL LAW.
VII. The PRACTICE of CONVEYANCING.
VIII. The PRACTICE of WILLS and ADMINISTRATIONS.
IX. The PRACTICE of the LAW of VENDORS and PURCHASERS.
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N.B. Each Treatise is to be strictly limited to PRACTICE; that is to say, instructions to the Lawyer what he is TO DO in any case. All the FORMS likely to be required in the business therein described must be appended to each Treatise.

Verulam Society Office, 29, Essex-street, Strand. 28th Oct. 1844.

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It is provided by the Constitution of the Society, that the insured shall be free from all responsibility, and to guarantee the engagements of the Office, a fund of 550,000*l.* has been subscribed by a numerous and opulent proprietary. Returns are periodically made to parties insuring.

The business of the Society exceeds Fifty-eight Millions. The duty paid to Government for the year 1842 was 68,612*l.* 14s. 3d., and the amount insured on Farming Stock was upwards of Nine Millions and a Half.

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	FARMING STOCK.	DUTY.
Norwich Union	£9,522,693	£68,612 14 3
County	7,464,858	48,465 10 7
Sun	6,818,051	165,683 16 8
Phœnix	4,811,161	129,649 2 3
Royal Exchange	4,349,774	71,891 14 2

LIFE INSURANCE SOCIETY.—INSTITUTED 1808.

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The Rates of Premium are BELOW those of most other Offices, and, under the age of 45, not less so than ten per cent.—a benefit in itself equivalent to an annual bonus; whilst periodical additions are also made to the sums assured upon all policies for the whole duration of life, in proportion to the amount of premium paid; the full advantage of Life Assurance is thus enjoyed by the members of this Institution.

The subjoined List of some of the existing Policies of the Society exhibits the aggregate amount of Bonus assigned to each of those Policies, including that declared at the General Meeting held on the 9th of September, 1842.

No.	SUM ASSURED.	BONUS.
477	£1,000	£776 4 10
951	499	431 10 5
170	1,000	445 15 6
751	1,000	458 7 4
1235	2,000	852 5 1
1276	1,500	619 3 4
1450	2,000	754 17 2
1414	1,000	519 10 7
1459	300	155 14 4
1745	2,000	1,117 1 11
1850	1,500	149 10 5
2570	1,000	531 6 10

Tables of Rates, &c. may be obtained at the Society's Offices, or of the Agents, in all parts of the United Kingdom.

CHURCH OF ENGLAND LIFE AND FIRE ASSURANCE INSTITUTION, 6, King-William-street, City.

(Empowered by special Act of Parliament, 4 & 5 Vict. cap. 92.)

CAPITAL, ONE MILLION.

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FIRE.—The Premiums for Assurance against Fire are charged at the usual moderate rates, with a reduction of 10*l.* per cent. on the RESIDENCES AND FURNITURE OF CLERGYMEN.

TABLE OF LIFE RATES.

Age.	Mutual Scale.			WITHOUT PROFITS. Equal Rates.			Ascending Scale: First Seven Years.			Sec. Seven Years.			Remain. of Life.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
20	1	17	4	1	13	11	1	2	0	1	13	0	2	4	0
30	2	6	10	2	2	7	1	8	0	2	2	0	2	16	0
40	3	3	6	2	17	8	1	10	0	2	18	6	3	18	0
50	4	13	4	4	4	11	3	0	2	4	10	3	6	0	4

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W. EMMENS, Secretary.

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THE MARINERS' AND GENERAL LIFE ASSURANCE COMPANY, ESTABLISHED FOR INSURANCES ON THE LIVES OF MARINERS, Whether of the Royal or Mercantile Navy. MEMBERS OF THE COAST-GUARD, FISHERMEN OR BOATMEN, MILITARY MEN or CIVILIANS, proceeding to any part of the Globe; as also INDIVIDUALS OF EVERY CLASS IN SOCIETY, resident on shore, are Insured. Empowered by Act of Parliament.

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TO PREVENT ALL FUTURE QUESTIONS AS TO THE VALIDITY OF POLICIES, this Company are prohibited by their deed of constitution from disputing any claim, unless they take upon themselves to prove that the policy upon which the claim arises was obtained by fraudulent misrepresentation.

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No. 16, Portland Place.—Capital Town Residence of the late Fred. Reade, Esq.—Excellent Furniture and Effects.

MR. ELGOOD is instructed by the Executors to SELL by AUCTION, on Tuesday next, December 17, the valuable LEASE for 28 years, at a ground-rent of only 22*l.* of the excellent spacious FAMILY HOUSE, No. 16, Portland-place, having principal and secondary stone staircases, suites of three capital rooms on each principal floor, ten bed-chambers, a water-closet on every story, and high service to the upper floor, convenient domestic offices, with coach-house and five-stall stable attached, and rooms over. Also on the same and following day, the capital furniture, winged and other wardrobes, noble glasses and chandeliers, console tables, 18 dining-room chairs, tables and sideboard, superior modern library furniture, clocks, piano, pictures, chariot, and various effects.

May be viewed, Catalogues, 6d. each, and particulars to be had at Mr. ELGOOD'S Offices, Wimpole-st. Cavendish-square.

Furniture and Effects of the Rev. Dr. and Mrs. Roberts, deceased, No. 24, Park-square.

MR. ELGOOD is directed by the Administrator to SELL by AUCTION, on Monday and Tuesday, December 23 and 24, the FURNITURE and EFFECTS; valuable library bookcases, buffets, tables, and cabinets, including an expensive large table made expressly for the library at St. Paul's School; carved sideboard, prints and pictures, 450 ounces of plate, linen, old and valuable china, clocks, numerous writing-desks and dressing-cases, gentlemen's tool-chests, variety of work-boxes, and other paraphernalia of a lady, &c. entirely genuine property of the deceased; of which catalogues are preparing, and further particulars will be advertised.—Wimpole-street, Dec. 6.

N.B. Dr. Roberts's valuable library has been removed, and will be sold by Mr. Evans shortly.

Capital Mansions in Wimpole and Harley-streets, in perfect repair.

MR. ELGOOD is favoured with instructions to SUBMIT to Peremptory SALE, on Tuesday, the 31st inst. (unless acceptable offers be previously made), the BENEFICIAL LEASES of those well-arranged, substantial, and spacious HOUSES, Nos. 64, Wimpole-street; and 1, Upper Harley-street, calculated for large families of the first respectability. The premises are fit for immediate occupation, having been recently improved and repaired throughout at a great expense, have two staircases, and very complete stabling, with coach-houses, &c. and are particularly suited to parties wishing for a residence, at a moderate rent, with a premium, in preference to a purchase or a rack rent, being held on leases, at the respective rents of 180*l.* and 200*l.*; but of the real value of 300*l.* a year, and upwards.

May be viewed by cards, and every information had of Mr. ELGOOD, 98, Wimpole-street, who is fully authorized to treat by private contract. Printed particulars also of F. B. BEEVOR, Esq. Gray's-inn; and at the Mart.

Handsome Villas, with Gardens, on the Walpole Eyre or St. John's Wood Estate, eligible for investment and occupation.

MR. ELGOOD is instructed to SELL by AUCTION (unless previously disposed of), at the Mart, on Tuesday, 31st inst. THREE elegant and substantial VILLA RESIDENCES (two in the Italian and one in the Gothic style), delightfully situate in the Finchley-road, St. John's Wood-road, Nos. 9 and 11 on the west, and No. 20 on the east side, commanding beautiful prospects of Hampstead and Highgate, Willesden, Harrow, &c. within an easy walk or drive of those places and of the Regent's-park, as well as all parts of the metropolis. The houses are finished for immediate occupation, and conveniently arranged for family comfort and accommodation on a moderate scale, with neat gardens and grounds, walled round; each held for 90 years, at a low ground-rent. Part of the purchase-money may be had on mortgage.

The premises may be viewed, and particulars had at the Eyre Arms Tavern, near the property (where omnibuses ply every five minutes); at the Mart; at Mr. ELGOOD'S Offices, in Wimpole-street; of Messrs. RHODES and LANE, 63, Chancery-lane; and of Mr. BEEVOR, 5, South-square, Gray's-inn.

Property of the best description for Investment, upon the St. John's Wood Estate.

MR. ELGOOD has the pleasure to announce that he will SELL, at the Mart, on the 31st instant, in One Lot (unless an acceptable offer is previously made), TWO capital detached FAMILY HOUSES, of bold and elegant design, in the Grecian style of architecture, distinguished as "Raby House," and "Wellesley House;" with large walled gardens, &c. in the Finchley-road, St. John's Wood-road; a situation pre-eminent for salubrious air and beautiful prospect; let on lease to highly respectable and responsible tenants, with establishments of the first class, at moderate rents of 170*l.* and 205*l.* the occupiers having made considerable outlay in improvements, &c.—Held of Walpole Eyre, esq. for the long term of ninety years, at low ground-rents; and the purchaser will have the benefit of 3,000*l.* on mortgage for five years.

Printed particulars to be had at the Eyre Arms Tavern, St. John's Wood; at the Auction Mart; of Messrs. CAPRON and Co. Solicitors, Saville-row; and at Mr. ELGOOD'S Offices, in Wimpole-street.

Devonshire-place, only two doors from the New-road, Regent's-park.—The capital Residence, Furniture, and Effects of the late Dr. Henry Young.

MR. ELGOOD is instructed by the Executors to SUBMIT to SALE by AUCTION, in the course of the next month (unless an acceptable offer is previously made), the LEASE, for 44 years, at a ground-rent of only 25*l.* of a most desirable well-arranged FAMILY RESIDENCE, No. 19, Devonshire-place, one of the best houses in this select and agreeable position, having excellent well-proportioned reception-rooms, seven bed-chambers, two water-closets up-stairs, with high service to the attic story, and convenient domestic offices, a neat garden and capital five-stall stable, with double coach-house and rooms over. The residence is in good order, having been well kept up by the late proprietor; the view from both fronts is cheerful and open, and the back rooms have the advantage of a bow, overlooking the neighbouring gardens, &c. The premises can only be viewed by tickets, to be had at Mr. ELGOOD'S Offices, Wimpole-street, who is authorized to negotiate by private contract.

Valuable improved Leasehold Ground-rents, for upwards of 90 years, on the Bishop of London's Paddington Estate.

MESSRS. HEDGER will SELL by AUCTION, at the Mart, on Thursday, January 16, 1845, at Twelve o'clock, in lots, the valuable IMPROVED GROUND-RENTS for about 93 years, arising from capital shops and dwelling-houses, comprehending Margaret's-place, Church-place, and Welling's-place, opposite Paddington Church, producing a net improved ground rental of about 180*l.* per annum, abundantly secured, and affording a first-rate investment for trust moneys, &c. Also, in lots, a Rental producing about 300*l.* per annum, arising from eight excellent shops, let at low rents on agreements for leases. This property, which is of superior erection, and in an unexceptionable situation, should command the attention of any capitalist seeking sure investment.

Particulars are preparing, and may shortly be had of Dalton Serrell, esq. 9, Tokenhouse-yard; at the Auction Mart; and of Messrs. HEDGER, land agents, 10, New Bond-street, opposite the Clarendon.

An old-established Baker's Business and Leasehold Investments.

MESSRS. CAFE, SON, and REID will SELL by AUCTION, by order of the Executors, at Garraway's, on Tuesday, December 17, at Twelve, in three lots, LEASEHOLD HOUSES, numbered 60 and 61, John-street, Howland-street, Tottenham-court-road, held for an unexpired term of 30 years at a ground-rent of 6*l.* together with the goodwill of an old-established Baker's Business, also of improved rentals arising out of leasehold houses, being Nos. 62, John-street, and 2, Howland-street. Nos. 60 and 61, John-street, may be viewed any day previous to the sale; No. 62, John-street, and No. 2, Howland-street, by permission of the tenants. Particulars had of Messrs. SUDLOW, SONS, and TORR, Solicitors, 20, Chancery-lane; of Messrs. Shearman and Slater, Solicitors, Great Tower-street; at Garraway's; and at Messrs. CAFE, SON, and REID'S Offices, Great Marlborough-street.

Improved Rent of 81*l.* 2s. per annum for 57 years.

MESSRS. ELLIS and SON are directed to SELL by AUCTION, at Garraway's, on Friday, the 20th day of December, at Twelve, the IMPROVED RENT of 81*l.* 2s. per annum, well secured upon a leasehold residence, No. 37, Southampton-row, Bloomsbury, three doors from Russell-square, let on lease to a highly respectable tenant at 100*l.* per annum; held under the Duke of Bedford, by lease, dated 1802, for 99 years, at a ground-rent of 18*l.* 18s. per annum. Printed particulars may be had, 10 days prior to the sale, at Garraway's; and of Messrs. ELLIS and SON, Auctioneers, &c. 36, Fenchurch-street.

An Improved Rent of 90*l.* 3s. per annum, well secured by a Leasehold Residence and Offices, most desirably situate at Streatham-common.

MESSRS. ELLIS and SON are directed to SELL by AUCTION, at Garraway's, on Friday, December 20, at Twelve, a clear RENT of 90*l.* 3s. per annum, well secured upon a respectable residence, with offices and grounds, most desirably situate on the south side of Streatham-common, in the occupation of a highly-respectable tenant, at 130*l.* per annum. The premises are held under two leases, which expire 1884 and 1889, at a ground-rent of 9*l.* 17s.; and underlet for 30 years from Christmas 1827, at a clear yearly rent of 100*l.* Printed particulars may be had, ten days prior to the sale, of Messrs. DODD and Co. Solicitors, Billiter-street; at Garraway's; and at Messrs. ELLIS and SON'S, 36, Fenchurch-street.

BLACKHEATH.—Valuable Leasehold Estate of the late Mrs. Hannah Chater, producing a rental of 304*l.* per annum, held on lease at a ground-rent of only 15*l.* per annum.

MESSRS. ELLIS and SON respectfully acquaint the public that they are directed by the executors to SELL by AUCTION, at Garraway's, on Friday, December 20, at Twelve, in Three Lots, a valuable LEASEHOLD ESTATE, comprising four capital residences, with large gardens, beautifully situate in Eliot-place, Blackheath, one of the most esteemed situations in that neighbourhood; let on lease, and in the several occupations of Mrs. Cooper, Mr. Pontifex, and Mr. Lawrence, at rents amounting to 304*l.* per annum; held for a term of 26 years at a ground-rent of only 15*l.* per annum. Considerable sums have been expended by the tenants, which, with their high respectability, renders the property a most secure and eligible investment. To be viewed with tickets only. Printed particulars may be had fourteen days prior to the sale of Messrs. COTTON, Solicitors, Lothbury; at the Green Man, Blackheath; at Garraway's; and of Messrs. ELLIS and SON, Auctioneers, &c. 36, Fenchurch-street.

Ground Rent of 31*l.* 10s. and Improved Rent of 22*l.* 18s. the property of the late Mrs. Hannah Chater.

MESSRS. ELLIS and SON respectfully acquaint the public, that they are directed by the Executors to SELL by AUCTION, at Garraway's, on Friday, December 20, at Twelve, in two lots, a GROUND RENT of 31*l.* 10s. arising out of and secured by an excellent family residence, situate in Rodney-buildings, Kent-road, in the occupation of Wm. Bouts, esq.; on lease for the whole term; held for 28 years at a peppercorn rent. And an Improved Rent of 22*l.* 18s. arising from a house, situate No. 17, Leigh-street, Burton-crescent; on lease to Mr. Ashley at a rent of 45*l.* per annum; held for a term of 61 years at a rent of 21*l.* per annum. To be viewed with tickets only. Printed particulars may be had, 14 days prior to the sale, of Messrs. COTTON, Solicitors, Lothbury; at the Green Man, Blackheath; at Garraway's; and of Messrs. ELLIS and SON, Auctioneers, &c. 36, Fenchurch-st.

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MESSRS. SHUTTLEWORTH and SONS respectfully inform the public that 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1845, as follow:—Friday, January 3; Friday, February 7; Friday, March 7; Friday, April 4; Friday, May 2; Friday, June 6; Friday, July 4; Friday, August 1; Friday, September 5; Friday, October 3; Friday, November 7; and Friday, December 5.—28, Poultry, December, 6, 1844.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 90.] SATURDAY, DECEMBER 21, 1844.

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Legal Notices.

LANCASHIRE EPIPHANY SESSIONS.—NOTICE IS HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE, for the COUNTY PALATINE of LANCASTER, will be held at the Castle of Lancaster on MONDAY, the Thirtieth day of December instant, at Ten o'clock in the forenoon, and by adjournment, at the following places and times, viz:—

At the COURT-HOUSE, in PRESTON, on WEDNESDAY, the First day of January next, at Ten o'clock in the forenoon;

At the NEW BAILEY COURT-HOUSE, in SALFORD, near MANCHESTER, on MONDAY, the Sixth day of January next, at Ten o'clock in the forenoon;

And at the COURT-HOUSE, in KIRKDALE, near LIVERPOOL, on WEDNESDAY, the Fifteenth day of January next, at Ten o'clock in the forenoon.

And that all business relating to the Assessment, Application, or Management of the County Stock or Rate will commence at such Sessions respectively at Eleven o'clock in the forenoon of the first day thereof.

All business arising within the Hundred of Lonsdale is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions, at each of the above-named places. And the Trial of such Appeals takes place at Lancaster on the first day; at Preston and Kirkdale not later than Friday, the third day; and at Salford on Friday, the fifth day.

GORSTS and BIRCHALL,
Deputy-Clerks of the Peace.

Clerk of the Peace's-office, Preston, 16th Dec. 1844.

BOROUGH of KINGSTON-UPON-HULL.—NOTICE is HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE for the Borough of KINGSTON-UPON HULL, for the trial of prisoners committed and held to bail on charges of felony and misdemeanour, will be holden at the TOWN-HALL, in the said Borough, before MATTHEW TALBOT BAINES, esq. Recorder of the said Borough, on SATURDAY, the 4th day of January next, at 10 o'clock in the forenoon, when and where all persons bound by recognizances, and others having business at the Sessions (except as hereinafter next mentioned), are requested to attend, and in all cases where the parties accused are out on Bail the prosecutors and witnesses must be in readiness to attend the Grand Jury at 10 o'clock on MONDAY morning, the second day of the Sessions.

And NOTICE is HEREBY also GIVEN, that all appeals must be entered with the Clerk of the Peace before the sitting of the Court on the 4th day of January next, and the hearing of appeals and motions will be taken at 9 o'clock in the morning on the TUESDAY following (if the criminal business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take notice that in appeals against removal orders, copies of the notice, and grounds of appeal, and examination of the pauper, must be filed along with the removal order.

J. H. GALLOWAY,
Clerk of the Peace.

Office of the Clerk of the Peace,
Kingston-upon-Hull, Dec. 11, 1844.

BOROUGH of COLCHESTER, 1844.—NOTICE is HEREBY GIVEN, that the next GENERAL COURT of QUARTER SESSION of the PEACE of the said borough will be holden at the COLCHESTER CASTLE there on MONDAY, the Twenty-third day of December instant, at the hour of Ten o'clock in the forenoon, when and where the grand and petty juries, persons bound by recognizances to appear, prosecute, and give evidence, and all others who have business to transact, are hereby directed to give their attendance accordingly.

Dated this seventh day of December, 1844.

BARNES, Clerk of the Peace.

Insurance Companies.

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New Three-&-a-quarter per Cts	102¼	102¼	102⅛	102¼	102¼	103⅜
Long Annuities...............	12¼	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	207	207¼	207½	208	208¼	208
India Stock	289	289	289½	288¾	288¾	289½
India Bonds, prem...........	84	83	84	85	85	75
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Spanish Five per Cents.......	24	24½	24	24¼	24½	25⅜
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Portuguese	55	55½	55¼	55½	55⅛	56¾
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Danish	89½	89⅛	89¼	89	89¾	89⅜
Colombian	14	14¼	14	14½	14½	14¾
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Buenos Ayres	36	36½	36	36½	36½	36½
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CORRESPONDENCE.

SELECTIONS FROM CORRESPONDENCE.

"W. S. J." (Somerset) has transmitted the following practical question, and will be obliged by information from those who have knowledge on the subject:—

As your columns are open to the Profession for general communication and information, I will beg to trespass thereon with a view of eliciting some information that may be of service to the Profession.

Before the Act of 3 & 4 Wm. 4, c. 42, to an action of assumpsit either in one of the superior courts of law at Westminster or in a county court, a defendant was enabled to give payment in evidence under the general issue. The Act empowered "the judges of the superior courts of common law at Westminster" to make by rule or order "such alterations in the mode of pleading in the said courts" as to them might seem expedient, which rules, orders, &c. should be "binding and obligatory on the said courts, *and all other courts of common law.*"

In Hilary Term, 4 Wm. 4, the judges made rules for pleading, and amongst them it was ordered that in all actions of assumpsit, except on Bills of Exchange and Promissory Notes, the plea of non-assumpsit should operate only as a denial in fact of the express contract or promise alleged, or of the matter of fact from which the contract or promise alleged might be implied by law. *Ex. gra.* In an action of *indebitatus assumpsit* for goods sold and delivered the plea of non-assumpsit was to operate as a denial of the sale and delivery in point of fact. And that in every species of assumpsit all matters of confession and avoidance, including not only those by way of discharge, but those which shewed the transaction to be either void or voidable in point of law on the ground of fraud or otherwise, should be pleaded specially, *ex. gra.* infancy, coverture, release, payment, &c. And by rule of Trinity Term, 1 Vict. it was ordered that payment should not, in any case, be allowed to be given in evidence in reduction of damages or debt, but should be pleaded in bar.

It has been said that these rules and orders are binding upon the county courts, and that they, as courts of common law, ought to adopt the mode of pleading laid down, and that unless such mode of pleading were adopted, a defendant in *indebitatus assumpsit* having paid the money claimed, could not give in evidence the payment in discharge of the action under the plea of the general issue.

On the other hand, it has been contended, that the county court is not bound by the rules and orders of the judges, notwithstanding the words in the Act of Parliament, "all other courts of common law;" and that the county court is not a court of common law.

I shall therefore be glad to hear from some of your well-informed readers, whether the county courts generally, or whether any of them, have adopted as their guide the rules of the judges; and also, whether in fact these courts are or are not courts of common law, and as such bound by the rules and orders I have quoted.

"ORIGO" offers the following suggestions as to the CERTIFICATE DUTY:—

I am sure your able observations on the above subject in last Saturday's LAW TIMES cannot but convince the most sceptical of the injustice as well as inutility of the certificate duty.

But it is equally certain that unless a *plan* is adopted, little or nothing besides perhaps a few local and straggling efforts will be attempted; and as *all* depends, in cases such as this, upon *unanimity* of sentiment and purpose, such efforts might be productive of more harm than good. Conclusions unfavourable to the petitioners might be drawn from the silence of the mass of the Profession. It is true we have a very large army in the field, and all that is wanted is a leader and a uniform plan of operation.

The only practicable course appears to me to be, immediately to start a subscription (through the medium of your office) for the purpose of defraying the necessary expenses attendant upon preparing petitions of adequate dimensions, to include the great majority at least of the Profession, and of employing canvassers for the various towns. Or it would be better if this expense could be saved by persuading the Law Societies, from their own resources, to canvass a certain district, assigning to each one of such extent, that the aggregate would comprehend the whole Profession. I merely throw out the hint for your mature consideration.

"AN OLD SUBSCRIBER," Manchester, referring to some remarks on Local Courts which have appeared in our columns, makes the following comment:—

Having so frequently noticed in the LAW TIMES an attack upon the Local Courts for the recovery of small debts, I have been induced to trouble you with a few remarks. When first I noticed the suggestions thrown out by you I concluded some unfortunate correspondent had urged you to take up the cause, but concluded the fallacy of the argument would prove itself, without any interference; but finding you still persist in your attack, I must naturally conclude that your correspondent has not troubled himself to make any inquiry or given the matter due consideration. He appears to imagine that a creditor would be much relieved by having a power of recovering his debts at a quarter sessions. If there happened to be a quarter sessions held in every place where a Local Court for the recovery of debts exists, his argument might have had a little more weight; but I fancy he is not aware that almost all the Local Courts for the recovery of small debts are at a very great distance from any sessions, and the courts are held much more frequently, thereby affording a more speedy recovery of the debts: some are forty or fifty miles from the place where the sessions are held for the county, and fourteen or fifteen miles from the sessions held in any adjoining county. Pray, what would be the expense of plaintiff and defendant alone travelling with their witnesses to the sessions? Why, I should not exaggerate if I said five times the amount of the costs altogether now charged in the Local Courts. Besides, why should we be sent to the sessions to recover our debts, or why should the sessions alone have jurisdiction? We might just as well be sent back to the county courts and try as we formerly did. The intention of the Legislature in passing the several Bills for the recovery of small debts is that a creditor may recover his debt at a trifling cost and without loss of time to himself and debtor, and this object the Local Courts have effected, and which, as far as I can learn, has given general satisfaction. But perhaps your correspondent, on reading these remarks, will explain more fully the benefits he may imagine will result from his suggestions.

A Correspondent signing himself "A. C." thus alludes to the drawing up of wills by unprofessional persons:—

With reference to the subject broached by your correspondent "H. M. G." in your last week's paper, I would observe that the preparing of wills by by unqualified persons would appear to be almost a matter of course in this neighbourhood. It was but last week an individual produced to me one of these unprofessionally made wills, to endeavour to obtain my opinion on it, or, as he said, to be informed if it was "all right." This of itself would scarcely have attracted my notice, had there been no *particular* circumstance to have done so. But what struck me was, the appearance the document had of being one of a numerous class. It was a printed form filled up, like a common bond, or apprenticeship indenture, garnished at the top with the Royal arms, and couched in language burlesquing the solemn; its composition assumed to be technical, but both technically and grammatically was all stuff. Of course I recommended that the production should be referred back to the gentleman who made it for revision. This gentleman, by the bye, did not appear to have thought favourably of the New Act, for he had sealed the will, and got it attested by three witnesses. I also believe it to be quite common for unqualified persons to prove wills, and would suggest that no attorney should do business with any Proctor known to act for a "sham lawyer."

"J. E. H. G." Stratford-on-Avon, proposes a novel, and more curious than practicable, plan for a tax in lieu of the attorneys' and solicitors' certificate duty:—

The attorneys' and solicitors' certificate duty, as it now stands, is undoubtedly a very partial and unfair tax, and demands the serious attention of the Legislature and the Profession.

The young practitioner, just struggling into professional existence, is compelled to bear (except for the first three years) as heavy a burden as the veteran who has become stout and strong in "the needful," by a prosperous professional career of a number of years. To the latter the impost of 8*l.* or 12*l.* per annum is a mere trifle, "a cypher in the great account;" but to the former it is a devouring and relentless monster, swallowing up a large portion of his hard-earned profits.

It perhaps cannot, I submit, be expected that the Government will altogether abandon the tax upon lawyers, but it probably might be induced to remodel and place it upon a more equitable footing than it stands at the present.

I take it that a true and healthy system of taxation ought always to be founded upon the equalization principle, under which every one in the state should bear the burden according to his means, and no more; and upon this principle *let every attorney and solicitor pay for the business that he actually does*, and not, as at present, a fixed duty, whether he has the business or not. No reasonable man could object to this; because the more business a man has the better is he enabled to pay a tax upon it.

The penny postage system of Mr. Rowland Hill has been found to answer well; I would, therefore, borrow its principle, and suggest that in lieu of the present annual certificate duty, a tax something similar to the following should be imposed upon the business documents of every attorney and solicitor in England and Wales, viz.:—

	s.	d.
Upon every letter written by an attorney or solicitor, or his clerk, in the due course of professional business	0	1
Upon every agreement, cognovit, judge's order, and the like, where the subject-matter thereof shall not exceed in value 20*l.* .	0	1
Upon all others	0	2
Upon every deed, bond, warrant of attorney, and all other documents of a like nature, where the subject-matter thereof shall not exceed in value 100*l.*	2	6
Exceeding 100*l.* and not 200*l.* . .	4	0
" 200*l.* " 500*l.* . .	7	6
500*l.* and upwards . .	10	0
Upon every abstract, or extract of title-deeds, wills, and other muniments of title, for every entire quantity of 504 words . . .	0	1
Upon all attested copies, for every entire quantity of 720 words	0	1
Upon every will, for every entire quantity of 720 words	0	2
Upon every bill filed and answer put in, in the High Court of Chancery, for every entire quantity of 720 words	0	6
Upon every writ, summons, declaration, notice, or plea, or other proceedings, in any of the courts of law in England and Wales, where the debt or damages indorsed or set forth shall not exceed 20*l.*	0	1
Upon all others	0	2
Upon all other documents and writings whatsoever, prepared by attorneys and solicitors in the *bonâ fide* and legitimate course of their business, for every entire quantity of 720 words	0	1

From the foregoing should be exempted—

All letters between country attorneys and solicitors and their London agents, and their respective clerks; and between members of a firm and their clerks.

Likewise, drafts of all descriptions, except those for the perusal of attorneys and solicitors other than those who prepared them, agents of course excepted.

For the more readily shewing by what attorney, &c. the documents liable to the duty were prepared, every such attorney or solicitor should sign his name, or the name of his firm, upon some conspicuous part of the instrument prepared, under the words "Prepared by me," adding the day of the month and the date of the year.

The stamps to be used should be neat, and similar to those now used upon the post-office envelopes; they should bear the word "certificate," and the price, and be impressed by Government upon parchment and paper of the description usually used by the Profession for the various purposes to which they would be applicable. This stamped paper, &c. should be sold at all stamp-offices, and by any other person taking out a license for that purpose.

I would make it imperative upon every attorney and solicitor to use these stamps, under a fine for every offence, to be enforced before any magistrate, with a power of appeal; and in case of default in payment of the fine within a limited period, suspension from professional duties for such time as any judge of the superior courts should think proper, not exceeding a certain time.

The plan may, perhaps, be objected to on the ground that attorneys would charge this extra stamp-duty, in some shape or other, to their clients, and London agents upon their country agencies. In the first of these instances, this cannot occur any more than it does now, because, by the general taxation which is imposed upon all professional bills, no more than a certain sum can be charged to the client; and in the latter case the objection may be obviated by extending a like taxation to agency accounts. This protection might be further extended by imposing a fine upon all attorneys, solicitors, and agents who by their bills charge more to their clients than would be allowed to them upon taxation.

Of course the foregoing is nothing more than a rough sketch of a system for an equal taxation, which I have no doubt would work well.

A correspondent sends the following reply to A. P.'s question (*supra*, p. 202):—

There are three parties interested:—1st, the vendors; 2nd, the heir-at-law; and 3rd, the executors of A B. The vendors must prepare the abstract of title, which must be unexceptionable, unless otherwise expressed in the agreement for sale made during the life of A B. The solicitor to the heir-at-law—the *quasi* purchaser—has a right to peruse the abstract and prepare the conveyance as in all common cases, and I consider the solicitors to the executors of A B entitled to peruse both the abstract and the direct conveyance to be satisfied that the title is good (without which the executors would be acting wrong if they paid the purchase-money out of the assets of A B), and to be further satisfied that the direct conveyance contains nothing improper.

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MEMBERS OF CONSUMPTIVE FAMILIES ASSURED at Equitable Rates.

INCREASED ANNUITIES GRANTED on UNSOUND LIVES, the amount varying with the particular disease.

HEALTHY LIVES are Assured at LOWER RATES than at most other Offices.

Owing to the prevalence of disease, more than two-thirds of the population are not assurable in other offices (see Prospectus, &c.), and it is ascertained that in several of the leading assurance societies in London, 23 per cent., or more than one in five of the applicants, although ostensibly good lives, are rejected on medical examination.

Solicitors being much connected with life assurance, have experienced this difficulty to a considerable extent from the delay, and often permanent obstacles, occurring in loan and other money transactions on behalf of their clients; the legal profession has consequently freely patronized this society, as it affords facilities not hitherto available in assurance transactions.

The success that has attended the office during the FIRST THREE YEARS is highly satisfactory, and there is every reason to believe that, as its peculiar features and principles become more known and better understood, it will command an unusual amount of public patronage.

About THREE-FOURTHS of the POLICIES already issued by the society are on DISEASED LIVES, and a majority of these had been previously rejected by other offices, shewing the necessity which existed for an assurance society on the plan in question.

Medical referees are appointed in almost every town of any extent, no difficulty will therefore be experienced in procuring the examination of parties residing in the country, on whom proposals for assurance are made.

Prospectuses, and every other information, will be forwarded on application.

F. G. P. NEISON, Actuary.

Insurance Companies.

CHURCH OF ENGLAND LIFE AND FIRE ASSURANCE INSTITUTION, 6, King-William-street, City.

(Empowered by special Act of Parliament, 4 & 5 Vict. cap. 92.)

CAPITAL, ONE MILLION.

LIFE.—This Institution adopts both the MUTUAL AND PROPRIETARY systems of Life Assurance. Persons assured according to the MUTUAL SCALE are entitled *to four-fifths of the profits of this branch*, whilst those assured according to the PROPRIETARY SCALE are charged *the lowest possible rate of premium consistent with security to the establishment*. Both are fully protected by the large subscribed capital of the Company.

FIRE.—The Premiums for Assurance against Fire are charged at the usual moderate rates, with a reduction of 10*l*. per cent. on the RESIDENCES AND FURNITURE OF CLERGYMEN.

TABLE OF LIFE RATES.

Age.	Mutual Scale.			Without Profits. Equal Rates.			Ascending Scale. First Seven Years.			Sec. Seven Years.			Remain. of Life.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
20	1	17	4	1	13	11	1	2	0	1	13	0	2	4	0
30	2	6	10	2	2	7	1	8	0	2	2	0	2	16	0
40	3	3	6	2	17	8	1	10	0	2	18	6	3	18	0
50	4	13	4	4	4	11	3	0	2	4	10	3	6	0	4

Detailed Prospectuses, the necessary forms for effecting assurances, and every information, may be obtained by application at the Office.

W. EMMENS, Secretary.

LONDON, EDINBURGH, and DUBLIN LIFE ASSURANCE COMPANY, 3, Charlotte-row, Mansion-house, and 18, Chancery-lane, London.

DIRECTORS.

Kennett Kingsford, esq. Chairman.
Benjamin Hill, esq. Deputy-chairman.

Alexander Anderson, esq.	James Hartley, esq.
John Atkins, esq.	John M'Guffie, esq.
James Bidden, esq.	John Maclean Lee, esq.
Captain F. Brandreth	J. Marmaduke Rosseter, esq.

AUDITORS.

H. H. Cannan, esq. | Robert E. Alison, esq.

MEDICAL ADVISER.—Marshall Hall, M.D., F.R.S., L. & E.

SECRETARY.—John Emerson, esq.

SOLICITORS.—Messrs. Palmer, France, and Palmer.

TO PREVENT ALL FUTURE QUESTIONS AS TO THE VALIDITY OF POLICIES, this Company are prohibited by their deed of constitution from disputing any claim, unless they take upon themselves to prove that the policy upon which the claim arises was obtained by fraudulent misrepresentation.

The Company are further bound to give effect to every policy, although the debt for which it may have been originally procured, or at any time held, may have been paid off before the claim arises.

And that the value of policies may not be lessened or destroyed by parties going beyond the limits usually prescribed, the Company grant, upon payment of a small extra premium, general or whole world leave, which subsists during the currency of the policy.

By these means the policies of the London, Edinburgh, and Dublin Life Company have come to be considered as forming securities more complete and more easily negotiable than any other similar documents.

Assurances are granted either with or without participation in profits, and the utmost facility is given in regard to the payment of the premiums, by the assured having the option of payment by a progressive ascending scale, or according to the half premium system, continued for seven years.

COMMISSION.—The Solicitor who transacts a Policy with this Company, is considered as the Agent during its whole currency, and receives commission upon all future premiums, by whomsoever they may be paid.

Prospectuses and schedules are forwarded to applicants, free of expense, by the Manager and Agents.

ALEX. ROBERTSON, Manager.

ENGLISH and SCOTTISH LAW LIFE ASSURANCE and LOAN ASSOCIATION, 12, Waterloo-place, London; 119, Princes-street, Edinburgh. (Established in 1839.)

SUBSCRIBED CAPITAL, ONE MILLION.

This Association embraces—

Every description of risk contingent upon Life:

Immediate, Deferred, and Contingent Annuities and Endowments:

A comprehensive and liberal system of Loan, on undoubted personal security, or upon the security of any description of assignable property or income of adequate value, in connection with Life Assurance:

A union of the English and Scotch systems of Assurance, by the removal of all difficulties experienced by parties in England effecting Assurances with offices peculiarly Scotch, and vice versâ:

An extensive Legal connection, with a Direction and Proprietary composed of all classes:

A large protecting Capital, relieving the Assured from all possible responsibility:

The admission of every Policy-holder, assured for the whole term of life, to a full periodical participation in two-thirds of the profits.

J. BUTLER WILLIAMS, Resident Actuary and Secretary, 12, Waterloo-place.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 21st day of Dec. 1844.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 91.] SATURDAY, DECEMBER 28, 1844.

SUBSCRIPTION.
For One Year, paid in advance.. £2 0 0
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Single Numbers, or on credit .. 0 1 0

Money to Lend.

MONEY to LEND, on approved Mortgage Security, the sum of 14,000*l.* at 3½ per Cent. Interest, and several smaller sums, at 4 per Cent. Interest.
Apply to Mr. WHITE, Solicitor, Berwick-upon-Tweed.

Situations Vacant.

LAW.—WANTED in a respectable office, in a midland county, a CLERK, acquainted with conveyancing and the general practice of a country office (not less than twenty-five years of age). If the character and conduct of the clerk meet with the approbation of the advertiser, he may be articled without a premium.
Letters addressed A. B. Messrs. Stevens and Norton's, Bell-yard, Lincoln's Inn, will be answered.

LAW.—WANTED a CLERK in an Office in the West Riding of Yorkshire, thoroughly competent to undertake the CONVEYANCING department. The most unexceptionable references as to capacity and moral character will be required.
Apply, by letter (post-paid), to Messrs. WILLIAMSON and HILL, Solicitors, 4, Verulam-buildings, Gray's-inn.

LAW.—WANTED, a MANAGING CLERK, in a respectable office in the county of Warwick. He must be well acquainted with general business, and particularly with Conveyancing. The most satisfactory references as to character and qualifications will be required.—Address, letters post-paid, to X. Z. Messrs. SUDLOW, SONS, and TORR, Solicitors, 20, Chancery-lane, London.

Situations Wanted.

LAW.—A GENTLEMAN intimately acquainted with Magisterial business in all its branches, Assizes and Sessions Practice, the conducting of Settlement Cases, Appeals, and Prosecutions, and all the duties relating to Land, Assessed, Property, and Income Taxes, as well as the general routine of a country office, wishes for an engagement in an office of extensive practice, where he would be required to take the entire superintendence. Having had considerable experience, he flatters himself he would be found an efficient servant.
Address, with full particulars as to salary, &c. and whether situation permanent, to B. C. Z. 4, Post-office, Newport, Monmouthshire.

TO ARTICLED CLERKS.—An Attorney offers his services to those Gentlemen applying for admission who may desire assistance in a course of study preparatory to their examination.
Apply, by letter only, addressed A. B., Mr. Bailey, Law-Stationer, Carey-st. Lincoln's-inn.

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LAW PARTNERSHIP.—A Solicitor, desirous of being actively engaged in the conduct of a well-established Practice in the country, wishes to negotiate for a PARTNERSHIP. The Advertiser would not object, prior to his being admitted as a Partner, acting for a limited period in the capacity of Managing Clerk.
Apply by letter, directed H. H., Mercury Office, Norwich.

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Address, prepaid, to H. H. LAW TIMES Office, Essex-street, Strand, London.

ART UNION OF LONDON.—By authority of Parliament.—The Lists for the current year are now open, and an early subscription is solicited. The Engraving, by M. G. T. Doo, after the picture by W. Mulready, R.A. "The Convalescent," in preparation for subscribers of the present year, is in a forward state. A finished proof of "The Castle of Ischia," engraved for the subscribers of the past year, may be seen at the office. Due notice will be given when the impressions are ready for delivery.

The Distribution in April will include, besides the amount set apart for the purchase of pictures, &c. a number of Bronzes from a reduced model of the "Eagle Slayer," by Mr. Bell, exhibited in Westminster Hall last year, now preparing by Mr. Ed. Wyon; and a certain number of Silver Medals, by Mr. A. J. Stothard, commemorative of Sir Joshua Reynolds, of which bronze copies will be given instead of prints to such subscribers as may prefer them.

GEORGE GOODWIN } Honorary Secretaries.
LEWIS POCOCK }

4, Trafalgar-square, Jan. 1845.
*** The Society's Almanac is now ready, and may be had gratuitously, on application at the Office.

LITHOGRAPHY.—Railroad and other Maps and Drawings, Circulars, and every description of Lithographic and Letter-press Printing, executed in the best manner and on the shortest notice, with care and economy, by CARTWRIGHT and PRITCHARD, Law-Stationers and Printers, 57, Chancery-lane, and Warwick-place.

Deeds and Writings, Parliamentary Proceedings, &c. copied or engrossed properly and punctually. Country Orders promptly attended to.

Legal Notices.

LANCASHIRE EPIPHANY SESSIONS.—NOTICE IS HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE, for the COUNTY PALATINE of LANCASTER, will be held at the Castle of Lancaster on MONDAY, the Thirtieth day of December instant, at Ten o'clock in the forenoon, and by adjournment, at the following places and times, viz:

At the COURT-HOUSE, in PRESTON, on WEDNESDAY, the First day of January next, at Ten o'clock in the forenoon;

At the NEW BAILEY COURT-HOUSE, in SALFORD, near MANCHESTER, on MONDAY, the Sixth day of January next, at Ten o'clock in the forenoon;

And at the COURT-HOUSE, in KIRKDALE, near LIVERPOOL, on WEDNESDAY, the Fifteenth day of January next, at Ten o'clock in the forenoon.

And that all business relating to the Assessment, Application, or Management of the County Stock or Rate will commence at such Sessions respectively at Eleven o'clock in the forenoon of the first day thereof.

All business arising within the Hundred of Lonsdale is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions, at each of the above-named places. And the Trial of such Appeals takes place at Lancaster on the first day; at Preston and Kirkdale not earlier than Friday, the third day; and at Salford on Friday, the fifth day.

GORSTS and BIRCHALL,
Deputy-Clerks of the Peace.
Clerk of the Peace's-office, Preston, 16th Dec. 1844.

BOROUGH of KINGSTON-UPON-HULL.—NOTICE is HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE for the Borough of KINGSTON-UPON HULL, for the trial of prisoners committed and held to bail on charges of felony and misdemeanour, will be holden at the TOWN-HALL, in the said Borough, before MATTHEW TALBOT BAINES, esq. Recorder of the said Borough, on SATURDAY, the 4th day of January next, at 10 o'clock in the forenoon, when and where all persons bound by recognizances, and others having business at the Sessions (except as hereinafter next mentioned), are requested to attend, and in all cases where the parties accused are out on Bail the prosecutors and witnesses must be in readiness to attend the Grand Jury at 10 o'clock on MONDAY morning, the second day of the Sessions.

And NOTICE is HEREBY also GIVEN, that all appeals must be entered with the Clerk of the Peace before the sitting of the Court on the 4th day of January next, and the hearing of appeals and motions will be taken at 9 o'clock in the morning on the TUESDAY following (if the criminal business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take notice that in appeals against removal orders, copies of the notice, and grounds of appeal, and examination of the pauper, must be filed along with the removal order.

J. H. GALLOWAY,
Clerk of the Peace.

Office of the Clerk of the Peace,
Kingston-upon-Hull, Dec. 11, 1844.

PUBLIC NOTICE.—NORTHAMPTON TOWN and BOROUGH SESSIONS.—NOTICE is HEREBY GIVEN, that the GENERAL SESSIONS of the PEACE for the Town and Borough of NORTHAMPTON will be holden at the Guildhall in the said Town and Borough, on MONDAY, the Sixth day of JANUARY, 1845, at Nine o'clock in the Forenoon, before N. R. CLARKE, Esq. Serjeant-at-Law, Recorder of the said Town and Borough; at which time and place all persons who are bound by recognizance to appear and prosecute, or give evidence upon any bill or bills of indictment, or to answer any charge or charges whatsoever, or have any business to transact at the said sessions, are required to attend, as the Court will be punctual in entering on the business of the Sessions at the time above mentioned; and SOLICITORS are required to TAKE NOTICE, that in appeals against Removal Orders, copies of the Notice, and Ground of Appeal, and Examination of the Pauper, must be filed with such Orders.

By order of the Court,
GEORGE COOKE, Clerk of the Peace.
Office of the Clerk of the Peace, Newland,
Northampton, Dec. 24, 1844.

Legal Notices.

PURSUANT to a Decree of the High Court of Chancery, made in a cause "Yardley *v.* Cook," the CREDITORS of JOHN YARDLEY, late of Rotherhithe, in the county of Surrey, and of South-street, Greenwich, in the county of Kent, corn dealer, deceased (who died in the month of January 1838), are by their solicitors, on or before the 1st day of March 1845, to leave their claims of debt before Nassau W. Senior, Esquire, one of the Masters of the said Court, at his office, in Southampton-buildings, Chancery lane, London, and are on or before the 31st day of March, 1845, to establish such claims before the said Master; or, in default thereof, they will be peremptorily excluded the benefit of the said decree and the general orders of the said Court.

ALFRED RHODES BRISTOW, Plaintiff's Solicitor,
Greenwich, Kent.

METROPOLITAN and PROVINCIAL LEGAL ASSOCIATION, 15, New Bridge-street, Blackfriars.

Every solicitor and writer to the Signet is admissible on payment of one guinea, subject to the approbation of the Council.

The objects of the Association are—

1. To promote and support the general interests of the Profession.
2. To prosecute all unqualified persons who may usurp either the duties or privileges of the Profession.
3. To originate and assist in obtaining all useful and practical reforms and amendments of the law.
4. To expose and punish all persons guilty of any acts of malpractice, whether they be members of the Bar, Attorneys, or Solicitors.
5. To maintain the respectability of the Profession by an honourable and liberal mode of practice.
6. To adopt measures for obtaining a co-operation with all Law Societies (provincial or local) having similar objects in view.

It is earnestly requested that those Solicitors who have not yet enrolled themselves will do so forthwith, as it is evident that the more the Association is strengthened, the greater and more beneficial will be its influence.

This is no time for merely lamenting the evils which the Association seek to remove. It behoves every well-wisher to his profession to be *doing*—to contribute his aid, however humble, to the great work to which his brethren have addressed themselves. To do so is a duty he owes to himself and to society.

Applications for enrolment to be made at the offices of the Association, 15, New Bridge-street, Blackfriars, between 10 and 5.

GEO. FITCH, Secretary,
Dec. 27, 1844. 15, New Bridge-street, Blackfriars.

Sales by Auction.

Valuable improved Leasehold Ground-rents, for upwards of 90 years, on the Bishop of London's Paddington Estate.

MESSRS. HEDGER will SELL by AUCTION, at the Mart, on Thursday, January 16, 1845, at Twelve o'clock, in lots, the valuable IMPROVED GROUND-RENTS for about 92 years, arising from capital shops and dwelling-houses, comprehending Margaret's place, Church-place, and Welling's-place, opposite Paddington Church, producing a net improved ground rental of about 180*l.* per annum, abundantly secured, and affording a first-rate investment for trust moneys, &c. Also, in lots, a Rental producing about 300*l.* per annum, arising from eight excellent shops, let at low rents on agreements for leases. This property, which is of superior erection, and in an unexceptionable situation, should command the attention of any capitalist seeking sure investment.

Particulars are preparing, and may shortly be had of Dalton Serrell, esq. 9, Tokenhouse-yard; at the Auction Mart; and of Messrs. HEDGER, land agents, 10, New Bond-street, opposite the Clarendon.

ESTATES, RADNORSHIRE.—To be peremptorily SOLD, pursuant to an ORDER of the High Court of Chancery, made in a cause of "Gravenor *v.* Miles," with the approbation of Sir Giffen Wilson, one of the Masters of the Court, at the Radnorshire Arms Hotel, Presteign, in the county of Radnor, on Tuesday, the 4th day of February, 1845, between the hours of Four and Five in the Afternoon, in Two Lots.

A freehold estate, called Llantrussa, containing 54a. 1r. 38p. situate in the parish of Llanvihangel, Nantmellan, in the county of Radnor, in the occupation of Thomas Miles. The estate comprises a farm-house, with farm-yard inclosed, and barns, stables, and outbuildings, and several pieces of arable, pasture, and woodland, and has a right of common over 1,400 acres of land near the farm.

Particulars may be had (gratis) at the said Master's Chambers, in Southampton-buildings, Chancery-lane, London; of Mr. T. KING STEPHENS, solicitor, Presteign; of Messrs. White, Eyre, and White, solicitors, Bedford-row, London; of Messrs. Thomas Jones and Sons, solicitors, Millman-place, Bedford-row; of Mr. Humphreys, auctioneer, Presteign; at the Radnorshire Arms Hotel, Presteign; and the Oxford Arms Hotel, Kington, Herefordshire.

WHITE, EYRE, and WHITE,
Bedford-row, Plaintiff's Solicitors.

CORRESPONDENCE.

NEW RULES OF PLEADING—COUNTY COURT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The question propounded by "W. S. J." as to whether the County Courts are bound by the rules Hilary Term, 4 Wm. 4, and Trinity Term, 1 Vict. is justly stated to be one of importance to the Profession.

As the rules in question are to be "*obligatory on all Courts of Common Law,*" the first question proposed is, whether the County Court is such. This may be answered, without the shadow of a doubt, in the affirmative. Upon this all the writers on the jurisdiction and practice of this Court agree. Anderson says in so many words that the County Court is a Court of Common Law. And Sweet, in his Treatise, p. 1, says:—"At the division of the kingdom into shires or counties by King Alfred, he instituted the Court called the County Court." This being allowed as historically and traditionally true, answers the question of itself (the Court being, without doubt, conversant with common law causes), for it is well known that all things are of common law origin which derive their existence from a custom or a statute of a date prior to the commencement of the reign of Richard I.; for all other things are before time of *legal memory*, and therefore customary, or appertaining *to the common law*. These authors are also confirmed by the general writers upon the laws and constitution of England, for Blackstone and Stephen both concur in ranging these courts under the head "Courts of Common Law." *Upon principle* I therefore think that the County Courts are bound by the Rules of Pleading framed in pursuance of 3 & 4 Wm. 4, c. 42. The only point upon which any doubt can be entertained is, whether this conclusion will apply to actions of "trespasses for goods," because as to these the County Courts are exempted from the jurisdiction of the superior courts by the Statute of Gloucester, 6 Edw. 1, c. 8; but even as to this, *quære* whether that statute is not *pro tanto* constructively repealed by the late Act?

As to the *practice*, I can only speak to that of the Salop County Court; but in that court only a month or two ago there was an instance of a plea of *nil debet* having been pleaded in an action of debt, in a case in which I was personally concerned; it will be remembered that this plea was abolished by R. G. H. 4 Wm. 4, and application was then made to the county clerk to sign judgment for want of a plea, regarding it as a nullity, on the authority of several cases; and this application was *granted*, under circumstances which I think sufficiently tested the practice, at least so far as that court was concerned.

Your obedient servant,

Shrewsbury, Dec. 24, 1844. ORIGO.

RIGHT OF ATTORNEYS TO PLEAD AT QUARTER SESSIONS.

"Important to Attorneys.—At the recent quarter sessions at Lichfield, the chairman was requested by one of the counsel present to give his decision upon a question raised at the previous sessions as to the right of attorneys to plead *in the presence of barristers*, when the honourable gentleman stated that he had consulted Lord Denman upon the matter, and he had decided that attorneys *should be allowed to plead either for prosecution or for prisoners; barristers* should be *allowed pre-audience, but not exclusive audience.*"

TO THE EDITOR OF THE LAW TIMES.

SIR,—The above paragraph appeared in a not very prominent part of your Journal of last week, but the alleged decision of the Lord Chief Justice of the Queen's Bench on the point mooted is one of very considerable consequence, and I am induced, therefore, to draw attention to it, inasmuch as it appears to me that the *assumed* privilege of barristers to exclusive audience at quarter sessions has been not unfrequently pushed to an extreme which seems quite uncalled for, and of which the following instance occurred at the *Essex adjourned Quarter Sessions*, held in this town on the 26th of November last.

Charlotte Chappell was indicted for obtaining, &c. by false pretences, certain articles of drapery, the property of James Bentall.

Ryland appeared for the prosecution.

On the woman being placed in the dock,

Hawkins, for the defence, applied to the Court, that a silver watch, and 8*l*. in money, found in the possession of the prisoner (who had been living with another man, apart from her husband), should be given up to her for the purposes of her defence.

Durrant (attorney) said he was requested by the prisoner's husband to state, that the watch was his property; it had been taken away from him by the prisoner, and he objected to it being delivered up to her. He (the husband) was in court to claim it.

The CHAIRMAN.—You must apply through counsel.

Durrant.—The poor man has none, *and cannot have; he has no means of feeing counsel.* The watch may not be worth 15s.; but being wretchedly poor, it is an object to my client to have it returned to him. I am an attorney, and I submit—

Ryland.—This is very irregular. You have no business to address the Court. It is an attempt to invade our privilege, and I trust, Sir, you (the Chairman) will put a stop to it.

The CHAIRMAN then said he could not hear Mr. Durrant's application; upon which,

Durrant said, that as the attention of the Court was now drawn to the matter—which the poor man could not have effected himself—he should state his own case. Durrant then called the claimant (a decrepid old man) into the witness-box, when the chairman made a note of his statement, and he ultimately, with the sanction of counsel for the prosecution, got back his property.

I believe the course pursued by Mr. Ryland was not entirely concurred in by all the members of the Bar present; on the contrary, an opinion prevailed with some that since I did not appear for prosecution or defence, but was merely calling the attention of the Court to the fact, that the watch claimed by the prisoner *was not her property*, I might be considered *amicus curiæ; but all agreed that no attorney had a right to plead there.* I maintained that I had a right, as an attorney, to state what I did for my client, and that my proceeding was not irregular. Now, if Lord Denman's decision be correctly reported, not only *was my view correct*, but I had a right to do *more than I attempted*, viz. *if I pleased, to plead either for prosecution or defence.*

Previous to the Act 6 & 7 Wm. 4, c. 114, intituled, "An Act for enabling persons *indicted for felony* to make their Defence by Counsel *or Attorney*," the case of *Collier* v. *Hicks* (2 Barn. & Adol. 663), was the leading case on the rights of attorneys to act as advocates, but that Act presents the whole matter in quite another aspect, and no doubt it is on that statute that Lord Denman has arrived at the conclusion he is reported to have communicated to the chairman of the Lichfield Quarter Sessions.

As my excellent and experienced friend Mr. Last, of Hadleigh, remarked in a letter which some time since appeared in your columns, *a great portion of the business transacted at quarter sessions by counsel could be equally well performed by any solicitor of ordinary ability.* Attorneys, however, do not wish unnecessarily to trench on the fees of counsel, and in proper cases will advise clients to avail themselves of their

assistance; but it is important we should distinctly know what *our rights* are, and be in a position to vindicate them by authority when denied, and whenever the interests of a client—as in the instance I have cited—require us to assert them.

The right in question is one which it may be incumbent on the attorney sometimes to exercise; and on the occurrence of such an occasion I shall certainly not hesitate to do so.

Trusting this letter may be the means of attracting the attention of your very numerous and influential readers,—I am yours, truly,

GEORGE JOHN DURRANT.

Chelmsford, Dec. 24, 1844.

INDENTURES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the supplement to Vol. IX. of *Jarman and Bythewood's Conveyancing*, by Sweet, containing the statute of 7 & 8 Vict. c. 76, with observations and forms, the editor commences the latter with "*A deed made*, &c." and proceeds, "Now these presents witness," &c. and adds this note:—"Indenting being rendered an immaterial circumstance, the description of deeds as indentures will probably fall into disuse." I suppose that this will be the case, but I submit to Mr. Sweet and the Profession at large whether the words "*This* deed," and "Now *this deed* witnesseth," would not be preferable, as being more precise and more simple. My name would add no weight to this suggestion—*Valeat quantum valet*—so I remain, Sir,

Yours respectfully,

A CONVEYANCER.

SELECTIONS FROM CORRESPONDENCE.

"AN ATTORNEY" (Dorchester) addresses to us the following on GOWNS, SHAM LAWYERS, and the CERTIFICATE TAX.

I have carefully read the many opinions which have from time to time appeared in your valuable paper pro and con. as to the revival of our ancient and respectable practice of wearing gowns, and in my humble judgment those in favour of the revival far outweigh those against it. Your correspondent "D," in the LAW TIMES of the week before last, appears to attribute great inconvenience to attorneys wearing gowns while transacting other business in the towns where the assizes and sessions are held, besides at the courts. I do not, however, recollect it has ever been suggested that we should wear gowns when not actually engaged in court, so that any attorney having other business, and thinking his gown an incumbrance, could easily divest himself thereof at his quarters.

I would take this opportunity of stating a plan which I think would in some measure assist in preventing the practice of that disreputable race "Sham Attorneys" at the assizes and sessions, and at the same time much facilitate our egress and regress to and from the courts, viz.—

That the under-sheriff of each county be empowered, upon application either at or before the assizes or sessions, to issue cards to some such effect as the following:—

DORSET EPIPHANY SESSIONS, 1845.
Admit A B (or C D, clerk to A B),
Gentleman, Attorney-at-Law.
(Signed) E F, Undersheriff.

Such cards to be given to attorneys only (at a small fee, sufficient to pay for printing in blank, &c.), most of whom would, as a matter of course, be personally known to the under-sheriff. By the officers of the court being instructed to clear the way at all times for gentlemen producing these cards, and to let none other into the attorneys' seats, all the inconvenience in that respect would be removed.

In case an authorized clerk should at any time attend in lieu of the principal, a letter from the latter to the under-sheriff would of course procure a card for such clerk's admission. Sham attorneys would thereby have a difficulty in obtaining access to counsel; and if the latter would but refuse to take briefs from any person not known to them to be an attorney, or the authorized clerk of an attorney, without the production of such card, the nefarious practices of the tribe would in time be so far put an end to.

The Profession, I am sure, cannot but feel much obliged to you for your well-timed remarks in your last and previous week's paper as to the odious certificate tax; and I trust it will be the means of inducing them to get up meetings, to be held in the various county towns, at the ensuing Epiphany Sessions if possible, or at all events at the next Spring Assizes, to petition for a repeal of the same.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

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VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

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BRISTOL DISTRICT COURT by J. ANGUS HOMER, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

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OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

JOURNAL OF PROPERTY.

THE following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

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New Three-&-a-quarter per Cts	103	103¼	102¼		102½	103¼
Long Annuities..........	12¼	12⅛	12¼		12⅛	12⅛
Bank Stock	207	209¼	210		210	211
India Stock	289½	289	289¼		290	290½
India Bonds, prem..........	85	85	85		85	85
Exchequer Bills, prem.	63	64	64		65	66
FOREIGN.						
Spanish Five per Cents.......	26	26¼	27		27⅛	26
Spanish Three per Cents.	37⅛	37⅛	37⅞		38¼	38
Russian	119	119	119¼		120¼	110
Peruvian..................	28⅞	29	29¼		29½	27⅛
Portuguese	60	66⅛	60¼		55⅛	61
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Danish	89½	89⅛	89¼		90	90⅛
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Chilian	101	101	101¼		102	102¼
Buenos Ayres	39	39⅛	39		40⅛	41
Brasilian..................	88	88⅛	89		89½	89
Belgian	102	102¼	102¼		102¾	104¼

SALE OF ESTATES IN PERTHSHIRE.—The estates belonging to the late Lord Lynedoch have been disposed of by his trustees. They consisted of Balgowan, the original family property, and Lynedoch, a purchase of the late lord, of which the portion along the banks of the Almond was entailed as well as Balgowan, and that betwixt the manor estate and the Tay was unentailed. The latter division, we understand, was sold by the trustees to Robert Graham, esq. of Redgorten, for the sum of 75,000*l.*; the remainder of the Lynedoch estate has been purchased by James Simpson, esq. formerly of Bellwood, and for many years a merchant in Manchester, at the price of 135,000*l.* Balgowan has become the property of William Thomson, esq. lately from China, son of John Thomson, esq. of the Royal Bank, at the price of 43,000*l.* These two last-mentioned sales of the entailed property have taken place in consequence of some deficiency or informality in the deed.—*Perthshire Courier.*

Public Sales.

By Mr. BAKER, at the Mart.

A house, No. 34, Cloudesley-square, Islington, let at 50*l.*; held for 57 years, at a ground-rent of 7*l.* per annum—480*l.*

A house, No. 1, Strachan-place, Liverpool-road, Islington, let at 40*l.*; held for 60 years, from March 1812, at 8*l.* per annum—270*l.*

A house, No. 1, Trinidad-place, Islington, let at 40*l.*; held for 73½ years, at 7*l.* 13s. per annum—435*l.*

A house, No. 16, Portland-place, Canonbury-square, Islington, let at 40*l.*; held for 74½ years from March 1844, at 6*l.* 10s. per annum—470*l.*

A house, No. 13, Critchill-place, Hoxton, let at 40*l.*; held for 41¾ years, at 4*l.* 15s. per annum—335*l.*

A ditto, No. 14, ditto—390*l.*

A house, No. 35, York-street, City-road, let at 36*l.* 16s.; held for 36¾ years, at 16*l.* per annum—235*l.*

By Messrs. WILKINSON.

A house, No. 15, Seymour-place, Bryanston-square; held for 56¼ years, at 9*l.* 2s. per annum—720*l.*

A house, No. 1, Moscow-road, Queen's-road, Bayswater, let at 25*l.*; held for 52¼ years, at 4*l.* 10s. per annum—370*l.*

A residence, No. 10, Connaught-terrace, Edgware-road; held for 63¾ years, at a ground-rent of 12*l.* per annum; let on lease at 75*l.*—1,080*l.*

By Mr. WHEELER.

Two freehold houses on the west side of Shire-lane, Fleet-street, let on a repairing lease at 50*l.* per annum—756*l.*

By Mr. HENRY BROWN, at the Mart.

A house and shop, 35, Hosier-lane, West Smithfield, let at 40*l.* per annum, held for 35¼ years, at 4*l.* 16s. per annum—455*l.*

Two freehold cottages, situate in Moor-terrace, Peckham; a forecourt inclosed with iron palisades, and garden in the rear, let at 21*l.* per annum each—420*l.*

A cottage residence, situate No. 32, Trafalgar-grove, Trafalgar-road, Greenwich; let at 20*l.* per annum; held for 87¾ years, at 2*l.* 12s. 6d. per annum—205*l.*

A ditto, No. 33, ditto—205*l.*

A ditto, No. 35, ditto—210*l.*

A freehold house, situate on Maidenstone-hill, near the Point, Blackheath, with garden in the rear, let at 16*l.* per annum—215*l.*

A similar house adjoining—225*l.*

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2. A Do. Residence, Eliot-place, Blackheath, in the occupation of Mr. Pontifex, let on lease at 82*l.* 2s. per annum; sold free of ground-rent for 27 years—980*l.*

3. A do. Residence adjoining, let to Mr. Lawrence at 90*l.* per annum; sold free of ground-rent for 27 years—940*l.*

4. A Leasehold Ground-rent of 31*l.* 10s. per annum for twenty-nine years, on a residence, Rodney-buildings, Kent-road, in the occupation of W. Bout, esq.—440*l.*

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Valuable Improved Rent of 90*l.* 13s. per annum for 13 years, and the reversionary interest at the end of that time for 27 years more, on a capital residence, Streatham-common, in the occupation of Mrs. Crabb, at 130*l.* per annum—1,240*l.*

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A freehold house, situate opposite the Druid's Head, in Church-street, St. Paul's, Deptford, Kent; land-tax redeemed; let at 12*l.* per annum—160 guineas.

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TO LEGAL AUTHORS.—The VERULAM SOCIETY being about to publish a work on the PRACTICE of the LAW, as conducted in the Attorney's office, LEGAL AUTHORS willing to undertake either of the following divisions of the work are requested to communicate with the EDITOR of the LAW TIMES.

I. The PRACTICE of the COURTS of COMMON LAW.
II. The PRACTICE of the COURTS of EQUITY.
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IV. The PRACTICE of the COURTS of INSOLVENCY and BANKRUPTCY.
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24th Oct. 1844.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 92.] SATURDAY, JANUARY 4, 1845.

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CORRESPONDENCE.

ATTORNEYS' CERTIFICATE DUTY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—To shew you that I for one have been long alive to the hardship under which our Profession alone has had to labour, I take the liberty of forwarding you a copy of an address I printed and circulated amongst the members of the West Riding Law Society in 1842.

I regret to say it produced no effect. I never as much as even heard the subject mentioned by them. There was no petition, I believe, nor any effort made by them in a body.

I confess such apathy has not raised my opinion of such societies, which hitherto have generally neglected our interests, and for this cause I have refrained from becoming a member of that or any other society. I do not forward this letter with a view of publication, but merely to shew you have subscribers who have long agreed in the opinions published by you last week.

I have myself for above twenty years paid the tax; I have witnessed new impositions upon us, and observed other more clamorous parties relieved, whilst we have continued passive sufferers.

Trusting your energy and influence will rouse the body of the Profession,

I am yours, &c.

Halifax, Dec. 19, 1844. H. F. HOLROYD.

[The following is a copy of this address. It is equally applicable at this moment; therefore we transcribe it at length.—ED. LAW T.]

TO THE PRESIDENT AND MEMBERS OF THE WEST-RIDING LAW SOCIETY.

GENTLEMEN,—Constituting as you do a highly influential and important part of the legal Profession of this Riding, and the only organized body of Attorneys and Solicitors to whom the other members of the Profession resident in this district can look for guidance and interference in matters from time to time affecting their interests, I feel that the moment has now arrived when your valuable counsel and assistance may fairly be required, and I trust you will receive this address from a brother practitioner with the deserts the subject alone merits.

Your Society has, I believe, been in existence more than 20 years, and during that time I can bear witness to services performed by you in upholding the respectability of the practice of the Profession, in several instances where otherwise it would have suffered; I regret, however, to remark that I have also observed too much apathy and indifference in your body during the last ten years, whilst several Bills have passed the Legislature and become laws, whereby the interests of the interests of the Profession have been assailed, and in several instances materially injured. Amongst others, permit me to mention Lord Brougham's Act (1 & 2 Wm. 4, c. 56), whereby the general body of the Profession were deprived of the privilege of acting as Commissioners of Bankrupt, to the exclusive advantage of barristers and a very few solicitors, selected by reason of their influence or interest in high quarters. Also the loss which we have felt by the passing of the Act 3 & 4 Wm. 4, c. 42, authorizing the trial of causes for debts under 20*l.* before the sheriff. Again, the injury suffered by the Profession generally in consequence of the passing of the Act for the Abolition of Fines and Recoveries (3 & 4 Wm. 4, c. 74), thereby giving the appointment of Commissioners for taking the examinations of married women to a select few of the solicitors. Again, the loss which we have sustained in consequence of the passing of the several Acts for establishing Courts of Request in this Riding, thereby permitting the recovery of debts amounting to 15*l.* without even the assistance of an attorney. And again, the detraction from our profits by the abolition of all leases for a year in the transfer and conveyance of freehold lands, made law by the statute 4 Vict. c. 21.

I admit these "reforms" may not have materially affected the *elite* of the Profession, and those who have been provided for by clerkships and commissionerships, but they have unquestionably greatly injured a most active and meritorious part of it.

During the progress of these measures the just and equitable consideration of compensation to us for all these losses was in no way pressed upon the Legislature, and which you are aware could only be done *with effect* by a body of gentlemen like yourselves, with the concurrence of the other members of the profession. Individuals I know have complained and remonstrated, but with no effect, and I think it surely is *now* the interest of *all* to join in obtaining relief in some way.

Permit me to remind you that amidst all these changes we have hitherto cheerfully paid our annual Certificate Duty of 8*l.* a tax imposed on no other profession.

We are now about to undergo a new imposition of great weight; we are to have our incomes—our daily exertions—taxed at the rate of 3*l.* per cent. per annum, in addition to the payment of our present Annual Duty, and the public are protected from any increase in our charges by the laws which provide for the taxation of our bills. We shall also be expected to support ourselves in practice with equal liberality and respectability; and feeling convinced that the profession *generally* cannot do so without some relief, I most urgently call on you to consider our position.

The Premier, by the imposition of the Income-tax, will have a surplus income, and to this we shall largely contribute; he has already proposed to remit several oppressive taxes, and I venture to think that the attorneys and solicitors are now fairly entitled to call for a remission of their annual certificate duty—at the least—a small compensation only for the losses they have already suffered by the measures already passed for the benefit of the public.

The members of the present Parliament are many of them greatly indebted to the exertions of the Profession for their seats; and I feel convinced that the

members for the Riding, under the guidance of a committee of the most influential members of the Profession in the Riding would give every attention to our claims.

May I therefore earnestly call on you, Gentlemen, at this important crisis, without delay to interfere in our behalf, by promoting a general meeting of the attorneys and solicitors of the Riding at an early date, to take active measures for immediately applying for a remission of the duty on our certificates, and such other relief as may be thought best under existing circumstances.

I have the honour to be, Gentlemen,
Your most obedient servant,
A West-Riding Solicitor.

March 16, 1842.

VETERANS OF THE LAW.

TO THE EDITOR OF THE LAW TIMES.

Sir,—On the 16th of November there appeared in the 124th page of your valuable journal a letter of Mr. Thomas Edye, of Clement's-inn, whereby he claimed on behalf of his father, Mr. Edmund Edye, of Montgomery, the honour of being the father of the Profession, he being in the 88th year of his age, and having been admitted in Michaelmas Term, 1779. I knew that Mr. Peter Batson, of Sherborne, if living, was a great deal older, and I therefore wrote to Mr. George Warry, who had been for many years a partner with Mr. Batson, for particulars, and he kindly sent me an answer, a copy of which I transmit; but I must premise that I have since received a message from Mr. Warry, signifying that he was prevented from sending me the promised information for the present by Mr. Batson being seized with a fit of the gout, since which I have received no further communication on the subject, so I will not delay putting in the claim of Mr. Batson any longer, but remain, Sir,

Yours faithfully,
J. P.

Dear Sir,—Mr. Batson is still alive and hearty; he was 97 last birthday. He says he will look out for his articles and admission, and let me see them in a day or two. He was admitted an attorney, he believes, upwards of seventy years ago. He ceased to take out his certificate some six or seven years since. I will afford you further information and particulars in a few days.

I am yours, &c.
Sherborne, Nov. 21, 1844. Geo. Warry.

POOR LAW COMMISSION.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Allow me to call your attention to the Extracts of Cases, from the Poor Law Circular, inserted in the Law Times; this practice on the part of the Poor Law Commissioners being, in my humble opinion, a direct infringement of the rights of the Profession.

I am not aware on whom the commissioners impose the duty of answering these cases; nor can I suppose the party to be either a barrister or an attorney; for, independently of many of the answers being lame and faulty, no professional man of honourable intentions would thus dole out the law to village lawyers (many of whom don't forget to charge for their nostrums) and private individuals.

If you will take the trouble of referring to last week's paper, you will find five out of the seven cases are from reverend sirs, and individuals with whom the commissioners ought not officially to hold any communication, and that the commissioners have no more to do with those cases than the Pope of Rome.

Is not such a practice equally worthy of your reprehension as the many you have already exposed?

If not, it is clearly useless to publish Reports; for where is the practitioner so foolish as to purchase them when he has not the chance of a client? Neither can it be expected he should be called upon, whilst the law can thus be had from Somerset-house merely by writing for it.—I am, Sir, your very obedient servant, Wm. Weston.

Leicester, Dec. 31, 1844.

TO THE EDITOR OF THE LAW TIMES.

Sir,—It is, I believe, generally admitted, and indeed cannot be denied, that our practice of omitting to take a *written* retainer on instructions to bring or defend actions or suits is both against authority and duty, alike injurious to ourselves and our clients. I need but refer to the observations of Lord Tenterden, in *Owen* v. *Ord*. I have often been impressed with the risks on the one hand an honourable member of the profession runs, and on the other have noted the artful pluckings to which the confiding victims of the unprincipled are subject, from this unwise and careless custom—evils so easily prevented by taking an express written authority on every occasion, as a rigid rule and matter of course, such indeed as the law requires and implies.

My attention has been lately directed to the subject by a case or two reported in your columns, which exhibit not only the evil consequences of such neglect, but have elicited the judge's reprehension: for instance, *Trevanion* v. *Trevanion*, p. 211, of your current vol. Allow me then to direct your attention to a pernicious practice, so perversely persisted in, and to submit the subject, through your pages, for the consideration of the Law Institution, or the Legal Association; suggesting the promulgation of a regulation confirming a rule so salutary, and yet so universally broken;—a copy transmitted to each member of the profession, with the sanction and recommendation of either or both of those influential bodies, would, if it did not command at once a general assent, at least tend to restore the good old rule, founded on justice and principle, and supported by prudence and expediency.

Permit me at the same, in reference to our abominable poll-tax, which you have lately so zealously taken in hand, to hazard a further suggestion, which is, that a form of petition for its immediate repeal might be most advantageously sent (say by the Legal Association) to some leading practitioner in every town in England, with a request that he would solicit the signatures of the other members, his fellow townsmen. I am persuaded few would refuse either to procure or attach the required names; and our voice, as that of one man, might be thus with facility and distinctness conveyed to the dull tympanum of a Government that seems to presume on the patience of attorneys as inexhaustible, and to view us, I fear, much in the light of a certain fowl prolific of golden eggs.

I am, Sir, your obedient servant,
Alfred H. Browne.

Wolverhampton, Jan. 1, 1845.

JOURNAL OF PROPERTY.

The following scale of charges, *reduced more than one-third*, has been adopted for Advertisements of Estates for Sale, &c., exceeding 10 lines in length:

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Brazilian..............	88	88½	89	89	89¼	89½
Belgian	102	102¼	102¼	102½	102½	102

Public Sales.

By Mr. ELGOOD, at the Mart.

Two residences, one of which is distinguished as Raby House, situated in the New Finchly-road, with front and back gardens walled round, and two carriage entrances with drive, occupying a plot of ground 85 feet by 240 feet, let on a running lease at a rent of 170*l.* per annum; held for 99 years from Michaelmas, 1838, at a ground rent of 30*l.* 1s. 6d. per annum; also a detached residence, known as Wellesley House, let at 205*l.* per annum, held as above, sold subject to an existing mortgage for 3000*l.* at 5 per cent. to continue for seven years from May 31, 1842—1310 gs.

The villa residence, No. 9, on the west side of the Finchley-road, St. John's Wood, held for a term of 91½ years from Lady-day, 1843, at a ground-rent of 23*l.* per annum—1420 gs.

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A Gothic villa residence, No. 20, on the east side of the Finchley-road, St. John's Wood, held for a term of 99 years from Michaelmas, 1838, at a ground rent of 35*l.* per annum—1200 gs.

The late Duke d'Angoulême.—The will of his Royal Highness Louis Antoine, Comte de Marnes, heretofore Dauphin of France, has just been proved in Doctor's Commons by Jean François, one of the executors, a power of proving hereafter being reserved for the Duke de Blacas and G. Isidore de Montbel, the other executors. The personal property is sworn under 250,000*l.* The deceased begs of his wife forgiveness for any involuntary wrongs he may have done her, and desires to be buried wherever he may die in the simplest manner, and leaves 25,000 francs for masses to be said for the repose of his soul. He also leaves 25,000 francs to the poor. The various other legacies amount to about 22,000 francs; and he then bequeaths the whole of his property (with the exception of these legacies) to his wife, and at her death directs that two-thirds shall go to his nephew, and the remainder to his niece. He directs that in the event of a new restoration his wife should "look to those who had been always kind to him." The will, which is dated in 1840, is short, and certainly a very singular document.—*Britannia.*

The New Police Courts.—This morning the new police-courts, at Stones-end, Blackman-street, Borough, and Kennington-lane, Lambeth, will be opened for public business. The old court, Union-hall, the business of which is transferred to the former, with the magistrates, Messrs. Traill and Cottingham, and all the officers attached thereto, was closed on Saturday evening, when all the official books and documents were removed to the Southwark Police-court. Lambeth street Police-court was also closed on the same evening, and the magistrates of that court will, for the future, transact the usual business at Lambeth Police-court, Kennington-lane.

THE REPORTS.

The following are the names of gentlemen who favour the Law Times with the Reports:—

PRIVY COUNCIL by Thomas Campbell Foster, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by William Paterson, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by Richard Griffiths Welford, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by George Goldsmith, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by Henry Baker, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. Symons, Esq. of the Middle Temple, Barrister-at-Law, and Edward Wise, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law, and W. Paterson, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by John Bridge Aspinall, Esq. of the Middle Temple, Barrister-at-Law, and Henry Mills, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. Saunders, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. Fry, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by John W. Bittleston, Esq. of the Middle Temple.

ADMIRALTY COURT by John W. Bittleston, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. Angus Homes, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. Robinson, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by James A. Foot, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by Henry Mills, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by John Lane, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law; and Henry Tindal Atkinson, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by Edward W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by Edw. W. Cox, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by William Duggan, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by Wm. St. Leger Babington, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. Gregory, Short-hand Writer.

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TO LEGAL AUTHORS.—The VERULAM SOCIETY being about to publish a work on the PRACTICE of the LAW, as conducted in the Attorney's office, LEGAL AUTHORS willing to undertake either of the following divisions of the work are requested to communicate with the EDITOR of the LAW TIMES.

I. The PRACTICE of the COURTS of COMMON LAW.
II. The PRACTICE of the COURTS of EQUITY.
III. The PRACTICE of the MAGISTRATES' COURTS—1st, QUARTER SESSIONS; 2nd, PETTY SESSIONS.
IV. The PRACTICE of the COURTS of INSOLVENCY and BANKRUPTCY.
V. The PRACTICE of the COUNTY COURTS and LOCAL COURTS.
VI. The PRACTICE of the CRIMINAL LAW.
VII. The PRACTICE of CONVEYANCING.
VIII. The PRACTICE of WILLS and ADMINISTRATIONS.
IX. The PRACTICE of the LAW of VENDORS and PURCHASERS.
X. The MISCELLANEOUS PRACTICE of an ATTORNEY'S OFFICE, arranged alphabetically.

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Published at the Office of the LAW TIMES, 29, Essex-st.

THE LITERARY JOURNAL OF YOUNG ENGLAND.
No. 24 of

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TO PREVENT ALL FUTURE QUESTIONS AS TO THE VALIDITY OF POLICIES, this Company are prohibited by their deed of constitution from disputing any claim, unless they take upon themselves to prove that the policy upon which the claim arises was obtained by fraudulent misrepresentation.

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ALEX. ROBERTSON, Manager.

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IMPERIAL LIFE INSURANCE COMPANY.—NOTICE is hereby given that persons effecting Insurances with this Company before the 31st of January next will participate in the quinquennial division of profits to be declared in the year 1846, and that to secure their completion in due time, Proposals should be submitted forthwith.

Forms of Proposal, and Prospectuses, may be had at the Offices, Cornhill and Pall Mall, London; or of the Agents.

SAMUEL INGALL, Actuary.

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Owing to the prevalence of disease, more than two-thirds of the population are not assurable in other offices (see Prospectus, &c.), and it is ascertained that in several of the leading assurance societies in London, 23 per cent., or more than one in five of the applicants, although ostensibly good lives, are rejected on medical examination.

Solicitors being much connected with life assurance, have experienced this difficulty to a considerable extent from the delay, and often permanent obstacles, occurring in loan and other money transactions on behalf of their clients; the legal profession has consequently freely patronized this society, as it affords facilities not hitherto available in assurance transactions.

The success that has attended the office during the FIRST THREE YEARS is highly satisfactory, and there is every reason to believe that, as its peculiar features and principles become more known and better understood, it will command an unusual amount of public patronage.

About THREE-FOURTHS of the POLICIES already issued by the society are on DISEASED LIVES, and a majority of these had been previously rejected by other offices, shewing the necessity which existed for an assurance society on the plan in question.

Medical referees are appointed in almost every town of any extent, no difficulty will therefore be experienced in procuring the examination of parties residing in the country, on whom proposals for assurance are made.

Prospectuses, and every other information, will be forwarded on application.

F. G. P. NEISON, Actuary.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 93.] SATURDAY, JANUARY 11, 1845.

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CORRESPONDENCE.

ATTORNEYS AT QUARTER SESSIONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—You having on several occasions rendered effectual service in supporting the rights and respectability of the Profession, I am induced to mention a case which occurred yesterday at the general Quarter Session of the Peace for the city of Norwich, held before Mr. Recorder Jeremy. An attorney appeared to defend on behalf of a prisoner; the counsel for the prosecution objected to his being heard, other counsel, not engaged, being present in court. The attorney on behalf of the prisoner referred to the judgment alleged to have been lately given by Lord Chief Justice Denman, referred to in your reports, and the Act of 6 & 7 Wm. 4, c, 114, entitled "An Act for enabling Persons indicted of Felony to make their defence by Counsel or Attorney." The learned recorder decided that he could not recognize your publication as any authority, and that the Act of Parliament merely gave permission to an attorney to defend in the absence of counsel. The Profession will be obliged by your informing them, under the circumstances, the course that ought to be adopted, as it is a question of importance to the Profession.

I am, Sir, yours very obediently,

Norwich, January 1, 1845. A SUBSCRIBER.

[Our article of last week is all the light we can throw upon this question. It is strange that if such a remark *was* made by the chairman of the Lichfield Sessions, no attorney can authenticate it to us.—ED. LAW T.]

INDENTURES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Since I wrote to you last week, I have seen the supplement to Mr. Weston's *Precedents in Conveyancing*, which is just published, and has the date of 1845 upon it. I see that he uses the words that I recommended, viz. "This deed," and "Now this deed witnesseth." As uniformity is desirable, I hope that these words will be universally adopted.

I am yours, &c.

A CONVEYANCER.

AFFIDAVITS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Great differences exist in the amount charged by solicitors for preparing affidavits for the proof of debts in bankruptcy, and forwarding them to the solicitor to the fiat; and as uniformity of charges in all cases is very desirable, perhaps some of your subscribers will favour the Profession with their views as to what should be the charges in the business referred to.

I am, Sir, yours, &c.

A SUBSCRIBER FROM THE COMMENCEMENT.

APPEALS AGAINST ORDERS IN BASTARDY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The first appeal against the New Orders in Bastardy at the Quarter Sessions for the East Riding of Yorkshire, was heard last week at the Epiphany Sessions, and as the result is of much importance, I think it may be useful to some of your numerous readers to know the particulars.

The 2nd section of the 7 & 8 Vict. c. 101, enables a justice of the peace, on the application of the mother of a bastard child, to issue his summons against the person alleged to be the father. By the 3rd section the justices in petty sessions *are to hear the evidence of such woman*, and such other evidence as she shall produce, and if the evidence of the mother be corroborated in some material particulars by other testimony, to the satisfaction of the said justices, they may adjudge the man to be the putative father of the child, and proceed to make an order upon him for its maintenance, &c. And by the 4th section, if within

twenty-four hours after adjudication and making of any order on the putative father, he shall give *notice of appeal to the mother*, and enter into recognizances as therein mentioned for payment of costs, it shall be lawful for such putative father to appeal to the general quarter sessions of the peace to be holden after the period of fourteen days next after the making of such order for the county, &c. where the petty sessions may have been held, and the justices shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them may seem fit.

On the appeal being called, the counsel for the respondent (the mother) opened his case and put her into the witness-box; it was then objected by the appellant's counsel, that she could not give evidence, inasmuch as the Act directed the notice of appeal to be given to the mother, and she was in fact the respondent, and a party interested in the appeal. That the 2nd section *directed the justices* in petty sessions *to hear the evidence of the mother*, but the 4th section was altogether silent as to her evidence, and did not expressly empower the justices to hear the evidence; and that the latter part of the 4th section empowered the justices to order costs to be paid by either party, thereby clearly recognizing the mother and the putative father as the parties in the appeal.

After a lengthened argument, the Court decided that the evidence of the mother could not be received, and quashed the order.

I understand that Mr. Archbold, who was counsel in the appeal, is of opinion that the decision is right, and that the very point is noticed in a work of his on the Poor Laws, now in the press.

You will perceive that the decision (if correct) renders that portion of the Act relative to orders in bastardy a perfect nullity, and it is only one of the many blunders it contains.

I am Sir, yours, &c.

Beverley, Jan. 2, 1845. WM. F. CLARK.

SELECTIONS FROM CORRESPONDENCE.

Y. Z. complains of a practice which it is not surprising newspapers should adopt, when it is sanctioned by the avowed editors of a legal publication.

As the columns of your invaluable paper have lately been successfully made use of as the medium of exposing infringements on the privileges of the legal profession, of which I happen to be a member, I think a few lines from you noticing the custom frequently exercised by the editors of different newspapers of answering legal questions and points raised by their correspondents, and thereby (if I may be allowed to use so strong an expression) defrauding some solicitor of his fee for advice on the point in question, might be of some service to the profession. I need only call your attention, in corroboration of what I have stated, to the *Britannia* weekly paper of the 28th Dec., in which, under the head of "Correspondents," three several answers on strictly legal points are given to as many correspondents. I trust you may deem this subject worth your notice.

"D. S." (Norwich) thus alludes to a question that arises on the Transfer of Property Act:—

I believe some misapprehension is prevalent amongst even well-informed members of the Profession, who may not have read attentively the Act recently passed to simplify the transfer of Property, with reference to the period of time at which the Act will be practically and generally operative.

It is to commence and take effect from the 31st day of December, 1844; but one of its most important and I think its most practically useful clause, declaring the receipts of trustees to be in all cases (where not expressly negatived) effectual discharges for trust moneys, it is submitted will not come into universal nor even general operation for many years to come; inasmuch as the 13th section declares that (except so far as regards contingent remainders) the Act shall not extend to any estate, right, or interest created before the 1st day of January, 1845; so that the powers of trustees to give effectual discharges in all cases where the deed or will creating the trust was executed anterior to the 1st of January inst. will remain unaffected by the Act. Whether this was the intention of those who prepared it, or who intrusted others to prepare it for them, may be, perhaps, a question.

"A SUBSCRIBER" suggests the following amendment of the Law of Debtor and Creditor:—

Since the passing of my Lord Brougham's Act, debtors for sums under 20*l*. and without property, snap their fingers at their creditors, and both before and since that Act those with property very frequently make an assignment, and creditors must either abandon their execution, or incur the risk of contesting the validity of the assignment. I would therefore suggest that the law should be altered so as to give an execution-creditor the same rights to the goods in the "order and disposition" of his debtor, as assignees have under a bankruptcy. I think this alteration would operate as a salutary check upon fraudulent assignments.

"E. L." submits the following practical query to our experienced readers:—

I shall feel obliged by your allowing me to ask some of the Profession the following question through the medium of your valuable journal.

A was articled to B for a period of five years, and continued to serve him under those articles for four years and a half, when they were given up to him at his request. After a lapse of some years, A was assigned by B to C for the residue of the five years, and entered into a covenant to serve C.

Is A (having served the whole term) entitled to apply for his admission, or ought the latter deed (instead of being an assignment) to have been in the form of fresh articles without the joining of A?

"A CORRESPONDENT," a Magistrate's Clerk, who accompanies the letter with his name and address, has sent us a very alarming statement of errors in Mr. LUMLEY'S *Bastardy Forms*, published by Shaw and Sons. As the matter is one of serious moment to the Profession, we insert the portion of the letter which sets forth the errors.

At the General Quarter Sessions of the Peace just held for the West Riding of Yorkshire, every bastardy order appealed against has been upset, and all in Mr. Lumley's form!!

The following objections (*inter alia*) were taken, viz.:—

That the order *omits* to set out—

1. That the petty sessions is held within a petty sessional division.

2. That at the time of making the application, the mother is residing within a petty sessional division.

3. That the mother made the application at a place within a petty sessional division.

4. That the magistrates making the order are stated to be usually acting, instead of then usually acting within a petty sessional division.

5. That the putative father hath been served with a summons within forty days, instead of alleging the summons to have been served six days at the least before the day of hearing.

6. That the mode of stating the evidence laid before the justices as the ground-work for the order is informal, uncertain, and insufficient.

About 600 bastardy orders have been granted in this Riding, none of which are now available.

No magistrate can safely issue a distress-warrant or a warrant of commitment against a putative father for disobeying a bastardy order. For if an action of trespass or a false imprisonment were brought against the magistrate, his only justification would be the order, which is defective on the face of it.

Parliament alone can find an adequate remedy, by directing that every order hitherto made shall be valid, notwithstanding any defects in point of form, *unless* such order shall have been *appealed against and quashed upon the merits*.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	100	100¼	100⅜	100¼	100⅜	100⅜
Three per Cents. Reduced	100¼	100½	100⅝	100½	100¾	101
New Three-&-a-quarter per Cts	103	103¾	103¾	104	104⅛	104⅛
Long Annuities............	12⅛	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	209	210½	211	210	211	211
India Stock	287	287	289½	288½	290	288
India Bonds, prem..........	79	80	81	80	80	80
Exchequer Bills, prem.	65	64	63	65	65	65
FOREIGN.						
Spanish Five per Cents.......	27	27¼	27¼	27	27⅛	27⅛
Spanish Three per Cents.	36½	36½	36½	36¼	36½	36⅜
Russian	119	119	119½	119	120	120
Peruvian............	27	27	27¼	28	29	29
Portuguese	60½	60	60¼	61	61	61
Mexican............	35	34½	35	35	34	34½
——— Deferred	15¼	15¼	15⅛	15½	15¼	15¼
Dutch Two-and-a-Half per Cents............	63¼	63½	64	64	64¼	64
——— Five per Cents	99¼	99¼	99¼	99	99¼	99½
Danish	89½	89⅛	89¼	89	90	89½
Colombian............	14½	14⅛	14¾	14½	14½	14½
Chilian	100	101	101½	102½	102	102
Buenos Ayres	40	40¼	41	40⅛	41	41
Brazilian............	89	89½	89½	89½	90	90
Belgian	102⅛	102¼	102¼	102½	102¾	103

Public Sales.

By Messrs. W. and C. PUGH.

A residence, No. 5, Camberwell-grove, with garden and fore-court; held for 53 years, at a ground-rent of 12*l*. 10s. per annum—460*l*.

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FLUCTUATIONS IN STOCKS.—It may be a desirable feature, as a matter for future reference, to give the highest and lowest values of those British stocks that have been quoted in the past year. They are as follow:—

1844.

	Highest.	Lowest.
Consols	100¼	96¼
Reduced Three per Cents. . . .	101	97⅝
New Three-and-a-Half	104¼	101¼
Ditto Three-and-a-Quarter . .	103¾	101⅛
Exchequer Bills	80	53
India Bonds	98	71
Ditto Stock	290	272
Bank Stock	211	185
Spanish Five per Cents. . . .	28¼	21⅝
Ditto Three per Cents.	38⅝	29⅝
Portuguese Converted	61¼	43
Mexican	37¾	32⅝
Russian	121	116
Austrian	116	112
Brazilian	91	73¾
Dutch Two-and-a-Half per Cents.	64⅞	54

—*Globe*.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

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CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

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ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

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Age.	Annual Premium.		
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20	1 0 9	1 1 6	1 13 11
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Attorney-gen. v. Earl Powis
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Tullock v. Hartley, appeal, part heard
Strickland v. Strickland, third appeal
Spalding v. Ruding, ditto
Fuller v. Craig, ditto
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Dalton v. Hayter
Baggett v. Meux — Appeals.
Payne v. Banner
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Millbank v. Collier
Decks v. Stanhope
Wiltshire v. Rabbitt
Smith v. Earl of Effingham
Archer v. Hudson
Turner v. Newport
The Attorney-general v. The Wardens and Company of the City of Bristol, ditto
Truelock v. Robey, ditto.

Before the VICE-CHANCELLOR OF ENGLAND.

Thelusson v. Ld. Rendlesham.	Gurney v. Goggs
Emmett v. Mitchell	Jackson v. Brooke
Richards v. Wood, two causes	Middleton v. Elliott
Montague v. Cator, three cau.	Barnacle v. Nightingale
Templeman v. Brelsforth	Gray v. Gray
Freeman v. Roberts, four cau	Aubrey v. Hoper, five causes
Roberts v. Marchant	Casley v. Moneypenny
Wilson v. Wilson, three cau.	Miller v. Harris
Breeze v. Hawker, two ditto	Casley v. Moneypenny
Williams v. Williams	Sinnett v. Matthias
Boazman v. Cazenove	Wilson v. Williams
Rogers v. Rogers	Gardner v. Marshall, two c.
Greenwood v. Taylor	Kield v. North
Preston v. Melville	Bennett v. Ravenhill, two c.
Pearse v. Brooke, five causes	Gould v. Uttermere
Pemberton v. Jackson	Kidd v. North
Hastlewood v. Partridge	Cloak v. Rolfe, four causes
Mapp v. Ellcock, two causes	Hodson v. Ball, seven ditto
Grand Junction Canal Company v. Dimes	Borrodale v. March, two do.
	Youde v. Jones, four ditto
Emerson v. Gibbins	Ridgway v. Gray
Dickson v. Moss	Nicholson v. Wilson, two c.
Goldsborough v. Hawdon	NEW CAUSES.
Hiles v. Moore, two causes	Falkner v. Birkett
Snow v. Hole, ditto	Biddles v. Biddles
Christ's Hospital v. Grain, ex	Ashton v. Packer
Clowes v. Sturnton	Timmiss v. Brassey
Fyson v. Foster, two causes	Reid v. Keith.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Dodsworth v. Kinnaird, two causes
Clayton v. Lord Nugent
Doyne v. Cartwright, two causes
Adams v. Paynter, three causes
Norton v. Pritchard, four causes
Gibson v. D'Este
Bury v. Allen, two causes
Harmond v. Swayne, two causes
Meads v. Shelling
Rond v. Warden
Samuel v. Gibbs
Parker v. Marchant, 6 causes
Parker v. Smith
Wright v. Taylor.

NEW CAUSES.

Cocksill v. Pitchforth	Stevens v. Stevens
Geldart v. Randell	Ellice v. Alsager
Wadley v. Wadley	Alexander v. Loft.

Before VICE-CHANCELLOR WIGRAM.

Blay v. Skipworth	Moore v. Stafford
Broad v. Robinson	Paget v. Belcher
Barnett v. Deane	Morison v. Morison
Vincent v. The Bishop of Sodor and Man	Challen v. Shippen
	Kay v. Wall
Massey v. Moss	Harrop v. Howard, two caus.
Ferrand v. Wilson, two caus.	Strangeways v. Corbett
Emperingham v. Short, two c.	Towgood v. Hankey, five c.
Brooks v. Jopling	Brown v. Brown.
Davies v. Davies	

NEW CAUSES.

Bursey v. St. Barbe	Strutt v. Lloyd
Attorney-gen. v. Northcote	Jones v. Reckitt
Aspinell v. Andus	M'Gregor v. Topham
Hughes v. Lipscombe	Ashbee v. Ashbee, two causes
Smith v. Beesley	Speakman v. Speakman
Cuttel v. Crowther	Packham v. Gregory
Coltman v. Harrison	Phelps v. Deardin
Logan v. Gilchrist	Davis v. Davis, two causes
Drew v. Ching	Brown v. Baston.
Lucy v. Barnes	

Before the MASTER OF THE ROLLS.

The following is a List, to the latest period, of Causes before the Master of the Rolls for the present Term:—

James v. James	Davenport v. Charlesworth, 2 c.
Johnson v. Todd, three causes	Wats v. Parker
Attorney-gen. v. Potter	Johnson v. Rowlands
Langley v. Fisher	Lewis v. Lewis
Hope v. Hope, three causes	Barton v. Chambers, three ca.
Richardson v. Horton, three causes	Wintle v. Burton
	Farquhar v. East India Company, two causes
Connolly v. Farrell	
Walton v. Potter	Dick v. Lacy
The Attorney-gen. v. Bedingfield	Connolly v. Butcher
	Gosling v. Carter
Hele v. Bexley, two causes	Johnson v. North
Gibson v. Nicol, two causes	Agers v. Nicholson
Attorney-gen. v. Mayor, &c. of London	Weakley v. Bunn
	Lloyd v. Jenkins
Master v. Croisnare	Harrison v. Ruston
Tristram v. Roberts, two cau.	Nouaille v. Flight, two causes
Chidwick v. Prebble	Sabine v. Williams
Fulton v. Gilmore	Attorney-gen. v. Heytesbury Hospital
Blomfield v. Eyre	
Ward v. Audland	Harvey v. Mount
Bradley v. Groom	Attorney-gen. v. the Mayor of Plymouth
Robertson v. Morrice	
Shallcross v. Hibberson, six causes	Flack v. Longmate, two cau.
	Cutbush v. Cutbush
Otley v. Gilby	Parker v. Parker
Curtis v. Robinson	Godley v. Thompson, two ca.
The Mayor of Ludlow v. Charlton	Robey v. Whitewood
	Witham v. Capon
Kilner v. Leech, two causes	Gray v. Watson
Attorney-Gen. v. The Ironmongers' Company	Meryon v. Collett
	Hounbry v. Bispham, six ca.
Score v. Ford	Carlon v. Farlar
Bordien v. Bromley, three ca.	Attorney-gen. v. The Governors of Hartlebury School
Kightley v. Trimbey, two cau.	
Waring v. Lee, three causes	Attorney-gen. v. The Bishop of Worcester
Attorney-gen. v. Lewis, two causes	
	Campbell v. Crook
Earl of Dundonald v. Norris	Walklen v. Histed
Marquis of Hertford v. Lord Lowther	Mann v. Ricketts
	Lethbridge v. Chetwoode
Beauclerk v. Ashburnham	Bricknell v. Standford, three causes
Wiggins v. Wiggins, two cau.	
Attorney-gen. v. Troughton	Smyth v. Lowndes
Barlow v. Gains	Vesey v. Fyson
Attorney-gen. v. Long, three causes	Sirelt v. Abraham
	Hames v. Westall
Wynn v. Heveringham, two causes	Boulter v. Boulter, three ca.
	Stopford v. Chaworth
Fernyhough v. Ginders, three causes	Gordon v. Lowe, two causes
	Rickards v. Gurney, three do.
Rogers v. Vesey	Lord Nelson v. Lord Bridport
Radburn v. Jervis, four causes	Gee v. Gurney
Fraser v. Wood	Augeraud v. Parry
Hammatt v. Ledsam	Attorney-gen. v. Eckley
Collins v. Reece	Lindgren v. Lindgren
Flower v. Harropp, two causes	Bennett v. Cooper
Montresor v. Montresor	Hodgkinson v. Cooper.

From the thinness of the Lists before Vice-Chancellors Bruce and Wigram, probably a transfer of some of the above will be made during the present Term.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.
HOUSE OF LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.
ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.
VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.
VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.
The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.
The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.
The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.
The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.
ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.
BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.
CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.
NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.
WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.
OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.
NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.
SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.
ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.
REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.
QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.
N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.
The Written Judgments are reported verbatim in Shorthand by Mr. H. GREGORY, Short-hand Writer.

THE PROVINCIAL LAW SOCIETIES ASSOCIATION.—At a Meeting of Deputations from Provincial Law Societies, held at the Law Society's Rooms, No. 4, Norfolk-street, Manchester, January 10th, 1845.

PRESENT,

R. H. WILSON, Esq. in the Chair.

Mr. Thomas Eyre Lee, Birmingham.
Arthur Ryland, ditto.
George Hicks Seymour, York.
Thomas Hodgson, ditto.
John Hope Shaw, Leeds.
Richard Eckroyd Payne, ditto.
John Sangster, ditto.
Charles Frost, Hull.
C. H. Phillips, ditto.
John Freeman, Huddersfield (West Riding Society).
James Westel, Witney, Oxfordshire.
John Marriott Davenport, Oxford.
Thomas Avison, ditto.
Ambrose Lace, Liverpool.
J. Eden, ditto.
Julius J. Shepherd, Feversham, Kent.
Edward Knocker, Dover.
John Sharp, Lancaster.
J. H. Sherson, ditto.
J. Rosome, Alford, Lincolnshire.
E. A. Bromehead, Lincoln.
Henry Abbott, Long Ashton, Somersetshire.
R. H. Wilson, Manchester.
Joseph Grave, ditto.
R. M. Whitlow, ditto.
Stephen Heelis, ditto.
James Crossley, ditto.
Charles Gibson, ditto.
Thomas Taylor, Hon. Sec. ditto.

The following Resolutions were passed unanimously:—

That it is desirable for the interests of the Public and the Legal Profession, that an Association of Provincial Law Societies be formed to assist in obtaining all useful and practical amendments of the Law, to watch all legislative and other measures affecting the Profession, and to adopt measures for maintaining its respectability.

That such Association be, and is hereby formed, and shall consist of all such Societies as shall now signify their intention of joining, and of all such other existing Societies as shall hereafter signify such intention to the Honorary Secretary of the Association, and of all such other Societies hereafter to be formed as shall be admitted according to the rules of the Association, the name of which shall be "The Provincial Law Societies Association."

That there shall be a President, two Vice-Presidents, a Treasurer, and an Honorary Secretary of the Association, to be elected annually.

That Mr. George Hicks Seymour, of York, be the President; Mr. J. M. Davenport, of Oxford, and Mr. Stephen Heelis, of Manchester, the Vice-Presidents; and Mr. R. M. Whitlow, of Manchester, the Treasurer of the Association, until the first annual General Meeting.

That Mr. Thomas Taylor, of Manchester, be requested to undertake the office of Honorary Secretary to the Association until such annual or General Meeting.

That the above-named officers, together with the President, Vice-Presidents, Treasurer, and Secretary of each society belonging to the Association, and the following gentlemen, be the Committee of Management until the first Annual Meeting:—

Mr. John Bagshaw, Manchester.
James Barratt, Jun. ditto.
Charles Cooper, ditto.
James Crossley, ditto.
Edwin Eddison, Leeds.
Charles Gibson, Manchester.
Joseph Grave, ditto.
Joseph Heron, Town Clerk, ditto.
Ambrose Lace, Liverpool.
C. H. Phillips, Hull.
John Sharp, Lancaster.
Julius J. Shepherd, Feversham.
George Thorley, Manchester.
James Westell, Witney, Oxfordshire.
R. H. Wilson, Manchester.

That the Committee shall have power to fix the time of the General Annual Meeting, to make Bye-Laws, and adopt all such proceedings in the name of the Society as they may think proper, and generally be invested with full power to do all such acts as they may think necessary for practically and effectually carrying out the objects of the Association, being indemnified by the same against all expenses to be thereby incurred, and shall have full control over the funds for the purposes of the Association, and shall meet on the first Friday in every month at one o'clock P.M. and whenever they consider it necessary for the interest of the Association, or at the call of the Secretary, but notice of the objects of such meeting shall be given by the Secretary: three to form a quorum.

That the subscription from each Society forming the Association, having less than twenty members, shall be five guineas per annum. Twenty and under thirty, seven guineas. Thirty and under fifty, ten guineas. Fifty and under one hundred, fifteen guineas. One hundred and upwards, twenty guineas.

That the Committee shall forthwith prepare such rules for the general government of the Association as they may consider necessary in accordance with the proceedings of this meeting.

That the best thanks of this meeting be given to Mr. Taylor, the Honorary Secretary, for his zealous exertions in forming the Association.

That the best thanks of this meeting be given to Mr. Thomas Hodgson, of York, for his important services in the formation of this Association.

(Signed) R. H. WILSON, Chairman.

That the best thanks of this meeting be given to R. H. Wilson, esq. for his able conduct in the Chair.

THOMAS TAYLOR, Hon. Sec.

N.B.—All communications must be made to the Honorary Secretary.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 18th day of Jan. 1845.

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FOR

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VOL. IV. No. 95.] SATURDAY, JANUARY 25, 1845.

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METROPOLITAN and PROVINCIAL LEGAL ASSOCIATION.—ATTORNEYS' CERTIFICATE DUTY.—The Council of this Association, considering the present a favourable time for urging a repeal of the unfair tax on Attorneys, Solicitors, and Proctors, have caused petitions to the Legislature for the purpose to be prepared, one of which lies for signature at the offices of the Association, 15, New Bridge-street, Blackfriars, London, and others have been forwarded to every town in England and Wales. The Council earnestly request that their professional brethren will readily and unanimously subscribe the petition, and afford whatever they can towards effecting so desirable an object.

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GEORGE FITCH, Secretary.

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„ March 7.	„ Sept. 5.
„ April 4.	„ Oct. 3.
„ May 2.	„ Nov. 7.
„ June 6.	„ Dec. 5.
„ July 4.	

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By EDWARD W. COX,
of the Middle Temple, Barrister-at-Law.

Published at the LAW TIMES Office, 29, Essex-street.

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India Stock	286	287	286½	287	287	287½
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Chilian	101	101⅞	102	102¼	102	102¼
Buenos Ayres	39½	39¾	39¾	40	40⅛	41
Brazilian	89½	89½	90	90	90¼	90
Belgian	101½	102	102	101¾	102	101¾

THE NEW PROJECTED RAILWAYS.

(From the *Gazette* of Friday night.)

Railway Department, Board of Trade,
Whitehall, Jan. 17.

Notice is hereby given, that the Board constituted by the minute of the Lords of the Committee of Privy Council for Trade, of the 24th of August, 1844, for the transaction of railway business, having had under consideration the following schemes for extending railway communication in the district of North Kent, and in the districts of Kent and Sussex, intermediate between the South-Eastern and Brighton railways, viz.

The Central Kent Railway,
The London and Croydon—Orpington branch,
The London and Maidstone,
The London and Ashford,
The London, Chatham, and Chilham,
The London, Chatham, and Gravesend,
The London, Chatham, and North Kent,
The Rye, Tenderden, and Headcorn,
The South-Eastern—Maidstone and Rochester,
The South-Eastern—Tunbridge to Hastings, Rye, and St. Leonard's,
The South-Eastern—branches to Deal and Walmer, and extension and deviation at Margate,
The South-Eastern—Ashford to Hastings,
The South-Eastern—Headcorn to Rye,
The South-Eastern—Hungerford-bridge to Tunbridge and Paddock-wood and branches,
The South Eastern—North Kent, Hungerford-bridge, to Chilham, with a branch to Sheerness, and branch to connect Greenwich and Woolwich,

have decided on reporting to Parliament in favour of the

South-Eastern—Maidstone and Rochester,
South-Eastern—branches to Deal and Walmer, and extension and deviation to Margate,
South-Eastern—Ashford to Hastings,
South-Eastern—Hungerford-bridge to Tunbridge and Paddock-wood and branches,
South-Eastern—North Kent, Hungerford-bridge to Chilham, with branch to Sheerness, subject to any modifications which may appear to be desirable for the naval and military establishments of the country; and reserving consideration of the branch to connect Greenwich and Woolwich;

and against the

Central Kent,
London and Croydon—Orpington branch,
London and Maidstone,
London and Ashford,
London, Chatham, and Chilham,
London, Chatham, and Gravesend,
London, Chatham, and North Kent,
Rye, Tenterden, and Headcorn,
South-Eastern—Tunbridge to Hastings, Rye, and St. Leonard's (with the exception of so much of the line as lies between Tunbridge and Tunbridge-wells),
South-Eastern—Headcorn and Rye.

DALHOUSIE. G. R. PORTER.
C. W. PASLEY. S. LAING.
D. O'BRIEN.

SALE OF A CHURCH LIVING.—On Tuesday the perpetual advowson, with the next presentation to the living, of Trimley St. Martin, in the county of Suffolk, was disposed of by public competition, at the Auction Mart. The large and small tithes had been commuted at the sum of 500*l.* per annum. The outgoings amounted to about 45*l.* a year, but which were compensated by the glebe, consisting of about twenty-one acres. The population, wholly agricultural, consisted of about 500 persons, and the parish comprised 1,200 acres; while the incumbent was in his 86th year. The auctioneer stated the value of it to be 7,000*l.* The first sum offered was 4,000*l.*, and it was knocked down, after a spirited competition, for 5,950*l.*—*Globe*.

PARLIAMENTARY PAPERS.—Mr. Wallace, the member for Greenock, has the following notice of motion on the order book of the House of Commons for the session appointed to commence on the 4th proximo. To move at the commencement of the next session of Parliament as follows:—"That with a view to avoid in future the anomalies and inconveniences which have sprung out of the sale of papers under the order of this House, and restore to it the independent and valuable privileges which formerly were possessed, as well as the respectability which the House of Lords has not forfeited by a sale of the papers printed under its orders, no sale of papers printed under the order of this House shall take place hereafter." The hon. member procured a return in the course of last session on the same subject, from which it appears, that besides the information afforded to the public by the publication of the papers printed by order of the House, the net profit to the public by the sale of printed Parliamentary papers from 1836 to 1843 amounted to 30,189*l.* 7s. 2d.

Public Sales.

By Messrs. D. S. BAKER and SON, at the Mart.

A leasehold estate, comprising four uniform built houses, of handsome elevation, situate Nos. 3, 4, 5, 6, Richmond-terrace, Canonbury-square, Islington; held under separate leases for 76 years, from 29th September, 1842, at a ground-rent of 8*l.* per annum each; let at rents amounting to 176*l.* per annum—1,560*l.*

A residence, No. 5, Upper Vernon-street, Lloyd-square, Pentonville; let at 50*l.* per annum. A lease will be granted by the New River Company, for 80 years from Christmas, 1839, at the annual ground-rent of 4*l.* per annum—430*l.*

A ditto, No 6, ditto—445*l.*

A family residence, No. 1, Percy-circus, Lloyd-square, Pentonville; let at 60*l.* per annum. A lease will be granted for the same term as the preceding lots, at 5*l.* 5s. per annum—520*l.*

A ditto, No. 2, let at 55*l.* per annum, ditto—475*l.*

A ditto, No. 3, let at 60*l.* per annum—485*l.*

A house, No. 2, Great Percy-street, Lloyd-square, Pentonville; let at 45*l.* per annum; a lease will be granted for the same term at 4*l.* per annum—420*l.*

A ditto, No. 4; let at 52*l.* 10s. per annum; ditto—455*l.*

A ditto, No. 8; let at 56*l.* per annum; held for the same term at 5*l.* per annum—405*l.*

By Mr. GEORGE PRIEST, at Garraway's.

Two cottage residences, Nos. 1 and 1½, Brooksby's-walk, Homerton; let at 67*l.* per annum; held for 14½ years, with the power to renew for a further term of 21 years, at the annual rent of 34*l.* and 1*l.* 8s. per annum in lieu of land tax—220*l.*

A house, known as the Prince of Wales, at Lea Bridge, facing the high road; let at 25*l.*; held for 99 years from Lady-day, 1840, at 7*l.* per annum—260*l.*

A cottage and a piece of ground, of the value of 20*l.* per annum, near the preceding lot; held for the same term, at 5*l.* per annum—210*l.*

By Mr. GEORGE ROBINS, at the Mart.

A freehold house and premises, No. 2, Bedfordbury, adjoining Chandos-street—sold for 770 gs.

A noble residence, No. 1, Devonshire-place, the corner of Devonshire-street, near Portland-place, with coach-house and six-stall stable attached; held for a term, of which 42¼ years are unexpired, at 18*l.* ground-rent—2,970 gs.

By Mr. F. CHINNOCK.

Three houses, Nos. 18, 19, and 20, Star-street, Paddington, let at 106*l.* per annum; held for 97 years from Sept. 1825, at 18*l.* 18s. per annum—1,000*l.*

Three ditto, Nos. 21, 22, and 23, ditto—1,010*l.*

A net rent of 20*l.* per annum arising out of a plot of ground measuring 45 feet by 24, upon which is erected a portion of the Marylebone Theatre: held for a term of 99 years from Christmas, 1822, at a peppercorn rent—360*l.*

A house and shop, No. 45, New Church-st. Marylebone; held the same as the preceding lot—750*l.*

A house, with commanding shop, situate No. 46, New Church-st. occupied as a baker's shop; held the same as the preceding lot—800*l.*

A house and shop, situate No. 77, Salisbury-street, let at 26*l.* per annum; held the same as the preceding lots, at a peppercorn—300*l.*

By Messrs. WINSTANLEY.

The perpetual advowson, with next presentation to the living of Trimley St. Martin, in Suffolk, the tithes of which have been commuted at 500*l.* per annum, exclusive of the glebe, consisting of upwards of 21 acres—5,950*l.*

By Messrs. FOSTER and SON.

A freehold house and shop, No. 48, Bell-yard, Temple-bar, long known as Ustonson's depôt for fishing-tackle—275*l.*

A similar house and shop nearly adjoining, being No. 46 in Bell-yard—210*l.*

By Messrs. RUSHWORTH and JARVIS, at Garraway's.

The residence and premises, No. 75, Dean-street, Soho; also superior workshops of considerable extent in the rear, with entrance from Richmond Mews, for many years occupied by the celebrated firm of Rundell, Bridge, and Rundell. The

premises present a frontage of 30 feet towards Dean-street, with a depth from front to rear of about 120 feet; held for 21 years from Michaelmas, 1843, at the annual rent of 160l—sold for 1,800l.

A piece of ground, with 38 feet frontage by a depth of 100 feet, together with three messuages erected thereon, being Nos. 7, 8, and 9, Blizard's-place, Fulham-road, let at 77l.; held for 81 years from Lady-day, 1818, at a ground-rent of 15l. 4s. per annum—sold for 730l.

By Messrs. WILKINSON, at the Mart.

A policy for 1,000l. effected with the London Association 29th June, 1821, on the life of a gentleman whose age then did not exceed 51; annual premium 47l. and from which the deduction of 64 per cent. was made last year, leaving the premium absolutely paid 16l. 18s. 5d.—600l.

A ditto—580l. A ditto—580l.

By Messrs. WARLTERS, LOVEJOY, and SON, at Garraway's.

The lease of the first class establishment, known as the London and St. Katharine's Docks Tavern and Hotel, comprising an excellent wine and spirit deprrtment, situate facing the principal entrance of St. Katharine's Docks; there are also included 10 cottages in the rear in Sun-Court, held for 21 years, at 300l. per annum—450l.

By Mr. C. WARTON.

Two freehold ground-rents, one of 10l. arising from a cottage in Blaystock-lane, Highbury-vale, and one of 11l. arising from two cottages in front of the above—555l.

A profit rent of 35l. per annum, arising from a residence, No. 2, Notting-hill-terrace, Bayswater, with detached coach-house and three-stall stable, let at 120l. per annum; held for 21 years from March 1840, at 85l. per annum—165l.

A net rental of 207l. per annum, arising from six houses and shops, Nos. 1 to 6, Princes-street, Brompton, let at 205l. per annum; held for 67¼ years, at a ground rent of 18l. per annum, sold subject to a mortgage to a building society, called the London and Westminster General Mutual Association, amounting to 11l. 18s. per month, the last payment to be made June 1854—780l.

By Mr. PRICKETT, at the Mart.

A plot of freehold ground, containing 5a. 20p. situate contiguous to Mount-pleasant, at the extremity of the Hornsey-road, land-tax redeemed—2,160l.

A detached villa residence, being the twelfth house in North-terrace, Camberwell, with carriage drive and extensive gardens; held for a term, of which 75¼ years were unexpired at Christmas last, at a ground-rent of 26l. 11s. per annum—1,445l.

An improved rental of 100l. per annum, for 21½ years, arising out of a house and premises, No. 12, Curzon-street, May-fair—695l.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

HUDSON.—At the Grove, Clapham-road, on the 16th inst. the lady of Mr. Hudson, of Doctors'-Commons, of a son.

ROMILLY.—On the 23rd inst. at 32, Gordon-square, the lady of John Romilly, esq. of a son.

TATHAM.—On the 17th inst. in Cambridge-st. Hyde-park, the wife of Montagu J. Tatham, esq. of Doctors'-Commons, of a son.

MARRIAGES.

BLENKIRON, the Rev. B. A.M vicar of Little Coates, Lincolnshire, to Harriet H. Hudson, eldest daughter of Cam Gyde Heaven, esq. solicitor, of Bristol, on the 7th inst. at Bristol.

CHILD, Mr. Henry, solicitor, of St. Swithin's-lane, London, to Miss Ruth Bates, third daughter of Joseph Bates, esq. of Cheapside and Upton, deceased, on the 7th inst. at Hoxton Academy Chapel.

CORNISH, William, esq. solicitor, of Marazion, to Eliza, eldest daughter of Mr. F. Symonds, ship builder, Falmouth, on the 1st inst. at Falmouth.

PENNY, J. D. esq. solicitor, of Taunton, Somerset, to Eleanor, youngest daughter of James Gill, esq. of the same town, on the 21st inst. at St. Olave's Church, Hart-st. London.

DEATHS.

BAINBRIDGE, C. H. esq. solicitor, son of the late George Cole Bainbridge, esq. of Liverpool, at Bombay, on the 18th Nov.

BARBER, Mrs. Mary, relict of the late Mr. Barber, solicitor, Stockport, at Mill-st. Macclesfield, on the 1st inst.

BROWN, John, esq. a magistrate of the counties of Worcester, Stafford, and Salop, and a Deputy-Lieutenant of the former county, at his seat, Lea Castle, Worcestershire, on the 11th inst. aged 66.

CONYERS, Elizabeth, relict of the late George Conyers, esq. formerly of Great Driffield, Yorkshire, solicitor, and one of the coroners for the county of York, and mother of Edward Dade Conyers, esq. of the same place, on the 4th inst. at Great Driffield.

HOARE, Mrs. Eleanor, relict of the late Patrick Hoare, esq. solicitor, of Dublin, at her residence, Haddington-road, Dublin, aged 75.

JAMESON.—The infant daughter of Thomas Jameson, esq. solicitor, on the 6th inst. at the South mall, Cork.

KEIR, George, esq. solicitor, on the 4th inst. at Barnsley, aged 77.

PAGE, Samuel, esq. a magistrate for the counties of Middlesex and Hertford, on the 18th inst. at Hadley-house, Middlesex, aged 59.

RAYNER, Miss Ann, only surviving daughter of the late John Rayner, esq. of the Inner Temple, on the 19th inst. at her residence, Chelsea, aged 78.

SIMS, Jemima, younger daughter of the late John Sims, esq. of Whiterock, Glamorganshire, on the 22nd inst. at H. Ball's, esq. 38, Torrington-sq.

SUPPLE, Daniel, sen. esq. many years a respectable solicitor of Kerry, on the 2nd inst. at Oyster-hall, Tralee.

WELLS, Piper, jun. esq. Kingston-upon-Hull, solicitor, at Torquay, aged 36.

WILLIAMS, Sir Charles F. Commissioner of the Court of Bankruptcy, on the 17th inst. at his house in Hyde-park-square.

WRIGHT, William, esq. one of her Majesty's Justices of the Peace for the counties of Lancaster and Chester, on the 29th Dec. at Welbeck-house, Ashton-under-Lyne, aged 66.

THE WILL OF THE LATE VENERABLE ARCHDEACON BATHURST, who died at Cheltenham, on the 11th September last, has lately been proved in the Prerogative Court of the Archbishop of Canterbury, by the widow, Mrs. Frances Bathurst, the sole executrix. He was Archdeacon of Norwich, and resided at Northcreak, in the county of Norfolk. The will is in his own handwriting, and made in May, 1844. It commences by imploring God's blessing on his own invaluable life, and of his exemplary children. He then gives his worldly goods—for instance, his household furniture, carriages, horses, arrears of tithes, and so forth, to his wife, leaving it with her to do as she thinks best for the family; but desires that his sons and daughters will select and accept of books as tokens of his sincere affection. To his son Henry, a lieutenant-colonel in the Guards, he expressly gives 'Todd's Milton,' which was presented to the Archdeacon by the present Earl Bathurst when a boy; to his son William he gives his 'Musæ Etonenses;' to his daughter, Mrs. Browne, 'Addison's Works,' bd. in morocco; and requests that his three daughters will each select a set of books. His sons-in-law, Lieutenant-Col. Phipps and J. T. G. Browne, esq. are likewise requested to make choice of such books as they may prefer, to be held as tokens of the respect he entertained for them. He most particularly requests that the Marquis of Normanby will receive, for the use of the library of Mulgrave Castle, the Great Testament, in two volumes, carefully interlined by the father of the Archdeacon: this he leaves to his lordship in remembrance of the kindness shewn by his lordship and Lady Normanby to his daughter, Mrs. Colonel Phipps, and goes on to state that he regrets to the last that his lordship did not separate from his late associates in power, rather than allow the interests of his family to be sacrificed by faithless and cruel colleagues, and finishes this paragraph in the following words:—"Lord Normanby is a lion of Judah, and will never suit the worshippers of Baal." By a power of appointment, which he enjoyed under the will of Lord Castlecute, he had made over 2,000l. to his (as he described) excellent son Henry, upon conditions favourable to his dear mother during her life. The personal estate sworn under 12,000l.

WILLS OF THE HON ROBERT OTWAY CAVE, M.P. SIR FRANCIS BURDETT, BART. AND DAME SOPHIA BURDETT.—Probate of the will of the Hon. R. Otway Cave, late member for Tipperary, has just been granted by the Perogative Court of Canterbury to Mrs. Sophia Cave, the relict and sole executrix, to whom the whole of the property is bequeathed, as well as that under settlement. The personal estate in England, sworn under 18,000l. Mrs. Otway Cave is the eldest daughter of the late Sir Francis Burdett, and received a marriage portion of 30,000l. from Sir Francis on the day of her marriage. The hon. member was in his 49th year, and died without issue. He was the only son of the late Admiral Otway and of the Baroness Braye, and heir to the Peerage, the patent of which had been lately revived after centuries of abeyance. The claimants for the Barony were the Duke of Bedford, the present Baroness, and Sir Percival Hart Dyke. The title descends to the eldest daughter of the present Baroness.—The will with two codicils of the late Sir Francis Burdett, Bart. was proved shortly after his decease, by the executors, E. Majoribanks, esq. Sir Edmund Antrobus, bart. W. M. Coulthurst, esq. and E. Majoribanks, esq. jun. all of the firm of Messars. Coutts and Co. bankers. The personal property was sworn under 160,000l. By the will, which is dated 6th February, 1840, a very liberal provision is made for the daughters of the deceased Baronet, particularly the eldest, now the widow of the late Hon. Mr. Otway Cave; and by the first codicil, made three months after his will, he leaves to her an additional sum of 20,000l. (in which she had an interest prior to her marriage, but had assigned all her claim therein to her father, Sir Francis, on receiving her marriage portion). The Baronet by his last codicil, executed three months before his death, has bequeathed to each of his servants a comfortable annuity. The original will and first codicil is on parchment, and occupies several large skins closely written. The Baronet only survived his wife twelve days; both died at their residence, James's place;—her ladyship on the 12th January, 1844, and Sir Francis on the 24th.—In the case of the will of Dame Sophia Burdett (wife of Sir Francis), a special grant of letters of administration with the will annexed was taken out (shortly after the probate of her husband's will) by John Parkinson, esq. her executor, with the consent of the executors under the will of Sir Francis. Her will is dated 31st July, 1843, is very short, and written on one sheet of paper; by it she disposes of the large box of autographs (the gift of her father) to Sir Francis. The box containing miniatures, with its contents, together with her portfolio of rare prints, she gives to her daughter, Mrs. Otway Cave; a portion of family plate she bequeaths to her daughter, Mrs. Trevanion; all her trinkets and jewellery she directs to be divided amongst her four daughters; all locked up boxes she gives to her daughter Angela Burdett Coutts; all her money savings she gives to the Right Hon. Baroness North and Lady Sandon, her nieces, and Mrs. Otway Cave and Mrs. Trevanion, her daughters. All her other pictures and prints she gives to her daughters, Mrs Trevanion, Joanna, and Clara. The effects were sworn under 10,000l.—*Ibid.*

AWARD OF THE TURNPIKE TRUST COMMISSIONERS.—The commissioners appointed under the act for consolidating turnpike trusts in South Wales have made their award to the different trusts in Carmarthenshire. In the Main Trust the sum of 90l. has been awarded for every 100l. of debt. The creditors of the Kidwelly and Loughor Bridge Trust are to have 100l. per cent. with all arrears of interest up to the 31st Dec. 1844. On the Newcastle Trust, 80l. per cent. has been awarded, without any arrears of interest. On the Three Commotts Trust only 30l. per cent. has been awarded; while on the Llandilo Rhynnws Trust the sum of 1,450l. has been given, which is to sweep off all the debts, amounting to upwards of 4,500l. We are given to understand that very great dissatisfaction exists amongst the majority of the creditors of the different trusts with respect to the commissioners' awards.—*Welchman.*

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT, by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR of ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT by HENRY BAKER, Esq. of Lincoln's Inn, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH by J. C. SYMONS, Esq. of the Middle Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT of COMMON PLEAS by HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law, and W. PATERSON, Esq. of Gray's-inn, barrister-at-law.

The COURT of EXCHEQUER by JOHN BRIDGE ASPINALL, Esq. of the Middle Temple, Barrister-at-Law, and HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by A. A. FRY, Esq. of Lincoln's-inn, Barrister-at-Law.

ECCLESIASTICAL AND ADMIRALTY COURTS.

ECCLESIASTICAL COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

ADMIRALTY COURT by JOHN W. BITTLESTON, Esq. of the Middle Temple.

BANKRUPT AND INSOLVENT COURTS.

The COURT of REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT by J. ANGUS HOMES, Esq. Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by H. TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

NORTHERN CIRCUIT, by JAMES A. FOOT, Esq. of the Middle Temple, Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

OXFORD CIRCUIT, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

NORFOLK CIRCUIT by HENRY MILLS, Esq. of the Middle Temple, Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

N.B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

New Publications.

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Sum Assured.	Time Assured.	Sum added to Policy.
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5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

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	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
20	1 17 4	1 13 11	1 2 0	1 13 0	2 4 0
30	2 6 10	2 2 7	1 8 0	2 2 0	2 16 0
40	3 3 6	2 17 8	1 19 0	2 18 6	3 18 0
50	4 13 4	4 4 11	3 0 2	4 10 3	6 0 4

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Age	1st Year	2nd Year	3rd Year	4th Year	5th Year	6th Year	7th Year.
30	1 6 4	1 7 1	1 7 11	1 8 9	1 9 7	1 10 5	1 11 4

Extracts from the EVEN RATES for Select Lives.

Age.	20	30	40	50	60	70	80
Prem	1 11 9	2 2 0	2 17 1	4 2 0	6 10 9	10 18 6	19 1 8

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JOINT STOCK COMPANIES REGISTRATION ACT, 7 & 8 Vict. c. 110.

NOTICE is hereby given, that by the above-mentioned Act, all Joint Stock Companies existing on the 1st of November, 1844 (with the exceptions therein mentioned), are bound to Register their Names, Purposes, and Places of Business, at the Registry-office, Serjeants'-inn, Fleet-street, before the 1st of February, 1845, under a penalty not exceeding 50*l*.

The return must be made in the prescribed form, and must be signed by a Director, or some Managing Officer of the Company.

FREDERICK ROGERS, Registrar of Joint Stock Companies.

Serjeants'-inn, January 20, 1845.

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AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 96.] SATURDAY, FEBRUARY 1, 1845.

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Three per Cents. Reduced	100¼	100¼	100¼	100¼	100¼	100¼
New Three & a-quarter per Cts	104¼	104¼	104⅛	104	104⅛	104¼
Long Annuities	12¼	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	213	213¾	214	214¼	214¼	215
India Stock	286½	287	286¼	287	287	287½
India Bonds, prem..	75	74	75	75?	76	75
Exchequer Bills, prem.	64	64	65	66	66	66
FOREIGN.						
Spanish Five per Cents.......	28⅛	28¼	28½	28⅛	28⅜	28¼
Spanish Three per Cents.	40¼	40¼	40¼	40½	40¼	40¼
Russian	119¼	119¼	119¼	120	120	120
Peruvian...............	28¼	27½	28⅛	28⅛	28⅛	28⅛
Portuguese	59¼	59½	59½	60	60	60
Mexican	36¼	36¼	36	36	36	36
——— Deferred	16¼	14¼	16¼	16¼	16⅛	16¼
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Colombian	14¼	14¼	14¾	14½	14⅜	14⅜
Chilian	101¼	101½	102	102	102	102
Buenos Ayres	40	40	41¼	40	41	41
Brazilian	89¼	89¼	90¼	90¼	90¼	90¼
Belgian	101	102	102	101¼	102¼	101

THE NEW PROJECTED RAILWAYS.

(From the *Gazette* of Friday.)

Railway Department, Board of Trade, Whitehall, Jan. 24.

Notice is hereby given, that the Board constituted by the minute of the Lords of the Committee of Privy Council for Trade, of the 24th of August, 1844, for the transaction of railway business, having had under consideration the following schemes for completing the eastern line of railway communication to Scotland, viz.

The Northumberland Railway, with Branch from Berwick to Kelso,
The Newcastle and Berwick Railway, with Branch from Berwick to Kelso,

have determined on reporting to Parliament in favour of the

Newcastle and Berwick Railway, with Branch to Kelso;

and against the

Northumberland Railway, with Branch from Berwick to Kelso.

And the Board having had under consideration the following schemes for extending railway communication in the districts of Norfolk and Suffolk, viz.:

The Bury and Ipswich Railway,
The Diss, Beccles, and Yarmouth,
The Diss and Colchester,
The Direct East Dereham and Norwich,
The Diss and Colchester—Redham and Lodden Branches,
The Eastern Counties — Colchester and Bury Extension,
The Ipswich and Norwich Extension,
The Lynn and Ely,
The Lynn and East Dereham,
The London and Norwich Direct,
The Norwich and Brandon—Diss and Dereham Branches,
The Wells and Thetford,

have decided on reporting to Parliament in favour of the

Bury and Ipswich,
Ipswich and Norwich Extension,
Lynn and Ely;

against the

Diss and Colchester,
Eastern Counties—Colchester and Bury Extension,
London and Norwich Direct,
Norwich and Brandon—Diss Branch,
Wells and Thetford;

and recommending the postponement until a future period of the

Direct East Dereham and Norwich,
Norwich and Brandon—Dereham Branch,
Lynn and East Dereham,
Diss, Beccles, and Yarmouth,
Diss and Colchester — Redham and Lodden Branches.

And the Board having had under consideration the following schemes for extending railway communication to the north and north-west of Ireland, viz.:—

The Belfast and Ballymena Railway,
The Dublin and Belfast Junction, with Branch to Drogheda and Kells,
The Dublin and Drogheda—Howth Branch,
The Dundalk and Enniskillen,
The Great North Western (Irish),
The Northern Railway, inland line (Armagh to Dublin),
The Newry to Enniskillen,
The Ulster Railway—Extension from Portadown to Armagh,

have determined on reporting to Parliament in favour of

Belfast and Ballymena,
Dublin and Belfast Junction, with Branch to Drogheda and Kells,
Dublin and Drogheda—Howth Branch,
Ulster Extension—Portadown to Armagh;

and of the

Dundalk and Enniskillen (with the exception of the Monaghan Branch),
Newry and Enniskillen (with the exception of the portion of the line between Newry and Armagh); subject to equitable arrangements for the construction and joint use of the line between Enniskillen and Clones common to the two schemes; and also for improving the railway communication by the Belfast Junction line to Newry, and for securing due facilities to the Newry traffic;

and against the

Great North-Western (Irish),
Northern Railway, inland line (Armagh to Dublin).

DALHOUSIE. G. R. PORTER.
C. W. PASLEY. S. LAING.
D. O'BRIEN.

SALES OF LANDED PROPERTY.—John Gladstone, esq. of Fasque, has become the proprietor of the estate of Phesdo and Pitnamoon, at the price of 32,000*l.* This beautiful property lies nearly adjacent to Fasque, and will constitute Mr. Gladstone one of the principal heritors of the parish of Fordoun. The valuable estate of Rossie, in the parish of Craig, has also been disposed of by Mr. Ross. The purchasers, we understand, are the trustees of Mr. Macdonald, of St. Martin's, near Perth, and the price 115,000*l.*—*Edinburgh Witness.*

THE PRICES OF RAILWAY SHARES.—From the share table recently issued by Mr. Watson, of Glasgow, some curious particulars of fluctuations in the price of shares may be gathered. Thus, on the 8th of January, 1838, the shares of the Great Western Railway were at 12 premium; at the corresponding period of 1839 they were at 13 premium; in 1840 they had sunk to 1 premium; in 1841 they again rose to 31 premium; in 1842 they were 22½; 1843 26¼; 1844, 32; and this year, on the same day, they had advanced to 87 premium. The are now much higher. The Liverpool and Manchester have shewn the following fluctuations as to premium:—1838, 97; 1839, 104; 1840, 85; 1841, 86; 1842, 96; 1843, 91; 1844, 130; and 1845, 117. London and Birmingham fluctuated from the lowest point of 61 premium (in 1840) to the highest (in 1844) of 137. The most remarkable case is the York and North Midland, the shares of which in 1838 were at 2¾ discount, and rose by almost regular steps to 56 premium (on a 50*l.* share) in 1845. The South-Western have in the same period risen from 12 discount to about 47 premium on 39*l.* shares. The Great North of England were in 1838 marked "no price;" in 1840 they were at 25 discount; in 1843 at 41 discount; whereas in 1845 they were at 47 premium on 100*l.* paid. The Manchester and Leeds shares, on the 8th of January of the same seven years, have stood thus:—1 premium; 20½ premium; 10 premium; 12 premium;

par; 2 premium; 31 premium; 55 premium. The largest advance during 1844 was in the Great North of England, 61*l.*; and the greatest decrease in Liverpool and Manchester, and York and North Midland, of 14*l.*—*Railway Record.*

Public Sales.

By Mr. GEORGE ROBINS, at the Mart.

An investment of the first character, secured upon the noble town mansion, No. 26, Upper Brook-street, Grosvenor-square, being the fourth house from Park-lane, with double carriage-house and six-stall stable opening to the mews at the rear; the residence is let upon lease, for the whole term, to General Sir Moore Disney, K.C.B. who has expended a large sum upon the premises, at a clear rental of 500*l.* a year; held under the Marquis of Westminster by an original lease, of which there is an unexpired term of 24 years, at a ground-rent of 28*l.* a year—5,550 guineas.

A reversion to the principal sum of 3,278*l.* payable on the death of a gentleman in his 67th year, if three persons of the ages of 26, 25, and 25, or any of them, shall be then living, the above sum is secured and charged upon estates producing 437*l.* a year in the county of Wicklow, also on renewable leaseholds, in the city of Dublin, producing a clear rental of 64*l.* a year; also on the sum of 2,489*l.* 2s. 3d. Consols standing in the name of the Accountant General of the Court of Chancery in Ireland. The estates and Consols are also charged with the payment of two annuities—viz. one of 18*l.* for the life of a lady aged 44, and one for 200*l.* for the life of a lady aged 50—1,300 gs.

By Messrs. HOGGART and NORTON, at the Mart.

A residence, situate in South-street, Grosvenor-square, overlooking the Park; held for a term, of which 41 years will be unexpired at Lady-day next, at a ground rent of 50*l.* per annum; sold by direction of the executors of the late Right Hon. Lord Western; the property is free from land-tax—1,500*l.*

By Mr. MASON, at Garraway's.

Four residences Nos. 8, 9, 11, and 12, Canterbury-street, York-road, Lambeth, and a ground-rent of 7*l.* arising from No. 10, producing an annual rental of 186*l.* held for 81 years from Lady-day 1842, at 35*l.* per annum—1,470*l.*

A residence, No. 16, Canterbury-street, Lambeth, let at 42*l* per annum, held for 80 years from Lady-day 1843 at 6*l.* 10s. per annum—378*l.*

A residence adjoining, being No. 17—388*l.* 10s.

Two ditto, being Nos. 18 and 19, Canterbury-street, let at 84*l* held for 80 years from Lady-day 1843, at 13*l.* per annum—766*l* 10s.

Two ditto, Nos 20 and 21 ditto—766*l.* 10s.

Two ditto, Nos. 22 and 23—766*l.* 10s.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

COLLINS—On the 12th ult. at Waltham-ter., Merrion avenue, Dublin, the lady of William Collins, esq. solicitor, of a son.

CHITTY.—On the 24th ult. the wife of Tompson Chitty, esq. of the Temple, of a son.

CLARKE.—On the 30th ult. in Glocester-pl. Portman-sq the lady of Thomas Sydenham Clarke, esq. of Lincoln's-inn, barrister-at-law, of a daughter.

MARRIAGES.

DOUGLAS, C. Brown, esq. Advocate, of Edinburgh, to Mary Christie, eldest daughter of C. M. Christie, esq. of Durie, on the 14th ult. at Durie, Fife.

HADOW, Patrick Douglas, esq. Barrister-at-law, eldest son of Patrick Hadow, esq. of Upper Harley-st London, to Emma Harriet, second daughter of Robert Parry Nisbet, esq. of Southbroom-house, North Wilts. on the 28th ult. at Southbroom.

KEANE, John, esq. Limerick, to Louisa Anna, eldest daughter of Boyle Minchin, Esq. of Wilton, Tipperary, on the 13th ult. at Balleymackey.

LODER, Mr. Charles, of Woodbridge, to Mary Ann, third daughter of R. S. Lockwood, esq. attorney-at-law, Lowestoft, on the 14th ult. at Chillesford.

MONTGOMERY, Captain Henry, to Frances, daughter of the late Alexander Reid, esq. barrister-at-law, of Demerara, on the 13th ult. at Belfast.

RUMSEY, Robert Murray, esq. Colonial Secretary, to Louisa Frances, third daughter of the late Hon. William Wharton Rawlins, member of her Majesty's Council, St. Christopher's, on the 12th Dec., at Basseterre, St. Christopher's.

SHORT, John, esq. barrister-at-law, to Alice, only child and heiress of Robert Drought, esq. of Cappagolden, in the King's county, on the 16th ult at Doorah, near Birr

DEATHS.

ASTON, the Right Hon. and Rev. Walter Hutchinson, Lord, on the 21st ult. at the Vicarage, Tardebigg, Worcestershire. The title is extinct.

BAIRD, Frederick William, second son of Henry John Baird, esq. Receiver-general of Berbice, at the Hon. Mr. Justice Wightman's, St. Alban's Bank, Hampton, on the 22nd ult. aged 17.

BENNETT, John, esq. jun. only son of John Bennett, esq. of Pyt-house, M.P. for South Wiltshire, on the 26th Dec. at Madeira.

CARRUTHERS, Mrs. of St. Leonards-on-Sea, on the 20th ult. at 6, Upper Wimpole-st.

COTTERELL, Sir John Geers, bart. on the 26th ult. at Garnons, Herefordshire, aged 88.

CULLEN, James Power, esq. eldest son of the late Michael Cullen, esq. barrister-at-law, late of Mount Venus, Dublin, on the 13th, ult. at Kingstown, Ireland.

DIXON, William, esq. one of the late chartered magistrates of Dublin, on the 11th ult. at Lower Mount-st. Dublin.

LAWRENCE, Mr. John, solicitor, of Old Fish-st. Doctors' Commons, aged 41.

MACKENZIE, Sir Colin, bart. of Kilcoy Castle on the 16th ult. at Belmaduthy-house, Ross-shire, aged 63.

PHILLIPS, Barry Brougham, son of Mr. Commissioner Phillips, on the 16th ult. at Liverpool, aged 10.

POOLE, Henry Joseph Ruscombe, infant son of Joseph Ruscombe Poole, esq. on the 29th ult. at Bridgwater.

WATKINS, Joshua Phillips, surgeon, and coroner for the county of the borough of Carmarthen, on the 19th ult. at Carmarthen, aged 44.

THE BAR.—The "standing" of the first seven members of the Bar eligible for promotion is as follows:—Atcherley, July 5, 1810; Platt, Feb. 9, 1816; Law (Recorder), Feb. 7, 1817; Thesiger (Solicitor-General), Nov. 18, 1818; Godson, July 10, 1821; Kelly, May 7, 1824; Wortley, Jan. 21, 1831, Mr. Justice Erle was called to the bar on the 26th of November, 1819.—*Sun.*

ALTERATIONS IN THE COURT OF BANKRUPTCY.—On Saturday Mr. Commissioner Goulburn presided in the court previously occupied by Mr. Commissioner Fonblanque, who in future will hold his sittings in the room where the late Sir C. F. Williams held his court. Mr. Commissioner Evans, as the senior commissioner, will be the Chief Commissioner.

COSTS OF UNCERTIFICATED ATTORNEYS.—An opinion has prevailed to some extent, that although an attorney who had not duly renewed his certificate could not recover costs against his client; yet that the client, as between party and party, might recover his costs. It has, however, been recently determined by the Masters of the Common Pleas, that the only costs which can be allowed between party and party, where the attorney is uncertificated, are the *costs out of pocket*, that is to say, payments made in carrying on the proceedings, and not any fees or emoluments to the uncertificated attorney himself, although really paid to him by the client. The Masters also require that proof should be given of the actual payment to the attorney, and it must appear that the disbursements were properly made by him. In the case in which this rule was laid down, an affidavit was made of payments to the attorney which exceeded the disbursements, but the Master allowed only the sums properly disbursed in the action.—*Legal Observer.*

A figure of Justice has been placed over the entrance of the new Bankruptcy Courts at Liverpool, whose right hand was to have held a pair of scales: but it is empty; for, after repeated trials, it was found that Justice would not hold the scales evenly! so, to avoid the ludicrous remarks of the passers-by, she has been deprived of them.

The *Dublin Monitor* publishes a document which shews how "a Monaghan County Jury" behave. Some time back, five persons swore informations against Smith, a sub-inspector of police, for having stabbed a man named M'Caffrey, in Clones, during a riot that took place at a Repeal meeting held in that town. The Grand Jury, on an indictment being sent up against Smith, ignored it; whereupon Smith preferred an indictment against the five persons who swore the informations against him. One of them, named Jordan, was tried at the last Assizes, and found guilty. Subsequently, however, James Thornton, one of the jury, made an affidavit, setting forth that the evidence had to his mind proved Jordan's innocence; that one of the jurors tried to persuade the others to convict the prisoner; that whisky was introduced into the jury-room and many of the jurors were made drunk, and "in consequence of his drinking such whisky, that this deponent agreed to the said verdict;" that he only did so upon the promise that the other jurors would join in a recommendation to mercy, which promise they afterwards broke! The Crown lawyers abandoned the conviction.

WILL OF FRANCIS BAILY, esq. F.R.S. and D.C.L. was lately proved in Doctors' Commons. The executors are John Baily, jun. the nephew, David Jardine, and Philip Martineau, esquires. After devising his several estates to relatives, he leaves to his numerous friends legacies of various amounts. To his sister he gives all manuscript letters and papers, and leaves her the house and furniture at Tavistock-place and 1,000*l.* a year; leaves to his executors his printed books and various instruments and apparatus, as assets in their hands; gives to Sir J. Herschel, the celebrated astronomer, and to Lieutenant Stratford, superintendent of the *Nautical Almanack*, 1,000*l.* each; to E. B. Airy, Astronomer Royal, Greenwich, 500*l.*; and to A. D. Morgan, esq. 200*l.*; some shares in the Stock Exchange to poor members; to his servants, legacies and mourning. To charitable institutions he bequeaths as follows:—the Dispensary, New-road, 300*l.*; the Dispensary, Burton crescent, the University College Hospital, the King's College Hospital, and the Seaman's Hospital at Greenwich, 200*l.* each; the Society of Foreigners in Distress, 100*l.*; to the several police courts, 20*l.* each for objects of charity. The will is in his own handwriting, dated 12th August last; he died on the 30th of the same month at his residence, Tavistock place, in his 71st year. The personal effects are sworn under 45,000*l.* He was President of the Royal Astronomical Society, Fellow of the Royal Society, and of the Linnean and Geological Societies, and member of the Royal Irish Academy.—*Historical Register.*

WILL OF THE LATE GEORGE WOODFALL, esq. of Great Dean Yard, Westminster, and Angel-court, London, dated 11th October, 1844, who died 22nd December, has been proved in Doctors' Commons by his sons, the executors. To his eldest son and partner he leaves all his manuscript correspondence and letters, including those from the author of "Junius;" rings to numerous friends (Sir Henry Ellis and others); legacies to his servants.—*Ibid.*

WILL OF THE LATE WILLIAM BRAME ELWYN, Doctor of Law, who was of York terrace, Regent's Park, has only this month been proved by the relict and sole executrix, now the wife of George Fitch, esq. The deceased died in June, 1841, without leaving any available property. Probate has now been applied for to procure a power of attorney for the purpose of endeavouring to recover the amount of some American securities. Effects sworn under 3,000*l.* Wills not proved within three years after the death of the testator, require an affidavit to be made by the executors, accounting for the delay, as in this case.—*Ibid.*

WILL OF THE LATE LIEUT.-GEN. THE HON. SIR ROBERT LAWRENCE DUNDAS, K.C.B. who died at Loftus, in the county of York, on 23rd November last, has just been proved in the Prerogative Court of Canterbury, by the Right Hon. the Earl of Zetland, the nephew and sole executor, to whom the estate at Loftus is bequeathed, and other estates adjoining; also the alum-works and stock, the property of Sir Robert. He is also appointed the residuary legatee of both real and personal estate. The property at Longhull is bequeathed to his sister, the Hon. Frances Chaloner, for her absolute use. The will is very short, and dated 10th December, 1838. The personal estate within the province sworn under 5,000*l.*—*Ibid.*

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Special Pleader.

HOUSE of LORDS by WILLIAM PATERSON, Esq. of Gray's-inn, Barrister-at-Law.

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All Persons intending to prefer Bills of Indictment, exhibit Articles of the Peace, &c. at the said Sessions, must leave instructions at the Office of the Clerk of the Peace in Gank-street, on or before the Wednesday preceding the Sessions, and the Prosecutors and Witnesses must be ready to go before the Grand Jury immediately after the Court is opened. Dated this 4th day of February, 1845.

RICHARD TOLLER,
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GORST & BIRCHALL,
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Clerk of the Peace's Office,
Preston, 3rd February, 1845.

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By Order,
CHARLES AUGUSTIN SMITH, Secretary.
Crooms Hill, Greenwich, Feb. [illegible] 1845.

ATTORNEYS' CERTIFICATE DUTY.—The Council of the Metropolitan and Provincial Legal Association beg to thank those gentlemen to whom they have caused petitions for the Repeal of the Certificate Duty to be forwarded for the exertions they have used in obtaining the signatures of their professional brethren, and they beg to urge on those who have not yet completed the number of signatures that it is in their power to obtain, that they will do so without loss of time, and transmit the list to the Secretary of the Association.

Should any gentleman not have had an opportunity of affixing his own name to the petition, or be able to obtain the signature of others, it is earnestly requested that he will acquaint the Secretary of it, who will immediately supply him with a copy of the petition for the purpose, and it is again urged that no delay take place.

Unanimity is essential to success, and the petition must be soon presented. GEO. FITCH, Secretary.

15, New Bridge-street, Blackfriars,
7th February, 1845.

THE LITERARY JOURNAL OF YOUNG ENGLAND.
This day No. 26 of

THE CRITIC, a Journal of British and Foreign Literature and Art, Guide to the Library and Book-club, and Booksellers' Circular, published on the 1st and 15th of each month, in 32 large pages, price 6d. or 7d. stamped for post. It will be regularly forwarded, by post, for half a year, to any Subscriber transmitting 6s. in penny postage stamps.

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£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

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Age	For 1 Year	For 7 Years	Whole Life.
Next Birthday—20	£0 19 11	£1 2 2	£1 18 1
.. 30	1 6 10	1 8 7	2 8 1
.. . 40	1 14 11	1 16 8	3 2 6
. . 50	2 6 9	2 11 3	4 5 6
. 60	3 12 6	4 4 10	6 [illegible] 8

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Age.	Annual Premium.		
	One Year.	Seven Years.	Whole Life.
	£ s. d.	£ s. d.	£ s. d.
20	1 0 9	1 1 6	1 13 11
30	1 2 9	1 3 3	2 2 1
40	1 5 6	1 7 6	2 16 4
50	1 15 9	2 1 6	4 1 11
60	3 3 5	3 17 0	6 8 2

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New Three & a-quarter per Cts	104	104¼	103¾	103¾	103¾	104¼
Long Annuities	12¼	12¾	12¼	12¼	12⅜	12⅜
Bank Stock	213	213¼	213	214	214	214¼
India Stock	284	284	282½	281½	283	284
India Bonds, prem.	79	81	85	85	85	85
Exchequer Bills, prem.	63	64	62	64	63	64
FOREIGN.						
Spanish Five per Cents.	27¾	27¾	27¾	27¾	28	28
Spanish Three per Cents.	39¾	39¾	40	40¼	40¼	40¾
Russian	120	119¾	119½	119	120	119¾
Peruvian	32½	33½	33¼	33¾	33¾	34
Portuguese	59	59¾	60	59½	59½	60
Mexican	36	36	36	36	36¼	36
—— Deferred	16¼	16½	16¾	16¾	16½	17¼
Dutch Two-and-a Half per Cents.	62¼	62¼	62¾	63	63¼	63½
—— Five per Cents.	99	99½	99¼	99	99¼	97½
Danish	89	89½	89¼	89	90	89½
Colombian	14¼	14¼	14¼	14¾	14¼	14¼
Chilian	100	101	101	101	101	102
Buenos Ayres	10	10½	11	11½	11½	12
Brazilian	89	89½	90	90½	90	90
Belgian	102	102½	102	101½	102¼	102

On Thursday last, at the Auction Mart, Mr. Marsh (of the firm of Fuller and Marsh, Charlotte-row, Mansion House) disposed of, by auction, the absolute reversion to 20,000*l*. sterling, secured on a sum of 49,622*l*. 19s. 5d. Three per Cent. Consols (standing in the name of the Accountant-General of the Court of Chancery) and on two freehold farms, one in the county of Gloucester, and the other in Essex (valued at 30,000*l*.), and to which absolute reversion the purchaser will become entitled on the decease of the vendor's grandmother, aged sixty-five years, and father, aged forty-nine years, who have life interests, when, after an animated competition, it was sold for 6,920*l*. The estimated value was stated to be about 8,000*l*. Also numerous shares in various companies; among them was an annuity or rent-charge, of 25*l* per annum, payable half-yearly, most amply secured on Covent Garden Theatre, with a transferable free admission. The annuity was granted in the year 1809, for a term of eighty-five years, fifty of which were unexpired at Michaelmas, 1844. The annuity deed bears, with those of other trustees, the autograph of John Philip Kemble. The first offer for the share was 50*l*. and it was ultimately knocked down for 105*l*. The shares in the Hungerford and Lambeth Suspension Foot Bridge sold at a premium, and numerous policies of assurance were sold from 50 to 75 per cent. above the office value.

Depreciation of Theatrical Property.—On Thursday at one o'clock, a sale by auction was proceeded with at the Auction Mart, of shares in various companies. Among them was an annuity or rent charge of 25*l*. per annum, payable half-yearly, clear of income and all other taxes, on Covent-Garden Theatre, with a transferable free admission. The annuity was granted in the year 1809 for a term of eighty-five years, fifty of which were unexpired at Michaelmas last (1841). The annuity deed bears, with those of other trustees, the autograph of John Philip Kemble. The first offer for the share was 50*l*. and, after a very languid bidding, was knocked down for 105*l*. about one-tenth its cost.

Reversion of 20,000*l*.—On Thursday, at the Auction Mart, were disposed of by auction the absolute reversion to 20,000*l*. sterling, secured in a sum of 49,622*l*. 19s. 5d. Three per Cent. Consols (standing in the name of the Accountant-General of the Court of Chancery), and in two freehold farms, one situate in the county of Gloucester, and the other in the county of Essex (valued at 30,000*l*.), and to which absolute reversion the purchaser will become entitled on the decease of the vendor's grandmother, aged 65 years, and father, aged 49 years, who have life interests; when, after an animated competition, it was sold for 6,920*l*. The estimated value was stated to be about 8,000*l*.

John Gladstone, esq. of Fasque has become the proprietor of the estate of Phesdo and Pitnamoon, at the price of 32,000*l*. This beautiful property lies nearly adjacent to Fasque, and will constitute Mr. Gladstone one of the principal heritors of the parish of Fourdoun.—*Aberdeen Herald.*

Public Sales.

By Mr. BARNES.

Two freehold ground-rents, amounting to 15*l*. a year, arising from Nos. 1, 2, 3, and 4, Eden Cottages—410*l*.

A cottage residence, situate in Portland-place North, Stockwell; held for 84 years from June, 1836, at a ground-rent of 7*l*. 10s. a year—205*l*.

A ditto ditto—210*l*.

Two copyhold houses, Hollybush-hill, Hampstead, let for 40*l*. a year—390*l*.

By Messrs. FULLER and MARSH.

A house, No. 6, Arnold's-place, Walworth, let at 26*l*.; held for 88½ years from December, 1796, at a peppercorn—275*l*.

Two houses, Nos. 1 and 5, Arnold's-paragon, let at 38*l*.; held for 97 years, at a peppercorn—290*l*.

A house, No. 15, Arnold's place, let at 22*l*. 13s 6d.; held for 80 years from March 1795, at 3*l*. per annum—185*l*.

A ground rent of 2*l*. 9s. per annum for 40 years, secured on No. 3, Penton-street, Walworth—53*l*.

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An annuity or rent-charge of 25*l*. per annum, secured on the immense property of Covent-garden Theatre for 50 years from September 1844—105*l*.

Five 25*l*. shares, 25*l* called and paid, in the Hungerford and Lambeth Suspension Foot-bridge Company—26*l*. 10s. per share.

Five similar shares—26*l*. 10s. per share.

The absolute reversion to 20,000*l*. sterling, secured on a sum of 49,622*l* 19s. 5d Three per Cent. Consols, and on two freehold farms, one situate in the county of Gloucester, and the other in Essex; let at 1,030*l*. per annum, and to which absolute reversion the purchaser will become entitled on the decease of the vendor's grandmother, a lady now of the age of 65 years, and that of his father, a gentleman aged 49 years, who have life interests—6,920*l*.

One 100*l*. share, 85*l* called and paid, in the University of London, Somerset House—5*l*.

A similar share—5*l*.

Two 150*l* shares, 150*l* called and paid, in the Bolanos Mining Company, established in the year 1826; the mines are situate in the state of Zacatecas—5*l*. 2s 6d. per share.

Two similar shares—5*l*. 7s 6d per share.

The absolute reversion to a house and premises, No 42, Manor-place, Walworth; also the absolute reversion to a moiety of No 44 Manor-place, on the death of a lady now in the 58th year of her age—135*l*.

The absolute reversion to one-eighth part of a copyhold estate situate at Barnes, Surrey, comprising a residence and four acres of land of the estimated value of 160*l* per annum; also to one-eighth part of the following sums: 2,833*l* 6s 8d. South Sea Annuities, 1,500*l* West India Dock Stock; 1,050*l* 10s 8d Three per Cent. Reduced Annuities; 3,500*l* Three per Cent Consols, 416*l* 13s. 4d. Bank Stock; 210*l*. New Three and-a-Half per Cent. Bank Annuities; and 20 shares in the London Assurance Office, subject to a deduction of 613*l* already advanced, and to the life interest of a lady now in the 60th year of her age—610*l*.

A policy for 500*l*. with the accumulations, amounting to 10*l* 4s effected with the Eagle Company, the 22nd April, 1826, on the life of a lady now in the 56th year of her age; annual premium, 10*l* 1s—81*l*.

A ditto for 600*l*. with the accumulations thereon amounting to 28*l* 16s. 1d effected with the Eagle Company April 22, 1826, on the life of a lady now in the 56th year of her age; annual premium, 15*l*. 6s—116*l*.

The contingent reversion in and to the entirety, or only three-fourth parts, as the case may be, of the sum of 770*l*. 17s. Consols—160*l*.

A policy for 500*l*. effected with the Rock Company the 25th August, 1826, on the life of a gentleman now in the 44th year of his age, annual premium, 12*l*. 5s—106*l*.

Ten shares of 2*l* 10s. each 2*l* 10s called and paid, in the Waterman's Steam Packet Company—2*l*. per share.

Ten similar shares—2*l*. 2s per share.

By Mr W. W. SIMPSON, at the Mart.

Two houses and shops, situate in the Commercial-road East, let at rents amounting to 56*l*. per annum, held for an unexpired term of 57 years, at the ground-rent of 8*l*. per annum—550*l*.

By Mr. MOORE, at the Mart.

A house and shop, No. 13, Back-road, St. George's, East; also a house in the rear of the above, let at 26*l*.; held for 44 years at a ground-rent of 7*l* 4s per annum—135*l*.

A house, No. 18, Jubilee-place, Mile End; held for a term whereof 57 years were unexpired at Lady Day last, at the ground-rent of 4*l*. per annum; the land-tax is redeemed—190*l*.

By Messrs. ROBERTS and ROBY, at the Mart.

Three freehold houses, situate opposite the new church, Church-street, Old Kent-road—710*l*.

A free public house, known as the Star, situate at No. 40, Wilkes-street, Spitalfields; also, a private house, No. 39, adjoining, held for a term of which seven years will be unexpired at Lady Day, 1845, at the ground-rent of 3*l*. per annum—340*l*.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Smith.—On the 5th inst. the lady of W. H. Smith, esq. of Bedford-row, of a son.

MARRIAGES.

Boyce, James W. esq. Barrister-at-law, to Fanny, youngest daughter of the late Edward Meurant, esq. of Russell-place, on the 22nd ult. at St. George's Church, Dublin.

Couch, Richard, esq. of the Middle Temple, Barrister-at-law, to Ann, eldest daughter of Richard Thomas Beck, esq. on the 1st inst. at Combs, Suffolk.

Dasent, Bury Irwin, esq. of Pall-mall, second son of the late John Roche Dasent, esq. Attorney-General of the Island of St. Vincent, to Elizabeth, youngest daughter of the late William Coningham, esq. of Upper Gower-st. on the 4th inst. at St. Pancras Church.

Hadow Douglas, esq. Barrister-at-law, eldest son of Patrick Hadow, esq. of Upper Harley-st. London, to Emma Harriett, second daughter of Robert Parry Nisbet, esq. of Southbroom House, North Wilts, on the 28th ult. at Southbroom Church.

Hiscock, Alfred, esq Solicitor, of North Fareham cottage, to Eliza, relict of Charles Olive, esq. on the 11th ult. at Fareham.

Innes, George Archibald, esq. Barrister-at-law, son of John Innes, esq. of Forest-green, near Dorking, to Alicia, youngest daughter of the late W. Frend, esq. on the 1st inst. at St. Pancras Church.

Sowler, Robert S. esq. Barrister-at-law, of Manchester, to Frances, the youngest daughter of George Sowler, esq. Surgeon, of London, on the 3rd inst. at Saint John's, Hoxton.

Tresidder, John Nicholas, esq. Surgeon, second son of N. T. Tresidder, esq. Solicitor, to Elizabeth Carlyon, eldest daughter of the late H. Barnicoat, esq. of her Majesty's Customs, Falmouth, on the 25th ult. at Falmouth.

DEATHS.

De Jersey, Herbert Hall son of Henry and Sophia Fisher De Jersey, esq. Solicitor, of convulsions from teething, aged 15 months and 12 days.

Halsted, Sarah, relict of Mr. C. L. Halsted, and daughter of Henry Coles, sen. esq. for many years one of the committee clerks of the House of Commons, on the 31st ult. at 120, High-street, Camden-town, aged 67.

Hamilton, Thomas, esq of the firm of Messrs. Few, Hamilton, and Fews, Solicitors Covent garden, on Sunday, the 2nd inst. at his residence at the Mall, Hammersmith.

Heppel, G. H. of Princes-street, Bank, on the 4th inst. aged 51.

Hoare, Maria Palmer, relict of Sir Henry Hoare, bart. on Friday, Jan. 31, at her house in St. James's-square.

Kay, James, esq. of Woodside, formerly chief magistrate of Arbroath on the 17th ult.

Kent, Edward, esq late of Nantwich, a Deputy-lieutenant for the county of Chester, on the 25th ult. at Hamilton-square, Woodside, Cheshire, aged 57

Laybourne, Mary, relict of the late Mr C. Laybourne, bookseller and stationer, and many years post-master of Driffield, and eldest daughter of W. Conyers, esq. formerly a Solicitor of Great Driffield, on the 12th ult. at Driffield, Yorkshire, aged 76

Roberts, William, esq. late of Balham-hill, and of the Six Clerks'-office, on the 29th ult. at Holt, in Norfolk, aged 68.

Sligo, The Marquess of, he was Lord-Lieutenant of the county of Mayo, in Ireland, Knight of the Order of St. Patrick, and was formerly governor of Jamaica, on Sunday, the 26th ult. at Tunbridge-wells, aged 57.

Stone, William, sen esq. late of Streatley House, a Deputy-Lieutenant for the county of Berks, and many years an active Magistrate for the counties of Berks and Oxon, on the 30th ult. at his house, in Russell-street, Reading.

1845.

PROSPECTUS of a PLAN for IMPROVING the OUTFALL BELOW LYNN, and for RECLAIMING FROM THE SEA 30,000 ACRES of LAND,

part of the Estuary called THE WASH, between the counties of Norfolk and Lincoln. Capital 500,000*l.* in 10,000 Shares of 50*l.* each. Deposit 2*l.* 10s. per Share.

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The Duke of Portland	Earl of Orford
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James M. Rendell, esq. for the town of Lynn.

SOLICITORS.

Frederic Lane, esq. King's Lynn.
Thomas Wing, esq. Gray's Inn, London.

SURVEYOR.

Mr. Edwin Durrant, King's Lynn.

The object of the Promoters is, to recover from the sea a very extensive tract of land, which now constitutes a part of the great Estuary called THE WASH.

The measure now in contemplation was suggested by the success which has already attended several other works of a similar nature upon the adjoining coasts, by which many thousand acres have been rescued from the overflowing of the sea, and converted into arable and pasture lands of excellent quality

For the present, it is intended to limit the undertaking to the recovery of 30,000 acres. This will require an expenditure of about 500,000*l.* which, deducted from 1,050,000*l.* the value of the land, will leave to the shareholders a clear gain of 550,000*l.* subject only to the claims and compensations of frontage owners.

The capital of the Company will be 500,000*l.* which will be divided into 10,000 shares of 50*l* each, upon which a deposit of 2*l.* 10s. is to be made immediately; but no farther deposit will be required, until an Act of Parliament, for which application will be made in the approaching session, has been obtained for incorporating the Company, and conferring upon it the necessary powers.

But although it has been thought prudent to make provision for raising 500,000*l.* the estimated expense of completing the undertaking, it is confidently expected that it will not be necessary to call for more than 50 to 60 per cent. of that sum, as large tracts of land will be recovered shortly after the commencement and during the progress of the work, which may be made an available fund for prosecuting the undertaking, or be divided among the Shareholders, as may be deemed most expedient. Between 9,000 and 10,000 acres of the most valuable part of the land are fit for immediate embankment, and will be wholly recovered within two or three years after the commencement of the works.

Sealed application for shares to be made by letter (post paid) addressed to Frederick Lane, esq. King's Lynn, Norfolk; or Thomas Wing, esq. Gray's-inn-square, London, on or before the 17th February, when the shares will be allotted; and no further application will be received after that day

Interest at the rate of 4*l.* per cent. will be allowed on all paid-up capital, from the passing of the Act, until a sufficient quantity of land shall have been acquired to cover the expenses and declare a dividend.

January 30th, 1845.

FORM OF APPLICATION.

LEVEL OF THE WASH.

Sir,—I request you will allot to me shares of 50l. each in the above undertaking agreeably to the Prospectus, and I agree to accept such shares as may be allotted to me, and also to pay the deposit thereon, and to sign the Parliamentary Contract and Subscribers' agreement when required.

Name
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To Frederick Lane, Thomas Wing, } *Esqrs.*

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1. Information of a Mother of a Bastard Child *before* Birth, *a.*
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5. Summons to Witnesses.
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5. Precept to Overseers to return List, § 2.
6. Overseers' Summons of Vestry Meeting, § 3.
7. List of Men agreed to at Vestry, § 3.
7*b*. Copy of such List, § 3.
8. Choice or Appointment of Constables, § 11.
8*b*. Appointment of Paid Constables, § 19.
9. Summons to Constable to attend to be sworn.
9*b*. Oath of Constable, with Instructions.
10. Justices' List of Constables, § 12.
10*b*. Clerks' List of Constables, § 11.
11. Overseers' Notice of Death of Constable, § 16
12. Precept to give Notice of Petty Session to supply Vacancy.
13. Summons to Party whose Substitute has made Vacancy, § 16.
14. Appointment of New Constable to supply a Vacancy, § 16.
15. Justices' Order for Fees and Allowances, § 17.
16. Information against Overseers not returning Lists, &c. § 9.
17. Information against Constables not attending, § 13.
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Extract from the Returns to the Stamp Office, shewing the Duty and amount insured on Farming Stock, paid by the five Principal Offices for the year 1842 -

	FARMING STOCK.	DUTY.
Norwich Union	£9,522,693	£68,642 14 3
County	7,161,858	48,465 10 7
Sun	6,818,051	165,683 10 8
Phœnix	4,811,131	129,640 2 3
Royal Exchange	4,319,771	71,891 14 2

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No.	SUM ASSURED.	BONUS.
477	£1,000	£776 4 10
951	499	431 10 5
170	1,000	445 15 6
751	1,000	458 7 4
1235	2,000	852 5 1
1276	1,500	619 3 4
1450	2,000	754 17 2
1441	1,000	519 10 7
1459	500	155 14 4
1745	2,000	1,117 1 11
1850	1,500	149 10 5
2570	1,000	591 6 10

Tables of Rates, &c. may be obtained at the Society's Offices, or of the Agents, in all parts of the United Kingdom.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

Vol. IV. No. 98.] SATURDAY, FEBRUARY 15, 1845.

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LEICESTER BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, That the next GENERAL QUARTER SESSIONS of the PEACE for the BOROUGH of LEICESTER will be holden at the Guildhall in the said Borough, before JOHN HILDYARD, Esquire, Barrister-at-Law Recorder of the same, on FRIDAY, the 28th day of FEBRUARY inst. at a Quarter before Nine o'clock in the Forenoon precisely; of which all Prosecutors, Witnesses, and other Persons bound by Recognizance to appear at the said Sessions, are required to take notice.

All Persons intending to prefer Bills of Indictment, exhibit Articles of the Peace, &c. at the said Sessions, must leave instructions at the Office of the Clerk of the Peace in Cank-street, on or before the Wednesday preceding the Sessions, and the Prosecutors and Witnesses must be ready to go before th Grand Jury immediately after the Court is opened. Dated this 4th day of February, 1845.

RICHARD TOLLER,
Clerk of the Peace.

LANCASHIRE INTERMEDIATE SESSIONS NOTICE IS HEREBY GIVEN, That a GENERAL SESSION of the PEACE for the COUNTY PALATINE of LANCASTER, for the trial of Persons committed and held to bail on charges of Felony and Misdemeanor, will be held at the Court House in Preston, on FRIDAY, the 21st day of FEBRUARY, inst. at Ten o'clock in the Forenoon; and at the New Bailey Court House, in Salford, on MONDAY, the 24th day of FEBRUARY inst. at Ten o'clock in the Forenoon.

GORSTS & BIRCHALL,
Deputy Clerks of the Peace.

Clerk of the Peace's Office,
Preston, 3rd February, 1845.

PUBLIC NOTICE. — NORTHAMPTON TOWN and BOROUGH SESSIONS. NOTICE IS HEREBY GIVEN, that the GENERAL SESSIONS of the PEACE for the TOWN and BOROUGH of NORTHAMPTON, will be holden at the GUILD HALL, in the said Town and Borough, on FRIDAY, the 21st Day of FEBRUARY instant, at Ten o'clock in the Forenoon; before NATHANIEL RICHARD CLARKE, Esq. Serjeant-at-Law, Recorder of the said Town and Borough, at which time and place all persons who are bound by Recognizance to appear and prosecute, or give evidence upon any Bill or Bills of Indictment, or to answer any Charge or Charges whatsoever, or have any business to transact at the said Sessions, are required to attend, as the Court will be punctual in entering on the business of the Sessions at the time above mentioned And Solicitors are required to take notice, that in all Appeals against Removal Orders, Copies of the Notice and Grounds of Appeal, and Examinations of the Pauper, must be filed along with the Removal Orders.

By order of the Court,
GEORGE COOK, Clerk of the Peace.

Office of the Clerk of the Peace,
Newland, Northampton, Feb. 11, 1845.

BOROUGH OF KINGSTON-UPON-HULL.—NOTICE is HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE for the BOROUGH of KINGSTON-UPON-HULL, for the Trial of Prisoners committed and held to bail on charges of Felony and Misdemeanor, will be holden at the TOWN HALL in the said borough, before MATTHEW TALBOT BAINES, Esq. Recorder of the said Borough, on THURSDAY, the 6th day of March next, at Ten o'Clock in the forenoon, when and where all persons bound by recognizances, and others having business at the said Sessions (except as hereinafter next mentioned), are requested to attend. And in all cases where the parties accused are OUT on BAIL, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'Clock on FRIDAY Morning, the second day of the Sessions.

And NOTICE is HEREBY also GIVEN, That all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the 6th day of March next, and the hearing of Appeals and Motions will be taken at Nine o'Clock in the Morning on the Saturday following (if the Criminal Business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take Notice, that in Appeals against Removal Orders, copies of the Notice and grounds of Appeal and Examination of the Pauper must be filed along with the Removal Order.

J. H. GALLOWAY,
Clerk of the Peace.

Office of Clerk of the Peace,
Kingston-upon-Hull, 13th February, 1845.

Legal Notices.

LEEDS BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, That the next GENERAL QUARTER SESSIONS of the PEACE for the BOROUGH of LEEDS, in the County of York, will be holden before THOMAS FLOWER ELLIS, Esq. Recorder of the said Borough, at the Court House in Leeds, on WEDNESDAY, the fifth day of MARCH next, at Two o'clock in the Afternoon, at which time and place all Jurors, Constables, Police Officers, Prosecutors, Witnesses, Persons bound by recognizance, and others having business at the said Sessions, are required to attend.

And Notice is hereby also given, that all appeals and proceedings under the Highway Act not previously disposed of, will be heard at the opening of the Court on Saturday Morning, the eighth day of March next, provided all cases of felony and misdemeanor shall then have been disposed of, or otherwise as soon as the Criminal Business of the Sessions shall be concluded.

By order,
JAMES RICHARDSON,
Clerk of the Peace for the said Borough.

Leeds, Feb. 6, 1845

PETITION for the REPEAL of the DUTY on SOLICITORS' CERTIFICATES.

The COUNCIL of the METROPOLITAN and PROVINCIAL LEGAL ASSOCIATION have the satisfaction of stating that this Petition has received nearly 1,000 signatures, including the most eminent houses in the Profession. It is earnestly requested that those solicitors who have not yet signed the Petition, will do so as speedily as possible.

Copies lie for signature at the Offices of the Association, 15, New Bridge-street, Blackfriars; the LAW TIMES Office, Essex-street, Strand; and at the following booksellers and stationers: Mr. Hill, Temple-lane, Mr. Nap. Aldridge, Clement's-Inn; Messrs. Dunn and Duncan, 9, Fleet-street; Mr. Laidman, Chancery-lane; Mr Concannon, Southampton-buildings; Mr. Duncombe, Lincoln's Inn; and Messrs. Herand and Son, Carey-street.

Copies of the Petition may be had on application at the Offices of the Association.

GEO. FITCH.
15, New Bridge-street, Blackfriars, Secretary.
14th Feb 1845

Sales by Auction.

IMPORTANT FREEHOLD ESTATE (consisting of nearly 1800 acres) and MANOR, in the county of Salop. To be SOLD by AUCTION, by Messrs. WINSTANLEY, at the Mart in London, on Tuesday, the 8th of April, at Twelve o'clock, in one lot, the MANOR of CULMINGTON, with its appurtenances; and all that highly valuable and important FREEHOLD ESTATE situate in the several parishes of Culmington, Diddlebury, and Stanton-Lacy, in the county of Salop, containing together 1,786 acres or thereabouts, of exceedingly rich arable, meadow, pasture, and wood land, in a ring fence, in a high state of cultivation, divided into convenient farms with excellent homesteads, and suitable agricultural buildings eligibly arranged and in complete repair; together with a good Water Corn Mill; all now in the several occupations of Messrs. James Williams, John Downes, Edward Instone, Francis Bach, and others.

The estate is equally eligible for residence or investment, being most desirably situate in the best part of the county of Salop, 5 miles from Ludlow, 14 from Wenlock, 16 from Bridgenorth, 20 from Shrewsbury, and 148 from London. It is in the immediate vicinity of the Ludlow Hunt, abounds with game, and the beautiful Trout river, Corve, runs through the centre thereof. The Land Tax is redeemed, and the Tithes are commuted. The arable Lands are peculiarly adapted for the growth of turnips, barley, clover, and wheat, the meadow and pasture Lands are rich and productive, and the Woods and Plantations are so situate as to be highly ornamental to the Estate.

The several Tenants will shew the Premises in their respective occupations, and descriptive printed particulars and conditions of sale may be had, six weeks previous to the day of sale, of Charles Powell, esq. of Sutton, near Ludlow, Shropshire; of Messrs. Garbutt, Fawcett, and Hick, solicitors, Yarm, Yorkshire; at the Crown Inn, Ludlow; the Lion, Shrewsbury; the Star and Garter, Worcester; and in London of Messrs. Baxendale, Tatham, Upton, and Johnson, solicitors, 24, Lincoln's Inn-fields; Messrs. Bell, Brodrick, and Bell, solicitors, 9, Bow Church-yard; at the MART, near the Bank of England; and of Messrs. WINSTANLEY, Paternoster-row.

LAW BOOKS.

MR. HODGSON will SELL by AUCTION, at his Great Room, 192, Fleet-street (corner of Chancery-lane), on TUESDAY next, February 18th, at half-past 12.

The VALUABLE LAW LIBRARY of THOMAS COMERFORD BARTRUM, esq. of Lincoln's Inn, Barrister-at-law, deceased, including the Statutes at Large, from Magna Charta to 7 Victoria; The Year Books, Statutes of the Realm, Domesday Book, Comyns's Digest, by Hammond, Jarman's Conveyancing, by Sweet; Cruise's Digest, by White; series of the Reports in Law and Equity, complete to the present time. Modern Books of Practice and Treatises, the whole in fine preservation.

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24, SUFFOLK-STREET, PALL-MALL EAST, LONDON.

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SECRETARY AND ACTUARY.—Mr. Charles M. Willich.

*** *In June*, 1845, *the* FOURTH QUINQUENNIAL *division of* PROFIT *will be made. All* POLICIES *effected before the* 1st *of May next will be entitled to participate fully in the division which will be made in* 1850.

Assurances may be effected on the lives of all Persons whose names are, or have been, during any period, however short, on the Books or Boards of any College or Hall, at Oxford or Cambridge.

Assurances may be effected on the lives of such Persons against the lives of any Persons whatsoever.

A division of PROFITS is made every five years, and very nearly nine-tenths appropriated to the Assured, either by a proportionate diminution of Premium, by an increase in the amount of the Policy, or by a present payment of the value in money, at the option of the party.

The Society will be always ready to purchase from the Party in possession any unexpired Policy, or the Additions thereon; or to lend the present value of both at interest, on the deposit of the Policy with the Society.

*** *It may be worthy of remark, that from the institution of this Society to the present time, a period of* 20 *years, in no case has a claim been disputed.*

The *Additions to Policies*, made by the University Life Assurance Society in 1830, 1835, and 1840, amount, on a Policy for 1,000*l.* as follows:—

If it has been effected	6	years, to the sum of	£120
,,	7	,,	140
,,	8	,,	160
,,	9	,,	180
,,	10	,,	200
,,	11	,,	220
,,	12	,,	240
,,	13	,,	260
,,	14	,,	280
,,	15	,,	300

The present value of which sums, *payable in money*, amounts on an average to more than 25 per cent. of the premiums paid for the respective periods.

In the event of death before the next Division of Profits in 1845, one and a half per cent. per annum will be added for each year after 1840.

Proposals for Assurances to be addressed to the Secretary, or to John Wray, esq. Chairman of the Committee, 24, Suffolk-street, Pall-mall East, London; or to the Corresponding Directors, the Rev. J. W. Hughes, Oxford, or H. Gunning, esq. Cambridge, from whom Proposals may be obtained.

*** Personal appearance at the Office is not required, except in particular cases.

Persons assured in this Office for the whole period of life may go by sea, during peace, without obtaining a License or paying an extra Premium, from any part of Europe to any other part of Europe.

Note.—Rather more than *five-sixths* of the persons assured in this Office are Clergymen.

January, 1845.

Just published, by Longman and Co. Second Edition of WILLICH'S INCOME TAX TABLES, with a variety of Statistical Information, price 1s. 6d.; and WILLICH'S ANNUAL SUPPLEMENT to the TITHE COMMUTATION TABLES for 1845, with Appendix, price 1s.

N.B. Complete sets of the TABLES 1837 to 1845. Price 11s. 6d. neatly bound.

Sales by Auction.

CROFT, near BURGH, LINCOLNSHIRE.—VALUABLE FREEHOLD GRAZING LAND.—To be SOLD by AUCTION, by Mr. J. A. POLLARD, at the Fleece Inn, in Burgh, in the county of Lincoln, on Thursday, the 13th March, 1845, between the hours of four and six o'clock in the evening, in the following or such other lots as may be agreed upon at the time of sale, and subject to conditions — The undermentioned very valuable old Pasture or Feeding Land in Croft aforesaid, viz.:—

Quantity, more or less.

	A.	R.	P.
Lot 1. Drain Close	4	2	20
,, 2. Seven Acres	7	1	27
,, 3. Long Seven Acres	7	0	20
,, 4. Gowt Three Acres	4	3	0
,, 5. Twelve Acres	11	3	5
,, 6. Church Lane Two Acres	2	2	28
	38	1	20

For further particulars apply at our office.
S. & W. EDWARDS, Solicitors, Spalding.
Spalding, 10th February, 1845.

Sales by Auction.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1845, as follow:—

Friday, March 7.	Friday, Aug. 1.
,, April 4.	,, Sept. 5.
,, May 2.	,, Oct 3.
,, June 6.	,, Nov. 7.
,, July 4.	,, Dec. 5.

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale, established 1803.—Valuable old Equitable Policy for 2,875*l.*

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Monthly Sale of Reversionary Interests, &c appointed to take place at the Mart on Friday, March 7, at twelve,

A POLICY for the sum of 2,500*l.* with the accumulations thereon from 1839, amounting to 375*l.* provided the insurer survives the 19th March in the present year, making together the sum of 2,875*l.* (with the prospective advantages amounting to 62*l.* 10s. per annum, until the 31st December, 1849, when the same will merge in the general bonus to be declared in 1850) effected with the Equitable Assurance Society, the 19th March, 1810, on the life of a gentleman who will complete his 59th year on the 10th of March instant.

Particulars may be obtained in due time of Mr. CUTTS, Solicitor, No. 28, Backe-street, Southwark; at the Mart, and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Important Leasehold Investments, including 73 substantial private Residences and Dwelling-houses, situate in Frederick-street, Frederick-place, and Ampton-place, St. Pancras, and in College-place and King street, Camden town, producing a clear annual income of 3,227*l.*, each house being held under a separate lease, at a low ground rent, and the whole presenting an unusual opportunity for the secure investment of capital in large or small sums and the increase of income.

MESSRS. SHUTTLEWORTH and SONS have received instructions from the proprietor, Mr. William Cubitt, to submit to public AUCTION, at the *Mart*, early in April, in numerous lots, the following extensive and valuable ESTATES; and in announcing the sale of this important property, the auctioneers avail themselves of the opportunity it affords them of earnestly drawing the attention of trustees and private individuals desirous of improving income by a transfer from the Government Stocks to investments of an undeniable character, and by which their annuities may be at least doubled, independent of an accumulating surplus adequate to replace the amount of the purchase *money* at the expiration of the respective leases, a material consideration, usually unappreciated by the buyers of leasehold estates. This extensive property consists of the following superior premises, erected under the immediate direction of Messrs. Cubitt and Co., the whole being in the very best condition of repairs, substantial and ornamental, and not requiring any outlay thereon whatever. Each house is held under a separate lease for a long term unexpired, at a low ground rent, the gross rental being 3,661*l.* per annum, and the aggregate ground rents only 434*l.* most amply secured upon 73 private residences and dwelling-houses, eligibly situate, as follows— Eleven in Frederick-street, seven in Frederick-place, and eighteen in Ampton-place, Gray's-inn-road, in the parish of St. Pancras; and twenty-seven in College place, and ten in King-street, Camden-town. The principal portion let, under leases and agreements, to very respectable tenants (clear of sewers, rates and every other assessment without exception), and a small part, recently finished, remains in hand.

May be viewed with leave of the tenants, and particulars had 14 days prior to the sale, at the Auction Mart, and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale: established 1803.—Next Presentation, Warwickshire.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in their Periodica Sale of Reversionary Interests, &c. appointed to take place at the Mart, in London, on Friday, March 7, at Twelve, the NEXT PRESENTATION to the desirable RECTORY of IDLICOTE, situate two miles from Shipston-on-Stour, fourteen from Warwick, twelve from Banbury, eleven from Chipping Norton, ten from Stratford-on-Avon, and eighty-five from London, in the county of Warwick. The parsonage house has been recently repaired; the glebe includes about three acres; the tithes are commuted at 300*l.* per annum, and that rent-charge paid in one sum. The land-tax has been redeemed; the church is in good repair, the duty single, the population eighty, and the present incumbent in his seventy-third year.

May be viewed, with permission of the incumbent, and particulars had at the George Inn, Shipston-on-Stour; the Star and Angel Inns, Oxford; the Hoop, and Eagle and Child Inns, Cambridge; of Messrs. BAXENDALE, TATHAM, UPTON, and JOHNSON, Solicitors, 7, Great Winchester-street, and 24, Lincoln's-inn-fields; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Sales by Auction.

MESSRS. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street, being about to republish an INDEX to their REGISTERS of ESTATES, MANORS, FARMS, VILLA RESIDENCES, TOWN HOUSES, &c. which they have at present for Sale or to be Let, beg leave most respectfully to notify that parties who may wish to have a description of their property inserted therein, are requested to send the full particulars to their offices before the 25th of the present month. These Registers are published and circulated all over the kingdom, at Messrs. B. and G.'s expense, and this method (which originated at their offices) of describing the property, its locality, &c. without making the name and address publicly known, has proved itself to be a successful and speedy mode of disposing of the same.

Eligible Investment.—Old Kent-road, adjacent to the Dover Railway Station.

MESSRS. BROOKS and GREEN have received instructions from the Executors of the late C. D. Collambell, esq. to SELL by AUCTION, at Garraway's, on Thursday, February 27, at One, an IMPROVED GROUND-RENT of 100*l.* per annum, most amply secured upon four houses in Brunswick-place, Old Kent-road, seven houses in Alfred-place, two in East-lane, and seven in Stanford-place, let to highly respectable tenants, at rents amounting to upwards of 450*l.*, per annum, for the whole remainder of the lease, of which 30½ years are unexpired.

Full particulars may be obtained of Mr. MARTIN SANGSTER, Solicitor, Queen-street-place, Southwark-bridge; at Garraway's; and of Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human Life, Shares in Railways, Mines, and all other undertakings.

MESSRS. FULLER and MARSH respectfully inform the public, that by their system of periodical sales by Auction they are enabled to offer to persons expectant or otherwise interested in the above description of property the most prompt, economical, and satisfactory mode of disposing thereof, as by classifying these descriptions of interests and properties in the same particular and for the same day, much expense is avoided, and a far greater competition secured. Their periodical sales of reversions, life interests, annuities, life policies, advowsons, next presentations, and all descriptions of securities dependent upon human life, shares in railways, mines, and all other undertakings, will be continued throughout the present year as follows:—Thursday, March 6, Thursday, April 3; Thursday, May 1; Thursday, June 5, Thursday, July 3, Thursday, August 7; Thursday, September 4; Thursday, October 2; Thursday, November 6; Thursday, December 4. Notices of sales intended to be effected by the above means should be forwarded to Messrs. Fuller and Marsh a fortnight prior to each date, in order that they may have the full benefit of publicity. Messrs. F. and M. beg to call the attention of the public to the economy and expedition of this system of business, as they are thereby enabled to include each property for the sum of two guineas and a half, including all expenses, should a sale not be effected. The next periodical sale will take place at the Mart on Thursday, March 6.

Particulars may be obtained at the *Offices* of Messrs. FULLER and MARSH, 2, Charlotte-row, Mansion-house.

DERBYSHIRE.—Alvaston Hall, near Derby.—Valuable Freehold Property, at Alvaston, within three miles of Derby.—Peremptorily, by Mr. EYRE, at the Royal Hotel, Derby, on Friday, March 7, at six in the evening, in the following or such other lots as may be agreed upon at the time of sale.

A Valuable FREEHOLD ESTATE at Alvaston aforesaid, viz. *Lot* 1. All that mansion-house called ALVASTON HALL, containing entrance-hall, breakfast dining, and drawing rooms, kitchen, back kitchen, and pantries, dairy, larder, &c on the ground floor, good cellaring under, and seven bedrooms, servant man's room and water-closet over, and attics above, together with coach-house, saddle-room, stabling for six horses, two loose boxes, standing for sixteen cows, and large barn and dovecote, excellent gardens and orchard, and three cottages all adjoining; the whole containing about .... 3A. 0R. 37P.

	A.	R.	P.	A.	R.	P.
Also the following closes of Pasture Land, viz. Summer-house Close, Pinfold Close, and Smedley Croft, containing together about	17	2	35			
				20	3	32
Lot 2.—Wingate Meadow, Rail Close, and Pingle (meadow), containing together about				15	2	33
Lot 3.—Near Long Shoot (meadow), coning about	4	3	27			
Far Long Shoot (meadow), containing about	5	3	18			
				10	3	5
Lot 4.—Stale Hades (arable), containing about				4	0	19
Total				51	2	9

The property may be viewed on application at Alvaston Hall; and particulars with plans may be had at the Offices respectively of Mr. J. H. RENBOW, Solicitor, Stone-buildings, Lincoln's-inn, London; and of Messrs. Jessopp, Son, and Burnaby, Solicitors, Derby; and also of Mr. Frederick Simpson, Land-agent, Friar-gate, Derby; and Mr. EYRE, the Auctioneer, Queen-street, Derby.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 15th day of Feb. 1845.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 99.] SATURDAY, FEBRUARY 22, 1845.

SUBSCRIPTION.
For One Year, paid in advance.. £2 0 0
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Single Numbers, or on credit .. 0 1 0

Money to Lend.

MONEY ready to be ADVANCED, at a reduced rate of interest.—150,000*l*. in One sum, or in Several sums, not less than 10,000*l*. each, on Freehold Land security. Also several other sums of various amounts.
Apply by letter, addressed to Y. B. at the Office of this Paper.

Money Wanted.

MONEY.—30,000*l*. and 26,000*l*. wanted at Three and a Quarter per Cent. upon extensive Freehold Landed Estates, in two of the best agricultural counties in England. The value of the property to be included in either Mortgage is double the sum to be secured by it, and the interest will be paid with the greatest punctuality in London. The Money will be taken for a term of years, and the securities are in every respect well adapted to trust money.
Apply to Messrs. RICHARDSON, SMITH, and SADLER, Solicitors, Golden-square.

MONEY.—Wanted, the following sums:—
500*l*. on the security of an assignment of two policies of insurance in the Amicable, one for 500*l*. effected in 1838, and the other for 300*l*. effected in 1841; and the covenant of two responsible sureties for payment of interest and premiums.
2,900*l*. on the Transfer of a Mortgage for that sum at 5*l*. per cent. on valuable leasehold premises, worth about 3,000*l*., which mortgage contains the covenant of two responsible sureties for payment of principal and interest.
6,000*l*. at 5*l*. per cent. on Mortgage of an Advowson, worth about 12,000*l*. and the covenant of two responsible sureties.
Apply by letter to Mr. HUMPHREYS, Solicitor, Gray's-inn, London.

MONEY.—WANTED 16,000*l*. at 4*l*. per cent. on security of mills, a manufactory, and machinery, with dwelling-house adjoining, and about nineteen acres of freehold land attached, well situated on a stream, affording ample supply of water-power for working the machinery, within twenty miles of London. A thriving trade is now, and has been for many years, carried on upon the premises; and a considerable portion of the required loan is intended to be laid out in the improvement of the mills and machinery.
Apply to SUDLOW, SONS, and TORR, 20, Chancery-lane, Solicitors.

MONEY.—£10,000 WANTED, at four per Cent. interest (but subject to reduction to three and three-quarters per Cent. if paid within thirty days), upon amply sufficient security, consisting of freehold houses situate on the West side of London. The money will be taken for a term.
Apply to Messrs. RICHARDSON, SMITH, and SADLER, Solicitors, Golden-square.

MONEY.—WANTED 3,000*l*. upon security of Freehold Property and Life Policy, with additions of ample value.
Applications to be by Principals or their Solicitors only, and may be addressed (postage free), with rate of Interest required, to Mr. LOTT, Solicitor, 43, Bow-lane, Cheapside.

ATTORNEYS' CERTIFICATE DUTY.—The Council of the Metropolitan and Provincial Legal Association earnestly beg those Gentlemen to whom Petitions for the Repeal of the ATTORNEYS' CERTIFICATE DUTY have been forwarded to return the same, fully signed, to the Secretary, by Wednesday, the 5th day of March next.
Forms of the Petition may be had on application at the offices of the Association, 15, New Bridge-street, Blackfriars.
15, New Bridge-street, Blackfriars, Feb. 21, 1845. GEO. FITCH, Secretary.

MR. HENRY OLDHAM, A.B. Solicitor, 42, Fleet-street, Dublin, Master Extraordinary in Ireland of the Court of Chancery in England, and Commissioner for taking Affidavits, &c. in Ireland for the Courts of Queen's Bench, Common Pleas, and Exchequer in England. Patents for Ireland enrolled.

CAPTAIN, otherwise MAJOR BARNES.—A REWARD of 3*l*. will be paid to any person who will give information, by letter or otherwise, to the undersigned, of the residence of the abovenamed gentleman, who was some 12 or 14 years ago residing at Spalding, in Lincolnshire, and was then an officer in the East India Military Service, and three years since, or thereabouts, residing at Tenby, in Pembrokeshire, and has lost an arm. The Captain, in May 1843, resided at Bridlington, in Yorkshire, and was accompanied by his wife and son, the latter of whom was in a delicate state of health.
Apply to E. J. HORTON, Esq. 11, Furnival's Inn; or to Mr. D. BAYNTON, Bristol.

Situations Wanted.

LAW.—To SOLICITORS and CONVEYANCERS. A young Man, aged 32 Years, unmarried, who has for the last fifteen years and upwards, been employed in a Solicitor's Office in a large commercial Town (during the last four years as Managing Clerk), is desirous of obtaining a Situation in London, to conduct the Conveyancing Department (with the business of which he is well acquainted), and to attend to the general business of the Office. A moderate Salary only will be required.
Address, J. P. care of Messrs. CLARKE, MEDCALF, and GRAY, Solicitors, 20, Lincoln's-inn-fields, of whom references can be obtained.

LAW.—A Gentleman twenty-four years of age, who has been seven years in the Profession, and is well acquainted with the general routine of business, is desirous of an ENGAGEMENT in an office of extensive practice, and that his articles (of which he has already served two years) should be assigned, in consideration of which he would be content to receive a very small salary.
Address, post-paid, to J. F. care of Mr. Ruscoe, Law Stationer, Quality-court.

LAW.—The Advertiser is desirous of a Situation as Manager under the Principal, in a Solicitor's Office.
Address, Z, at the Office of the LAW TIMES, Essex-street, Strand.

Situation Vacant.

LAW.—WANTED, in an Office in the Country, a steady, respectable YOUNG MAN, acquainted with Conveyancing and the general routine of country business, and who would consider his Articles a compensation for his services. None need apply but those who can produce an unexceptionable character.
Address (post-paid) to H. F., Post-office, Brookend, near Lydney, Gloucestershire.

Legal Notices.

LEICESTER BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, That the next GENERAL QUARTER SESSIONS of the PEACE for the BOROUGH of LEICESTER will be holden at the Guildhall in the said Borough, before JOHN HILDYARD, Esquire, Barrister-at-Law, Recorder of the same, on FRIDAY, the 28th day of FEBRUARY inst. at a Quarter before Nine o'clock in the Forenoon precisely; of which all Prosecutors, Witnesses, and other Persons bound by Recognizance to appear at the said Sessions, are required to take notice.
All Persons intending to prefer Bills of Indictment, exhibit Articles of the Peace, &c. at the said Sessions, must leave instructions at the Office of the Clerk of the Peace in Cank-street, on or before the Wednesday preceding the Sessions; and the Prosecutors and Witnesses must be ready to go before the Grand Jury immediately after the Court is opened. Dated this 4th day of February, 1845.
RICHARD TOLLER, Clerk of the Peace.

BOROUGH OF KINGSTON-UPON-HULL.—NOTICE is HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE for the BOROUGH of KINGSTON-UPON-HULL, for the Trial of Prisoners committed and held to bail on charges of Felony and Misdemeanor, will be holden at the TOWN HALL in the said borough, before MATTHEW TALBOT BAINES, Esq. Recorder of the said Borough, on THURSDAY, the 6th day of March next, at Ten o'Clock in the forenoon, when and where all persons bound by recognizances, and others having business at the said Sessions (except as hereinafter next mentioned), are requested to attend. And in all cases where the parties accused are OUT on BAIL, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'Clock on FRIDAY Morning, the second day of the Sessions.
And NOTICE is HEREBY also GIVEN, That all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the 6th day of March next, and the hearing of Appeals and Motions will be taken at Nine o'Clock in the Morning on the Saturday following (if the Criminal Business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take Notice, that in Appeals against Removal Orders, copies of the Notice and grounds of Appeal and Examination of the Pauper must be filed along with the Removal Order. J. H. GALLOWAY, Clerk of the Peace.
Office of Clerk of the Peace, Kingston-upon-Hull, 13th February, 1845.

CHAMBERS, FURNISHED or UNFURNISHED, LINCOLN'S-INN-FIELDS.—To be LET, consisting of two Rooms on the First Floor, in complete repair. For Terms and Cards to view apply at Mr. HAMMOND'S Auction and Agency Offices, 28, Chancery-lane, and 30, Bell-yard, Lincoln's-inn.

TO SOLICITORS.—GOOD and CHEAP WRITING-PAPERS.
Good Useful Writing-Paper, 6s. per Ream.
Ditto, of the best quality, 11s. per ream.
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Ditto, very best made, 21s. per ream.
Finest Vermilion Wax, 3s. 6d. per lb.—warranted equal to any 5s.
Best Thick Satin Envelopes, 6s. per 1,000, usually charged 1s. per 100.
Any Article exchanged, if not approved of.—Samples can be had gratis.
*** Orders from the Country, accompanied with a remittance, will be punctually attended to.
W. PARKINS'S STATIONERY WAREHOUSE, 11, Hanway-street, Oxford-street.

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LICENSED
OILMAN'S, GROCER'S, and TALLOW-CHANDLER'S VALUER, GENERAL HOUSE AND PROPERTY AGENT,
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MR. P. BROAD begs to inform the above Professional Gentlemen who have Clients connected with the GROCERY, TALLOW CHANDLERY, OIL and COLOUR, or GENERAL TRADES, that he undertakes the disposal of Businesses on the usual terms, and also the valuation of every description of Fixtures, Stocks, Utensils, Furniture and Commercial Property of every description, either for the purposes of Sales, Partnerships, Assignments, Administrations, or Claims on Fire Policies. Mr. B.'s extensive connection with persons in all the above Trades affords every facility for the immediate disposal of any Business placed in his Register, and his matured experience will ensure the best assistance in the Valuation department.
Mr. B. allows the usual commission to the Profession for their recommendation.
P. BROAD, Appraiser, 12, Tavistock-street, Covent-garden.

New Publications.

Just published, price 3d. each, or by post, pre-paid, 4d. the Nos. 43 and 44, of the
OFFICIAL CIRCULARS of PUBLIC DOCUMENTS and INFORMATION, issued by the Poor Law Commissioners, on the following subjects, viz:—The Commissioners' General Order for Apprenticing Poor Children; ditto on Non-resident Relief; ditto on Out-door Relief; ditto on Election of Guardians, &c. &c.
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JOHN CROCKFORD, Publisher, LAW TIMES Office, 29, Essex-street, Strand, London.

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By EDWARD W. COX, of the Middle Temple, Barrister-at-Law.
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NECROLOGY.

SIR JAMES DOWLING.

Chief Justice of New South Wales.

It is with feelings of sincere regret we have to announce the death of Sir James Dowling, Chief Justice of New South Wales, which we collect from the following supplement to the Government *Gazette* of September last:—

Colonial Secretary's-office, Sydney,
Sept. 28, 1844.

His Excellency the Governor, with feelings of the deepest regret, announces to the public the death of his Honour Sir James Dowling, Chief Justice of the colony, which melancholy event took place at his residence at Darlinghurst, about 4 o'clock yesterday afternoon.

His Excellency feels assured that the public in general will join with him in deeply regretting the loss which the colony has sustained by the death of his Honour, and in a desire to pay all possible respect to his memory.

It is the intention of the Governor to attend the funeral of the deceased Chief Justice, which will move from his late residence at Darlinghurst on Monday next, at 11 o'clock; and his Excellency invites all officers of the civil Government also to attend.

By his Excellency's command,
E. D. THOMSON.

It may be remembered that a few weeks back we stated that his Honour had obtained leave of absence for two years, in order that he might visit his native country, with a view to the restoration of his health, which had completely broken down under the pressure of excessive labour, occasioned by the withdrawal of Judge Burton to Madras. Sir James was then left to discharge all the multitudinous duties connected with the Court of Equity, Court of Common Law, Court of Admiralty, and the Criminal Court, with no other coadjutor than Judge Stephens, a gentleman of high talent, not long since appointed to that office from the bar of Van Diemen's Land. These duties completely broke him down, and he was thrown upon his bed incapable of further exertion. His medical attendants at once pronounced on the necessity of immediate withdrawal from all active employment, as well as the expediency of a change of climate. Under these circumstances, the Governor granted him permission to return to England; and he had taken his passage with Lady Dowling to come home, in the forlorn hope that he would be able to resume his duties hereafter. Unhappily, however, a temporary convalescence was succeeded by a relapse, which carried him off on the day stated in the *Gazette*, to the universal regret of all the inhabitants of the colony, by whom he was sincerely respected, not only on account of his great talent, integrity, and impartiality as a judge, but for his unceasing benevolence as a man, having been a liberal contributor to every institution calculated to promote the happiness or advantages of the colony. Previous to his death, the Legislative Assembly, impressed with the value of his past services, (having been 17 years on the bench), voted him the full amount of his official salary (2,000*l.* a-year) during his absence, although it is customary, on such occasions, to reduce that moderate stipend one-half. Farewell addresses of the most flattering description were presented to him by the corporation and every institution in Sydney; while the bar not only offered the strongest expressions of their sympathy, but handed to him a valuable piece of plate commemorative of the high regard which they entertained for him, and the deep sorrow they felt at the cause of his departure. It is a source of painful reflection to the family of the learned judge, that three years back, when labouring under ill-health, arising from his incessant application, he applied to the Governor (Sir G. Gipps) for permission to return to his native air to recruit his strength, but was refused on the ground of economy, and on the plea that his medical men would not certify that he was incapable of continuing his duties without danger to his life. The economy by this fatal determination secured was a saving of 500*l.* a-year, for two years. One-half of Sir James's salary would have been apportioned to some gentlemen of the bar who would have been placed on the bench, and this sum would have been increased to 1,500*l.* per annum, the salary of a puisne judge, out of the colonial funds. This refusal is the more extraordinary, as a similar license had been granted to his predecessor, Sir F. Forbes, and to Judge Burton, next in seniority to himself, without hesitation. Judge Burton, on his return to the colony, was appointed to a better post at Madras, and thus Sir James and Judge Stephens were left to perform the whole judicial duties of the colony, and the life of a valuable public functionary has been sacrificed. Sir James had long been a member of the English bar, and was well known, and his services universally appreciated as the reporter of cases under the title of "Dowling and Ryland's Reports." He was appointed to the office of puisne judge in New South Wales in June 1827; and in August 1837, on the retirement of Sir Francis Forbes, was elevated to the Chief Justice-ship, on which occasion he had the honour of receiving knighthood from her Gracious Majesty.

He has left behind him a widow, two daughters, and a son in the colony, to deplore his irreparable loss. Mr. James Dowling, his second son, is at the English bar, and was on the eve of his departure to the colony, hourly expecting the arrival of his father, when the melancholy intelligence we have thus announced, arrived. Sir James Dowling was in his 58th year, having been born in 1787. His family in this country is well known as members of the bar, and their connexion with the literature of the country.

THE MARQUIS OF WESTMINSTER.

It is our painful duty to record the demise of the above respected nobleman, who expired at Eaton Hall, on Monday, the 17th inst. at half-past ten, P.M.

The deceased Robert Grosvenor, Marquis of Westminster, Earl Grosvenor, Viscount Belgrave, county Chester; Baron Grosvenor, of Eaton, in the same county, in the peerage of the United Kingdom, and a baronet, was eldest son of the first Earl Grosvenor, by Miss Vernon, daughter of Mr. Henry Vernon, of Hilton-park, Stafford-hire, granddaughter maternally of Thomas Wentworth, Earl of Strafford. He was born 22d March, 1767, and married 28th April, 1794, Lady Eleanor Egerton, only surviving daughter and heir of Thomas, first Earl of Wilton, by whom, who survives the marquis, he leaves issue, Richard Earl Grosvenor (now Marquis of Westminster); the Earl of Wilton, born 30th December, 1799, who succeeded to the title on the death of his maternal grandfather in 1814, married to Lady Mary, fourth daughter of the Earl of Derby; and Lord Robert Grosvenor, M.P. born 24th April, 1801, and married 17th May, 1831, the Hon. Charlotte Wellesley, eldest daughter of Lord Cowley, our ambassador at France.

The late Marquis succeeded to the title of Earl Grosvenor on the demise of his father, in 1802, and in September, 1831, he was created Marquis of Westminster. In 1841, he was elected a Knight of the Garter. His lordship was Lord Lieutenant, and Custos Rotulorum of Flintshire. When Viscount Belgrave, greater expectations were raised of his talents than were realized by his speeches in Parliament. He represented East Looe and Chester in several Parliaments. In 1789 he was made a Lord of the Admiralty, an office he held until 1791. In 1793 he was appointed one of the Commissioners of the Board of Control, and nominated a member of the Privy Council. He possessed considerable political influence in the county of Chester, and previous to the Reform Bill he returned no less than six members to the House of Commons. The late marquis was well known as one of the most distinguished patrons of the turf, his lordship for a long series of years having kept the largest and most successful racing stud in this country.

The deceased nobleman is succeeded in his honours and vast estates by Richard Earl Grosvenor, his eldest son, born January 27, 1795, and married September 16, 1819, Lady Elizabeth Mary Leveson Gower, second daughter of the late and sister of the present Duke of Sutherland, by whom he has a numerous family, his eldest son, Viscount Belgrave (now Earl Grosvenor), having been born on the 13th of October, 1825. The present Marquis represented the county of Chester in several Parliaments previous to the general election in 1835, since which period his lordship has retired from public affairs.

This noble family traces its descent from Gilbert le Grosvenor, who accompanied William the Conqueror to this country from Normandy, and was nephew of Hugh Lupus, Earl of Chester, so that he was closely related to the Conqueror. The family settled in Cheshire. Sir Richard le Grosvenor, eldest son of Sir Thomas lord of Hulme, was created a baronet in 1621-2. Sir Thomas, his grandson, married, in 1676, Mary, sole daughter and heiress of Mr. Alexander Davies, of Ebury, in Middlesex, by which alliance all the vast real property possessed by the family in and about London was acquired. He died in 1700, and Sir Robert Grosvenor, who succeeded his father in the baronetcy, but died in 1755, left Sir Richard Grosvenor, who was cup-bearer to George II. at that sovereign's coronation. In April, 1761, he was created Lord Grosvenor, and subsequently, in July, 1784, Viscount Belgrave and Earl Grosvenor. He was considered in fashionable life one of its brilliant stars, and was, like the late Marquis, his son, a great supporter of racing. He died in August, 1802.

In politics, the late Marquis was a Whig, and for several years took rather an active part in the business of the House of Lords, advocating on all occasions the principles of civil and religious liberty, though he was not as an orator very commanding or successful. His lordship promoted the reform in Parliament, cheerfully sacrificing, in common with other Whig noblemen, his Parliamentary patronage for the public benefit.

Sales by Auction.

IN BANKRUPTCY.—CAPITAL LONG LEASEHOLD, direct from the Freeholder.—NOTTING-HILL.

MR. FREDERICK CHINNOCK is ordered by the Assignees of Messrs. Christie and Rogers, bankrupts, and with the consent of the Mortgagees, to SELL by AUCTION, at the Mart, on TUESDAY, March 4, at Twelve, TWO substantially-built DWELLING-HOUSES, with shops, situate in the Queen's-road, Notting-hill; both let to highly respectable tenants, at low rents, amounting to 69*l*. per annum, and are held for an unexpired term of about 96 years.

May be viewed by leave of the tenants; and printed particulars obtained of Messrs. RICHARDSON, SMITH, and SADLER, Solicitors, 28, Golden-square; at the Mart; and at Mr. FREDERICK CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

TWO SEMI-DETACHED VILLAS, with large Gardens, and with Possession of One.—ADDISON-ROAD, Notting-hill.

MR. FREDERICK CHINNOCK is directed to SELL by AUCTION, at the Auction Mart, on TUESDAY, March 4, at Twelve, TWO well-built, tastefully-finished, and conveniently-arranged VILLAS, very near the new church of St. James. No. 39 is let to a good tenant at the moderate rent of 55*l*. per annum; the other is in the occupation of the vendor, the estimated annual value of which is 110*l*. and is increasing daily in value. The houses are held direct from the freeholder in one lease, at the very low ground-rent of 20*l*. per annum, for an unexpired term of about 97 years. 600*l*. of the purchase money may remain on mortgage for a year at 5*l*. per cent.

May be viewed, and printed particulars obtained of Messrs. RICHARDSON, SMITH, and SADLER; at the Mart; and at Mr. FREDERICK CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

LONG LEASEHOLD GROUND-RENTS, WHARFS, and HOUSES, LOWER BELGRAVE-PLACE, PIMLICO; held direct from the Marquis of Westminster, for a Term of 78 Years.

MR. FREDERICK CHINNOCK has been favoured with instructions to SELL by AUCTION, at the Mart, on TUESDAY, March 4, at One, a valuable WHARF, with several messuages and stabling erected thereon, called and known as Halkin-wharf, situate in Lower Belgrave-place, with large carriage-way and good water frontage to Grosvenor-basin, let to a highly-respectable tenant for 21 years, at 105*l*. per annum. A ground rent of 7*l*. and 16*l*. per annum, amply secured upon two capital private houses, Nos. 37 and 38, Lower Belgrave-place, and a large factory and buildings in the rear. Also, a capital dwelling-house, No. 36, Lower Belgrave-place, let on lease to a highly-respectable tenant, at the very moderate rent of 26*l*. per annum. The wharf alone will be sold subject to the whole of the ground-rent to which the estate is liable.

The property may be viewed by permission of the tenant. Descriptive particulars may be had of Messrs. RICHARDSON, SMITH, and SADLER, Solicitors; at the Mart; and at Mr. FREDERICK CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

FREEHOLD HOUSE, SAINT LUKE'S.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on TUESDAY, March 4, at Twelve, a capital FREEHOLD HOUSE, situate and being No 4, Baldwyn-street, near St. Luke's Church; it is let to a highly respectable tenant at 22*l*. per annum.

May be viewed; and printed particulars had of Messrs. RICHARDSON, SMITH, and SADLER, Solicitors, 28, Golden-square; at the Mart; and at Mr. CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

BURTON-STREET, EATON-SQUARE.
LONG LEASEHOLD DWELLING-HOUSE, close by the New Church.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on TUESDAY, March 4, the above private HOUSE, which is well built and capitally finished, and is in the occupation of an excellent tenant, at the original rent of 50*l*. per annum—55*l*. may now readily be obtained for it, held for about 80 years, at a reduced ground-rent.

May be viewed. Particulars to be had of Messrs. RICHARDSON, SMITH, and SADLER, Solicitors, 28, Golden-square; at the Mart; and at Mr. FREDERICK CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

By Mr. FREDERICK CHINNOCK, at the Auction Mart, on TUESDAY, March 4, at Twelve.

DWELLING-HOUSE, Manufactory, and Stables, and large Yard, Halkin Wharf, Pimlico, the whole being enclosed by folding gates. The property is let to Messrs. Flashman and Co. at 50*l*. per annum; held for an unexpired term of about 78 years, at a ground-rent of 16*l*. per annum.

May be viewed by leave of the tenants, and particulars obtained at Mr. F. CHINNOCK'S Auction Offices, 28, Regent-street, Waterloo-place.

Leasehold Property at Camberwell, producing a rental of 98*l*. per annum, and a Freehold Ground Rent of 3*l*. per annum, giving a vote for the county of Middlesex.

MESSRS. WINSTANLEY are instructed to offer for SALE by AUCTION, at the Mart, on TUESDAY, Feb. 25, a desirable LEASEHOLD PROPERTY, consisting of four respectable brick-built dwelling-houses, with fore-courts and gardens, situate Nos. 17, 18, 19, and 20, in Denmark-row, Coldharbour-lane, leading from Camberwell to Brixton, in the occupation of yearly tenants, at rents amounting to 98*l*. per annum, and held for an unexpired term of about 88 years at 10*l*. Also a Ground Rent of 3*l*. per annum, arising from freehold houses in the neighbourhood of Bishopsgate-street. The houses can be viewed by permission of the tenants. Printed particulars may be obtained of Messrs. Robinson and Ouvry, solicitors, Tokenhouse-yard; at the Mart; the Golden Lion, Camberwell-green; and of Messrs. WINSTANLEY, Paternoster-row.

Sales by Auction.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1815, as follow:—

Friday, March 7.	Friday, Aug. 1.
,, April 4.	,, Sept. 5.
,, May 2.	,, Oct. 3.
,, June 6.	,, Nov. 7.
,, July 4.	,, Dec. 5.

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

IMPORTANT FREEHOLD ESTATE (consisting of nearly 1800 acres) and MANOR, in the county of Salop. To be SOLD by AUCTION, by Messrs. WINSTANLEY, at the Mart in London, on Tuesday, the 8th of April, at Twelve o'clock, in one lot, the MANOR of CULMINGTON, with its appurtenances; and all that highly valuable and important FREEHOLD ESTATE situate in the several parishes of Culmington, Diddlebury, and Stanton-Lacy, in the county of Salop, containing together 1,786 acres or thereabouts, of exceedingly rich arable, meadow, pasture, and wood land, in a ring fence, in a high state of cultivation, divided into convenient farms with excellent homesteads, and suitable agricultural buildings eligibly arranged and in complete repair; together with a good Water Corn Mill; all now in the several occupations of Messrs. James Williams, John Downes, Edward Instone, Francis Bach, and others.

The estate is equally eligible for residence or investment, being most desirably situate in the best part of the county of Salop, 5 miles from Ludlow, 14 from Wenlock, 16 from Bridgenorth, 20 from Shrewsbury, and 148 from London. It is in the immediate vicinity of the Ludlow Hunt, abounds with game, and the beautiful Trout river, Corve, runs through the centre thereof. The Land Tax is redeemed, and the Tithes are commuted. The arable Lands are peculiarly adapted for the growth of turnips, barley, clover, and wheat, the meadow and pasture Lands are rich and productive, and the Woods and Plantations are so situate as to be highly ornamental to the Estate.

The several Tenants will shew the Premises in their respective occupations, and descriptive printed particulars and conditions of sale may be had, six weeks previous to the day of sale, of Charles Powell esq. of Sutton, near Ludlow, Shropshire; of Messrs. Garbutt, Fawcett, and Hick, solicitors, Yarm, Yorkshire; at the Crown Inn, Ludlow; the Lion, Shrewsbury; the Star and Garter, Worcester; and in London of Messrs. Baxendale, Tatham, Upton, and Johnson, solicitors, 24, Lincoln's Inn-fields; Messrs. Bell, Brodrick, and Bell, solicitors, 9, Bow Church-yard; at the MART, near the Bank of England; and of Messrs. WINSTANLEY, Paternoster-row.

CROFT, near BURGH, LINCOLNSHIRE.—VALUABLE FREEHOLD GRAZING LAND.—To be SOLD by AUCTION, by Mr. J. A. POLLARD, at the Fleece Inn, in Burgh, in the county of Lincoln, on Thursday, the 13th March, 1845, between the hours of four and six o'clock in the evening, in the following or such other lots as may be agreed upon at the time of sale, and subject to conditions—The undermentioned very valuable old Pasture or Feeding Land in Croft aforesaid, viz.:—

	Quantity, more or less. A.	R.	P.
Lot 1. Drain Close	4	2	20
,, 2. Seven Acres	7	1	27
,, 3. Long Seven Acres	7	0	20
,, 4. Gowt Three Acres	4	3	0
,, 5. Twelve Acres	11	3	5
,, 6. Church Lane Two Acres	2	2	28
	38	1	20

For further particulars apply at our office.

S. & W. EDWARDS, Solicitors, Spalding.

Spalding, 10th February, 1845.

VALUABLE BUILDING LAND, LITTLE WOODHOUSE, LEEDS, YORKSHIRE.

TO BE SOLD, in several LOTS, pursuant to a DECREE of the HIGH COURT OF CHANCERY, made in a cause of Lyddon *v.* Woolcock, with the approbation of James William Farrar, esq. one of the Masters of the said Court, at Scarborough's Hotel, in Leeds, in the county of York, in the month of March next (of which due notice will be given)—

A FREEHOLD ESTATE (adapted to building purposes), called the Atkinson Estate, and situate near Little Woodhouse, in the town of Leeds, in the county of York, and which said estate forms a portion of the property of Mrs. Julia Lyddon, late of Boston, in the parish of Bramham, in the county of York, deceased.

Particulars are in course of preparation, and may be had gratis (after the 27th day of February), at the Master's Chambers, Southampton-buildings, Chancery-lane, London; of Messrs. Richardson, Smith, and Sadler, Solicitors, Golden-square; of Messrs. Ensor and Company, Gray's-inn; of Messrs. Bischoffe and Coxe, Coleman-street; of Messrs. Sandys and Pearson, Symonds-inn; of John Moss, esq. Derby; of William Tottie, esq. Leeds, and at Scarborough's Hotel there.

RICHARDSON, SMITH, and SADLER,
Golden-square, Plaintiff's Solicitors.

Sales by Auction.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human Life, Shares in Railways, Mines, and all other undertakings.

MESSRS. FULLER and MARSH respectfully inform the public, that by their system of periodical sales by Auction they are enabled to offer to persons expectant or otherwise interested in the above description of property the most prompt, economical, and satisfactory mode of disposing thereof, as by classifying these descriptions of interests and properties in the same particular and for the same day, much expense is avoided, and a far greater competition secured. Their periodical sales of reversions, life interests, annuities, life policies, advowsons, next presentations, and all descriptions of securities dependent upon human life, shares in railways, mines, and all other undertakings, will be continued throughout the present year as follows:—Thursday, March 6; Thursday, April 3; Thursday, May 1; Thursday, June 5; Thursday, July 3; Thursday, August 7; Thursday, September 4; Thursday, October 2; Thursday, November 6; Thursday, December 4. Notices of sales intended to be effected by the above means should be forwarded to Messrs. Fuller and Marsh a fortnight prior to each date, in order that they may have the full benefit of publicity. Messrs. F. and M. beg to call the attention of the public to the economy and expedition of this system of business, as they are thereby enabled to include each property for the sum of two guineas and a half, including all expenses, should a sale not be effected. The next periodical sale will take place at the Mart on Thursday, March 6.

Particulars may be obtained at the Offices of Messrs. FULLER and MARSH, 2, Charlotte-row, Mansion-house.

TO be SOLD, pursuant to an Order of the High Court of Chancery, made in the cause of *Beare* v. *Prior*, with the approbation of Richard Richards, esq. one of the Masters of the said Court, at the Gray's-inn Coffeehouse, Holborn, in the county of Middlesex, on the 10th day of March, 1845, at one o'clock in the afternoon, in three lots, several COPYHOLD HOUSES and PREMISES, situate in High-street, Mortlake, in the county of Surrey; and a storehouse, yard, and coke oven, situate in the rear of the said houses, and having a frontage on the towing-path of the river Thames.

Printed particulars and conditions of sale may shortly be had (gratis) at the chambers of the said Master, in Southampton-buildings, Chancery-lane; of Messrs. MAPLES, PEARSE, STEVENS, and MAPLES, 6, Frederick's-place, Old Jewry; and of Messrs. SUDLOW, SONS, and TORR, Chancery-lane, London.

DERBYSHIRE.—Alvaston Hall, near Derby.—Valuable Freehold Property, at Alvaston, within three miles of Derby.—Peremptorily, by Mr. EYRE, at the Royal Hotel, Derby, on Friday, March 7, at six in the evening, in the following or such other lots as may be agreed upon at the time of sale.

A Valuable FREEHOLD ESTATE at Alvaston aforesaid, viz. Lot 1. All that mansion-house called ALVASTON HALL, containing entrance-hall, breakfast, dining, and drawing rooms, kitchen, back kitchen, and pantries, dairy, larder, &c. on the ground floor, good cellaring under, and seven bedrooms, servant man's room and water-closet over, and attics above, together with coach-house, saddle-room, stabling for six horses, two loose boxes, standing for sixteen cows, and large barn and dovecote, excellent gardens and orchard, and three cottages all adjoining; the whole containing about .... 3A.0R.37P.

		A. R. P.
Also the following closes of Pasture Land, viz. Summer-house Close, Pinfold Close, and Smedley Croft, containing together about	17 2 35	
		20 3 32
Lot 2.—Wingate Meadow, Rail Close, and Pingle (meadow), containing together about		15 2 33
Lot 3.—Near Long Shoot (meadow), containing about	4 3 27	
Far Long Shoot (meadow), containing about	5 3 18	
		10 3 5
Lot 4.—Stale Hades (arable), containing about		4 0 19
Total		51 2 9

The property may be viewed on application at Alvaston Hall; and particulars with plans may be had at the Offices respectively of Mr. J. H. BENBOW, Solicitor, Stone-buildings, Lincoln's-inn, London; and of Messrs. Jessopp, Son, and Burnaby, Solicitors, Derby; and also of Mr. Frederick Simpson, Land-agent, Friar-gate, Derby; and Mr. EYRE, the Auctioneer, Queen-street, Derby.

Just published,

A TABLE of the ABBREVIATIONS by which the REPORTS are usually cited, and a CHRONOLOGICAL TABLE of the same, on a large sheet, to be hung in Offices and Chambers for ready reference. Price, 1s.; or mounted on Pasteboard, 2s.

N.B. This useful Table will be forwarded, post-paid, to any person transmitting *one shilling* in *penny* postage stamps.

As in its complete form, mounted upon millboard, it is too large and heavy to be transmitted by post, persons desirous of having it in this shape are requested either to order it through their booksellers, or to direct the Publisher in what manner it may be forwarded to them by parcel.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 100.] SATURDAY, MARCH 1, 1845.

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MONEY ready to be ADVANCED, at a reduced rate of interest.—150,000*l.* in One sum, or in Several sums, not less than 10,000*l.* each, on Freehold Land security. Also several other sums of various amounts.
Apply by letter, addressed to Y. B. at the Office of this Paper.

MONEY ADVANCED by W. E. Luxmore, of 92, St. Martin's-lane, Charing-cross, on PLATE, JEWELLERY, &c. at much less interest than is usually charged. A well-selected assortment of antique and second-hand modern plate, a brilliant necklace, and a single row of splendid oriental pearls, to be sold a bargain. Double-bottomed gold horizontal watches, jewelled, at 6*l.* 16*s.* 6*d.* each. Silver horizontal ditto, jewelled, at 2*l.* 18*s.* 6*d.* each. All warranted.

Money Wanted.

MONEY.—£100,000 WANTED, at four per Cent. interest (but subject to reduction to three and three-quarters per Cent. if paid within thirty days), upon amply sufficient security, consisting of freehold houses situate on the West side of London. The money will be taken for a term.
Apply to Messrs. RICHARDSON, SMITH, and SADLER, Solicitors, Golden-square.

MONEY.—WANTED 3,000*l.* upon security of Freehold Property and Life Policy, with additions of ample value.
Applications to be by Principals or their Solicitors only, and may be addressed (postage free), with rate of Interest required, to Mr. LOTT, Solicitor, 43, Bow-lane, Cheapside.

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Applications for Shares, in any usual form, to be made to me, at 18, Austin Friars.
Signed, JACKSON BARWISE, Secretary.

Situations Wanted.

LAW.—To SOLICITORS and CONVEYANCERS. A young Man, aged 32 Years, unmarried, who has for the last fifteen years and upwards, been employed in a Solicitor's Office in a large commercial Town (during the last four years as Managing Clerk), is desirous of obtaining a Situation in London, to conduct the Conveyancing Department (with the business of which he is well acquainted), and to attend to the general business of the Office. A moderate Salary only will be required.
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LAW.—WANTED immediately by a respectable young Man, Aged 20, a SITUATION in a Solicitor's Office. He has been six years in the Profession, and is accustomed to the general routine of business. Testimonials as to ability, steadiness, &c. will be given.
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WANTED a SITUATION as CLERK in a Solicitor's Office. The Advertiser is fully competent to take the entire management of the Chancery department, and can be well recommended.
Address (post-paid) to J. B., at Messrs. SHERWOOD, GILBERT, and PIPER, Booksellers, 23, Paternoster-row, Cheapside.

LAW.—A Gentleman who has been admitted, and has since passed six months with a Conveyancer, is desirous of obtaining a situation in a respectable Office, either in London or the Country, where he would undertake the management of Conveyancing or Common Law, under the superintendence of a principal.
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POOR LAW UNION SETTLEMENT.—The Bill brought in by Sir JAMES GRAHAM for making important alterations in the Law of Settlement, will appear in No. XLV. of the Poor Law Commissioners' Official Circular, now in the Press. The Official Circular is published monthly, by C. KNIGHT and Co. Ludgate-street. Price 3d. or if sent by post 4d.

BOROUGH OF KINGSTON-UPON-HULL.—NOTICE is HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE for the BOROUGH of KINGSTON-UPON-HULL, for the Trial of Prisoners committed and held to bail on charges of Felony and Misdemeanor, will be holden at the TOWN HALL in the said borough, before MATTHEW TALBOT BAINES, Esq. Recorder of the said Borough, on THURSDAY, the 6th day of March next, at Ten o'Clock in the forenoon, when and where all persons bound by recognizances, and others having business at the said Sessions (except as hereinafter next mentioned), are requested to attend. And in all cases where the parties accused are OUT on BAIL, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'Clock on FRIDAY Morning, the second day of the Sessions.
And NOTICE is HEREBY also GIVEN, That all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the 6th day of March next, and the hearing of Appeals and Motions will be taken at Nine o'Clock in the Morning on the Saturday following (if the Criminal Business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take Notice, that in Appeals against Removal Orders, copies of the Notice and grounds of Appeal and Examination of the Pauper must be filed along with the Removal Order.
J. H. GALLOWAY, Clerk of the Peace.
Office of Clerk of the Peace, Kingston-upon-Hull, 13th February, 1845.

Sales by Auction.

IN BANKRUPTCY.—CAPITAL LONG LEASEHOLD, direct from the Freeholder. NOTTING-HILL.

MR. FREDERICK CHINNOCK is ordered by the Assignees of Messrs. Christie and Rogers, bankrupts, and with the consent of the Mortgagees, to SELL by AUCTION, at the Mart, on TUESDAY, March 4, at Twelve, TWO substantially-built DWELLING-HOUSES, with shops, situate in the Queen's-road, Notting-hill; both let to highly respectable tenants, at low rents, amounting to 69*l.* per annum, and are held for an unexpired term of about 96 years.
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NORFOLK CIRCUIT by JNO. B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by WM. ST. LEGER BARINGTON, LL.D. Barrister-at-Law.

N. B.—The names of the reporters of such important points as may arise upon Circuit will be announced as the arrangements for each are completed.

The Written Judgments are reported verbatim in Short-hand by Mr. H. GREGORY, Short-hand Writer.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	99¼	97⅞	99⅞	99⅛	99¾	99¼
Three per Cents. Reduced	100	100⅛	100¼	100⅛	100½	100⅛
New Three-&-a-quarter per Cts	103⅞	103⅞	101	104	104	104
Long Annuities............	12⅛	12⅛	12¼	12⅛	12⅛	12⅛
Bank Stock	212½	212⅛	212¼	213	213	213
India Stock	281	282	282¼	282	282⅛	282⅞
India Bonds, prem...........	70	69	70	68	69	70
Exchequer Bills, prem.	58	58	59	60	61	62
FOREIGN.						
Spanish Five per Cents.......	27⅞	27⅞	28	27⅞	27⅞	27⅞
Spanish Three per Cents.	40⅞	40¾	40⅞	40⅞	40¾	41
Russian	119⅞	119⅛	119⅞	119⅞	120	119⅞
Peruvian...............	30½	30⅛	31¼	31	31¼	31
Portuguese	60	59¾	60⅛	60⅛	60⅞	60¼
Mexican...............	35⅞	35¾	36	36	36¼	36
——— Deferred	16½	16⅞	16	16	16¼	16¼
Dutch Two-and-a-Half per Cents..............	63	63¼	63⅜	63	63	63¼
——— Five per Cents.	98¼	98¼	98¼	98⅛	98¼	98¼
Danish	89½	90	90¼	90¼	90⅛	90⅛
Colombian.............	14	14¼	14¼	14	14¼	14¼
Chilian	101⅛	101⅛	101⅛	102	102¼	102
Buenos Ayres	43	43⅛	43¼	43½	43½	44
Brazilian.............	88½	89	90⅛	89¼	89¼	90
Belgian	101½	101¼	101½	101½	101½	102

NEW PROJECTED RAILWAYS.

(From the *Gazette* of Friday, Feb. 28.)

RAILWAY DEPARTMENT, BOARD OF TRADE, WHITEHALL, FEB. 28, 1845.

Notice is hereby given, that the Board constituted by the Minute of the Lords of the Committee of Privy Council for Trade, for the transaction of railway business, having had under consideration the following schemes, for extending railway communication in Scotland, viz.:—

The Aberdeen,
The Dundee and Perth,
The Edinburgh and Northern,
The Scottish Midland,
The Glasgow, Barrhead, and Neilston,
The Glasgow and Ayr — Barrhead and Neilston Branch;

have determined on reporting to Parliament in favour of the

Aberdeen,
Dundee and Perth (line on the north bank of the Tay),
Edinburgh and Northern,
Scottish Midland,
Glasgow, Barrhead, and Neilston;

and against the

Glasgow and Ayr—Barrhead and Neilston Branch; and the Board having further had under consideration the following schemes, viz.

The Whitehaven and Furness Junction,
The Kendal and Windermere,
The Lowestoft,

have determined on reporting to Parliament in favour of the said schemes.

DALHOUSIE.
C. W. PASLEY. G. R. PORTER.
D. O'BRIEN. S. LAING.

Public Sales.

By Messrs. SHUTTLEWORTH and SONS, at the Mart.

A freehold estate, comprising a detached residence with offices, lawn, gardens, and meadow-land, in all 3A. 0R. 35P. situate near the eight-mile-stone at Lower Tooting, Surrey; let on lease at 100*l*. per annum—1700*l*.

Two houses. No. 21, West-street, and No. 10, Martha-street, Cambridge-heath, Bethnal-green, let at 49*l*. 12s.; held for 42 years at a ground-rent of 12*l*. per annum—205*l*.

Two ditto, Nos. 1 and 2, East-street, Cambridge-heath, let at 34*l*. per annum; held for 42½ years, at a ground-rent of 4*l*. 10s. per annum—200*l*.

A freehold house, No. 4, High Holborn, let at 105*l*. per annum—2420*l*.

A freehold house, No. 20, Great Peter-street, Westminster, let at 32*l*. 10s. per annum—530*l*.

By Messrs. ELLIS and SON, at Garraway's.

A freehold house and shop, No. 36, St John's-lane, Smithfield-market—260*l*.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

HARDY—On the 27th ult. at 35, Eaton-square, the lady of Gathorne Hardy, esq. barrister-at-law, of a son.

ISAACSON.—On the 25th ult. in Norfolk-street, Mrs. John Frederick Isaacson, of a son.

PARSON.—On the 26th ult. at Haslemere, Surrey, the lady of George John Parson, esq. solicitor, of a son.

MARRIAGES.

BOILEAU, Lieut. Archibald J. M., Madras Engineers, son of Thomas Boileau, esq. of the Madras Civil Service, and judge of the Northern Division, Masulipatam, to Georgiana Elizabeth, eldest daughter of George Wilson Boileau, esq. of Monkstown, Dublin, on Feb. 14, at Monkstown Church, Dublin.

RAWORTH, J. T. esq. of Leicester, to Jane, third daughter of W. Collins, esq. M.P. on Feb. 12, at Worcester.

WEBB, Francis, of the Middle Temple, and of 53, Russell-square, son of the late Richard Webb, esq. of Melchet-park, Wilts, to Matilda Jane, daughter of Mrs. Ingram, of Ashton Gifford, in the parish of Codford, St. Peter, Wilts, on the 20th ult. at Codford, St. Peter, Wilts.

DEATHS.

BUXTON, Sir T. Fowell, bart. at his residence, Northrepps-hall, Norfolk, on the 19th ult. aged 59.

CROSBY, Elizabeth, wife of James Crosby, esq. of Church-street, Old Jewry, solicitor, on the 26th ult. aged 23.

HALL, Benjamin Hanbury Stewart, eldest and only surviving son of Sir Benjamin and Lady Hall, bart. M.P. of Llanover, Monmouth, on the 11th ult. at Llanover.

HUNT, William, esq. one of the magistrates of Stamford, at Stamford, on the 17th ult. aged 68.

LEIR, Rev. Paul, M.A. Rector of Charlton Musgrove, and a magistrate for the county of Somerset, on the 14th ult. aged 75.

MERRIFIELD, James Edward, late of Cook's-court, Carey-street, and of the Register-office for Middlesex, on the 24th ult. aged 88.

MORNINGTON, William Earl of, at his house in Grosvenor-square, on the 22nd ult. aged 82.

PRENDERGAST, Guy Lenox, esq. late of the East India Company's Civil Service, formerly Chief of Surat, Member of Council at Bombay, and M.P. for Lymington, at his house in Grafton-street, on the 21st ult. aged 66.

SAWYER, John, esq. the oldest magistrate and deputy lieutenant of the county of Berks, at Heywood-lodge, on the 26th ult. aged 83.

STEPHENS, Ellys Anderson, esq. a magistrate and deputy lieutenant of the county of Essex, at his seat, Bower-hall, Essex, on the 12th ult. aged 79.

TAYLOR, Henry, esq. Recorder of the Borough of Pontefract, on the 15th ult.

Sales by Auction.

Sales by Auction.

New Publications

New Publications.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 1st day of March, 1845.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 101.] SATURDAY, MARCH 8, 1845.

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BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

CLIFTON.—On the 3rd inst. at No. 5, Wilton-crescent, Belgrave-square, the lady of J. Talbot Clifton, esq. M.P. of a son and heir.

POWYS.—On Thursday, the 27th ult. in Somer's-place, Hyde-park, Mrs. Philip Lybbe Powys, of a son.

MARRIAGES.

FEARON, Robert J. esq. barrister, to Frances Arabella, relict of Edward Atkin, esq. late of the county of Wexford, on the 18th ult. at the parish church, Donnybrook.

HOOKEY, Captain G. Paymaster of the Chatham Division of Royal Marines, to Sarah, daughter of the late Thomas Mason, esq. of Lincoln, and sister of Richard Mason, esq. town-clerk of that city, on the 25th ult. at Christ Church, Liverpool.

MAHER, N. S. esq. of Turtulla, M.P. for Tipperary, to Margaret Jane, eldest daughter of Walter Otway Herbert, esq. J.P. of Pilhouse, Carrick-on-Suir, on the 18th ult. at New Inn Church, Ireland.

SPARKS, John, esq. of Crewkerne, Somersetshire, to Mary, eldest daughter of Sir Alexander Ramsay, bart. of Balmain, Kincardineshire, and relict of the late Rev. Burges Lambert, of Misterton, Somersetshire, on the 25th ult. at St. John's Church, Edinburgh.

DEATHS.

ANDREWS, Robert, second son of Mr R. B. Andrews, solicitor, Epping, Essex, on the 1st inst. at the same place.

COLLIER, John, esq. for many years vestry clerk of St. Clement Danes and the Liberty of the Rolls, on the 5th inst. aged 74.

BEST, Right Hon. W. Draper, Lord Wynford, formerly Lord Chief Justice of the Court of Common Pleas, on the 3rd inst. at Leasons, Kent.

GURNEY, Sir John, late one of the Barons of her Majesty's Court of Exchequer, on the 1st inst. in Lincoln's-inn-fields, aged 77.

HEWITT, Thomas, esq. solicitor, of No. 54, Burton-crescent and No. 3, Rainbow-terrace, on the 23rd ult.

HULBERT, Charles, solicitor, Southgate, Devizes, on the 16th ult. at that town.

MAURICE, Mr. Thos. Roberts, solicitor, Holywell, at the residence of his brother, Bistree, near Mold, on the 17th ult.

POWYS, Henry Philip, infant son of Philip Lybbe Powys, esq. of the Inner Temple, barrister-at-law, on the 2nd inst. in Somer's-place, Hyde-park.

RAYMOND, Henry Archer, esq. of Upper Woburn-place and Lincoln's-inn-fields, on the 3rd inst.

SMITH, Rev. Sydney, Canon Residentiary of St. Paul's, at his house, in Green-street, Grosvenor-square, on the 22nd ult. aged 74.

STEER, William, youngest son of the late John Steer, esq. barrister-at-law, at 50, Cumming-street, Pentonville, on the 5th inst. aged 11.

WHITE, Frederick, esq. solicitor, at his house, in South-street, Wellington, on the 25th ult. aged 73.

WOODRUFFE, John, esq. barrister, of the Insolvent Debtors' Court, at his residence, Porchester-terrace, Bayswater, on the 26th ult. aged 48.

JOURNAL OF PROPERTY.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols ...	99¼	99⅞	99¼	99⅞	99⅜	99½
Three per Cents. Reduced	100⅛	100⅛	100¼	100⅛	100⅛	100⅛
New Three-&-a-quarter per Cts	103⅞	103⅞	103	103¼	103¼	103¼
Long Annuities............	12⅝	12⅝	12¾	12⅝	12⅝	12⅝
Bank Stock	212½	212½	212¼	213	213	213
India Stock	281	282	282½	282	282½	282½
India Bonds, prem...........	70	69	70	68	69	70
Exchequer Bills, prem.	42	63	63	64	65	65
FOREIGN.						
Spanish Five per Cents.......	29⅜	29⅜	29	29⅛	29¼	29¼
Spanish Three per Cents.	40¾	41½	41	41	41¼	41¼
Russian	119¾	119½	119⅞	119½	120	119¾
Peruvian...................	30½	30⅛	31½	31	31¼	31
Portuguese	66	66¼	66⅛	66½	66⅞	66¼
Mexican....................	36¼	36⅞	36	36	36¼	36
——— Deferred	16¼	16⅞	16¼	16⅛	16½	16½
Dutch Two-and-a-Half per Cents....................	63⅞	63¼	63⅝	63¼	63¼	63¼
——— Five per Cents.	99	99¼	99⅛	99¼	99¼	99½
Danish	89⅛	90	90¼	90¼	90½	90½
Colombian..................	14	14¼	14¼	14	14¼	14¼
Chilian	100⅛	101⅛	101½	102	102¼	102¼
Buenos Ayres	43½	43½	43¾	43½	43½	44
Brazilian..................	89½	89¾	90	90¼	90½	90½
Belgian	101	101½	101	101½	101½	102

Public Sales.

By Mr. W. W. SIMPSON, at the Mart.

The advowson of the rectory of Thornford, situate about 3½ miles from Sherborne, Dorsetshire, comprising a parsonage-house and 34 acres of glebe land, together with the rent-charge, in lieu of tithes, extending over 1,426 acres of land, amounting to 227*l.* per annum; the incumbent is in his 63rd year, and the population 390—1,520*l.*

The perpetual advowson of Iken, situate near Orford, Suffolk, yielding an income of 457*l.* per annum, comprising the tithes of the parish, containing about 3,295a., and 19a. 1r. 12p. of glebe land; the incumbent is in the 76th year of his age, and the population, in 1841, was 342—3,000gs.

A freehold estate, called Woodmansterne Manor Farm, situate at Woodmansterne, Surrey, comprising a mansion and 122a. 21p. of arable, pasture, and wood land, together with the freehold manor, or reputed manor, of Woodmansterne—7,360*l.*

By Mr. HENRY BROWN, at the Mart.

Three freehold houses, Nos. 17 and 18, Mint-street, and No. 1, Redcross-street, Borough—530*l.*

A freehold house and shop, No. 2, Redcross-street—370*l.*

A ditto, No. 3—460*l.*

A freehold farm, situate at Great Sutton, in Cheshire, comprising a farmhouse, with farm buildings, and about 144 acres of arable and pasture land, producing a rental of 285*l.* 12s. per annum; the land tax is redeemed—6,000*l.*

By Messrs. WINSTANLEY.

A residence, with coach-house and stable, situated No. 31, Eaton-square, held for a term whereof 78 years were unexpired at Midsummer last, at a ground-rent of 47*l.*—2,960*l.*

A leasehold property, consisting of four houses, situate in Denmark-row, Camberwell, let at rents amounting to 98*l.* per annum, held for 38 years, at 10*l.* per annum—805*l.*

A freehold ground-rent of 3*l.* per annum, arising from premises near to Bishopsgate-street—76*l.*

One moiety of a whole share in the bridge over the River Thames from Fulham, in Middlesex, to Putney, in Surrey, which is freehold, and produces an average income of about 45*l.* per annum, which being divided into five lots, produced the sum of 765*l.*

By Mr. THOMAS VENTOM.

A leasehold estate, consisting of 14 houses, Nos. 59 to 72, in James-street, and 11 tenements in Burnes-terrace, producing a net rental of 219*l.* 18s. 3d.; the whole of the property is held for 19½ years, at 31*l.* 1s. per annum; sold pursuant to an order of the High Court of Chancery in the cause of "Partridge *v.* Partridge."

By Messrs. BROOKS and GREEN, at Garraway's.

An improved ground rent of 100*l.* per annum, secured upon four houses in Brunswick-place, Old Kent-road, and seven houses in Alfred-place, two in East-lane, and seven in Stanford place, held for 30¼ years sold for 1,459*l.*

By Mr. HENRY COBB, at the Mart.

A freehold rent-charge, in lieu of the great and small tithes of the parish of Darrington, near Faversham, Kent, amounting in the last year to 249*l.* 1s. variable under the provisions of the Tithe Commutation Act—6,125*l.*

WILL OF THE LATE DR. BIRKBECK.—The will of George Birkbeck, esq. Doctor of Medicine, who formerly resided in Cateaton-street, afterwards in Broad-street, and latterly in Finsbury-square, was proved a short time since by Henry Lloyd, esq. and William Lloyd Birkbeck, esq. the son, the surviving executors—William Birkbeck, esq. banker at Settle, the brother and other executor, having died before the testator. The personal estate is sworn under 10,000*l.*—*Ibid.*

LEVEL of the WASH.—At a Meeting of the Directors, held at the Old Hummums, on Tuesday, the 25th day of February, 1845,

Present,

The Lord GEORGE BENTINCK, M.P. in the Chair

Joseph Baxendale, esq.	Henry Rich, esq.
R. C. Lee Bevan, esq.	Joseph Brown Wilks, esq.
Charles Muriel, esq.	Joseph Wilson, esq.
G. A. Peppercorn, esq.	W. Eagle, esq.

The solicitors having submitted to this meeting the letter of his Grace the Duke of Portland, dated the 13th inst. and addressed to Frederic Lane, esq.

Resolved—That the wishes of the Duke of Portland be complied with, and that his Grace's letter be published in each paper in which the prospectus with his Grace's name has been advertised; and that a copy of this resolution be forwarded to the Duke of Portland.

(Copy of the Letter referred to.)

Welbeck, Feb. 13, 1845.

Sir,—I have seen in the newspaper my name as a Trustee and Director of the Wash Embankment.

I am not sure whether or not I authorized Lord George Bentinck to say I would subscribe 5,000*l.* which I believe is equivalent to saying I would take 100 shares in that scheme. However, whether I did so or not, I authorize you to put down my name for that number.

But I must desire that my name may be withdrawn from all advertisements as Trustee or Director.

It is quite impossible for me to take any share in the management of its concerns, and therefore I cannot allow my name to be used in a manner which might mislead people into the opinion that I made myself in any way responsible for its success; at the same time I have no doubt that it will succeed, and you may quote my opinion to that effect.

I have the honour to be,
Sir,
Your most obedient servant.

Frederic Lane, Esq. SCOTT PORTLAND.

PROSPECTUS of a PLAN for IMPROVING the OUTFALL BELOW LYNN, and for RECLAIMING from the SEA 30,000 ACRES of LAND, PART of the ESTUARY called the WASH, between the COUNTIES of NORFOLK and LINCOLN.

Capital 500,000*l.* in 10,000 shares of 50*l.* each. Deposit 2*l.* 10s. per share.

TRUSTEES.

Earl Fitzwilliam	Lord George Bentinck, M.P.
Sir Thomas Hare, bart.	W. Bagge, esq. M.P.
Earl of Orford	W. W. Chute, esq. M.P.

DIRECTORS.

Earl Fitzwilliam	Charles Muriel, esq.
Earl of Orford	George Capron, esq.
Lord George Bentinck, M.P.	Martin West, esq.
Sir Wm. Browne Folkes, bart.	Joseph Browne Wilks, esq.
Rd. Greaves Townley, esq.	The Mayor of Lynn
George Bentinck, esq.	Richard Bagge, esq.
George Pryme, esq.	Edward Everard, esq.
Rt. Cooper Lee Bevan, esq.	Henry Rich, esq.
William Eagle, esq.	Joseph Baxendale, esq.
Joseph Wilson, esq.	George A. Peppercorn, esq.

(With power to add to their number.)

London Bankers—Messrs. Smith, Payne, and Smiths; Messrs. Barclay, Bevan, and Co.

Country Bankers—Messrs. Gurney and Co. Lynn; Messrs. Everards and Co. Lynn.

Engineers—Messrs. Rennie, for the promoters; James M. Rendel, esq. for the town of Lynn.

Solicitors—Frederic Lane, esq. King's Lynn; Thomas Wing, esq. Gray's-inn, London.

Surveyor—Mr. Edwin Durrant King's Lynn.

The period for receiving subscriptions to this undertaking having been enlarged to the 17th of March instant, applications for Shares may be made in the meantime, by letters, post paid, to Frederic Lane, esq. King's Lynn, Norfolk; or Thomas Wing, esq. Gray's-inn-square, London.

March 1, 1845.

FORM OF APPLICATION.

Level of the Wash.

I request that you will allot to me shares of 50*l.* each in the above undertaking, agreeably to the Prospectus, and I agree to accept such shares as may be allotted to me, and also to pay the deposit thereon, and to sign the parliamentary contract and subscribers' agreement when required.

Name———————
Residence———————

To Frederic Lane, Thomas Wing, } Esquires.

New Publications.

TO ADVERTISERS.

EDINBURGH REVIEW, No. CLXIV.—ADVERTISEMENTS for insertion in No. 164 of The Edinburgh Review are requested to be sent to the Publishers' by Thursday, the 20th inst.; and BILLS on or before Saturday, the 22nd.

39, Pater Noster Row, March 8, 1845.

Published this day, 8vo. gratis.

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Johnson's Farmer,	Ure's Arts, Manufactures, and Mines (and Supplement of Recent Improvements),
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Loudon's Rural Architecture,	
Loudon's Gardening,	
Loudon's Plants,	

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These FORMS are printed on convenient sheets for use, and Nos. 1, 2, 3, 4, 5, and 8, will be supplied at 3s. and Nos. 6 and 7 at 4s. per quire.

The following Forms are now ready. Orders should specify the Forms wanted exactly as here described:—

1. Information of a Mother of a Bastard Child *before* Birth, *a*.
2. Information of a Mother of a Bastard Child *after* Birth, *a b*.
3. Summons to the Putative Father *before* Birth, A.
4. Summons to the Putative Father *after* Birth, B.
5. Summons to Witnesses.
6. Order of Maintenance *before* Birth, C.
7. Order of Maintenance *after* Birth, D.
8. Notice of Appeal.
9. Complaint of Disobedience to Order.
10. Warrant for the Aprehension of the Putative Father.

N.B. A complete series of Forms in Settlement Law and in Magistrates' Law generally, is in preparation.

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No. 3. Copy Subpœna duc. tec. 9d. per doz.
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Eleventh Edition, dedicated, by permission, to H.R.H. Prince Albert.

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AN Abridgment of the LAW of NISI PRIUS. Eleventh Edition, enlarged and much improved, with the Statutes and Cases brought down to the present time.

By WILLIAM SELWYN, Esq. of Lincoln's-Inn, One of her Majesty's Counsel, late Recorder of Portsmouth.

V. and R. STEVENS and G. S. NORTON, Law Booksellers and Publishers (Successors to the late J. and W. T. Clarke, of Portugal-street), 26 and 39, Bell-yard, Lincoln's-Inn.

Just published,

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Published at the LAW TIMES Office, 29, Essex-street, and to be had of all Booksellers.

Sales by Auction.

CROFT, near BURGH, LINCOLNSHIRE.—VALUABLE FREEHOLD GRAZING LAND.—To be SOLD by AUCTION, by Mr. J. A. POLLARD, at the Fleece Inn, in Burgh, in the county of Lincoln, on Thursday, the 13th March, 1845, between the hours of four and six o'clock in the evening, in the following or such other lots as may be agreed upon at the time of sale, and subject to conditions—The undermentioned very valuable old Pasture or Feeding Land in Croft aforesaid, viz.:—

Quantity, more or less.

		A.	R.	P.
Lot 1.	Drain Close	4	2	20
,, 2.	Seven Acres	7	1	27
,, 3.	Long Seven Acres	7	0	20
,, 4.	Gowt Three Acres	4	3	0
,, 5.	Twelve Acres	11	3	5
,, 6.	Church Lane Two Acres..	2	2	28
		38	1	20

For further particulars apply at our office.

S. & W. EDWARDS, Solicitors, Spalding.

Spalding, 10th February, 1845.

Capital House, Brewery, Malting, Public Houses, &c.

MR. B. PAYNE is instructed by the Trustees under the Will of the late William Smith, esq. to SELL by AUCTION, at the Bull Inn, in Weedon Becke, in the county of Northampton, on Friday, March 14th, at four o'clock in the afternoon, a very excellent stone-built DWELLING-HOUSE, with yard, gardens, hothouse, stabling, and other requisite out-buildings and offices; and also a good ten-quarter Malthouse and complete Brewery, with plant, steam-engine, and every necessary apparatus for continuing the brewing trade; the whole recently put into a perfect state of repair by Pontifex, and now in the tenure of Mr. R. Bull. Also a Messuage or Public House, called the "Wheat-sheaf," with yard, garden, stabling, and other out-buildings, in the occupation of —— Barnett; also a Cottage or Tenement, and premises adjoining, in the occupation of —— Dufton.

The above property is of copyhold tenure, and is situate at and within the manor of Weedon Beck aforesaid.

Also a Freehold Messuage or Public-house, called the "Quart Pot," with yard, out-buildings, and appurtenances, situate in Daventry, in the said county of Northampton, in the occupation of —— Brown. And also a superior Freehold Messuage or Inn, called the "George Inn," with yard, garden, piece of ground, stables, coach-house, and other out-buildings, situate at Roade, in the said county of Northampton, in the occupation of Mary Parish.

Weedon adjoins the London and Birmingham Railway, the Grand Junction Canal, and also the turnpike-road leading from Daventry to Towcester and Northampton; is four miles from Daventry, eight from Towcester, and eight from Northampton, and contains one of the principal barracks and depôts for soldiers in the kingdom, not fewer than 1,000 men being always stationed there; and the above-described property (now in full trade) offers an opportunity and facilities for continuing and carrying on the brewing and malting business seldom met with.

To view the property, apply to the respective tenants; and particulars may be had on application to Mr. J. Smith, Bowden Brewery, near Market-Harborough; or to Mr. LAWLEY, or Mr. G. WARTNABY, Solicitors, of Lutterworth, Leicestershire.

IMPORTANT FREEHOLD ESTATE (consisting of nearly 1800 acres) and MANOR, in the county of Salop.—To be SOLD by AUCTION, by Messrs. WINSTANLEY, at the Mart in London, on Tuesday, the 8th of April, at Twelve o'clock, in one lot, the MANOR of CULMINGTON, with its appurtenances; and all that highly valuable and important FREEHOLD ESTATE situate in the several parishes of Culmington, Diddlebury, and Stanton-Lacy, in the county of Salop, containing together 1,786 acres or thereabouts, of exceedingly rich arable, meadow, pasture, and wood land, in a ring fence, in a high state of cultivation, divided into convenient farms with excellent homesteads, and suitable agricultural buildings eligibly arranged and in complete repair; together with a good Water Corn Mill; all now in the several occupations of Messrs. James Williams, John Downes, Edward Instone, Francis Bach, and others.

The estate is equally eligible for residence or investment, being most desirably situate in the best part of the county of Salop, 5 miles from Ludlow, 14 from Wenlock, 16 from Bridgenorth, 20 from Shrewsbury, and 148 from London. It is in the immediate vicinity of the Ludlow Hunt, abounds with game, and the beautiful Trout river, Corve, runs through the centre thereof. The Land Tax is redeemed, and the Tithes are commuted. The arable Lands are peculiarly adapted for the growth of turnips, barley, clover, and wheat, the meadow and pasture Lands are rich and productive, and the Woods and Plantations are so situate as to be highly ornamental to the Estate.

The several Tenants will shew the Premises in their respective occupations, and descriptive printed particulars and conditions of sale may be had, six weeks previous to the day of sale, of Charles Powell, esq. of Sutton, near Ludlow, Shropshire; of Messrs. Garbutt, Fawcett, and Hick, solicitors, Yarm, Yorkshire; at the Crown Inn, Ludlow; the Lion, Shrewsbury; the Star and Garter, Worcester; and in London of Messrs. Baxendale, Tatham, Upton, and Johnson, solicitors, 24, Lincoln's Inn-fields; Messrs. Bell, Brodrick, and Bell, solicitors, 9, Bow Church-yard; at the MART, near the Bank of England; and of Messrs. WINSTANLEY, Paternoster-row.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 102.] SATURDAY, MARCH 15, 1845.

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MONEY ADVANCED by W. E. Luxmore, of 92, St. Martin's-lane, Charing-cross, on PLATE, JEWELLERY, &c. at much less interest than is usually charged. A well-selected assortment of antique and second-hand modern plate, a brilliant necklace, and a single row of splendid oriental pearls, to be sold a bargain. Double-bottomed gold horizontal watches, jewelled, at 6l. 16s. 6d. each. Silver horizontal ditto, jewelled, at 2l. 18s. 6d. each. All warranted.

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MONEY.—WANTED 1,000l. at an annuity rate of interest to be agreed on between the parties, the whole to be repaid on the death of a Widower aged sixty, and to be in the meantime secured on freehold property in Hull of ample value.
Apply to Messrs. ENGLAND and SHACKLES, Solicitors, Hull.

Six per Cent. Interest, Fifteen per Cent. profit, under the Act of of 1st and 2nd Wm. 4, cap. 57.

FIVE THOUSAND SHARES of £10 each, 1l. Deposit, bearing the above specified Profit and Interest, are directed to be issued under a Government Commission, for Draining and Improving Lough Corrib, in the Counties of Galway and Mayo.
Applications for Shares, in any usual form, to be made to me, at 18, Austin Friars.
Signed, JACKSON BARWISE, Secretary.

Situations Wanted.

LAW.—SITUATION WANTED, by a SOLICITOR, a bachelor, aged 55, of steady habits, admitted in 1811, since which time he has been in practice in a large manufacturing town (until the last two years) on his own account, to take the management of an office of respectability under the direction or in the absence of the principal. Would reside on the premises if required.
For further particulars, apply to Mr. John Ray, Solicitor, Leeds.

Partnerships Wanted.

LAW.—PARTNERSHIP WANTED.—A SOLICITOR, who has been in practice three years, of business-like habits, wishes to make an arrangement with any gentleman for the purchase of a share in an established and respectable business in town or country, or to purchase the Practice of a gentleman wishing to retire. The advertiser would have no objection to assist as Clerk for a certain time upon the understanding ultimately to be taken into Partnership. The highest references given and required.
Address (pre-paid) to A. X. LAW TIMES Office, 29, Essex-street, Strand.

PARTNERSHIP.—A Gentleman of great experience as a Mercantile Bookkeeper and Banking Accountant, and who has been engaged for some years as a Public Accountant in the City, wishes as PARTNER a respectable young Gentleman of good education and active habits, to take charge of the Office department.
For particulars address to A. C. C. at Messrs. Witherby's, Law-stationers, 9, Birchin-lane, Lombard-street.

PARTNERSHIP.—WANTED, in a Wholesale Manufacturing Business of the first respectability, a PARTNER, active or dormant, who can command from 5,000l. to 8,000l. for which an ample return can be realised.
The concern will bear the utmost scrutiny, and references of the first class will be given.
Apply (if by letter, prepaid) to Messrs. DOD and WRAY, Solicitors, 16, Great Marlborough-street.

PARTNERSHIP.—An opportunity now offers for a Gentleman who can command 1,600l. to join a firm where the business is both gentlemanly and lucrative.
Address, D. E. F. LAW TIMES Office, post paid.

LAIDMAN'S AGENCY ACCOUNT OFFICE, 119, Chancery-lane, Established 1839, for receiving and collecting Country Solicitors' and Under-Sheriffs' Accounts in Town and Country. References can be given to them in most parts of England and Wales, as also, to their agents.
Affidavits of service of writs, and letters containing any information, are forwarded to Solicitors as soon as the post arrives in London, and prepayment obtained when instructions are given, or it may be deemed prudent.
Terms, &c. may be had upon application as above.

SCHOOL for the SONS of GENTLEMEN, CORUNNA HOUSE, HAMMERSMITH (London), three miles from Hyde-park Corner, close to St. Mary's Church, on the great western road. Large productive gardens and dry and airy playground. Number of Pupils limited to twenty. No notice required previous to removal. No extras whatever, except for printed books. Terms, according to age. Including Board, Washing, Ancient and Modern Languages, &c. 36l., 44l., or 52l. per annum, payable quarterly. Parlour Boarders, 6l. per month. Principal, Mr. WM. HANIGAN (formerly Interpreter in the English army in Spain).
REFERENCES.—Mr. Muriel, Mexican Embassy, London; Mr. W. J. Voules, 5, Pelham-place, Brompton; Mr. W. Knight, 9, Inner Temple-lane, Temple; and, among others, the gentlemen mentioned in the LAW TIMES of Sept. 21, 1844.

CHEAPER LAW BOOKS.—Now ready, gratis, and sent, postage free, to all parts of the United Kingdom, WILDY and SON'S CATALOGUE of SECOND-HAND LAW BOOKS, containing all the Common Law and Equity Reports, with about 5,000 Volumes of Practical and Elementary Treatises, the whole of which are offered at exceedingly low prices, to make room for other purchases. Early application is particularly requested.
WILDY and SON, 90, Chancery-lane, and Lincoln's-inn-gateway, Carey-street (within the gates).

MATTHEW MEASE SEATON, English Solicitor and General Law Agent for Jersey, Guernsey, Avranches, St. Malo, and the South of France.
Residence, 5, Parnasse place, St. Helier.
London Agent: S. Tripp, 2, Adelaide-place, London-bridge.

WEST RIDING OF YORKSHIRE.—Spring Sessions, 1845.—NOTICE is HEREBY GIVEN, that the SPRING GENERAL QUARTER SESSIONS of the PEACE, for the West Riding of the County of York, will be holden at PONTEFRACT, on MONDAY, the 7th day of April next; on which day the Court will be opened at Ten o'Clock of the Forenoon, and on every succeeding day at Nine o'Clock.
Prosecutors and Witnesses in Prosecutions must be in attendance in the following order, viz.:—
Those in Felony, from the divisions of Strafforth and Tickhill, Lower Agbrigg, Barkstonash, Staincross, and Osgoldcross, and also those in respited Traverses, are to be in attendance at the opening of the Court on Monday morning.
Those from the divisions of Upper Agbrigg, Morley, and Skyrack, are to be in attendance at one o'Clock at Noon on Monday.
Those from the divisions of Staincliffe and Ewcross, Claro and the Ainsty (being the remainder of the West Riding), and those in all cases of Misdemeanor (except in respited Traverses, who are to attend on Monday), are to be in attendance on Tuesday morning.
After the charge to the Grand Jury has been given, Motions by Counsel will be heard, after which the Court will proceed with the trials of Felonies and Misdemeanors, until the whole are disposed of, commencing with the trials of respited Traverses.
The hearing of Appeals will commence, at all events, on Friday Morning, in case they shall not have been begun on Thursday; but parties in Appeals must be in readiness on Thursday morning, and all Appeals must be entered before the sitting of the Court on that day.
Solicitors are required to take notice, that the Order of Removal, copies of the Notice of Appeal, and examination of the Pauper, are required to be filed with the Clerk of the Peace on the entry of the Appeal:—and that no Appeals against Removal Orders can be heard unless the Chairman is also furnished by the Appellants with a copy of the Order of Removal, of the Notice of Chargeability of the Examination of the Pauper, and of the Notice and Grounds of Appeal.
Coroners and High Constables must be in attendance at the sitting of the Court on Tuesday morning.
The names of persons bound over to answer in Felony or Misdemeanor, with a description of the offence, must be sent to the Clerk of the Peace's Office seven days at least before the first day of the Sessions, together with all Depositions, Convictions, and Recognizances.
The attendance of Jurymen will not be excused on the ground of illness, unless it be verified by affidavit, or proved by evidence in open Court.
And Notice is also Hereby Given, that the PUBLIC BUSINESS of the Riding will be transacted in open Court, at twelve o'clock at noon, on Wednesday, when Motions for Gratuities, and the Finance Committee's Report, will be received and considered.
C. H. ELSLEY, Clerk of the Peace.
Clerk of the Peace's Office, Wakefield, March 10, 1845.

ELIGIBLE INVESTMENT.—To be SOLD, an Improved RENT of 99l. a year, arising from five houses, held direct from the freeholder for 97¼ years from Michaelmas, 1836, at 16l. a year. Four of the houses are underleased to two tenants (who paid premiums) for terms expiring Midsummer 1866 and 1896. Also a Cottage, underlet at 28l. and held direct from the freeholder for 69¾ years from Lady-day 1837, at 7l. 10s. a year.
Apply, post-paid, to Mr. WILSON, 44, Wilmington-square, Pentonville. None but principals will be treated with.

Sales by Auction.

WANTED, a RESIDENCE, with SHOOTING and FLY FISHING, in any of the Southern or South-western Counties. Messrs. BROOKS and GREEN have an opportunity of introducing a highly respectable tenant to any party who may be desirous of letting a well-furnished, compact-built, gentlemanly residence, situate as above, with land, the right of shooting, together with or in the immediate neighbourhood where fly fishing may be obtained. The gentleman for whom Messrs. Brooks and Green advertise would prefer a place which might be purchased at the expiration of one or two years, provided the amount of the same should not exceed the sum of 40,000l. The family being small, every care would be taken of the furniture. Full particulars, as regards situation, terms for renting, and the price for purchase, to be addressed to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

COUNTRY RESIDENCE WANTED, between Reading and Chippenham, or on the road from Reading to Devizes, not more than ten miles from the Great Western Railway.—WANTED, to RENT on LEASE, a detached RESIDENCE, with two or three Acres of PASTURE LAND. The house, which is for the purpose of a private School, must contain three or four large rooms, with ten or twelve bed-rooms: near a town would be preferred. Full particulars and terms to be addressed to Messrs. BROOKS and GREEN, estate agents and auctioneers, 28, Old Bond-street.

IN the immediate Vicinity of the Houses of Parliament and Courts of Law.—To be LET, unfurnished, a spacious FAMILY RESIDENCE. For particulars and terms apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

ELEGANTLY FURNISHED RESIDENCE, for the season or year, pleasantly situate in the vicinity of the parks, adapted for the reception of a gentleman or nobleman's family of moderate extent. Apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

TO NOBLEMEN and GENTLEMEN.—Messrs. BROOKS and GREEN have instructions to LET, unfurnished, or elegantly furnished, SUITES of spacious CHAMBERS, most eligibly situate in the vicinity of the Palaces, the Clubs, and the Parks. Apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

UPPER HARLEY-STREET.—To be LET, handsomely Furnished, an excellent FAMILY RESIDENCE; containing six reception-rooms and nine bed-rooms, with requisite domestic offices. Coach-house and stable if required. To a careful tenant the rent would be moderate. For terms apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

MORTLAKE, on the Banks of the Thames.—Messrs. BROOKS and GREEN are instructed to LET, for six weeks from the 22nd instant, an elegantly FURNISHED and compact FAMILY RESIDENCE, with pleasure-grounds and gardens, coach-house and stables. It is delightfully situate, and commands an extensive view of the river and adjacent country. Apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

MANCHESTER-SQUARE.—Messrs. BROOKS and GREEN have instructions to DISPOSE OF the LEASE and FURNITURE of a very complete FAMILY RESIDENCE, in the preferable part of the above-mentioned fashionable situation, with capital stabling; or the house may be rented furnished, for the season or a longer period. Apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

BUCKINGHAMSHIRE.—Messrs. BROOKS and GREEN are instructed to LET, Furnished, for a long or short period, a capital FAMILY RESIDENCE, adapted for the reception of a large establishment, with beautiful pleasure-grounds, lawns, shrubbery, orchards, gardens, and grazing land. The exclusive right of sporting over a well-preserved estate, abounding with game and wild fowl, and excellent fishing; it is within reach of three packs of hounds, and surrounded by the seats of the nobility and gentry. For terms and to view apply to Messrs. BROOKS and GREEN, Estate Agents and Auctioneers, 28, Old Bond-street.

RAYMOND BUILDINGS.—Part of a SET of CHAMBERS on the FIRST FLOOR to be LET.
Apply to Mr. Goodeve, No. 1,

Sales by Auction.

Important Freehold Estate (consisting of nearly 1,800 acres) and Manor, in the county of Salop.—By Messrs. WINSTANLEY, at the Auction Mart, on Thursday, April 24, at Twelve o'clock, in One Lot.

THE MANOR of CULMINGTON, with its Appurtenances; and all that highly valuable and important FREEHOLD ESTATE situate in the several parishes of Culmington, Diddlebury, and Stanton-Lacy, in the county of Salop, containing together 1,786 acres or thereabouts, of exceedingly rich arable, meadow, pasture, and wood land, in a ring fence, in a high state of cultivation, divided into convenient farms with excellent homesteads, and suitable agricultural buildings, eligibly arranged and in complete repair; together with a good Water Corn Mill; all now in the several occupations of Messrs. James Williams, John Downes, Edward Instone, Francis Bach, and others.

The estate is equally eligible for residence or investment, being most desirably situate in the best part of the county of Salop, 5 miles from Ludlow, 14 from Wenlock, 16 from Bridgenorth, 20 from Shrewsbury, and 148 from London. It is in the immediate vicinity of the Ludlow Hunt, abounds with game, and the beautiful trout river, Corve, runs through the centre thereof. The Land Tax is redeemed, and the Tithes are commuted. The arable Lands are peculiarly adapted for the growth of turnips, barley, clover, and wheat, the meadow and pasture Lands are rich and productive, and the Woods and Plantations are so situate as to be highly ornamental to the Estate.

The several Tenants will shew the Premises in their respective occupations, and descriptive printed particulars and conditions of sale may be had, six weeks previous to the day of sale, of Charles Powell, esq. of Sutton, near Ludlow, Shropshire; of Messrs. Garbutt, Fawcett and Hick, solicitors, Yarm, Yorkshire; at Ludlow of Messrs. Lloyds, Solicitors; of Messrs. R. T. and R. Tench, Land Agents; and at the Angel and Crown Inns; the Lion, Shrewsbury; the Star and Garter, Worcester; Messrs. Thomas Winstanley and Sons, Auctioneers, Liverpool; and in London of Messrs. Baxendale, Tatham, Upton, and Johnson, Solicitors, 24, Lincoln's-inn Fields, & 7, Great Winchester street; Messrs. Bell, Brodrick, and Bell, Solicitors, 9, Bow Church-yard, at the Auction Mart, and of Messrs. WINSTANLEY, Paternoster-row.

Excellent Investments.—Long Leasehold Estates, in London-street, Fitzroy-street, Grafton street, and Hertford-street, Fitzroy square.

MR. T. TIMS will SELL by AUCTION, at the Auction Mart, on Thursday, April 3, at twelve, by direction of the Trustees under the Will of the late Proprietor, in five lots, an eligible RESIDENCE, with coach-house and stable, No. 8, Fitzroy-street, held for 14 years, at 12*l*. ground-rent, of the fair value of 90*l*. a year, two well built Houses, with back premises, Nos. 36 and 37, London-street, held for 43 years at 12*l*. ground-rent, and let on lease at rents amounting to 111*l*. per annum; a capital Messuage and Premises, No. 25, Grafton-street, held for 13 years at 8*l*. ground-rent, and let on lease at 40*l*. per annum, and a Dwelling-house with Shop, No 12, Hertford-street, held for 43 years at 5*l*. ground rent and also let at 35*l*. per annum. To be viewed by leave of the tenants, and particulars had of Messrs. Holme, Loftus, and Young, 10, New-inn; at the Mart; and at the Auctioneer's Offices, 63, Upper Charlotte-street, Fitzroy-square.

Upper Charlotte-street, Fitzroy-square.

MR. TIMS is instructed to SELL by AUCTION, at the Mart, on Thursday, the 3rd of April, at Twelve o'clock, an excellent RESIDENCE, in thorough repair, situate and being No 47, Upper Charlotte-street, Fitzroy-square; held for a term whereof about 30 years are unexpired, a a ground-rent of 9*l*. per annum, and let to a highly respectable tenant, on lease, at 95*l*. a year. The house may be viewed (by permission of the tenant) by tickets only, which with printed particulars, may be had of Mr. TIMS, 63, Upper Charlotte-street, Fitzroy-square; particulars also of Messrs. Amory, Sewell, and Moores, Solicitors, Throgmorton-street, and at the Mart.

VALUABLE FREEHOLD ESTATE, in the North Riding of the County of YORK.—To be offered for SALE by AUCTION (unless previously disposed of by private contract), at the Fleece Inn, in Thirsk, in the said county, on Tuesday, the 8th day of April, 1845, at Two o'clock in the afternoon, in the following lots, and subject to conditions.

LOT 1. All that very valuable Freehold Estate, situate in the township of Pickhill with Roxby, in the parish of Pickhill, in the North Riding of the County of York, consisting of 57*a*. 2*r*. 35*p*. of arable, meadow, and pasture land, divided into three very convenient Farms, and now occupied by Mr. Anthony Hurwood, Mr. John Douthwaite, and Mr. Ralph Walker.

Also, all those two plots of Garden ground containing together 21 perches, situate in Pickhill, aforesaid, in the occupation of Richard Hewitt and Ann Clement.

The above Estate, which lies within a ring fence, and is bounded on the west by Leeming Lane, is delightfully situate in the fertile and far-famed Vale of Mowbray, seven miles from Thirsk, six from Bedale, seven from Northallerton, and nine from Ripon, all first-rate market-towns.

LOT 2. All those two closes of Arable Land, containing 19*a*. 3*r*. 19*p*.

LOT 3. All that Barn, with the garth or parcel of rich Grass Land thereto adjoining, containing 2*r*. 24*p*.

LOT 4. All that close of Arable Land, containing 3*a*. 1*r*. 12*p*.

LOT 5. All that close or parcel of Arable Land, containing 4*a*. 1*r*. 38*p*.

The four last lots are situate in the township of Sinderby, in the said parish of Pickhill, and are respectively in the occupation of Mr. Charles Douthwaite.

The Tithes of the said parish have been commuted, and the rent-charge in lieu thereof has been apportioned.

Mr. Anthony Hurwood will shew the Estate; and particulars and plans thereof may be had at the George Hotel, York; at the offices of Messrs. MILNE, PARRY, MILNE, and MORRIS, Temple, London; or of Mr. SWARBRECK, Solicitor, Thirsk.

Thirsk, Feb. 28, 1845.

Sales by Auction.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1845, as follow:—

Friday, March 7.	Friday, Aug. 1.
,, April 4.	,, Sept. 5.
,, May 2.	,, Oct. 3.
,, June 6.	,, Nov. 7.
,, July 4.	,, Dec. 5.

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Mart, and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Peremptory Sale.—Eligible Freehold Investments in the parish of Sandy, comprising some of the most valuable land in the county of Bedford, Tithe free, Land-tax redeemed, and let on lease for long terms.

MESSRS. RUSHWORTH and JARVIS will SELL by AUCTION, at Garraway's, on Thursday, March 20, at Twelve o'clock, in Two Lots, by order of the mortgagees, and with the concurrence of the devisees in trust under the will of the late Mr. Jeremiah Bryant, the former purchasers not having completed their purchases. Lot 1. Ayres's Farm, situate at Beeston-green, on the Great North-road, three miles beyond Biggleswade, consisting of a roomy farm-house and homestead, two cottages, garden, paddock, and a field, cultivated as garden ground, let on lease to William Ilsley, a responsible tenant, for twenty-one years, from October, 1841, and an inclosure of land adjoining on lease to William Cooper for twenty years, from Michaelmas, 1842, comprising in the whole 21*a*. 1*r*. 37*p*. and let at rents amounting together to 153*l*. per annum. Lot 2. Two Inclosures of Land, situate at Beeston-green, near to Lot 1, comprising together 12*a*. 3*r*. 20*p*. let to John Housden for twenty-one years, from Michaelmas, 1843, at a clear rent of 51*l*. 14*s*. This property offers to trustees and capitalists a very eligible opportunity for investment, and it may be fairly contemplated that the facility of traffic which will be afforded by the projected railway from London to York, which is planned to pass through the parish of Sandy, will add very substantial advantages to this proverbially fertile district.

The lots may be viewed on application to the tenants, of whom particulars may be obtained, and are also to be had at the principal inns in the neighbouring towns, and in London of Messrs. Barker, Rose, and Norton, 50, Mark-lane; of Messrs. Gregory, Faulkner, Gregory, and Bourdillon, 1, Bedford-row; and at the offices of Messrs. RUSHWORTH and JARVIS, Land Agents, Saville-row, Regent-street, and 19 Change-alley, Cornhill; also of Messrs. Pilkington and Walker, solicitors, Preston, Lancashire.

New Publications.

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MESSRS. FULLER and MARSH have been favoured with instructions from the executors of a gentleman, deceased, to include in their Periodical Sale appointed to take place at the Auction Mart, on Thursday, April 10, at twelve, a POLICY of ASSURANCE for the sum of 1,000*l*. with the accumulation thereon, amounting to 1,725*l*. in October last, making together the sum of 2,725*l*. with all prospective advantages thereon, effected with the Equitable Society March 15, 1810, on the life of a gentleman now in the 65th year of his age. Particulars may be obtained of Mr. James Matthews, solicitor, 5, Lant-street, Southwark; and at Messrs. FULLER and MARSH'S offices for the sale of policies, reversions, life annuities, shares, &c. 2, Charlotte-row, Mansion-house.

In Lincolnshire.—The Advowson of the Parish of Ulceby-cum-Fordington, about five miles from Spilsby, three and a half from Alford, and twelve from Louth.

MESSRS. FULLER and MARSH have been favoured with instructions to SELL by AUCTION, at the Mart, on Thursday, April 10, at Twelve, the PERPETUAL ADVOWSON and RIGHT of PRESENTATION to the valuable RECTORY of ULCEBY-CUM-FORDINGTON, most desirably situate in one of the best neighbourhoods in the north-eastern part of the county of Lincoln, comprising a convenient Residence and about 460 acres of fertile Land, in the occupation of a highly respectable tenant, at a rental of 620*l*. per annum. The land is of the best quality, and in a high state of cultivation. The population of the parish does not exceed 250, and the locality is remarkably healthy. The above Advowson will be sold subject to the life of the present incumbent, now in the 73rd year of his age. Further particulars may be obtained on application at the offices of Messrs. Heaton, Brackenbury, and Guy, Solicitors, Gainsborough; of Messrs. Capes and Stuart, Solicitors, Field-court, Gray's-inn; and of Messrs. FULLER and MARSH, Land Agents, 2, Charlotte-row.

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145 Shares in the Ulster Canal.

MESSRS. FULLER and MARSH have received instructions to SELL by AUCTION, at the Auction Mart, on Thursday, March 20, at Twelve, without reserve, in lots, 145 SHARES of 50*l*. each, lately belonging to Philip Courtenay, esq. deceased, in the Ulster Canal Company, established in pursuance of the Act of the 6th Geo. 4, c. 193, intituled an "Act for making and maintaining a navigable canal from Lough Erne, in the county of Fermanagh, to the river Blackwater, near the village of Charlemont, in the county of Armagh." Upon the above shares calls amounting to 42*l*. 10*s*. per share have been paid; three further calls of 2*l*. 10*s*. per share have become due, and in consequence of the non-payment of these calls the Directors of the Company on the 26th of February, 1845, declared the shares to be forfeited, but they have consented to transfer them to any purchaser or purchasers on payment of the said calls, with interest at five per cent. from the time they respectively became due until payment, and the venders sell the said shares subject to the said forfeiture and payment.

Particulars may be obtained of Messrs. Tilson and Squance, Solicitors, 29, Coleman-street, London; of Messrs. Milne, Parry, Milne, and Morris, Solicitors, 2, Harcourt-buildings, Temple, London; at the several hotels in Charlemont, Armagh, Monaghan, Enniskillen, Londonderry, and Dublin; and at the Offices of Messrs. FULLER and MARSH, Auctioneers, Surveyors, and Land Agents, 2, Charlotte-row, Mansion-house, London.

Periodical Sale.—Policies of Assurance, and Absolute Reversions to several Sums of Money.

MESSRS. FULLER and MARSH have received instructions to include in their Periodical Sale, appointed to take place at the Auction Mart, on Thursday, April 10, at Twelve, in lots, a CONTINGENT REVERSION to the SUM of 500*l*.; the Absolute Reversions to the sums of 1,629*l*. 7*s*. 11*d*., 208*l*. 6*s*. 8*d*., and 100*l*.; Policies of Assurance in the Eagle Life-office; and Forty Shares in the Bude Light Company. Particulars may be obtained, ten days prior to the sale, of C. W. Cobby, esq. solicitor, 10, Paternoster-row; of Mr. George Drew, solicitor, Bermondsey-street; and at Messrs. FULLER and MARSH'S offices for the sale of reversions, shares, &c. 2, Charlotte-row, Mansion-house.

Valuable Freehold Estate, Maze-hill, Greenwich, overlooking the park, desirable for investment or occupation.

MESSRS. FULLER and MARSH have received instructions to SELL by AUCTION, at the Mart, on Thursday, April 10, at Twelve, a valuable FREEHOLD ESTATE, comprising a commodious brick-built dwelling-house and extensive premises in the rear, situate at the south end of East-street, Greenwich, contiguous to the pier and the railway station. Detailed particulars will appear in future advertisements, and, in the meantime, any information may be obtained of Messrs. Bristow and Tarrant, solicitors, 24, Walbrook, and London-street, Greenwich; or of Messrs. FULLER and MARSH, auctioneers and surveyors, 2, Charlotte-row, Mansion-house, and Croydon, Surrey.

Periodical Sale.—Policy for 1,000*l*. effected with the Atlas Assurance Company, in the year 1819, on the life of a gentleman now in the 71st year of his age.

MESSRS. FULLER and MARSH have been favoured with instructions to include in their Periodical Sale appointed to take place at the Auction Mart on Thursday, April 10, at twelve, in lots, a POLICY of ASSURANCE for the sum of 1,000*l*. effected with the Atlas Assurance Company the 30th June, 1819, on the life of a gentleman now in the 71st year of his age: annual premium, 37*l*. 17*s*. 6*d*. Particulars may be obtained at the Mart; of Mr. H. Edwards, St. Alban's; and at the offices of Messrs. FULLER and MARSH, 2, Charlotte-row, Mansion house.

Periodical Sale.—Valuable Old Policy for 3,000*l*. in the London Life Association, effected in the year 1819, on the life of a gentleman now in the 71st year of his age.

MESSRS. FULLER and MARSH have been favoured with instructions to include in their Periodical Sale of Reversions, Life Policies, &c. appointed to take place at the Auction Mart, on Thursday, April 10, at Twelve, in lots, a POLICY of ASSURANCE for the sum of 3,000*l*. effected with the London Life Association, No. 81, King William-street, the 2nd July, 1819, on the life of a gentleman now in the 71st year of his age: reduced annual premium 41*l*. 0*s*. 9*d*. Particulars may be obtained at the Mart; of Mr. H. Edwards, St. Alban's; and at the offices of Messrs. FULLER and MARSH for the sale of reversions, life policies, annuities, &c. 2, Charlotte-row, Mansion-house.

Periodical Sale.—Copland's Patent Right for improvements in Water Wheels.

MESSRS. FULLER and MARSH have been favoured with instructions from the Administrator of the late Mr. Robert Copland to include in their Periodical Sale, appointed to take place at the Auction Mart, on Thursday, April 10, at Twelve, in lots, COPLAND'S PATENT RIGHT for IMPROVEMENTS in WATER WHEELS, secured by Royal Letters Patent for the sole use, benefit, and advantage of the said invention within England and Wales and the town of Berwick-upon-Tweed, and also in all our colonies and plantations abroad, for the term of fourteen years. Particulars may be obtained at the Mart; of John H. Fitch, esq. Solicitor, 17, Union-street, Southwark; and of Messrs. FULLER and MARSH, 2, Charlotte-row, Mansion-house.

Eligible Investments, arising from valuable Freehold Estates situate in Red Lion-street, Clerkenwell, and Aldersgate-street, in the city of London.

MESSRS. FULLER and MARSH have received instructions from the Executors of the late W. Baldwin, esq. to SELL by AUCTION, at the Mart, on Thursday, April 10, at 12, TWO valuable FREEHOLD ESTATES; consisting of four brick-built houses, with workshop and cellar, being Nos. 1, 2, 3, and 4, Cherry-tree-court, Aldersgate-street, and a capital brick-built Residence, 28, Red Lion-street, Clerkenwell, in the occupation of respectable tenants, at rentals amounting to 204*l*. 12*s*. per annum. The premises may be viewed on application. Particulars obtained on the premises; at the Mart; of Stephen Walters, esq. solicitor, 36, Basinghall-street; and of Messrs. FULLER and MARSH, auctioneers and land agents, 2, Charlotte-row, Mansion-house, and Croydon, Surrey.

Periodical Sale—Shares in the Hungerford Market Company.

MESSRS. FULLER and MARSH have received instructions from the Executors of the late Thomas Nixson, esq. to include in their Periodical Sale of Reversions, Shares, Policies, &c. appointed to take place at the Auction Mart, on Thursday, April 10, at 12, in lots, TEN SHARES of 100*l*. each 100*l*. called and paid, in the HUNGERFORD MARKET COMPANY. Particulars may be obtained at the Mart; of Messrs. Few, Hamilton, and Fews, solicitors, Henrietta street, Covent-garden; and at the offices of Messrs. FULLER and MARSH for the sale of shares in all public undertakings, reversions, annuities, &c. 2, Charlotte-row, Mansion-house.

Periodical Sale.—Absolute Reversions in the Sums of 39,105*l*. 10*s*. 4*d*. Three and a Quarter per Cent. Consols, and 5,000*l*. Three per Cent. Reduced.

MESSRS. FULLER and MARSH have been favoured with instructions to include in their Periodical Sale, appointed to take place at the Auction Mart on Thursday, April 10, the ABSOLUTE REVERSION in and to ONE-TWELFTH PART or SHARE of the Moiety of the Sum of 39,105*l*. 10*s*. 4*d*. Three-and-a-Quarter per Cent. Consols, and One-Twelfth Part or Share of the Moiety of 5,000*l*. Three per Cent. Reduced, receivable on the death of the survivor of a gentleman and his wife—the former aged 55, the latter aged 48. Particulars may be obtained at the Mart, and at Messrs. FULLER and MARSH'S Offices, 2, Charlotte-row, Mansion-house.

Important Mining Property, situate near Aberystwith, Cardiganshire, embracing the Cwmerfin, Llechwithhalog, Llawr Cwm Bach, Blaen Caenant, and Plynlymon Lead and Copper Ore Mines.

MESSRS. FULLER and MARSH have been favoured with instructions from the Committee of the Cardigan United Mining Company to SELL by public COMPETITION, at the Auction Mart, on Thursday, April 10, at twelve o'clock, in one lot, all that important and valuable PROPERTY, comprising the Cardigan United Mines, situate near Aberystwith, embracing the Cwmerfin, Llechwithhalog, Llawr Cwn Bach, Blaen Caenant, and Plynlymon Lead and Copper Ore Mines, or adventure for Lead and Copper Ore, and all other metals and metallic minerals in and throughout the aforesaid mines, together with the machinery, apparatus, buildings, fixtures, and implements, and all the extensive and valuable works connected therewith, the whole of which will be included in the purchase. These valuable mines are considered rich with mineral extract of the most productive character. May be viewed on application to Mr. George Francis, captain of the mines, of whom descriptive particulars may be obtained, any day prior to the sale; also at the Auction Mart; the Belle Vue Hotel, Aberystwith; the Bush, Bristol; Adelphi Hotel, Liverpool; Royal Hotel, Manchester; Pearce's Hotel, Truro; and at the offices of Messrs. FULLER and MARSH, Auctioneers and Surveyors, 2, Charlotte-row Mansion-house London.

To Insurance Offices and other Public Institutions.—Valuable long Leasehold Premises, most eligibly situate in the city of London, within a few minutes' walk of the Exchange.

MESSRS. FULLER and MARSH have received instructions to submit to public COMPETITION, at the Auction Mart, on Thursday, April 10, at twelve, the very extensive and important PREMISES, comprising Nos. 37 and 38, Gracechurch-street, consisting of two substantial modern brick-built houses, most admirably adapted for public business. No. 37, Gracechurch-street, a substantial house, in perfect repair, containing noble double-fronted shop, fitted up with plate glass windows, entrance-hall, elegant dining and drawing rooms, numerous bed-rooms, and all requisite domestic offices. No. 38, Gracechurch-street, a substantial house in perfect repair, containing extensive counting-houses and entrance-hall, well-proportioned dining and drawing rooms, sleeping apartments, and well-arranged domestic offices. The estate is held on lease for an unexpired term of 70 years, subject to a reserved rent. Particulars may be obtained, ten days prior to sale, on the premises; at the Auction Mart; of Mr. Freeland, Solicitor, Steyning, Sussex; and of Messrs. FULLER and MARSH, 2, Charlotte-row, Mansion-house.

Valuable Leasehold Property, in the immediate neighbourhood of important contemplated city improvements.

MESSRS. FULLER and MARSH have been favoured with instructions to SELL by AUCTION, without reserve, at the Mart, on Thursday, April 10, at Twelve, THREE DWELLING-HOUSES, Nos. 13, 14, and 15, Bear-alley, Farringdon-street, in the city of London, and extensive premises adjoining, well adapted for a factory or warehouse, in the occupation of respectable tenants, at rentals amounting to 82*l*. per annum, held for a long term at a low ground-rent. Particulars may be obtained on the premises; at the Mart; of John Henry Fitch, esq. Solicitor, 17, Union-street, Southwark; and at Messrs. FULLER and MARSH'S Offices, 2, Charlotte-row, Mansion-house.

In Herefordshire.—The Sugwas Court Estate, an important Freehold Landed Investment, extending over upwards of 600 acres of arable, pasture, and meadow land, productive orchard and fruit plantations, with its mansion and offices.

MESSRS. FULLER and MARSH have been favoured with instructions to submit to public COMPETITION, early in May (unless in the meantime an acceptable offer be made by private contract), a first-rate FREEHOLD LANDED INVESTMENT, comprising the valuable property distinguished as the SUGWAS COURT ESTATE, with an excellent Residence, suitable to a large family, and offices, situate in the centre of the property, surrounded by about 600 acres of very superior land, beautifully timbered and bounded by the river Wye, together with the manorial rights, fisheries, and other immunities. Detailed particulars will appear in future advertisements, and in the meantime any application for sale by private contract to be made to Messrs. FULLER and MARSH, Surveyors and Land-agents, 2, Charlotte-row, Mansion-house.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, Publisher, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 15th day of March, 1845.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. IV. No. 104.] SATURDAY, MARCH 29, 1845.

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Legal Notices.

LANCASHIRE EASTER SESSIONS.—NOTICE is HEREBY GIVEN, that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of Lancaster, will be held at the CASTLE of LANCASTER, on MONDAY, the 7th day of April next, at Ten o'clock in the forenoon, and by adjournment at the following places and times, viz.:—

At the Court-House in Preston, on Wednesday, the 9th day of April next, at Ten o'clock in the forenoon.

At the New Bailey Court-House in Salford, near Manchester, on Monday, the 14th day of April next, at Ten o'clock in the forenoon.

And at the Court-House in Kirkdale, near Liverpool, on Wednesday, the 23rd day of April next, at Ten o'clock in the forenoon.

And that all Business relating to the assessment, application, or management of the County Stock or Rate, will commence at such Sessions respectively at Eleven o'clock in the forenoon of the first day thereof.

All Business arising within the Hundred of Lonsdale, is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and motions made to the Court respecting them on the first morning of the Sessions, at each of the above-named places, and the trial of such appeals takes place at Lancaster on the first day, at Preston and Kirkdale not earlier than Friday, the third day; and at Salford on Wednesday, the third day.

GORSTS and BIRCHALL, Dep. C. P.

Clerk of the Peace's Office, Preston, 17th March, 1845.

Legal Notices.

BOROUGH OF COLCHESTER.—1845.—NOTICE is HEREBY GIVEN that the next GENERAL COURT of QUARTER SESSION of the PEACE of the said Borough will be holden at the COLCHESTER CASTLE there on WEDNESDAY, the 26th day of March instant, at the hour of Ten o'clock in the Forenoon, when and where the Grand and Petty Jurors, Persons bound by Recognizances to appear, prosecute, and give evidence, and all others who have business to transact, are hereby directed to give their attendance accordingly.

Dated this 17th day of March, 1845.

BARNES, Clerk of the Peace.

BOROUGH of DOVOR, in the County of KENT. CLARKE, Mayor.—NOTICE IS HREBY GIVEN, that the COURT OF QUARTER SESSIONS of the PEACE, of and for the said Borough, and the liberties of the same, will be holden before William Henry Bodkin, esq. M.P. Recorder of the said Borough, at the New Sessions House, of and in the said borough, on FRIDAY, the 4th day of April next, at the hour of Nine o'clock in the Forenoon, at which time and place all persons bound by recognizance, or that have any other business to do at the said session, are hereby required to attend.

The Grand Jury will be called and sworn at TEN o'clock in the morning, but APPEALS and any other business not requiring a jury, will be called on at NINE o'clock precisely.

LEDGER, Clerk of the Peace.

Dovor, March 17, 1845.

Sales by Auction.

MANOR OF CULMINGTON, SALOP. — Sale Postponed till 24th April, 1845.

Important Freehold Estate (consisting of nearly 1,800 acres) and Manor, in the county of Salop.—By Messrs. WINSTANLEY, at the Auction Mart, on Thursday, April 24, at Twelve o'clock, in One Lot,

THE MANOR of CULMINGTON, with its Appurtenances; and all that highly valuable and important FREEHOLD ESTATE situate in the several parishes of Culmington, Diddlebury, and Stanton-Lacy, in the county of Salop, containing together 1,786 acres or thereabouts, of exceedingly rich arable, meadow, pasture, and wood land, in a ring fence, in a high state of cultivation, divided into convenient farms with excellent homesteads and suitable agricultural buildings, eligibly arranged and in complete repair; together with a good Water Corn Mill; all now in the several occupations of Messrs. James Williams, John Downes, Edward Instone, Francis Bach, and others.

The estate is equally eligible for residence or investment, being most desirably situate in the best part of the county of Salop, 5 miles from Ludlow 14 from Wenlock, 16 from Bridgenorth, 20 from Shrewsbury, and 148 from London. It is in the immediate vicinity of the Ludlow Hunt, abounds with game, and the beautiful trout river, Corve, runs through the centre thereof. The Land Tax is redeemed, and the Tithes are commuted. The arable Lands are peculiarly adapted for the growth of turnips, barley, clover, and wheat, the meadow and pasture Lands are rich and productive, and the Woods and Plantations are so situate as to be highly ornamental to the Estate.

The several Tenants will shew the Premises in their respective occupations, and descriptive printed particulars and conditions of sale may be had, six weeks previous to the day of sale, of Charles Powell, esq. of Sutton, near Ludlow, Shropshire; of Messrs. Garbutt, Fawcett, and Hick, solicitors, Yarm, Yorkshire; at Ludlow of Messrs. Lloyds, Solicitors; of Messrs. R. T. and R. Tench, Land Agents; and at the Angel and Crown Inns; the Lion, Shrewsbury; the Star and Garter, Worcester; Messrs. Thomas Winstanley and Sons, Auctioneers, Liverpool; and in London of Messrs. Baxendale, Tatham, Upton, and Johnson, Solicitors, 24, Lincoln's-inn Fields, & 7, Great Winchester-street; Messrs. Bell, Brodrick, and Bell, Solicitors, 9, Bow Church-yard, at the Auction Mart; and of Messrs. WINSTANLEY, Paternoster row.

VALUABLE FREEHOLD ESTATE, in the North Riding of the County of YORK. To be offered for SALE by AUCTION (unless previously disposed of by private contract), at the Fleece Inn, in Thirsk, in the said county, on Tuesday, the 8th day of April, 1845, at Two o'clock in the afternoon, in the following lots, and subject to conditions.

LOT 1. All that very valuable Freehold Estate, situate in the township of Pickhill with Roxby, in the parish of Pickhill, in the North Riding of the County of York, consisting of 576a. 2r 35p. of arable, meadow, and pasture land, divided into three very convenient Farms, and now occupied by Mr. Anthony Hurwood Mr. John Douthwaite, and Mr. Ralph Walker.

Also, all those two plots of Garden-ground containing together 21 perches, situate in Pickhill, aforesaid, in the occupation of Richard Hewitt and Ann Clement.

The above Estate, which lies within a ring fence, and is bounded on the west by Leeming Lane, is delightfully situate in the fertile and far-famed Vale of Mowbray, seven miles from Thirsk, six from Bedale, seven from Northallerton, and nine from Ripon, all first-rate market towns.

LOT 2. All those two closes of Arable Land, containing 10a. 3r. 10p.

LOT 3. All that Barn, with the garth or parcel of rich Grass Land thereto adjoining, containing 2r 24p.

LOT 4 All that close of Arable Land, containing 3a 1r. 12p.

LOT 5. All that close or parcel of Arable Land, containing 4a. 1r. 38p.

The four last lots are situate in the township of Sinderby, in the said parish of Pickhill and are respectively in the occupation of Mr. Charles Douthwaite.

The Tithes of the said parish have been commuted, and the rent charge in lieu thereof has been apportioned.

Mr. Anthony Hurwood will shew the Estate; and particulars and plans thereof may be had at the George Hotel, York, at the offices of Messrs. MILNE, PARRY, MILNE, and MORRIS, Temple, London; or of Mr. SWARBRECK, Solicitor, Thirsk.

Thirsk, Feb. 28, 1845.

Lymington, Hants. Elegant and complete Marine Residence, fit for the immediate reception of a nobleman's or gentleman's family, sites for upwards of 100 Houses — Notice of Sale.

THE extensive and very valuable FREEHOLD ESTATE, formerly the property and residence of Mrs. Wall sister of Sir Thomas Baring Bart.), and lately of George Scott, esq. deceased, situate in the borough and parish of Lymington, Hants, will be submitted by AUCTION in May next, unless an acceptable offer for purchase by private contract should previously be made. In its present form it presents a handsome marine residence, with excellent offices gardens, hot-house, &c. and with its pleasure grounds and paddocks covers about 16 acres; land-tax redeemed. There are a court-yard with four-stall stable, harness room, standing for four carriages, dwelling house of four rooms, also, screened from view, a farm-yard, with cow-houses, piggeries, &c and a large building formerly used as a school. The residence comprises entrance-hall 26 feet in length, library 16 feet by 15 feet 6 inches, two morning rooms 2? feet by 15 feet, and 16 feet by 15, communicating by folding doors, and opening into a conservatory and veranda, in front of which is a broad terrace walk; dining-room 26 feet by 20 feet 11 feet 6 inches high, over which is a drawing room of the same size, six best bed rooms and dressing rooms, five secondary bed-rooms, four excellent attics, three water closets, and bath-room. The variety of the views from the house, and the scenery of the surrounding country, including the New Forest and the Isle of Wight, are beyond dispute equal to any in the kingdom. Plans and surveys, shewing that the property possesses most valuable sites for building, may be seen on application to Mr. Guy, Solicitor, or Mr. Galpine, Lymington, Hants, of whom further information may be obtained. Printed particulars will be ready in the mouth of April.

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Sum Assured.	Time Assured.	Sum added to Policy.
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
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The Premiums nevertheless are on the most moderate scale, **and only one-half need be paid for the first Five Years,** where the Insurance is for Life.

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ESTABLISHED 1808.

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Actuary—Charles Ansell, esq. F.R.S.
Solicitor—Thomas Browning, esq.
Surveyor—Thomas Hopper, esq.
Assistant Surveyor—Thomas Lloyd, esq.

FIRE DEPARTMENT.

RETURNS.—The Directors request reference to the fact, that Twenty per Cent. was returned by this Company on the amount of premiums paid for the five years up to Christmas 1841, on all policies for 300l. and upwards, which had been in force for one year at that time.

The next periodical Accounts for Returns will be made up to Christmas 1846.

RENT.—This Office (independent of the Returns) offers to Persons effecting Assurances, the further advantage of an allowance for the loss of Rent on Buildings rendered untenantable by Fire.

RENEWALS. Policies due on Lady-day should be renewed within fifteen days thereafter.

LIFE DEPARTMENT.

The attention of the Public has, in the Advertisements and Proposals of this Company of late years, been called to a Table of Additions applicable to and expectant on Policies of particular dates and ages; the Directors now beg to refer to a statement which may be obtained on application at the office in Cheapside, or to any of the Agents in the Country of Sums ACTUALLY PAID, shewing the Sums respectively assured and the Bonuses thereon.

Persons assured for the whole term of Life in GREAT BRITAIN or IRELAND respectively, will have an ADDITION made to their Policies every seventh year, or an equivalent REDUCTION in the future payments of Premium, at the option of the Assured.

THE FOURTH SEPTENNIAL VALUATION will be made up to Christmas 1844, and the Directors hope to announce to the Life Policy holders about the end of the ensuing May, the result of the Actuary's computations. ALL POLICIES EFFECTED DURING THE NEXT SEVEN YEARS, and remaining in force at Christmas 1851, will participate in the valuation to be made up to that date.

ASSURANCES FOR SHORT PERIODS may now be effected in this Office at considerably reduced rates of Premium.

The Company's Rates and Proposals may be had at the Office in London or of any of the Agents in the country, who are authorized to report on the appearance of Lives proposed for Assurance.

HENRY DESBOROUGH, Secretary.
92, Cheapside, March, 1845.

SELTERS WATER, in England called SELTZER WATER. The DUKE of NASSAU, to prevent any further fraudulent imitation of SELTERS WATER, the celebrated produce of his Territory, previously carried to such an enormous extent, that bottles with his name, arms, and marks, have been specially made for the purpose in this country, has, through THE DIRECTION GENERAL OF HIS DOMAINS, adopted the use of THE PATENT METALLIC CAPSULES, and has entered into an agreement with the Patentee, Mr. J. T. BETTS, of London, by which the exclusive right is given to him, of purchasing direct from the Springs for the United Kingdom, its Colonies, and Dependencies.

The nature and extent of this arrangement with the Nassau Government, will not only enable Mr. BETTS to supply the public at a moderate price, but every bottle being capsuled the instant it is filled in the same state of freshness and perfection as at the first moment of the waters being taken from the spring.

Particulars, with the Declaration of the Nassau Government, shewing the impossibility of adulteration, or of a spurious article being substituted for the genuine, will be published as soon as the navigation of the Rhine is opened, and supplies received.

1, Wharf-Road, City-Road, London, March 1845.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations and all descriptions of Securities dependent upon human Life, Shares in Railways, Mines, and all other undertakings

MESSRS. FULLER and MARSH respectfully inform the public, that by their system of periodical sales by Auction they are enabled to offer to persons expectant or otherwise interested in the above description of property the most prompt, economical, and satisfactory mode of disposing thereof, as by classifying these descriptions of interests and properties in the same particular and for the same day, much expense is avoided, and a far greater competition is secured. Their periodical sales of reversions, life interests, annuities, life policies, advowsons, next presentations, and all descriptions of securities dependent upon human life, shares in railways, mines, and all other undertakings, will be continued throughout the present year as follows:—

Thursday, April 10	Thursday, September 4
Thursday, May 1	Thursday October 2
Thursday, June 5	Thursday, November 6
Thursday, July 3	Thursday, December 4
Thursday, August 7	

Notice of Sales intended to be effected by the above means should be forwarded to Messrs Fuller and Marsh a fortnight prior to each date in order that they may have the full benefit of publicity. Messrs Fuller and Marsh beg to call the attention of the public to the economy and expedition of this system of business, as they are thereby enabled to include each property for the sum of two guineas and a half, including all expenses, should a sale not be effected Particulars of the next period cal sale may be obtained ten days previous to the sale, at the Star Hotel, Oxford University Arms, Cambridge, Hen and Chickens, Birmingham Plough, Cheltenham, Bush, Bristol, New London Hotel Exeter; Pierce's Hotel, Truro, Adelphi Liverpool Royal Hotel, Manchester; Cuff's Midland Hotel, Derby; Black Swan, York, Tontine Hotel, Sheffield, Royal Hotel Leeds, Tontine Hotel Glasgow, M Gregor's Hotel Princes street Edinburgh; Gresham's Hotel Dublin; and at the Offices of Messrs FULLER and MARSH, 2, Charlotte row, Mansion-house, London.

In Lincolnshire.—The Advowson of the Parish of Ulceby cum-Fordington, about five miles from Spilsby, three and a half from Alford, and twelve from Louth with early possession.

MESSRS. FULLER and MARSH have been favoured with instructions to SELL by AUCTION at the Mart, on Thursday, April 10 at Twelve the PERPETUAL ADVOWSON and RIGHT of PRESENTATION to the valuable RECTORY of ULCEBY CUM FORDINGTON, most desirably situate in one of the best neighbourhoods in the north-eastern part of the county of Lincoln, comprising a convenient Residence and about 400 acres of fertile Land, in the occupation of a highly respectable tenant, at a rental of 630*l* per annum The land is of the best quality, and in a high state of cultivation The population of the parish does not exceed 240, and the locality is remarkably healthy The above Advowson will be sold subject to the life of the present incumbent now in the 73rd year of his age Further particulars may be obtained on application at the offices of Messrs Heaton Brackenbury and Guy, Solicitors, Gainsborough of Messrs Capes and Stuart, Solicitors Field-court Gray's-inn and of Messrs FULLER and MARSH, Land Agents 2, Charlotte row

Periodical Sale —Policies of Assurance and Absolute Reversions to several Sums of Money

MESSRS. FULLER and MARSH have received instructions to include in their Periodical Sale, appointed to take place at the Auction Mart on Thursday, April 10, at Twelve, in lots, a CONTINGENT REVERSION to the SUM of 500*l*, the Absolute Reversions to the sums of 1,689*l* 7s 11d 208*l* 6s 8d and 100*l* Policies of Assurance in the Eagle Life office, and Forty Shares in the Bude Light Company Particulars may be obtained, ten days prior to the sale, of C W Cobby esq solicitor, 10, Paternoster-row, of Mr George Drew solicitor, Bermondsey-street, and at Messrs FULLER and MARSH'S offices for the sale of reversions, shares &c 2, Charlotte-row, Mansion house

Periodical Sale.—Policy for 1,000*l* effected with the Atlas Assurance Company, in the year 1819 on the life of a gentleman now in the 70th year of his age

MESSRS. FULLER and MARSH have been favoured with instructions to include in their Periodical Sale appointed to take place at the Auction Mart on Thursday, April 10, at twelve, in lots a POLICY of ASSURANCE for the sum of 1 000*l* effected with the Atlas Assurance Company the 30th June 1819 on the life of a gentleman now in the 7[illegible] year of his age annual premium 37*l*. 17s 6d A bonus will be declared in June next Particulars may be obtained at the Mart, of Messrs Thompson Field, and Debenham, solicitors, Salters' hall St Swithin s lane; of Mr H Edwards St Alban's and at the offices of Messrs. FULLER and MARSH, 2, Charlotte-row, Mansion house.

To Assurance Offices and other Public Institutions —Valuable Leasehold Premises, most eligibly situate in the heart of the city of London, within a few minutes' walk of the Exchange.

MESSRS. FULLER and MARSH have received instructions to submit to public COMPETITION, at the Auction Mart, on Thursday, April 10, at twelve, the very extensive and important PREMISES comprising Nos 37 and 38, Gracechurch-street, consisting of two substantial modern brick-built houses, most admirably adapted to public business. No 37, Gracechurch-street, a substantial house, in perfect repair, containing noble double fronted shop, fitted up with plate glass windows, entrance hall, elegant dining and drawing rooms, numerous bed rooms, and all requisite domestic offices. No 38, Gracechurch-street, a substantial house in perfect repair, containing extensive counting-houses and entrance hall, well proportioned dining and drawing rooms, sleeping apartments and well-arranged domestic offices The estate is held on lease for an unexpired term of 70 years, subject to a reserved rent. Particulars may be obtained, ten days prior to sale, on the premises, at the Auction Mart, of Mr Freeland, Solicitor, Stcyning, Sussex, and of Messrs FULLER and MARSH, 2, Charlotte-row, Mansion-house

Periodical Sale.—Valuable Old Policy for 3,000*l*. in the London Life Association, effected in the year 1819, on the life of a gentleman now in the 70th year of his age

MESSRS. FULLER and MARSH have been favoured with instructions to include in their Periodical Sale of Reversions, Life Policies, &c. appointed to take place at the Auction Mart, on Thursday, April 10, at Twelve, in lots, a POLICY of ASSURANCE for the sum of 3 000*l* effected with the London Life Association, No 81, King William-street, the 2nd July, 1819, on the life of a gentleman now in the 70th year of his age reduced annual premium 41*l* 0s 0d Particulars may be obtained at the Mart, of Messrs Thompson, Field, and Debenham solicitors, Salters' hall, St Swithin s lane, of Mr H Edwards St Alban's, and at the offices of Messrs FULLER and MARSH for the sale of reversions, life policies, annuities, &c 2 Charlotte row, Mansion house

Valuable Freehold Estate, Red Lion-street Clerkenwell

MESSRS FULLER and MARSH have been favoured with instructions from the Executors of the late W Baldwin esq to SELL by AUCTION at the Mart on Thursday April 10 at Twelve a desirable FREEHOLD INVESTMENT, comprising a capital brick built Residence, No 28 Red Lion street Clerkenwell in the occupation of a respectable tenant at the very inadequate rent of 40*l* per annum May be viewed on application to the tenant Particulars obtained on the premises at the Mart of Stephen Walters esq solicitor 56 Basinghall street and at the offices of Messrs FULLER and MARSH auctioneers and land agents, 2 Charlotte-row, Mansion-house, and Croydon Surrey

Periodical Sale —Shares in the Hungerford Market Company.

MESSRS FULLER and MARSH have received instructions from the Executors of the late Thomas Nixson esq to include in their Periodical Sale of Reversions Shares, Policies &c appointed to take place at the Auction Mart on Thursday April 10, at 12 in lots TEN SHARES of 100*l* each 100*l* called and paid in the HUNGERFORD MARKET COMPANY Particulars may be obtained at the Mart of Messrs New Hamilton, and Fews solicitors Henrietta street Covent garden and at the offices of Messrs FULLER and MARSH for the sale of shares in all public undertakings reversions annuities &c 2 Charlotte row Mansion house

Periodical Sale —Absolute Reversions to the Sums of 30 105*l* 10s 4d Three and a Quarter per Cent Consols and [illegible]000*l* Three per Cent Reduced

MESSRS FULLER and MARSH have been favoured with instructions to include in their Periodical Sale appointed to take place at the Auction Mart on Thursday April 10 the ABSOLUTE REVERSION to ONE TWELFTH PART or SHARE of the Moiety of the Sum of 30 105*l* 10s 4d Three and a Quarter per Cent Consols and One Twelfth Part or Share of the Moiety of [illegible]000*l* Three per Cent Reduced receivable on the death of the survivor of a gentleman and his wife the former aged 5[illegible] the latter aged 48 Particulars may be obtained at the Mart of Mr G[illegible] Drew solicitor 18 Bermondsey street and at Messrs FULLER and MARSH S Offices Charlotte row Mansion house

In Herefordshire —The Sugwas Court Estate an important Freehold Landed Investment extending over upwards of [illegible]00 acres of sound arable pasture and meadow land productive orchard and fruit plantations with its mansion and offices

MESSRS FULLER and MARSH have been favoured with instructions to submit to public COMPETITION early in May unless in the meantime an acceptable offer be made by private contract a first rate FREEHOLD LANDED INVESTMENT comprising the valuable property distinguished as the SUGWAS COURT ESTATE with an excellent Residence suitable to a large family and offices situate in the centre of the property surrounded by about 600 acres of very superior land beautifully timbered and bounded by the river Wye together with the manorial rights fisheries and other immunities Detailed particulars will appear in future advertisements and in the meantime any application for sale by private contract to be made to Messrs FULLER and MARSH, Surveyors and Land Agents 2 Charlotte row Mansion house

Periodical Sale —Copland s Patent Right for Improvements in Water Wheels

MESSRS FULLER and MARSH have been favoured with instructions from the Administrator of the late Mr Robert Copland to include in their Periodical Sale appointed to take place at the Auction Mart on Thursday April 10, at twelve in lots COPLAND'S PATENT RIGHT for IMPROVEMENTS in WATER WHEELS secured by Royal letters patent for the sole use benefit and advantage of the said invention within England and Wales and the town of Berwick upon Tweed and also in all our colonies and plantations abroad for the term of fourteen years Particulars may be obtained at the Mart of John H Fitch, esq Solicitor 17 Union street Southwark and of Messrs FULLER and MARSH, 2, Charlotte row, Mansion house

Periodical Sale —Contingent Reversion fully equal to absolute in the sums of 1 535*l* 17s Three and a Quarter per Cents and 115*l* sterling

MESSRS. FULLER and MARSH have been favoured with instructions to include in their next Periodical Sale of Reversions Policies Shares &c appointed to take place at the Auction Mart on Thursday April 10 at twelve in lots, the CONTINGENT REVERSION fully equally to absolute) in and to one-third part or share of a moiety of the sum of 1 535*l* 17s Three and a Quarter per Cents and 115*l* sterling and to which reversion the purchaser will become entitled on the decease of a lady now in the 54th year of her age; the lady has long been an incurable lunatic, and is now in an asylum Also the Contingent Reversion in and to the moiety of the above sums, receivable on the death of the sister of the before mentioned lady provided she dies without issue Particulars may be obtained at the Mart, of Mr Montague Gossett, Solicitor, 30 Old Jewry, and at Messrs FULLER and MARSH'S Offices for the Sale of every description of Reversionary Property, Shares, &c. 2, Charlotte row, Mansion house.

Periodical Sale —Valuable old Policy for the sum of 1,000*l*. effected with the Equitable Life Assurance Company in the year 1810.

MESSRS. FULLER and MARSH have been favoured with instructions from the executors of a gentleman, deceased, to include in their Periodical Sale appointed to take place at the Auction Mart, on Thursday, April 10 at Twelve, a POLICY of ASSURANCE for the sum of 1,000*l* with the accumulation thereon, amounting to 1,725*l* in October last, making together the sum of 2,725*l* and with all prospective advantages thereon, effected with the Equitable Society March 15, 1810 on the life of a gentleman now in the 65th year of his age Annual premium 26*l* 13s 6d Particulars may be obtained of Mr James Matthews solicitor, 5, Lant-street Southwark, and at Messrs FULLER and MARSH S offices for the sale of policies, reversions, life annuities, shares, &c 2, Charlotte row, Mansion-house

Periodical Sale An Improved Rental of 5*l* per annum with prospective Reversionary Interest well secured on a genteel Family Residence most eligibly situate on Shacklewell green Hackney

MESSRS FULLER and MARSH have been favoured with instructions from the administrator of the late Mr Thomas Sharpe to include in their next Periodical Sale appointed to take place at the Auction Mart on Thursday April 10 at Twelve in lots an IMPROVED RENT of 5*l* per annum issuing out of a genteel compact family residence, with pleasure and extensive kitchen gardens coach house stabling &c most pleasantly situate on Shacklewell green, in the parish of St John s Hackney in the occupation of and on lease to Mr John Cooper for an unexpired term of 21 years from Michaelmas 18[illegible] at the low rent of 50*l* per annum The estate is held on lease for an unexpired term of 15 years from 1820 Also the prospective Reversionary Interest in and to a considerably improved Rental at the expiration of the present tenant s lease The house and premises may be viewed by cards only, which with particulars may be obtained of Messrs Bristow and Tarrant Solicitors 24 Walbrook, and London street Greenwich and at Messrs FULLER and MARSH'S offices 2 Charlotte row Mansion house

Periodical Sale —Policy for 700*l* in the Pelican Life Assurance Company effected in the year 181[illegible]

MESSRS FULLER and MARSH have been favoured with instructions to include in their next Periodical Sale of Reversions Life Policies Shares &c appointed to take place at the Auction Mart on THURSDAY April 10 at twelve in several lots a POLICY of ASSURANCE for the sum of 700*l* effected with the Pelican Life Assurance Company the 7th of May 181[illegible] on the life of a gentleman now in the 60th year of his age annual premium 21*l* 9s 4d Particulars may be obtained of Messrs White Kennett and White, Solicitors Grantham Lincolnshire of Mr W G Taylor, Solicitor 14 John street Bedford row and at Messrs FULLER and MARSH s offices for the sale of life policies reversions &c Charlotte row Mansion house

Valuable Freehold Estate situate in the city of London

MESSRS FULLER and MARSH have been favoured with instructions from the Executor of the late W Baldwin esq to SELL by AUCTION at the Mart on Thursday April 10 at twelve in lots an eligible FREEHOLD ESTATE comprising four commodious and substantial Brick built houses, forming Nos 1, 2, 3 and 4 Cherry tree court Aldersgate street within a few yards of Twin street and nearly opposite the Albion Tavern in the occupation of respectable tenants at very inadequate rents amounting to 164*l* 12s per annum The several premises may be viewed on application to the tenants and particulars obtained on the respective premises at the Mart of Stephen Walters esq Solicitor 56 Basinghall street and at the offices of Messrs FULLER and MARSH auctioneers and land agents 2 Charlotte row Mansion house, and Croydon Surrey

Periodical Sale—A well secured Annuity of 100*l* per annum Policies of Assurance in old established offices and Life Interests arising from Money in the Funds and valuable Leasehold Property

MESSRS FULLER and MARSH have received instructions from the Assignees to prepare for SALE by AUCTION in their Periodical Sale for May an ANNUITY of 100*l* per annum well secured several Policies of Assurance and Life Interests arising from money in the funds and valuable leasehold property Detailed particulars will appear in future advertisements 2 Charlotte row, Mansion house March [illegible]

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